

APPENDIX D – TERMS AND CONDITIONS

PURCHASE/WORK ORDER TERMS AND CONDITIONS

1. **DEFINITIONS AND ABBREVIATIONS.** The following words shall, unless the context otherwise requires, bear the following meanings in this Purchase/Work Order and in any supplementary terms and conditions:
 - a. **"Goods"** means the goods described above and, where the context requires one or more units or portions of such goods;
 - b. **"Services"** means the services described above and, where the context requires, a portion of such services, and includes the materials used in the performance of such services;
 - c. **"Contract"** means the contract described in paragraph 2;
 - d. **"PO/WO"** is the abbreviation for Purchase/Work Order

2. **FORMATION OF CONTRACT.** If this PO/WO is issued as a result of a Bid Call Award, it constitutes a contract consisting of all the specifications, Terms and Conditions in the Bid Call documents, otherwise this PO/WO constitutes an offer to purchase the Goods and/or Services and a contract shall be formed consisting of the Terms and Conditions above, in these Paragraphs numbered 1 through 31, and any supplementary Terms and Conditions and specifications delivered by the Purchaser with this PO/WO, when the Vendor:
 - a. signs where indicated and returns to the Purchaser, all copies (if requested) of this PO/WO without modification, addition or deletion, or otherwise acknowledges or confirms this PO/WO in a manner satisfactory to the Purchaser; **or**
 - b. commences any work in connection with the Goods and/or Services or makes any deliveries of any Goods.

3. **CONTRACT PRICE.** The prices stated in this PO/WO are in Canadian funds, and include all packing, freight, storage and delivery costs, packing materials, bond premiums, costs of guarantees, warranties, and fees and other government exactions and all other costs of carrying out and completing the Contract, unless otherwise specified by the Purchaser in writing; and in the case of Services, without limiting the generality of and in addition to the foregoing, include all labour, overhead, superintendence, equipment, tools, water, heat, light, power, licences and permits.

4. **STANDING PRICES.** If this PO/WO is a "Standing PO/WO" the unit prices are final, all inclusive prices which remain in effect for the term or until the expiry date recorded on the PO/WO except for adjustments allowed for in paragraph 5.

5. **TAXES AND DUTIES.** Any increase or decrease in costs to the Vendor due to changes in applicable taxes and duties after the date of the Bid Call or offer shall increase or decrease the Contract price(s) accordingly.

6. **DELIVERY.** The Goods shall be delivered and the Services completed by the Vendor at the time and place and in the manner specified in this PO/WO, or as directed by the Purchaser in writing. The Vendor shall be responsible for providing, and removing from the point of delivery, packing cases, materials, skids and other articles used for packing and delivering the Goods. If the Vendor, due to a cause beyond his control, is delayed in supplying the Goods or performing the Services required by this Contract, the Contract shall be extended by the Purchaser for a reasonable time upon receiving a written request from the Vendor explaining the delay. If the Vendor, due to a cause beyond his control, is unable to deliver the Goods as described in the contract, he may suggest alternate products of an equivalent quality and price for approval by the Purchaser, and approval may not be unreasonably withheld.

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7. **CLEAN-UP.** The Vendor shall perform Services in an orderly manner, and shall undertake clean-up during and after performance of Services, and upon completion, shall remove his surplus products, tools, machinery, waste products and debris. The Contractor shall be responsible for the safe and legal off site disposal of all waste and surplus product in an environmentally friendly manner and in compliance with all Municipal, Provincial, Federal and Workers' Compensation Board regulations.
8. **VENDOR RECORDS AND PURCHASER ACCESS.** The Vendor shall establish and maintain time records and books of account, invoices, receipts and vouchers of all expenses incurred for services performed. The Purchaser and its
9. authorized representatives shall have access to the Goods and/or Services for inspection wherever they are in process, preparation, progress or completion and to related records and documents for copying and review. The Vendor shall cooperate to provide reasonable facilities for such access without unreasonable delay. Upon request of the Purchaser, the Vendor shall fully inform the Purchaser of the work done by the Vendor in connection with this Contract.
10. **GOODS & SERVICES.** In placing this PO/WO, the Purchaser is relying on the Vendor's skill and judgement in selecting and providing the proper Goods and/or Services for the Purchaser's purposes. The Vendor covenants that the Goods and/or Services will correspond with the description of the same on the front of this PO/WO, will conform to all applicable drawings and specifications, that the Goods and the materials used in the performance of Services will be new and of the best quality unless otherwise specified, and will be fit for the purpose for which they are to be used, that satisfaction of the Purchaser in its absolute discretion and that Goods and/or Services will conform in all respects with all applicable safety orders of regulations of any competent authority in the Province of British Columbia. The Vendor covenants that the Goods are free and clear of all liens and encumbrances whatsoever and that the Vendor has and will pass to the Purchaser a good and marketable title to same, and the Vendor agrees to hold the Purchaser and its successors and assigns free and harmless against any and all claims to the goods. The covenants set forth in this paragraph 9 shall be in addition to and not in substitution for all conditions and warranties at law or in equity including (without limitation) conditions and warranties under the Sale of Goods Act of British Columbia.
10. **PAYMENT CONDITIONS.**
 - a) Subject to all Terms and Conditions of the Contract, payment shall be made thirty (30) days after the date of receipt of an invoice by the Purchaser, or the date of receipt of the Goods by the Purchaser or performance of the Services whichever is latest, and the payment at such latest date shall be the sum of the unit prices shown on the front of this PO/WO for every unit of the Goods which has been the subject of such receipt or the actual Services completed to the satisfaction of the Purchaser;
 - b) No payment made to the Vendor nor partial or entire use of the Goods or the subject matter of the Services shall constitute an acceptance by the Purchaser of any Goods and/or Services in whole or in part;
 - c) The Purchaser may, as a condition precedent to any payment hereunder, require the Vendor to satisfy the Purchaser that the Vendor has transferred free and clear title to the Goods, and require the Vendor to deliver to the Purchaser such documents of title and transfers, releases, discharges and waivers of and from any and all claims and demands for and in respect of the Goods and/or Services and all matters and things arising out of or connected with this Contract by the Vendor or by anyone else as may be deemed

