

Schedule A | Bylaw No. 2025-4

Schedule 1 - Schedule of Deliverables, Rates and Specific Provisions

i. Description of Deliverables

As per Section 45 of the Integrated Accessibility Standards, 0. Reg. 1 91-11, and under the Accessibility for Ontarians with Disabilities Act (AODA, 2005), the City is obligated to provide accessible transit for City residents with disabilities living within the boundaries of the City of Kingston who qualify as a Registered Client pursuant to this Contract.

The City and the KATC have agreed to terms and conditions under which the KATC will provide accessible transportation services within the City (“the Services”).

The Services and related deliverables are as described in herein.

ii. Rates and Disbursements

The fare structure is as set out in the Kingston Area Taxi Commission By-Law No. 2, and as defined in Item F, Special Provisions, 2.

iii. Payment Terms

The KATC will provide monthly invoices and the City shall pay within 30 days, less what the clients have paid in bus fare the amounts set out in Schedule 1 - Section B - Payments.

iv. City and The KATC Representatives

The City Representative and contact information for the Contract is:

Kyle Compeau
Manager, Enforcement
Licensing & Enforcement City of Kingston
kcompeau@cityofkingston.ca 613/546-4291, ext. 1343

The KATC Representative and contact information for the Contract is:

Joseph Dowser, Chair,
Kingston Area Taxi
Commission, 12-1201 Division Street, Kingston, ON, K7K 6X4,
jdowser@katc.ca, 613-547-3763, extension 102

v. Term of Contract

The Contract shall commence on the Effective Date and terminate one (1) year following the Effective Date unless terminated earlier in accordance with the provisions of this Contract. The Effective Date is the date of the signing of this Agreement by the parties.

This Agreement provides a one-year optional extension based upon mutual agreement between the City and the KATC unless it is terminated earlier in accordance with the terms of the Contract or otherwise by operation of law or otherwise by re-negotiation of the effective date. The Contract may be terminated at any time by the City by providing ninety (60) days written notice.

vi. Specific Provisions

1. The City does not guarantee a minimum number of clients who require the Services provided for herein.
2. The KATC shall ensure that any Registered Client using the Services is not charged more than the highest fare charged and set by Kingston Transit for conventional transportation services, in accordance with Schedule 1 - Section A - Bookings and Fares and shall provide the Services with Vehicles procured and maintained in accordance with Schedule 1 – Section E - Accessible Vehicle Requirements.
3. All by-laws of the Kingston Area Taxi Licensing Commission are to be strictly adhered to in the provision of the Services.
4. Subject to the terms of this agreement, the KATC shall provide the following as part of the Services:
 - i. a call answering service, together with a reservation booking service and a taxi dispatch function; and
 - ii. management of all customer inquiries and complaints.
5. The KATC shall ensure that:
 - i. at all times the Services fully satisfy the obligations of the City under the Accessibility for Ontarians with Disabilities Act, any associated Regulations and the Human Rights Code as well as all other applicable law;
 - ii. all passenger pick-up and drop-off locations will be as identified under Schedule 1 - Section D. The KATC may permit trips outside of the identified boundaries provided these trips do not reduce the availability of accessible trips within the identified boundaries and provided additional fares, payable by the client, are collected to ensure full cost recovery. The City will only be obligated to pay for fares incurred as part of the provision of the Services within the identified boundaries.

