

APPENDIX B2

Part 2 of City RFQ for ADO's

This Agreement entered into on the **[Note to Finalization before Execution: Insert Date of Execution]**

between

CITY OF TORONTO

(“City”)

and

● **[Note to Finalization before Execution: Insert Legal Name of Supplier]**

(“Supplier”)

WHEREAS the City prequalified general contractors to carry out Work for the City's Accessibility Upgrades Program through a separate Request for Supplier Qualification process, and intends to contract with some or all of those prequalified general contractors through a competitive tender process that will lead to accessibility upgrades of approximately 350 City buildings under the Accessibility Upgrades Program, including installation of automatic door openers and other equipment at some locations;

WHEREAS the City wishes to pre-select a supplier for the supply, delivery and installation of automatic door openers and necessary equipment for the City's Accessibility Upgrades Program ("Deliverables");

WHEREAS the City issued Request for Quotations No. **[Note to Finalization before Execution: insert RFQ No.]** dated **[Note to Finalization before Execution: insert RFQ date]** including Addendum No. **[Note to Finalization before Execution: insert any addenda numbers and their respective issuance dates]** respectively, (collectively the "RFQ") and in response to the RFQ, the Supplier submitted a response dated **[Note to Finalization before Execution: insert RFQ submission date]** ("RFQ Response"); and

WHEREAS the Supplier will be required to enter into direct contracts with General Contractors in order to provide Deliverables;

WHEREAS the City and Supplier now wish to enter into this Agreement to establish the terms and prices under which the Supplier will provide Deliverables;

NOW THEREFORE in consideration of the mutual covenants herein contained, the City and the Contractor agree as follows:

1. DEFINITIONS

The definitions contained in the RFQ are incorporated into and form a part of this Agreement in addition to the following definitions:

"Accessibility Upgrades Program" means the City's accessibility upgrades program for approximately 350 City buildings, including the installation of new Equipment in some buildings.

"Automatic Door Opener Supply Contract" means any contract between the Supplier and a General Contractor retained by the City for Work to be provided for the Accessibility Upgrades Program.

"Contract Documents" have the meaning in section 3 of the Agreement.

"Deliverables" has the meaning set out in the recitals and further defined in the RFQ.

"Equipment" means the automatic door openers and other necessary equipment to be supplied by the Supplier as part of the Deliverables.

"General Contract" means a contract that the Supplier enters into with a General Contractor for the purpose of providing Work/Services with respect to Equipment for the Accessibility Upgrades Program.

"General Contractor" means a prequalified general contractor retained by the City for the Accessibility Upgrades Program.

"Warranty Period" has the meaning set out in Appendix B of the RFQ.

"Work" means the work being performed by General Contractors.

2. THE DELIVERABLES AND WORK

- (1) The Supplier will do and fulfill everything indicated in the Contract Documents.
- (2) The Supplier agrees to provide the Deliverables under any Automatic Door Opener Supply Contract under the terms and prices set out in the RFQ, RFQ Response, and this Agreement.
- (3) The Supplier acknowledges and agrees that the City does not guarantee the value or volumes of work and that this Agreement forms a standing offer to the Supplier that is subject to the City entering into an a General Contract.
- (4) In the event the Supplier enters into an Automatic Door Opener Supply Contract, the Supplier shall provide warranty for and maintenance services to the Equipment provided under said Automatic Door Opener Supply Contract to the City, pursuant to the RFQ.

3. CONTRACT DOCUMENTS

The Agreement is comprised of the following Contract Documents, which are incorporated by reference. The following is a list, in order of precedence of the Contract Documents. In

the event of any inconsistency between, or an omission or ambiguity with respect to any provisions contained in any of the following Contract Documents, the following documents shall apply and prevail in the following order of priority to the extent of such conflict, inconsistency, mission, ambiguity or incongruity:

- (a) any duly authorized amendments to the Agreement;
- (b) the Agreement;
- (c) addenda to the RFQ in the order of most recent date issued;
- (d) RFQ; and
- (e) RFQ Response.

Should any discrepancies appear or differences of opinion or misunderstanding arise as to the meaning of the Agreement or as to any omissions therefrom or statements therein in any respect, or as to the quality or dimensions or sufficiency of the Equipment, materials, services or work or any part thereof, or as to the due and proper execution of the Contract Documents, the same shall, subject to the terms of the Contract Documents, be determined by the City.

4. RELATIONSHIP OF THE PARTIES

The Supplier, in providing the Services for the Work to be performed by the General Contractor under the General Contract, shall and is deemed to be an independent contractor to the General Contractor and not the agent or employee of the City and nothing in the RFQ or Contract Documents shall be deemed or construed as creating any such relationship. Neither is there any intention to create a partnership, joint venture or joint enterprise between the Supplier and the City.

