



**INVITATION TO TENDER ("ITT") No. PS10172**

**SUPPLY AND DELIVERY OF IBM SOFTWARE SUBSCRIPTION AND SUPPORT  
RENEWAL**

Tenders will be received in the Purchasing Services Office, 3rd Floor, Suite #320, East Tower, 555 West 12th Avenue, Vancouver, British Columbia, Canada, V5Z 3X7 prior to the Closing Time: 3:00:00 pm Vancouver Time (as defined in Note 2 below), Tuesday July 27, 2010 and opened publicly Wednesday July 28, 2010 at 11:00:00 am.

**NOTES:**

1. Tenders are to be submitted in sealed envelopes or packages marked with the Tenderer's Name, the ITT Title and Number.
2. Closing Time and Vancouver Time will be conclusively deemed to be the time shown on the clock used by the City's Purchasing Services Office for this purpose.
3. The City's Purchasing Services Office is open on Business Days 8:30 am to 4:30 pm Vancouver Time and closed Saturdays, Sundays, and holidays.
4. DO NOT SUBMIT BY FAX.

All queries related to this ITT shall be submitted  
in writing to the attention of:

**Dino Goundouvas  
Buyer**

**Fax: 604 873 7057 E-mail: [purchasing@vancouver.ca](mailto:purchasing@vancouver.ca)**

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**NOTE:** The definitions set out in Part B - General Conditions - Section 1.0 "Definitions" apply throughout this ITT, including this Part A of this ITT, except where otherwise expressly stipulated or the context otherwise requires.

**1.0 Description of Requirement**

- 1.1 Tenders are invited for the supply and delivery of **IBM Software Subscription and Support Renewal for general purpose** in accordance with the Requirements of this ITT for the City of Vancouver (the "City").
- 1.2 Tenderers are to submit Tenders for the full Requirements only. Partial responses may be put aside and given no consideration.
- 1.3 The City will only consider Tenders for complete units ("Units") as described in Appendix 3 - Detailed Equipment Specifications and Compliance Matrix.

**2.0 Contract Term**

- 2.1 The Term of any Contract awarded as a result of this ITT will start on the Effective Date and not expire until after the expiry of any applicable warranty period(s).

**3.0 Pricing**

- 3.1 Pursuant to Part A - Instructions to Tenderers - Section 11.2, Tenders are irrevocable and therefore the pricing within the Tender is also irrevocable and may not be withdrawn or altered after the Closing Time.
- 3.2 Prices quoted are to be exclusive of HST, except where expressly requested.
- 3.3 Prices shall be held firm for the term of the contract, unless otherwise expressly agreed to by the City.
- 3.4 Prices are to be quoted F.O.B. Destination, including freight, unloading at destination, import duties, brokerage, royalties, handling, overhead, profit and all other costs included.
- 3.5 Prices are to be quoted in Canadian currency.
- 3.6 Quotations submitted will be valid and open for acceptance by the City for sixty (60) days after the closing date and time noted above.

**4.0 Inquiries and Clarifications**

- 4.1 It is the responsibility of the Tenderer to thoroughly examine these documents and satisfy itself as to the full requirements of this ITT. Inquiries are to be in written form only, faxed or e-mailed to the contact person shown on the cover page no later than five (5) business days prior to the closing time. If required, an addendum will be posted to the City's website.

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**5.0 Conduct of the Contract**

5.1 The City's Manager of Supply Management shall have the conduct of the ITT on behalf of the City and will be the City's Designated Representative under the Contract.

**6.0 Inspection of Site – Intentionally Omitted**

**7.0 Submission of Tender**

7.1 The response to this ITT with all accompanying schedules, appendices or addenda submitted by the Tenderer will be received up to the Closing Time. Tenders are to be submitted utilizing Part E - Tender Form of this ITT and then enclosed in a sealed envelope or package, marked with the Tenderer's name and the ITT title and number.

7.2 Tenders are to submit their Tenders in the following format:

- a) Part E - Tender Form
- b) Documents Required pursuant to Table on First Page of Tender Form
- c) Appendix 1 - Certificate of Existing Insurance
- d) Appendix 3 - Detailed Equipment Specifications and Compliance Matrix

7.3 Tenders received after the Closing Time or in locations other than the Drop-Off Location shown on the cover page, may or may not be accepted and may be returned unopened. The City may elect to extend the Closing Time.

7.4 The Tenderer shall submit two (2) copies of its Tender in accordance with the instructions stated in this ITT.

7.5 Tenders are to be submitted in English.

7.6 The Tenderer is to enter its full corporate or legal business name on the first page of Part E - Tender Form. The Tender Form is to be signed in the place provided by an authorized signatory of the Tenderer. All other pages of the Tender Form are to be initialled by the authorized signatory in the spaces provided.

7.7 Amendments to a Tender may only be submitted if delivered in writing prior to the Closing Time in a sealed envelope or package, marked with the Tenderer's name and the ITT title and number.

7.8 Tenders are irrevocable after the Closing Time and so may only be withdrawn by written notice duly signed by the Tenderer's authorized signatory delivered to the Drop-Off Location shown on the cover page prior to the Closing Time.

7.9 All costs associated with the preparation and submission of the Tender, including any costs incurred by the Tenderer after the Closing Time, will be borne solely by the Tenderer.

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7.10 By submitting a Tender, the Tenderer acknowledges and agrees that the liability of the City in connection with the ITT, the conduct or outcome of the ITT, all related processes, decisions and procedures, and any and all duties and obligations in connection with all of the foregoing, is limited in the aggregate to the maximum of \$1,000 (for any and all claims by the Tenderer combined with any and all claims of all other Tenderers and any and all other claimants in connection with the ITT), and that if payment is made by the City into Court (or into trust, for the benefit of all Tenderers and other such claimants, with a law firm reasonably selected for the purpose) of the said sum of \$1,000, then:

- a) that will be sufficient to fully release and discharge the City from all further liability; and
- b) the Tenderer will, upon the request from time to time of the City, execute and deliver a release (in such form as the requesting party may reasonably prescribe).

**8.0 Bid and Performance Security**

8.1 No bid security is required as part of this ITT.

8.2 The Tenderer shall include with its Tender proof of ability to provide a Letter of Credit in the amount(s) set out in Part B - General Conditions - Section 20 "Insurance and Letter of Credit Requirements".

**9.0 Declaration – No conflict of Interest/ No Collusion**

**9.1 Declaration as to Conflict of Interest**

The Tenderer now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Tenderer's or organizations (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is:

- a) an elected official or employee of the City; or
- b) related to or has any business or family relationship with any elected official or employee of the City, such that there would be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of this Proposal by the City, except as set out in Part E - Tender Form - Section 1.2.

**9.2 Declaration as to Collusion**

The Tenderer now confirms and warrants that

- a) the Tenderer has no affiliation, whether legal or financial, with any other entity which is in the business of providing the same type of goods or services which are the subject of this ITT; and

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- b) the Tenderer is not competing within this ITT process with any entity which it is legally or financially associated or affiliated, except as set out Part E - Tender Form, Section 1.3.

**10.0 Evaluation of Tenders**

- 10.1 Tenders will be evaluated on the basis of the overall best value to City based on quality, service, price and any other criteria set out in this ITT including, but not limited to:
  - a) the Tenderer's ability to meet the Requirements, qualifications and competencies set out in this ITT;
  - b) financial offer including but not limited to prices, operating and maintenance costs, warranty, and any life cycle considerations;
  - c) the Tenderer's business and technical reputation and capabilities; experience and where applicable, the experience of its personnel; financial stability; track record; and references of current and former customers;
  - d) equipment quality, configuration, age and condition;
  - e) any other criteria set out in the ITT or otherwise reasonably considered relevant.
- 10.2 The City may elect to short list some of the Tenderers and require short listed Tenderers to provide additional information or details, including making a presentation, supplying samples, demonstrations, and/or additional technical literature. Samples of items, when required, must be submitted within the time specified and at no expense to the City. If not destroyed in testing, they will be returned at the Tenderer's request and expense.
- 10.3 Prior to Contract award, the Tenderer must demonstrate financial stability. Should the City so request, the Tenderer is required to provide annual financial reports or a set of financial statements prepared by an accountant and covering the last two (2) fiscal years.
- 10.4 The City may, prior to Contract award, negotiate changes to the scope of the Work, the materials, the Specifications or any conditions with any one or more of the Tenderers without having any duty or obligation to advise any other Tenderers or to allow them to vary their prices as a result of changes to the scope of Work, the materials, the Specifications, or any conditions, and the City shall have no liability to any other Tenderer as a result of such negotiations or modifications.
- 10.5 All Sub-contractors of the Tenderer will be subject to the same evaluation process. It is the responsibility of the Tenderer to guarantee that all its Sub-contractors will comply with all the Requirements and terms and conditions set out in this ITT.