6. The parties shall manage Registered Client eligibility in accordance with the eligibility criteria set out in Schedule 1 - Section C.
7. The KATC will provide the Services within the boundary delineated and described under Schedule 1 - Section D.
8. In administering the Services, the KATC shall comply with all laws and lawful orders and regulations imposed by any municipal, provincial or federal authority.
9. The KATC shall individually keep proper accounts and records of their respective financial activity and of all expenditures or commitments made the KATC in connection herewith, and shall keep all invoices, receipts and vouchers relating thereto for up to six months. Title to all accounts and records created by the KATC as part of the Services will vest in and become the property of the City upon delivery of such information to the City in accordance the terms set out herein. All such accounts and records as well as any invoices, receipts and vouchers will at all times be open to audit, inspection and examination by the authorized representatives of the City who may make copies and take extracts thereof.
10. The KATC acknowledge that all reports and communications provided hereunder are subject to the provisions of the Municipal Act, 2001 and the Municipal Freedom of Information and Protection of Privacy Act and cannot be considered confidential given the disclosure requirements which may exist under those and other relevant legislation. The City shall not disclose any such reports or communication containing information considered to be confidential to the KATC unless required by law or with the written permission of the KATC. The KATC shall keep confidential all information and documentation provided to the KATC by or on behalf of the City in connection with the Services, shall not disclose any such information or documentation to any person without the written permission of the City, and shall return the original versions of all such information and documentation to the City forthwith upon the conclusion of the term or any renewal of the term.
11. Subject to Article 3.06 the KATC shall not subcontract or permit the subcontracting of any portion of the Services to any other individuals, firms or corporations at any time without the prior written consent of the City.
12. The KATC shall submit a Certificate of Insurance adhering to the requirements of Article 8.02 of the General Terms prior to the commencement of the service, with the following amendments, additions and deletions:
 - a. Amendments
 - i. 8.02 (a) evidence of Commercial General Liability of not less than \$5,000,000 will be required.
 - b. Additions

- i. The proponent shall provide, as a stand-alone policy or as part of the Commercial General Liability, confirmation of coverage to the City's satisfaction, of Abuse Liability which shall include coverage for physical and sexual abuse. Coverage shall be underwritten by an insurer licensed to conduct business in the Province of Ontario for the following limit of liability, \$1,000,000.
- ii. Coverage that satisfies Kingston Area Taxi Licensing Commission By-law No. 2 clauses 35 and 36 (1) & (2).
- iii. An owned automobile liability policy that provides coverage to carry passengers for compensation for at least the minimum limits required for the jurisdiction in which they are operating and a Public Vehicle Operating License where required.

Item	Amount of Insurance	Seating Capacity for Passengers of Each Vehicle
1.	\$1,000,000	1 to 7 passengers
2.	\$5,000,000	8 to 12 passengers
3.	\$8,000,000	13 or more passengers

c. Deletions

- i. Delete - Automobile Insurance -Automobile Insurance for both owned and leased vehicles with inclusive limits of not less than two million dollars (\$2,000,000)
- ii. Delete - Proof of automobile insurance will not be required if the KATC provides a signed letter stating that they do not own or lease vehicles.
- iii. Delete - "non owned automobile coverage with blanket contractual coverage for hired automobiles".

Schedule 1 - Section A - Bookings and Fares

- 1. The KATC will provide, at a minimum, the following fare structure as described below:
 - a. Services will be offered at fare parity with the conventional transit service

provided by Kingston Transit as set out in the Fees and Charges By-law, By-law 2005-10 as amended from time to time by the City in its sole discretion.

- b. Registered Clients may be accompanied by one travelling companion but only one fare is to be collected for each ride.
2. The City will provide a minimum notice of 45 days for proposed amendments to fares.
3. Registered Clients shall be able to book a 762mm (30 inches) or a 838mm (33 inches) wheelchair accessible van.
4. Service animals may accompany Registered Clients.
5. Processes for client bookings will be set out in a process document that may be subject to change. The process for booking clients will be created by The City and the KATC, acting reasonably.

Schedule 1 - Section B - Payments and Invoices

1. The City will not be responsible for any payment to the KATC for the Services. The parties agree that the Services shall be paid for by the Registered Clients as well as fees received by the KATC from Transportation Network Companies pursuant to the existing agreement between the City and the KATC for administration and enforcement of By-Law Number 2022-06, A By-Law to Regulate and License Transportation Network Companies in the City of Kingston (“the TNC fees”). The KATC will not invoice or collect any administration fees from the City in the execution of this program.
2. The KATC shall provide monthly statements to the City on or before the 20th of each month confirming the following information:
 - a. Schedule outlining details of trips made during the previous month including number of passengers, date, pick-up and drop-off locations;
 - b. Details of charges for each trip including Registered Client card number;
 - c. Particulars of all payments received by the KATC from Registered Clients and the TNC fees and payments made to drivers for all trips provided pursuant to this agreement;
 - d. Any complaints received and/or enforcement actions taken in the preservation of compliance to the Services; and
 - e. Any non-approved requested for payment.
3. The parties agree that if