5. GENERAL CONTRACTOR'S OBLIGATIONS

(1) The Supplier acknowledges that upon award of a General Contract by the City to a General Contractor, the General Contractor shall be responsible for:

- (a) procuring the Deliverables from the Supplier; and
- (b) making all payments for the Deliverables;

all as if the General Contractor had selected the Supplier for the Services.

- (2) The Automatic Door Opener Supply Contract from the General Contractor shall be in accordance with the scope, terms and conditions of these RFQ Documents.
- (3) The Supplier acknowledges that General Contractors will be required to enter into General Contracts with the City in the form of agreement set out in Appendix D to the RFQ.

6. PAYMENT TO SUPPLIER FOR DELIVERABLES

(1) The Supplier acknowledges the General Contractor will be responsible for paying the Supplier for all payments with respect to the supply of the Deliverables, and the General Contractor will be responsible for making all payments to the Supplier for the Deliverables in accordance with the terms of payment, as described herein, from, but

not necessarily limited to, money received by the General Contractor from the City in payment for the supply of the Deliverables under the General Contract.

- (2) The City shall pay the General Contractor for the supply of the Deliverables, subject to the holdback provisions of the *Construction Act, R.S.O. 1990*.
- (3) The selection of the Equipment and the Supplier by the City pursuant to this RFQ, or the approval of payment under the General Contract for the supply thereof, shall in no way constitute a waiver by the City of its rights to return or reject such Equipment and/or claim damages for: (a) non-compliance with the terms of the RFQ Documents, (b) breach of an expressed or implied warranty or guarantee, or (c) the enforcement of any contractual, legal, equitable or other rights which the City may have under the Contract Documents or General Contract.

7. REPRESENTATIONS AND WARRANTIES

- (1) Without limiting or restricting in any way any other responsibilities and obligations of the Supplier under the Contract Documents, the Supplier represents, warrants and guarantees to the City and shall warrant to the General Contractor (and acknowledges that the City and the General Contractor is relying thereon) that any Deliverables resulting from or to be supplied or developed under the Automatic Door Opener Supply Contract and all Equipment, and the supply thereof:
 - (a) shall be in strict accordance with all applicable Laws and the City's functional and technical requirements set out in the RFQ including, without limiting the generality of the foregoing, the specifications for the said Equipment, and will function or otherwise perform in accordance with such requirements;
 - (b) shall be free from defects in design, engineering, material, manufacture, workmanship or title;
 - (c) shall perform efficiently and without unwanted interruption during the Warranty Period; and
 - (d) shall have any breakage, damage, defects or deterioration (other than those due to the negligence of the General Contractor or the City or to normal wear and tear) in the Equipment that occurs or is detected and is reported to the Supplier within the Warranty Period made good promptly by the Supplier at its expense including the expense of all necessary labour, supervision, travelling, replacement parts, transportation and otherwise.
- (2) All representations, warranties and guarantees provided herein are in addition to any other representations, warranties and guarantees contained in the Supplier's RFQ Response, including manufacturer's warranties, and all such representations, warranties and guarantees shall be completely transferable by the General Contractor to, and completely enforceable by, the City.
- (3) No inspection, examination, test, acceptance or use of all or any part of the Equipment or services furnished hereunder nor the failure to inspect, examine or test the same nor acceptance thereof nor the expression of any approval by the General Contractor, or by the City pursuant to the General Contract or otherwise, shall constitute acceptance of any defect or shall affect the Supplier's obligation under these warranty provisions, or

be deemed to relieve Supplier from any of its obligations under the Contract Documents, including among others the obligation to supply the Equipment and services satisfying the warranties set forth herein. Such warranties shall survive inspection, test, acceptance and use.

- (4) The Supplier agrees that all representations, warranties and guarantees provided in the Agreement and which are to be incorporated into the Automatic Door Opener Supply Contract, are fully assignable to and enforceable by the City (where not already expressly reserved to the City) at the City's sole option and further agrees that the City's right to a complete assignment of same shall be included in the Automatic Door Opener Supply Contract, without any additional compensation payable by the City (including indirectly by the General Contractor) or further approval by the Supplier. The Supplier acknowledges that the City is relying on the representations, warranties and guarantees of the Supplier and, but for same, the City would not have selected the Equipment or Supplier. The Supplier's representations, warranties and guarantees herein shall run to the City, its successors, and assigns.

