

**THIS IS A SAMPLE ONLY**  
**JOC ONTARIO PROGRAM AGREEMENT**

**THIS AGREEMENT** is between **CANOE PROCUREMENT GROUP OF CANADA** a tradename of the Rural Municipalities of Alberta, a corporation incorporated pursuant to the laws of Alberta ("**Canoe**") and:

Contractor Legal Name: \_\_\_\_\_

Contractor Corporate Jurisdiction: \_\_\_\_\_

(the "**Contractor**"), as of

Date of Agreement: January 15, 2024 \_\_\_\_\_ regarding

RFP No. CAN-2024-019

RFP Title Contractors for Job Order Contracting - Ontario \_\_\_\_\_  
(the "**RFP**").

**BACKGROUND**

- A. Canoe is a public agency serving as a national contracting agency for its Members, and in that capacity issued the RFP for the purchase of Work.
- B. The Contractor is engaged in the business of providing Work, and responded to the RFP.
- C. Canoe wishes to enter into an agreement with the Contractor for the purchase of Work by Members, pursuant to a Job Order Contract program.
- D. Canoe has retained Gordian to act as a Contract administrator to administer the Job Order Contract program.
- E. The Parties wish to set out the terms and conditions upon which purchases of Work will occur, and under which the Job Order Contract program will be administered.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants herein contained and of other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each Party), the Parties hereby agree as follows:

*Remainder of page intentionally left blank*

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Agreement the following terms have the corresponding meanings.

**"Agreement"** means this Services Agreement and all schedules attached hereto, as the same may be supplemented, amended, restated or replaced from time to time in writing in accordance with its terms.

**"Business Day"** and **"Normal Working Hours"** means Monday to Friday between the hours of 8:00 a.m. to 5:00 p.m. ET, except when such a day is a statutory holiday, or as otherwise agreed to by the parties in writing.

**"Confidential Information"** means all tangible and intangible information and materials, in any form or medium, received (directly or indirectly) by the Receiving Party from the Disclosing Party, or collected by the Receiving Party on behalf of the Disclosing Party, in connection with the Agreement that is:

- (a) related to the Disclosing Party's, or any of its affiliates', finances, assets, pricing, purchases, products, sales, business or operational plans, strategies, forecasts or forecast assumptions, operations, stakeholders, clients and personnel (including, without limitation, the Personal Information of officers, directors, employees, agents and other individuals), trade secrets, intellectual property, technology, data or other information that reveal the research, technology, processes, methodologies, know how, or other systems or controls by which the Disclosing Party's existing or future products, services, applications and methods of operations or doing business are developed, conducted or operated, and all information or materials derived therefrom or based thereon;
- (b) designated as confidential in writing by the Disclosing Party, whether by letter or an appropriate stamp or legend, prior to or at the time such information is disclosed by the Disclosing Party to the Receiving Party; and/or
- (c) apparent to a reasonable person, familiar with the Disclosing Party's operations, business and the sector in which it operates, to be of a confidential nature.

and without regard to whether that information and materials are owned by a Party or by a third party. Confidential Information does not include:

- (d) information that is in the public domain or has come into the public domain other than by reason of a breach of this Agreement;
- (e) was already known by or in the possession of the Receiving Party prior to being disclosed by or on behalf of the Disclosing Party pursuant to this Agreement; or
- (f) is or becomes available to the Receiving Party from a source other than the Disclosing Party or its

representatives, provided that such source was not and is not bound by a confidentiality agreement regarding the Disclosing Party or its affiliates, or otherwise prohibited from disclosing such information by a legal, contractual or fiduciary obligation.

**"Confidential Material"** means any notes or other documents relating to the Confidential Information.

**"Conflict of Interest"** means any situation or circumstance where, in relation to the performance of its obligations under the Agreement, the Contractor (including its directors, officers, employees, agents or subcontractors) other commitments, relationships or financial interests that (i) exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or (ii) compromise, impair, or be incompatible with the effective performance of its obligations under the Agreement.

**"Construction Task Catalog" ("CTC")** Means Gordian's proprietary comprehensive listing of specific construction-related tasks created and customized for the solicitation under which this Contract was awarded. Each task has an assigned specific unit of measurement and Unit Price using current local labor, material, and equipment costs. The CTC is incorporated by reference into this Contract.

**"Days"** means Calendar days, unless specifically stated otherwise.

**"Detailed Scope of Work"** means a document created by the Member, in conjunction with the Gordian and the Contractor, following a Joint Scope Meeting that details the work the Contractor will perform for a particular Purchase Order.

**"Disclosing Party"** means, in connection with particular Confidential Information, the Party that disclosed (directly or indirectly) the Confidential Information to the other Party, or the Party on whose behalf the other Party collected or generated the Confidential Information.

**"Effective Date"** means the date of this Agreement first noted above.

**"Event of Force Majeure"** means any cause beyond the reasonable control of a Party, including any act of God, outbreak, or epidemic of any kind, communicable and virulent disease, strike, flood, fire, embargo, boycott, act of terrorism, insurrection, war, explosion, civil disturbance, shortage of gas, fuel or electricity, interruption of transportation, governmental order, unavoidable accident, or shortage of labour or raw materials.

**"Deliverables"** means the services identified in Schedule A, B and C and any subsequent Purchase Orders agreed to by the Contractor and member(s).

**"The Gordian Group, Inc." ("Gordian")** means Canoe's designated representative and contract administrator for this Contract. Gordian's support includes preparing Construct Task Catalogs and related technical specifications, providing information management systems, training to contractors, administering fee collection, and assisting with proposal or work order development.

**"Governmental Authority"** means any government, regulatory authority, commission, bureau, official, minister, court, board, tribunal, or dispute settlement panel or other law, rule, or regulation-making

organization or entity having or purporting to have jurisdiction to exercise any administrative, executive, judicial, legislative, policy, regulatory, or taxing authority or power.

**"Joint Scope Meeting"** Means the Contractor, Member representative, and Gordian representative assemble at the Site to discuss the Project and Scope of Work. The Member will present the Project in detail, with a job site visit by the Contractor, prior to preparing and submitting a Detailed Scope of Work.

**"Member"** means any current and future members of Canoe during the Term, and any Canoe-represented associations and their current and future members during the Term. Canoe may also be considered a Member in its capacity as a purchaser of Deliverables. In addition, to be a Member for the purposes of this Agreement, the Member must operate within the Region during the Term. See <https://canoeprocurement.ca/canoe-current-future-members/> for a general list of Members.

**"Participating Addendum"** means a legal agreement that establishes specific terms, conditions, and responsibilities applicable to a Member's purchases, while adhering to the overarching Program Agreement negotiated by Canoe.

**"Parties"** means both Canoe and Contractor collectively, and **"Party"** means either one of them.

**"Person"** shall be broadly interpreted and includes any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, corporation, with or without share capital, unincorporated association, trust, trustee, or other legal representative, Governmental Authority and any entity recognized by law.

**"Personal Information"** has the meaning ascribed to it in FOIPPA.

**"Pricing"** means the pricing as outlined in the Proposal, excerpts attached hereto in Schedule B.

**"Project"** means the work to be accomplished by the Contractor in satisfaction of a requirement or group of related requirements pursuant to one or more Purchase Orders.

**"Project Manager"** means the person or firm designated by a Member and authorized to represent the Member in connection with a signed Purchase Order.

**"Proposal"** means the proposal by the Contractor, attached hereto in Schedule B.

**"Purchase Order"** Means the document establishing the engagement by the Member to the Contractor to complete a Detailed Scope of Work for the Purchase Order Price within the Purchase Order Completion Time. In addition to adopting the terms of this Agreement, the Purchase Order may consist of a notice to proceed, signed work order, or other Member required documentation.

**"Region"** means for the purposes of this Agreement refers to the territories referred to in Schedule F.

**"Receiving Party"** means, in connection with particular Confidential Information, the Party that received (directly or indirectly) the Confidential Information from the other Party, or the Party that collected or generated the Confidential Information on behalf of the other Party.

**"Site"** means the area upon or in which the Contractor performs the Detailed Scope of Work and such other areas adjacent thereto as may be designated by the Member.

**"Subcontractor"** means any person, firm, or corporation, other than employees of the Contractor, that contracts with the Contractor or its subcontractors to furnish, or actually furnishes labor, or labor and materials, or labor and equipment, at the Site. The term "Subcontractor" is referred to throughout the Agreement as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

**"Term"** means the term of this Agreement, as set out in Section 1.2.

**"Unit Price"** means the price published in the Construction Task Catalog for a task.

**"Work"** means the labor, material, equipment, and services necessary to the completion of Purchase Order(s).

## **1.2 Term**

This Agreement comes into effect on the Effective Date and shall continue in force for a period of three (3) years until January 31, 2028, unless terminated in accordance with its provisions. That initial term may be extended once by a further period of 2 years between Canoe and the Contractor by mutual agreement of the Parties in writing.

## **1.3 Rules of Interpretation**

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning.

- (a) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine and feminine includes the other gender.
- (b) References containing terms such as "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- (c) The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (d) "Hereof", "hereto" and "hereunder" and similar expressions mean and refer to this Agreement and not to any particular section or paragraph. References herein to "Article", "Section", or "Schedule" refer to the applicable article, section or schedule of this Agreement.
- (e) If any action is required to be taken pursuant to this Agreement on or by a specified date which is not a Business Day, then such action shall be valid if taken on or by the next succeeding Business Day.

## **1.4 Schedules**

The following Schedules are incorporated by reference into and form part of this Agreement:

Schedule A	RFP Particulars
Schedule B	Proposal
Schedule C	Procedure for Ordering Work
Schedule D	Licensing Agreement
Schedule E	Regions and Awards
Schedule F	Administrative fee

## **1.5 Order of Priority**

In the event of any conflict or inconsistency between any of the Articles of this Agreement and the Schedules to this Agreement, that conflict or inconsistency shall be resolved in the following (descending) order of priority:

- (a) Members Purchase Order which may include plans, drawings, and supplemental technical terms and conditions
- (b) Standard Specifications of the Member, if any
- (c) Article 1 to Article 10 of this Agreement;
- (d) Schedule A (RFP Particulars);
- (e) Schedule B (Proposal);
- (f) Schedule C (Procedure for Ordering Work)
- (g) Schedule D (Licensing Agreement)
- (h) Schedule E (Regions and Awards)
- (i) Schedule F (Administrative Fee);

provided that Schedule A will supersede Article 1 to Article 10 of this Agreement if it expressly references the specific section or Article of this Agreement that it intends to supersede.