- i. a client card of a Registered Client or the associated account number is lost/stolen or given to anyone other than the Registered Client and
 - ii. is fraudulently used by a person other than the Registered Client
 - iii. KATC shall be entitled to make payment for any rides incurred by a taxi operator through the abuse/fraudulent use from the TNC fees. Should the KATC be made aware of any abuse or fraudulent use they shall notify the City immediately.
4. Following the signing of this agreement, the KATC will:
 - a. open and establish a separate bank account with a reputable financial institution which is to be used solely for the purpose of accounts related to the Services;
 - b. provide The City with:
 - i. name and address of the financial institution; and
 - ii. the account number, transit number, and institution number
5. All bank fees related to the account detailed in clause 4 shall be paid by the KATC and may be paid from the balance of the account.
6. The KATC shall ensure that each taxi operator operating as part of the provision of the Services maintains proper records including the KATC approved trip sheet for each accessible fare which details:
 - a. Taxi operators badge number;
 - b. Taxi plate and top sign number;
 - c. Date, time, and address of pickup location;
 - d. Client's name and/or the City Accessible ID number;
 - e. Number of passengers;
 - f. Time and address of drop-off location, and;
 - g. Total fare as displayed per the taxi meter.
7. Each taxi operator operating as part of the provision of the Services must submit a completed trip sheet in full to the KATC reporting on the Services provided in a calendar month no later than the 10th day of the following calendar month.
8. The KATC will make payments to such taxi operators for approved invoices within 30 days from the date of the receipt of the completed trip sheet.

9. Payment will not be made by the KATC to a taxi operator operating as part of the provision of the Services:
 - a. For any trip that has not been properly detailed on the trip sheet; and
 - b. For any trip sheet described in whole or in part that is submitted after the 10th day of each calendar month.

Schedule 1 - Section C – Eligibility to be a Registered Client

1. To become a Registered Client, a person must:
 - a. Have a disability as per the Integrated Accessibility Standards, Ont. Reg. 199/11, and the Accessibility for Ontarians with Disabilities Act which prevents the person from using the conventional transportation services provided by the City through Kingston Transit); and
 - b. Live within the City of Kingston; and
 - c. Qualify for use of the Kingston Access Bus services according to the standards set by the Kingston Access Bus from time to time.
2. Upon approval of an application, the applicant becomes a Registered Client of the accessible transit system and is an Accessible Transit Client Card with personal information together with a unique identifying number which they must show to the driver upon entering the taxi and refer to when communicating to the KATC when booking a ride.
3. Where an application for approval as a Registered Client is rejected, the KATC shall advise the City of the rejection and review the application to determine if alternate evidence of qualification for eligibility may be reasonably considered including the City has developed an application system for prospective Registered Clients that will require the examination and validation by a licensed medical practitioner that the prospective client cannot use/access the conventional Kingston Transit bus.
4. The City and KATC shall cooperate the shall creation of public communications program related to the Services which may be updated from time to time to meet current needs.

Schedule 1 - Section D - Service Area, Service Hours, Services and Restrictions

1. The Services shall be provided 7 days per week, 24 hours per day in accordance with as described in KATC By-Law No. 3, General Provisions - Drivers, 4(e).
2. The Services shall be provided within the geographical boundaries of the City of Kingston and the Township of Loyalist (“the Service Area’). Where a trip extends through both municipalities, payment shall be made in accordance with the

municipal fee structure of the Registered Client's home municipality.

