

City of Coquitlam

Request for Proposals

RFP No. 24-109

Cloud Backup & Recovery Solution

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**KEY DATES**

<b>RFP Issue Date</b>	<b>Monday, December 23, 2024</b>
<b>Response Confirmation Form and NDA Deadline Appendices A and B</b>	<b>2:00 PM (local time) Monday, January 13, 2025</b>
<b>Scope of Work, Proposal Submission Form and Playbook Details Issue Date Appendices C, D and E</b>	<b>Monday, January 20, 2025</b>
<b>Deadline for Questions</b>	<b>2:00 PM (local time) Tuesday, February 4, 2025</b>
<b>Deadline for Issuing Addenda</b>	<b>Thursday, February 6, 2025</b>
<b>Final Submission Deadline</b>	<b>2:00 PM (local time) Monday, February 10, 2025</b>

**Please note that the Purchasing department at City Hall will be closed at 12:00 pm on Tuesday, December 24, 2024 and reopen at 8:00 am on Thursday, January 2, 2025. Queries will not be reviewed until January 2, 2025. City service operations will remain in full service.**

**SUMMARY OF KEY INFORMATION**

<b>RFP Reference</b>	<b>RFP No. 24-109 Cloud Backup &amp; Recovery Solution</b>
<b>Overview of the Opportunity</b>	The City of Coquitlam requests Proposals from professional, qualified, experienced companies for the provision of <b>Cloud Backup &amp; Recovery Solution</b> .
<b>Instructions for Proposal Submission</b>	Proposal submissions are to be returned in Microsoft Word and any other supporting documents to be consolidated into one PDF file and uploaded through QFile, the City's file transfer service accessed at website: <a href="http://qfile.coquitlam.ca/bid">qfile.coquitlam.ca/bid</a> <ol style="list-style-type: none"> <li><b>In the "Subject Field" enter:</b> RFP Number and Name</li> <li><b>Add files in .pdf format and Send</b> (Ensure your web browser remains open until you receive 2 emails from QFile to confirm receipt.)</li> </ol> <p>Phone 604-927-3037 should assistance be required. The City reserves the right to accept Proposals received after the Closing Date and Time.</p>
<b>Obtaining RFP Documents</b>	In order to receive the Scope of Work and Proposal Submission Form, Proponents are to complete and return: <b>Appendix A – Response Confirmation Form</b> <b>Appendix B – Non Disclosure Agreement</b> Printing of RFP documents is the sole responsibility of the Proponents.
<b>Questions</b>	Send questions to: <a href="mailto:bid@coquitlam.ca">bid@coquitlam.ca</a> referencing the RFP name and number.
<b>Instructions to Proponents</b>	The guidelines for participation that will apply to this RFP are posted on the City's website: <a href="#">Instructions to Proponents</a>
<b>Withdrawal of Submission</b>	Proposals may be withdrawn by written notice only, made by an authorized representative of the Proponent sent to email: <a href="mailto:bid@coquitlam.ca">bid@coquitlam.ca</a> prior to the Closing Date and Time.

<b>Terms and Conditions of Contract</b>	The City's Consulting and Professional Services Agreement attached as <b>Appendix E</b> will apply to any Contract awarded resulting from this RFP.
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## DEFINITIONS

**“Agreement” “Contract”** means the contract for services or City Purchase Order that will be issued to formalize with the successful Proponent through negotiation process with the City based on the proposal submitted and will incorporate by reference the Request for Proposals, Specifications, Drawings, any additional subsequent information, any addenda issued, the Proponent’s response and acceptance by the City.

**“City” “Owner”** means City of Coquitlam;

**“Contractor”** means the person(s) firm(s) or corporation(s) appointed by the City to carry out all duties, obligations, work and services described in the Request for Proposal and all associated documentation, which may also include mutually agreed revisions subsequent to submission of a Proposal. Both “Contractor” and “Proponent” are complementary in terms of duties, obligations and responsibilities contemplated at the Request for Proposals stage, through evaluation process, execution and performance of the services and Works.

**“ICT”** means Information and Communications Technology

**“Price”** means the amount that will be paid by the City to the Contractor for delivery and acceptance of goods and Services;

**“Preferred Proponent”** means a proponent selected by the Evaluation Committee to participate in a subsequent RFP process or enter into negotiations for a Contract.

**“Project Manager”** means the City staff member appointed to coordinate the Work;

**“Proponent”** means responder to this Request for Proposals;

**“Proposal”** means the submission by the Proponent;

**“Request for Proposals” “RFP”** shall mean and include the complete set of documents, specifications and addenda incorporated herein, and included in this Request for Proposals;

**“Services” “Work” “Works”** means and includes the provision by the successful Proponent of all services, duties, and expectations as further described in this RFP. This will also mean the whole of the Work, tools, materials, labour, equipment, travel, and all that is required to be done, furnished and performed by the Contractor;

**“Shall” “Must” “Will” “Mandatory”** means a requirement that must be met;

**“Supply” “Provide”** shall mean supply and pay for and provide and pay for.

## 1. INSTRUCTIONS TO PROPONENTS

### 1.1. Acknowledgement

The City acknowledges with gratitude and respect that the name Coquitlam was derived from the hən̓q̓əmi̓nə́m̓ word kʷikʷə́ləm (kwee-kwuh-tlum) meaning “Red Fish Up the River”. The City is honoured to be located on the kʷikʷə́ləm (Kwikwetlem) traditional and ancestral lands, including those parts that were historically shared with the s̓q̓əciyaʔ təməxʷ (Katzie), and other Coast Salish Peoples.

### 1.2. Purpose

The City of Coquitlam requests Proposals from professional, qualified, experienced companies for the provision of **Cloud Backup & Recovery Solution**.

### 1.3. Proposal Submission

Proponents should complete and submit the information requested in this RFP document on the Proposal Submission Form or in a format that has been approved and is acceptable to the City.

### 1.4. Instructions to Proponents

Proponents are advised that the rules for participation that will apply to this RFP are located: [Instructions to Proponents](#).

