

## FORM OF AGREEMENT

**BETWEEN:**

**The Town of Caledon**

(referred to as the "Town")

**AND:**

**[\*INSERT FULL LEGAL NAME OF VENDOR\*]**

(referred to as the "Vendor")

In consideration of their respective agreements set out herein, the parties covenant and agree as follows:

### **1. Contract Documents**

The contract between the parties in respect of:

**[Insert Name of Project or Brief Description of Deliverables – should match the description used as the title of the RFX document]**

is comprised of the following documents, which are collectively referred to as the "Contract":

- (a) this Agreement;
- (b) the Schedule of Deliverables, Rates and Specific Provisions, attached hereto as Schedule 1;
- (c) the Standard Terms and Conditions, attached hereto as Schedule 2;
- (d) the **[\*Insert RFX Document Name and #\*]**, including any addenda, (the "Solicitation Document"); and
- (e) all the documentation submitted by the Vendor in response to the Solicitation Document (the "Vendor's Submission").

### **2. Interpretive Value of Contract Documents**

Any ambiguity, conflict or inconsistency between or among the documents comprising the Contract will be resolved by giving precedence to the express terms of the documents in the order in which they appear above, so that a first mentioned document shall prevail notwithstanding any term or aspect of a later mentioned document.

### 3. Execution

This Agreement may be executed and (i) delivered by facsimile transmission or (ii) scanned and delivered by electronic transmission, and when so executed and delivered, will be deemed an original.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date written below.

#### The Town of Caledon

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_  
Date of Signature: \_\_\_\_\_ Date of Signature: \_\_\_\_\_

Authorization By-Law No. 2019-24; Passed by the Town of Caledon Council; On the 30<sup>th</sup> day of April 2019

**[\*\*Insert Vendor's Full Legal Name\*\*]**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date of Signature: \_\_\_\_\_

I have the authority to bind the Vendor.

## Schedule 1 – Schedule of Deliverables, Rates and Specific Provisions

### A. Description of Deliverables

[\*Describe the Deliverables. Reference can be made to the Solicitation Document and/or Vendor Submission, as appropriate\*]

### B. Rates and Disbursements

#### B.1 Maximum Fee

Notwithstanding anything else in the Contract, the total amount payable by the Town to the Vendor under the Contract shall not exceed [\*insert maximum contract amount\*] (\$xxx) inclusive of HST.

#### B.2 Personnel and Rates

The Vendor must provide experienced, skilled and trained persons and subcontractors approved by the Town who are qualified to perform the work and are completely familiar with the Contract requirements.

The following individuals are responsible for the provision of the Deliverables. The Rates for these individuals are set out below and shall remain fixed during the Term of this Contract:

[\*insert personnel and rate information or replace this section with other applicable form of rate breakdown\*]

### C. Payment Terms

The payment terms for the Contract are as follows: full payment upon acceptance

### D. Town and Vendor Representatives

The Town Representative and contact information for the Contract is:

[\*insert name and title of the Town's representative in charge of the contract and contact details, including mailing address and email address\*]

The Vendor Representative and contact information for the Contract is:

[\*insert name and title of Vendor representative in charge of the contact and contact details, including mailing address and email address\*]

### E. Term of Contract

The Contract shall take effect on the [\*insert date\*] (the “Effective Date”) and shall be in effect for a period of [\*insert # of years or months] from the Effective Date, with an option in favour of the Town to extend the term for an additional period of [\*insert extension period, if applicable, or revise this language as necessary\*], unless it is terminated earlier in accordance with the terms of the Contract or otherwise by operation of law.

#### F. Specific Provisions

[\*Insert any additional contract performance terms or modifications to the Standard Terms and Conditions in Schedule 2 and note any express deletions from the Vendor’s Submission or negotiated changes to the Solicitation Document, if applicable\*]

Notwithstanding any other provision of this Contract, throughout the Term, and in the course of the performance of its obligations under the Contract, the Vendor shall be fully responsible to comply with all applicable federal, provincial and municipal legislation, public health orders, directives, guidelines, policies and recommendations, as may be enacted or otherwise put into effect or issued, from time to time, by the government of Canada, the Province of Ontario, and Region of Peel Public Health, in connection with the management of the COVID-19 pandemic.

The Vendor shall provide their employees and subcontractors with all required personal protective equipment, supplies and health & safety training pursuant to all recommended health measures by all levels of government and the Region of Peel Public Health at no additional cost to the Town.