3. The parties may expand the Service Area to any new geographical areas beyond the Service Area only upon further agreement with the City, the KATC and the Township of Loyalist. Proof of the expansion of the Service Area shall be evidenced through and effective upon the execution of a duly authorized written amending agreement entered into by the City, the KATC and the Township of Loyalist. Upon execution of an amending agreement, the KATC shall ensure that the Services will be provided to any newly expanded Service Area in accordance with this Agreement as amended.
4. Where a Registered Client requests transportation to a destination beyond the Service Area, the Registered Client shall pay (i) the required fare within the Service Area plus (ii) the metered fare beyond the Service Area to the final destination. The Registered Client shall be informed of this payment requirement at the time of the booking with the KATC. If the client refuses to pay the fee required for transportation beyond the Service Area, the KATC may refuse the booking.
5. Registered Clients are not permitted to change their destination once the ride is booked and underway nor are clients permitted to stop at locations on way to their destination therefore stops on route that incur "waiting time" are not permitted. Registered Clients requesting a destination change once the ride is booked and underway will be required to provide payment for the cost of the deviation from the original destination. If the client refuses to pay the fee required for transportation beyond the Service Area, the KATC may refuse to provide the requested destination change.
6. Additional and more detailed processes under this section may be set out in an administrative document that may be agreed upon and updated from time to time upon mutual agreement between the representatives of the City and the KATC.

Section 1 - Schedule E - Accessible Vehicle Requirements

1. All vehicles operated in the provision of the Services shall be inspected by the KATC and maintained in accordance with the requirements of KATC By-Law No. 3 as amended from time to time.
2. THE KATC will ensure that a fleet of accessible vehicles is established to provide for the Services within the City of Kingston. KATC shall at a minimum provide for an additional four vehicles per annual term of this Agreement in addition to normal vehicle life cycle expectations. The parties acknowledge that KATC aims to achieve an accessibility service level of 25% of the taxi fleet providing the Services within the City of Kingston by 2030. The provision of additional vehicles and the achievement of the stated service level goal is acknowledged to be subject to available funding from the TNC Fees described in Schedule 1, Section B(1) as well as public demand for the Services.

3. To provide for the funding of the establishment and incremental growth of the accessible vehicle fleet, the KATC shall allocate the total received funding of twenty-seven (27) cents per TNC trip which shall be allocated as follows:
 - a. Five (5) cents capital funding for acquisition or and/or subsidization of accessible vehicles purchase of upgrade including through the fitting vehicle ramps or lift upgrades as well as axel upgrades and such other;
 - b. Ten (10) cents operational funding for the administrative, licensing, inspection and enforcement purposes; and
 - c. Twelve (12) cents to accessibility fund for operational fare expense beyond the fare provided by Registered Clients.
4. The parties acknowledge that the KATC may allocate capital funding for the establishment and maintenance of the accessible fleet through purchasing, leasing, subsidies to brokers, consignment to brokers and/or vehicle upgrades in accordance with the operational standards established pursuant to KATC By-Law No. 3 as amended from time to time.
5. The KATC shall register any interest held by the KATC in any vehicles and equipment upgrades funded to provide the Services under the Personal Property Security Act (PPSA). All fees related to registrations under the PPSA may be paid from the balance of the account referred to in section 3 above.
6. The KATC shall provide to the City Representative such information as reasonably requested by the City as part of periodic reporting in relation to the establishment and growth of the accessible taxi fleet to the City.

Schedule 2 - Standard Terms and Conditions

ARTICLE 1 - INTERPRETATION

6.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

“Agreement” and “Contract” as a noun shall have the same meaning herein, being as the terms of this Agreement as amended from time to time.

"Authority" means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Contract; and "Authorities" means all such authorities, agencies, bodies and departments.

"Brokerage" means that Taxi owners pay a weekly fee to use the KATC name. This means that the brokerage is a separate entity from The KATC. Each business has their own separate HST numbers and the KATC is solely responsible for the drivers and vehicles provided for this contract. KATC is responsible for providing invoicing monthly on behalf of The KATC to the City and collecting fares such as a bank does, to provide payouts to the contractors for the rides that are incurred in service. The KATC must follow the Kingston Area Taxi Licensing Commission policy and standards for its vehicles that are on the road in order to continue to be an owner operator on the fleet.

"Business Day" means any working day, Monday to Friday inclusive, but excluding statutory holidays and other days on which the City has elected to be closed for business;

"City Confidential Information" means all information of the City that is of a confidential nature, including all confidential information in the custody or control of the City, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the KATC in connection with the Contract. For greater certainty, City Confidential Information shall: (a) include: (i) all new information derived at any time from any such information whether created by the City, the KATC or any third-party; (ii) all information (including Personal Information) that the City is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but

(b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the KATC of any duty of confidentiality owed by the KATC to the City or to any third-party; (ii) the KATC can demonstrate to have been rightfully obtained by the KATC, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the KATC free of any obligation of confidence; (iii) the KATC can demonstrate to have been rightfully known to or in the possession of the KATC at the time of disclosure, free of any obligation of confidence when disclosed; or

(iv) is independently developed by the KATC; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law; and

"City Representative" is as set out in Schedule 1(iv).