By submission of a Proposal in response to this RFP, the Proponent agrees and accepts the rules by which the bid process will be conducted.

### 1.5. Response Submission Confirmation Form

Prior to accessing the Non-Disclosure Agreement (NDA) and the detailed Scope of Work, Proponents are required to submit a preliminary portion of the Proposal Submission Form as outlined in Appendix A. This submission will be used solely to verify the legitimacy and qualifications of the Proponent to ensure compliance with the City's standards.

This process is intended to protect the integrity of the procurement process and safeguard sensitive information.

Failure to submit the preliminary portion or meet the verification criteria will result in the Proponent being ineligible to proceed further in the RFP process.

In order to receive the Scope of Work and Proposal Submission Form, Proponents are to complete and return:

- **Appendix A – Response Confirmation Form**
- **Appendix B – Non Disclosure Agreement**

On or before the RFP Response Confirmation Due Date as stated in [Key Dates](#) Section and return to: [bid@coquitlam.ca](mailto:bid@coquitlam.ca)

By submitting Appendices A and B, the Proponent will receive the following as per [Key Dates](#) Section:

- **Appendix C – Scope of Work**
- **Appendix D – Proposal Submission Form**
- **Addenda – as issued**

1.6. Prices

Prices shall be all-inclusive and stated in (Canadian Funds).

Prices shall include the provision of all tools, materials, equipment, labour, transportation, fuel, supervision, management, overhead, materials, traffic control, services, all necessary packing and crating (where applicable), Canadian Customs import and export duties, freight, handling, insurance, all other associated or related charges, foreign, federal, provincial and municipal taxes, bonding costs, all licences, permits, inspections and all other requirements necessary for the commencement, performance and completion of Services as described.

Taxes are to be shown separately at time of invoicing.

The lowest price of any Proposal will not necessarily be accepted but will be analyzed to determine best overall value.

1.7. Requested Departures

The Proponent acknowledges that the departures requested in the Proposal Submission Form will not form part of the Contract unless and until the City specifically consents in writing to any of them. The City may not consider any departures not stated in the Proponent's Proposal Submission.

1.8. Evaluation Criteria

The City uses Microsoft Word to aid the transfer of Proponents information to an evaluation document. Proposal Submission Form responses should provide direct answers or a concise summary of attachments. If attachments are required, ensure to provide a summary for each question then direct the City to the appropriate section within the attachments.

**Lower scores** may be recorded if Proposal Submission Forms are:

- Not in Microsoft Word
- Only answering questions with "see section x in attached document".
- Proposal exceeds 50 pages

Evaluation Criteria of each proposal will be determined in accordance with the following:

<b>Proposal Evaluation Summary</b>	<b>Maximum Points to be Awarded</b>
Corporate	40
Sustainable Benefits and Social Responsibility	5
Technical includes interview	35
Financial	20

<b>Total</b>	<b>100</b>
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The criteria for evaluation of the Proposals should include, but is not limited to:

**Corporate Experience, Capacity and Resources**

The Proponent needs to demonstrate a sustainable and proven business model over the last seven years, needs to show recognized industry accreditations, and a well-established, satisfied customer base. Information in the proposal should include:

- Appendix A – Response Confirmation Form will form part of evaluation
- Business and technical reputation and capabilities; experience, financial stability, capacity and resources
- Value added benefits
- References
- Demonstrate a comprehensive training program for City staff to manage immutable cloud backups and recovery
- Outline certification and education requirements for staff handling cloud backup and recovery operations.
- Provide information on key personnel assigned to support the City's cloud backup and recovery systems throughout the contract duration.
- Detail the qualifications, certifications, and experience of key personnel involved in the implementation and management of immutable cloud backups.
- If managed services are proposed, demonstrate that the SOC(s) has sufficient staffing, expertise, and training to manage various stages of a security incident involving cloud backups.

**Sustainable Benefits and Social Responsibility**

- Sustainable benefits
- Reconciliation
- Social Responsibility

**Technical**

- Define services for managed immutable cloud backup and recovery.
- Outline the methodology for the setup, execution, and ongoing management of immutable cloud backup and recovery solutions.
- Describe the quality assurance program, including standards and procedures to ensure the reliability and integrity of immutable backups and recovery.
- Facilitate up to two (2) backup and recovery testing exercises annually for core applications that have separate application servers and database servers.
- Identify databases and operating systems supported.
- Identify how this adheres to 3-2-1 data protection.

- Identify options and potential risk factors associated with (i) adding an immutable cloud backup and recovery service; or replacing entire current backup environment to a new backup solutions which includes existing on premise backups, along with an integrated immutable backup and recovery system.
- Provide detailed service level agreements, including availability, performance guarantees, and service offerings tailored to immutable cloud backup and recovery solutions.
- Demonstrate that Proponents have privacy policies and security controls to safeguard City information, ensuring compliance with SOC2 standards or equivalent for immutable backups and recovery.
- Confirm the ability to comply with the stated specifications and requirements for implementing and supporting immutable cloud backup and recovery solutions.
- Highlight the functionality of tools, products, or services offered, including automation features, security features and reporting features relevant to immutable cloud backups and recovery.
- Provide a sample architecture diagram of the solution proposed.
- Interviews will be conducted with the highest ranked Proponent(s)
  - Demonstrated technical strength
  - Overview of services
  - Overview of tools
  - Introduction of experienced team

### **Financial**

- Pricing structure

These criteria will be used to determine best overall value to the City. Proposals will be compared to select one or more that are most advantageous.

And, upon selection of one or more preferred Proponent(s):

- References may be contacted
- Interviews may be conducted

The City reserves the right to check references on other projects even if they are not specifically listed. Information obtained from references will be confidential and will not be disclosed to any Proponents.

These criteria will be used to determine best overall value to the City as well as any other criteria that may become evident during the evaluation process.

The City may, at its discretion, request clarification or additional information from a Proponent with respect to any Proposal and the City may make such requests to only selected Proponents. The City may consider such clarifications or additional information in evaluating a Proposal.