The Town reserves the right to halt all work or terminate the contract without penalty should the Vendor fail to comply with the measures noted above at the sole and absolute discretion of the Town. The Vendor shall provide the Town with evidence of the Vendor’s compliance with this section upon request by the Town.

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## ARTICLE 1 – INTERPRETATION

### 1.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

**“Authority”** means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Contract; and **“Authorities”** means all such authorities, agencies, bodies and departments;

**“Business Day”** means any working day, Monday to Friday inclusive, but excluding statutory holidays and other days on which the Town has elected to be closed for business;

**“Conflict of Interest”** includes, but is not limited to, any situation or circumstance where (a) in relation to the procurement process, the Vendor had an unfair advantage or engaged in conduct, directly or indirectly, that may have given it an unfair advantage, including but not limited to (i) having access to information that is confidential to the Town and not available to other bidders or proponents; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive procurement process; or (b) in relation to the performance of the Contract, the Vendor’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

**“Deliverables”** means everything developed for or provided to the Town in the course of performing under the Contract or agreed to be provided to the Town under the Contract by the Vendor or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, as further defined, but not limited by, Schedule 1, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

**“Effective Date”** is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);

**“Indemnified Parties”** means the Town and the Town’s officials, directors, officers, agents, employees and volunteers;

**“Industry Standards”** include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Canada and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Vendor establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the Town;

**“Intellectual Property”** means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

**“MFIPPA”** means the *Municipal Freedom of Information and Protection of Privacy Act*, Revised Statutes of Ontario 1990, Chapter M.56, as amended;

**“Newly Created Intellectual Property”** means any Intellectual Property created by the Vendor in the course of performance of its obligations under the Contract;

**“Person”** if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;

**“Personal Information”** means recorded information about an identifiable individual or that may identify an individual;

**“Proceeding”** means any action, claim, demand, lawsuit, or other proceeding;

**“Rates”** means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);

**“Record”** means any recorded information, including any Personal Information, in any form: (a) provided by the Town to the Vendor, or provided by the Vendor to the Town, for the purposes of the Contract; or (b) created by the Vendor in the performance of the Contract;

**“Requirements of Law”** mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them;

**“Vendor Representative”** is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);

**“Vendor’s Intellectual Property”** means Intellectual Property owned by the Vendor prior to its performance under the Contract or created by the Vendor during the Term of the Contract independently of the performance of its obligations under the Contract;

**“Term”** is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions); and

**“Third-Party Intellectual Property”** means any Intellectual Property owned by a party other than the Town or the Vendor.

**“Town Confidential Information”** means all information of the Town that is of a confidential nature, including all confidential information in the custody or control of the Town, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with the Contract. For greater certainty, Town Confidential Information shall: (a) include: (i) all new information



derived at any time from any such information whether created by the Town, the Vendor or any third-party; (ii) all information (including Personal Information) that the Town is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Vendor of any duty of confidentiality owed by the Vendor to the Town or to any third-party; (ii) the Vendor can demonstrate to have been rightfully obtained by the Vendor, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Vendor free of any obligation of confidence; (iii) the Vendor can demonstrate to have been rightfully known to or in the possession of the Vendor at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Vendor; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

**"Town Representative"** is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);

## **ARTICLE 2 – GENERAL TERMS**

### **2.01 No Indemnities from the Town**

Notwithstanding anything else in the Contract, any express or implied reference to the Town providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the Town beyond the obligation to pay the Rates in respect of Deliverables accepted by the Town, whether at the time of entering into the Contract or at any time during the Term, shall be void and of no legal effect.

### **2.02 Entire Contract**

The Contract embodies the entire agreement between the parties with regard to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the Effective Date of the Contract.

### **2.03 Severability**

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

### **2.04 Failure to Enforce Not a Waiver**

Any failure by the Town to insist in one or more instances upon strict performance by the Vendor of any of the terms or conditions of the Contract shall not be construed as a waiver by the Town of its right to require strict performance of any such terms or conditions, and the obligations of the Vendor with respect to such performance shall continue in full force and effect.

### **2.05 Changes by Written Amendment Only**

Any changes to the Contract shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment. Any such written changes shall be included in the definition of Contract.