"Conflict of Interest" includes, but is not limited to, any situation or circumstance where

- (a) in relation to the procurement process, the KATC had an unfair advantage

or engaged in conduct, directly or indirectly, that may have given it an unfair advantage, including but not limited to (i) having access to information that is confidential to the City and not available to other bidders or proponents; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive procurement process; or (b) in relation to the performance of the Contract, the KATC other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

"Deliverables" means the Services as well as any obligations, reports and records required to be provided to the City by KATC;

"Effective Date" is as set out in Schedule 1(v);

"Indemnified Parties" means the City and the City's officials, directors, officers, agents, employees and volunteers;

"Industry Standards" include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Canada and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the KATC establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the City;

"Intellectual Property" means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

"MFIPPA" means the *Municipal Freedom of Information and Protection of Privacy Act*, Revised Statutes of Ontario 1990, Chapter M.56, as amended;

"Newly Created Intellectual Property" means any Intellectual Property created by the KATC in the course of performance of its obligations under this Agreement;

"Person" if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;

"Personal Information" means recorded information about an identifiable individual or that may identify an individual;

"Proceeding" means any action, claim, demand, lawsuit, or other proceeding;

"Rates" means the applicable price, in Canadian funds, to be charged for the Services as set out in Schedule, section 1B;

"Record" means any recorded information, including any Personal Information, in any form:

- a. provided by the City to the KATC, or provided by the KATC to the City, for the purposes of this Agreement; or (b) created by the KATC in the performance of the Services;

"Requirements of Law" mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either this Agreement or the Services or any part of them;

"KATC Representative" is as set out in Schedule 1(iv) Rates and Specific Provisions);

"KATC Intellectual Property" means Intellectual Property owned by the KATC prior to its performance under the Contract or created by the KATC during the Term independently of the performance of its obligations;

"Term" is as set out in Schedule 1(v); and

"Third-Party Intellectual Property" means any Intellectual Property owned by a party other than the City or the KATC;

ARTICLE 2 - GENERAL TERMS

2.01 No Indemnities from the City

Notwithstanding anything else in the Contract, any express or implied reference to the City providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the City beyond the obligation to pay the Rates in respect of Deliverables accepted by the City, whether at the time of entering into the Contract or at any time during the Term, shall be void and of no legal effect.

2.02 Entire Contract

The Contract embodies the entire agreement between the parties with respect to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the Effective Date of the Contract.

2.03 Severability

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

2.04 Failure to Enforce Not a Waiver

Any failure by the City to insist in one or more instances upon strict performance by the KATC of any of the terms or conditions of the Contract shall not be construed as a waiver by the City of its right to require strict performance of any such terms or conditions, and the obligations of the KATC with respect to such performance shall continue in full force and effect.

2.05 Changes by Written Amendment Only

Any changes to the Contract shall be by duly authorized written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment. Any such written changes shall be included in the definition of Contract.

2.06 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or email and shall be addressed to, respectively, the City Representative and the KATC Representatives. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or email one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by email. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

2.07 **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

ARTICLE 3 - NATURE OF RELATIONSHIP BETWEEN CITY AND THE KATC

3.01 **The KATC Power to Contract**

The KATC represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person which would in any way interfere with the rights of the City under the Contract.

3.02 **Representatives May Bind the Parties**

The parties represent that their respective representatives have the authority to legally bind them in relation to the obligations and rights assigned to them under this Contract to the extent permissible by the Requirements of Law.

3.03 **The KATC Not a Partner, Agent or Employee**

The KATC shall have no power or authority to bind the City or to assume or create any obligation or responsibility, express or implied, on behalf of the City. The KATC shall not hold themselves out as an agent, partner or employee of the City beyond any responsibilities set out in any agreement entered into with the City. Nothing in this Agreement shall have the effect of creating an employment, partnership or agency relationship between the City and the KATC or any of the KATC directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors.