Incomplete Proposals or Proposals submitted on forms other than the Proposal Form may be rejected.

Proponents agree the City may disclose names of Proponents and total award amount, however, unevaluated results, unit prices, rates or scores will not be provided to any Proponents.

The City reserves the right to reject without further consideration any Proposal which in its opinion does not meet the criteria it considers essential for the Work outlined in this RFP.

Where only one Proposal is received, the City may reject such and re-issue the RFP on a selected basis.

### 1.9. Eligibility

For eligibility, and as a condition of award, the successful Proponent would be required to meet or provide the equivalent:

- a) Commercial General Liability (CGL) insurance \$5M coverage provided on the [City's Standard Insurance Form](#)
- b) Enter into Contract with the Cities as provided in [Appendix E – Consulting and Professional Services Agreement](#), the City's Consulting and Professional Services Agreement.
- c) A City of Coquitlam or Tri Cities Intermunicipal [Business License](#) is required for any Contractor performing Work within the City or if their office is located within the City, excluding delivery-only services.
- d) Appendix G - Privacy Impact Assessment

These items are not required as part of this Proposal Submission but will be required prior to entering into an agreement with the City for Services.

### 1.10. Term

The initial term of the Contract is three (3) years with the option to extend the Contract by an additional year for up to 2 years, upon mutual agreement of the parties.

## **2. GENERAL CONDITIONS OF CONTRACT**

### 2.1. Terms and Conditions of Contract

The City's [Appendix E – Consulting and Professional Services Agreement](#), the Conditions listed in this RFP, along with the accepted Proposal, addenda and any subsequent clarifications, correspondence, the totality of which will constitute the Contract

### **PROJECT SPECIFIC TERMS AND CONDITIONS**

### 2.2. Qualified Personnel

All Work shall be performed by skilled persons in strict accordance with the applicable Municipal, Provincial, Federal and other laws, regulations, standards, codes, etc. The Contractor and persons hired by it to perform the Work shall be licensed and comply with all laws applicable to the provision of the Work in the Province of British Columbia.

**APPENDIX E**  
**Contract No. 24-109**

**“Cloud Backup and Recovery  
Solution”**

**Consulting and Professional  
Services Agreement**

<b>Section 01000</b>	<b>Pages 2 - 4</b>
<b>Section 01200</b>	<b>Page 5</b>
<b>Section 01400</b>	<b>Pages 6 - 15</b>
<b>Section 01600</b>	<b>Pages 16 - 19</b>

**BETWEEN:** **City of Coquitlam** *(the “City”)*  
**3000 Guildford Way**  
**Coquitlam, BC**  
**V3B 7N2**

**AND:** **Company Name** *(the “Consultant”)*  
**Address#**  
**City, Province**  
**Postal Code**

THIS AGREEMENT WITNESSES that the City intends to engage the professional services of the Consultant in connection with the following project:

24-109 RFP Cloud Backup and Recovery Solution  
*(the “Project”)*

and the Consultant agrees to furnish the Consulting Services under the terms and conditions as follows:

**1.0 “Contract Documents”** means the following documents:

1.1

1. the Agreement: Section 01000
2. Schedules of Services, Fees, and Proposal: Section 01200
3. the General Conditions: Section 01400
4. Purchase Order issued for assignments as requested
5. 24-109 RFP Cloud Backup and Recovery Solutions
6. Addenda (if any)

1.2 The Contract Documents shall form part of this Agreement as though recited in full.

1.3 In the event of discrepancies, inconsistencies or ambiguities in provisions of the Contract Documents, the provisions of the document that first appears on the list in Clause 1.1 shall take precedence and govern over the provisions of a document subsequently appearing on the list.

**2.0 Services to be Performed and Period of Service:**

2.1 The Services to be provided by the Consultant are **Cloud Backup & Recovery Solution** as per RFP 24-109 (“Services”)

2.2 Assignments will be communicated through issuance of a City issued Purchase Order.

2.3 The Consultant shall perform and complete the Services with care, skill, due diligence and efficiency.

2.4 The Term of this Agreement will commence on XXXX XX, XXXX, and will expire upon XXXX XX, XXXX, unless otherwise extended or terminated by the parties.

### **3.0 Agreement Amount:**

3.1 Subject to the terms and conditions of this Agreement and in consideration for the satisfactory performance of the Services, the City shall pay to the Consultant a fee **not to exceed the amount on the Purchase Order issued for each specific assignment** excluding GST, including expenses, for the Services to be provided as outlined in Section 01200 Schedules of Services, Fees, and Proposal.

3.2 Where progress payments are required the Consultant shall be paid on the basis of monthly progress billings for services performed and invoices approved by the City, all in accordance with Clause 18 of Section 01400.

3.3 The Agreement amount stated in Clause 3.1 does not include any applicable taxes, which are to be shown separately on all invoices submitted by the Consultant.

### **4.0 Time of the Essence:**

4.1 Time shall be of the essence in the performance of the Services.

### **5.0 Entire Agreement:**

5.1 When duly executed by authorized officers of both parties, this Agreement constitutes the entire Consulting and Professional Services Agreement between the parties with respect to the subject matter hereof.

### **6.0 Amendment:**

6.1 The Contract Documents shall not be amended except as specifically agreed to in writing by both the City and the Consultant.

### **7.0 Contract Administrator:**

7.1 For the purposes of this Agreement, the City designates as its Contract Administrator:

***Kim Chan***

***Director, Information and Communication Technology***

***City of Coquitlam***

***3000 Guildford Way, Coquitlam, BC V3B 7N2***

***T: 604-927-3435 E: <mailto:kchan@coquitlam.ca>***

7.2 For the purposes of this Agreement, the Consultant designates as its Contract Administrator:

**Contact**  
**Company Inc.**  
**Address**  
**City, Province, Postal Code**  
**T:604-XXX-XXXX E: xx@yy.com**

**8.0 Inurement:**

8.1 This Agreement shall inure to the benefit of and be binding upon the City, the Consultant, and their respective heirs, executors, legal representatives, administrators, successors and permitted assigns.

