



For Administrative Purposes Only

Project Title:

Contract #: _____

PO # (if applicable): _____

WebReq #: _____

Solicitation #(if applicable): _____

Lead Department: _____

Contractor Information

Supplier Name: _____

Supplier No.: _____

Telephone No.: _____

E-mail Address: _____

Website: _____

Terms of Agreement

Start Date: _____

End Date: _____

Maximum Amount: _____

Option(s) to Renew: _____

Maximum Amount (including options): _____

General Services Agreement

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GENERAL SERVICES AGREEMENT

THIS AGREEMENT (the "Agreement"), made in duplicate, for **Campus Master Planning** is effective as of the **April 1, 2019**.

BETWEEN:

Kwantlen Polytechnic University
(referred to as the "University")

AND:

[*INSERT FULL LEGAL NAME OF SUPPLIER*]

(referred to as the "Supplier")

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

ARTICLE 1 – INTERPRETATION**1.01 Defined Terms**

When used in the Agreement, 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 University 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 Supplier 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 or having access to information in the preparation of the Supplier's Submission that is confidential to the University 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 and render that process non-competitive and unfair; or (b) in relation to the performance of the Contract, the Supplier'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;

"Contract" means the aggregate of: (a) the Agreement, including Schedule 1 (Schedule of Deliverables, Rates and Supplementary Provisions), and any other schedule attached at the time of execution; (b) the Solicitation Document, including any addenda; (c) the Supplier's Submission; and (d) any amendments executed in accordance with the terms of the Agreement;

“Deliverables” means everything developed for or provided to the University in the course of performing under the Contract or agreed to be provided to the University under the Contract by the Supplier 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;

“Expiry Date” means **March 31, 2020** or, if the original term is extended, the final date of the extended term;

“FOIPPA” means the *Freedom of Information and Protection of Privacy Act British Columbia*;

“Indemnified Parties” means the University and the University’s 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 Supplier 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 University;

“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;

“Newly Created Intellectual Property” means any Intellectual Property created by the Supplier 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 the Contract, representing the full amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes (except applicable sales tax, which should be itemized separately); (b) all labour and material costs; (c) all travel and carriage costs; (d) all insurance costs; and (e) all other overhead including any fees or other charges required by law;

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

“Solicitation Document” means the solicitation document dated **November 2, 2018** for **Campus Master Planning**, reference number **NRFP2800** issued by the University for the Deliverables and any addenda to it;

“Supplier Address” and **“Supplier Representative”** mean:

[*insert Supplier’s mailing address *]

[*insert name and title, telephone and email address for Supplier representative, as well as same information for back -up person if available*]

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

“Supplier’s Submission” means all the documentation submitted by the Supplier in response to the Solicitation Document;

“Term” means the period of time from the effective date first above written up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of the Contract in accordance with its terms;

“Third-Party Intellectual Property” means any Intellectual Property owned by a party other than the University or the Supplier;

“University Address” and **“University Representative”** mean:

12666 72ND Avenue, Surrey, BC V3W 2M8

[*insert name, title, telephone and email address for representative, as well as same information for back-up person if available*]

“University Confidential Information” means all information of the University that is of a confidential nature, including all confidential information in the custody or control of the University, 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 Supplier in connection with the Contract. For greater certainty, University Confidential Information shall: (a) include: (i) all new information derived at any time from any such information whether created by the University, the Supplier or any third-party; (ii) all information (including Personal Information) that the University 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 Supplier of any duty of confidentiality owed by the Supplier to the University or to any third-party; (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Supplier; 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;

ARTICLE 2 – GENERAL TERMS

2.01 No Indemnities from the University

Notwithstanding anything else in the Contract, any express or implied reference to the University 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 University beyond the obligation to pay the Rates in respect of Deliverables accepted by the University, whether at the time of execution of the Agreement 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 date of execution of the Agreement.

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 Interpretive Value of Contract Documents

In the event of a conflict or inconsistency in any provisions in the Contract: (a) the main body of the Agreement shall govern over the Schedules to the Agreement; (b) the Agreement (including its Schedules) shall govern over the Solicitation Document and the Supplier's Submission; and (c) the Solicitation Document shall govern over the Supplier's Submission.

2.05 Failure to Enforce Not a Waiver

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

2.06 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.

2.07 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 this 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.

