

# BCIT Standard Purchase Order Conditions (C001)

These standard terms and conditions (the “Standard PO Conditions”) are incorporated by reference and form part of each PO Agreement entered into between the Vendor and BCIT (which collectively with the Purchase Order and any other documents identified in the Purchase order as forming part of the agreement between the Parties, are referred to herein as “this PO Agreement”). The Vendor is deemed to have agreed to be bound these Standard PO Conditions as set out in Section 1 of these Standard PO Conditions.

For certainty, except where expressly accepted by BCIT in writing, no terms or conditions set out in any document presented by the Vendor (including any invoice, statement of account, ordering document, form of agreement or other document) will be applicable to the Deliverables or the contract between the Vendor and BCIT regarding the Deliverables.

## 1 Acceptance

- .1 The Vendor shall be deemed to have accepted this PO Agreement, including for certainty these Standard PO Conditions, upon the earliest of:
  - a) written notice given by the Vendor to BCIT that it has accepted and agreed to the Purchase Order;
  - b) commencement of the provision of the Deliverables by the Vendor;
  - c) acceptance by the Vendor of any portion of the Total Price from BCIT prior to the commencement of the provision of the Deliverables by the Vendor and does not protest or challenge the payment; and
  - d) execution of the Purchase Order by the Vendor. Execution of the Purchase Order may be executed in counterparts and each executed counterpart will be considered an original. All executed counterparts taken together will constitute the Purchase Order. Any Party may deliver a counterpart signature page by digital or electronic transmission.

## 2 Definitions

- .1 **Definitions:** In this PO Agreement, the following capitalized words and expressions will have the following meanings unless the context otherwise requires:
  - a) “**Applicable Privacy Laws**” means any and all applicable statutes, laws, regulations, bylaws, rules, codes, ordinances, judgments, decrees, writs, permits, licenses, administrative interpretations, guidelines, policies or orders of any governmental authority applicable to the collection, use, disclosure or protection of Personal Information by BCIT;
  - b) “**BCIT**” means British Columbia Institute of Technology;
  - c) “**BCIT Code and Guidelines**” means BCIT’s Code of Conduct and all BCIT safety guidelines as updated from time to time.
  - d) “**BCIT’s Code of Conduct**” means Policy 1500 and as updated from time to time.
  - e) “**BCIT’s Contractor or Safety Guidelines for Construction, Maintenance, and Services**” means all information made available at <https://www.bcit.ca/safety-security/health-safety/contractor-safety/> and as updated from time to time by BCIT Safety, security & Emergency Management Department;

- f) **“Business Day”** means a day other than Saturday, Sunday or a day that is a statutory holiday in British Columbia;
- g) **“Confidential Information”** has the meaning set out in Section 10.1 of these Standard PO Conditions;
- h) **“CSA Standards”** refers to any of the following: Canadian Standards Association, Underwriters Laboratory, Underwriters Laboratory Canada, or other approved equivalents;
- i) **“Defaulting Party”** has the meaning set out in Section 7.3 of these Standard PO Conditions
- j) **“Deliverables”** means:
  - i. for Services, the Services; and
  - ii. for Goods, the Goods;
- k) **“Date(s) Required”** means the date(s), if any, set out in the Purchase Order which, for any Services, the date the Services are to be performed, and for Goods, the date the Goods are to be delivered to BCIT;
- l) **“Discloser”** means has the meaning given to it in Section 10.1 of these Standard PO Conditions;
- m) **“Goods”** means the supplies, equipment, furniture, wares, merchandise, materials and other goods to be supplied by the Vendor as set out in the Purchase Order;
- n) **“Safety Data Sheet (SDS)”** refers to the information provided at the following: [https://www.ccohs.ca/oshanswers/chemicals/whmis\\_ghs/sds.html#section-1-hdr](https://www.ccohs.ca/oshanswers/chemicals/whmis_ghs/sds.html#section-1-hdr)
- o) **“Party”** and **“Parties”** means BCIT and the Vendor, individually, and collectively, respectively;
- p) **“Personal Information”** refers to personal information (as that term is defined in British Columbia *Freedom of Information and Protection of Privacy Act*);
- q) **“Premises”** means the location(s) where the Deliverables are to be provided as set out in the Purchase Order;
- r) **“the Purchase Order”** means that document entitled “Purchase Order” bearing the Purchase Order number and accepted by the Vendor as set out in Section 1 of these Standard PO Conditions;
- s) **“Recipient”** means has the meaning given to it in Section 10.1 of these Standard PO Conditions;
- t) **“Regulatory Standards”** has the meaning given to it in Section 4.1i) of these Standard PO Conditions;
- u) **“Services”** shall mean those services identified in the Purchase Order, which may be changed, from time to time by the mutual agreement of the Parties, and includes producing to BCIT all of the Deliverables by the Date(s) Required, if any, set out in the Purchase Order;
- v) **“Specifications”** means any samples, specifications, drawings, directives or other description provided by BCIT identified in the Purchase Order, as may be amended from time to time by BCIT;
- w) **“Standards”** means all Regulatory Standards, applicable laws, rules and regulations, including the CSA Standards, any Specifications, and generally accepted industry standards, and using the standard of care and diligence that is customary for providers of like Deliverables to post-secondary institutions;
- x) **“Subcontractor”** has the meaning given to in Section 4.1s)of there Standard PO Conditions;