**AGREED:**

**SIGNED on behalf of the City:**

\_\_\_\_\_  
*Authorized Signatory*

\_\_\_\_\_  
*Name & Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Authorized Signatory*

\_\_\_\_\_  
*Name & Title*

\_\_\_\_\_  
*Date*

**SIGNED on behalf of the Consultant:**

\_\_\_\_\_  
*Authorized Signatory*

\_\_\_\_\_  
*Name & Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Authorized Signatory*

\_\_\_\_\_  
*Name & Title*

\_\_\_\_\_  
*Date*

**1.0 Scope of Services:**

Refer to 24-109 Scope and Pricing/Proposal Submission Form - Cloud Backup and Recovery Solution and RFP 24-109 – Cloud Backup and Recovery Solution issued XXXX XX, 2024.

**2.0 Deliverables, Tasks, Milestones, Timelines:**

Refer to 24-109 Scope and Pricing/Proposal Submission Form - Cloud Backup and Recovery Solution and RFP 24-109 – Cloud Backup and Recovery Solution issued XXXX XX, 2024. and Consultant Legal Name's Proposal dated XXXX XX, 2024.

**3.0 Consultant Project Team:**

Refer to Consultant Legal Name's Proposal dated XXXX XX, 2024.

**4.0 Consulting Fee & Rates:**

Refer to Refer to 24-109 Scope and Pricing/Proposal Submission Form - Cloud Backup and Recovery Solution and RFP 24-109 – Cloud Backup and Recovery Solution issued XXXX XX, 2024.

**1.0 DEFINITIONS:**

In this Agreement

- 1.1 "Agreement" means the agreement set out in Section 01000.
- 1.2 "Contract Administrator" has the meaning in Section 01000 Clause 7.0.
- 1.3 "Services" has the meaning set out in Section 01000 Clause 2.1, and
- 1.4 "Subcontractors" means the independent consultants, associates and subcontractors retained by the Consultant to assist in the performance of the Services.

**2.0 ASSIGNMENT:**

- 2.1 The Consultant shall not assign the Agreement, in whole or in part, or any payments due or to become due under the Agreement, without the express written consent of the City.

**3.0 STANDARD OF CARE AND QUALIFICATIONS:**

- 3.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily possessed and exercised by consultants experienced in providing such Services. The Consultant acknowledges that its qualifications and experience were a major factor in the selection of the Consultant for the work set out in this Agreement.
- 3.2 Without limiting any other remedy which the City may have, the Consultant at its sole cost upon written request of the City shall rectify any of the Services which have not been performed in accordance with the care, skill and diligence set out in Clause 3.1 or which have otherwise not been performed in accordance with the terms of this Agreement and in addition the Consultant shall do all such things that may be reasonably required by the City to satisfy the City that the Services have been duly rectified or performed in accordance with the terms of this Agreement.
- 3.3 The Consultant shall be responsible for the degree of care, skill and diligence exercised by any Subcontractors and for selecting Subcontractors having the appropriate qualifications and experience to provide that portion of Services to be provided by such Subcontractors.

**4.0 CONFIDENTIALITY:**

- 4.1 **Definition of Confidential Information.** In this Agreement, "Confidential Information" means all information and data disclosed orally, in writing or electronically, by one party to the other party on a confidential basis including, without limitation, all such information and data relating to the structure, personnel, and operations of the disclosing party, including financial, planning, marketing, advertising and commercial information and strategies; employee, supplier and customer information and data; contractual agreements, records and correspondence; computer programs, computer-related data and databases; trade secrets, inventions, designs, methods, processes and know-how; and items provided or disclosed to a party by third parties under an obligation of confidentiality.

- 4.2 **Obligation of Confidentiality.** It is contemplated that in the course of the performance of this Agreement each party may, from time to time, disclose its Confidential Information to the other party. During the term of this Agreement and for a period of five (5) years thereafter, subject to Clause 4.3 and 4.4, each party agrees:
- (a) to keep and use in strict confidence all Confidential Information of the other party that it acquires, sees, or is informed of, as a direct or indirect consequence of this Agreement and to not, without the prior written consent of the other party, disclose any such Confidential Information; and
  - (b) not to use, copy, duplicate or reproduce, either directly or indirectly, any of the Confidential Information of the other party or any recollections thereof for any purpose other than for the performance of its obligations under this Agreement, without the other party's prior written approval.
- 4.3 **Freedom of Information and Protection of Privacy Act.** The Consultant acknowledges and agrees that any Confidential Information disclosed by it to the City under this Agreement may be subject to disclosure under *the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c.165*, as amended from time to time (in this Clause, the "Act").
- 4.4 **Designation of Confidential Information.** The Consultant acknowledges that the Act provides an exemption from disclosure for information as specified in Section 21 of the Act. Accordingly, if any information supplied to the City fits within Section 21 of the Act, the Consultant must specifically advise the City and request the City not to disclose that information.
- 4.5 **Return of Confidential Information.** Upon expiration or earlier termination of this Agreement, each party shall promptly cease all use of the Confidential Information of the other party and upon written request will return all Confidential Information. This obligation shall not apply to any Confidential Information of the Consultant required by the City to make use of any work product under this Agreement.
- 5.0 CITY'S RESPONSIBILITIES:**
- 5.1 The City shall provide timely support, guidance, direction, instruction, acceptances, decisions and information as the Contract Administrators agree necessary or appropriate under this Agreement.
- 6.0 INDEMNITY:**
- 6.1 Notwithstanding the provision of insurance coverage by the City, the Consultant hereby agrees to indemnify and save harmless the City and its successor(s), assign(s) and authorized representative(s) (the "Indemnified Parties") and each of them from and against losses, claims, damages, actions, and causes of action, (collectively referred to as "Claims") that the City may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the Consultant or its Sub-consultant(s), servant(s), agent(s) or employees(s) under this 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 the City, its other consultant(s), assign(s) and authorized representative(s) or any other persons.