## **ARTICLE 2 PROGRAM ADMINISTRATION**

### **2.1 Job Order Contract Program Details**

- (a) A Job Order Contract (JOC) is an indefinite quantity contract pursuant to which the Contractor may perform one or more individual Projects for Canoe Members at the Members' request.
- (b) Members within the Region shall have access to the benefits of this Agreement, but are required to enter into a separate Purchase Order directly with the Contractor that may contain additional terms and conditions. Members may also require Contractors to enter into a Participating Addendum to supplement Canoe's Program Agreement. The terms of that Purchase Order will contain the Detailed Scope of Work. Any additional terms and conditions in the Purchase Order or Participating Addendum cannot be less favorable to the Member than those in this Agreement, nor shall they conflict with any provision of this Agreement.
- (c) Canoe has designated Gordian to administer this Agreement on its behalf and coordinate with the Contractor as well as Members for the fulfillment of the Deliverables.
- (d) The Parties agree that the Contractor is an independent Contractor and is not the agent or partner of Canoe. Nothing contained in this Agreement shall create or be deemed to create the relationship of joint venture, partnership, or agency between the Parties. Neither Party shall represent itself as the joint venturer, partner or agent of the other. The Contractor has no authority to bind Canoe, and will not represent itself as having that authority.

## **2.2 Responsibilities of the Contractor**

- (a) **General**
  - (i) The Contractor shall provide the Deliverables described in Schedules "A, B and C" as set out in this Agreement.
  - (ii) The Contractor will maintain the insurance required under Section 10.2 at all times during the Term.
  - (iii) The Contractor will perform its obligations in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession performing similar work in similar circumstances or, where the services are not professional in nature, in a good skillful and proficient manner.
  - (iv) Comply with all Canoe rules, regulations, policies, and procedures of which it has been made aware, including, but not limited to, the policies set forth in Schedule A, in its provision of the Services.
  - (v) Comply with all applicable laws, rules, codes, regulations, ordinances, and other legal and governmental requirements of any local, provincial, territorial, federal, or international jurisdiction in providing the work including any applicable licensing, permits and certifications required by law to complete the services.
  - (vi) The Contractor will take reasonable steps to safeguard Canoe's Information from damage and unauthorized access.

- (vii) The Contractor will provide the Project Manager access to the work at all times.

**(b) Coordination with Sub/Contractors**

- (i) The Contractor, as soon as practicable after award of the Purchase Order, will furnish in writing to the Project Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each portion of the work. The Project Manager will promptly reply to the Contractor in writing stating whether or not, after due investigation, the Contractor has reasonable objection to any such proposed person or entity. Failure of the Project Manager to reply promptly will constitute notice of no reasonable objection.
- (ii) The Contractor will not subcontract with a proposed person or entity with whom the Member or Project Manager has made reasonable and timely objection. Similarly, the Contractor will not be required to subcontract with anyone with whom the Contractor has made reasonable objection.
- (iii) If the Member or Project Manager has reasonable objection to a subcontractor proposed by the Contractor, the Contractor will propose another to whom the Member or Project Manager has no reasonable objection.
- (iv) The Member reserves the right to perform construction or operations related to the Purchase Order with the Member's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site.
- (v) The Member will provide for coordination of the activities of the Member's own forces and of each separate contractor with the work of the Contractor, who will cooperate with them. The Contractor will participate with other separate contractors and the Member in reviewing their construction schedules when directed to do so. The Contractor will make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules will then constitute the schedules to be used by the Contractor, separate contractors, and the Member until subsequently revised.

**(c) Public Facilities, Identification, and Security Requirements**

- (i) The Contractor's employees may be required to perform work at government-owned facilities, including schools. The Contractor's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with the applicable Member's policies and procedures, and all applicable laws. The Contractor will comply with all identification and security requirements that the Member may establish.
- (ii) In the event the Contractor is required to work within a secured facility where labor, material, and equipment must be inspected to pass through a secured perimeter, and all



work must be constantly monitored by facility personnel (such as a department of corrections prison) the Contractor will be paid for the labor time lost as a result of such perimeter inspection, as well as any loss of time resulting from a temporary shutdown of the work site required by the facility (such as a temporary shutdown to move prisoners).

### **2.3 Responsibilities of Canoe**

- (a) Canoe, through Gordian, will facilitate and administer the financial and payment aspects of the Program as outlined in this Agreement – including all the Schedules.
- (b) Canoe, through Gordian, will act as a liaison between the Contractor and the Members, to help facilitate the creation and discharge of any Purchase Orders as described in this Agreement.

### **2.4 No Guaranteed Volumes**

Canoe makes no guarantee of the value or volume of Purchase Orders for Deliverables over the course of the contract term.

### **2.5 Conflict of Interest**

- (a) The Contractor shall promptly disclose to Canoe the existence of any actual or reasonably suspected Conflict of Interest in connection with performance of Services and this Agreement. The Parties shall cooperate in determining whether a Conflict of Interest exists and how it will be addressed or avoided, provided that if the Conflict of Interest cannot be resolved to Canoe's satisfaction, acting reasonably, Canoe may deem the Conflict of Interest to be a material breach of this Agreement by the Contractor.
- (b) The Contractor shall take reasonable measures to ensure that its directors, officers, employees, agents, or subcontractors involved in the provision of Deliverables promptly disclose to it any actual or reasonably suspected Conflict of Interest in connection with this agreement.
- (c) The Contractor agrees not to enter into any contract or other commitment with any person during the term of the Agreement that would cause a Conflict of Interest in connection with the Deliverables.

### **2.6 Marketing**

The Contractor must adhere to the following when preparing marketing materials and web sites, and in the use of trademarks and service marks:

- (a) The Contractor will include the Canoe logo and website address on all marketing materials and web sites that mention this Contract or have any relation to this Contract.
- (b) The Contractor will include Gordian's logo, and website address ([www.Gordian.com](http://www.Gordian.com)) on all marketing materials and web sites that mention this Contract.

- (c) The Contractor is authorized to use Canoe's and Gordian's names, logos, trademarks, service marks and other provided materials solely for the presentation and promotion of the availability and use of this Contract to Members.
- (d) All publicity and marketing materials must be coordinated with and approved by Canoe.
- (e) The Contractor must not claim that Canoe or Gordian endorses its work or services.

The Contractor must avoid all conflicts of interest with the promotion of this Contract to any Member.

### **ARTICLE 3 REPORTING AND FINANCIAL MATTERS**

#### **3.1 Contract Activity Report**

The Contractor must report contract activity within eGordian and complete all required fields. The Report must contain the following fields related to Purchase Orders received from Members:

- A. Member Name;
  - B. Member's Complete Address;
  - C. Canoe Assigned Member Number;
  - D. Brief Description of the work;
  - E. Transaction Date;
  - F. Total Sales Amount; and
  - G. Applicable Canoe Contract Number.
- (a) The Contractor shall keep Gordian reasonably informed of the construction status of each active construction project, which shall include responding to Gordian inquiries regarding construction status within 5 days. Additionally, the Contractor shall:
    - (i) Within two business days of receipt of a Purchase Order from a Member, the Contractor must provide notification to Gordian by forwarding a copy of the Purchase Order to Gordian.
    - (ii) Within two business days of receiving initial payment from an Member, the Contractor must provide notification to Gordian of the initial payment by forwarding a copy of the submitted invoice to Gordian.
  - (b) In order to audit this section, Canoe or Gordian may request records from the Contractor for all work performed under this Contract. If a discrepancy exists between the actual activity and the Administrative Fees paid, Gordian will provide written notification to the Contractor of the discrepancy and allow the Contractor 10 days from the date of notification to resolve the discrepancy. In the event the Contractor does not resolve the discrepancy to the satisfaction of

Canoe or Gordian, Canoe or Gordian reserve the right to engage a third party to conduct an independent audit of the Contractor's records. In the event the Contractor is found not to be in compliance with this Contract, the Contractor will reimburse Canoe or Gordian for the cost and expense related to such audit.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

### **4.1 Representations by Each Party**

Each Party represents and warrants to the other that:

- (a) it has the authority to enter into this Agreement and carry out its obligations hereunder, and doing so will not result in a violation by it of any law or any rule, judgment, order, decree or similar act of any Governmental Authority;
- (b) this Agreement has been duly executed by it; and
- (c) it has not granted and shall not grant any rights or licenses and has not entered into and shall not enter into any agreement, either written or oral, that would conflict with this Agreement.

### **4.2 Representations by the Contractor**

Contractor represents and warrants that:

- (a) it is properly qualified, licensed, equipped, and financed to provide the Deliverables and perform its obligations under this Agreement;
- (b) its representatives, agents, employees that are involved in the delivery of the Deliverables are properly qualified, licensed and equipped for such purposes;
- (c) it shall comply with all applicable standards and requirements referred to in this Agreement or as may be required by law;
- (d) all of its obligations will be carried out by qualified personnel and all work will be performed in a professional manner;
- (e) it is not aware of any proceeding in progress or pending or threatened that might be expected to have a materially adverse effect on the Deliverables or impact its ability to meet its obligations under this Agreement; and
- (f) after due inquiry, it is not aware of any circumstances which do or might cause a Conflict of Interest in respect of its provision of the Deliverables.

## **ARTICLE 5**

### **CONFIDENTIAL INFORMATION**

#### **5.1 Use and Non-Disclosure of Confidential Information**

The Receiving Party agrees not to:

- (a) use Confidential Information for any purpose except to carry out the Deliverables; or
- (b) grant access or disclose Confidential Information to any person except to those agents, directors, officers, employees and contractors of the Receiving Party who are required to have access to the information in order to carry out the Deliverables, and who are bound by obligations to protect the Confidential Information that are substantially similar to those set out in this Agreement (provided that the Receiving Party remains liable for any breach of confidence cause by such persons).

#### **5.2 Protection**

The Receiving Party agrees that it will take all reasonable measures to protect the Confidential Information from loss, theft or any use or disclosure not permitted under this Agreement, which measures shall include:

- (a) taking reasonable measures to ensure that only those agents, directors, officers, employees and contractors of the Receiving Party who are required to have access to the Confidential Information in order to carry out the Deliverables have access to such limited Confidential Information as may be necessary for their duties; and
- (b) taking the highest degree of care that the Receiving Party utilizes to protect its own Confidential Information of a similar nature, but no less than a reasonable degree of care, given the nature of the Confidential Information.

#### **5.3 Mandatory Disclosure**

Notwithstanding Section 5.2(b), the Disclosing Party acknowledges and agrees that the Receiving Party may be required by law or a Governmental Authority to disclose Confidential Information. If the Receiving Party believes that the disclosure of Confidential Information is or is about to be required by law or Governmental Authority, it will notify the Disclosing Party of the circumstances and scope of the disclosure – with an oral notice provided as soon as reasonably possible and as much in advance of the impending disclosure as possible, and such oral notice confirmed in writing promptly thereafter – and will provide reasonable assistance in resisting such disclosure.

