

## **1. INTRODUCTION**

- 1.1. All capitalized terms used in these general terms and conditions – project delivery (“Terms and Conditions”) shall have the meaning given them in these Terms and Conditions provided that any other terms that have a generally understood meaning in the construction industry shall have that meaning for the purposes of the Agreement.
- 1.2. In consideration of the sum of \$10 and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by Supplier and BGIS hereby retains Supplier as an independent contractor to perform and Supplier hereby agrees to perform the Work as an independent contractor in accordance with the terms and conditions of the Agreement.

## **2. SCOPE**

- 2.1. Goods and/or services (“Work”) ordered by BGIS Global Integrated Solutions Canada LP or any subsidiary or affiliate thereof on its own behalf or as agent for a third party (in each case, “BGIS”) in a purchase order, work order or other instructions (collectively, a “P/O”) issued to the supplier named in the P/O (“Supplier”) shall be timely furnished and invoiced in strict conformity with the P/O, these Terms and Conditions and any other documents relating to the Work as advised by BGIS, including without limitation specification, pricing and Work milestone documents, (collectively the “Agreement”) as well as, Applicable Law, the policies and other requirements of the Work beneficiary (“Client”) shared with Supplier, including the requirements set out in the attached Schedule F.
- 2.2. If BGIS advises Supplier that it has retained a consultant (“Consultant”), the Consultant will provide administration of the Agreement while the Work is being provided until completion of the Work. Such administration may include, but is not limited to: changes in the Work and the Agreement, field review, payment certification, and shop drawing review, deficiency review, and review of as-builts and closeout documents.

## **3. DELIVERABLES**

- 3.1. Supplier shall supply all labour, materials, supplies, equipment and services required to deliver the Work in accordance with the requirements of the Agreement including, without limitation, the provision of any and all labour, materials, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of such Work. If any of the Work, in the reasonable opinion of BGIS, is inadequately provided or requires corrections, the Supplier shall forthwith make the necessary corrections at its expense. During the Term Supplier shall keep the Place of Work clean and tidy.
- 3.2. The Work: (i) shall be undertaken in a professional and competent manner by persons qualified and skilled in their occupations to the standards consistent with that level of care and skill ordinarily exercised by members of the same trade or profession currently practicing under similar circumstances in the general vicinity of the location of the Work (“Place of Work”); and (ii) shall comply with all applicable laws, statutes, ordinances, rules, regulations and codes, whether federal, provincial or local, including required

environmental protection and health and safety regulations (“Applicable Law”). All materials and supplies brought into the Work shall be new and any substitutions agreed to by BGIS shall be of equal or better quality than such specified materials or supplies

- 3.3. Supplier shall be fully responsible for the professional quality, technical accuracy, timeliness and completeness of the Work and at all times shall act diligently, prudently, ethically, and in the best interest of BGIS, the Client and the Client’s properties.
- 3.4. At any time, BGIS may issue a change to the Work and any resulting change in the Contract Price or the Work milestones agreed to by BGIS shall be confirmed in writing by the Parties. No change in the Work or any resulting change to the Contract Price or Work milestones proposed by Supplier shall be effective unless or until agreed to in writing by BGIS. All such changes that are confirmed in writing shall constitute part of the Agreement.
- 3.5. Supplier shall only use subcontractors first approved in writing by BGIS. Supplier shall be solely responsible for the acts and omissions of its subcontractors BGIS’s approval of any subcontractor shall not change Supplier’s liability in this regard. Subcontractors shall obtain and maintain all insurance coverage that Supplier is required to maintain under the Agreement.
- 3.6. Supplier has inspected the Place of the Work prior to the commencement of the Work to the extent it deems necessary to determine difficulties and hazards incidental to the Work (for both construction and design purposes) whether arising from the location of the Work, proximity of the Work to adjacent facilities, site conditions, equipment, and other building structures, or otherwise, and is reasonably satisfied with the nature and extent of such difficulties and hazards. No change to the Contract Price or Work milestone documents will be permitted due to Supplier’s failure to have investigated and determined the conditions affecting the Work as contemplated in this section.

**4. CONFLICT OF INTEREST**

- 4.1. Supplier shall not engage in any activity or provide any services to BGIS where to do so would create a real or perceived conflict of interest with the provision of the Work. Without limiting the generality of the foregoing, Supplier acknowledges and agrees that it shall be a conflict of interest to provide Work if Supplier is related in law to another person or entity that has bid on the Work, or if Supplier uses confidential competitor or BGIS information to support the bid for the award of the Work, or if Supplier’s employees or subcontractors are related by family or business relationship to BGIS employees or Client employees where such relationship can be considered to impact the award of the Work.
- 4.2. Supplier shall promptly disclose to BGIS any actual or potential situation that may be reasonably interpreted as a real or perceived or potential real or perceived conflict of interest and shall comply with any terms and conditions subsequently prescribed by BGIS resulting from the disclosure. Disclosure to be made in writing to:

**BGIS**  
**Attn: BGIS Legal Counsel**  
**4175 14TH Avenue**  
**Markham ON. L3R 5R5 Andrew.McLachlin@bgis.com**

4.3. Breach of these conflict of interest provisions may result in termination of the Agreement by BGIS in addition to any other remedies that BGIS has for such breach in contract, in law or in equity.

