

Terms of Service

Please read the following Terms of Service (“Agreement”) carefully. In consideration for accessing and using Government of Yukon “Online Marketplace” (“Online Marketplace”) and access to any procurement and contracting materials, documents, and information provided or contained therein (collectively, the “Procurement Site and Materials”), the sufficiency of which you hereby acknowledge and accept, you agree to the following terms:

1. For the purposes of this Agreement, “you” and “your” (whether capitalized or not) means and includes: you; your employer and its successors and assigns; your partners; your employees or subcontractors; and any other person or corporation for whom you act as representative or agent in accessing or using the Procurement Site and Materials. You represent and warrant that you have full power and authority to enter into, perform, and execute this Agreement on behalf of each person or party above.
2. You must be registered under and with the Online Marketplace to be notified of procurement opportunities and any revised purchase orders for such procurements listed on the Online Marketplace. You are solely responsible for ensuring that your registration information is complete, current, and accurate at all times, and you are solely responsible for the security of the password used by you to access the Procurement Site and Materials. If you have lost or forgotten your password, it is your sole responsibility to reset your password.
3. You are solely responsible for checking the Online Marketplace often to review any open procurement opportunities at any stage.
4. Any response to or submission on any Government of Yukon (“YG”) procurement or contract at any stage, including, without limitation: any bids, proposals, standing offer arrangements, confirmation or acceptance of orders or a contract, or other responses and the information contained therein (collectively, “Responses”), must be in accordance with the terms and requirements of the Procurement Site and Materials. Responses that fail to comply with the terms and requirements of the Procurement Site and Materials may be rejected or deemed unacceptable by YG.
5. Amendments to procurement documents will be posted to the Online Marketplace through a subsequent revised purchase order. You are solely and unequivocally responsible for ensuring that you have checked the Online Marketplace and reviewed and downloaded all revised purchase orders, terms and conditions, and other information related to a YG procurement or contract prior to and after submission of any Response, regardless of whether you have been notified of the revision or information contained therein by alternative means or by YG or its staff. Failure to acknowledge revised purchase order or terms and conditions on any Response to a procurement may result in the Response being deemed counter-offer, non-compliant, incomplete, unacceptable, or rejected by YG.
6. You acknowledge and agree that the timing of any Response submitted electronically is based on when the Response is RECEIVED by the Online Marketplace system, not when a Response is submitted by you, and that transmission of a Response submitted electronically can be delayed in an "Internet Traffic Jam" due to file transfer size, transmission speed, etc. A Response will only be considered to have been submitted once it has been RECEIVED by the Online Marketplace system and a

confirmation from such system is received by you, confirming receipt of the electronic Response, regardless of when the Response was submitted by you. You are solely responsible for allowing sufficient time to upload your Response electronically and any other materials and attachments (if applicable) and to resolve any issues that may arise. The closing time and date for any and all electronic Responses submitted through the Online Marketplace system shall be determined by the Online Marketplace system electronic clock, and such clock shall be deemed correct as to the date and time of receipt of electronic Responses submitted through the Online Marketplace system. All Responses are subject to further review and acceptance by YG.

7. YG is not responsible or liable in any way or for any reason for failure to receive or misdirected notices of orders, procurements, or contracts which may result from registered users who fail to update their contact information.

8. You fully accept the Procurement Site and Materials "as is" and use of the Procurement Site and Materials is solely at your own risk. When using the Procurement Site and Materials, you are solely responsible for confirming the content, veracity, accuracy, availability, suitability, reliability, usability, functionality, compliance, completeness, and timeliness of your Response and the Procurement Site and Materials.

9. YG makes NO guarantees, warranties, or representations in any way (express or implied) with respect to the accuracy, availability, suitability, reliability, usability, functionality, completeness or timeliness of the Procurement Site and Materials for any purpose, including, without limitation: implied warranties for merchantability, fitness for a particular purpose, and non-infringement of rights. YG does NOT make any representation or warranty, express or implied, with respect to: whether a Response will be accepted; the content, veracity, accuracy, availability, suitability, reliability, usability, functionality, compliance, completeness or timeliness of Responses; or whether a contract or work will be awarded/provided. It should not be assumed that the lowest priced or highest ranked Response recorded on the Online Marketplace will be awarded a contract and a contract may be awarded based on other circumstances.