3.04 **Non-Exclusive Contract, Work Volumes**

The KATC acknowledge that they are providing the Deliverables to the City on a non-exclusive basis. The City makes no representation regarding the volume of goods and services required under the Contract. The City reserves the right to contract with other parties for the same or similar goods and services as those provided by the KATC and reserves the right to obtain the same or similar goods and services internally.

3.05 **No Subcontracting or Assignment**

The KATC shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of the City. Such consent shall be in the sole discretion of the City and subject to the terms and conditions that may be imposed by the City. Without limiting the generality of the conditions which the City may require prior to consenting to the KATC use of a subcontractor, every contract entered into by the KATC with a subcontractor shall adopt all of the terms and conditions of the Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the City.

3.06 **Duty to Disclose Change of Control**

In the event that the KATC undergo a change in control the KATC shall immediately disclose such change in control to the City and shall comply with any terms and conditions subsequently prescribed by the City resulting from the disclosure.

3.07 **Conflict of Interest**

The KATC shall: (a) avoid any Conflict of Interest in the performance of their contractual obligations; (b) disclose to the City without delay any actual or potential Conflict of Interest that arises during the performance of their contractual obligations; and (c) comply with any requirements prescribed by the City to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the City may immediately terminate the Contract upon giving notice to the KATC where: (a) the KATC fail to disclose an actual or potential Conflict of Interest; (b) the KATC fail to comply with any requirements prescribed by the City to resolve a Conflict of Interest; or (c) the KATC Conflict of Interest cannot be resolved to the satisfaction of the City. This paragraph shall survive any termination or expiry of the Contract.

3.08 **Contract Binding**

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 4 - PERFORMANCE BY THE KATC

5.01 **Commencement of Performance**

The KATC shall commence performance upon receipt of written instructions from the City.

5.02 **Deliverables Warranty**

The KATC hereby represent and warrant that the Deliverables (i) shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations; and (ii) shall be free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title; and furthermore that all Deliverables shall be provided in accordance with: (a) the Contract; (b) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of the City, are inadequately provided or require corrections, the KATC shall forthwith make the necessary corrections at their own expense as specified by the City in a rectification notice.

5.03 **Use and Access Restrictions**

The KATC acknowledge that unless they obtain specific written preauthorization from the City, any access to or use of the City property, technology or information that is not necessary for the performance of its contractual obligations with the City is strictly prohibited. The KATC further acknowledge that the City may monitor the KATC to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the KATC.

5.04 **Notification by The KATC of Discrepancies**

During the Term, the KATC shall advise the City promptly of: (a) any contradictions,

discrepancies or typographical errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

5.05 Change Requests

The City may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The KATC shall comply with all reasonable City change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the KATC are unable to comply with the change request, they shall promptly notify the City and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties.

5.06 Pricing for Requested Changes

Where a City change request includes an increase in the scope of the previously contemplated Deliverables, the City shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request (a) include pricing for the particular type of goods or services contemplated in the change request, the KATC shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the City and the KATC within a reasonable period of time and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

5.07 Performance by Specified Individuals Only

The KATC agree that to the extent that specific individuals are named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract unless duly substituted. The KATC shall not replace or substitute any of the individuals named in the Contract without the prior written approval of the City, which may not arbitrarily or unreasonably be withheld. Should the KATC require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The KATC shall not claim fees for any replacement individual greater than the Rates established under the Contract.

5.08 Time

Time is of the essence of the Contract.

5.09 Rights and Remedies Not Limited to Contract

The express rights and remedies of the City and obligations of the KATC set out in

the Contract are in addition to and shall not limit any other rights and remedies available to the City or any other obligations of the KATC at law or in equity.

ARTICLE 5 - PAYMENT FOR PERFORMANCE AND AUDIT

5.01 Payment According to Contract Rates

Subject to Schedule 1B, the parties shall pay such amounts as established under the Contract.

5.02 No Expenses or Additional Charges

There shall be no other charges payable by one party to the other except as established under the Contract.