- y) **“Term”** means the term of the Purchase Order, as set out in the Purchase Order;
- z) **“Total Price”** means total fees, cost and expenses payable by BCIT for the Deliverables, including all fees and expenses incurred by the Vendor and any Subcontractor, and all applicable other taxes related to the Deliverables;
- aa) **“Vendor”** means the vendor of the Deliverables as identified in the Purchase Order;
- bb) **“Vendor’s Equipment”** means the equipment, tools vehicles, materials, cellular phones, radios, computers, and pagers, long distance charges and other electronic telecommunication devices, and information technology used by the Vendor in performance of the Services;
- cc) **“Vendor Personnel”** has the meaning set out in Section 4.1a) of these Standard PO Conditions; and
- dd) **“Workplace Hazardous Materials Information System (WHMIS)”** refers to the information available at the following: <https://www.canada.ca/en/health-canada/services/environmental-workplace-health/occupational-health-safety/workplace-hazardous-materials-information-system.html>

### 3 Scope of Deliverables

- .1 The Vendor acknowledges and agrees that, in relation to the Deliverables, the Vendor:
  - a) shall provide the Deliverables on the applicable Date(s) Required regardless of the date of acceptance of this Agreement by the Vendor;
  - b) shall provide the Deliverables in a competent, professional, timely and efficient manner, consistent with the Standards, Specifications and provisions of this PO Agreement;
  - c) unless otherwise agreed to in writing by BCIT, shall be solely responsible for providing all labour, materials, supplies, Vendor’s Equipment, facilities, approval and licenses necessary or advisable to perform its obligations in this PO Agreement and any maintenance, damage, loss or theft of Vendor’s Equipment;
  - d) warrants that neither the supply of any Deliverables to BCIT nor the use of those Deliverables by BCIT will constitute an infringement of any patent, copyright, trade-mark, trade secret or other intellectual property of any third party;
  - e) shall obtain BCIT’s prior written approval to any changes to the Purchase Order;
  - f) shall assign all manufacturer warranties to BCIT for products manufactured by third party manufacturers and provided to BCIT by the Vendor pursuant to this PO Agreement, and shall take all necessary steps as required by such third party manufacturers to effect assignment of such warranties to BCIT. Payment by BCIT to the Vendor under this PO Agreement be deferred, as to all or part as BCIT may require, until the foregoing has been carried out to the satisfaction of BCIT;
  - g) will abide by the Conflict of Interest provisions in BCIT’s Code of Conduct as if the Vendor were an employee of BCIT; and
  - h) represents and warrants that is in the business of providing the type of Deliverables described in this PO Agreement.
- .2 Where Date(s) Required is/are stated in the Purchase Order, timely delivery is of the essence and the Vendor will be responsible to ensure that such delivery is made, and will notify BCIT immediately in writing of any anticipated delays and the reasons therefore.

- .3 The Vendor and BCIT agree to work cooperatively in carrying out the obligations set out in this PO Agreement, with a view to optimizing efficiency, achieving cost reductions, ensuring safety and minimizing inconveniences.
- .4 It is the responsibility of the Vendor to ensure that it has obtained all necessary employment authorizations for any foreign workers and contractors. In the event that proposed foreign workers are detained at the Canadian border or refused entry into Canada, it shall be the sole responsibility of the Vendor to ensure such detention or refusal does not affect or jeopardize the performance and completion of the work set forward in this PO Agreement in a timely manner.