## **5. CONTRACT PRICE AND PAYMENT**

5.1. The amount that BGIS shall pay for Work completed in accordance with the Agreement (“Contract Price”) shall be as provided for in or otherwise in accordance with the P/O (including any accompanying drawings and specifications raised by BGIS).

5.2. The Contract Price is: (i) exclusive of GST, HST, TVQ and PST applicable in the jurisdiction where the Place of Work is situated; and (ii) inclusive of all other taxes, tariffs, duties and/or levies which may be payable in connection with the Work.

5.3. Subject to any payment schedule provided for elsewhere in the Agreement, Supplier shall submit monthly applications for payment of the Contract Price for Work completed since the last application for payment was made. Each application for payment shall consist of: (i) a detailed, itemized invoice that includes a labour and material cost breakdown, the work location, the correct P/O number, the BGIS project number, the BGIS project manager’s name and any other information reasonable required by BGIS or the Client; (ii) a CSST/W SIB/WCB certificate; and (iii) any other information or documentation reasonable required by BGIS or Client. No application for payment will be processed by BGIS unless BGIS has received: (i) certificates confirming that the insurance coverage that Supplier is required to obtain and maintain under the Agreement are in effect; and (ii) evidence that all building permits for the Work have been obtained. The final application for payment shall, in addition to the foregoing, include: (i) evidence that notice of substantial completion has been published in a recognized construction trade newspaper and that no claims for lien have been received (provided that if the Place of Work is in Quebec the Work shall be considered substantially complete 30 days following the date when the Work is ready for use or is being used for the purpose intended and, if there is a payment certifier, is so certified by the payment certifier otherwise as determined by BGIS and in any case, no liens have been filed); (ii) as-built drawings; (iii) contractor or Supplier warranties for equipment, systems and materials; and (iv) all manuals and commissioning information.

5.4. If: (i) BGIS determines that Supplier’s invoice is not correct; (ii) BGIS disputes the amount of the invoice; (iii) BGIS determines that the Work was not satisfactorily rendered or is otherwise deficient; or (iv) Any application for payment is incomplete, BGIS shall notify Supplier accordingly and may reject the invoice and withhold payment until the issue has been resolved provided that if only part of an invoice amount is disputed, BGIS shall pay the undisputed portion of the invoice. Payment of Supplier’s invoices shall be made by cheque or electronic funds transfer 45 days following the date of receipt an application for payment made in accordance with the terms of this section. Payment shall not constitute BGIS acceptance of the Work nor impair BGIS’s right to inspect or audit the Work or exercise any of its remedies, including its right to recover back from Supplier any amount already paid for the Work. All

payments on account of the Contract Price are subject to any holdbacks required by applicable construction lien law at the Place of Work.

- 5.5. Supplier acknowledges that BGIS's agreement with the Client may include prompt invoicing requirements and accordingly, and in any event, Supplier agrees to waive payment for Work: (i) not invoiced within 6 months of the P/O issue date where such Work is scheduled for completion within 3 months of the P/O issue date; or (ii) not invoiced within 6 months of substantial completion of the Work where Work is scheduled for completion beyond 3 months of the P/O issue date.
- 5.6. BGIS may deduct from any sum due by BGIS to Supplier under the Agreement any amount due to BGIS by the Supplier under the Agreement or any other agreement between BGIS and Supplier.

## **6. TERM AND TERMINATION**

- 6.1. Subject to earlier termination as may be provided in the Agreement and unless otherwise specified, the Agreement shall be effective upon the P/O being issued and shall remain in effect until all obligations under the Agreement have been performed in full ("Term").
- 6.2. If the Contract Price is less than or equal to \$10,000, BGIS may terminate the Agreement without cause immediately with written notice. If the Contract Price is greater than \$10,000 BGIS may terminate the Agreement in whole or part without cause upon 30 days' written notice. BGIS may immediately terminate the Agreement in whole or part if Supplier has breached the terms of the Agreement and has failed to correct the breach within 30 days of BGIS's notification of the breach.
- 6.3. Upon termination, BGIS shall be liable solely for payment of the value of the Work satisfactorily completed under the Agreement to the date of termination including a reasonable amount to compensate Supplier for costs directly related to the wind-up of the Work ("Wind-Up Costs"). Wind-Up Costs shall not include any profit or overhead or opportunity costs of Supplier and Supplier shall use commercially reasonable efforts to minimize Wind-Up Costs.
- 6.4. BGIS retains the right, should Supplier not be able to meet BGIS's requirements in connection with the Work or this Agreement, to satisfy BGIS's requirements from other sources and BGIS's obligations under the Agreement will be reduced accordingly.