#### **5.4 Notice of Unauthorized Use or Disclosure**

The Receiving Party agrees to notify the Disclosing Party of any actual or reasonably suspected loss, theft or unauthorized use or disclosure of Confidential Information that may come to its attention – with an oral notice provided immediately and confirmed in writing promptly thereafter.

#### **5.5 No Proprietary Right**

The Receiving Party agrees that it acquires no right, title or interest to the Confidential Information, except a limited right to use that Confidential Information in connection with the Deliverables. All Confidential Information shall remain the property of the Disclosing Party (to the extent possible) and no licence or other right, title or interest in the Confidential Information is granted hereby.

#### **5.6 Return / Non-Use of Confidential Information and Other Related Materials**

On receipt of a written demand from the Disclosing Party, the Receiving Party shall immediately return or securely destroy, at its election, all Confidential Information, including any related Confidential Material and, if applicable, provide a written certificate to the Disclosing Party certifying the destruction of such Confidential Information and Confidential Material. This Section 5.6 shall not apply to routinely made back-up copies of Confidential Information in electronic form, or to archival copies required to be retained under the applicable law, provided that the Receiving Party shall comply with this Agreement in respect of such copies.

### **ARTICLE 6 INDEMNITY AND LIABILITY**

#### **6.1 Liability for Representatives**

Each Party shall be responsible for any breach of this Agreement by its agents, directors, officers, employees and contractors – provided that Canoe and Gordian shall not be responsible for the decisions, actions or omissions of any Member, and/or insured.

#### **6.2 Indemnity**

- (a) Subject to the limitation of liability set out in Section 6.3 (and in the case of Canoe, subject to Section 6.1), each Party (an "**Indemnifying Party**") shall indemnify, defend (at its expense) and hold the other Party (the "**Indemnified Party**") and its directors, officers, employees, contractors and agents (collectively, the "**Indemnitees**") harmless in respect of any action, claim, demand, cost, charge, losses, and expenses (including legal costs on a substantial indemnity basis), whether or not well-founded, ("**Losses**") brought against or suffered by the Indemnitees arising out of or related to:
  - (i) claims for bodily injury, including death, and claims asserted by third parties for bodily injury, including death;

- (ii) claims for loss or damage to tangible property, and claims asserted by third parties for loss or damage to tangible property; or
- (iii) any breach of the Indemnifying Party's obligations, representations or warranties in the Agreement;

except to the extent that such Losses were not caused by the Indemnifying Party or any person for whom it was responsible. The foregoing indemnity shall be conditional upon the Indemnified Party notifying the Indemnifying Party as soon as is reasonably practicable in the circumstances of any Losses in respect of which this indemnity may apply and of which the Indemnified Party has knowledge, and the Indemnatee cooperating with the Indemnifying Party in the defence of any such claim or action. No such claim or action shall be settled or compromised by the Indemnifying Party without the Indemnified Party's prior written consent.

- (b) The indemnity obligations hereunder will be enforceable without right of set-off or counterclaim as against the Indemnatee. The Indemnifying Party will, upon payment of an indemnity in full under this Agreement, be subrogated to all rights of the Indemnatee with respect to the claims and defences to which such indemnification relates.

### **6.3 Limitation of Liability**

In no event shall either party, its affiliates or any of their respective directors, officers, employees, agents, or subcontractors, be liable to the other party for any claim for punitive, exemplary, aggravated, indirect, consequential or special damages in connection with this agreement, including without limitation damages for loss of profits or revenue, or failure to realize expected savings, howsoever derived.

### **6.4 Equitable Relief**

Each Party acknowledges and agrees that, in the event of any breach or anticipated breach of the provisions of this Agreement relating to Confidential Information or privacy, damages alone would not be an adequate remedy, and agree that the non-breaching Party shall be entitled to equitable relief in respect of that breach, such as an injunction, in addition to or in lieu of damages and without being required to prove that it has suffered or is likely to suffer damages.

## **ARTICLE 7 TERMINATION**

### **7.1 Termination by Either Party**

A Party may, without liability, cost or penalty, terminate the Agreement on written notice to the other where such other Party fails to perform or observe any material term or obligation of the Agreement and such failure has not been cured within fifteen (15) days of written notice of such failure being provided to that Party.

## **7.2 Termination by Canoe**

Canoe shall be entitled to terminate the Agreement, in whole or in part, without liability, cost, or penalty:

- (a) at any time without cause, and without liability except for required payment for services rendered, and reimbursement for authorized expenses incurred, prior to the termination date, by providing at least sixty (60) days notice to the Contractor.
- (b) on written notice to the Contractor where the Contractor: (i) commits an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or equivalent legislation; (ii) makes any general assignment for the benefit of creditors or otherwise enters into any composition or arrangement with its creditors; (iii) has a receiver and/or manager appointed over its assets or makes an application to do so; (iv) has a resolution or a petition filed or an order made for its winding up; or (v) ceases to carry on business;
- (c) on 30 days' written notice to the Contractor, following the occurrence of any material change in Canoe's requirements which results from regulatory or funding changes or recommendations issued by any Governmental Authority; or
- (d) on written notice to the Contractor if the Contractor breaches in any material respect any of its obligations or covenants hereunder with respect to Confidential Information or privacy.

## **7.3 Termination by Contractor**

Contractor shall be entitled to terminate the Agreement, without liability, cost, or penalty:

- (a) at any time without cause, and without liability except for required payment for services rendered, and reimbursement for authorized expenses incurred, prior to the termination date, by providing at least sixty (60) days notice to the Contractor.
- (b) on written notice to Canoe where Canoe: (i) commits an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or equivalent legislation; (ii) makes any general assignment for the benefit of creditors or otherwise enters into any composition or arrangement with its creditors; (iii) has a receiver and/or manager appointed over its assets or makes an application to do so (iv) has a resolution or a petition filed or an order made for its winding up; or (v) ceases to carry on business or operations; or
- (c) on written notice to Canoe if Canoe breaches in any material respect any of its obligations or covenants hereunder with respect to Confidential Information or privacy.

## **7.4 Orderly Termination**

In the event of termination or expiry of the Agreement, each Party shall cooperate to effect an orderly wind-up of the Deliverables. Within thirty (30) days of termination or expiry, each Party shall pay to the other any amounts owed to that other Party under this Agreement.

## **7.5 No Limitation of Remedies**

Any termination of the Agreement shall not limit any Party's rights or remedies either in law or in equity.

## **7.6 Survival**

In addition to any other provision dealing with the survival of obligations hereunder, all of the obligations regarding Confidential Information, privacy, indemnifications, disclaimers and limitations on liability set out in this Agreement shall survive the expiry or termination of this Agreement, as shall all any other provisions which, by their nature, ought reasonably to survive expiry or termination.

## **ARTICLE 8 FORCE MAJEURE**

### **8.1 General**

Except as expressly provided otherwise in the Agreement, dates and times by which a Party is required to render performance under this Agreement shall be postponed to the extent and for the period of time that such Party is prevented from meeting such dates and times by an Event of Force Majeure.

### **8.2 Notice and Performance**

Where an Event of Force Majeure occurs, the Party that is delayed or fails to perform shall give prompt notice to the other Party and shall use reasonable efforts to render performance in a timely manner.

### **8.3 Right to Terminate**

In the event that a Party's inability to perform due to an Event of Force Majeure continues for longer than forty-five (45) days, the Party that received (or which was entitled to receive) notice pursuant to this Article may terminate this Agreement by written notice to the other Party without further liability, expense, or cost of any kind.

## **ARTICLE 9 DISPUTE RESOLUTION**

### **9.2 General**

- (a) Subject to Section 6.4, in the event of any dispute concerning this Agreement, the Parties agree to address the dispute through arbitration. Before pursuing arbitration, the Parties shall have first escalated the dispute to the highest level of management within their respective organization and given at least seven (7) days for resolution of the matter by such persons. Subject to the provisions of the Agreement, each Party shall continue performing its obligations during the resolution of any dispute, including payment of undisputed amounts then due.
- (b) This Article 9 shall not:



- (i) apply to claims by third parties; or
- (ii) prevent either Party from seeking an injunction or other equitable relief pursuant to Section 7.4.

### **9.3 Election**

If elected by a Party, any breach or claim arising out of or relating to this Agreement or the breach thereof, may be settled by arbitration in accordance with the *Arbitration Act*, R.S.A. 2000, Chapter A-43 and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

### **9.4 Arbitration Site and Arbitrator**

The arbitration shall be held at the City of Edmonton or at such other site mutually determined by the Parties. Where the Parties are unable to agree upon an arbitrator who is willing to serve within seven (7) days of receipt of a demand to arbitrate by a Party, then either Party may apply to the Court of Queen's Bench for the appointment of an arbitrator willing to serve.

### **9.5 Procedure**

The arbitrator shall determine the procedure for the arbitration. Such procedure shall include at least one opportunity for written submissions by or on behalf of each Party and may include proceedings by way of exchange of oral argument, hearings with or without witnesses, and such other procedures as the arbitrator deems appropriate. The arbitrator shall have no power to amend the provisions of the Agreement. The proceedings shall be confidential, and the arbitrator shall issue appropriate protective orders to safeguard both Parties' Confidential Information. The arbitrator shall have the right, but not the obligation, to order that the unsuccessful Party pay the fees of the arbitrator, which shall be designated by the arbitrator. If the arbitrator is unable to designate an unsuccessful Party or does not order the unsuccessful Party to pay all such fees, the arbitrator shall so state, and the fees shall be split equally between the Parties.

## **ARTICLE 10 GENERAL**

### **10.1 Notices**

Any notice, demand or other communication to be given or made under this Agreement (a "**Notice**") shall be in writing and shall be sufficiently given or made if:

- (a) delivered in person (including by commercial courier) during a Business Day and left with a receptionist or other responsible employee of the relevant Party at the applicable address set forth below;

- (b) sent by registered mail to the applicable address set forth below; or
- (c) sent by any electronic means of sending messages which produces a paper record (an "**Electronic Transmission**") on a Business Day charges prepaid.

The Parties respective addresses and contact persons are set out in 10.2. Each Notice sent in accordance with this Section shall be deemed to have been received:

- (i) if delivered in person, on the day it was delivered;
- (ii) on the third Business Day after it was mailed (excluding each Business Day during which there existed any general or rotating interruption of postal services due to strike, lockout or other cause); or
- (iii) on the first Business Day after it was sent by Electronic Transmission.

The Parties may change their address for Notice by giving Notice to the other in accordance with this Section.