### **2.06 Force Majeure**



Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under the Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

**2.07 Notices by Prescribed Means**

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or email and shall be addressed to, respectively, the Town Representative and the Vendor Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or email one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by email. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

**2.08 Governing Law**

The Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN TOWN AND VENDOR**

**3.01 Vendor's Power to Contract**

The Vendor represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person which would in any way interfere with the rights of the Town under the Contract.

**3.02 Representatives May Bind the Parties**

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

**3.03 Vendor Not a Partner, Agent or Employee**

The Vendor shall have no power or authority to bind the Town or to assume or create any obligation or responsibility, express or implied, on behalf of the Town. The Vendor shall not hold itself out as an agent, partner or employee of the Town. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the Town and the Vendor or any of the Vendor's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors.

**3.04 Non-Exclusive Contract, Work Volumes**

The Vendor acknowledges that it is providing the Deliverables to the Town on a non-exclusive basis. The Town makes no representation regarding the volume of goods and services required under the Contract. The Town reserves the right to contract with other parties for the same or similar goods and services as those provided by the Vendor and reserves the right to obtain the same or similar goods and services internally.

**3.05 Responsibility of Vendor**

The Vendor agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. This paragraph is in addition to any and all of the Vendor's liabilities under the Contract and under the general application of law. The Vendor shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Vendor pursuant to the Contract or otherwise at law or in equity, the Vendor shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Contract resulting from the actions of the above-mentioned individuals and entities. This paragraph shall survive the termination or expiry of the Contract.

**3.06 No Subcontracting or Assignment**

The Vendor shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of the Town. Such consent shall be in the sole discretion of the Town and subject to the terms and conditions that may be imposed by the Town. Without limiting the generality of the conditions which the Town may require prior to consenting to the Vendor's use of a subcontractor, every contract entered into by the Vendor with a subcontractor shall adopt all of the terms and conditions of the Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the Town.

**3.07 Duty to Disclose Change of Control**

In the event that the Vendor undergoes a change in control the Vendor shall immediately disclose such change in control to the Town and shall comply with any terms and conditions subsequently prescribed by the Town resulting from the disclosure.

**3.08 Conflict of Interest**

The Vendor shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the Town without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the Town to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the Town may immediately terminate the Contract upon giving notice to the Vendor where: (a) the Vendor fails to disclose an actual or potential Conflict of Interest; (b) the Vendor fails to comply with any requirements prescribed by the Town to resolve a Conflict of Interest; or (c) the Vendor's Conflict of Interest cannot be resolved to the satisfaction of the Town. This paragraph shall survive any termination or expiry of the Contract.

**3.09 Contract Binding**

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

## **ARTICLE 4 – PERFORMANCE BY VENDOR**

### **4.01 Commencement of Performance**

The Vendor shall commence performance upon receipt of written instructions from the Town.

### **4.02 Deliverables Warranty**

The Vendor hereby represents and warrants that the Deliverables (i) shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations; and (ii) shall be free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title; and furthermore that all Deliverables shall be provided in accordance with: (a) the Contract; (b) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of the Town, are inadequately provided or require corrections, the Vendor shall forthwith make the necessary corrections at its own expense as specified by the Town in a rectification notice.

### **4.03 Health and Safety**

Without limiting the generality of section 4.02, the Vendor warrants and agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1 and Regulations, as amended, as well as any other applicable occupational health and safety laws, regulations and standards in relation to the performance of the Vendor's obligations under the Contract. The Vendor shall provide the Town with evidence of the Vendor's compliance with this section upon request by the Town.

### **4.04 Shipment of Goods**

To the extent that the Deliverables include the shipment of goods to the Town, all such goods shall be delivered F.O.B. Destination, Freight Prepaid to the Town's place of business or such other location as may be specified in the Contract. No transportation or delivery charges of any kind, including, without limitation, packing, boxing, storage, cartage or customs brokerage charges, shall be paid by the Town, unless specifically agreed by the Town in writing. The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Vendor until the Deliverables are received by the Town. Receipt of the Deliverables at the Town's location does not constitute acceptance of the Deliverables by the Town. The Deliverables are subject to the Town's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the Town, are inadequately provided or require corrections, the Vendor shall make the necessary corrections at its own expense as specified by the Town in a rectification notice.

### **4.05 Use and Access Restrictions**

The Vendor acknowledges that unless it obtains specific written preauthorization from the Town, any access to or use of the Town property, technology or information that is not necessary for the performance of its contractual obligations with the Town is strictly prohibited. The Vendor further acknowledges that the Town may monitor the Vendor to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Vendor.