8. DEFECTIVE EQUIPMENT, SERVICES

- (1) In the event of failure of the Equipment or any part or parts or supply thereof, during the Warranty Period, due to defects of design, materials, or workmanship or other breach of a representation or warranty provided herein, the affected Equipment, or part or parts or supply thereof, shall be replaced promptly upon notice by the General Contractor or the City. All replacement parts shall be furnished, delivered, and installed at the expense of the Supplier.
- (2) Upon receipt of any notice of defect from the General Contractor, the Supplier, at its own expense, shall immediately:
- (a) correct; or
 - (b) re-perform; or
 - (c) replace and fit with new parts; or
 - (d) repair and refit,
- or any combination of the foregoing, without cost or charge to the General Contractor or the City,
- (i) any error, defect, deficiency or malfunction in the Equipment, or any parts, materials or workmanship thereof or services related thereto supplied by the Supplier; or
 - (ii) non-conformance of the Equipment or the supply thereof with the warranty provisions set forth herein or other requirements of the Contract Documents,
- upon notification of the Supplier by the General Contractor or the City within Warranty Period.
- (3) Notwithstanding subsection (2) above, should the Equipment fail to meet the representations and warranties set forth herein in any material respect, such failure shall be deemed cause for the rejection and removal of the unit and for its replacement with an acceptable unit, and the City shall be entitled to require the General Contractor

to do so at the sole option of the City, which shall be done at the sole expense of the General Contractor, and if appropriate, the Supplier.

- (4) The Supplier's obligation herein shall include, without limitation, all transportation costs for parts and/or Equipment both ways between the Supplier's factory or repair depot and the point of use. In the case of remedial work to be performed by Supplier hereunder, the Supplier shall provide all labour, supervision, equipment, tools and materials necessary to perform the remedial work and shall bear all expenses in connection therewith or incidental thereto. The Supplier shall perform, at its own cost, such tests as may be reasonably required to verify that corrected, repaired or replaced Equipment conforms to the warranties above.
- (5) Subject to subsection (3) above, if the Supplier chooses to effect a repair under subsection (2) it shall immediately fit a replacement part to enable the Equipment to continue in use until the original part has been repaired and refitted.
- (6) The City will provide the General Contractor reasonable access to such Equipment to assist the General Contractor or Supplier in having work carried out on installed Equipment or in removing or replacing installed Equipment or parts thereof.
- (7) Any Equipment or service or part thereof that is corrected, replaced or repaired in accordance with the warranty provisions herein shall carry and be subject to the same warranty terms as set forth herein, except that the Warranty Period shall start from the date on which the correction, re-performance, replacement or repair is completed and the Equipment is properly operational.
- (8) The Supplier acknowledges that the failure of the Equipment, or any part thereof, to operate and perform properly and in accordance with the warranties provided herein could result in disruption of the Project and substantial revenue loss to City. The Supplier agrees to use its best efforts to perform all warranty work hereunder as expeditiously as is reasonably possible and in a manner which minimizes Project disruption and revenue loss. The Supplier recognizes and agrees that City's operational requirements may require immediate repairs or reworking of defective goods, without notice to the Supplier and without affecting the City's warranty rights hereunder. In such event, the Supplier shall reimburse the City and shall be required to reimburse the General Contractor all costs, delays, or other damages which the City has incurred as a result of such failure. In the event of an emergency breakdown, the Supplier shall attend the location of the emergency breakdown within twenty-four (24) hours of the incident being reported, failing which the City shall have the right to undertake repairs as required and charge the Supplier the cost of the repairs. Subject to subsection (7) above, the Supplier's responsibility shall be discharged when the City is satisfied that the necessary correction, replacement or repair has been properly effected, subject to any warranty applicable thereto.
- (9) The Supplier shall be liable for all damage, loss or expense arising from any failure of the Equipment or delay or failure to perform warranty work hereunder or in restoring the Equipment to working order.
- (10) Nothing in this section shall be construed, in any way, to prejudice or limit the City's contractual rights under the Agreement or the General Contract or any equitable or common law rights available to it.

9. PERFORMANCE

In addition to any other provision concerning the performance and personnel of the Supplier:

- (1) Under the Automatic Door Opener Supply Contract:
 - (a) the Supplier shall make available appropriately skilled workers, consultants or subcontractors, as appropriate, and must be able to provide the necessary materials, tools, machinery and supplies to fulfill its obligations to supply the Equipment in accordance with the terms and conditions of the Contract Documents.
 - (b) Without limiting the foregoing, the Supplier shall be responsible for complying with the *Occupational Health and Safety Act* (OHSA) at all times during the supply of the Deliverables. The City shall in no way be considered the constructor with respect to any part of the supply of Equipment for the purposes of the OHSA.
 - (c) It shall be the Supplier's responsibility to co-ordinate, control and check the work of and the provision of the goods and services by its own forces and of all its subcontractors and to ascertain that all work is performed in accordance with all requirements of the Contract Documents. Without limiting the generality of any other provision herein, the Supplier shall be liable for all costs or damages arising from acts, errors or omissions, negligence or wilful misconduct of its subcontractors.
- (2) The City shall not be construed to have any contractual relationship with any of the Supplier's employees or subcontractors or material suppliers or their employees or supplier.
- (3) The City's general conditions for its General Contract are included in Appendix D to the RFQ and will form part of the General Contract. The Supplier agrees to be bound by the terms and conditions contained therein as they affect the supply of the Deliverables to the Work and the Supplier as a subcontractor to the General Contractor.
- (4) Any Equipment, services, work, material or incidentals, not explicitly specified in the RFQ Documents but which are necessary to conform to generally accepted industry, safety or product standards, good construction practice, to produce a finished appearance, or required by the Ontario Building Code or other governing codes, or which may be fairly implied as "included", shall be done or supplied by the Supplier as if such Equipment, services, work, material or incidentals had been explicitly specified.