## 10.2 Contact Information for Notices

Any Notice to Canoe shall be addressed to:

CANOE PROCUREMENT GROUP OF CANADA  
2510 Sparrow Drive  
Nisku, Alberta T9E 8N5

Attention: Tyler Hannemann, General Manager of Canoe  
Tel: 780.955.8403  
Email: [Tyler@canoeprocurement.ca](mailto:Tyler@canoeprocurement.ca)

Any Notice to the Supplier shall be addressed to:

CONTRACTOR NAME  
CONTRACTOR ADDRESS

Attention: >>>>  
Tel: >>>>  
Email: >>>>>

## 10.3 Insurance Requirements

The Contractor shall maintain for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to its Services, including commercial general liability

insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than \$5,000,000 per occurrence. The policy shall include the following:

- (a) the Indemnitees as additional insureds with respect to liability arising in the course of performance of the Contractor's obligations under, or otherwise in connection with, the Agreement or the performance of the Contractor (or its representatives, agents, dealers and distributors) of the Deliverables;
- (b) a cross-liability clause;
- (c) contractual liability coverage; and
- (d) a 30-day written notice of cancellation, termination, or material change.

The Contractor shall provide Canoe with certificates of insurance that confirms the insurance coverage as provided for above. Failure to request certificates of insurance by Canoe, or failure of the Contractor to provide certificates of insurance, in no way limits or relieves the Contractor of its duties and responsibilities in this Contract.

A Member may require such further or increased insurance requirements as set forth in their Purchase Order.

Failure of the Contractor to maintain the required insurance will constitute a material breach entitling Canoe to immediately terminate this Contract for default, or the Member to cancel the Purchase Order for default.

If at any time any of the above-required insurance policies should be cancelled, terminated, or modified so that insurance is not in effect as above required, then, if Canoe will so direct, the Contractor will suspend performance of the work. If the work is suspended, no extension of time to complete the work will be due. If the work is not suspended, then Canoe or the Member may, at its option, obtain insurance affording coverage equal to that above required, the cost of such insurance to be payable by the Contractor.

Should the awarded Contractor retain a Subcontractor to perform any of the services mentioned herein, it is the Contractor's responsibility to ensure that the Subcontractor(s) maintains the same types of insurance coverage in accordance with the requirements and amounts indicated herein.

#### **10.4 Worker's Compensation**

The Contractor will maintain Workers Safety Insurance Board coverage throughout the Region and maintain their Clearance Certificate for the Term.

### **10.5 Public Announcements**

The Contractor shall not make any public statement or issue any press release concerning the Agreement or the relationship between the Parties except with the prior approval of Canoe or as may be necessary, in the opinion of counsel to the Contractor to comply with the requirements of applicable law. When seeking the prior approval of Canoe, the Parties will use all reasonable efforts, acting in good faith, to agree upon a text for such statement or press release which is satisfactory to both Parties.

### **10.6 Governing Law and Forum**

This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (excluding any conflict of laws rule or principle that might refer such interpretation to the laws of another jurisdiction). Each Party hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario for all matters relating to the subject matter of this Agreement.

### **10.7 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions, other agreements or acknowledgements, whether direct or collateral, express or implied, which induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement.

### **10.8 Amendment and Waiver**

This Agreement may be amended, modified or supplemented only by a written agreement signed by both Parties. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of either Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

### **10.9 Severability**

If any part of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable or invalid, it will, be severed from the rest of this Agreement, which shall continue in full force and effect, so long as the economic or legal substance of the matters contemplated hereby is not affected in any manner materially adverse to either Party.

### **10.10 Assignment**

This Agreement may not be assigned by either Party without the prior written consent of the other Party.

#### **10.11 Time of Essence**

Time shall be of the essence in this Agreement.

#### **10.12 Further Assurances**

Each Party will take all necessary actions, obtain all necessary consents, file all necessary registrations and execute and deliver all necessary documents reasonably required to give effect to this Agreement.

#### **10.13 Counterparts**

This Agreement may be executed in any number of counterparts. Either Party may send a copy of its executed counterpart to the other Party by Electronic Transmission instead of delivering a signed original of that counterpart. Each executed counterpart (including each copy sent by Electronic Transmission) will be deemed to be an original; all executed counterparts taken together will constitute one agreement.

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the date first written above.

#### **CANOE PROCUREMENT GROUP OF CANADA**

By: \_\_\_\_\_  
Name: Tyler Hannemann  
Title: General Manager

**XXX**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE "A"**

**RFP Particulars**

## **PART B – RFP PARTICULARS**

### **A. THE “DELIVERABLES”**

#### **1. Requested Services**

The purpose of this RFP is for Canoe to qualify contractors to qualify to deliver its Job Order Contracting program in Ontario.

Canoe’s intent with its Ontario Program is to provide flexibility and opportunities for various types and sizes of Contractors to participate in order to meet its Members’s diverse needs.

#### **Job Order Contracting Background:**

Canoe issued a Request for Proposal in October 2023 for JOC service providers, and as a result, retained the services of The Gordian Group, Inc. (“Gordian”) to develop, implement, and support a JOC program for its current and future Members.

In this role, Gordian provides support in the administration of the program to both Members and Contractors in accessing the JOC program, including:

- preparing Construction Task Catalogs and related technical specifications;
- providing information management systems and licenses to Contractors;
- providing training to Contractors;
- administering fee collection
- providing consulting services, and;
- assisting Members and Contractors with proposal package or work order development.

#### **Job Order Contracting Overview:**

A Job Order Contract is an indefinite delivery indefinite quantity contract that allows many projects (in various regions in Ontario) to be completed through a competitively-awarded Agreement. This single-solicitation process enables projects to start faster and creates non-adversarial relationships between Members and the Contractors that result in higher quality work. The Master JOC Agreement includes a Construction Task Catalog® (CTC) which contains construction tasks with pre-set Unit Prices. All Unit Prices are based on local labour, material and equipment prices, and are for the direct cost of construction.

The CTC Unit Prices will be reviewed and updated annually over the term of the Agreement on the anniversary date of the agreement.

#### **2. Utilisation of the contract – Canoe members**

Canoe Members in Ontario may choose but are not obligated to utilise the services during the term of the agreement. There is no minimum guarantee of usage.

As Projects are identified, Members will work with the Contractor and Gordian to begin using the Canoe JOC program in Ontario. Members will select Contractors (on an as-required basis) to jointly scope the work with the Member. The Member, Gordian and the Contractor will work together to prepare a Detailed Scope of Work and issue a Request for Proposal to the Contractor. The Contractor will then prepare a Price Proposal Package for the project using Gordian’s IQCC System.

The Price Proposal Package may include, drawings and sketches, a list of subcontractors, construction schedule, and other requested documentation. By submitting a Price Proposal to the Member, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price it submits. Upon approval of the Proposal Package by the Member, the Member may issue a signed Purchase Order, Notice of Award, or similar document accepting the Contractor's offer.

### **3. Requirements**

Type of Contractors required:

#### **General Contractors:**

The scope of work for the General Construction Contractors may include the evaluation, design, and renovation of existing facilities or the construction of minor new additions to existing facilities. The work may include the remodel of individual classrooms, offices, restrooms for ADA compliance, storage and common areas, administrative offices, clinical and lab areas, athletic areas, and similar sites or facilities involving one or multiple construction trades. New construction may include additions, such as classrooms, administrative, athletic, storage, land development, etc. that involves and requires multiple construction trades such as demolition, mechanical, plumbing, electrical, carpentry, flooring, painting as well as utilities, masonry, and site work sourced internally or using the General Contractor's own network of sub-contractors.

#### **Mechanical:**

The scope of work for the Mechanical category may include but not be limited to the inspection and evaluation, assessing, of existing mechanical, HVAC distribution and return, and related equipment. The scope of work may include work on existing systems or the demolition of existing systems and installation of new systems. The work may also include services relating to installing, maintaining, and repairing the specified systems as well as conducting preventive maintenance programs to maintain the systems in good working order. Contracts can be awarded to individual Mechanical contractors or a combination there of.

#### **Plumbing:**

The scope of work for the Plumbing category may include the inspection and evaluation, assessing, of existing plumbing, fire suppression, water supply, sewer infrastructure, natural and liquid propane gas distribution systems, and related equipment. The scope of work may include work on existing systems or the demolition of existing systems and installation of new systems. The work may also include services relating to installing, maintaining, and repairing the specified systems as well as conducting preventive maintenance programs to maintain the systems in good working order. Contracts can be awarded to individual Plumbing contractors or a combination there of.

#### **Electrical:**

The scope of work for the Electrical category may include the inspection and evaluation, assessing, of existing electrical systems, such as: low voltage, security systems, safety upgrades, lighting, distribution systems, and related equipment. The scope of work may include work on existing systems or the demolition of existing systems and installation of new systems. The work may also



include services relating to installing, maintaining, and repairing the specified systems as well as conducting preventive maintenance programs to maintain their electrical systems in good working order. Contracts can be awarded to individual Electrical contractors or a combination there of.

**Site/Civil:**

The scope of work for the Civil/Site category may include the inspection and evaluation, assessing, of existing facilities and job sites, and may include work on existing facilities and new projects. Typical projects are but not limited too; sitework like excavation, landscaping, irrigation, paving of roads and parking lots, work on bridges, railroads, airports, wastewater treatment plants, and landfills.

**Roofing and Weather Proofing:**

The Scope of work for Roofing and Weather Proofing category is to provide comprehensive roofing and weatherproofing services. The services will include, but not be limited to, the assessment, repair, replacement, and maintenance of roofing systems, as well as the implementation of weatherproofing measures to ensure the integrity and longevity of the building envelope. Contractors must be licensed, bonded, and insured, with proven experience in roofing and weatherproofing services.

**Other:**

The Scope of work for the other Contractors is to provide other services not generally captured above. The services include, but are not limited to, fencing, asbestos removal and remediation, etc.

**Self-Performance Requirements**

Contractors responding as a **Mechanical, Plumbing, Electrical, Site/Civil, Roofing & Weatherproofing and other** type of contractor must perform at least **51%** of all contracted work with its own organization and forces. The percentage calculation does not include field superintendents or office management personnel.

**Trade Partners, Sub - Contractors**

General Contractors are permitted to engage Trade Partners or Sub-Contractors for Construction Task Catalog (CTC) projects. It is not necessary for these Sub-Contractors to participate in the RFP process to contribute to a Job Order Contracting (JOC) project under a General Contractor. However, General Contractors must use the Construction Task Catalog and their corresponding adjustment factor to account for subcontractor costs in the final work order.

### Sample Projects:

The following list includes examples of projects Canoe Members may need. This list is for informational purposes only, is not exhaustive and does not represent a minimum guarantee of work nor is it a forecast.