5.03 Payment of Taxes and Duties

Unless otherwise stated, each party shall pay all applicable taxes with respect to the Contract.

5.04 Withholding Tax

The parties City shall withhold any applicable withholding tax from amounts due and owing and shall remit them to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Contract.

ARTICLE 6 - CONFIDENTIALITY

6.01 Confidentiality and Promotion Restrictions

Any publicity or publications related to the Contract shall be at the sole discretion of the City. The City may, in its sole discretion, acknowledge the Deliverables provided by the KATC in any such publicity or publication. The KATC shall not make use of its association with the City without the prior written consent of the City. Without limiting the generality of this paragraph, the KATC shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the City.

6.02 City Confidential Information

During and following the Term, the KATC shall: (a) keep all City Confidential Information confidential and secure; (b) limit the disclosure of City Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any City Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the City and (ii) in respect of any City Confidential Information about any third-party, the written consent of such third-party; (d) provide City Confidential Information to the City on demand; and (e) return all City Confidential Information to the City on or before the

expiry or termination of the Contract, with no copy or portion kept by the KATC.

6.03 Restrictions on Copying

The KATC shall not copy any City Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the KATC, the KATC must reproduce all notices which appear on the original.

6.04 Notice of Breach

The KATC shall notify the City promptly upon the discovery of loss, unauthorized disclosure, unauthorized access or unauthorized use of City Confidential Information.

6.05 Notice and Protective Order

If the KATC or any of their directors, officers, employees, agents, partners, affiliates, volunteers become legally compelled to disclose any City Confidential Information, the KATC will provide the City with prompt notice to that effect in order to allow the City to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and they shall co-operate with the City and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the KATC will disclose only that portion of City Confidential Information which the KATC are legally compelled to disclose, only to such person or persons to which the KATC are legally compelled to disclose, and the KATC shall provide notice to each such recipient (in co-operation with legal counsel for the City) that such City Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Contract and, if possible, shall obtain each recipient's written agreement to receive and use such City Confidential Information subject to those terms and conditions.

6.06 Survival

The provisions of this Article shall survive any termination or expiry of the Contract.

ARTICLE 7 - INTELLECTUAL PROPERTY

7.01 City Intellectual Property

The KATC agree that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information, and materials, however recorded, (including images and data) provided by the City to the KATC shall remain the sole property of the City at all times.

7.02 No Use of the City Insignia

The KATC shall not use any insignia or logo of the City except where required to provide the Deliverables, and only if it has received the prior written permission of the City to do so.

7.03 Ownership of Intellectual Property

The City shall be the sole owner of any Newly Created Intellectual Property. The

KATC irrevocably assign to and in favour of the City and the City accepts every right, title, and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the City all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in whole or in part, the KATC's Intellectual Property, the KATC grant to the City a licence to use that The KATC's Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the KATC by the City.

7.04 **The KATC's Grant of License**

For those parts of the Deliverables that are The KATC Intellectual Property, the KATC grant to the City a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub- contractors, to do any of the former on behalf of the City.

7.05 **No Restrictive Material in Deliverables**

The KATC shall not incorporate into any Deliverables anything that would restrict the right of the City to modify, further develop or otherwise use the Deliverables in any way that the City deems necessary, or that would prevent the City from entering into any contract with any contractor other than the KATC for the modification, further development of or other use of the Deliverables.

7.06 **Third-Party Intellectual Property**

The KATC represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The KATC further represent and warrants that they have obtained assurances with respect to any The KATC Intellectual Property and Third-Party Intellectual Property that any rights of integrity or any other moral rights associated therewith have been waived.

7.07 **Survival**

The obligations contained in this Article shall survive the termination or expiry of the Contract.

ARTICLE 8 - INDEMNITIES AND INSURANCE

8.01 **The KATC Indemnity**

The KATC hereby agree to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including for breaches of confidentiality or privacy or Intellectual Property rights or for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the KATC, their respective directors, officers,

agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the KATC obligations under, or otherwise in connection with, the Contract. The KATC further agree to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, the City, claimed or resulting from such Claims. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

This indemnity shall be in addition to and not in lieu of any insurance to be provided by the KATC in accordance with this Contract.