#### 4 *Provision of Deliverables*

- .1 In relation to the provision of any Deliverables, and in addition to Section 3.1 of these Standard PO Conditions, the Vendor acknowledges and agrees to:
  - a) employ or engage all personnel that are required to perform the Services and provide the Deliverables in accordance with this PO Agreement (collectively the “**Vendor Personnel**”). The Vendor warrants, acknowledges and agrees that:
    - i. all Vendor Personnel have the required qualifications, licensing, skills and experience to provide the Deliverables. The Vendor will properly train, instruct and supervise the Vendor Personnel;
    - ii. all Vendor Personnel are and shall be employed or engaged by the Vendor, and that no Vendor Personnel shall be employed by BCIT;
    - iii. BCIT assumes no responsibility whatsoever for any Vendor Personnel; and
    - iv. the Vendor assumes all risks and responsibilities for each Vendor Personnel. The Vendor is solely responsible for each Vendor Personnel’s acts and omissions and all matters pertaining to each Vendor Personnel’s provision of the Deliverables, including and without limiting the generality of the foregoing, obtaining, maintaining and paying for each Vendor Personnel’s licenses, permits, insurance premiums, contributions to benefit plans, medical expenses and health insurance and any other requirements or expenses related to the Vendor Personnel’s provision of the Deliverables;
  - b) pay all wages and other amounts that are owed to the Vendor Personnel in connection with the provision of the Deliverables;
  - c) be responsible for the operation of the Vendor’s business, including and without limiting the generality of the foregoing, all expenses related to the Vendor’s business;
  - d) complete all records and reports pertaining to the Deliverables as BCIT may require;
  - e) not commit BCIT to pay any money except as described in the Purchase Order, or as otherwise authorized by BCIT in writing;
  - f) supply and pay all charges and fees related to Vendor’s Equipment for Vendor Personnel in relation to the Deliverables;
  - g) implement quality control, inspection policies and solution reviews to ensure that all of the Deliverables complies or exceeds the Standards;
  - h) provide all information and communication to internal collaboration and file sharing tools as requested by BCIT;
  - i) comply with all Applicable Privacy Laws, applicable health, workplace safety, sanitary laws, bylaws, regulations, Standards (including for certainty WorkSafeBC and other laws, regulations and directions of any applicable governmental or regulatory authority relating to

- the Deliverables) including the use of Vendor's Equipment), and BCIT's Contractor or Safety Guidelines for Construction, Maintenance, and Services (collectively the "**Regulatory Standards**") and shall take all steps required to rectify non-compliance related to the provision of the Deliverables;
- j) ensure all Vendor Personnel comply with all applicable rules, laws, ordinances and regulations related to the provision of the Deliverables, including, without limiting the generality of the foregoing, all applicable Regulatory Standards, and the BCIT Code and Guidelines;
  - k) comply with all applicable laws pertaining to its hiring, employment, engagement and termination of all Vendor Personnel, including but not limited to the Human Rights Code (BC);
  - l) at any time, upon demand by BCIT at its sole discretion and without liability hereunder, immediately remove any Vendor Personnel from the Premises or to deny any Vendor Personnel access to the Premises or any part thereof, if in BCIT's reasonable opinion, such Vendor Personnel is incapable, unwilling or unable to provide the Deliverables in accordance with this PO Agreement;
  - m) If a labour dispute involving BCIT personnel or Vendor Personnel affects the Vendor's ability to provide the Deliverables, make all lawful efforts to ensure that all Deliverables continue to be provided in accordance with this PO Agreement. If any Deliverables are not continued to the reasonable satisfaction of BCIT, BCIT may take steps to obtain continued Services, including but not limited to retaining another person or contractor temporarily to provide the Deliverables, terminating this PO Agreement or reduction of Total Price;
  - n) during the Term of this this PO Agreement, obtain and maintain, at its cost, appropriate insurance coverage in respect of any of the Vendor Personnel or other authorized third parties who will attend the Premises in connection with the Deliverables;
  - o) during the Term, where required by BC law:
    - i. and as a condition of providing the Deliverables, be registered with and remain in good standing with WorkSafeBC, and must ensure that all persons providing Deliverables under this PO Agreement are covered under the *Workers' Compensation Act* (BC); and
    - ii. keep current and good standing the Vendor's WorkSafeBC account at all times during the Term of this PO Agreement. All premiums and other costs associated with such insurance coverage shall be borne by the Vendor;
  - p) be responsible for making any and all payments and remittances that may be required in connection with the provision of the Deliverables, including without limiting the generality of the foregoing, the *Income Tax Act* (Canada), the *Employment Insurance Act* (Canada), the *Canada Pension Plan Act* (Canada), the *Income Tax Act* (BC), the *Workers' Compensation Act* (BC), the *Employment Standards Act* (BC), the *Assessment Act* (BC) or any other similar statute of Canada or a province of territory thereof. The Vendor agrees that such remittances will be made in strict accordance with the Vendor's statutory obligations;
  - q) indemnify and hold harmless BCIT and its officers, Board of Governors, directors, employees, representatives and agents from and against any and all liability for any tax, assessment, penalty, interest, wages, or any other amount of any kind whatsoever, arising under one or more of the *Income Tax Act* (Canada), the *Employment Insurance Act* (Canada), the *Canada Pension Plan Act* (Canada), the *Income Tax Act* (BC), the *Employment Standards Act* (BC) or any other similar statute of Canada or a province or territory thereof that may arise in connection with the provision of the Deliverables;