Sample projects	Interior Renovations
Asbestos Remediation	Lift Installs
Asphalt Renewal / Replacement	Masonry / Structural Repairs
Barrier Free Ramps	Mechanical Upgrades and Replacements
Concrete walkways & sidewalks renewals	Pathway Lighting
Disaster Recovery	Plumbing Projects
Door & Hardware Replacements	Retrofits
Electrical, Lighting Upgrades	Roof Top HVAC Unit Replacements
EV Charger Installation, repairs, service	Roofing Repairs and Replacements
Exterior / Interior Painting	Safety Upgrades
Exterior/Interior Finishes	Security Upgrades
Fencing installation and repairs	Sprinkler Replacements
Generator Replacements	Washroom Renovations
Install Fall Arrest Systems	Window & Skylight Replacement

### Value of Projects:

Canoe's JOC program for Ontario does not have limits or maximum dollar values on Member projects. There is no overall cap or threshold. The value of a project is determined by the specific scope of work required by the Member. While many JOC projects have exceeded \$1 million, Contractors can expect a typical Member project will be between \$150,000 and \$400,000 approximately.

## B. MANDATORY SUBMISSION REQUIREMENTS

### 1. Submission and Specification Questionnaires

Contractors must answer specification questionnaires directly into Canoe's Procurement Portal. Proposal materials should be prepared and submitted in accordance with the instructions in the Procurement Portal, including any maximum upload file size.

Contractors should refer to the instructions in the Procurement Portal and provide all required information in accordance with the instructions provided.

Contractors are required to submit the following information in the Procurement Portal:

Mandatory Submission Requirements	Source of information
<b>All Contractors:</b> CCDC11 – 2019 Certified Appendices A-B-C Include projects \$400,000.00 or more.	Contractor to complete, certify and upload CCDC11-2019 Certified document
General/Automobile Liability Insurance coverage  <b>All Contractors:</b> <ul style="list-style-type: none"> <li>• Provide a letter signed by an authorized representative from the Contractor's insurance company indicating that the Contractor has the ability to obtain and provide:</li> <li>• Commercial General Liability insurance coverage in limits of not less than \$5 million, TBD on a project-by-project basis per occurrence.</li> <li>• Automobile Liability insurance coverage in the amount of \$2 million.</li> </ul>	Letter from Insurance Provider
<b>For General Contractors only:</b> <ul style="list-style-type: none"> <li>• Provide a letter signed by an authorized representative from the Contractor's insurance company indicating that the Contractor has the ability to obtain and provide:</li> <li>• Builders Risk Insurance for the full amount of the contract price (TBD on a project-by-project basis)</li> <li>• Contractors Pollution Liability Insurance (TBD on a project-by-project basis)</li> <li>• Wrap up Liability Insurance (TBD on a project-by-project basis)</li> </ul>	Letter from Insurance Provider
<b>Bonding Capacity</b>  <b>All Contractors:</b> <ul style="list-style-type: none"> <li>• Provide a letter from your bonding company which details your firm's available bonding capacity. The letter should confirm that, if necessary, your company is capable of providing labor and material payment bonds, as well as performance bonds, for projects up to the specified bonding capacity. Ensure that the letter is dated within the last twelve months relative to this proposal's submission deadline.</li> </ul>	Letter from Surety Company providing per project bonding capacity and total bonding capacity.
<b>WSIB Clearance</b>  <b>All Contractors:</b> <ul style="list-style-type: none"> <li>• Workplace Injury Summary Report (WISR)</li> <li>• Current WSIB Clearance Certificate</li> </ul>	WSIB Clearance Certificate

*Insurance and bonding requirements may be required by Members. Canoe is requesting an indication of insurance and bonding capacity in a way that indicates coverage for certain projects while not inadvertently excluding firms from program participation due to coverage limits.*

## **2. Pricing – Construction Task Catalog and Adjustment Factor**

Each proposal must include adjustment factors in compliance with the instructions set out in the Procurement Portal.

For evaluation purposes Canoe will use Gordian's proprietary Construction Task Catalog (CTC). The CTC is a comprehensive listing of specific repair and construction related tasks, together with a specific unit of measurement and pre-set unit price. All Unit Prices within the CTC are based on local labor, material and equipment prices for the direct cost of construction.

All Unit Prices listed in the Construction Task Catalog<sup>®</sup> are priced at a net value of 1.0000. Under this RFP, Contractors will offer price adjustments (Adjustment Factors) that will be applied to the CTC Unit Prices. The Adjustment Factors proposed are an increase or decrease to all the Unit Prices listed in the Construction Task Catalog<sup>®</sup>. For example, 1.1000 would be a 10% increase to the Unit Prices and 0.9500 would be a 5% decrease to the Unit Prices.

A Member's cost for a specific task will be determined by multiplying the preset Unit Prices by the appropriate quantities and by the appropriate Adjustment Factor (e.g., specific task cost = preset unit price in CTC \* quantity needed \* Adjustment Factor).

- i. Each Contractor must submit 5 Adjustment Factors to be applied to every task in the CTC. The adjustment factor must be either an adjustment "decrease from" (e.g. 0.9800) or "increase to" (e.g. 1.1000) the Unit Prices listed in the CTC.
- ii. The Contractor's Adjustment Factors must include all of the Contractor's direct and indirect costs. This includes, but is not limited to, its costs for overhead, profit, bond premiums above the reimbursable amount, insurance, mobilization, purchase order proposal development, and all contingencies in connection therewith. See pages 00-1 – 00-6 of the CTC for a complete explanation of what is and is not included in the Unit Prices. Note, where applicable, the Contractor must comply with all applicable prevailing wage laws. The wage rates in the CTC were current at the time these RFP Documents were issued.
  - a. Adjustment Factor #1 will be applied to work to be performed during Normal Working Hours (8:00 Am to 5:00 PM) and performed in Non-Secure/Non-Secure Acute Working Areas.
  - b. Adjustment Factor #2 will be applied to work to be performed during Other Than Normal Working Hours (5:01 PM to 7:59 AM) and performed in Non-Secure/Non-Secure Acute Working Areas.
  - c. Adjustment Factor #3 will be applied to work to be performed during Normal Working Hours (8:00 Am to 5:00 PM) and performed in Secured/Secured Acute Working Areas.
  - d. Adjustment Factor #4 will be applied to work to be performed during Other than Normal Working Hours (5:01 PM to 7:59 AM) and performed in Secured/Secured Acute Working Areas.

- e. Adjustment Factor #5 will be for work tasks not identified in the Construction Task Catalog. IQCC includes a provision for establishing of prices for Work requirements which are within the general scope of IQCC but were not included in the CTC at the time of Contract award. These Tasks are referred to as "Non Pre-priced Tasks (NPP)." NPP Tasks may require new specifications and drawings and may subsequently be incorporated into the CTC. The Contractors will offer an Adjustment Factor to be applied to the actual material, equipment, and labor cost for NPP work Tasks.

**SCHEDULE "B"**

**PROPOSAL**

## Schedule "C"

### Procedure for Ordering Work

#### A. DEFINITIONS

**"Adjustment Factors"** The Contractor's competitively bid price adjustment to the Unit Prices that are published in the Construction Task Catalog. Adjustment Factors are expressed as an increase to or decrease from the Construction Task Catalog's published prices and may be modified periodically during the term of this Contract, through written amendment.

**"Non-Pre-Priced Task" ("NPP")** A task not included in the Construction Task Catalog, but that is within the general scope and intent of this Contract.

**"Price Proposal"** means proposed pricing document prepared for the Member by the Contractor using the Construction Task Catalog, Adjustment Factors, and appropriate quantities.

**"Proposal Package"** means A group of documents and files consisting of the: Price Proposal; incidental drawings, sketches, or specification information; quantity take-offs supporting all material quantities; catalog cuts providing information on materials or products, as specifically requested; list of known Subcontractors; construction schedule; back-up for any Non Pre-Priced Tasks; warranty information on special equipment or materials; and or other such documentation as the Member may require.

**"Purchase Order Completion Time"** Means the period of time set forth in the Purchase Order by which the Contractor must complete the Detailed Scope of Work.

**"Purchase Order Price"** Means the value of the approved Price Proposal and not to exceed price to be paid to the Contractor by the Member for completing the Detailed Scope of Work within the Purchase Order Completion Time.

**"Request for Proposal"** means the Member's written request for a contractor to prepare and submit a Proposal Package for a specific Detailed Scope of Work. A request for proposal is not a guarantee of work

**"Supplemental Purchase Order"** means a purchase order issued to add, delete, or change work from an existing related Purchase Order.

**"Technical Specifications"** means the comprehensive listing of standards for quality of workmanship and materials, and the standard for the required quality of the work. The Technical Specifications are numbered and organized in the Construction Specification Institute's ("**CSI**") master format, and are incorporated into this Contract by reference. All specifications are filed in divisions per CSI guidelines. Except when substitutions are clearly impermissible, all references in the Technical Specifications or the CTC to a specific manufacturer, trade name, or catalog is intended to be descriptive but not restrictive and only to indicate to the Contractor those items that will be satisfactory.

B. SCOPE. Work will be offered to the Contractor only through an authorized Purchase Order issued in accordance with this Contract. Purchase Orders will contain the Detailed Scope of Work required for the

Contractor to complete the Project for a Member. The Contractor will provide all pricing, management, incidental drawings, shop drawings, samples, documents, work, materials, supplies, parts (to include system components), transportation, plant, supervision, labor, and equipment needed to complete each Purchase Order. The Contractor will also be responsible for Site safety as well as Site preparation and cleanup during and after construction.

C. PRIMARY ACCOUNT REPRESENTATIVE. The Contractor will assign an Account Representative to Canoe for this Contract and must provide prompt notice to Canoe and Gordian if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Canoe, Gordian, and Member inquiries; and
- Business reviews with Canoe, Gordian, and Members, if applicable.

D. CONTRACTOR SELECTION METHODOLOGY. After the Member has developed a draft Scope of Work, it will select an awarded Canoe contractor directly. A Member can use any factor to choose a Contractor to perform a Work Order. The Member may ask a Contractor for additional information as part of their Contractor Selection Methodology.

