



# WESTBANK FIRST NATION

## STANDARD CONTRACTOR / SERVICE TERMS AND CONDITIONS OF PURCHASE

### PAYMENT:

Westbank First Nation payment terms are net 30 days of the invoice date and shall be in Canadian funds, unless stated otherwise. Westbank First Nation will not be responsible for any delay in receipt of the invoice. Should delay occur, time for payment of invoices or for accepting cash discount offered shall commence on the date of invoices are received by Westbank First Nation.

### INVOICING:

All invoices submitted by the Contractor for Services rendered shall reference the specific Contract/PO number as assigned by Westbank First Nation. Invoices must be an original and should be addressed to: Attn: Finance – Accounts Payable, Westbank First Nation, 301-515 Highway 97S, Kelowna, BC, V1Z 3J2. The Contractor shall not charge interest and no interest shall be payable by Westbank First Nation.

### INVOICE DISCREPANCIES:

Invoices containing discrepancies or errors shall be returned to the Contractor noting areas for correction or, if the defect is minor, may be corrected by Westbank First Nation. Payment to the Contractor shall not be initiated until a proper invoice is received by Westbank First Nation or the invoice has been corrected by Westbank First Nation as permitted herein.

### TAXES:

The WFN is not subject to the HST. The goods covered under this Purchase Order are required by the Westbank First Nation in respect of either management activities or real property located on reserve and are therefore not subject to HST.

### CONFLICT OF INTEREST:

The Contractor shall ensure that the Services are provided to Westbank First Nation without any conflict of interest. Examples of conflict of interest include, but are not limited to:

- a personal relationship between any officer, director, employee, servant or agent of the Contractor and any other person which results in work being awarded to the Contractor;
- any officer, director, employee, servant or agent of the Contractor approaching Westbank First Nation personnel, other than as required for performance of the Services, to in any way promote the business of the Contractor or otherwise solicit requests for Services;
- the retention of Westbank First Nation employees and/or subcontractors to provide services;
- distribution of promotional material while performing the Services for Westbank First Nation.

Where the Contractor recognizes or perceives a conflict of interest, the Contractor shall provide written notice to Westbank First Nation of the conflict.

### OWNERSHIP:

The Material produced by, received or acquired by the Contractor as a result of this Agreement including all systems, programs, specifications and associated documentation, and any equipment, machinery or other property will be the exclusive property of Westbank First Nation and will be delivered by the Contractor to Westbank First Nation forthwith upon request by Westbank First Nation. The copyright in the Material will belong exclusively to Westbank First Nation and the Contractor will execute any assignments of copyright required by Westbank First Nation to give this provision effect.

### STANDARDS OF CONDUCT AND POLICY COMPLIANCE:

The Contractor shall perform all Services in a professional manner satisfactory to Westbank First Nation, in accordance with the industry codes and/or professional standards as applicable.

**INDEPENDENT CONTRACTOR:** The Contractor is an independent Contractor and neither the Contractor, nor their directors, officers, employees, servants or agents are the directors, officers, employees, servants or agents of Westbank First Nation.

The Contractor shall not, in any manner whatsoever, commit Westbank First Nation to the payment of any money to any person, firm or corporation.

Westbank First Nation may, from time to time, give such instructions as it considers necessary to the Contractor in connection with the provision of the Services. The Contractor shall comply with these instructions, but the Contractor will not be subject to the control of Westbank First Nation with respect to the manner in which such instructions are carried out except in regard to general Westbank First Nation standards, policies and guidelines.

### ASSIGNMENT AND SUB-CONTRACTING:

The Contractor will not assign and/or sub-contract this Agreement or any obligation either directly or indirectly under this Agreement, without the prior written approval of Westbank First Nation.

**ADVERTISING, PUBLICATION OR SOLICITATION:** The Contractor shall not advertise their relationship or use Westbank First Nation's name or any contents of this Agreement in any advertising, mailing list or publication, written or verbal, except where the Contractor has been given written approval by Westbank First Nation.

Any use or reference by the Contractor to this Agreement to promote, solicit, or disseminate information regarding the details of this Agreement is prohibited except as allowed in clause 11.1 of this Agreement.