- r) withhold and submit to applicable government authorities all applicable taxes and be responsible and pay for payroll insurance with respect to its employees, insurance premiums, contributions to benefit plans, licensing fees and worker's compensation costs and shall file all required documents and forms;
- s) not subcontract any of the Deliverables to a subcontractor without the prior written approval of BCIT (the "**Subcontractor**"). If BCIT authorizes the Vendor to retain a Subcontractor to perform a portion of the Deliverables, the Vendor acknowledges and agrees that:
  - i. such authorization by BCIT and subsequent subcontracting to the Subcontractor will not relieve the Vendor of any of its obligations to BCIT in this PO Agreement;
  - ii. the Vendor will ensure that any agreement with the Subcontractor contains terms and conditions no less restrictive than the Specifications, Standards, Applicable Privacy Laws, BCIT Code and Guidelines, and the Vendor's obligations to BCIT's Confidential Information and Personal Information, and BCIT intellectual property as set out in the Purchase Order; and
  - iii. the Vendor's obligations to BCIT in relation to Vendor Personnel in this PO Agreement shall also apply to each Subcontractor and Subcontractor's personnel as if each Subcontractor and Subcontractor's personnel is also a Vendor Personnel.

## 5 *Provision of Goods*

- .1 In relation to the provision of any Goods pursuant to this PO Agreement, and in addition to Section 3.1 of these Standard PO Conditions, the Vendor:
  - a) represents and warrants that:
    - i. all Goods will conform to the Specifications;
    - ii. where the Purchase Order provides for the supply of new Goods, all Goods will be new, of merchantable quality, free from any defect in material or workmanship, and fit for any purpose expressly disclosed by BCIT to the Vendor;
    - iii. where the Purchase Order provides for the supply of used Goods, such goods are of operational quality and fit for any purpose expressly disclosed by BCIT to the Vendor;
    - iv. the Vendor will have on or before the Date(s) Required, good and marketable title to the Goods and that, on payment for the Goods, BCIT will obtain such title to the Goods free and clear of all liens, charges and encumbrances; and
    - v. all Goods operating on alternating current are approved by the applicable CSA Standards and bear the appropriate approval sticker prior to delivery to BCIT;
  - b) acknowledges and agrees that it will:
    - i. provide packing slips with each shipment of Goods identifying this PO Agreement number on all packing slips, packages, bills of lading, and invoices, the place from where the Goods were shipped, the name of the carrier and the bill of lading number;
    - ii. all properly classify, describe, package, mark and label for shipment, and will be in proper condition for shipping by the mode of transportation chosen and in accordance with any applicable provincial or federal laws or regulations for all Goods. Where Workplace Hazardous Materials Information System (WHMIS) applies, the Vendor will provide all related Safety Data Sheets (SDS); and
    - iii. unless otherwise specified in the Purchase Order, all Total Prices and deliveries of Goods will be made on terms "DDP" (Delivered Duty Paid to a named place of destination), as



that term is defined in the publication Incoterms 2010 published by the International Chamber of Commerce. As a result, the Vendor will bear all risks and costs, including duties, taxes and other charges, of delivering the Goods, cleared form importation, to BCIT's named destination. Goods will not be deemed or construed to be delivered until actually received by BCIT at the place designated on this PO Agreement for shipment of the Goods; and

- c) acknowledges and agrees that where by reason of a delay in shipment, it is necessary to make expedited or express or air express shipments of the Goods in order to deliver the Goods by the Date(s) Required, BCIT may direct that the Goods be so shipped, and the difference between the freight and the applicable expedited or express rates will be paid by the Vendor and may be deducted by BCIT if paid by BCIT.
- .2 The provisions of this PO Agreement are in addition to and not in substitution or derogation of any applicable sale of goods legislation in effect in British Columbia. The provisions of the U.N. Convention on Contracts for the International Sale of Goods do not apply to this PO Agreement.