E. PURCHASE ORDER COMPLETION PROCESS. Upon selection of a contractor as described in Section C above, the Member and Gordian will work with the Contractor to complete the following:

1. JOINT SCOPING MEETING. The Contractor will attend the Joint Scope Meeting with the Member and Gordian to discuss, at a minimum:
  - a. The general Scope of Work
  - b. Alternatives for performing the work and value engineering
  - c. Access to the Site and protocol for admission
  - d. Hours of operation
  - e. Staging area
  - f. Requirements for professional services, sketches, drawings, and specifications
  - g. Construction schedule
  - h. Requirement for bonding
  - i. The presence of hazardous materials
  - j. Date on which the Proposal Package is due
2. DETAILED SCOPE OF WORK. Upon completion of the joint scoping meeting, Gordian, the Member, and the Contractor will work together to create a Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Detailed Scope of Work will be the basis on which the Contractor will develop its Proposal Package. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.
3. REQUEST FOR PROPOSALS. Upon completion of the Detailed Scope of Work, the Member will issue a Request for Proposal to the Contractor. The Contractor will use Gordian's IQCC System to prepare its Price Proposal.
4. REVIEW OF FIELD CONDITIONS. Before submitting a Price Proposal, the Contractor must: carefully study the Detailed Scope of Work, as well as the information furnished by the Member; take field measurements of any existing conditions related to the work; and observe any conditions at the Site affecting the Price Proposal. Any design errors or omissions, other errors, inconsistencies, or omissions



discovered by the Contractor must be reported promptly to the Project Manager. It is recognized that the Contractor's review is made in the Contractor's capacity as a Contractor and not as a licensed design professional. The Contractor is not required to ascertain that the Detailed Scope of Work is in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, any nonconformity discovered by or made known to the Contractor must be reported promptly to the Project Manager.

5. PROPOSAL PACKAGE CONTENTS. Upon issuance of the Member's Request for Proposal, the Contractor will create a Proposal Package that includes:

a. Price Proposal: The Price Proposal will be based on the following:

- 1) *Pre-Priced Tasks*: Pre-Priced tasks described, and for which a Unit Price is set forth, in the CTC. The Contractor will identify the Task and the quantities required.
- 2) *Non-Pre-Priced Tasks*: A Non Pre-priced Task is a task that is not in the CTC.
  - a) For Non Pre-Priced Work Performed with the Contractor's Own Forces: The Contractor will submit three independent quotes for all materials to be installed and will provide a breakdown of the labor and equipment costs.

The final price submitted for Non Pre-Priced Tasks will be according to the following formula, and each Non Pre-Priced Task must be supported with the necessary back-up documents including the calculation below:

- i. The hourly rate for each trade classification not in the CTC multiplied by the quantity.
- ii. The rate for each piece of Equipment not in the CTC multiplied by the quantity.
- iii. Lowest of three independent quotes for all materials.

Total Cost for Non-Pre-Priced Tasks performed by contractor's own forces = (i + ii + iii) x Non-Pre-Priced Adjustment Factor.

b) For Non-Pre-Priced Work performed through a Subcontractor: The Contractor must submit three independent bids from Subcontractors. The Contractor may not submit a quote or bid from any Contractor or Subcontractor that the Contractor is not prepared to use during the Project. The Member may require additional quotes and bids if the Contractors or Subcontractors are not acceptable or if the prices are not determined to be reasonable. If the Contractor cannot obtain three quotes or bids, the Contractor will provide this information in writing to the Member for review and approval.

The final price submitted for Non Pre-Priced Work performed through a Subcontractor will be the lowest of three Subcontractor quotes.

The Total Cost for Non-Pre-priced Tasks performed by Subcontractors = Lowest of Three Subcontractor Quotes X Non-Pre-Priced Task Adjustment Factor.

At the discretion of Gordian, Non-Pre-Priced Tasks, as well as other Tasks, may be added to the CTC during the course of the Contract. Unit prices will be established based on actual quotes from material Contractors and installers and fixed as a permanent Pre-priced Task in the CTC.

Gordian's determination as to whether an item is a Pre-Priced Task or a Non-Pre-

Priced Task will be final, binding and conclusive as to the Contractor.

The means and methods of construction will be such as the Contractor may choose; subject however, to the Member's right to reject means and methods proposed by the Contractor that: Will not produce finished work in accordance with the terms of the Contract; or Unnecessarily increases the price of the Purchase Order when alternative means and methods are available.

- 3) *Additional Costs.* In the event the Contractor is required to work within a secured facility where labor, material, and equipment must be inspected to pass through a secured perimeter, and all work must be constantly monitored by facility personnel, such as a prison, the Contractor will be paid for the labor time lost as a result of such perimeter inspection, as well as any loss of time resulting from a temporary shut down of the work site required by the facility, such as a temporary shut down to move prisoners.

The value of the Price Proposal will be calculated by summing the total of the calculations for each Pre-Priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non-Pre-Priced Tasks.

- a. Incidental drawings, sketches, or specification information,
- b. Quantity take-offs supporting all material quantities,
- c. Catalog cuts providing information on materials or products, as specifically requested,
- d. The list of known Subcontractors,
- e. Construction schedule,
- f. Back-up data for any Non-Pre-Priced Tasks (identified above),
- g. Warranty information on special equipment or materials, and
- h. Other such documentation as the Member may require.

By submitting a Price Proposal to the Member, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price it submits. It is the Contractor's responsibility to include the necessary tasks and quantities in the Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the Member. However, when trade jurisdiction rules or small quantities, the cost of a minor task in the Price Proposal is less than the cost of the actual labor and material to perform such task, the Member may permit the Contractor to be paid for such task as a Non-Prepriced Task, or use Prepriced labor tasks and material component pricing to cover the actual costs incurred. Provided that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$5,000.

F. TIME FOR SUBMITTAL OF THE PROPOSAL PACKAGE.

1. The Proposal Package will be submitted by the date indicated on the Request for Proposal. All incomplete Proposal Packages will be rejected. The time allowed for preparation of the Proposal Package will depend on the complexity and urgency of the Project but should average between seven and 14 days. On complex Projects, such as those requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.

2. In emergency situations and for Projects requiring immediate completion, the Proposal Package may be required quickly and the due date will be so indicated on the Request for Proposal or, the Contractor may begin work immediately, with the paperwork to follow.
3. If the Contractor fails to meet the deadline for submittal of the Proposal Package, this may be reason to suspend issuance of this particular Purchase Order.
4. If the Contractor requires clarifications or additional information regarding the Detailed Scope of Work in order to prepare the Proposal Package, the request must be submitted so that the submittal of the Proposal Package is not delayed.

G. REVIEW OF THE PROPOSAL PACKAGE.

1. Gordian and/or the Member will evaluate the Price Proposal by evaluating the nature and number of Tasks proposed against the agreed upon Detail Scope of Work and will determine the reasonableness of approach. Furthermore Gordian or the Member may compare the Price Proposal to the cost estimate for the Detailed Scope of Work. Gordian or the Member reserves the right to reject a Price Proposal based on unjustifiable/unsupported (with take off details) quantities and/or Tasks, schedule, inadequate documentation, or for any other reason.
2. If Gordian and/or the Member finds any part of the Price Proposal unacceptable, Gordian or the Member may request the Contractor to re-submit its Price Proposal or cancel the Project. The Contractor is expected to submit correct Price Proposals the first time. Adjustments to the Price Proposal may occasionally need to be made after review by Gordian and the Member. In that event, Gordian may permit the Contractor to submit the first Price Proposal and a second Price Proposal for each Purchase Order.
3. Additionally, Gordian and/or the Member will evaluate all other components of the Proposal Package and may request revisions thereto.
4. Requested revisions to any and all of the Proposal Package components should be made by the Contractor and resubmitted in no more than three working days. If after the second review by Gordian and/or the Member, Gordian and/or the Member finds requested revisions to the Proposal Package that were not made, this may be reason to suspend that particular Purchase Order.
5. Failure by the Contractor to submit Proposal Packages, and revisions thereto, in a timely manner (within time frames described above) is grounds for suspension of all future Purchase Orders.
6. The Member reserves the right to obtain Price Proposals from any or all of the contractors awarded an IQC contract.
7. If the Contractor continues to submit Price Proposals that are rejected by Gordian, Canoe may declare the Contractor in default and initiate termination of the Contract.

H. DELIVERY OF THE PROPOSAL PACKAGE. After Gordian reaches an agreement with the Contractor on the Proposal Package and any requested revision thereto, if applicable, Gordian will assemble and deliver the Proposal Package for the Member's consideration.

If the Contractor submits a Proposal Package with inaccurate Adjustment Factors, the Contractor waives all

rights to any further compensation above the Purchase Order Price submitted in the Proposal Package.

The Contractor cannot delay submission of the Proposal Package past the due date to take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor must use the Adjustment Factors that would have been in effect without the delay.

I. REVIEW OF THE PROPOSAL PACKAGE BY THE MEMBER AND ISSUANCE OF PURCHASE ORDER.

1. The Member will evaluate the entire Proposal Package.
2. The Member may reject a Proposal Package for any reason.
3. The Member may request changes to or clarifications of any part of the Proposal Package. A Member may also require a certificate of insurance or labor, material payment, or performance bonds. The Contractor and Gordian will work together to make any requested revisions in a timely manner and resubmit a revised Proposal Package.
4. Upon approval of the Proposal Package by the Member, the Member may issue a signed Purchase Order, Notice of Award, or similar document accepting the Contractor's offer. The document will include:
  - a) Reference to the Detail Scope of Work
  - b) The Purchase Order Price
  - c) Start date, Purchase Order Completion Time (duration) and completion date
  - d) Whether liquidated damages will apply
5. Once the Contractor accepts the Purchase Order, the Contractor may not refuse to perform the work. Such actions may be grounds for termination of this Contract or other disciplinary action at the option of Canoe.
6. If performance and payment bonding is required, or if a separate and/or special insurance certificate is required, the Contractor will deliver such requirement to the Member within 10 days of notification of the requirement.
7. Within two business days of receipt of a Purchase Order from a Member, the Contractor must provide notification to Gordian by forwarding a copy of the Purchase Order to Gordian.
8. Within two business days of receiving initial payment from a Member, the Contractor must provide notification to Gordian of the initial payment by forwarding a copy of the submitted invoice to Gordian.

J. REQUESTS OF EXTENSION OF TIME.

1. The Purchase Order Completion Time will be extended for such reasonable time as the Project Manager may determine, if the Contractor is delayed at any time in the commencement or progress of the Detailed Scope of Work by:
  - An act or neglect of the Member or its Project Manager, their employees, or agents
  - A separate contractor employed by the Member
  - Changes ordered in the work by the Member
  - Labor disputes or civil unrest
  - Fire

- Unusual delay in deliveries
- Unavoidable casualties or other causes beyond the Contractor's control
- Other causes for which the Project Manager may determine justify a delay

2. The Contractor will not make any claim for damages for the delay in the performance of any Purchase Order occasioned by any act or omission of the Member, Project Manager, or any of their representatives; and agrees that any such claim will be fully compensated for by an extension of time as provided herein.

K. CHANGES TO THE SCOPE OF WORK.

1. The Member reserves the right to make, in writing, at any time during the work, changes in the Detailed Scope of Work as are necessary to satisfactorily complete the Project, and to delete in whole or in part, or to add to, the Detailed Scope of Work. Such changes, deletions, or additions will not invalidate the Contract or the Purchase Order nor release the surety, if any, and the Contractor agrees to perform the work as altered.
2. All changes, deletions, and additions to the Detailed Scope of Work will be reflected in a Supplemental Purchase Order developed and priced in accordance with the procedure for developing and approving all Price Proposals.