## **7. INSURANCE AND WORKPLACE INSURANCE**

- 7.1. Supplier shall obtain and maintain during the Term the following insurance coverages. Prior to the commencement of the Work Supplier shall deliver the following to BGIS:
  - 7.1.1. A certificate of insurance confirming Supplier has in place commercial general liability insurance in an amount not less than two million dollars (\$2,000,000) inclusive per occurrence for personal injury, bodily injury, death and property damage. The insurance may not be reduced, allowed to lapse, cancelled or modified without 30 days prior written notice to BGIS;
  - 7.1.2. A certificate of insurance confirming Supplier has in place 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;

7.1.3. A certificate of insurance confirming Supplier has in place Environmental Liability Insurance (if applicable) in the amount of not less than two million dollars (\$2,000,000) per occurrence, insuring against bodily injury, property damage or environmental remediation expense, arising out of the handling, storage, transport and disposal of any Hazardous Substances.

7.1.4. A clearance certificate issued pursuant to the workers' compensation legislation in effect in each of the jurisdictions where Work is to be performed confirming employees of Supplier performing the Work are covered by workers' compensation insurance or equivalent legislative compensation scheme and that payments due thereunder are up to date.

7.1.5. BGIS has arranged for work performed under its Public Services and Procurement Canada (PSPC) client account to be insured under a blanket Wrap-Up Liability program. The insurance program insures all eligible contractors and subcontractors under contract with BGIS and other designated parties for work performed as described in the Wrap-Up Liability Program attached: BGIS Controlled Wrap-Up Insurance Program Manual. The Supplier agrees to comply with the requirements of the Wrap-Up Liability Program attached, including Section 4 (Contractor Maintained Coverage) and Section 5 (Contractor Responsibilities).

7.1.6. The Supplier shall, prior to performing the Deliverables, provide BGIS with certificates of insurance meeting the above requirements and the requirements of Wrap-Up Program, and certificate(s) with respect to WC Compliance.

7.2. All insurance policies must (i) for any property insurance, contain a waiver of subrogation in favor of the Indemnitees and (ii) for any liability insurance, include BGIS, the Consultant and the Client (collectively, "Indemnitees") as additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with the Agreement, in which case the policy shall be non-contributing and primary with respect to coverage in favor of the Indemnitees.

7.3. Supplier's obligations to maintain such minimum insurance coverage shall in no way limit the liability or obligations assumed by Supplier under this Agreement

7.4. BGIS may, acting reasonably, require higher limits or other types of insurance coverage(s) as necessary and appropriate under the circumstances.

7.5. If the Work is or includes professional services Supplier must carry and provide proof of professional errors and omissions coverage with a coverage limit of at least two million dollars (\$2,000,000.00) inclusive.

**8. INDEMNITIES AND LIABILITY**

8.1. If, and to the extent, any act or omission of Supplier or its employees, servants, subcontractors, agents, or representatives or others it is responsible for in law, causes or results in (i) damage to or destruction of

property of BGIS or third-parties (including Clients), and/or (ii) death or injury to persons including employees of BGIS or third-parties (including Clients), and/or (iii) any claim for infringement of intellectual property rights, and/or (iv) any claim for breach of any confidentiality provisions or unauthorized release of confidential information, Supplier agrees to indemnify, defend and hold harmless BGIS and its partners and affiliates and Clients and their respective officers, directors, employees, agents, successors and assigns (collectively, "Indemnified Parties") from and against any and all claims, actions, damages, demands, liabilities, costs and expenses, including reasonable lawyers' fees and expenses and costs of litigation ("Losses") BGIS or any other Indemnified Party incurs as a result of, in connection with, or arising therefrom. Supplier shall pay or reimburse BGIS or any other Indemnified Party promptly for all Losses. The provisions of this section shall survive the expiration or termination of this Agreement.

- 8.2. Except for breaches of confidentiality or intellectual property infringement by Supplier, neither Party shall have any liability to the other Party for any indirect, special, incidental, exemplary or punitive damages or economic consequential damages (including loss of profits or savings) whether in contract (including fundamental breach), tort (including negligence or strict liability) or other legal or equitable theory, resulting from or arising in connection with any breach of this Agreement by it, even if advised in advance of the possibility of such damages and even if a remedy set forth herein is found to have failed of its essential purpose provided, however, that any claim by a third party against a Party shall be considered direct damages of such Party. The provisions of this section shall survive the expiration or termination of this Agreement.
- 8.3. Supplier shall indemnify and hold BGIS, its partners and each of their respective officers, directors and employees (collectively, "BGIS Indemnified Parties") harmless from any and all claims and losses of any kind whatsoever (including, without limitation, fines and penalties) suffered by or imposed upon any Indemnified Party due to, as a result of or arising out of Supplier's failure to comply with any applicable workers' compensation legislation and this provision will survive the expiry or termination of the Agreement.
- 8.4. BGIS shall hold the benefit of all indemnities in favor of the other Indemnified Parties and the other BGIS Indemnified Parties in trust for those persons and may enforce the indemnities for their benefit without further formality.