### **4.06 Notification by Vendor of Discrepancies**

During the Term, the Vendor shall advise the Town promptly of: (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become

evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

**4.07 Change Requests**

The Town may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The Vendor shall comply with all reasonable Town change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Vendor is unable to comply with the change request, it shall promptly notify the Town and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties.

**4.08 Pricing for Requested Changes**

Where a Town change request includes an increase in the scope of the previously contemplated Deliverables, the Town shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request (a) include pricing for the particular type of goods or services contemplated in the change request, the Vendor shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the Town and the Vendor within a reasonable period of time and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

**4.09 Performance by Specified Individuals Only**

The Vendor agrees that to the extent that specific individuals are named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract. The Vendor shall not replace or substitute any of the individuals named in the Contract without the prior written approval of the Town, which may not arbitrarily or unreasonably be withheld. Should the Vendor require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Vendor shall not claim fees for any replacement individual greater than the Rates established under the Contract.

**4.10 Time**

Time is of the essence of the Contract.

**4.11 Rights and Remedies Not Limited to Contract**

The express rights and remedies of the Town and obligations of the Vendor set out in the Contract are in addition to and shall not limit any other rights and remedies available to the Town or any other obligations of the Vendor at law or in equity.

**ARTICLE 5 – PAYMENT FOR PERFORMANCE AND AUDIT**

**5.01 Payment According to Contract Rates**

The Town shall, subject to the Vendor's compliance with the provisions of the Contract, pay the Vendor for the Deliverables provided at the Rates established under the Contract.

**5.02 Hold Back or Set Off**

The Town may hold back payment or set off against payment if, in the opinion of the Town acting reasonably, the Vendor has failed to comply with any requirements of the Contract.

**5.03 No Expenses or Additional Charges**

There shall be no other charges payable by the Town under the Contract to the Vendor other than the Rates established under the Contract.

**5.04 Payment of Taxes and Duties**

Unless otherwise stated, the Vendor shall pay all applicable taxes, including excise taxes incurred by or on the Vendor's behalf with respect to the Contract.

**5.05 Withholding Tax**

The Town shall withhold any applicable withholding tax from amounts due and owing to the Vendor under the Contract and shall remit it to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Contract.

**5.06 Interest on Late Payment**

If a payment is in arrears through no fault of the Vendor, the interest charged by the Vendor, if any, for any late payment shall not exceed the Bank of Canada's prime rate, in effect on the date that the payment went into arrears.

**5.07 Document Retention and Audit**

For seven (7) years after the Expiry Date or any date of termination of the Contract, the Vendor shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the expiry or termination of the Contract, the Vendor shall permit and assist the Town in conducting audits of the operations of the Vendor to verify (a) and (b) above. The Town shall provide the Vendor with at least ten (10) Business Days prior notice of its requirement for such audit. The Vendor's obligations under this paragraph shall survive any termination or expiry of the Contract.

**ARTICLE 6 – CONFIDENTIALITY**

**6.01 Confidentiality and Promotion Restrictions**

Any publicity or publications related to the Contract shall be at the sole discretion of the Town. The Town may, in its sole discretion, acknowledge the Deliverables provided by the Vendor in any such publicity or publication. The Vendor shall not make use of its association with the Town without the prior written consent of the Town. Without limiting the generality of this paragraph, the Vendor shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the Town.

**6.02 Town Confidential Information**

During and following the Term, the Vendor shall: (a) keep all Town Confidential Information confidential and secure; (b) limit the disclosure of Town Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any Town Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without



first obtaining: (i) the written consent of the Town and (ii) in respect of any Town Confidential Information about any third-party, the written consent of such third-party; (d) provide Town Confidential Information to the Town on demand; and (e) return all Town Confidential Information to the Town on or before the expiry or termination of the Contract, with no copy or portion kept by the Vendor.

**6.03 Restrictions on Copying**

The Vendor shall not copy any Town Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Vendor, the Vendor must reproduce all notices which appear on the original.

**6.04 Notice of Breach**

The Vendor shall notify the Town promptly upon the discovery of loss, unauthorized disclosure, unauthorized access or unauthorized use of Town Confidential Information.