L. PUNCH LIST COMPLETION.

1. The Contractor understands and agrees that time is of the essence in closing out the work of each Purchase Order under this Contract. Upon Substantial Completion of the work, the Punch List will be transmitted to the Contractor from the Member. The Contractor agrees to begin performance of Punch List Work immediately after receipt of the Punch List.
2. Failure of the Contractor or its Subcontractors to begin the Punch List Work within three business days after receipt of the Punch List will be construed as failure to prosecute the work of the Contract.
3. Punch List Work will be continuously prosecuted once begun and completed within 30 Days from the receipt of the Punch List. Should the Contractor fail to complete the Punch List within this period of time, the liquidated damages as identified in by the Member's Purchase Order will apply.

M. BONDS: PAYMENT AND PERFORMANCE OR MATERIAL AND WORKMANSHIP. If required by the Member for a particular Purchase Order, the Contractor will deliver a Labor and Material Payment Bond and a Performance Bond in the amount of such Purchase Order. If required by the Member for a particular Purchase Order, the Contractor will deliver Material and Workmanship Bonds in the amount required by the Member. The bonds must be in a form, and executed by a surety, acceptable to the Member. The bonds must be received before the Notice to Proceed will be issued. The Contractor will be compensated for the cost of the bonds up to 2% of the Work Order Price through the Reimbursable Fee work task in the Construction Task Catalog. The Contractor will apply a 1.1000 Adjustment Factor to the Reimbursable Fee work task rather than applying the Contractor's competitively bid Adjustment Factor.

N. PERSONNEL. The Contractor will employ competent personnel for the development of the Project's Detailed Scope of Work, the preparation of the Price Proposal and the execution of the work. During the performance of the work, the superintendent assigned to the Project will represent the Contractor, and communications given to the superintendent will be as binding as if given to the Contractor. Important

communications must be confirmed in writing. Other communications will be similarly confirmed on written request in each case.

O. TERMINATION OF ORDERS. Members may terminate a Purchase Order, in whole or in part, immediately upon notice to the Contractor in the event of any of the following events:

1. The Member fails to receive funding or appropriation from its governing body at levels sufficient to pay for the work
2. Federal or state laws or regulations prohibit the work
3. The Contractor commits any material breach of this Contract or Purchase Order

P. CONSTRUCTION TASK CATALOG (CTC) UPDATE. The Construction Task Catalog issued with this solicitation will be in effect for the first year of the contract. On the first year of this contract from the time of execution and each year thereafter during the term a new Construction Task Catalog will be furnished to address the escalation or de-escalation of costs of materials and services. The new Construction Task Catalog will be effective for the 12-month period after the anniversary date of execution. The Construction Task Catalog that accompanies each anniversary shall only apply to Purchase Orders issued after the effective date of that specific renewal term and shall have no impact on Purchase Orders issued prior to the effective date of that specific renewal term.

The Adjustment Factors submitted with the Contractor's Proposal shall be used for the full term of the Contract. On the annual anniversary of the Contract, Kinetic shall issue the Contractor the new Construction Task Catalog. The Contractor shall use the Construction Task Catalog in effect on the date the Proposal is due. However, the Contractor cannot delay the issuance of a Proposal to take advantage of a scheduled update of the Construction Task Catalog. In that event the Contractor shall use the Construction Task Catalog that would have been in effect without delay

Q. MATERIAL PRICE SPIKE ADJUSTMENT. A "major spike" in material price is defined as a spike in a specific material cost of more than 25% above the cost of that material on the date the CTC was issued.

1. In the event a major spike occurs in a specific material cost, Contractor may submit a request for a price modification to a Unit Price or individual Job Order. In order to initiate such a request, Contractor must:
  - a. Identify the specific material that has experienced a major spike;
  - b. Identify Pre-priced Task(s) or Job Orders that require the material experiencing a major spike; and,
  - c. Demonstrate that the spike exists by submitting a minimum of three quotes on material Contractor letterhead to show that the current price meets the "major spike" definition above.
2. The Member, after review of a request, may elect to adjust the Unit Price or Job Order by considering it a Non-Pre-Priced item. The adjustment will be for the difference between the material cost at the time the CTC was issued multiplied by the quantity stated in the Job Order. The adjustment will not include any other markup, and the Non-Pre-Priced adjustment factor will not apply.

3. Member, at its option, may also determine that a drastic decrease in a material cost warrants the same Non-Pre-Priced adjustment downward in the Unit Price or a Job Order.

R. PARTIAL PAYMENTS.

1. The Contractor may submit a monthly Application for Payment for Work completed to date. The Contractor will submit Certified Payroll Records, and such other supporting documentation as may be required by the Project Manager. The Contractor may be required to submit Certified Payroll Records online. The Project Manager will inspect the work within a reasonable time and the Member will make partial payments to the Contractor based on the approved value of completed work.
2. As permitted by the law or policy of the Member, the Member may withhold retainage per purchase order until completion of the Project.
3. The Contractor must promptly pay each Subcontractor, upon receipt of payment from the Member, out of the amount paid to the Contractor on account of such Subcontractor's portion of the work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the work. The Contractor will, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its sub-Subcontractors in a similar manner.

S. FINAL PAYMENTS.

1. The Contractor will notify the Project Manager when the Detailed Scope of Work is complete and ready for final inspection. The Project Manager will promptly make such inspection. If the Project Manager finds the Detailed Scope of Work complete and all final documentation submitted, the Project Manager will notify the Contractor that a final Application for Payment may be submitted.
2. The Contractor may then submit a final Application for Payment. The Contractor will submit Certified Payroll Records and such supporting documentation as may be required by the Project Manager. The Member will make final payment to the Contractor.
3. Acceptance of final payment by the Contractor, a Subcontractor or material Contractor will constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

T. CONTRACTOR RECORDS AND REPORTS

1. The Contractor will maintain accurate and complete records, files and libraries of documents to demonstrate compliance with federal, provincial, and local regulations, codes, applicable laws listed herein; including manufacturers' instructions and recommendations which are necessary and related to the work to be performed.
2. The Contractor will prepare and submit required reports, maintain current record drawings, and submit required information to Gordian and/or the member, as applicable. The Contractor will provide: materials lists that include trade names and brand names, and model materials lists that include trade names, brand names, model number, and ratings (if appropriate) for all materials necessary to complete the Purchase Order. Upon full payment for the Project, the documents created

by Contractor for the Member that are specific to the Project will become the property of the Member; including all applicable intellectual property rights.

U. SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

1. Shop drawings, product data, samples, and similar submittals are not considered as Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Detailed Scope of Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Detailed Scope of Work. Submittals that are not required by the Contract Documents may be returned by the Project Manager without action.
2. The Contractor must review for compliance with the Contract Documents, approve and submit to the Project Manager shop drawings, product data, samples and similar submittals required with reasonable promptness and in such sequence as to cause no delay in the work or in the activities of the Member or of separate contractors. Submittals that are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Project Manager without action.
3. By approving and submitting shop drawings, product data, samples and similar submittals, the Contractor represents that it has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Detailed Scope of Work and of the Contract Documents.
4. The Contractor must perform no portion of the work for which the Contract Documents require submittal and review of shop drawings, product data, samples, or similar submittals until the respective submittal has been approved by the Project Manager.
5. The work will be performed in accordance with approved submittals except that the Contractor will not be relieved of responsibility for deviations from requirements of the Contract Documents by the Project Manager's approval of shop drawings, product data, samples or similar submittals unless the Contractor has specifically informed the Project Manager in writing of such deviation at the time of submittal and a) the Project Manager has given written approval to the specific deviation as a minor change in the work, or b) a Supplemental Purchase Order or written notice has been issued authorizing the deviation. The Contractor will not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the Project Manager's approval thereof.
6. The Contractor will direct specific attention, in writing or on resubmitted in shop drawings, product data, samples or similar submittals, to revisions other than those requested by the Project Manager on previous submittals. In the absence of such written notice the Project Manager's approval of a resubmission will not apply to such revisions.
7. All costs for normal submittal information (shop drawings, cut sheets, performance information, installation or erection drawings, etc.) are included in the CTC line item costs.
8. The Contractor will not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically requested by the Member in accordance with applicable laws, as required by the Detailed Scope of Work; or if the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means,



methods, techniques, sequences and procedures, and such services are requested and approved by the Member. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Detailed Scope of Work, the Member will specify all performance and design criteria that such services must satisfy, and the costs associated with such services will be represented by including the appropriate tasks from the CTC. The Contractor will cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by such professional. Shop drawings and other submittals related to the work designed or certified by such professional, if prepared by others, will bear such professional's written approval when submitted to the Project Manager. The Member will be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Member has specified to the Contractor all performance and design criteria that such services must satisfy. The Project Manager will review, approve, or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Detailed Scope of Work. The Contractor will not be responsible for the adequacy of the performance or design criteria required by the Detailed Scope of Work. The Member will have the right to provide, or designate a representative to provide, any architectural or engineering services necessary for completion of the Work.

V. PARTIAL OCCUPANCY OF TIME

1. The Member may occupy or use any completed or partially completed portion of the work at any stage when it is consented to by the authorized public authorities having jurisdiction over the work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Member and the Contractor agree in writing to the conditions of such use, including payment and any other required terms. Consent of the Contractor to partial occupancy or use will not be unreasonably withheld.
2. Immediately prior to such partial occupancy or use, the Member, the Contractor and Project Manager will jointly inspect the area to be occupied or portion of the work to be used in order to determine and record the condition of the work.
3. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the work will not constitute acceptance of work that does not comply with the requirements of the Contract Documents.

W. PROTECTION OF PERSONS AND PROPERTY

1. The Contractor must take reasonable precautions for safety of, and will provide reasonable protection to prevent damage, injury, or loss to:
  - a. Employees on the work and other persons who may be affected thereby;
  - b. The work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or sub-subcontractors; and
  - c. Other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

2. The Contractor will give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss
3. The Contractor will erect and maintain, as required by existing conditions and performance of the Detailed Scope of Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Member and users of adjacent sites and utilities.
4. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the work, the Contractor will exercise utmost care and carry on such activities under supervision of properly qualified personnel.
5. The Contractor will promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the Member or Project Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's other obligations included herein.
6. The Contractor will designate a responsible member of the Contractor's organization at the Site whose duty will be the prevention of accidents. This person will be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Project Manager.
7. The Contractor will not permit any part of the construction or Site to be loaded in a manner that endangers safety.