10. COMPLIANCE WITH LAWS

- (1) The Supplier, at all times, shall comply with and conform to all statutes, laws, by-laws, regulations, requirements, codes, ordinances, notices, rulings, orders, directives, policies and controls of the municipal, provincial and federal governments and any other lawful authority and all court orders, judgments and declarations of a court of competent jurisdiction (collectively referred to as the "Laws"), applicable to the Equipment and the supply thereof, and the responsibilities and obligations of, the Supplier under the Contract Documents. The Supplier shall ensure that all persons performing the supply of the Deliverables to the Work hold all valid and current permits, licences (including municipal), consents and approvals required by Law with respect to such services to be provided and/or Equipment to be supplied by them.

- (2) The Supplier, at all times, shall cooperate with the General Contractor and the City, as Owner, in promptly furnishing any information that may be required by the Ministry of Labour and any other government regulatory authority with jurisdiction over any matter applicable to the supply of the Deliverables.

11. W.H.M.I.S.

The Equipment shall be supplied in compliance with Canada's Workplace Hazardous Materials Information System (W.H.M.I.S.). Without exception, all Equipment and all parts and material comprising same shall be ASBESTOS-free and TAR-free.

12. PROHIBITED PRODUCTS

- (1) The Supplier must provide the General Contractor with a list of designated substances that will be brought to the Work Site prior to commencing the supply of the Deliverables to the Work. The tender for the General Contract will require that the General Contractor maintain at the Project site, copies of all Materials Safety Data Sheets (MSDS) and an inventory of hazardous materials for each substance on the Project.
- (2) Hazardous products and materials containing any Class A1 carcinogen substance, as indicated in their appropriate Material Safety Data Sheets, shall not comprise any part of the Equipment, or the supply thereof, and are prohibited from City property and the Work Site.
- (3) The Supplier agrees to fully indemnify and save harmless the City, its employees and consultants and the General Contractor from any and all charges, fines, penalties and costs that may be incurred or paid by the City or the General Contractor, as the case may be, or any of their respective employees or if the City or the General Contractor or any of their respective employees shall be made a party to any charge under the *Occupational Health and Safety Act* in relation to any violation of such Act arising out of the supply of the Deliverables.

13. OWNERSHIP OF PROJECT DOCUMENTATION

All information, data, plans, specifications, reports, estimates, summaries, photographs and all other documentation prepared by the Supplier specifically in the connection with the supply of the Deliverables, whether they are in draft or final format, shall be the property of the General Contractor, upon delivery of such documents to the General Contractor, which shall be completely and absolutely transferable to the City under the General Contract.

14. PATENT AND COPYRIGHTS

- (1) Where the supply and incorporation of the Equipment, or any component thereof, to the Work and use of such Equipment, or any component thereof, requires the installation or use of any patented, trademarked, copyrighted or other protected intellectual property ("Intellectual Property"),
 - (a) belonging to the Supplier, the Supplier shall grant to the General Contractor an irrevocable and perpetual license to permit the General Contractor to use such Intellectual Property for the supply, installation and use of the Equipment and all components thereof, as contemplated in the Contract Documents, which licence

shall be completely assignable to the City upon acceptance of the Equipment by the City;