If Westbank First Nation, in its sole discretion, determines that the use of the phrase noted in 11.1 hereof is inappropriate or in any way cause harm to Westbank First Nation or its reputation Westbank First Nation may in writing direct the Contractor to cease using any reference to Westbank First Nation in its advertising or may terminate this Agreement or both.

### ENTIRE AGREEMENT:

This document and any Schedules, Terms and Conditions attached constitutes the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject-matter of this Agreement.

### VARIATION OF AGREEMENT:

This Agreement will not be varied unless in writing and signed by both parties. Any notice, consent, waiver, statement or contractual correspondence should be directed to the Purchasing Administrator; Westbank First Nation, 301-515 Highway 97S, Kelowna, BC, V1Z 3J2.

### JURISDICTION:

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia, and each of their parties by their execution of this Agreement irrevocably attorns to the exclusive jurisdiction of the courts of the Province of British Columbia in regard to any and all disputes arising out of or in connection with this Agreement.

### OCCUPATIONAL HEALTH AND SAFETY:

WorkSafeBC is responsible for worker and workplace safety in British Columbia, and for ensuring compliance with the Workers Compensation Act (the Act) and the regulations under the Act (the Regulation). As such it is important that any Contractor performing Services for Westbank First Nation complies with the Act and Regulation in order to promote worker and workplace safety. During the Term of this Agreement, the Contractor shall ensure that all work performed in British Columbia by the Contractor, is performed in compliance with all applicable health and safety regulations and guidelines, including without limitation the Act and Regulation. If the Contractor does not comply with this requirement, Westbank First Nation may terminate this Agreement for cause. The Contractor will arrange for the Designated Employee to meet with the Westbank First Nation manager in the location where the Designated Employee will work to review all applicable health and safety regulations, including the safety and emergency evacuation procedures and security requirements in effect for those premises.

**THREAT AND HAZARD:** The Contractor, its employees, servants, agents and subcontractors are required to, as soon as possible and no later than 24 hours from being made aware of the threat, report to Westbank First Nation any threats, whether perceived or actual made *against Westbank First Nation, its employees or other individuals*. Threats include, but are not limited to: physical threats and suicide threats.

### ASSESSMENT REGISTRATION:

If under the Workers Compensation Act of British Columbia, the Contractor is required to register with WorkSafeBC, or is permitted to purchase Personal Optional Protection with WorkSafeBC, as a condition of this Contract, the Contractor must:

- a. if required, register with WorkSafeBC and maintain their account in good standing with WorkSafeBC, or
- b. if not required to register and permitted to purchase Personal Optional Protection must purchase Personal Optional Protection and maintain their account in good standing, unless otherwise exempted in writing by WorkSafeBC. It is the responsibility of the Contractor to determine their registration status. For further information contact WorkSafeBC Employer Registration at (604) 244-6182 or [www.Westbank First Nation.com](http://www.Westbank First Nation.com)



# WESTBANK FIRST NATION

## STANDARD CONTRACTOR / SERVICE TERMS AND CONDITIONS OF PURCHASE

### INDEMNITY:

The Contractor will indemnify and save harmless Westbank First Nation from and against all claims, demands, losses, damages, costs and expenses made against or incurred, suffered or sustained by Westbank First Nation at any time where the same are based upon or arise out of anything tortiously done or omitted to be done by the Contractor.

### INSURANCE:

During the Term, the Contractor will carry, at a minimum, Comprehensive General Liability insurance in an amount of not less than \$2,000,000.00 per occurrence. In addition, Error & Omissions Insurance in an amount of not less than \$1,000,000.00 per occurrence is required if this contract is for Engineering/Professional Services. The Contractor will provide, at the request of Westbank First Nation, documentation satisfactory to Westbank First Nation evidencing the insurance coverage required hereunder.

### FORCE MAJEURE:

Neither party will be liable for any failure or delay to perform that party's obligations resulting from any cause beyond that party's reasonable control, including but not limited to fires, explosions, floods, strikes, work stoppages or slow downs or other industrial disputes, accidents, riots or civil disturbances, acts of civil or military authorities, inability to obtain any license or consent necessary in respect of use with any telecommunications facilities, or delays caused by carriers, Contractors or material shortages.