## **9. ASSIGNMENT**

- 9.1. Supplier shall not assign the Agreement without the prior written consent of BGIS. If Supplier subcontracts or delegates any of its obligations in the Agreement to a third party, Supplier shall remain fully responsible for complete performance of all of Supplier's obligations under the Agreement and for any such third party's compliance with the provisions set forth therein. BGIS may, upon written notice to Supplier, assign its interest and obligations in the Agreement to a Client without Supplier's consent and BGIS shall have no further obligations to Supplier under the Agreement from and after the assignment.



## **10. RECORDS**

10.1. If Supplier provides time and materials or construction management services under the Agreement, Supplier shall maintain complete and accurate books, records, accounts and invoices in relation to the Work and the Agreement. Upon request BGIS and Client shall be entitled from time to time to inspect and audit all said books, records, accounts and invoices and in such case all of which shall be made available at the Supplier's office closest to the Place of Work during normal business hours.

## **11. HEALTH, SAFETY AND SUSTAINABILITY**

11.1. Supplier acknowledges reading, reviewing and informing their staff of the BGIS Health & Safety Policy and agreeing to abide by all applicable legislated and mandated health and safety requirements. Supplier agrees to provide all required health and safety training at its own cost for their staff as related to providing the Work.

11.2. Where specified in the Agreement, Supplier agrees to provide security clearance checks at their own cost on all employees that have access to Client locations to undertake the Work. BGIS will provide the required Client specific security requirements.

11.3. Supplier will use only environmentally friendly products if available. Supplier will remove all waste materials from the Place of Work and dispose of in an environmentally-friendly manner, including reuse and recycling. Supplier will abide by all LEED requirements if Place of Work site is LEED certified.

11.4. Supplier shall immediately notify BGIS of any actual or possible environmental, health or safety problems, including any issues that need to be reported to regulatory agencies that are attributable to the Work. Supplier also agrees to provide BGIS with reasonable advance notice of potential labour disputes, material shortages, its insolvency or any other matters that may delay or interfere with its performance under the Agreement.

11.5. Supplier recognizes and declares that it: (i) is responsible for directing, monitoring and performing the Work; (ii) is the person undertaking the Work and is the "Constructor" or "Prime Contractor" or "Principal Contractor" pursuant to the applicable health and safety legislation (the "Constructor") in connection with the Work; and (iii) shall assume all of the obligations of the Constructor pursuant to such legislation unless otherwise agreed to in writing by BGIS.

11.6. Supplier shall ensure that all hazardous materials are properly handled and stored in accordance with all Client requirements and Applicable Law. Supplier must be able to demonstrate that its employees have received appropriate WHMIS training and are knowledgeable in spill response. If Supplier encounters toxic or hazardous materials or substances, Supplier shall: (i) take all reasonable steps to ensure that no person suffers injury, sickness or death and that no property is damaged or destroyed as a result of exposure to or the presence of the substances or material; (ii) suspend work at the location where Supplier encountered the toxic or hazardous substance or material; and (iii) immediately report its findings to BGIS and confirm such findings in writing. Supplier will be permitted to continue work only upon BGIS's removal of the work suspension.

## **12. LAW AND ARBITRATION**

12.1. The Agreement shall be interpreted in accordance with and governed by the laws of the province where the Place of Work is located and all laws of Canada applicable therein and all disputes among the parties shall be submitted to the non-exclusive jurisdiction of the courts where the Place of Work is located.

## **13. FORCE MAJEURE**

13.1. For the purposes of this Agreement “Force Majeure” means an event which occurs owing to causes beyond the control of the Party claiming Force Majeure, which is unforeseeable and unavoidable, and which occurs without fault or negligence or impecuniosity of the Party claiming Force Majeure.

13.2. A failure of Supplier to perform its obligations under this Agreement caused by Supplier's subcontractors shall only be considered as Force Majeure if the criteria stated in Clause 13.1 are all met in respect of such subcontractor and Supplier accepts such event as Force Majeure under its contract with the subcontractor.