**6.05 Injunctive and Other Relief**

The Vendor acknowledges that breach of any provisions of this Article may cause irreparable harm to the Town or to any third-party to whom the Town owes a duty of confidence, and that the injury to the Town or to any third-party may be difficult to calculate and inadequately compensable in damages. The Vendor agrees that the Town is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

**6.06 Notice and Protective Order**

If the Vendor or any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any Town Confidential Information, the Vendor will provide the Town with prompt notice to that effect in order to allow the Town to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Town and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Vendor will disclose only that portion of Town Confidential Information which the Vendor is legally compelled to disclose, only to such person or persons to which the Vendor is legally compelled to disclose, and the Vendor shall provide notice to each such recipient (in co-operation with legal counsel for the Town) that such Town Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Contract and, if possible, shall obtain each recipient's written agreement to receive and use such Town Confidential Information subject to those terms and conditions.

**6.07 Records and Legislative Compliance**

The Vendor and the Town acknowledge and agree that MFIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Vendor agrees (a) to keep Records secure; (b) to provide Records to the Town within seven (7) calendar days of being directed to do so by the Town for any reason including an access request or privacy issue; (c) not to access any Personal Information unless the Town determines, in its sole discretion, that access is permitted under MFIPPA and is necessary in order to provide the Deliverables; (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the Town; (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so; (f) to restrict

access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by a Town representative to have such access for the purpose of providing the Deliverables; (g) to implement other specific security measures that in the reasonable opinion of the Town would improve the adequacy and effectiveness of the Vendor's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any confidential information supplied to the Town may be disclosed by the Town where it is obligated to do so under MFIPPA, by an order of a court or tribunal or pursuant to a legal proceeding and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

**6.08 Survival**

The provisions of this Article shall survive any termination or expiry of the Contract.

**ARTICLE 7 – INTELLECTUAL PROPERTY**

**7.01 Town Intellectual Property**

The Vendor agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the Town to the Vendor shall remain the sole property of the Town at all times.

**7.02 No Use of the Town Insignia**

The Vendor shall not use any insignia or logo of the Town except where required to provide the Deliverables, and only if it has received the prior written permission of the Town to do so.

**7.03 Ownership of Intellectual Property**

The Town shall be the sole owner of any Newly Created Intellectual Property. The Vendor irrevocably assigns to and in favour of the Town and the Town accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the Town all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in whole or in part, the Vendor's Intellectual Property, the Vendor grants to the Town a licence to use that Vendor Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Vendor by the Town.

**7.04 Vendor's Grant of License**

For those parts of the Deliverables that are Vendor Intellectual Property, the Vendor grants to the Town a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the Town.

**7.05 No Restrictive Material in Deliverables**

The Vendor shall not incorporate into any Deliverables anything that would restrict the right of the Town to modify, further develop or otherwise use the Deliverables in any way that the Town deems necessary, or that would prevent the Town from entering into any contract with any contractor other than the Vendor for the modification, further development of or other use of the Deliverables.



**7.06 Third-Party Intellectual Property**

The Vendor represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The Vendor further represents and warrants that it has obtained assurances with respect to any Vendor Intellectual Property and Third-Party Intellectual Property that any rights of integrity or any other moral rights associated therewith have been waived.

**7.07 Survival**

The obligations contained in this Article shall survive the termination or expiry of the Contract.

**ARTICLE 8 – INDEMNITIES AND INSURANCE**

**8.01 Vendor Indemnity**

The Vendor hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including for breaches of confidentiality or privacy or Intellectual Property rights or for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Vendor, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Vendor's obligations under, or otherwise in connection with, the Contract. The Vendor further agrees to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, the Town, claimed or resulting from such Claims. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

**8.02 Insurance**

Throughout the term of the Contract (including any renewal thereof), the Vendor shall obtain and maintain at its own expense, including the cost of any applicable deductible, the following policies of insurance, underwritten by an insurer (insurers) licensed to conduct business in the Province of Ontario.

Commercial General Liability Insurance, including but not limited to bodily injury and personal injury liability, property damage, products and completed operations liability, cross-liability and severability of interest, owners & contractors protective liability, blanket contractual liability, premises liability, broad form property damage, employer's liability and voluntary compensation and contingent employer's liability coverage, having an inclusive limit of not less than \$5,000,000 per occurrence.

The Commercial General Liability Insurance Policy shall include the Corporation of the Town of Caledon as an additional insured and provide 30 days' notice of cancellation

Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than \$2,000,000 per occurrence in respect of vehicles not owned by the Vendor that are used or operated on its behalf for the provision of services under the Contract.