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expedient by the Purchaser; and in particular, without limitation, may require the delivery of a registerable bill of sale absolute in form satisfactory to the Purchaser;

- d) The Purchaser may discharge any lien, encumbrance or security interest with respect to the Goods and/or Services by payment to the holder thereof. The price of the Goods and/or Services shall be decreased by the amount so paid;
- e) All payments by the Purchaser to the Vendor shall be subject to such statutory or deficiency holdbacks as the Purchaser deems appropriate and interest shall not be payable on any such holdbacks.

11. REJECTION OF GOODS AND SERVICES.

- a) If the Vendor should neglect to prosecute the required services or otherwise fails to comply with the requirements of the Contract to a substantial degree, the Purchaser may notify the Vendor in writing that he is in default of his contractual obligations and instruct him to correct the default in the five (5) working days immediately following receipt of such notices. If the Vendor fails to correct the default within the time specified or subsequently agreed upon, the Purchaser may without limitation as to time, by notice in writing to the Vendor, reject the Goods and/or Services or any portion of the Goods and/or Services and terminate the Contract in whole or in part.
- b) Upon giving notice of rejection, the Purchaser may either return the rejected Goods to the Vendor, at the Vendor's risk and expense, or advise the Vendor to remove the rejected Goods, at the Vendor's risk and expense, and upon so advising the Vendor, any responsibility of the Purchaser for the rejected Goods shall cease.
- c) Any monies paid by the Purchaser to the Vendor in respect of any rejected Goods and/or Services, together with any additional expenditures over and above the contract price reasonably incurred by the Purchaser in obtaining other Goods and/or Services in replacement and any other direct or consequential loss, damage and expense shall be paid by the Vendor to the Purchaser;
- d) The rights and remedies provided in this paragraph 11 are in addition to and not in substitution for any other rights or remedies of the Purchaser.

12. BANKRUPTCY / INSOLVENCY.

- a) If the Vendor shall become bankrupt or insolvent, or if circumstances shall arise which entitle a court or a creditor to appoint a receiver or receiver-manager, or which entitle a court to make a winding-up-order, then the Purchaser shall be at liberty,
 - i) to cancel the Contract summarily by notice in writing without compensation to the Vendor; **or**
 - ii) to give any receiver, receiver-manager, trustee, liquidator or other person the option of carrying out the Contract;
- b) The exercise of any of the rights granted to the Purchaser under sub-paragraph (a) shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Purchaser.

13. BREACH OF CONTRACT. Neither the inspection nor testing nor the failure to inspect or test, nor acceptance of Goods and/or Services by the Purchaser shall release the Vendor from any of its obligations under the Contract nor impair the Purchaser's rights and remedies. The Vendor shall notwithstanding that the Purchaser has paid for or accepted the Goods and/or Services, pay to the Purchaser on demand the amount of any and all loss, damage or expense arising from any defective Goods and/or Services or the use thereof or any other breach of the Contract, whether or not the Purchaser has given any notice of rejection or revocation of acceptance, with respect thereto.

14. WAIVERS. A waiver of any provision or breach by the Vendor of this Contract shall be effective only if it is in writing and signed by a duly authorized representative of the

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Purchaser.