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10.6 Preference may be given to Tenders offering environmentally beneficial products or services.

**11.0 Acceptance and Rejection of Tenders**

11.1 Notwithstanding any other provision in the ITT documents, the City has in its sole discretion, the unfettered right to:

- a) accept any Tender;
- b) reject any Tender;
- c) reject all Tenders;
- d) accept a Tender which is not the lowest Tender;
- e) accept a Tender that deviates from the Requirements, Specifications or the conditions specified in this ITT;
- f) reject a Tender even if it is the only Tender received by the City;
- g) accept all or any part of a Tender; and
- h) split the Requirements between one or more Tenderers.

11.2 All Tenders are irrevocable and remain open for acceptance for one hundred and twenty (120) days after the Closing Time, whether or not another Tender has been accepted.

11.3 Any deviations from the Requirements, Specifications or the conditions specified in this ITT, must be clearly stated in the Tender. The City will be the sole judge as to what constitutes an acceptable Tender deviation. If no deviations are indicated in the Tender, the Tender constitutes a legally binding offer by the Tenderer to perform in full compliance with the Requirements, Specifications and conditions of this ITT.

11.4 The City may waive any non-compliance with the ITT, the Requirements, the Specifications, or any conditions, including the timing of delivery of anything required by this ITT and may elect to retain for consideration Tenders which are non-conforming, which do not contain the content or form required by the ITT or which have not complied with the ITT process for submission.

**12.0 Award of Contract**

12.1 Award of a Contract is contingent on funds being approved and the contract award being made by City Council, if applicable.

12.2 The City will notify the successful Tenderer(s) in writing that it has been awarded the Contract by issuing a Notice of Award.



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- 12.3 The Notice of Award and subsequent purchase order terms and conditions, excluding the provision titled "The City's Offer", will apply unless otherwise agreed in writing by the City.
- 12.4 The Notice of Award, Tender, ITT, purchase order(s), and such other documents including all amendments or addenda, will form the basis for the Contract between the Contractor and the City. In the event of a conflict between any of the Contract Documents, the following documents will take precedence and govern over each other in the following order of priority from highest to lowest:
- a) the Notice of Award;
  - b) subject to Section 12.3, the City's purchase order including the standard purchase order terms and conditions (which may be downloaded from [www.vancouver.ca/bid/terms.htm](http://www.vancouver.ca/bid/terms.htm));
  - c) or any mutually agreed to written amendments between the Tenderer and the City;
  - d) the Tender; and
  - e) the ITT and any subsequent addenda.
- 12.5 Where the head office of the successful Tenderer is located within the City of Vancouver and/or where the successful Tenderer is required to perform any Work at a site located within the City of Vancouver, the successful Tenderer is required to have a valid City of Vancouver business license prior to Contract execution.
- 12.6 The City is not under any obligation to award a Contract and may elect to terminate this ITT at anytime.

**13.0 Quantities**

- 13.1 The quantities stated in this ITT are the City's best estimates of its requirements and should not be relied on. Actual quantities may vary.

**14.0 Brand Names**

- 14.1 Unless otherwise stated, if and wherever the Specifications state a brand name, make, name of manufacturer, trade name, or vendor catalogue number, it is for the purpose of establishing a grade or quality of goods, material, equipment and/or services only. It is not intended to rule out competition from equal brands or makes. If, however, a product other than that specified is offered, it is the Tenderer's responsibility to name such a product in its Tender. Evidence of equality in the form of samples may be requested.

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**15.0 Alternates and/or Variations to Specifications**

- 15.1 Except where otherwise stated, the Specifications describe what is considered necessary to meet the performance requirements of the City and Tenderers should bid in accordance with such Specifications, or if the Tenderer cannot meet the Specifications, the Tenderer may offer an alternative which it believes to be the equivalent.
- 15.2 Tenderers shall clearly indicate any variances from the City's Specifications or conditions no matter how slight. The attachment of descriptive literature from which variations may be gleaned will not be considered as a sufficient statement of variations.
- 15.3 If in addition to bidding on goods, materials, equipment and/or services that meet the Specifications, the Tenderer wishes to offer an alternative, the alternative Tender shall be submitted separately in the same format as the initial Tender.
- 15.4 The City is not obligated to accept any alternatives.
- 15.5 The City will determine what constitutes allowable variations.

**16.0 Environmental Responsibility**

- 16.1 The City is committed to preserving the environment. Tenderers shall provide environmentally sensitive products or services wherever possible. Where there is a requirement that the Contractor supplies materials, and where such materials may cause adverse effects, the Tenderer shall indicate the nature of the hazard in its Tender.
- 16.2 The Tenderer agrees to advise the City of any known alternatives or substitutes for such materials that would mitigate the effects of any adverse conditions on the environment.

**17.0 Named Sub-contractors**

- 17.1 The Tenderer agrees that the Sub-contractors shown in its Tender are the Sub-contractors that it proposes to use to carry out the Requirements. The Tenderer agrees to engage the listed Sub-contractors and no others in their stead without prior written authorization of the City.
- 17.2 The City may or may not reject Tenders from any Tender that proposes to sub-contract all or substantially all of the Requirements.

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**18.0 Access to/Ownership of Tender Information**

**18.1 ITT Documents Remain/Tender Becomes - City's Property**

- a) All Tender packages and addenda provided to the Tenderer by the City remain the property of the City and must be returned to the City upon request.
- b) The documentation containing the Tender, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Tender.

**18.2 Tenderer's Submission Confidential**

Subject to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) and the City's full right to publicly disclose any and all aspects of the Tender in the course of publicly reporting to the Vancouver City Council on the Invitation to Tender results or announcing the results of the Tenders to the Tenderer, the City will treat all material and information expressly submitted by the Tenderer (and the City's evaluation of it) in confidence in substantially the same manner as it treats its own confidential material and information.

The Tenderer now irrevocably waives all rights it may have by statute, at law or in equity, to obtain any records produced or kept by the City in evaluating its Tender (and any other submissions) and now agrees that under no circumstances will it make any application to the City for disclosure of any records pertaining to the receipt, evaluation or selection of its Tender (or any other submissions) including, without limitation, records relating only to the Tenderer.

**18.3 All City Data/Information is Confidential**

The Tenderer will not divulge or disclose to any third parties any information concerning the affairs of the City which may be communicated to the Tenderer at any time (whether before or after the Closing Time). Recognizing the need for confidentiality of the City's data, files and other confidential information, the Tenderer will not use, exploit or divulge or disclose to third parties any confidential or proprietary information of the City of which the Tenderer may gain knowledge in connection with or in the course of discussions or negotiations with the City.

All material and information that has or will come into the Tenderer's possession or knowledge in connection with this Tender process is confidential and may not be disclosed or utilized in any way except in accordance with this Invitation to Tender.

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**18.4 Disclosure Requires Prior Consent**

The Tenderer may not divulge any information respecting the Tender process to any third party without the prior written consent of the City, which consent may be arbitrarily withheld unless it is information which the City has already made public or has been required to disclose pursuant to the *Freedom of Information and Protection of Privacy Act* (British Columbia).

**18.5 Declaration of Confidentiality**

The Tenderer now declares and agrees that, except for the information disclosed by the City in the course of publicly reporting to the Vancouver City Council or any public tender opening:

- a) the information supplied by the Tenderer in response to this Invitation to Tender is expressly provided in strict confidence;
- b) any records made of the evaluation of the Tenderer's Tender and all other submissions will be the property of, and private to, the City and will not be disclosed to the Tenderer nor anyone else;
- c) the disclosure of the information in items (a) and (b) above to anyone outside of the City's staff would reveal the Tenderer's trade secrets or proprietary commercial information concerning its private business affairs; and
- d) the disclosure of the information in items (a) and (b) above, could reasonably be expected to harm the Tenderer's competitive position, harm the City's ability to engage in competitive procurement of goods and services, and result in undue financial loss to the Tenderer and/or the City.

**19.0 Special Conditions**

- 19.1 Where Special Conditions are attached to this ITT and they conflict in any way with any other part of this ITT, the Special Conditions shall take precedence.

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PART B - GENERAL CONDITIONS

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1.0 Definitions

The following words and terms, unless the context otherwise requires, shall have the meanings set out below. Words including the singular number include the plural and vice versa.