6.2 The terms and conditions of Clause 6.1 shall survive notwithstanding the completion of all Services and the obligations and duties under this Agreement and the termination for any reason whatsoever of this Agreement.

6.3 The indemnity provided in Clause 6.1 by the Consultant to the Indemnified Parties shall not in any way be limited or restricted by the insurance set out in Clause 11 or by limitations on the amount or type of damages, compensation or benefits payable under the Workers' Compensation Act or any other similar statute.

#### **7.0 NO WAIVER:**

7.1 No action or failure to act by the City shall constitute a waiver of any right or duty under the Agreement, or constitute an approval or acquiescence in any breach there under, except as may be specifically agreed in writing by the City.

#### **8.0 CONSULTANT STATUS:**

8.1 This is an agreement for the performance of Services and the Consultant is engaged under the Agreement as an independent Consultant for the sole purpose of providing the Services. Neither the Consultant nor any of the Consultant's personnel is engaged by the Agreement as an employee, servant or agent of the City.

8.2 It is understood and agreed that the Consultant will act as an independent consultant and that it is entitled to no other benefits or payments whatsoever other than those specified in the Agreement and Section 01200 Schedule of Fees, Rates and Charges.

#### **9.0 DOCUMENTATION, PATENT AND COPYRIGHT:**

9.1 **Title.** The title, property rights and ownership in and to all present and future materials and information produced or prepared by the Consultant pursuant to this Agreement including but not limited to plans, drawings, specifications, computer discs, listings, computer software and any other material or physical item on which information is stored shall vest in the City without any payment by the City therefor.

9.2 **Patent and Copyright.** The title, property rights and ownership in and to all copyright in all present and future literary or artistic works including, but not limited to, computer programs and software, plans, drawings and specifications and the title, property rights and ownership in and to all patent rights in any invention developed during the course of or out of providing the Services shall vest in the City without any payment by the City therefor.

9.3 **Further Assurances.** The Consultant shall upon request by the City, do all such things and execute and deliver to the City all such documents and instruments as the City shall reasonably require in order to vest title, property rights and ownership in the City as provided in Clause 9.1 and 9.2 and the Consultant shall execute and deliver all such assignments, documents and instruments as may, in the City's opinion, be necessary or desirable for the application or the issuance of any patents, designs or the registration of any copyright.

9.4 The City will not sell or transfer those rights without Consultant permission

**10. NOTICES:**

10.1 Where in the Agreement any notice, request, direction, or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person, sent by registered mail, or by facsimile addressed to the party for whom it is intended at the address specified in Clause 7 of the Form of Agreement. Any notice, request, direction or other communication shall be deemed to have been given if by registered mail, when the postal receipt is acknowledged by the other party; by facsimile when transmitted. The address of either party may be changed by notice in the manner set out in this provision.

**11.0 WORKERS' COMPENSATION, INSURANCE AND BUSINESS LICENCE:**

**11.1 Workers' Compensation Board (WCB) Requirements**

11.1.1 The Consultant agrees that it shall at its own expense procure and carry or cause to be procured and carried and paid for, full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject of this Agreement. The Consultant agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such Workers' Compensation Board coverage against any monies owing by the City to the Consultant. The City shall have the right to withhold payment under this Agreement until the Workers' Compensation Board premiums, assessments or penalties in respect of work done or service performed in fulfilling this Agreement had been paid in full.

11.1.2 The Consultant shall provide the City with their Workers' Compensation Board registration number and a "Clearance Letter" from WorkSafeBC confirming that they are registered and in good standing with the Workers' Compensation Board and that all assessments have been paid to the date.

11.1.3 The Consultant shall indemnify the City and hold them harmless from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid Workers' Compensation Board assessments owing from any person or corporation engaged in the performance of this Agreement or arising out of or in any way related to the failure to observe safety rules, regulations and practices of the Workers' Compensation Board, including penalties levied by the Workers' Compensation Board.

**11.2 Insurance to be provided by the Consultant**

11.2.1 The Consultant shall provide, maintain and pay for the following insurance:

(a) Commercial General Liability Insurance

Commercial General Liability Insurance providing third party bodily injury and property damage coverage in an amount of not less than **\$2,000,000**. per occurrence, indicating that the City is an additional insured and

containing a cross liability and/or severability of interest clause protecting each insured to the same extent as if they were separately insured.

The Policy shall contain a clause providing that the City will receive 30 days' notice of cancellation or of any material change in coverage that will reduce the extent of coverage provided to the City. The certificate will also indicate that the policy contains non-owned automobile liability and contractual liability coverage. The insurance policy will be in a form and with a company that is, in all respects, acceptable to the City.

(b) **Automobile Liability Insurance**

Automobile liability insurance with respect to owned and leased automobiles used directly or indirectly in the performance of the Services covering liability for bodily injury, death and damage to property with a limit of not less than \$2,000,000. inclusive for each and every loss.

(c) **Professional Liability Insurance**

Professional liability (errors and omissions) insurance coverage shall be obtained to a limit of not less than **\$500,000.** per claim and **\$1,000,000.** Aggregate for each loss. Such coverage shall be maintained for a period of two years subsequent to conclusion of services provided under this Agreement.

(d) **Consultant Equipment Insurance**

"All risks" equipment insurance covering owned and non-owned machinery and equipment used by the Consultant for the performance of the Services to its full replacement value.

11.2.2 Prior to commencing any work the Consultant shall provide to the City certificates of insurance that shall include a provision that such insurance shall not be cancelled or modified without at least 30 days' written notice to the City.

**11.3 City of Coquitlam Business Licence**

11.3.1 Where the head office of the Consultant is located within the City of Coquitlam and/or where the Consultant is required to perform any work at a site within the City of Coquitlam, the Consultant shall have a valid City of Coquitlam business license throughout the duration of the Agreement.