2.08 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 University Address to the attention of the University Representative and to the Supplier Address to the attention of the Supplier 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.

2.09 Governing Law

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

ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN UNIVERSITY AND SUPPLIER

3.01 Supplier's Power to Contract

The Supplier 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 University under this 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 Supplier Not a Partner, Agent or Employee

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

3.04 Non-Exclusive Contract, Work Volumes

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

3.05 Responsibility of Supplier

The Supplier 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 Supplier's liabilities under the Contract and under the general application of law. The Supplier 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 Supplier pursuant to the Contract or otherwise at law or in equity, the Supplier 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 this Contract.

3.06 No Subcontracting or Assignment

The Supplier 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 University. Such consent shall be in the sole discretion of the University and subject to the terms and conditions that may be imposed by the University. Without limiting the generality of the conditions which the University may require prior to consenting to the Supplier's use of a subcontractor, every contract entered into by the Supplier with a subcontractor shall adopt all of the terms and conditions of this 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 University.

3.07 Duty to Disclose Change of Control

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

3.08 Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the University 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 University to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the University may immediately terminate the Contract upon giving notice to the Supplier where: (a) the Supplier fails to disclose an actual or potential Conflict of Interest; (b) the Supplier fails to comply with any requirements prescribed by the University to resolve a Conflict of Interest; or (c) the Supplier's Conflict of Interest cannot be resolved to the satisfaction of the University. 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 SUPPLIER

4.01 Commencement of Performance

The Supplier shall commence performance upon receipt of written instructions from the University.

4.02 Deliverables Warranty

The Supplier 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 University, are inadequately provided or require corrections, the Supplier shall forthwith make the necessary corrections at its own expense as specified by the University in a rectification notice.

4.03 Health and Safety

Without limiting the generality of section 4.02, the Supplier warrants and agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, all applicable occupational health and safety laws and regulations in relation to the performance of the Supplier's obligations under the Contract. The Supplier shall provide the University with evidence of the Supplier's compliance with this section upon request by the University.

4.04 Shipment of Goods

To the extent that the Deliverables include the shipment of goods to the University, all such goods shall be Delivered Duty Paid (DDP) (Incoterms 2010) to the University'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 University, unless specifically agreed by the University 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 Supplier until the Deliverables are received by the University. Receipt of the Deliverables at the University's location does not constitute acceptance of the Deliverables by the University. The Deliverables are subject to the University's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the University, are inadequately provided or require corrections, the Supplier shall make the necessary corrections at its own expense as specified by the University in a rectification notice.

4.05 Use and Access Restrictions

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

4.06 Notification by Supplier to the University

During the Term, the Supplier shall advise the University 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 Supplier to Comply With Reasonable Change Requests

The University may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The Supplier shall comply with all reasonable University change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Supplier is unable to comply with the change request, it shall promptly notify the University 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 University change request includes an increase in the scope of the previously contemplated Deliverables, the University 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 Supplier 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 University and the Supplier 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 Supplier 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 Supplier shall not replace or substitute any of the individuals named in the Contract without the prior written approval of the University, which may not arbitrarily or unreasonably be withheld. Should the Supplier 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 Supplier shall not claim fees for any replacement individual greater than the Rates established under the Contract.

4.10 Time

Time is of the essence.

4.11 University Rights and Remedies and Supplier Obligations Not Limited to Contract

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

ARTICLE 5 – PAYMENT FOR PERFORMANCE AND AUDIT

5.01 Payment According to Contract Rates

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

5.02 Hold Back or Set Off

The University may hold back payment or set off against payment if, in the opinion of the University acting reasonably, the Supplier 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 University under the Contract to the Supplier other than the Rates established under the Contract.

5.04 Payment of Taxes and Duties

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

5.05 Withholding Tax

The University shall withhold any applicable withholding tax from amounts due and owing to the Supplier 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 Supplier, the interest charged by the Supplier, 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 Supplier 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 Term, the Supplier shall permit and assist the University in conducting audits of the operations of the Supplier to verify (a) and (b) above. The University shall provide the Supplier with at least ten (10) Business Days prior notice of its requirement for such audit. The Supplier'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 University. The University may, in its sole discretion, acknowledge the Deliverables provided by the Supplier in any such publicity or publication. The Supplier shall not make use of its association with the University without the prior written consent of the University. Without limiting the generality of this paragraph, the Supplier 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 University.