"Act of God" means a cataclysmic phenomenon of nature, including earthquake, flood or cyclone. Rain, snow, wind, high water or any other natural phenomenon, which might reasonably have been anticipated from historical records of the general locality of the City, shall be deemed not to be acts of God;

"BC Motor Vehicle Legislation" means all British Columbia legislation relating to the equipping and manufacturing of vehicles for operation in British Columbia and includes without limitation and by way of example only, the *Commercial Transport Act*, *Commercial Transport Regulations*, *Motor Vehicle Act*, and *Motor Vehicle Regulations* of British Columbia.

"City" means the City of Vancouver, a municipal corporation continued pursuant to the *Vancouver Charter*;

"City's Designated Representatives" means the City's employees or representatives who are authorized in writing to deal with the Contractor on behalf of the City in connection with the goods, materials, equipment and services or to make decisions in connection with the Contract, and includes the person or person holding the title set out in Part A - Section 5.0 - *Conduct of Contract*;

"Closing Time" means the closing date, time, and place as set out on the title page of this ITT;

"Contract" means the agreement formed between the City and the Contractor as evidenced by the City's issuance of a Notice of Award;

"Contract Documents" means the ITT, any Amendments or Addenda issued pursuant to this ITT, the Contractor's Tender, any City purchase order, and any changes to the foregoing agreed to in writing by the parties;

"Contract Price" means the price(s) for the Product and Work set out in the Tender Form;

"Contractor" means the successful Tenderer (whether an individual, partnership, corporation or combination of same, including joint venturers) who or which executes the Tender which is then accepted in writing by the City;

"Delivery Date" means the date(s) on which the City requires the Contractor to deliver the goods to the City's Delivery Site;

"Delivery Site" means Suite 200, 515 West 10<sup>th</sup> Avenue, Vancouver, BC, Canada V5Z 4A8;

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"Effective Date" means that date which is seven (7) days after the date of award of this Contract by the City to the Contractor;

"F.O.B." means all costs of freight, insurance, brokerage, customs duties and all other costs of delivery to the site named as F.O.B. will be borne by the Contractor and that ownership and title to all goods, materials, and equipment are transferred to the City when same are delivered by the Contractor to the City and the risk of loss or damage to the goods, materials and equipment transfers to the City only at such time as same are received and accepted by the City at the site named as "F.O.B." or "Delivery Site";

"GST" means the goods and services tax administered under the *Excise Tax Act* (Canada) and any successor tax or levy therefore in force from time-to-time; including for further certainty any increased GST pursuant to any harmonized sales tax legislation;

"ITT" means this Invitation to Tender including, but not limited to: Part A - Instructions to Tenderers; Part B - General Conditions; Part C - Special Conditions; Part D - Requirements; Part E - Tender Form; Appendix 1 - Certificate of Existing Insurance; Appendix 2 - Certificate of Insurance; Appendix 3 - Detailed Equipment Specifications and Compliance Matrix and any additional attachments listed in the Table of Contents; and any amendments, addenda, and/or clarifications pertaining to this ITT that may be issued prior to the Closing Time;

"Letter of Credit" means the security for performance required to be posted by the Contractor pursuant to Part B - General Conditions - Section 20.9 and the Notice of Award;

"Minimum Warranty Period" means the period of time starting on the Effective Date and expiring one year after the Warranty Start Date for the last Unit delivered to and accepted by the City under this Contract;

"Product" means, depending on the context, one or more Units;

"PST" means British Columbia provincial sales tax administered under the *Social Service Tax Act* and any successor tax or levy therefore in force from time-to-time;

"Requirements" means all of the Specifications, requirements and obligations of the Contractor set out in this ITT;

"Security Clearance" means that level of security clearance required by the City or its police department for Contractor personnel accessing the information or premises required to be accessed in order to perform the Work under this Contract;

"Specifications" means that part of the Requirements set out in Appendix 4 - *Detailed Equipment Specifications and Compliance Matrix*;

"Tender" means an offer submitted by the Tender in response to this ITT and in substantial compliance with this ITT;

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"Tenderer" means the individual, partnership, corporation or combination of same, including joint venturers, who or which are named as such on the first page of Part E - Tender Form;

"Unit" means - the entire Software Subscription and Support Renewal package;

"Warranty" has the meaning set out in Section 14.0 - *Warranty* of these General Conditions;

"Warranty Start Date" has the meaning set out in Section 14.5 of these General Conditions;

"WorkSafeBC" means the Workers Compensation Board, a provincial Crown corporation created pursuant to the *Workers Compensation Act* (British Columbia);

"WorkSafeBC Rules" means the *Workers Compensation Act* (British Columbia), including without limitation, the *Occupational Health & Safety Regulation* enacted pursuant to such Act, all as such Act or Regulations are amended or re-enacted from time to time;

"Work" means all the labour, materials, equipment, supplies, services and other items necessary for the execution, completion and fulfilment of the Requirements;

"Work Schedule" means - those Requirements which relate to the dates and times by which the Contractor is required to deliver the Product and Work;

"Work Site" means the site where the Work is being performed.

## **1.0 Notices**

1.1 Any notice required to be given in regards to the Contract(s) shall be given in writing and if addressed to the City will be sent to the civic address, fax number or e-mail address provided by the City from time to time for the City's Designated Representative, and if to the Contractor will be sent to the civic address, fax number, or e-mail address set out in its Tender or otherwise provided by the Contractor from time to time.

1.2 No notice will be deemed to have been received by the recipient unless and until its receipt is acknowledged by the recipient or, alternatively, is delivered by hand or sent by registered mail to the civic address (in which case it will be deemed to have been received on the first business day after its actual receipt or arrival at such civic address).

## **2.0 Assignment**

3.1 Neither the Tender nor the Contract (nor any of the rights of payment under the Contract Documents) may be assigned, sub-let, or otherwise disposed of transferred in any way nor in whole or in part by the Contractor (except as expressly named and disclosed in the Section 5.1 of the Tender Form or

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expressly permitted pursuant to Section 5.0 below) without the prior written consent of the City, which consent may be arbitrarily withheld.

- 3.2 In the event that the City consents to any such assignment or other disposition, the Contractor will not be relieved of any of its obligations under the Contract and will remain fully liable under the Contract to perform the Requirements.

**4.0 Independent Contractor**

- 4.1 The Contractor, its Sub-contractors, the officers, directors, shareholders, partners, personnel, affiliates and agents of the Contractor and its Sub-contractors are not, nor are they to be deemed to be, partners, appointees, employees or agents of the City.

**5.0 Sub-Contractors**

- 5.1 Subject to Section 5.2, the Contractor will not assign, sublet, subcontract, or let out as task work any part of the Requirements to any third party, without in each case the prior written consent of the City which consent the City may arbitrarily withhold.
- 5.2 Despite Section 5.1 above, the Contractor may utilize those Sub-contractors expressly named in Section 5.1 of the Tender Form but only for the Area of Responsibility set out beside their name, provided always that the Contractor may not substitute or replace those Sub-contractors, or permit those Sub-contractors to further assign, sub-let, sub-contract, or let out as task work their obligations under the Contract Documents, except in accordance with Section 5.1 above.
- 5.3 If the City should consent to any such assignment, subletting or letting out as task work of all or any part of the Requirements, the Contractor shall in no way be relieved from its responsibility for the fulfilment of the Work, but shall continue to be responsible for the same in the same manner as if all the Work had been performed by the Contractor.

**6.0 Time of the Essence**

- 6.1 For all requests made by the City pursuant to the Contract, time is of the essence. The acceptance of a late performance, with or without objections or reservations by the City, shall not waive the right to claim damages for such breach nor constitute a waiver of the requirement of timely performance of any obligation remaining to be performed.

**7.0 Laws, Permits and Regulations**

- 7.1 The laws of British Columbia shall govern the Contract and the parties now irrevocably attorn to the jurisdiction of the courts of British Columbia.
- 7.2 All provisions of the *International Sale of Goods Act* are specifically excluded from application of this Contract.



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7.3 In carrying out the Requirements, the Contractor shall familiarize itself and comply with all applicable laws, bylaws, regulations, ordinances, codes, specifications and requirements of all regulatory authorities, and shall obtain all necessary licenses, permits and registrations as may be required by law.

**8.0 Workplace Hazardous Materials Information System (“WHMIS”)**

8.1 The Contractor shall provide appropriate labels and material safety data sheets for WHMIS regulated products. No product containing asbestos shall be supplied at any time without written authorization from the City.

**9.0 Product Standards**

9.1 The Product shall comply with all standards referred to in the Specifications.

9.2 All electrical items shall comply with the relevant sections, latest editions, of versions of the Canadian Standards Association (CSA) standard C22.1, Canadian Electrical Code (CEC), Electrical Safety Branch - BC Amendments to CEC Regulations and Bulletins, the City’s Electrical Bylaw, and the National Building Code.