### AUDIT OF RECORDS:

The Contractor shall maintain all records and books concerning the Services provided and fees invoiced by the Contractor under this Agreement.

The Contractor shall maintain all records and books, together with all relevant documents and materials, for the duration of this Agreement, including any and all renewals of this Agreement, for seven (7) years following the completion or termination of this Agreement.

When requested by the Westbank First Nation, the Contractor shall make available all books and records, together with the supporting or underlying documents and materials, to the Westbank First Nation for inspection, audit, or reproduction by its employees and/or subcontractors or authorized representatives, during normal business hours at the Contractors office or place of business. The Contractor shall not charge any fee for the cost of reproduction of records required under this Agreement.

Westbank First Nation may, at any time during the Term of this Agreement, audit all the Contractors accounting records and books concerning Services provided under this Agreement, including any and all documents and other materials, in whatever form they may be kept, upon which the accounting records and invoices are based.

Upon receipt of a request from the Westbank First Nation, the Contractor shall, within two (2) business days, give the Westbank First Nation full access to the Contractors complete file pursuant to this Agreement.

### TERMINATION FOR CAUSE:

Westbank First Nation reserves the right to cancel all or any part of this Agreement if the Contractor fails to deliver the Services in accordance with the terms of this Agreement to the satisfaction of Westbank First Nation. Such cancellation shall be in writing and may be without notice and shall not result in any penalty or other charges to Westbank First Nation.

### TERMINATION FOR CONVENIENCE:

In addition to the remedy provided in any other clause within the Agreement, Westbank First Nation may, at its option, terminate this Agreement at any time during the Term, and, if such option is exercised, then this Agreement will terminate fourteen (14) days after the date such written notice is received or deemed received, by the Contractor and Westbank First Nation will be under no further obligation to the Contractor, except to pay to the Contractor such amount as the Contractor may be entitled to receive, pursuant to Payment for the Services provided to the date of termination. Such termination will not result in any penalty to Westbank First Nation, unless otherwise agreed to and as specified in this Agreement.

### ADDITIONAL STANDARD CONTRACTOR / SERVICE TERMS AND CONDITIONS:

CSA APPROVAL: The Contractor(s) agrees that all materials supplied hereunder shall be manufactured and produced in compliance with all applicable

laws, regulations, codes, standards and/or requirements of CSA and/or ULC, all Federal, Provincial and Territorial authorities, and all other authorities having jurisdiction, and that performance of this order shall be in accordance with the above laws, regulations, codes, terms, standards and/or requirements. The Contractor(s) agrees upon request to furnish Westbank First Nation with a certificate of compliance with this provision in such terms as Westbank First Nation may require.

WHMIS: All products purchased by Westbank First Nation are considered to be required for use in a workplace. Therefore, full compliance for all labelling and information requirements of the Workplace Hazardous Materials Information Systems (WHMIS) Legislation for controlled products is required. All shipments must be accompanied by a material safety data sheet. Shipments of goods which do not comply with these requirements will be returned to the Contractor(s) at their expense.

DEFAULT RESOLUTION: If Westbank First Nation delivers to the Contractor written notice of default in any of the services to be provided by the Contractor, and the Contractor fails to remedy such default;

- .1 within three (3) working days from and after delivery of the written notice; or
- .2 within such period less than three (3) working days from delivery of written notice fails to take such action as will ensure Westbank First Nation suffers no loss or damage then Westbank First Nation may, without further notice to the Contractor, take such steps as may, in the sole judgment of Westbank First Nation, be necessary to remedy such default, and without limiting any of Westbank First Nation remedies at law or in equity, all costs incurred by Westbank First Nation shall be paid by the Contractor.

If the Contractors fails to pay such costs on demand, Westbank First Nation shall be entitled to either deduct the costs from any other amounts payable under this agreement or to withhold payment of any amounts payable to the Contractor until such time as Westbank First Nation has recovered all its costs in remedying the default.