- (b) belonging to any other person, the Supplier shall acquire from and pay for the an irrevocable and perpetual license from the owner thereof entitling the General Contractor to use such third party Intellectual Property for the supply, installation and use of the Equipment and all components thereof, as contemplated in the Contract Documents, which licence shall further be completely assignable to the City, upon acceptance of the Equipment by the City.
- (2) The Equipment price shall include all payments made or to be made or required to be made for the use of any and all Intellectual Property, as provided in subsection (1) above.
- (3) The Supplier, at its sole expense, shall defend, indemnify and save harmless the City, and its employees, officers, consultants and agents, from all and every claim, action or proceeding for damages, costs (including legal fees on a substantial indemnity basis), charges, expenses, royalties, or fees for the alleged infringement or infringement of any patent, trademark, trade secret, copyright or other proprietary right occasioned by them in connection with the supply of the Deliverables by the Supplier or the installation or use of the Equipment by the General Contractor or the City, as contemplated in this Agreement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished hereunder. The City may, at its option, be represented at any such proceeding.
- (4) If the Equipment or the supply of the Deliverables or the installation or use of the Equipment is held in any such claim, action or proceeding to constitute an infringement, the Supplier, at its expense and in compliance with the Specifications, shall forthwith either procure for the General Contractor or the City, as the case may be, the right to use and continue to use such material or Equipment; or replace same with substantially equal but non-infringing material and Equipment; or modify same to make them substantially equal but non-infringing; or remove same and refund the purchase price and transportation and installation costs and all other costs of the General Contractor or the City related to the removal and loss of use.

15. CONFIDENTIALITY

All correspondence, documentation and information of any kind provided by City, or by any other person on the City's behalf including its consultant, contract administrator or General Contractor, to or which comes to the attention of the Supplier in connection with, or arising out of, or by reason of the RFQ or the supply of the Deliverables remains the property of the City; must be treated as confidential; and must not be used for any purpose other than as contemplated herein and shall not be reproduced, disclosed or disseminated, except as required by Law or as expressly permitted in advance by the City in writing. The RFQ is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended.

16. SPARE PARTS

The Supplier shall maintain a complete inventory of spare parts commonly needed for the Equipment specified at a location within the Province of Ontario or, alternately, spare parts

must be made available to the General Contractor within 48-hours of any spare part order by the General Contractor during the Warranty Period and, after the Warranty Period, to the City, as soon as reasonably possible but no later than within 30 days. The Supplier represents and warrants that such spare parts inventory shall be maintained for the Equipment for a period of no less than ten (10) years or the life cycle for the Equipment quoted by the Supplier in its RFQ Response, whichever is greater.

17. LATE DELIVERY/LIQUIDATED DAMAGES

- (1) The City accepts no responsibility for any claim made by the General Contractor against the Supplier on account of actual damages or additional costs incurred, or allegedly incurred, by the General Contractor on account of late delivery by the Supplier of any item of Equipment or the Deliverables. Any dispute between the Supplier and the General Contractor with respect to any such claim shall be settled between the Supplier and the General Contractor.
- (2) Failure to meet the completion schedule will subject the Supplier to damages, including liquidated damages, in accordance with the General Contract. The liquidated damages assessed by the City against the General Contractor for failure to complete the project within the Contract Time stipulated in the General Contract shall be determined by the City for each General Contract. The General Contractor shall have the right to assess this amount against the Supplier to the extent the Supplier is the reason for any portion of the delay in completion. This is without prejudice to any other remedy of the City or the General Contractor in contract or otherwise at law.

18. TRANSFER OF TITLE

The title to Equipment, components, and materials to be furnished in accordance with the Contract Documents including replacements or substitutions shall pass to the General Contractor upon its acceptance of the Equipment. The passing of the title to the General Contractor (or the subsequent transfer of the Equipment to the City) shall not relieve Supplier from any other liabilities or obligations under the Automatic Door Opener Supply Contract or the Agreement, which shall remain in full force and effect.

19. STORAGE OF EQUIPMENT

The Supplier shall coordinate the storage of the Equipment at the Work Site with the General Contractor. The Supplier shall be responsible for providing the General Contractor with full instructions in writing of all precautions to be observed in connection with the storing and protection of the Equipment. A copy of all instructions shall be provided to the Contract Administrator. The General Contractor will be responsible for proper storage of the delivered and accepted Equipment, appurtenances and materials until it is installed and for their protection against weather, deterioration, loss, damage or theft.

20. COORDINATION WITH WORK BY OTHERS

- (1) The Supplier shall cooperate and liaise with the General Contractor to make appropriate working arrangements to ensure the satisfactory execution and timely completion of the supply of the Deliverables and related services.

- (2) The City shall provide the General Contractor reasonable access to the Work site necessary to enable the Supplier to complete the supply and services herein.