X. TESTS AND INSPECTIONS

1. Tests, inspections and approvals of portions of the work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction will be made at an appropriate time. Unless otherwise provided, the Contractor will make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Member, or with the appropriate public authority. The Contractor will give the Project Manager timely notice of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures.
2. If the Project Manager, Member, or public authorities having jurisdiction determine that portions of the work require, through no fault of the Contractor, additional testing, inspection or approval, the Project Manager will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Member, and the Contractor will give timely notice to the Project Manager of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures. Such costs will be at the Member's expense.
3. If such procedures for testing, inspection or approval reveal failure of the portions of the work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Project Manager's services and expenses will be at the Contractor's expense.

4. Required certificates of testing, inspection or approval will, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Project Manager.
5. If the Project Manager is to observe tests, inspections or approvals required by the Contract Documents, the Project Manager will do so promptly and, where practicable, at the normal place of testing.
6. Tests or inspections conducted pursuant to the Contract Documents will be made promptly to avoid unreasonable delay in the work.

Y. MEMBER'S RIGHT TO STOP WORK AND COMPLETE WORK A Member may order the Contractor to stop the work on any Purchase Order, or any portion thereof, at any time for any reason. If the Contractor has been ordered to stop the work, the Member may, without prejudice to other remedies, have the work completed by any available means.

Z. SURVIVAL OF WORK Any Purchase Order issued prior to the expiration of this Contract may survive after the expiration of this Contract. This means work may continue to be performed, payments may be made, and the guarantee period may continue.

AA. WARRANTY

1. All work furnished under this Contract will be guaranteed against defective materials and workmanship, improper performance, and non-compliance with the Contract Documents for a period of one year after final acceptance of the work (Warranty Period); except as otherwise specified in other parts of the Contract Documents, or within such longer period of time as may be prescribed by law or provided by the manufacturer.
2. During the Warranty Period, the Contractor will repair and replace at Contractor's own expense, all work that may develop defects whether such defects may be inherent in the equipment or materials, in the functioning of the piece of equipment, or in the functioning and operation of pieces of equipment operating together as a functional unit. Any equipment or material that is repaired or replaced will have the Warranty period extended for a period of one year from the date of the last repair or replacement.
3. If the Contractor fails to repair, replace, rebuild, or restore such defective or damaged work promptly after receiving such notice, the Member will have the right to have the work done by others and to deduct the cost thereof from the monies owed to the Contractor. If the amount owed is insufficient to cover such costs, the Contractor will be liable to pay such deficiency on demand. The Project Manager's certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective work when performed by one other than the Contractor will be binding and conclusive as the amount thereof upon the Contractor.
4. The Contractor must obtain all manufacturer's warranties and guarantees of all equipment and materials required by this Contract in the name of the Member.

BB. LIQUIDATED DAMAGES

1. The Member may assess liquidated damages for each day after the Purchase Order Completion Time in the Detailed Scope of Work is not complete. It is understood and agreed by and between the Contractor, Canoe, and the Member, that time is of the essence in all matters relating to Liquidated Damages.
2. The liquidated damages will be determined on a Purchase Order by Purchase Order basis.

#### **CC. DEFAULT AND REMEDIES**

1. Either of the following constitutes cause to declare this Contract, or any Member Purchase Order under this Contract, in default:
  - a. Nonperformance of contractual requirements, or
  - b. A material breach of any term or condition of this Contract.
2. Written notice of default and a reasonable opportunity to cure must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:
  - a. Exercise any remedy provided by law or equity, or
  - b. Terminate this Contract or any portion thereof, including any orders issued against the Contract.

#### **DD. REMOTE LOCATION TRAVEL AND FREIGHT CHARGES:**

Personal Travel and Material and Equipment Freight charges for work being performed in a remote location may be considered above and beyond typical Travel and Freight charges and can be negotiated and approved on a project-by-project basis by the owner. Determinations for beyond typical Travel and Freight charges will be made at the inception of the project with approval from the owner. Approved beyond typical Travel and Freight costs will be reimbursed to the contractor as a reimbursable line item in the Job Order. At the end of the project the contractor must provide proof of expenses to validate the reimbursable charge. Modifications to the reimbursable charge may be negotiated and approved by the owner at the end of the project. Any agreed upon modification will be issued via a Supplemental Job Order.

### **Schedule "D"** **Licensing Agreement**

#### **GORDIAN IQCC SYSTEM**

Gordian's proprietary IQCC system includes Gordian's proprietary JOC software applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Price Proposals, subcontractor lists, and other requirements specified by the Owner. Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog® and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the Owner is strictly prohibited

unless otherwise approved in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following IQCC System License.

#### IQCC SYSTEM LICENSE

Gordian hereby grants to the Contractor for the term of this Contract, a non-exclusive right, non-transferable, privilege, and license to Gordian's proprietary IQCC System (comprised of the JOC software applications and support documentation, the CTC, construction cost data, Technical Specifications, training materials, marketing materials and any other proprietary materials provided to Contractor by Gordian (collectively referred to as "Proprietary Information"). The Proprietary Information will be used for the sole purpose of executing Contractor's responsibilities to Canoe and the Members under this Contract ("Limited Purpose"). In the event this Contract expires or terminates as provided herein, or the Gordian's contract with Canoe expires or terminates, this IQCC System License will terminate and the Contractor will return all Proprietary Information in its possession to Gordian.

Contractor acknowledges that Gordian will retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Contractor will have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor must not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Contractor acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Contract and must at all times maintain complete confidentiality with regard to the Proprietary Information provided to Contractor, subject to federal, state and local laws related to public disclosure. Contractor further acknowledges that a breach of any of the terms of this Contract by Contractor will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian will be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to this IQCC System License to enforce the provisions of this Contract or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party will be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

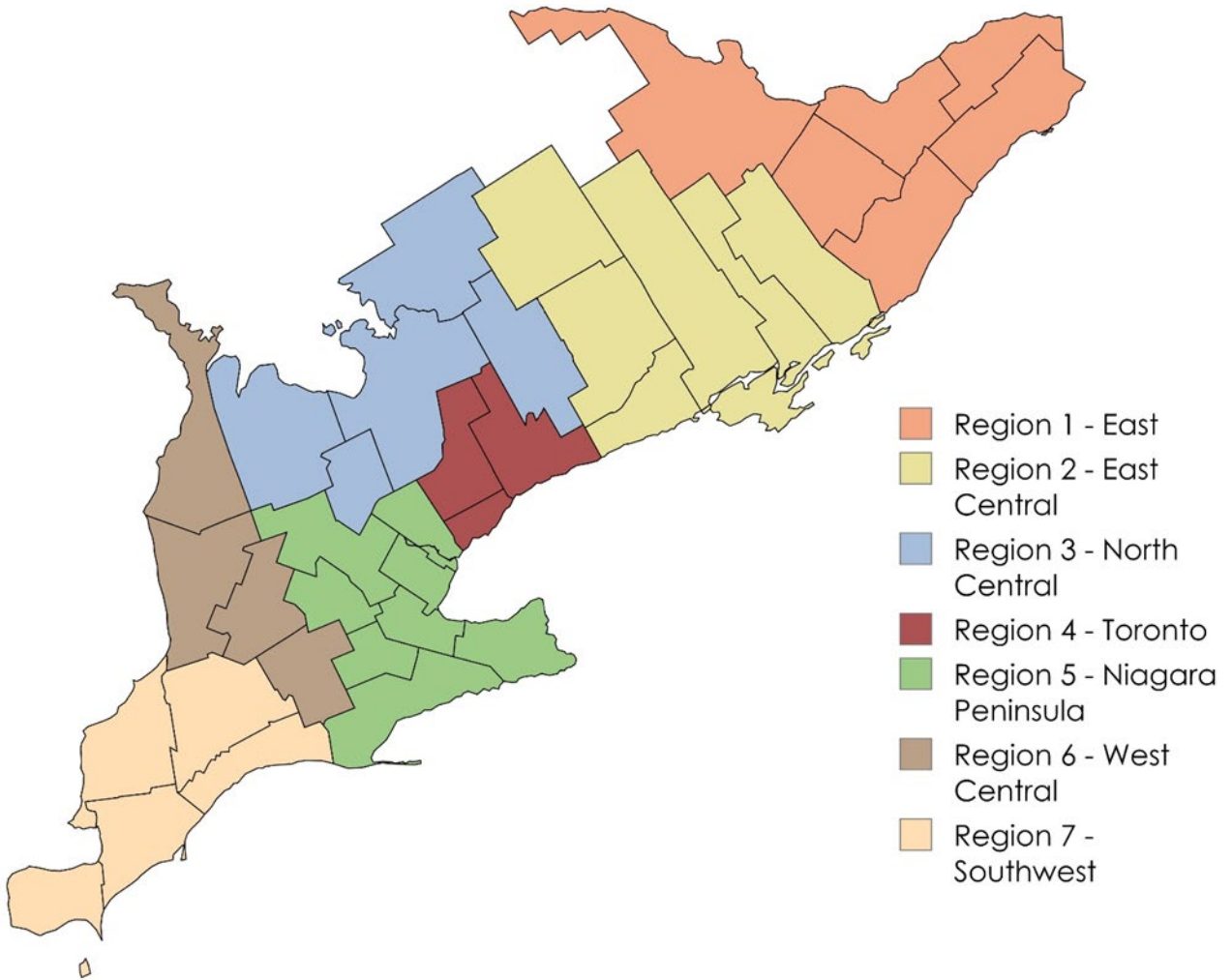
In the event of a conflict in terms and conditions between this IQCC System License and any other terms and conditions of this Contract or any Order, Purchase Order or similar purchasing document (Purchase Order) issued by Canoe or a Member this IQCC System License will take precedence.

**Schedule "E"**

**Regions and Awards**

**The Contractor is awarded for the following region(s):**

1, 2, 3, 4, 5, 6, 7      General Contractor  
EXAMPLE ONLY



## **Schedule "F"**

### **Administrative Fee**

The Contractor must pay an administrative fee in exchange for the administration of the contracts by Canoe and Canoe's contract administrator, Gordian. If the Contract is utilized by Entities, the Contractor agrees to pay Gordian a 7.25% administrative fee. Unless otherwise agreed with Gordian, Contractor shall make progress payments for the administrative fee in proportion to the percentage of construction completed to be invoiced at milestones reasonably established by Gordian. Contractor shall pay all Gordian invoices within thirty (30) days of date of invoice and payment will be sent as specified by Gordian. Administrative Fees not paid by the specified deadline shall bear an interest rate of 1.5% per month until paid.

In the event the Contractor is delinquent in any undisputed administrative fees, Canoe reserves the right to cancel this Contract and reject any bid or proposal submitted by the Contractor to a Canoe or a Member. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

**Canoe designates Gordian as its contract administrator. The Administrative Fee payments must be made payable to The Gordian Group and sent to the following address:**

**The Gordian Group, Inc.  
PO Box 74008498  
Chicago, IL 60674-8498  
USA**