15. **MECHANICS' / BUILDERS' LIEN.** The Vendor shall execute and deliver and shall cause all sub-contractors and suppliers of material and renters of equipment to execute and deliver by such date as the Purchaser specified a waiver, release and discharge of the right to claim a lien in respect of the Goods and/or Services and real property and improvements connected therewith in favour of the Purchaser and any other person designated by the Purchaser, in form and substance satisfactory to the Purchaser. The Vendor shall promptly pay all persons employed by it.
16. **PROPERTY TRANSFER.** The property in the Goods and the risk shall pass to the Purchaser on delivery to the Purchaser at the place specified in or pursuant to this PO/WO, but without prejudice to any right of rejection which may accrue to the Purchaser.
17. **OTHER PROPERTY.** Everything produced, received or acquired by the Vendor or sub-contractor as a result of this Contract and any property provided by the Purchaser to the Vendor or sub-contractor (the "Material") will:
 - a) be the exclusive property of the Purchaser; and
 - b) be delivered by the Vendor to the Purchaser immediately upon the Purchaser giving notice of such request to the Vendor.
18. **COPYRIGHT.** The copyright in the Material belongs to the Purchaser.
19. **WARRANTY.** The Vendor agrees with the Purchaser that for a period of one (1) year after the date of the delivery of the Goods or completion of the Services, whichever is the later, the Vendor will, if requested by the Purchaser, without cost to the Purchaser, repair, replace or correct any Goods and/or Services which are defective or deficient. This agreement is in addition to any other rights or remedies which may apply to the Goods and/or Services. If the Vendor is not the manufacturer of the Goods, the Vendor shall furnish to the Purchaser by such date as the Purchaser specifies a manufacturer's warranty with respect to the Goods.
20. **CONFIDENTIALITY.** The Vendor shall treat the Contract and all documents, drawings, specifications and information connected therewith as confidential and shall not advertise the existence of the Contract nor disclose any matters or documents relating thereto to any third party without the Purchaser's written consent.
21. **ASSIGNMENT.** Neither party to the contract shall assign the Contract or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.
22. **TIME** is of the essence of the Contract.
23. **GOVERNING LAWS.** The laws of and prevailing in British Columbia shall govern the validity, interpretation and enforcement of the Contract. The Vendor shall comply with all applicable Municipal, Provincial and Federal legislation and regulations and obtain all permits and licences, including building permits, necessary for the performance of the Contract.
24. **ARBITRATION.** All claims, disputes, and other matters arising out of this Contract or relating to a breach thereof may, upon the agreement of both parties, be referred to a single arbitrator under the Arbitration Act, R.S.B.C. 1979, and if so referred, the decision of the arbitrator shall be final, conclusive and binding upon the parties.
25. **PERFORMANCE BOND.** The Vendor shall, if requested by the Purchaser, provide by such date as the Purchaser specifies and maintain in good standing at the Vendor's expense,

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bonds covering the faithful performance of the Contract and the payment of all obligations arising under or by virtue of the Contract, in form and substance satisfactory to the Purchaser.

26. **INSURANCE.** The Vendor shall, at its own expense, maintain Comprehensive General Liability Insurance with a limit of not less than \$2,000,000.00 per occurrence, including, without limitation, the designation of the Purchaser as an additional insured, and shall deliver a signed copy of BC Housing's Certificate of Insurance Form, on the document provided, to the Purchaser by such date as the Purchaser specifies, and in default, the Purchaser may do or cause to be done all acts necessary to place and maintain such insurance at the expense of the Vendor.
27. **WORKERS' COMPENSATION BOARD.** The Vendor shall be registered and maintain good standing with the Workers' Compensation Board for the duration of this Contract, and, when requested by the Purchaser, provide proof of compliance by himself and his sub-contractors.
28. **VENDOR INDEMNITY.** The Vendor, shall indemnify and save harmless the Purchaser, its agents and employees and any other person designated by the Purchaser, whether designated before or after the performance and completion of the Contract as having an interest in the Goods and/or the Services hereunder, from and against any and all actions, suits, claims, demands, costs, losses, damages or proceedings of whatsoever kind, arising out of, attributable to, or connected with the Vendor's performance or lack of performance hereunder or any default by the Vendor or breach of any Term or Condition of the Contract.
29. **PURCHASER RIGHTS & REMEDIES.** The rights and remedies of the Purchaser are independent and cumulative, and the exercise, or partial exercise of any right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy.
30. **WORDS.**
 - a) Words importing the singular shall include the plural and vice versa, words importing the neuter gender shall include the masculine and feminine, and words importing persons shall include bodies corporate;
 - b) If the subject matter of the contract is solely Goods, then all provisions in the Contract applicable only to Services shall be disregarded, and vice versa, and in both cases the Contract shall be read with the appropriate grammatical changes.
31. The British Columbia Housing Management Commission enters into this agreement on its own behalf and also as agent for the Provincial Rental Housing Corporation. All terms and conditions of this agreement are for the benefit of both the British Columbia Housing Management Commission and the Provincial Rental Housing Corporation and may be enforced against either party(ies) to this agreement in the name of the British Columbia Housing Management Commission or the Provincial Rental Housing Corporation or both.