6.02 **University Confidential Information**

During and following the Term, the Supplier shall: (a) keep all University Confidential Information confidential and secure; (b) limit the disclosure of University 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 University 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 University and (ii) in respect of any University Confidential Information about any third-party, the written consent of such third-party; (d) provide University Confidential Information to the University on demand; and (e) return all University Confidential Information to the University before the end of the Term, with no copy or portion kept by the Supplier.

6.03 **Restrictions on Copying**

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

6.04 **Notice of Breach**

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

6.05 **Injunctive and Other Relief**

The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to the University or to any third-party to whom the University owes a duty of confidence, and that the injury to the University or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the University 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 Supplier or any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any University Confidential Information, the Supplier will provide the University with prompt notice to that effect in order to allow the University to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the University and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of University Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the University) that such University 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 University Confidential Information subject to those terms and conditions.

6.07 FOIPPA Records and Compliance

The Supplier and the University acknowledge and agree that FOIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees (a) to keep Records secure; (b) to provide Records to the University within seven (7) calendar days of being directed to do so by the University for any reason including an access request or privacy issue; (c) not to access any Personal Information unless the University determines, in its sole discretion, that access is permitted under FOIPPA 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 University; (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 University 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 University would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any confidential information supplied to the University may be disclosed by the University where it is obligated to do so under FOIPPA, 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 University Intellectual Property

The Supplier 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 University to the Supplier shall remain the sole property of the University at all times.

7.02 No Use of the University Insignia

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

7.03 Ownership of Intellectual Property

The University shall be the sole owner of any Newly Created Intellectual Property. The Supplier irrevocably assigns to and in favour of the University and the University 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 University 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 Supplier's Intellectual Property, the Supplier grants to the University a license to use that Supplier Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Supplier by the University.

7.04 Supplier's Grant of License

For those parts of the Deliverables that are Supplier Intellectual Property, the Supplier grants to the University 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 University.

7.05 No Restrictive Material in Deliverables

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

7.06 Supplier Representation and Warranty Regarding Third-Party Intellectual Property

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

7.07 Supplier Assistance

The Supplier hereby agrees to reasonably assist KPU, without cost to the Supplier, in making, prosecuting and maintaining any copyright or other intellectual property applications and registrations relating to the Supplier Intellectual Property, including the execution and delivery of documents relating to the foregoing. The Supplier further agrees, from time to time to cooperate and deliver such instruments and take such action as may be reasonably requested by KPU to carry out the provisions and purposes of this Article, including any reasonable action requested by KPU, from time to time, to vest more effectively in KPU or to put KPU more fully in possession of all right, title and interest in and to the Supplier Intellectual Property, in form and substance satisfactory to KPU.

7.08 **Survival**

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

ARTICLE 8 – INDEMNITIES AND INSURANCE

8.01 **Supplier Indemnity**

The Supplier 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 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 Supplier, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract. The Supplier 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 University, claimed or resulting from such Claims. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

8.02 **Insurance**

The Supplier must, without limiting the Supplier's obligation or liabilities and at the Supplier's own expense, purchase and maintain throughout the Term the following insurances with insurers licensed in Canada in forms and amounts acceptable to the University:

- (a) Commercial General Liability in an amount not less than **Two Million dollars** (\$2,000,000) inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this Agreement and this insurance must:
 - (i) include the University as an additional insured,
 - (ii) be endorsed to provide the University with 30 days advance written notice of cancellation or material change, and
 - (iii) include a cross liability clause; and
- (b) Professional Errors and Omissions Liability insuring the Supplier's liability resulting from errors or omissions in the performance of the Services in an amount per occurrence, and in the aggregate, calculated as follows:
 - (i) not less than **One Million dollars** (\$1,000,000), if the "Maximum Fee" set out in Schedule 1 is less than Five Hundred Thousand dollars (\$500,000); and
 - (ii) not less than **Two Million dollars** (\$2,000,000), if the "Maximum Fee" set out in Schedule 1 is Five Hundred Thousand dollars (\$500,000) or greater.