The KATC further agree to defend, indemnify and save harmless the Indemnified Parties from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related to the KATC status with WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the KATC in accordance with this Contract and shall survive this Contract.

8.02 Insurance

The KATC hereby agrees to put in effect and maintain insurance for the Term, at their own cost and expense, with insurers having a secure AM. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the KATC would maintain including, but not limited to, the following:

- (a) 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 and including products and completed operations liability. The policy is to include the following:
 - i. the City as an additional named insured with respect to liability arising in the course of performance of the KATC's obligations under, or otherwise in connection with, the Contract
 - ii. contractual liability coverage
 - iii. cross-liability and severability of interests' clause
 - iv. employers liability coverage
 - v. 30 day written notice of cancellation, termination or material change
 - vi. tenants legal liability coverage (if applicable and with suitable sub-limits)
 - vii. non-owned automobile coverage with blanket contractual coverage for hired automobiles
- (b) Automobile Insurance - Automobile Insurance for both owned and leased vehicles with inclusive limits of not less than two million dollars (\$2,000,000)*. Proof of automobile insurance will not be required if The KATC provides a signed letter stating that they do not own or lease vehicles.

- (c) Additional Insurance Requirements - Any other types of insurance specified in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions) or required elsewhere under the Contract.

*Limits may be amended dependent on contract requirements as deemed appropriate by the duly authorized City staff.

ARTICLE 9 - TERMINATION, EXPIRY AND EXTENSION

9.01 Immediate Termination of Contract

The City may immediately terminate the Contract upon giving notice to the KATC where:

- (a) the KATC are adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the KATC insolvency;
- (b) the KATC breach any provision in Article 6 (Confidentiality);
- (c) the KATC breach the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between City and The KATC);
- (d) the KATC, prior to or after entering into the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to the City;
- (e) the KATC undergoes a change in control which adversely affects the KATC ability to satisfy some or all of its obligations under the Contract;
- (f) the KATC subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of the City; or
- (g) the KATC acts or omissions constitute a substantial failure of performance and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

9.02 Dispute Resolution by Rectification Notice

Subject to the above paragraph, where the KATC fail to comply with any of-HS their obligations under the Contract, the City may issue a rectification notice to the KATC setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice, the KATC shall either:

- (a) comply with that rectification notice; or
- (b) provide a rectification plan satisfactory to the City. If the KATC fail to either comply with that rectification notice or provide a satisfactory rectification plan, the City may immediately terminate the Contract. Where the KATC have been given a prior rectification notice, the same subsequent type of non-compliance by the KATC shall allow the City to immediately terminate the Contract.

9.03 Termination on Notice

The City reserves the right to terminate the Contract, without cause, upon sixty (60) calendar days prior notice to the KATC.

9.04 The KATC Obligations on Termination

On termination of the Contract, the KATC shall, in addition to its other obligations under the Contract and at law (a) at the request of the City, provide the City with any completed or partially completed Deliverables; (b) provide the City with a report detailing: (i) the current state of the provision of Deliverables by the KATC at the date of termination; and (ii) any other information requested by the City pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by the City to give effect to the termination of the Contract; and (d) comply with any other instructions provided by the City, including but not limited to instructions for facilitating the transfer of its obligations to another Person. This paragraph shall survive any termination of the Contract.

9.05 The KATC Payment Upon Termination

On termination of the Contract, the City shall only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination shall not relieve the KATC of HS their warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set off, the City may hold back payment or set off against any payments owed if the KATC fails to comply with its their obligations on termination.

9.06 Termination in Addition to Other Rights

The express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of the City under the Contract, at law or in equity.

9.07 Expiry and Extension of Contract

The Contract shall expire on the original Expiry Date, unless the City exercises its option to extend the Contract, such extension to be upon the same terms (including the Rates in effect at the time of extension), conditions and covenants contained in the Contract. The option shall be exercisable by the City giving notice to the KATC not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.

9.08 Evaluation of Performance

The KATC will be subject to a performance evaluation by the City during the course of, and/or at the conclusion of the Term.

In the event that the KATC fails to perform its obligations under the Contract, the City may, in addition to any and all legal and equitable remedies available to it, place the KATC on probation or suspend the KATC from participating in future procurement opportunities.