**12.0 DELAY IN PERFORMANCE:**

12.1 Neither the City nor the Consultant shall be deemed to be in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to abnormal weather conditions, flood, earthquake, fire, epidemic, war, riot and other civil disturbance, strike, lockout, and other labour disturbances, sabotage, judicial restraint and inability to procure permits, licenses or authorizations from any local, provincial or federal agency for any of the supplies, materials, accesses or services

required to be provided by either the City or the Consultant under this Agreement. If any such circumstances occur, the non-performing party shall, as soon as possible after being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

**13.0 SEVERABILITY:**

13.1 The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void.

**14.0 CONFLICT OF INTEREST:**

14.1 The Consultant declares that the Consultant has no pecuniary interest in the business of any third party that would cause a conflict of interest or be seen to cause a conflict of interest in carrying out the Services. Should such an interest be acquired during the term of the Agreement, the Consultant shall declare it immediately in writing to the City. If the Consultant does declare a conflict of interest the City may direct the Consultant to resolve the conflict of interest to the City's satisfaction and the Consultant shall do so.

**15.0 GOVERNING LAW:**

15.1 The Agreement shall be construed under and according to the laws of the Province of British Columbia and subject to an agreement to refer a dispute to arbitration under Clause 16, the parties agree to irrevocably attorn to the jurisdiction of the Courts of the Province of British Columbia.

**16.0 DISPUTE RESOLUTION:**

16.1 All claims, disputes or issues in dispute between the City and the Consultant shall be decided by arbitration if the parties agree, or failing agreement, in a Court of competent jurisdiction within the Province of British Columbia and be governed by the laws of British Columbia.

16.2 In the event that the parties agree to arbitration, pursuant to Clause 16.1, the arbitration shall be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators shall be agreed upon by the parties, and failing agreement by the parties, shall be appointed by a Court of competent jurisdiction within the Province of British Columbia.

16.3 In the event that the parties agree to arbitration, the arbitration shall take place in Vancouver, British Columbia and be governed by the laws of British Columbia.

16.4 The procedure set out in this Clause 16 is not meant to preclude or discourage informal resolution of disagreements between the City and the Consultant.

**17.0 TERMINATION:**

#### Termination for Default

- 17.1 The City may terminate the Agreement if the Consultant at any time becomes bankrupt, makes an assignment of his property for the benefit of his creditors, or if a receiver or liquidator should be appointed. Such termination shall be effective upon the City giving written notice thereof.
- 17.2 The City may terminate the Agreement in whole or in part in writing if the Consultant defaults in the fulfilment of any or all of its obligations under this Agreement provided that, except in the case where the City acting reasonably deems it impractical, the Consultant shall be entitled to cure the default within 10 days of receipt of written notice from the City. Failure to cure the default within the 10-day period or as mutually extended by agreement between the City and the Consultant, shall entitle the City to terminate this Agreement immediately.
- 17.3 If the City terminates the Agreement under Clause 17.1 or 17.2, upon receipt of written notice of termination, the Consultant shall discontinue providing the Services in accordance with the notice and within the period of time set out in the notice deliver to the City all drafts, reports, drawings, plans, specifications, computer discs, software and all other information and materials relating to the Services.

#### Termination without Default

- 17.4 Notwithstanding the provision of Clause 17.1 or 17.2, the City shall be entitled at any time during the Agreement to terminate this Agreement upon thirty (30) days written notice to the Consultant. Upon receipt of written notice of termination, the consultant shall discontinue providing the Services in accordance with the notice and within the period of time set out in the notice deliver to the City all drafts, reports, drawings, plans, specifications, computer discs, software and all other information and materials relating to the Services.
- 17.5 Upon termination under Clause 17.4, the City shall pay to the Consultant in accordance with Section 01200 for the Services provided to the date of termination together with the actual and reasonable out-of-pocket expenses directly and necessarily incurred by the Consultant as a result of the termination. The Consultant may not claim loss of profit on the balance of the Services not fulfilled because of the termination.

#### **18.0 PAYMENT:**

- 18.1 Consultant is required to forward to the City's Project Manager a draft copy of the invoice for review **five (5) business days prior** to formal submission to the City.
- 18.2 The Consultant shall submit invoices to the City sent by email to: [apinvoices@coquitlam.ca](mailto:apinvoices@coquitlam.ca) for Services performed monthly (the "billing period") during which the Services are performed under this Agreement; such invoices to be submitted as soon as practicable after each billing period. GST is to be shown as a separate item.
- 18.3 All Fee (Lump Sum) invoices are to be accompanied by a cost status breakdown showing information regarding percentage complete and percentage invoiced, all with associated

costs. Invoices not containing the summary cost status will not be processed until the information is provided.

- 18.4 The invoice submitted for each billing period shall be clearly itemized to show the PO number, amount of work performed, the billing rates, the reimbursable expenses and the costs incurred to employ any Subcontractors. The Consultant shall also provide to the City upon written request such receipts, bills, invoices or other evidence in support of each invoice for a billing period as the City shall request.
- 18.5 Payments will be made in portions of the fixed lump sum amounts quoted based upon satisfactory completion of a portion of each of the project deliverables as determined by the Project Manager outlined above and in accordance with the fee schedule.
- 18.6 Except for the amounts which the City in good faith is disputing and except for any set off which the City may claim and except for invoices (or portions of invoices) in respect of which the City has requested and not received supporting evidence under Clause 18.2, the City shall pay invoices submitted to it for the Services within 30 days of receipt thereof.
- 18.7 The Consultant shall keep and shall cause any Subcontractors to keep books, records, documents and other evidence relevant to the provision of the Services in accordance with generally accepted accounting principles and practices consistently applied. The City or any of its duly authorized representatives shall for the purpose of audit and examination have access to and be permitted to inspect such books, records, documents and any other evidence for inspection, copying and audit for a period of three years after the termination, for any reason, of this Agreement.
- 18.8 The Consultant will not be able to claim any additional cost as a result any delays caused by the consultants. The consultant shall be entitled to extra fees as result of changes to the scope by the owner or an extension to the schedule caused by owner or contractor.
- 18.9 Payments made to the Consultant shall not be construed as an unconditional acceptance of the work accomplished up to the time of payment.