## **6 Approvals, Inspection, Payment and Taxes**

- .1 No provision in this PO Agreement requiring BCIT's consent or approval shall be deemed to have been fulfilled or waived unless the written consent or approval of BCIT relating to the particular matter or instance has first been obtained and, without limiting the generality of the foregoing, no prior consent or approval and no condoning, excusing or overlooking by BCIT on previous occasions when such a consent or approval was required shall be taken to operate as a waiver of the necessity of such consent or approval whenever required under this PO Agreement. Where any provision of this PO Agreement requires the consent or approval of BCIT, then:
  - a) such provision will not be construed, interpreted or applied to mean that BCIT's consent or approval will not be unreasonably withheld, unless such provision expressly states that BCIT's consent or approval will not be unreasonably withheld; and
  - b) BCIT may stipulate reasonable requirements and terms, as a condition of giving such consent or approval, and BCIT may withhold its consent or approval until such requirements and terms have been satisfied and complied with, and the Vendor hereby covenants with BCIT that, unless the Vendor withdraws its request for BCIT's consent or approval forthwith after the Vendor is advised of the requirements and terms.
- .2 The performance of this PO Agreement will be subject to BCIT's inspection, acceptance testing, and, approval of all Deliverables, including in accordance with the Standards. The Vendor acknowledges and agrees that:
  - a) the Vendor will allow BCIT to attend the Vendor's premises or place of performance to conduct the inspection of the Deliverables reasonably assist BCIT for the purposes of the inspection of the Deliverables;
  - b) any prior payment for the Deliverables does not constitute acceptance of the Deliverables; and
  - c) for any Deliverables that do not meet the Standards, at BCIT's sole discretion and election, BCIT may require the Vendor to remedy such non-compliance, which remedy may include one or more of the following:
    - i. requiring the Vendor to pay all transportation charges for the delivery, return and removal of any Deliverables that do not meet the Standards;
    - ii. requiring the Vendor to pay for any costs, loss, expense or damages incurred by BCIT in the event that purchases from a third party for any rejected Deliverables;
    - iii. requiring the Vendor, at its cost, to provide Deliverables that meet the Standards;

- iv. requiring the Vendor at its cost to undertake any repairs to the rejected Deliverables; and/or
  - v. at the Vendor's sole cost, terminating or suspending this PO Agreement for any Deliverables that do not meet the Standards or delivered by the Date(s) Required.
- .3 Unless otherwise expressly specified, the Total Price is as set out in this PO Agreement, is in Canadian funds, and terms are net thirty (30) days from the later of the date of BCIT's receipt of the invoice for this PO Agreement and the date the Deliverables are completed or delivered and received and accepted by BCIT. Original invoices are to be in Canadian funds, must indicate the Purchase Order number, and submitted to the BCIT Accounts Payable department by mail or email to:
- BCIT  
Accounts Payable  
3700 Willingdon Avenue  
Burnaby, BC V5G 3H2  
[BCIT\\_AP\\_Department@bcit.ca](mailto:BCIT_AP_Department@bcit.ca)
- .4 BCIT may withhold or set off against any payment due to the Vendor any charge, liability or indebtedness owed by the Vendor to BCIT or which under this PO Agreement is to be paid by or charged to the Vendor.
  - .5 BCIT may as a condition of making final payment to the Vendor, require the Vendor to execute and deliver a full and final release and discharge in favour of BCIT, in such form as BCIT may prescribe.
  - .6 The Vendor shall apply for and immediately on receipt, remit to BCIT any available refund, credit, rebate or remission of federal or provincial tax or duty that BCIT has paid the Vendor or agreed to pay Vendor under this PO Agreement.
  - .7 If the Vendor is not registered for GST, then, where applicable, BCIT may self-assess and remit the GST to or as directed by Canada Revenue Agency.
  - .8 If the Vendor is not a resident of Canada, BCIT may be required by law to withhold income tax, for services provided in Canada, from the Vendor and to remit such tax to or as directed by Canada Revenue Agency, on behalf of the Vendor. If the Vendor is not a resident of Canada or in case of any uncertainty as to whether the Vendor is a non-resident, BCIT is entitled to withhold and remit, and shall be credited under this PO Agreement for all remittances. If BCIT was required to withhold income tax but failed to withhold, then the Vendor will on demand pay to BCIT the amount of the required withholding to reimburse BCIT for the amount required to be remitted.

## 7 Term and Termination

- .1 The term of this this PO Agreement (the "**Term**") will commence on the Effective Date and will end on the specified in the Purchase Order or satisfactory receipt of the last Deliverable by BCIT, whichever is later, unless this PO Agreement is terminated sooner or extended as described herein.
- .2 At any time, BCIT shall have the right to terminate this this PO Agreement without cause on giving at least seven (7) days' written notice to the Vendor.
- .3 If a Party breaches its obligations or contravenes any provision in this PO Agreement (the "**Defaulting Party**"), the other Party may serve written notice of such breach or contravention on the Defaulting Party. If the Defaulting Party does not remedy the breach or cease the



contravention within ten (10) days of the date of receipt of such notice, the other Party may, at its sole option, in addition to any and all remedies available under all applicable laws:

- a) remedy such default or contravention at the expense of the Defaulting Party; and/or
  - b) terminate this PO Agreement immediately by giving written notice of termination to the Defaulting Party.
- .4 BCIT may terminate this PO Agreement immediately, upon written notice to the Vendor, in the event that:
- a) the Vendor commits an act of bankruptcy, or becomes insolvent or unable to pay its debts as they become due;
  - b) the Vendor ceases to carry on business as a going concern;
  - c) the Vendor makes an assignment for the benefit of its creditors, applies to or petitions any tribunal for the appointment of a custodian, receiver or trustee for itself or any substantial part of its assets, or commences any proceeding with respect to itself under any bankruptcy, reorganization, readjustment of debt, insolvency, receivership, dissolution or liquidation law or statute of any jurisdiction, or if the other Party files any such application or petition, or if such proceeding is commenced against the Vendor;
  - d) either Party becomes subject to an event of Force Majeure, as defined in these Standard PO Conditions, which continues for a period of more than thirty (30) days; or
  - e) pursuant to Sections 4.1m) or 6.2c)v. of these Standard PO Conditions.
- .5 Upon termination of this PO Agreement:
- a) such termination shall not operate to limit, reduce, cancel, or otherwise modify any obligations then accrued or unpaid;
  - b) the Vendor shall furnish BCIT with the usual statements and other documents as at the date of termination;
  - c) any monies owing by one Party to the other shall be paid within seven (7) Business Days, provided that any outstanding monies owed by BCIT to the Vendor shall be set-off against any outstanding monies owed by the Vendor to BCIT; and
  - d) all paper and electronic files, Confidential Information, information and documents pertaining to BCIT's business shall remain the property of BCIT, and shall promptly be delivered by the Vendor to BCIT's office, and no copy, duplication or reproduction of any kind whatsoever shall be made of such paper and electronic files, Confidential Information, information or documents without the express written consent of BCIT.

## 8 Notices

- .1 Any notice, direction request or other communication required or contemplated by any provision of this PO Agreement to BCIT will be given in writing and will be given by delivering or emailing the same to BCIT as follows:

Procurement Manager or Associate Director, Strategic Procurement, Corporate Services, or other individual designated in writing by the Associate Director, Strategic Procurement, Corporate Services

Building NE9, Room 120

3700 Willingdon Ave, Burnaby BC, V5G 3H2

[supply@bcit.ca](mailto:supply@bcit.ca)

604 432 8399

## 9 Indemnity and Release

- .1 The Vendor will indemnify, hold harmless and defend, and hereby forever releases and discharges, BCIT and BCIT's Board of Governors, directors, officers, employees, faculty, students, representatives and agents (collectively the "**BCIT Indemnitees**") from and against any claims, suits, losses, damages, actions, causes of action, costs, fees and expenses (including actual legal fees and expenses) and liability of any kind and every nature that can or may arise, directly or indirectly, either before or after this PO Agreement ends, and whether asserted by third parties or otherwise, relating to or arising this PO Agreement, excepting always that this indemnity does not apply to the extent, if any, to which the claims are caused by errors, omissions or the negligent acts of BCIT, its other contractors, assigns and authorized representatives or any other person.
- .2 Without limiting the foregoing, the Vendor will fully indemnify and save harmless the Indemnitees from and against all damage, cost, loss, expense and liability suffered or incurred by any such persons, including, without limitation, all legal fees and disbursements incurred by any such persons, arising out of or as a result of any claim by a third party for product liability which claim relates to the functioning, the failure to function or malfunctioning of any of the Goods. The above indemnity includes all claims for direct, indirect, incidental, consequential, punitive, aggravated, exemplary and/or special damages and damages for pure economic loss, whether such claims arise in contract, tort or otherwise.

## 10 Confidentiality and Privacy

- .1 In this this PO Agreement, "**Confidential Information**" means any information in any form or medium relating to one Party's (the "**Discloser**") business, strategies, pricing, personnel, customers, Vendors, products or services, including all information belonging to third parties in respect of which the Discloser owes any confidentiality obligation, that is directly or indirectly disclosed to or accessed by the other Party (the "**Recipient**"), whether or not any of the information is identified as being confidential, but excludes information that the Recipient proves: (i) was lawfully in its possession before receiving it from the Discloser; (ii) was provided in good faith to the Recipient by a third Party that had no obligation to keep it confidential; (iii) is or becomes generally available to the public through no fault of the Recipient; or (iv) the Recipient developed independently without any reference to the Discloser's Confidential Information.
- .2 The Recipient will use conscientious efforts to protect the Discloser's Confidential Information, and will only provide Confidential Information to those of its employees, directors, officers, consultants, agents and other representatives on a "need to know" basis.
- .3 Except as authorized by this PO Agreement or otherwise by the Discloser in writing, the Recipient will not:
  - a) use, exploit or take any benefit from any of the Discloser's Confidential Information for any purpose other than the Services or to fulfill its obligations in this PO Agreement;
  - b) disclose any of the Discloser's Confidential Information to any third party;
  - c) duplicate, transfer, sell, publish, transmit, modify, reverse-engineer or take any benefit from any of the Discloser's Confidential Information, or
  - d) directly or indirectly assist, facilitate or encourage any third party to carry on any activity that the Recipient is not permitted to carry on, relating to this PO Agreement.
- .4 All Parties acknowledge and agree that, notwithstanding any wording in this PO Agreement or any confidentiality agreement, BCIT is a public body subject to the British Columbia *Freedom of Information and Protection of Privacy Act*.