**10.0 Changes in Requirements**

**10.1 City May Request**

The City may, by giving written notice to the Contractor, be entitled to request amendments to the Requirements. Upon receipt of such notice, the Contractor will, as soon as practicable and in no event later than five (5) days after receipt of such notice, inform the City of any adjustments to the Work Schedule or Contract Price, either advancing or delaying the Work Schedule or increasing or decreasing the Contract Price, that would be necessitated by such change in the Requirements, or will notify the City that no adjustment is required. If adjustments to the Work Schedule or Contract Price are necessary and the City confirms in writing that such adjustments are acceptable to it, the Requirements, Work Schedule, and the Contract Price will then be deemed to be amended as agreed by the City

**10.2 Disputes Over Requested Change**

If the City determines that such adjustments, or no adjustments, to the Work Schedule or Contract Price are unacceptable and the City and the Contractor are unable to agree on a mutually acceptable adjustment to same, the City may elect to pursue any one of the following options:

a) The City may refer the issue to arbitration to determine the appropriate adjustments pursuant to Section 25.0 - *Dispute Resolution* (in which case the parties will be deemed to have mutually and irrevocably agreed to arbitration pursuant to Section 25.1).

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- b) The City may proceed with this Contract without the proposed change in Requirements.
- c) The City may cancel all or any part of the Contract, provided the City gives the Contractor at least
  - (i) Ninety (90) days prior written notice of cancellation with respect to any given category of Product or Work (as those categories are set out in Tender Form), or
  - (ii) One Hundred and Twenty (120) days prior written notice of cancellation with respect to a cancellation of all Product and Work (excluding any and all Product and Work already delivered).

**10.3 Disputes as to Requirements (Where No Prior Change Request)**

The City's Designated Representative may issue orders or instructions with respect to the timing, quality and quantity of the Work. They will be obeyed, performed and complied with by the Contractor promptly, efficiently and to the satisfaction of the City. However, if the Contractor is of the opinion that such orders or instructions are not authorized under the provisions of the Contract Documents or involve a change in the Requirements, it will so notify the City in writing before proceeding to carry them out and, in any event, within two (2) days of the receipt of such orders or instructions. The giving of such notice to and receipt by the City's Designated Representative will not constitute an acknowledgment by the City as to the validity of the claim, and the will then be at liberty to contest or dispute the claim. If the Contractor does not so notify the City within the time so limited, it will not be entitled to later claim that the orders or instructions were not so authorized or involved a change in the Requirements. Nevertheless, the giving of such notice to the City will not relieve the Contractor of its obligation to carry out and to obey such orders or instructions.

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**11.0 Delivery**

- 11.1 Deliveries must be made between 8:00 a.m. and 3:00 p.m. Monday to Friday, excluding statutory holidays, unless other arrangements have been agreed in writing. A material safety data sheet ("MSDS") must accompany all shipments containing products regulated under WHMIS legislation.
- 11.2 Deliveries must be made to the following address:  
Suite 200, 515 West 10<sup>th</sup> Avenue, Vancouver, BC, Canada V5Z 4A8

**12.0 Quality of Workmanship and Materials**

- 12.1 The Contractor shall perform the Work with the degree of care, skill and diligence normally applied in the performance of services of a similar nature and in accordance with sound current professional practices and conforming to the requirements set out in the ITT.
- 12.2 Materials, goods and equipment shall be new, free and clear of all liens, charges and encumbrances, the latest model, complete with all necessary accessories for operation and be the products of suppliers or manufacturers of established reputation engaged in the supply or manufacture of such materials or equipment.
- 12.3 Materials are to be applied in accordance with the manufacturer's directions and shall use the techniques and applications best suited for the type of material being used.

**13.0 Inspection**

- 13.1 All goods, materials, equipment and/or services are subject to inspection and approval upon delivery. The City has the right to refuse acceptance of such goods, materials, equipment and/or services that are not in accordance with the Specifications, Requirements or the Contractor's warranty (expressed or implied).
- 13.2 Acceptance or rejection of the goods, materials, equipment and/or services shall be made as promptly as practical, but failure to inspect and accept or reject the goods, materials, equipment and/or services shall not relieve the Contractor from responsibility for such goods, materials, equipment and/or services that are not in accordance with the Contract.
- 13.3 The City shall be the final judge of all goods, materials, equipment and/or services in respect of both quality and quantity and its decisions of all questions in dispute with regard thereto will be final. Materials, goods or equipment not accepted will be returned to the Contractor at the Contractor's expense.

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- 13.4 The City will not be deemed to have accepted the goods, materials, equipment and/or services by virtue of a partial or full payment for them.

**14.0 Warranty**

- 14.1 The Warranty set out in this Section 14.0 is the minimum warranty under this Contract. The Contractor is bound by all additional warranties set out in the Specifications and, where the City has selected any separately priced additional, optional or extended warranties by indicating same in the Notice of Award, the Contractor and City will be bound in the manner set out in the Notice of Award.
- 14.2 The Contractor warrants that, for at least one (1) year from the Warranty Start Date, the Unit supplied to, and Work performed by the Contractor for, the City will be in full conformity with the Requirements as well as samples, if any, and if so, then this is a sale by sample as well as by description within the meaning of the *Sale of Goods Act* (British Columbia).
- 14.3 The Contractor further warrants that for at least one (1) year from the Warranty Start Date, the Unit and Work will be of merchantable quality, and fit for the intended use and will perform according to the Requirements.
- 14.4 The warranty set out in Sections 14.2 - 14.3 above will include all parts and labour delivered and performed at the location of delivery of the Unit to the City.
- 14.5 The warranty start date ("Warranty Start Date") for each Unit is the date on which the City puts that Unit into service, or three (3) months after acceptance of the Unit, whichever is sooner.
- 14.6 The City will notify the Contractor of the date that the Unit goes into service.
- 14.7 The warranty is to be in the name of the City of Vancouver, Department of Information Technology.
- 14.8 The Contractor now warrants that all claims and representations made by the Contractor with respect to third party products and services have been fully authorized by that third party.
- 14.9 The Contractor warrants that its employees have the qualifications, experience, knowledge, skills and abilities necessary for the fulfilment of the Contract.

**15.0 Protection of Person and Property**

- 15.1 The Contractor shall use due care that no persons are injured, no property damaged or lost, and no rights are infringed in the performance of the Requirements, and the Contractor shall be solely responsible for all loss,

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damages, costs and expenses in respect of any injury to persons, damage of property, or infringement of the rights of others incurred in the performance of the Requirements or caused in any other manner whatsoever by the Contractor or those for whom in law it is responsible.

- 15.2 The Contractor shall effectively warn and protect the public and other personnel from any danger as a result of the performance of the Requirements.

**16.0 Rectification of Damage and Defects**

- 16.1 The Contractor shall rectify any loss or damage for which, in the opinion of the City the Contractor is responsible, at no charge to the City and to the satisfaction of the City. Alternatively, the City may repair the loss or damage and the Contractor shall pay to the City the costs of repairing the loss or damage forthwith upon demand from the City. Where, in the opinion of the City, it is not practical or desirable to repair the loss or damage, the City may estimate the cost of the loss or damage and deduct such estimated amount from the amount owing to the Contractor hereunder.

**17.0 Clean Up - Intentionally Omitted**

**18.0 Indemnification**

- 18.1 The Contractor shall indemnify, hold and save harmless the City from and against all claims, losses, damages, costs, actions and other proceedings made, sustained, brought or prosecuted in a manner based upon, occasioned by or attributable to any injury, including death, property damage, infringement or damage arising from any act or omission of the Contractor, its employees, officers, volunteers, servants, sub-contractors, or agents or persons for whom the Contractor has assumed responsibility in the performance or purported performance of the Requirements.
- 18.2 The Contractor shall indemnify the City from and against any and all liability or expenses by way of legal costs or otherwise in respect of any claim which may be made for a lien or charge at law or in equity or to any claim or liability under the Builders Lien Act, or to any attachment for debt, garnishee process or otherwise.
- 18.3 The Contractor shall pay all royalties and license fees and shall save the City harmless from loss on account of suits or claims of infringement of patents in the performance of the Requirements.
- 18.4 The Contractor shall assume the defense of, and indemnify and hold harmless the City and its officers, employees and agents, from and against all claims relating to materials, goods or equipment furnished and to inventions, copyrights, trade marks, or patents and rights thereto used by the Contractor in the execution of the Contract and in subsequent use and/or operation by the City.