## **14. NOTICES**

14.1. All documentation, contacts and or recall notices shall be made strictly through BGIS’s Design and Project Delivery Services team and addressed to:

**BGIS**  
**ATTN: TFMS Program Director**  
**300 Sparks Street**  
**Ottawa, ON K1R 7S3**

## **15. WARRANTIES**

15.1. Supplier warrants that the Work: (i) shall be provided in accordance with the requirements of the Agreement; (ii) shall be free from failure, defects in material or workmanship; (iii) shall be of the best quality; (iv) shall comply with applicable industry standards and practices; (v) shall be free and clear of all liens, attachments and claims; (vi) shall be fit for the purpose intended; and (vii) shall correspond with the specifications, drawings, samples, or other description furnished or adopted by BGIS and with applicable laws.

15.2. Unless otherwise specified elsewhere in the Agreement, Supplier’s warranty shall be for no less than one year after satisfactory substantial completion of the Work and BGIS and the Client shall further benefit from all legal and manufacturers’ guarantees available in connection with the Work. Supplier agrees to expeditiously repair, replace or re- perform, at its own expense (including all associated costs such as transportation, replacement, removal and reinstallation costs) any Work or any part or components thereof which are found to be in breach of the warranties provided in the Agreement when notified of such non-conformity by BGIS. If Supplier fails promptly to remedy or replace non- conforming Work, BGIS may, upon reasonable notice to Supplier, undertake or arrange for the undertaking of remedial works at



Supplier's expense. All warranties shall survive inspection, acceptance and use of the Work and completion, termination or cancellation of this Agreement.

**16. CONFIDENTIALITY**

16.1. The Parties agree to protect and keep all data and information disclosed by each Party in relation to this Agreement confidential.

**17. APPLICABLE TO PERFORMING WORK IN CONNECTION WITH PUBLIC WORKS AND GOVERNMENT SERVICES**

*Note: Canada requires inclusion of the following provisions. BGIS has no authority to revise or delete any provision in this Section, even if such provision is not applicable to the Work.*

17.1. **Definitions:** For purposes of this Schedule:

- a. **“Agreement”** shall mean the “Agreement” or “Contract” (as applicable);
- b. **“BGIS”** shall mean the “Owner” or “Purchaser” (as applicable);
- c. **“Canada” or the “Affected Party”** shall mean Canada represented by the Minister of Public Works and Government Services;
- d. **“Supplier”** shall mean the “Contractor” or “Supplier” (as applicable); and
- e. **“Work”** shall mean the “Deliverables” or “Work” (as applicable).

17.2. **Security Requirements:** The Supplier shall at all times comply with the security requirements set out in Schedule F-1 attached hereto. Supplier must comply with all security measures, standing orders, policies, or other rules in force at the site where the Work is performed.

17.3. **Subcontracting:** Supplier must obtain BGIS' prior written consent before subcontracting or permitting the subcontracting of any part of the Work. Even if BGIS consents to any subcontract, the Supplier is responsible for its obligations under the Agreement and BGIS is not responsible to any subcontractor of the Supplier. The Supplier is responsible for any matters or things done or provided by any of its subcontractors under the Agreement and for paying any of its subcontractors for any part of the Work they perform.

17.4. **Protection of Work and Property:** The Supplier shall protect the Work, Canada's property, and property adjacent to the Work from damage that may arise and shall be responsible for any loss or damage to the Work or any part of the Work until it is delivered to Canada. Even after delivery, the Supplier remains responsible for any loss or damage to any part of the Work caused by the Supplier or any of its subcontractors.

17.5. **Accounts and Audit:**

17.5.1. The Supplier shall keep proper accounts and records of the cost of performing the Work and of all expenditures or commitments made by the Supplier in connection with the Work, including all invoices, receipts and vouchers. The Supplier must retain records, including bills of lading and other evidence of transportation or delivery, for all deliveries made under the Agreement.

17.5.2. If the Agreement includes payment for time spent by the Supplier, its employees, representatives, agents, or subcontractors performing the Work, the Supplier must keep a record of the actual time spent each day by each individual performing any part of the Work.

17.5.3. Unless BGIS has consented in writing to its disposal, the Supplier must retain all the information described in this Section 5 for six (6) years after it receives the final payment under the Agreement, or until the settlement of all outstanding claims and disputes, whichever is later. During this time, the Supplier must make this information available for audit, inspection, and examination by the representatives of Canada and BGIS, who may make copies and take extracts. The Supplier must provide all reasonably related facilities for any audit and inspection and must furnish all the information as the representatives of Canada and BGIS may from time to time require to perform a complete audit of the Agreement.

**17.6. Confidential Information:**

17.6.1. The Supplier must keep confidential all information provided to the Supplier by or on behalf of Canada or BGIS in connection with the Work, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Supplier as part of the Work when copyright or any other intellectual property rights in such information belongs to Canada or BGIS under the Agreement. The Supplier must not disclose any such information without the written permission of BGIS. The Supplier may disclose to a subcontractor any information necessary to perform the subcontract as long as the subcontractor agrees to keep the information confidential and that it will be used only to perform the subcontract.