## 11 Audit Rights

- .1 BCIT reserves the right to audit the Vendor's records to assure compliance with the terms of this PO Agreement. The Vendor shall make available all data reasonably requested by BCIT. BCIT will treat all information concerning the Vendor and its personnel, systems, procedures and operations reviewed or discovered during the course of any such audit as proprietary to the Vendor and strictly confidential except to the extent that disclosure may be required to enforce the terms of this PO Agreement.

## 12 Intellectual Property

- .1 In accordance with BCIT policy, but subject to the terms of this this PO Agreement, BCIT will exclusively own all right, title and interest (including all intellectual property rights) in and to the Deliverables and any information, results, data, inventions, developments, discoveries, improvements and material, whether or not complete and whether or not patentable, that have been produced, developed, compiled, reduce to practice or acquired as a result of the Deliverables or BCIT's Confidential Information.

## 13 Use of Trademarks

- .1 The Vendor acknowledges the proprietary interest of BCIT in all names, trademarks, crests, or logos owned by BCIT and shall not use any BCIT, trademark, crest or logo without the written consent of BCIT.
- .2 The Vendor shall not in any way or in any form publicize or advertise in any manner the fact it is providing products or services to BCIT without the express written approval of BCIT which must be obtained in advance for each item of advertising or publicity.

## 14 Dispute Resolution

- .1 If any dispute arises out of or relating to this PO Agreement at any time before or after this PO Agreement terminates, the Parties will attempt to resolve the dispute amicably through confidential good-faith discussions.
- .2 If the Parties cannot resolve the dispute within ten (10) Business Days, or such longer period as the Parties may agree in writing, then the Parties will submit the dispute to be settled confidentially by a single neutral arbitrator under the *Commercial Arbitration Act* (British Columbia) and the rules of the Vancouver International Commercial Arbitration Centre (VaniAC). If the Parties cannot agree on an arbitrator within ten (10) Business Days after the dispute is referred to arbitration then VaniAC will appoint the single arbitrator. The arbitrator will apply the laws of British Columbia. The arbitrator's decision will be binding upon the Parties, and judgment on the decision may be entered in any court of competent jurisdiction. The arbitration hearing will be held in Burnaby, British Columbia and will be conducted in English. The Parties will share equally in the arbitrator's fees and expenses and the cost of the facilities used for the arbitration hearing, but will otherwise each bear their respective costs in connection with the arbitration.

## 15 General

- .1 **Headings:** The headings in these Standard PO Conditions are for convenience of reference only and shall not affect the construction of this PO Agreement or any provision hereof.
- .2 **Precedence of Documents:** If there is any conflict or inconsistency between these Standard PO Conditions and any other agreement executed by the Parties referred to in this PO Agreement in relation to the Deliverables (the "**Attached Agreement**"), these Standard PO Conditions will take precedence over the Attached Agreement unless the Purchase Order expressly states otherwise, including by identifying the specific provision over which any Schedule to the Purchase Order takes precedence.

- .3 **Relationship between the Parties.** The Parties are independent contractors and nothing in this PO Agreement shall be construed as establishing an agency, partnership, or employment relationship between the Parties, or between BCIT and any of the Vendor Personnel, the Vendor's group, or a Subcontractor. Neither Party shall have the authority to act on behalf of the other Party or to commit the other Party in any manner or cause whatsoever, or to use the other Party's name in any way not specifically authorized in this PO Agreement.
- .4 **Persons Bound.** This PO Agreement enures to the benefit of and is binding on the Parties and their respective successors and permitted assigns.
- .5 **Further Assurances.** Each Party will promptly sign and deliver all documents and take all action as may be necessary or desirable to effectively carry out the intent and purposes of this PO Agreement, to protect the Parties' interests and to establish, protect and perfect the rights, remedies and interests granted or intended to be granted under this PO Agreement.
- .6 **Waiver.** A waiver of any term of this PO Agreement or of any breach of this PO Agreement is effective only if it is in writing and signed by the Parties and is not a waiver of any other term or any other breach.
- .7 **Amendment.**
  - a) The Standard PO Conditions in place at the time of issuance of the Purchase Order shall be the Standard PO Conditions applicable to the provision of Goods and/or Services. If the Purchase Order is amended after its first issuance, the version of the Standard PO Conditions with the latest updates shall govern.
  - b) Despite the foregoing, no modification of the Purchase Order is effective unless it is in writing and signed by the Parties.
- .8 **Entire Purchase Order.** These Standard PO Conditions, together with the Purchase Order and any documents identified in the Purchase Order, and regarding its subject-matter,
  - a) constitutes the entire agreement between the Parties; and
  - b) supersedes all prior agreements (including Purchase Orders), understandings, negotiations and discussions between the Parties.
- .9 **No Assignment.** The Vendor shall not assign any part of this PO Agreement or any of its rights under this PO Agreement without BCIT's prior written consent, and any purported assignment without such prior consent will be void.
- .10 **Force Majeure.** Neither Party will be held responsible for damages caused by delay or failure to perform its obligations under this PO Agreement (other than its payment obligations) to the extent caused by events or circumstances beyond the non-performing Party's reasonable control, including acts of God, war, riot, embargoes, acts of government including civil or military authorities, export controls, catastrophe, fire, floods, accidents, strikes, shortages of transportation, facilities, fuel, energy, labour or material, or acts of public enemies, but not including the non-performing Party's financial status.
- .11 **Law and Jurisdiction.** The laws of British Columbia, without giving effect to its conflict of law principles, govern this PO Agreement and all proceedings arising out of it, and the parties attorn to the exclusive jurisdiction of the British Columbia courts.
- .12 **Severability.** Any provision of this PO Agreement that is held to be invalid, illegal or unenforceable will be deleted from this PO Agreement and the remaining provisions will continue in full force and effect.
- .13 **Time.** Time is of the essence in this PO Agreement.