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**19.0 Termination**

- 19.1 The City will advise the Contractor by written notice of its intent to terminate the whole or any part of the Contract in any one of the following circumstances:
- a) if the Contractor fails to make delivery of the goods, materials, equipment and/or services within the time specified, or fails to perform any other provisions, terms or conditions of the Contract within the time specified, or within a reasonable time if no time is specified;
  - b) in the event that the Contractor performs any act or does anything by which the City shall incur any liability whatsoever;
  - c) any failure of the Contractor to meet the safety requirements of the Contract;
  - d) in the event that any creditor of the Contractor causes a writ of execution or similar writ or court order to be served upon the City requiring the City to pay any portion due to the Contractor under the Contract; or
  - e) in the event that the Contractor is adjudged bankrupt or if it makes a general assignment for the benefit of creditors or if it becomes insolvent or if it should take the benefit of any Act that may be in force for bankrupt or insolvent debtors.
- 19.2 Upon termination of the Contract, the City shall have no obligation to the Contractor except for such goods, materials, equipment and/or services as have been supplied up to the date of the termination of the Contract(s).
- 19.3 Upon termination of the Contract(s) in whole or in part, the City may procure similar goods, materials, equipment and/or services and the Contractor shall be liable to the City for any excess costs for such similar goods, materials, equipment and/or services. The Contractor shall not be liable for any excess costs if failure to perform arises by reason of strikes, lockouts, Acts of God or acts of the City. The City will not be liable where Delivery Sites are not available due to strikes, lockouts or Acts of God.

**20.0 Insurance and Letter of Credit Requirements**

- 20.1 Without limiting any of its obligations or liabilities under the Contract, the Contractor and its Sub-contractors shall obtain and continuously carry during the term of the Contract at their own expense and cost, the following insurance coverage with minimum limits of not less than those shown in the respective items set out below.
- 20.2 All insurance policies shall be in a form and in amounts satisfactory from time-to-time and with insurers acceptable to the City's Manager of Supply

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Management and shall provide the City with sixty (60) days prior written notice of cancellation or material change resulting in reduction of coverage. Notice must identify the Contract title, number, policyholder, and scope of work.

- 20.3 The Contractor and each of its Sub-contractors shall provide at their own cost any additional insurance which they are required by law to provide or which they consider necessary.
- 20.4 Neither the providing of insurance by the Contractor in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing shall be held to relieve the Contractor from any other provisions of the Contract Documents with respect to liability of the Contractor or otherwise.
- 20.5 The insurance coverage shall be primary insurance with respect to liability arising out of the operation of the Contractor. Any insurance or self-insurance maintained by or on behalf of the City, its officers, officials, employees, servants or agents shall be excess of this insurance and shall not contribute with it.
- 20.6 Within seven (7) days of the City's issuance of the Notice of Award, the Contractor shall provide the City with evidence of all required insurance in the form of Appendix 3 - *Certificate of Insurance*. The Certificate of Insurance shall identify the Contract title, number, policyholder and scope of work and shall not contain any disclaimer whatsoever. At all times thereafter, throughout the term of this Contract, similar evidence of renewals, extensions or replacement of all required insurance must be forwarded to the City's Designated Representative prior to the effective date of same. At any time, and from time to time, and within seven (7) days of a request for same, certified copies of all insurance policies will be made available to the City's Designated Representative.
- 20.7 The Contractor shall provide in its agreements with its Sub-contractors clauses in the same form as those found herein. Upon request, the Contractor shall deposit with the City's Designated Representative detailed certificates of insurance for the policies it has obtained from its Sub-contractors and a copy of the insurance clauses so provided in the said agreements.
- 20.8 The Contractor shall obtain and maintain in full force and effect during the term of the Contract, insurance not less than that set out below and provided by a company duly registered and authorized to conduct insurance business in the Province of British Columbia.
- a) Commercial General Liability
- The Contractor will maintain Commercial General Liability insurance in sufficient amounts and description to protect the Contractor, its sub-contractors, the City and their respective officers, officials, employees,

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and agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this Contract.

The limit of commercial general liability insurance shall be not less than five million dollars (\$5,000,000) per occurrence inclusive for personal injury, death, bodily injury or property damage and in the aggregate with respect to products and complete operations. The deductible per occurrence shall not exceed two thousand five hundred dollars (\$5,000) per occurrence.

The policy of insurance shall:

- (i) be on an occurrence form;
- (ii) add the City and its officials, officers, employees and agents as additional insureds;
- (iii) contain a cross-liability or severability of interest clause;
- (iv) extend to cover non-owned automobile, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery.

b) Third Party Auto Liability Insurance

The Contractor will maintain and cause its Sub-contractors to maintain Third Party Auto Legal Liability Insurance in an amount not less than Five million (\$5,000,000) dollars per occurrence and Physical Damage Insurance for all vehicles owned, leased or operated by the Contractor in connection with this Contract.

c) All Risk Property Insurance

The Contractor will maintain all risks insurance protecting the Contractor and the City against physical loss or damage to each Unit and all components thereof in an amount of not less than the full Contract price and which insurance will terminate only upon safe delivery to and acceptance by the City. The policy will name the City as additional insured and loss payee with respect to its interest and will contain a waiver of subrogation in favour of the City. The policy will contain a deductible of no more than five thousand (\$5,000) dollars for each and every claim.

20.9 Letter of Credit

- a) letter of credit (the "Letter of Credit") may be required under this Contract except where expressly deleted from the Requirements in the Notice of Award.



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- b) security for the performance of the Requirements, the Contractor may be required within seven (7) days of the City's issuance of a Notice of Award, deliver the Letter of Credit to the City.
- c) Letter of Credit must be a clean, unconditional irrevocable demand letter of credit, payable in the amount specified in the Notice of Award, and issued in favour of the City by a Schedule I or Schedule II Canadian chartered bank or such other bank previously approved in writing by the City's Director of Legal Services and issued in a form and on terms previously approved the City's Director of Legal Services.
- d) Letter of Credit must contain an automatic extension clause so that it remains valid from the Effective Date through to the expiry of the Minimum Warranty Period and may be drawn on by the City to reimburse the City for any losses or damages suffered by the City as the result of any breach of this Contract by the Contractor during the Minimum Warranty Period.
- e) Successful performance of the Contractor's obligations under this Contract for the Minimum Warranty Period, the City will return the Letter of Credit.

**21.0 WorkSafeBC Compliance**

- 21.1 Within seven (7) days of the Notice of Award, the Contractor must provide evidence that it is registered and in good standing with WorkSafeBC.
- 21.2 The Contractor agrees that it shall at its own expense procure and carry or cause to be procured and carried and paid for, full WorkSafeBC coverage for itself and all workers, employees, and others engaged in or upon any Work under this Contract.
- 21.3 The Contractor agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafe BC coverage against any money owing by the City to the Contractor. The City shall have the right to withhold payment under this Contract until the WorkSafe BC premiums, assessments or penalties in respect of work done or service performed in fulfilling this Contract had been paid in full.
- 21.4 The City now designates the Contractor as the Prime Contractor, and the Contractor now acknowledges and agrees to its designation as the Prime Contractor, in respect of all Work under this Contract for the purposes of the WorkSafeBC Rules.
- 21.5 The Contractor will indemnify the City and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to:

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- (i) unpaid WorkSafeBC assessments of the Contractor or any other employer for whom the Contractor is responsible under this Contract,
- (ii) the acts or omissions of any person engaged directly or indirectly by the Contractor in the performance of this Contract, or for whom the Contractor is liable pursuant to the Contractor's obligations as the Prime Contractor, and which acts or omissions are or are alleged by WorkSafeBC to constitute a breach of the WorkSafeBC Rules or other failure to observe safety rules, regulations and practices of WorkSafeBC, including any and all fines and penalties levied by the WorkSafeBC, or
- (iii) any breach of the Contractor's obligations under this General Condition.

## **22.0 Character of Workers**

22.1 On the written request of the City, the Contractor will remove any employee, Sub-contractor or agent for any reason including but not limited to the following:

- a) lack of or failure to obtain any required Security Clearance;
- b) intoxication;
- c) use of foul, profane, vulgar or obscene language or gestures;
- d) solicitation of gratuities or tips from any person for services performed under the Contract;
- e) wilful, negligent or reckless action in disregard of safety or sanitary requirements or regulations; or
- f) any action which may constitute a public nuisance or disorderly conduct.

22.2 The Contractor will immediately comply with each such request and will then provide the City with all requested documentation verifying that the employee, Sub-contractor or agent has been removed from further involvement with this Contract.