17.6.2. The Supplier agrees to use any information provided to the Supplier by or on behalf of Canada or BGIS only for the purpose of the Agreement. The Supplier acknowledges that all this information remains the property of Canada, BGIS, or the third party, as the case may be. Unless provided otherwise in the Agreement, the Supplier must deliver to BGIS all such information, together with every copy, draft, working paper, and note that contains such information, upon completion or termination of the Agreement or at such earlier time as Canada and BGIS may require.

17.6.3. The obligations of the Supplier set out in this Section 6 do not apply to any information if the information:

- i. is publicly available from a source other than Canada or BGIS;
- ii. is or becomes known to the Supplier from a source other than Canada or BGIS; or
- iii. is developed by the Supplier independently without use of the information of Canada or BGIS.

17.6.4. Wherever possible, the Supplier must mark or identify any proprietary information delivered to Canada or BGIS under the Agreement as “Property of [Supplier's name], permitted Government uses defined under Public Works and Government Services (PWGSC) Contract No. [fill in Contract Number].” Neither Canada nor BGIS will not be liable for any unauthorized use or disclosure of information that could have been so marked or identified and was not.

17.6.5. If the Agreement, the Work or any information referred to in this Section 6 is identified as TOP SECRET, SECRET, CONFIDENTIAL or PROTECTED by Canada or BGIS, the Supplier must at all times take all measures reasonably necessary for the safeguarding of the material so identified, including those set out in the “PWGSC Industrial Security Manual” and its supplements and any other instructions issued by BGIS and Canada.

17.6.6. If the Agreement, the Work, or any information referred to in this Section 6 is identified as TOP SECRET, SECRET, CONFIDENTIAL or PROTECTED, by Canada or BGIS, representatives of BGIS and Canada are entitled to inspect the Supplier's premises and the premises of any subcontractor of the Supplier at any tier for security purposes at any time during the term of the Agreement. The Supplier must comply with, and ensure that any subcontractor complies with, all written instructions issued by BGIS and Canada dealing with the material so identified, including any requirement that employees of the Supplier or of any of its subcontractors execute and deliver declarations relating to reliability screenings, security clearances and other procedures.

**17.7. Indemnification:**

17.7.1. The Supplier shall indemnify and save Canada and BGIS harmless from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by Canada and BGIS or in respect of claims by any third party, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by, or attributable to the activities of the Supplier in performing the Work, provided such claims are caused by the negligent or deliberate acts or omissions of the Supplier, or those for whom it is responsible at law.

17.7.2. The Supplier must pay all royalties and patent fees required for the performance of the Agreement and, at the Supplier's expense, must defend all claims, actions or proceedings against Canada and BGIS charging or claiming that the Work or any part thereof provided or furnished by the Supplier to Canada or BGIS infringes any patent, industrial design, copyright trademark, trade secret, or other proprietary right enforceable in the Country of Canada.

**17.8. Licences to Intellectual Property:**

17.8.1. For purposes of this Section 17.8:

- i. **“Background Information”** means all Intellectual Property that is not Foreground Information that is incorporated into the Work or necessary for the performance of the Work and that is proprietary to or the confidential information of the Supplier, its subcontractors or any other third party.
- ii. **“Foreground Information”** means all Intellectual Property first conceived, developed, produced or reduced to practice as part of the Work under the Agreement;
- iii. **“Intellectual Property”** means any information or knowledge of an industrial, scientific, technical, commercial, literary, dramatic, artistic or otherwise creative nature relating to the Work, whether oral or recorded in any form or medium and whether or not subject to copyright; this includes but is not limited to any inventions, designs, methods, processes, techniques, know-how, show-how, models, prototypes, patterns, samples, schematics, experimental or test data, reports, drawings, plans, specifications, photographs, manuals and any other documents, Software, and Firmware;

- iv. **“Intellectual Property Right”** means any intellectual property right recognized by law, including any intellectual property right protected by legislation such as patents, copyright, industrial design, integrated circuit topography, and plant breeders' rights, or subject to protection under the law as trade secrets and confidential information.
- v. **“Software”** means any computer program whether in source or object code, any computer program documentation recorded in any form or upon any medium, and any computer database, including any modification.

17.8.2. The Supplier agrees to grant to BGIS and Canada a licence to exercise all Intellectual Property Rights in the Foreground Information for BGIS' and Canada's activities. Subject to any exception described in the Agreement, this licence allows BGIS and Canada to do anything that it would be able to do if it were the owner of the Foreground Information, other than exploit it commercially and transfer or assign ownership of it. The Supplier also agrees to grant to BGIS a licence to use the Background Information to the extent that it is reasonably necessary for BGIS to exercise fully all its rights in the Work and in the Foreground Information.

17.8.3. These licences are non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free. Neither licence can be restricted in any way by the Supplier providing any form of notice to the contrary, including the wording on any shrink-wrap or click-wrap licence or any other kind of packaging, attached to any deliverable.