**19.0 SUBCONTRACTORS:**

- 19.1 The Consultant may retain Subcontractors to assist in the performance of the Services provided that, where appropriate, the terms of this Agreement shall apply to the Subcontractors and provided that the Consultant shall be wholly responsible for the professional standards, performance and all actions of the Subcontractors. The City may request a copy of Terms and Conditions entered into by the Consultant with any subcontractor and the Consultant shall comply. The Consultant shall only employ Subcontractors having the appropriate standards, qualifications and experience in their respective areas of expertise.
- 19.2 Disbursements for which the Consultant shall not be reimbursed and shall be included as the design fee total for professional services include:
- .1 Drafting (AutoCAD, manual, supplies);
  - .2 Clerical support

- .3 Computer Use;
- .4 Courier and freight charges
- .5 Telecommunications
- .6 Travel (mileage, transportation, parking, vehicle, taxi, accommodation, meals);
- .7 Copying and Reprographics (Consultant's in-house drawings reproduction, review drawings and specifications, reports for sub-consultants' review);

**20.0 EXTRA WORK:**

20.1 Extra Work means the furnishing of services not directly or by implication called for in the Agreement. If the City requires extra work it may do so by itself or by the employment of others or it may direct the Consultant to do the extra work by issuance of a written direction. The Consultant shall perform any extra work at the rates provided for in Section 01200.

**21.0 WORK AND SERVICES OMITTED:**

21.1 Extra Work means the furnishing of services not directly or by implication called for in the Agreement. If the City requires extra work it may do so by itself or by the employment of others or it may direct the Consultant to do the extra work by issuance of a written direction. The Consultant shall perform any extra work at the rates provided for in Section 01200.

21.2 The Consultant must receive written approval from the City prior to commencing any additional works which will affect the project cost or schedule. A Change Order form must be submitted in the event the Consultant fees exceed the original proposed purchase order amount. In this situation the Consultant will be requested to submit scope of work change alternatives to meet the budget.

21.3 A separate schedule of values is required as supporting documentation to the invoice for all additional services.

21.4 Any invoice encompassing extra work or additional work not previously approved in writing will not be accepted by the City.

**22.0 WORK AND SERVICES OMITTED:**

22.1 Upon receipt of written direction from the City, the Consultant shall omit Services to be performed under the Agreement. The Consultant shall have no claim against the City for loss associated with any omitted Services.

**23.0 WITHHOLDING OF PAYMENTS**

23.1 The City may withhold payment to the Consultant as necessary to protect the City relating to unsatisfactory performance or quality of work;

23.2 No interest shall accrue on payments withheld by the City. Interest payments will only be considered where it is agreed that the City erred in its information causing the withholding of payment.

23.3 The withholding of any payment shall not affect the Consultant's obligation to continue performance of work.

**24.0 THIRD PARTY RIGHTS:**

24.1 Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

**25.0 LIMITATION OF LIABILITY:**

25.1 In no event will the City be liable to the Consultant for any incidental, indirect, special or consequential damages arising out of, or in connection with this Contract.

**26.0 CHANGES TO SCOPE OF SERVICES:**

26.1 The City may at any time vary the scope of work to be provided by the Consultant as part of the Services. In that case and where this Agreement contains a limit or limits in Clause 3.0 (Agreement Amount) of Section 01000 (FORM OF AGREEMENT) as to the maximum fees and disbursements to be paid to the Consultant for all or any part of the Services, such limit or limits shall be adjusted as agreed to by both parties in writing and failing agreement, as reasonably determined by the City. Should the Consultant consider that any request or instruction from the City constitutes a change in the scope of the work, the Consultant shall so advise the City within ten (10) days in writing. Without said written advice within the time period specified, the City shall not be obligated to make any payments of additional fees to the Consultant.

**27.0 NON-RESIDENT WITHHOLDING TAX:**

27.1 If the Consultant is, at any time, a non-resident of Canada, within the meaning of the Income Tax Act of Canada as amended, then, and the Consultant hereby so agrees, the City may deduct from all monies payable under this Agreement and remit to the Receiver-General of Canada, the Government of Canada or Canada Revenue Agency, Taxation sums not greater than the greater of:

27.1.1 Fifteen percent (15%) of all monies payable under this Agreement; and

27.1.2 sums required to be withheld and remitted by the *Income Tax Act* of Canada as amended.

27.2 The City will receive full credit under this Agreement for monies withheld as of and from the date of the withholding (regardless of when or whether remitted) and no interest will be payable by the City on sums withheld, not remitted as aforesaid, and later paid directly to the Contractor.

27.3 Exemption from this withholding tax is available in some circumstances, but the Consultant must apply directly to the Canada Revenue Agency (CRA) at least thirty (30) days prior to commencing services for a "Certificate of Exemption".

**28.0 ADVERTISEMENT:**

28.1 The Consultant will not advertise its relationship with the City without prior written authorization from the City.



## **PRIVACY PROTECTION SCHEDULE**

### **DEFINITIONS**

1. In this Schedule,
  - (a) "**access**" means disclosure by the provision of access;
  - (b) "**Act**" means the *Freedom of Information and Protection of Privacy Act* (British Columbia), as amended from time to time;
  - (c) "**contact information**" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
  - (d) "**personal information**" means recorded information about an identifiable individual, other than contact information, collected or created by the Consultant as a result of the Agreement or any previous agreement between the Public Body and the Consultant dealing with the same subject matter as the Agreement but excluding any such information that, if this Schedule did not apply to it, would not be under the "control of a public body" within the meaning of the Act.

### **PURPOSE**

2. The purpose of this Schedule is to:
  - (a) enable the Public Body to comply with its statutory obligations under the Act with respect to personal information; and
  - (b) ensure that, as a service provider, the Consultant is aware of and complies with its statutory obligations under the Act with respect to personal information.