## **23.0 Unavoidable Delay**

23.1 Except for the performance of obligations to pay money, time periods for the City's and the Contractor's performance under this Contract will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. For the purposes of this section, an "Unavoidable Delay" means any circumstances beyond the reasonable control of the party trying to perform (such as, for example, strikes/lockouts, acts of God, war or other strike or governmental action) but expressly excludes any and all delays caused by the Contractor's lack of financial resources or insolvency, strikes, lockouts or labour affiliations of the Contractor's employees and Sub-contractors, or governmental action taken in the enforcement of law specifically against the Contractor.

## **24.0 Failure to Perform**

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- 24.1 Should the Contractor neglect to execute the Requirements properly or fail to perform any provision of the Contract, the City may, without prejudice to any other right or remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment due to the Contractor.
- 24.2 If the Contractor fails to perform any provision of this Contract, the City may upon ten (10) days' written notice to the Contractor terminate the Contract without prejudice to any other right or remedy the City may have, including without limitation and by way of example only, the remedies set out in Section 24.1 above as well as any and all remedies afforded by any security for performance issued by the Contractor under this Contract, such as a performance bond, letter of credit, or insurance, all of which will survive any such termination of the Contract.

**25.0 Dispute Resolution**

- 25.1 All claims, disputes or issues in dispute between the City and the Contractor shall be decided by mediation or 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.
- 25.2 In the event that the parties agree to arbitration pursuant to the above, 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.
- 25.3 In the event that the parties agree to arbitration, the arbitration shall take place in the Lower Mainland, British Columbia and be governed by the laws of British Columbia.
- 25.4 The procedure set out in this section is not meant to preclude or discourage informal resolution of disagreements between the City and the Contractor.

**26.0 Contract Price/Payment**

- 26.1 The Contract Price is fixed and may not be changed by either party except to the extent mutually agreed upon by both parties in writing pursuant to Section 10.0 - *Changes in Requirements*.
- 26.2 The Contractor shall be paid net thirty (30) days from receipt of invoice and acceptance of the goods, materials, equipment and or services, whichever is the later.

**27.0 Taxes**

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- 27.1 Unless otherwise provided herein, the City will pay the GST, PST and/or HST on the Contract Price to the Contractor, provided that any increase or decrease in such GST, PST and/or HST will proportionately increase or decrease the amount due under the Contract(s).
- 27.2 The Contract Price is deemed to be exclusive of GST, PST and HST. However, all other governmental taxes, levies, and fees, as well as all other costs relating to freight, handling, import duties, brokerage, royalties, handling, overhead, profit and any and all other costs are deemed to be included in the Contract Price.
- 27.3 Invoices must separately show the appropriate amounts for GST, PST and HST.

**28.0 Non-resident Withholding Tax**

- 28.1 The *Income Tax Act (Canada)* requires that payments to non-residents for any work performed in Canada may be subject to a non-resident withholding tax. Exemption from this withholding tax is available in some circumstances, but the Contractor must apply directly to the Canada Revenue Agency (CRA) at least 30 days before commencing the work and should seek the advice of a Canadian tax lawyer.
- 28.2 The City is legally required by the *Income Tax Act (Canada)* to withhold a specified amount from any payment to a non-resident (as defined in the Act) where no exemption certificate can be produced to the City by that non-resident. The amount of the withholding is determined by the residency of the non-resident and the applicable Income Tax Act Regulations.

**29.0 Failure to Enforce**

- 29.1 Any failure by the City to enforce or require the strict keeping and performance of any of the terms and conditions contained in this Contract will not constitute a waiver of such terms and conditions and will not affect or impair such terms and conditions in any way or the City's right at any time to avail itself of such remedies as the City may have for any breach or breaches of such terms and conditions.

**30.0 Successors and Assigns**

- 30.1 This Contract will benefit and bind each party and its successors and permitted assigns.

**31.0 No Promotion of Relationship**

- 31.1 The Contractor must not disclose or promote its relationship with the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the City (except as may be necessary for the Contractor to perform the Contractor's obligations under the terms of the Contract). The Contractor

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undertakes not to use "VANOC", "Vancouver 2010", any official emblem, logo or mascot of the City or of 2010 Games or any reference or means of promotion or publicity, without the express prior written consent of the City. Furthermore, the Contractor undertakes not to disclose or promote its relationship with the City in any communication or manner whatsoever as a basis to create an association, express or implied, between the Contractor and the IOC, the Olympics or the Olympic Movement.

**32.0 HARMONIZED SALES TAX ("HST") - PROVINCIAL SALES TAX ("PST") AND FEDERAL GOOD AND SERVICES TAX ("GST") HARMONIZATION**

32.1 The parties agree that the Contract Price presently includes all duties, sales and social service taxes, excise taxes, personal property taxes on products, materials, construction machinery and equipment and other property owned or leased by the Contractor, and any other taxes, assessments, charges applicable to or arising directly or indirectly out of the performance of the work under the Contract other than the GST. The Contractor shall be registered in accordance with applicable laws and shall comply with all requirements hereunder to collect and remit GST and HST (as presently announced by the federal and provincial government to be effective July 1, 2010 for British Columbia and Ontario) and to pay or remit any other such taxes, assessments or charges. For greater certainty, on the harmonization of the PST with the GST, or the replacement of the PST with a value-added tax similar to the GST, the Contractor will decrease the Contract Price to the same extent that the Contractor is no longer required to pay the PST included in the Contract Price and is instead paying a recoverable value-added tax (or HST). If requested by the Owner, the Contractor shall make available to the representatives or auditors of the Owner, all relevant accounting books, tax records, invoices and other documents for inspection and audit during normal business hours. Any refund, rebate or credit in respect of PST or other taxes, assessments or charges payable arising directly or indirectly out of the performance of work under the Contract shall be for the benefit of the Owner and the Contractor shall participate and cooperate, as required, in any filing or application process necessary to initiate or complete the intent of this provision. The Contractor shall provide the Owner, at the Owner's request, such documents and particulars relating to the performance of work under the Contract in respect of which GST or HST is required to be paid by the Owner that are necessary to substantiate any claim for any input tax credits as may be permitted pursuant to the Excise Tax Act (Canada) or other applicable laws. The Contractor represents and warrants that the Contractor is not a non-resident of Canada for the purposes of the Income Tax Act (Canada) and that the Contractor has complied fully with the provisions of all applicable tax legislation, including, the Social Service Tax Act (British Columbia). The Contractor shall be liable to the Owner for: (i) any non-compliance with any of the Contractor's obligations under this paragraph; and (ii) any costs, penalties, assessments or other charges incurred by or levied against the Owner by reason of the Contractor being or becoming a non-resident of Canada for the purposes of the Income Tax Act (Canada).

**INVITATION TO TENDER NO. PS10172**  
**SUPPLY AND DELIVERY OF IBM SOFTWARE SUBSCRIPTION AND RENEWAL**  
**PART C - SPECIAL CONDITIONS**

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**1.0 City's Option to Purchase Additional Units**

- 1.1 The Tenderer will be required to grant the City the Option (as defined below) and the City will then have the option to include or delete same from the Contract by indicating same in the Notice of Award.
- 1.2 The Contractor now irrevocably grants the City the option to purchase (the "Option") up to one (1) complete order of materials as per the requirements in section D.
- 1.3 The Option will expire if not exercised by the City within two (2) years of the Closing Time.
- 1.4 The Option must be exercised by delivery of written notice to the Contractor prior to its expiry.
- 1.5 For further certainty, the Option may be exercised in part or in whole or in any combination of materials, provided always that the City complies with Section 1.3 above.
- 1.6 Upon valid exercise of the Option, the City will have the right to purchase the additional materials specified in each Option notice at the same price and on the same terms and conditions as the first group of materials, except as follows:
  - a) The Contractor will deliver each additional group of materials within six (6) months of the City's exercise of the Option of those materials.
  - b) All other Requirements as to timing will be performed within the same period of time measured from the exercise of the Option as they were originally required as measured from the award of the Contract. So, for further certainty, and by way of example only, the delivery of the General Certificate of Insurance and Letter of Credit for the additional materials will occur within seven (7) days of Option exercise as opposed to award of Contract.

**2.0 City's Option to Acquire Optional Equipment/Warranty Coverage**

- 2.1 As set out in the Specifications and Part E - Tender Form - Section 3.0 "Schedule of Price and Quantities", the City has asked for separate prices, terms and conditions for certain options and warranty coverage.
- 2.2 Where the Tenderer has provided the requested pricing, terms and conditions for any given option and the City has elected to include same in the Contract, the City will do so by indicating same on the Notice of Award and the Tenderer will then be bound to supply the option on the terms and conditions of this Contract as modified by the pricing, terms and conditions set out in that Tenderer's Tender Form.