17.8.4. For greater certainty, BGIS' and Canada's licences include, but are not limited to:

- i. the right to disclose the Foreground Information and Background Information to third parties bidding on or negotiating contracts with BGIS and to sublicense or otherwise authorize the use of that information by any contractor engaged by BGIS solely for the purpose of carrying out such contracts. BGIS will require these third parties and contractors not to use or disclose that information except as may be necessary to bid on, negotiate or carry out those contracts;
- ii. the right to disclose the Foreground Information and Background Information to other governments for information purposes;
- iii. the right to reproduce, modify, improve, develop or translate the Foreground Information and Background Information or have it done by a person hired by BGIS. BGIS, or a person designated by BGIS, will own the Intellectual Property Rights associated with the reproduction, modification, improvement, development or translation;
- iv. without restricting the scope of any license or other right in the Background Information that BGIS may otherwise hold, the right, in relation to any custom-designed or custom-manufactured part of the Work, to exercise such of the Intellectual Property Rights in the Background Information as may be required for the following purposes:
  - 1. for the use, operation, maintenance, repair or overhaul of the custom designed or custom-manufactured parts of the Work;
  - 2. in the manufacturing of spare parts for maintenance, repair or overhaul of any custom-designed or custom-manufactured part of the Work by BGIS, if those parts are not available on reasonable commercial terms to enable timely maintenance, repair or overhaul; or

3. for Software that is custom designed for BGIS, the right to use any source code the Supplier must deliver to BGIS under the Agreement.

17.8.5. The Supplier agrees to make the Background Information, including in the case of Software, the source code promptly available to BGIS for any purpose mentioned above. The licence does not apply to any Software that is subject to detailed license conditions that are set out elsewhere in the Agreement.

**17.9. Anti-Bribery and Corruption:**

17.9.1. The Supplier hereby represents, warrants and declares that no bribe, gift, benefit or other inducement has been or will be paid, given, promised or offered directly or indirectly to any official or employee of BGIS, Canada or to a member of the family of such a person, with a view to influencing the entry into the Agreement or the administration of the Agreement.

17.9.2. The Supplier must not influence, seek to influence or otherwise take part in a decision of BGIS or Canada knowing that the decision might further its private interest. The Supplier must have no financial interest in the business of a third party that causes or would appear to cause a conflict of interest in connection with the performance of its obligations under the Agreement. If such a financial interest is acquired during the period of the Agreement, the Supplier must immediately declare it to BGIS.

17.9.3. The Supplier warrants that, to the best of its knowledge after making diligent inquiry, no conflict exists or is likely to arise in the performance of the Agreement. In the event the Supplier becomes aware of any matter that causes or is likely to cause a conflict of interest in relation to the Supplier's performance under the Agreement, the Supplier must immediately disclose such matter to BGIS in writing.

17.9.4. If BGIS is of the opinion that a conflict of interest exists as a result of the Supplier's disclosure or as a result of any other information brought to BGIS' attention, BGIS may require the Supplier to take steps to resolve or otherwise deal with the conflict of interest or, at its entire discretion, terminate the Agreement for default. Conflict means any matter, circumstance, interest or activity affecting the Supplier, its personnel or subcontractors, which may or may appear to impair the ability of the Supplier to perform the Work diligently and independently.

17.9.5. The Supplier certifies that it has not directly or indirectly, paid or agreed to pay and agrees that it will not, directly or indirectly, pay a contingency fee for the solicitation, negotiation or obtaining of the Agreement to any person, other than an employee of the Supplier acting in the normal course of the employee's duties. In this section, "contingency fee" means any payment or other compensation that depends or is calculated based on a degree of success in soliciting, negotiating or obtaining the Agreement.

**17.10. Integrity Provisions:**

17.10.1. The Supplier represents, warrants and certifies that it:

- i. has reviewed and familiarized itself with Canada's Ineligibility and Suspension Policy, available at: <http://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-eng.html> (the "Integrity Policy");

- ii. is not an ineligible or suspended supplier under the Integrity Policy; and
- iii. is not aware of any charge, conviction or other circumstance relevant to the Integrity Policy in respect of itself or its affiliates.

17.10.2. During performance of the Agreement, the Supplier shall inform BGIS in writing, within five working days, of any charge, conviction or other circumstances relevant to the Integrity Policy in respect of itself or its affiliates.