### **COLLECTION OF PERSONAL INFORMATION**

3. Unless the Agreement otherwise specifies or the Public Body otherwise directs in writing, the Consultant may only collect or create personal information that is necessary for the performance of the Consultant's obligations, or the exercise of the Consultant's rights, under the Agreement.
4. Unless the Agreement otherwise specifies or the Public Body otherwise directs in writing, the Consultant must collect personal information directly from the individual the information is about.
5. Unless the Agreement otherwise specifies or the Public Body otherwise directs in writing, the Consultant must tell an individual from whom the Consultant collects personal information:
  - (a) the purpose for collecting it;
  - (b) the legal authority for collecting it; and
  - (c) the title, business address and business telephone number of the person designated by the Public Body to answer questions about the Consultant's collection of personal information.

### **ACCURACY OF PERSONAL INFORMATION**

6. The Consultant must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Consultant or the Public Body to make a decision that directly affects the individual the information is about.

### **REQUESTS FOR ACCESS TO PERSONAL INFORMATION**

7. If the Consultant receives a request for access to personal information from a person other than the Public Body, the Consultant must promptly advise the person to make the request to the Public Body unless the Agreement expressly requires the Consultant to provide such access and, if the Public Body has advised the Consultant of the name or title and contact information of an official of the Public Body to whom such requests are to be made, the Consultant must also promptly provide that official's name or title and contact information to the person making the request.

### **CORRECTION OF PERSONAL INFORMATION**

8. Within 5 business days of receiving a written direction from the Public Body to correct or annotate any personal information, the Consultant must annotate or correct the information in accordance with the direction.
9. When issuing a written direction under section 8, the Public Body must advise the Consultant of the date the correction request to which the direction relates was received by the Public Body in order that the Consultant may comply with section 10.
10. Within 5 business days of correcting or annotating any personal information under section 8, the Consultant must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Public Body, the Consultant disclosed the information being corrected or annotated.
11. If the Consultant receives a request for correction of personal information from a person other than the Public Body, the Consultant must promptly advise the person to make the request to the Public Body and, if the Public Body has advised the Consultant of the name or title and contact information of an official of the Public Body to whom such requests are to be made, the Consultant must also promptly provide that official's name or title and contact information to the person making the request.

### **PROTECTION OF PERSONAL INFORMATION**

12. The Consultant must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

### **STORAGE AND ACCESS TO PERSONAL INFORMATION**

13. Unless the Public Body otherwise directs in writing, the Consultant must not store personal information outside Canada or permit access to personal information from outside Canada.

### **RETENTION OF PERSONAL INFORMATION**

14. Unless the Agreement otherwise specifies, the Consultant must retain personal information until directed by the Public Body in writing to dispose of it or deliver it as specified in the direction.

### **USE OF PERSONAL INFORMATION**

15. Unless the Public Body otherwise directs in writing, the Consultant may only use personal information if that use is for the performance of the Consultant's obligations, or the exercise of the Consultant's rights, under the Agreement.

### **DISCLOSURE OF PERSONAL INFORMATION**

16. Unless the Public Body otherwise directs in writing, the Consultant may only disclose personal information inside Canada to any person other than the Public Body if the disclosure is for the performance of the Consultant's obligations, or the exercise of the Consultant's rights, under the Agreement.

17. Unless the Agreement otherwise specifies or the Public Body otherwise directs in writing, the Consultant must not disclose personal information outside Canada.

### **NOTICE OF FOREIGN DEMANDS FOR DISCLOSURE**

18. In addition to any obligation the Consultant may have to provide the notification contemplated by section 30.2 of the Act, if in relation to personal information in its custody or under its control the Consultant:

- (a) receives a foreign demand for disclosure;
- (b) receives a request to disclose, produce or provide access that the Consultant knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
- (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure

the Consultant must immediately notify the Public Body and, in so doing, provide the information described in section 30.2(3) of the Act. In this section, the phrases "foreign demand for disclosure" and "unauthorized disclosure of personal information" will bear the same meanings as in section 30.2 of the Act.

### **NOTICE OF UNAUTHORIZED DISCLOSURE**

19. In addition to any obligation the Consultant may have to provide the notification contemplated by section 30.5 of the Act, if the Consultant knows that there has been an unauthorized disclosure of personal information in its custody or under its control, the Consultant must immediately notify the Public Body. In this section, the phrase "unauthorized disclosure of personal information" will bear the same meaning as in section 30.5 of the Act.

### **INSPECTION OF PERSONAL INFORMATION**

20. In addition to any other rights of inspection the Public Body may have under the Agreement or under statute, the Public Body may, at any reasonable time and on reasonable notice to the Consultant, enter on the Consultant's premises to inspect any personal information in the possession of the Consultant or any of the Consultant's information management policies or practices relevant to its management of personal information or its compliance with this Schedule and the Consultant must permit, and provide reasonable assistance to, any such inspection.

## **COMPLIANCE WITH THE ACT AND DIRECTIONS**

21. The Consultant must in relation to personal information comply with:

- (a) the requirements of the Act applicable to the Consultant as a service provider, including any applicable order of the commissioner under the Act; and
- (b) any direction given by the Public Body under this Schedule.

22. The Consultant acknowledges that it is familiar with the requirements of the Act governing personal information that are applicable to it as a service provider.

## **NOTICE OF NON-COMPLIANCE**

23. If for any reason the Consultant does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Consultant must promptly notify the Public Body of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

## **TERMINATION OF AGREEMENT**

24. In addition to any other rights of termination which the Public Body may have under the Agreement or otherwise at law, the Public Body may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Consultant, terminate the Agreement by giving written notice of such termination to the Consultant, upon any failure of the Consultant to comply with this Schedule in a material respect.

## **INTERPRETATION**

25. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.

26. Any reference to the "Consultant" in this Schedule includes any sub-consultant or agent retained by the Consultant to perform obligations under the Agreement and the Consultant must ensure that any such sub-consultants and agents comply with this Schedule.

27. The obligations of the Consultant in this Schedule will survive the termination of the Agreement.

28. If a provision of the Agreement (including any direction given by the Public Body under this Schedule) conflicts with a requirement of the Act or an applicable order of the commissioner under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.

29. The Consultant must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to section 30, the law of any jurisdiction outside Canada.

30. Nothing in this Schedule requires the Consultant to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the Act