8.03 **Proof of Insurance**

The Supplier shall provide the University with proof of the insurance required by this Contract in the form of valid certificates of insurance that reference this Contract and confirm the required coverage. The Supplier shall provide the University with renewal replacements on or before the expiry of any such insurance. Upon the request of the University, a copy of each insurance policy

shall be made available to it. The Supplier 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 University 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 Workers Compensation Act

The Supplier warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if the Supplier is subject to the Workers Compensation Act, will provide proof of valid coverage by means of a current Workers Compensation Board clearance certificate to the University upon request. The Supplier 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 the Workplace Compensation Act during the Term. The Supplier further agrees to indemnify the University for any and all liability, loss, costs, damages and expenses (including legal fees) or other charges in connection with the Supplier's failure to comply with any applicable workplace safety and insurance laws or related to the Supplier's status with the Workplace Compensation Board.

ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION

9.01 Immediate Termination of Contract

The University may immediately terminate the Contract upon giving notice to the Supplier where (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency; (b) the Supplier breaches any provision in Article 6 (Confidentiality) of the Agreement; (c) the Supplier breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between University and Supplier) of the Agreement; (d) the Supplier, prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the University; (e) the Supplier undergoes a change in control which adversely affects the Supplier's ability to satisfy some or all of its obligations under the Contract; (f) the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of the University; or (g) the Supplier'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 Supplier fails to comply with any of its obligations under the Contract, the University may issue a rectification notice to the Supplier setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice, the Supplier shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the University. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, the University may immediately terminate the Contract. Where the Supplier has been given a prior rectification notice, the same subsequent type of non-compliance by the Supplier shall allow the University to immediately terminate the Contract.

9.03 Termination on Notice

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

9.04 Supplier's Obligations on Termination

On termination of the Contract, the Supplier shall, in addition to its other obligations under the Contract and at law (a) at the request of the University, provide the University with any completed or partially completed Deliverables; (b) provide the University with a report detailing: (i) the current state of the provision of Deliverables by the Supplier at the date of termination; and (ii) any other information requested by the University pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by the University to give effect to the termination of the Contract; and (d) comply with any other instructions provided by the University, 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 Supplier's Payment Upon Termination

On termination of the Contract, the University 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 Supplier 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 University may hold back payment or set off against any payments owed if the Supplier 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 University 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 University 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 University giving notice to the Supplier not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.

IN WITNESS WHEREOF the parties hereto have executed the Agreement effective as of the date first above written.

Kwantlen Polytechnic University

Signature: _____

Name:

Title:

Date of Signature: _____

[*Insert Full Legal Name of Supplier*]

Signature: _____

Name:

Title:

Date of Signature: _____

I have authority to bind the Supplier.

Schedule 1 - Schedule of Deliverables, Rates and Supplementary Provisions

[To be completed after selection of the successful proponent]

A. Description of Deliverables

[Include a detailed description of all aspects of the services, using the following sub-headings, as applicable. Use as much space as required.]

Outputs

[Deliverables or the services purchased. Includes a delivery schedule, formats, quantity and specific or technical requirements. Use mandatory language: "The Supplier must..."]

Inputs

[Resource commitments that produce the outputs. Includes staff qualifications and time, materials, equipment, facilities, volunteer time. Extract inputs from the proposal, a statement of work or as negotiated. Use mandatory language: "The Supplier must..."]

Outcomes

[Expected results flowing from the contracted services. Do not list inputs, outputs or other mandatory contract requirements or deliverables in this section as the Supplier is not warranting that "outcomes" will be achieved]

Reporting requirements

[Report formats, instructions, and frequency. Reports must include delivery dates and quantities of the outputs.]

Key Personnel:

[If no Key Personnel state "not applicable" but if Key Personnel provision is desired as referenced in section 13.12, include the following section 1.]

1. The Key Personnel of the Supplier are as follows:

(a)

(b)

(c)

B. Rates and Disbursements

B.1 Maximum Fee

Notwithstanding anything else in the Contract, the total amount payable by the University to the Supplier under the Contract shall not exceed **[*insert maximum contract amount*]** (\$xxx) (exclusive of any applicable taxes described in Section 5.04 of this agreement)

B.2 Personnel and Rates

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:

C. Payment Terms

Within 30 days of KPU's receipt of the Supplier's written statement of account or invoice delivered in accordance with this Schedule, KPU must pay the Supplier the fees and expenses (plus all

applicable taxes) claimed in the statement if they are in accordance with this Schedule. Statements of account or contract invoices offering an early payment discount may be paid by KPU as required to obtain the discount.