17.10.3. The Supplier agrees that BGIS may terminate the Agreement for cause effectively immediately in the event that the Supplier or any of its affiliates is either (i) deemed an ineligible or suspended supplier under the Integrity Policy; or (ii) convicted of any of the following offences:

- i. paragraph 80(1)(d) (False entry, certificate or return), subsection 80(2) (Fraud against His Majesty) or section 154.01 (Fraud against His Majesty) of the Financial Administration Act;
- ii. section 121 (Frauds on the government and Contractor subscribing to election fund), section 124 (Selling or Purchasing Office), section 380 (Fraud) for fraud committed against His Majesty or section 418 (Selling defective stores to His Majesty) of the Criminal Code of the Country of Canada;
- iii. section 462.31 (Laundering proceeds of crime) or sections 467.11 to 467.13 (Participation in activities of criminal organization) of the Criminal Code of the Country of Canada;
- iv. section 45 (Conspiracies, agreements or arrangements between competitors), 46 (Foreign directives) 47 (Bid rigging), 49 (Agreements or arrangements of federal financial institutions), 52 (False or misleading representation), 53 (Deceptive notice of winning a prize) under the Competition Act;
- v. section 239 (False or deceptive statements) of the Income Tax Act;
- vi. section 327 (False or deceptive statements) of the Excise Tax Act;
- vii. section 3 (Bribing a foreign public official) of the Corruption of Foreign Public Officials Act; or
- viii. section 5 (Trafficking in substance), section 6 (Importing and exporting), or section 7 (Production of substance) of the Controlled Drugs and Substance Act.

17.11. **Assignment:** BGIS may assign or transfer the Agreement, or any part of the Agreement, to Canada without the prior written consent of the Supplier.

17.12. **Advertising:** The Supplier will obtain BGIS' prior written approval for any public advertising, written public sales promotions, press release or other general publicity matter, in which the name or trademarks of BGIS or Canada are mentioned or used or in which words are used from which any connection with BGIS, Canada or its trademarks may be inferred. The Supplier will not allow or permit any public ceremony in connection with the Work without the prior written permission of BGIS. The Supplier will not erect or permit the erection of any sign or advertising without the prior written approval of BGIS.

17.13. **Right of Set-Off:** Without restricting any right of set-off given by law, BGIS may set-off against any amount payable to the Supplier under the Agreement, any amount payable to BGIS by the Supplier under the Agreement or under any other current contract. BGIS may, when making a



payment pursuant to the Agreement, deduct from the amount payable to the Supplier any such amount payable to BGIS by the Supplier which, by virtue of the right of set-off, may be retained by BGIS.

**18. SUCCESSORS AND ASSIGNS**

The Agreement shall ensure to and be binding upon the successors and permitted assigns of each Party.

**Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Company:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**SCHEDULE F-1**

**SECURITY REQUIREMENTS**

**General**

Subcontracts which contain security requirements will not be awarded without an SRCL that has been approved and signed by the Contract Security Program (CSP). PWGSC confirming that the contractor has a valid organizational clearance of either a Designated Organization Screening (DOS) or a Facility Security Clearance (FSC). If any contractor is required to work on protected and/or classified information at their own workplace, they must have a Document Safeguarding Capability (DSC) and the appropriate level of personnel security clearance. If any contractor is required to electronically process, produce or store information or data at the protected and/or classified level on their IT systems, they must have an approved IT media clearance and the appropriate level of personnel security clearance. Both the Document Safeguarding Capability and IT Media requirements, must also be approved by the CSP, through the SRCL process prior to any work being started where this requirement is needed.

**SECURITY REQUIREMENT FOR CANADIAN SUPPLIER (RELIABILITY):**

**Subcontract File#**

**Prime#**

1. The Contractor/Offeror must, at all times during the performance of the Contract/Standing Offer, hold a valid Designated Organization Screening (DOS), issued by the Contract Security Program (CSP), Public Works and Government Services Canada (PWGSC).
2. The Contractor/Offeror personnel requiring access to sensitive work site(s) must EACH hold a valid RELIABILITY STATUS, granted or approved by CSP/PWGSC.
3. Subcontracts which contain security requirements are NOT to be awarded without the prior written permission of CSP/PWGSC.
4. The Contractor/Offeror must comply with the provisions of the:
  - a) Security Requirements Check List and security guide (if applicable), attached at Annex \_\_\_\_;
  - b) Contract Security Manual (Latest Edition).

**SECURITY REQUIREMENT FOR CANADIAN SUPPLIER (SECRET):**

**Subcontract File#**

**Prime#**

1. The Contractor/Offeror must, at all times during the performance of the Contract/Standing Offer, hold a valid Facility Security Clearance at the level of SECRET, issued by the Contract Security Program (CSP), Public Works and Government Services (PWGSC).
2. The Contractor/Offeror personnel requiring access to sensitive site(s) must EACH hold a valid personnel security screening at the level of SECRET, granted or approved by the CSP, PWGSC.
3. Subcontracts which contain security requirements are NOT to be awarded without the prior written permission of the CSP, PWGSC.

4. The Contractor/Offeror must comply with the provisions of the:
- a) Security Requirements Check List and security guide (if applicable), attached at Annex \_\_\_\_\_.
  - b) *Contract Security Manual* (Latest Edition).