- .14 **Survival** Section 7 (Term and Termination), Sections 3.4 and 4.1 (regarding Vendor’s Personnel contractor’s personnel and subcontractors), Section 6 (Approvals, Inspection, Payment and Taxes), Section 9 (Indemnity and Release), Section 10 (Confidentiality and Privacy), Section 11 (Audit Rights), Section 12 (Intellectual Property), Section 13 (Use of Trademarks), Section 3.1 f) (regarding manufacturers warranties), Section 2.4 (regarding insurance), Section 14 (Dispute Resolution), and Section 15 (General), and all other provisions of this PO Agreement that are reasonably necessary for the interpretation of this PO Agreement or to give effect to this PO Agreement continue in force indefinitely, even after this PO Agreement ends.

## 16 *Supplementary Conditions*

### .1 Supplier’s Proposal

- a) The Vendor acknowledges that its proposal as noted on the Purchase Order (the “**Proposal**”) submitted in response to BCIT’s request for proposals/quotation and addenda thereto (if any) (collectively, the “**RFP**”) was material in inducing BCIT to enter into this PO Agreement, and the Vendor agrees that it shall adhere to and perform and be responsible for each and every one of the undertakings, warranties and representations contained in its Proposal. Unless expressly excluded in this PO Agreement, all of the requirements and stipulations on the part of the “Proponent”, “Consultant”, “Service Provider”, “Contractor”, “Supplier” or “Vendor” (or such similar term used in the RFP) to be performed as set out in the RFP will be observed, performed and complied with by the Vendor, as part of this PO Agreement.
- b) BCIT will not be obligated by anything contained in the Proposal unless expressly accepted in writing by BCIT and incorporated into this PO Agreement.
- c) In the event of a conflict in any of this PO Agreement, the Proposal and the RFP, the order of priority shall be:
- i. This PO Agreement, as may be amended and supplemented from time to time;
  - ii. the RFP; and
  - iii. the Proposal.

### .2 Commitments, Warranties and Representations by the Vendor

- a) Any commitments made by the Vendor pursuant to or as part of its Proposal, engagement letter, quotation, including any interviews or other communications or assurances, shall be binding upon the Vendor unless expressly excluded or superseded in this PO Agreement. For this purpose, a commitment by the Vendor includes: (i) that prices and options are committed to remain in force over specified periods of time; and (ii) any warranty or representation made by the Vendor in its Proposal and including support documents, side letters or other memoranda, or negotiations subsequent thereto, as to training to be provided, the qualities, features or characteristics of services to be supplied, the prices and options committed to remain in force over fixed periods of time, or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this PO Agreement.

### .3 License of Proprietary Rights

- a) The Vendor hereby grants a perpetual, non-exclusive, royalty free, no-charge, worldwide, irrevocable license in favour of BCIT, for use by BCIT for BCIT’s proposed purposes and associated and ancillary purposes, to all inventions, ideas, concepts, designs, data, software, specifications, documents, compilations, works and the like (collectively the “**IP Works**”) developed, made, invented, created, authored, generated, conceived or contributed to by the Vendor or any subcontractor or other person in connection with the subject matter of this PO Agreement.

- b) The IP Works do not include those that were independently developed, made, invented, created, authored, generated, conceived or contributed to by third parties. The Vendor shall disclose to BCIT all third-party owned works that are necessary in order for BCIT to utilize or benefit from the IP Works, and shall, at BCIT's option, assign or sublicense such third-party rights to BCIT, or arrange for BCIT to license such works directly from the third party rightsholder(s). Unless otherwise disclosed in the Purchase Order, the costs of securing rights to such third-party works shall be deemed borne by the Vendor and included in the Total Price.