21. UNPAID ACCOUNTS AND LIENS

- (1) The Supplier shall be required to covenant to the General Contractor to pay all charges incurred by or on behalf of the Supplier for any services, work or materials which may be supplied, done or performed in respect of the supply of the Deliverables and the Supplier shall be required to forthwith discharge and obtain a release of any liens or encumbrances whatsoever arising therefrom at any time claimed or registered against or in respect of the supply of the Deliverables or any part thereof. In the event that the Supplier shall fail to cause any such liens or encumbrances forthwith to be discharged and released after being notified thereof, then, in addition to any other right or remedy of the General Contractor, the General Contractor may, but shall not be obliged to, discharge same by paying the amount claimed to be due and any other amounts necessary to obtain such a discharge and the amount so paid by the General Contractor and all costs and expenses, including reasonable legal fees on a substantial indemnity basis, incurred by the General Contractor in procuring the discharge and release of such lien or encumbrance, shall be payable by the Supplier forthwith.
- (2) The Supplier shall be required to indemnify the General Contractor from all claims arising out of unpaid accounts relating to the supply of the Deliverables including any claims of the City. The General Contractor shall have the right at any time to require satisfactory evidence that the work in respect of which any payment has been made or is to be made by the General Contractor to the Supplier is free and clear of liens, attachments, claims, and demands, charges or other encumbrances.
- (3) In the event that the Supplier shall fail to cause any liens or encumbrances any time claimed or registered against the lands of the Owner in respect of any improvement which the supply of the Deliverables may constitute under the *Construction Act*, R.S.O.1990 to be discharged and released forthwith after being notified thereof, then, in addition to any other right or remedy the City may have by contract, law, statute or in equity, the City may, but shall not be obliged to, discharge same by paying the amount claimed to be due and any other amounts necessary to obtain such a discharge and the amount so paid by the City and all costs and expenses, including reasonable legal fees on a substantial indemnity basis, incurred by the City in procuring the discharge and release of such lien or encumbrance, shall be payable to the City by the Supplier and the General Contractor forthwith. The City shall have the right at any time to require satisfactory evidence that the work in respect of which any payment has been made or is to be made by the City to the General Contractor is free and clear of liens, attachments, claims, and demands, charges or other encumbrances.

22. INDEMNIFICATION

- (1) In consideration of the Supplier being pre-selected by the City for the supply of the Deliverables to the Work under the General Contract, the Supplier covenants and agrees at all times to defend, fully indemnify and save harmless the General Contractor, the City, their councillors, officers, directors, employees, agents and representatives, successors, and assigns (hereinafter called the "Indemnitees") from and against any and

all claims of any nature whatsoever and howsoever caused to, sustained or suffered by, or imposed upon or made or instituted against any of the Indemnitees or to which any of them may be liable by reason of or arising from or related to:

- (a) any act or omission, neglect, default or wilful misconduct on the part of the Supplier as well as any officer, employee, servant, subcontractor, consultant, invitee, agent or assign of the Supplier relating to the supply of the Deliverables; or
 - (b) attributable to or connected with the performance, non-performance or purported performance of the Supplier's obligations pursuant to the Automatic Door Opener Supply Contract; or
 - (c) in consequence of or in any way arising out of any defect in the Equipment; or
 - (d) by reason of any default, breach, violation, misrepresentation, non-performance or non-compliance of or with any covenant, term, obligation, warranty (express or implied), condition or provision in or related to the Agreement or the Automatic Door Opener Supply Contract by the Supplier, or
 - (e) any infringement or alleged infringement or other breach, actual or alleged of any Canadian, American or other patent, industrial design, trade secret, trademark, copyright, service mark, trade name, official mark, moral right or any other intellectual property right of any person conferred by contract, common law, statute or otherwise, for which the Supplier is responsible or which is occasioned by the Supplier in connection with the supply of the Deliverables or material to the Work and related services performed by it under the Agreement or the Automatic Door Opener Supply Contract, or anyone else for whom at law it is responsible; or
 - (f) breach of any confidentiality obligations under the Automatic Door Opener Supply Contract, except to the extent that the same are directly caused by the negligence or deliberate wrong-doing of the General Contractor.
- (2) In the event any claim is asserted in respect to which any of the Indemnitees is entitled to indemnification under this section, without prejudice to any other right or remedy it may have, the General Contractor shall be entitled to deduct or withhold a reasonable sum on account of such claim, including legal costs, from monies owed or payable by the General Contractor to the Supplier under the Automatic Door Opener Supply Contract, pending the final determination or settlement of such Claim.
- (3) Upon assuming the defence of any claim covered under this section the Supplier shall keep the party or parties entitled to indemnification herein reasonably informed of the status of the matter, and the Supplier shall make no admission of liability or fault on any GC Indemnitee's part without prior written consent the party or parties entitled to indemnification herein.
- (4) The rights to indemnity provided for in this section shall be deemed to be in addition to and not in lieu of any insurance to be provided by the Supplier and any rights with respect to insurance in favour of the General Contractor. The rights to indemnity provided herein shall survive the expiration or any termination of the Automatic Door Opener Supply Contract.

- (5) The Supplier acknowledges and agrees that the City, at its option, shall have the right to an assignment of the General Contractor's rights of indemnification herein related to the supply of the Deliverables and may directly enforce such rights against the Supplier.