**INVITATION TO TENDER NO. PS10172  
SUPPLY AND DELIVERY OF IBM SOFTWARE SUBSCRIPTION AND RENEWAL  
PART C - SPECIAL CONDITIONS**

---

**3.0 Required Documentation**

3.1 The following documentation shall accompany each Unit at time of delivery. Failure to include all or some of the listed documents will delay the City's acceptance of the materials:

- a) Copy of the Contractor's invoice to the City for the materials;
- b) Packing slip, packing list, bill of lading or customer receipt that includes and itemized detail of the package contents which does not include pricing;
- c) British Columbia Motor Vehicle Branch form APV/9T - transfer tax form/statement of vehicle origin or equivalent document from originating jurisdiction if applicable;
- d) Customs documentation, if applicable; and
- e) All other documents required by the Specifications to be delivered concurrently with the materials.

The City of Vancouver address shown on the documentation should read the same as the Delivery Site address set out in Part B - General Conditions - Section 11.0 "Delivery".

INVITATION TO TENDER NO. PS10172  
SUPPLY AND DELIVERY OF IBM SOFTWARE SUBSCRIPTION AND RENEWAL  
PART D - REQUIREMENTS

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Intentionally Omitted



**INVITATION TO TENDER NO. PS10172  
SUPPLY AND DELIVERY OF IBM SOFTWARE SUBSCRIPTION AND RENEWAL  
PART E - TENDER FORM**

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Tenderer's Name: \_\_\_\_\_  
"Tenderer"

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Cheque Payable/Remit to Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Key Contact Person: \_\_\_\_\_ E-mail: \_\_\_\_\_

GST Registration No.: \_\_\_\_\_ Incorporation Date: \_\_\_\_\_

City of Vancouver Business License Number: \_\_\_\_\_  
*(If your office is located in Vancouver or N/A if not applicable)*

WorkSafeBC Account Number: \_\_\_\_\_

Dunn and Bradstreet Number: \_\_\_\_\_  
*( or N/A if not applicable)*

*Attach additional pages immediately behind this page for Sub-contractors, if applicable.*

To the City of Vancouver,

The undersigned Tenderer, having carefully read and examined the ITT including the Instructions to Tenderers, General Conditions, Special Conditions, Requirements, Specifications and all addenda and having full knowledge of the Requirements described herein, does offer to provide the goods, materials, equipment and/or services in accordance with the Specifications, terms and conditions set out in the ITT (except as noted herein) and in accordance with the pricing set out in the Tender form.

**INVITATION TO TENDER NO. PS10172  
SUPPLY AND DELIVERY OF IBM SOFTWARE SUBSCRIPTION AND RENEWAL  
PART E - TENDER FORM**

---

**Required Documents:**

Description	Reference	Required	Received
Bid Bond in the amount of ten percent (10%) of Total Tender Price	Part A Section 8.1	No	
Certificate of Existing Insurance	Appendix 1	Yes	

If the above documents do not accompany the Tender at the time of opening, the Tender is put aside and given no further consideration.

**To be Initialled at Tender Opening:**

\_\_\_\_\_  
Manager, Supply Management or designate

\_\_\_\_\_  
Witness

**INVITATION TO TENDER NO. PS10172  
SUPPLY AND DELIVERY OF IBM SOFTWARE SUBSCRIPTION AND RENEWAL  
PART E - TENDER FORM**

---

**1.0 Compliance**

- 1.1 By initialling each item, the Tenderer acknowledges it has read and understands the Requirements, has submitted the required addenda, has identified deviations or alternatives, and provided an explanation of where it does not comply with the Requirements.
- 1.2 With respect to Part A - Instructions to Tenderers - Section 9.1 "Declaration as to Conflict of Interest", the Tenderer now conclusively declares there are no such conflicts of interest unless the Tenderer deletes this note and describes any and all relationships which might give rise to a conflict of interest or an appearance of a conflict of interest in the space provided for same in the Table below (by indicating "Does Not Comply" and providing the details under the Column entitled "Variations, etc.").
- 1.3 With respect to Part A - Instructions to Tenderers - Section 9.2 "Declaration as to Collusion", the Tenderer now conclusively declares there has been no such collusion unless the Tenderer deletes this note and describes any and all affiliations or relationships that might give rise to collusion or an appearance of collusion in the spaces provided for same in the Table below (by indicating "Does Not Comply" and providing the details under the Column entitled "Variations, etc.").

Section Title	Understand, Will Comply	Does Not Comply	Variations, Alternatives or Explanation for Non-Compliance
<u>Part A (Except Sections 9.1 and 9.2)</u> Instructions to Tenderers			
<u>Part A - Section 9.1</u> Conflict of Interest (See Tender Form Section 1.2 above)			
<u>Part A - Section 9.2</u> Collusion (See Tender Form Section 1.3 above)			

**INVITATION TO TENDER NO. PS10172  
SUPPLY AND DELIVERY OF IBM SOFTWARE SUBSCRIPTION AND RENEWAL  
PART E - TENDER FORM**

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**2.0 References**

2.1 The following is a list of references for similar goods, materials, equipment and/or services supplied by the Tenderer to other clients. The Tenderer agrees that the City may contact these references at its discretion. In addition, the City may also contact any other organization for the purposes of evaluating the Tenderer's company and Tender.

Name and Address of Company	Contact Name and Telephone Number	Brief Description of Work and Date Performed

**INVITATION TO TENDER NO. PS10172  
SUPPLY AND DELIVERY OF IBM SOFTWARE SUBSCRIPTION AND RENEWAL  
PART E - TENDER FORM**

---

**3.0 Schedule of Price and Quantities:**

<b>Item Description</b>	<b>IBM Part Number</b>	<b>Quantity</b>	<b>Price</b>
IBM Lotus Domino Enterprise Server Processor Value Unit (PVU) Annual SW Subscription & Support Renewal	E020KLL	100	
IBM DB2 Enterprise Server Edition Processor Value Unit (PVU) Annual SW Subscription & Support Renewal	E020CLL	1,000	
IBM Tivoli Storage Manager for System Backup and Recovery 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029JLL	10	
IBM Tivoli Storage Manager Storage Area Networks 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ILL	50	
IBM Tivoli Storage Manager for Databases 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E028WLL	10	
IBM Tivoli Storage Manager Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ELL	1,800	
IBM Tivoli Storage Manager Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ELL	1,010	
IBM Tivoli Storage Manager Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ELL	220	
IBM Tivoli Storage Manager Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ELL	96	
IBM Tivoli Storage Manager Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ELL	120	
IBM Tivoli Storage Manager Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ELL	60	
IBM Tivoli Storage Manager Extended Edition Client Device Annual SW Subscription & Support Renewal	E00IALL	10	
IBM Lotus Domino Enterprise Client Access License Authorized User Annual SW Subscription & Support Renewal	E07UMLL	2	

**INVITATION TO TENDER NO. PS10172  
SUPPLY AND DELIVERY OF IBM SOFTWARE SUBSCRIPTION AND RENEWAL  
PART E - TENDER FORM**

---

4.0 Other - Intentionally Omitted

5.0 Sub-contractors

5.1 Sub-contractors to be used in the performance of the Contract are listed below. (If no Sub-contractors will be used, indicate "Not Applicable").

Company Name, Address	Contact Name	Telephone No.	Area of Responsibility

**INVITATION TO TENDER NO. PS10172  
SUPPLY AND DELIVERY OF IBM SOFTWARE SUBSCRIPTION AND RENEWAL  
PART E - TENDER FORM**

---

**6.0 Tenderer's Declaration**

The undersigned Tenderer confirms that it has read and agreed to the Requirements of this ITT and that any and all deviations have been clearly noted.

The Tenderer agrees that if this Tender is accepted within one hundred and twenty (120) calendar days from the Closing Time, the undersigned Tenderer agrees to supply the City of Vancouver with all or any part of the items upon which prices are stated, at the price set opposite each item and to deliver the same at the designated point or points within the time specified, and in accordance with the Requirements set out in this Tender.

\_\_\_\_\_  
Authorized Signatory for the Tenderer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title (*please print*)

INVITATION TO TENDER NO. PS10172  
SUPPLY AND DELIVERY OF IBM SOFTWARE SUBSCRIPTION AND RENEWAL  
PART E - TENDER FORM

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7.0 Acceptance of Tender

**ACCEPTANCE**

Date of Acceptance \_\_\_\_\_

The City hereby accepts the Tender for:

(a) the supply and delivery of the goods, materials, equipment and/or services [Insert "described herein" or "that portion of the goods, materials, equipment and/or services set out below: [List Here]"; and

(b) the Letter of Credit in the amount of [Insert "\$250,000", "\$500,000" or "NIL-DELETED" as applicable]

(c) the following Options: [Insert any and all other Tendered Options which City has elected to include here]

at the prices and on the Terms and Conditions set forth in the Tender:

City of Vancouver, by its authorized signatory:

\_\_\_\_\_





CERTIFICATE OF EXISTING INSURANCE TO BE COMPLETED AND SUBMITTED ALONG WITH PROPOSAL/TENDER

Section 2 through 8 – to be completed by the Insurer or its Authorized Representative

- 1. THIS CERTIFICATE IS ISSUED TO: City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4 And certifies that the insurance policy (policies) as listed herein has been issued to the Named Insured and is in full force and effect as of the effective date of the agreement described below.