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$2,000,000 per occurrence

for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Vendor for the provision of services.

Contractor's Equipment Floater Insurance on all equipment used during the term of this Contract. Coverage shall be provided, on a broad form basis, for equipment, tools and stock that will be used by the Vendor in the performance of the work. The coverage shall also include rental expenses.

The Vendor's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the Corporation of the Town of Caledon.

The Vendor shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to Contract commencement and any renewal thereof.

The Vendor shall ensure that of all its Subcontractors carry sufficient insurance coverage in order provide coverage of risks associated with the Contract.

**8.03 Proof of Insurance**

The Vendor shall provide the Town with proof of the insurance required by the Contract in the form of valid certificates of insurance that reference the Contract and confirm the required coverage. The Vendor shall provide the Town with renewal replacements on or before the expiry of any such insurance. Upon the request of the Town, a copy of each insurance policy shall be made available to it. The Vendor shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the Town and Indemnified Parties are named as additional insured with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables.

**8.04 Workplace Safety and Insurance**

The Vendor warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if applicable will provide proof of valid coverage by means of a current clearance certificate to the Town upon request. The Vendor covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it and its subcontractors under all applicable workplace safety and insurance laws and regulations during the Term. The Vendor further agrees to indemnify the Town for any and all liability, loss, costs, damages and expenses (including legal fees) or other charges in connection with the Vendor's failure to comply with any applicable workplace safety and insurance laws or related to the Vendor's status with any workplace safety and insurance board or body.

**ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION**

**9.01 Immediate Termination of Contract**

The Town may immediately terminate the Contract upon giving notice to the Vendor where (a) the Vendor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Vendor's insolvency; (b) the Vendor breaches any provision in Article 6 (Confidentiality); (c) the Vendor breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between Town and Vendor); (d) the Vendor, prior to or after entering into the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to the Town; (e) the Vendor undergoes a change in control which adversely affects the Vendor's ability to satisfy some or all of its obligations under the Contract; (f) the Vendor subcontracts for the provision of part or all of the

Deliverables or assigns the Contract without first obtaining the written approval of the Town; or (g) the Vendor's acts or omissions constitute a substantial failure of performance and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

**9.02 Dispute Resolution by Rectification Notice**

Subject to the above paragraph, where the Vendor fails to comply with any of its obligations under the Contract, the Town may issue a rectification notice to the Vendor setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice, the Vendor shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the Town. If the Vendor fails to either comply with that rectification notice or provide a satisfactory rectification plan, the Town may immediately terminate the Contract. Where the Vendor has been given a prior rectification notice, the same subsequent type of non-compliance by the Vendor shall allow the Town to immediately terminate the Contract.

**9.03 Termination on Notice**

The Town reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior notice to the Vendor.

**9.04 Vendor's Obligations on Termination**

On termination of the Contract, the Vendor shall, in addition to its other obligations under the Contract and at law (a) at the request of the Town, provide the Town with any completed or partially completed Deliverables; (b) provide the Town with a report detailing: (i) the current state of the provision of Deliverables by the Vendor at the date of termination; and (ii) any other information requested by the Town pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by the Town to give effect to the termination of the Contract; and (d) comply with any other instructions provided by the Town, including but not limited to instructions for facilitating the transfer of its obligations to another Person. This paragraph shall survive any termination of the Contract.

**9.05 Vendor's Payment Upon Termination**

On termination of the Contract, the Town shall only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination shall not relieve the Vendor of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set off, the Town may hold back payment or set off against any payments owed if the Vendor fails to comply with its obligations on termination.

**9.06 Termination in Addition to Other Rights**

The express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of the Town under the Contract, at law or in equity.

**9.07 Expiry and Extension of Contract**

The Contract shall expire on the original Expiry Date, unless the Town exercises its option to extend the Contract, such extension to be upon the same terms (including the Rates in effect at the time of extension), conditions and covenants contained in the Contract. The option shall be exercisable by the Town giving notice to the Vendor not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.

9.08 **Evaluation of Performance**

The Vendor will be subject to a performance evaluation during the course of, and/or at the conclusion of the assignment.

In the event that the Vendor fails to perform its obligations under the Contract, the Town may, in addition to any and all legal and equitable remedies available to it, place the Vendor on probation or suspend the Vendor from participating in future procurement opportunities.

**PREVIEW**

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