23. INSURANCE

- (1) The Supplier shall comply with all insurance requirements, and all WSIB prior to the execution of this Agreement. The Supplier shall bear all costs, expenses, losses and damages of its own and those of the General Contractor and the City, which may arise as a result of the Supplier failing to or delaying in promptly complying with this condition.

- (2) The Supplier agrees to purchase and maintain in force, at its own expense and for the duration of the Agreement, the following policies of insurance, which policies shall be in a form and with an insurer acceptable to the City. A certificate evidencing these policies signed by the insurer or an authorized agent of the insurer must be delivered to the City prior to the commencement of services:

- (a) Commercial General Liability provided that the policy:

- (i) is in the amount of not less than Five Million Dollars (\$5,000,000.00), per occurrence;
- (ii) adds the City of Toronto as an additional insured;
- (iii) includes Non-Owned Automobile Liability, Employer's Liability and/or Contingent Employer's Liability, and any other provision relevant to the services;
- (iv) includes a clause which will provide the City with thirty (30) days' prior written notice of cancellation (15 days if cancellation is due to non-payment of premium).

- (b) Automobile Liability insurance with a minimum limit of Two Million Dollars (\$2,000,000) for all owned or leased licensed motorized vehicles used in the performance of services.

- (3) It is understood and agreed that the coverage and limits of liability noted above are not to be construed as the limit of liability of the vendor in the performance of services. It is also agreed that the above insurance policies may be subject to reasonable deductible amounts, which deductible amounts shall be borne by the vendor. At the expiry of the policies of insurance, original signed Certificates evidencing renewal will be provided to the City without notice or demand.

- (4) The Supplier is responsible for any loss or damage whatsoever to any of its materials, goods, equipment or supplies and will maintain appropriate all-risk coverage as any prudent owner of such materials, goods, supplies and equipment. The Supplier shall

have no claim against the City or the City's insurers for any damage or loss to its property and shall require its property insurers to waive any right of subrogation against the City.

24. CONTRACT CANCELLATION

- (1) The City may cancel the Agreement between the City and the Supplier for any reason, prior to the execution of the Automatic Door Opener Supply Contract, without any financial obligation to the Supplier. Should for any reason the City not enter into a General Contract which includes the supply of the Deliverables, then the City will notify the Supplier in writing and the Supplier for this Project will be cancelled without any financial obligation to the Supplier.
- (2) In the event of any cancellation, the Supplier shall immediately stop all work related to the Supply Contract, and shall immediately cause any and all suppliers and subcontractors to do the same.
- (3) In the event of any cancellation the City shall not incur any liability to the Supplier apart from payment to the General Contractor, which the General Contractor shall pay over to the Supplier, of the reasonable costs directly incurred by the Supplier for Equipment, work or services that have been satisfactorily delivered or performed by the Supplier prior to the notice of cancellation. Such reasonable costs incurred shall be supported by audit, if necessary, carried out by auditors acceptable to the City, prior to payment of same. Neither the City nor General Contractor shall be liable to the Supplier for loss of anticipated profit on the cancelled portion or portions of the General Contract or the supply of the Deliverables. Neither the City nor General Contractor shall be liable to the Supplier for consequential, economic or indirect losses or damages arising as a result of such cancellation.
- (4) The Supplier shall not be paid for any Equipment supplied or services or work done after receipt of the notice of cancellation or for any costs incurred by the Supplier or its suppliers or subcontractors which such persons could reasonably have avoided or mitigated. The Supplier shall not unreasonably anticipate the requirements of a Purchase Order for the Equipment.

25. CHANGES IN THE WORK

The City may, without invalidating the Agreement or General Contract, direct the General Contractor to make changes to the work which may include changes to the supply of the Deliverables by the Supplier. When a change causes an increase or decrease in the Work related to the supply of the Deliverables, the Deliverables price shall be increased or decreased by the application of RFQ Response prices to the quantum of such increase or decrease, or in the absence of applicable RFQ Response prices, by an amount to be agreed upon between the City and the General Contractor and correspondingly between the General Contractor and the Supplier, under their respective contracts. All such changes shall be in writing. The General Contractor shall, without invalidating the Automatic Door Opener Supply Contract, have the right to make a corresponding change in the Automatic Door Opener Supply Contract.

26. NON-WAIVER

No condoning, excusing or overlooking by the General Contractor under the Automatic Door Opener Supply Contract, or the City under this Agreement, of any default, breach or non-observance by the Supplier at any time or times in respect of any provision herein contained shall operate as a waiver of the General Contractor's or the City's right, as the case may be, hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way the rights of the General Contractor or City herein in respect of any such continuing or subsequent default or breach. No waiver shall be inferred from or implied by anything done or omitted by the General Contractor or the City, save only by express waiver in writing. The doing of anything by the General Contractor required by the Automatic Door Opener Supply Contract to be done by the Supplier shall not relieve the Supplier of its continuing obligation to do that thing. No delay or omission by the City in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy.