NAMED INSURED (must be the same name as the proponent/bidder and is either an individual or a legally incorporated company)

BUSINESS TRADE NAME or DBA DOING BUSINESS AS

BUSINESS ADDRESS

DESCRIPTION OF OPERATION

- 3. PROPERTY INSURANCE (All Risks Coverage including Earthquake and Flood)

INSURER TYPE OF COVERAGE POLICY NUMBER POLICY PERIOD From to Insured Values (Replacement Cost) Building and Tenants Improvement Contents and Equipment Deductible Per Loss

- 4. COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)

Including the following extensions: Personal Injury Property Damage including Loss of Use Products and Completed Operations Cross Liability or Severability of Interest Employees as Additional Insureds Blanket Contractual Liability Non-Owned Auto Liability INSURER POLICY NUMBER POLICY PERIOD From to Limits of Liability (Bodily Injury and Property Damage Inclusive) - Per Occurrence Aggregate All Risk Tenant's Legal Liability Deductible Per Occurrence

- 5. AUTOMOBILE LIABILITY INSURANCE for operation of owned and/or leased vehicles with endorsement showing insurance coverage for use of demonstration vehicle by City personnel for evaluation and testing purposes prior to award as per Specification Item 1, Section D. Demonstration Unit.

INSURER POLICY NUMBER POLICY PERIOD From to Limits of Liability - Combined Single Limit If vehicles are insured by ICBC, complete and provide Form APV-47.

- 6. UMBRELLA OR EXCESS LIABILITY INSURANCE

INSURER POLICY NUMBER POLICY PERIOD From to Limits of Liability (Bodily Injury and Property Damage Inclusive) - Per Occurrence Aggregate Self-Insured Retention

- 7. PROFESSIONAL LIABILITY INSURANCE

INSURER POLICY NUMBER POLICY PERIOD From to Limits of Liability Per Occurrence/Claim Aggregate Deductible Per Occurrence/Claim

If the policy is in a "Claims Made Form", please specify the applicable Retroactive Date:

- 8. OTHER INSURANCE

TYPE OF INSURANCE INSURER POLICY NUMBER POLICY PERIOD From to Limits of Liability Per Occurrence Aggregate Deductible Per Loss

TYPE OF INSURANCE INSURER POLICY NUMBER POLICY PERIOD From to Limits of Liability Per Occurrence Aggregate Deductible Per Loss

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

Dated

PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER



CERTIFICATE OF INSURANCE
[To be completed and submitted by successful Tenderer upon Notice of Award in accordance with Part B – Section 20.0]

Section 8 b) – to be completed by City staff. Select # of days Written Notice is required.
Section 2 through 7 – to be completed by the Insurer or its Authorized Representative

1. THIS CERTIFICATE IS ISSUED TO: City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4

And certifies that the insurance policies as listed herein have been issued to the Named Insured(s) and are in full force and effect as of the effective date of the agreement described below.

2. NAMED INSURED: (must be the same name as the Permittee/Licensee or Party(ies) to Contract and is either an individual or a legally incorporated company)

MAILING ADDRESS:

LOCATION ADDRESS:

DESCRIPTION OF OPERATION, CONTRACT, AGREEMENT, LEASE, PERMIT OR LICENSE:

3. PROPERTY INSURANCE naming the City of Vancouver as a Named Insured and/or Loss Payee with respect to its interests (All Risks Coverage including Earthquake and Flood)

INSURER: TYPE OF COVERAGE: POLICY NUMBER: POLICY PERIOD: From to
INSURED VALUES: (Replacement Cost)
Building and Tenants Improvement: \$
Contents and Equipment: \$
Deductible Per Loss: \$

4. COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)

Including the following extensions:
Personal Injury
Products and Completed Operations
Cross Liability or Severability of Interest
Employees as Additional Insureds
Blanket Contractual Liability
Non-Owned Auto Liability
LIMITS OF LIABILITY: (Bodily Injury and Property Damage Inclusive)
Per Occurrence: \$
Aggregate: \$
All Risk Tenant's Legal Liability: \$
Deductible Per Occurrence: \$

5. AUTOMOBILE LIABILITY INSURANCE for operation of owned and/or leased vehicles

INSURER: POLICY NUMBER: POLICY PERIOD: From to
LIMITS OF LIABILITY:
Combined Single Limit: \$
If vehicles are insured by ICBC, complete and provide Form APV-47.

6. UMBRELLA OR EXCESS LIABILITY INSURANCE

INSURER: POLICY NUMBER: POLICY PERIOD: From to
LIMITS OF LIABILITY: (Bodily Injury and Property Damage Inclusive)
Per Occurrence: \$
Aggregate: \$
Self-Insured Retention: \$

7. OTHER INSURANCE (e.g. Boiler & Machinery, Business Interruption, Crime, etc.) – Please specify Name of Insurer(s), Policy Number, Policy Period, and Limit

8. POLICY PROVISIONS:

Where required by the governing contract, agreement, lease, permit or license, it is understood and agreed that:
a) The City of Vancouver, its officials, officers, employees, servants and agents have been added as Additional Insureds with respect to liability arising out of the operation of the Named Insured pursuant to the governing contract, agreement, lease, permit or license;
b) SIXTY (60) days written notice of cancellation or material change resulting in reduction of coverage with respect to any of the policies listed herein, either in part or in whole, will be given by the Insurer(s) to the Holder of this Certificate; the exception is cancellation for non-payment of premiums in which case the applicable statutory conditions will apply;
c) The insurance policy (policies) listed herein shall be primary with respect to all claims arising out of the operation of the Named Insured. Any insurance or self-insurance maintained by the City of Vancouver shall be in excess of this insurance and shall not contribute to it.

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

Dated:

PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER

**INVITATION TO TENDER NO. PS10172  
SUPPLY AND DELIVERY OF IBM SOFTWARE SUBSCRIPTION AND RENEWAL  
PART D - REQUIREMENTS**

---

**1.0 Detailed Equipment Specifications and Compliance Matrix**

Item Description	IBM Part Number	Quantity	Coverage Start Date	Coverage End Date	Comply Yes/No
IBM Lotus Domino Enterprise Server Processor Value Unit (PVU) Annual SW Subscription & Support Renewal	E020KLL	100	01-Aug-2010	31-Jul-2011	
IBM DB2 Enterprise Server Edition Processor Value Unit (PVU) Annual SW Subscription & Support Renewal	E020CLL	1,000	01-Aug-2010	31-Jul-2011	
IBM Tivoli Storage Manager for System Backup and Recovery 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029JLL	10	01-Aug-2010	31-Jul-2011	
IBM Tivoli Storage Manager Storage Area Networks 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ILL	50	01-Aug-2010	31-Jul-2011	
IBM Tivoli Storage Manager for Databases 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E028WLL	10	01-Aug-2010	31-Jul-2011	
IBM Tivoli Storage Manager Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ELL	1,800	01-Aug-2010	31-Jul-2011	
IBM Tivoli Storage Manager Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ELL	1,010	01-Nov-2010	31-Jul-2011	
IBM Tivoli Storage Manager Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ELL	220	01-Jan-2011	31-Jul-2011	
IBM Tivoli Storage Manager Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ELL	96	01-Feb-2011	31-Jul-2011	
IBM Tivoli Storage Manager Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ELL	120	01-Apr-2011	31-Jul-2011	
IBM Tivoli Storage Manager Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal	E029ELL	60	01-May-2011	31-Jul-2011	
IBM Tivoli Storage Manager Extended Edition Client Device Annual SW Subscription & Support Renewal	E00IALL	10	01-Aug-2010	31-Jul-2011	
IBM Lotus Domino Enterprise Client Access License Authorized User Annual SW Subscription & Support Renewal	E07UMLL	2	01-Aug-2010	31-Jul-2011	

**1.1 WARRANTY:**

Describe Warranty Coverage: \_\_\_\_\_

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**1.2 EXTENDED WARRANTY:**

Describe Extended Warranty Coverage: \_\_\_\_\_

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