27. SUCCESSORS AND ASSIGNS

- (1) All terms, covenants, conditions and provisions provided herein relating to the Automatic Door Opener Supply Contract shall be binding upon and shall enure to the benefit of the Supplier and their respective permitted assigns, successors and legal representatives.
- (2) The Supplier shall not assign, subcontract, transfer or encumber in any manner or part of the Automatic Door Opener Supply Contract or any interest therein without the prior written consent of the General Contractor, which consent shall not be unreasonably withheld. Any attempt to assign, transfer or encumber any of the duties or obligations of Supplier without such consent is void.
- (3) Any delay in the commencement of the supply of the Deliverables or in the performance of any related services or the Supplier's obligations under the Automatic Door Opener Supply Contract related to or arising from the General Contractor's consideration of the Supplier's request for an assignment, transfer or encumbrance in any manner or part of the Automatic Door Opener Supply Contract or any interest therein or a subcontractor change and the costs of same shall be solely borne by the Supplier.
- (4) No assignment or subcontracting by the Supplier shall, in any circumstances, relieve the Supplier from any responsibility for the full performance of all of its responsibilities and obligations and undertaking of its liabilities under the Automatic Door Opener Supply Contract and this Agreement. Notwithstanding the approval of any subcontractors by the General Contractor, the Supplier shall be fully responsible for every subcontractor's performance, activities, work, acts or omissions as if the Supplier were performing the subcontracted portion of the supply of the Deliverables with its own resources.
- (5) The General Contractor(s) shall be responsible to the City for the performance of all of its subcontractors, including the Supplier. The City shall require any and all such subcontractors to sign agreements with the General Contractor that bind the subcontractors to abide by the terms and conditions hereof. Upon the request of the City, the General Contractor shall furnish the City with copies of such agreements.

28. NON-EXCLUSIVE REMEDIES

The rights and remedies of the City provided in the Contract Documents shall not be exclusive and are in addition to any other rights and remedies provided by contract, law or in equity, including the right of specific performance and offset.

29. FURTHER ASSURANCES

The Supplier shall draw, execute and deliver at its own expense, all such instruments and documents, and do all such acts and things as the General Contractor or City may from time to time reasonably consider necessary or advisable for the purpose of carrying out the intent and provisions of the Contract Documents.

30. GOVERNING LAW

The Contract Documents shall be governed by, subject to and construed in accordance with the laws of the Province of Ontario and the laws of Canada, as applicable to the matters herein. Any action or other legal proceeding arising under or with respect to the Contract Documents (including any motion or other interlocutory proceeding) shall be brought in a Court or a tribunal, whichever may be applicable, sitting in Toronto, Ontario. The Supplier and the City each irrevocably submit to the exclusive jurisdiction of the courts of the Province of Ontario in accordance with the foregoing.

31. SEVERANCE WHERE PROVISION ILLEGAL, ETC.

If any provision or provisions of the Contract Documents or parts thereof or the application thereof to any person or circumstances shall be found is/are found to be invalid, unenforceable or void by any court or tribunal of competent jurisdiction, such provision or provisions or parts thereof shall be deemed severable and all other provision or provisions or parts of the Contract Documents shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found void and/or unenforceable. The remaining terms and provisions of the Contract Documents and its application to any person or circumstances shall not be affected thereby, but this provision shall apply only insofar as the effect of that severance is not to change the fundamental nature of the obligations assumed respectively by each of the parties thereto.

32. ENTIRE AGREEMENT

This Agreement embodies and constitutes the sole and entire agreement between the parties hereto. There are no terms, obligations, covenants or conditions between the parties hereto, other than as contained herein. No alteration, amendment or modification hereof shall be valid unless executed by an instrument in writing by the parties. Neither this Agreement, nor any term hereof, can be changed, modified or abandoned, in whole or in part, except by such instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

33. COUNTERPART AND ELECTRONIC SIGNATURE

This Agreement may be executed in counterpart and may be executed by electronic signature that is received by the City in a file format acceptable to the City. Such electronic signature shall be deemed to be an original signature for the purpose of this Agreement with the same legal effect as an original signature.

[signatures on next page]

The parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED

in the presence of:

CITY OF TORONTO

By:

Name: ●
Title: ●
I have authority to bind the corporation

By:

Name: ●
Title: ●
I have authority to bind the corporation

**● [Note to Finalization before Execution:
Insert Legal Name of Supplier]**

By:

Name: ●
Title: ●
I have authority to bind the corporation

By:

Name: ●
Title: ●
I have authority to bind the corporation