10. **EXCLUSION OF LIABILITY:** In consideration for access to and use of the Procurement Site and Materials, you fully and irrevocably agree to FULLY RELEASE, REMISE, WAIVE and FOREVER DISCHARGE YG, its elected officials, officers, employees, subcontractors, partners, agents, insurers, successors and assigns from any and all claims, liabilities, actions, proceedings (including any judicial review or injunction application), damages (including: direct, indirect, consequential, incidental, general, special or exemplary damages, any economic losses, lost profits, lost opportunities, or all other costs, expenses and losses of any type or for any reason), or any other legal remedy in any way or for any reason, whether unknown or unforeseen, whether in law or in equity or pursuant to statute or regulation (collectively, the "Claims") related to or arising from in any way connected to your access to or use of the Procurement Site and Materials, including, without limitation: the content, veracity, accuracy, availability, suitability, reliability, usability, functionality, compliance, completeness or timeliness of Responses or the Procurement Site and Materials; any failure to receive, transmit, download, or use orders or revised purchase orders and any procurement and contracting materials, terms and conditions, documents, and information related to or arising from the Procurement Site and Materials; any use of change to, suspension of, or termination of access to or use of the Procurement Site and Materials; any breach of any express or implied obligation, duty, or terms on the part of YG at any stage of the procurement process or related to the use of the Procurement Site and Materials; the receipt, rejection, or evaluation of any Responses; any breach of YG's policies or directives; any failure by YG to award or execute a contract

or cancellation of a order, procurement, or contract regardless of the reason, or re-order or re-procurement of the goods or services on the same terms or other terms; any breach of a statutory or other duty; negligence, misrepresentation (negligent or otherwise), or any other tort; bad faith or violation of common law duties; breach of contract; or any decisions, acts, errors, or omissions by YG, its elected officials, officers, employees, subcontractors, partners, agents, insurers, successors and assigns related to or arising from the Procurement Site and Materials.

11. **LIMITATION OF LIABILITY:** If section 10 above is inapplicable, unconscionable, contrary to public policy, or otherwise unenforceable or invalid for any reason, in whole or in part, or where you are otherwise entitled to a remedy or compensation at common law or otherwise for any reason in relation to the Procurement Site and Materials, you acknowledge and agree that the sole and absolute remedy and total maximum compensation for any and all Claims against the Owner in relation to or arising from the Procurement Site and Materials, either individually or cumulatively, will not exceed \$1000.00, and in no way or for any reason shall YG be liable to you for an amount greater than this amount. Multiple claims will not enlarge this limit. This clause shall survive the expiry, cancellation, or termination of this Agreement.

12. You acknowledge and agree that the Procurement Site and Materials may be interrupted or unavailable at times due to technical issues, maintenance, or for other reasons.

13. YG may, in its sole and absolute discretion, change, suspend, or terminate access to or use of the Procurement Site and Materials at any time without prior notice to you. In the case of a computer virus or other malicious electronic code that, in the sole opinion of YG is considered harmful to YG's computer networks, YG reserves the right to take whatever actions it deems necessary to rectify, mitigate, or neutralize the computer virus or other malicious electronic code, including, without limitation: discontinuing access to or use of the Procurement Site and Materials at any time or deleting or modifying any electronic transmission or submission made by you. In such a case, YG will not be liable in any way for any failure to receive your electronic submission or changes that may occur to the electronic transmission or Response submitted by you, including, without limitation: rendering such transmission unreadable, non-compliant, rejected, unenforceable, or unacceptable in any way; or any economic losses, lost profits, lost opportunities incurred because of such actions above.

14. YG may, at its sole discretion, unilaterally change the terms and conditions of this Agreement from time to time upon notice to you. It is your responsibility to review this Agreement to satisfy yourself that you continue to agree to the terms and conditions set out in this Agreement or any amendment thereof.

15. You represent, warrant, and agree that you will not:

- a.) use, reproduce, distribute, publish, or communicate the Procurement Site and Materials for any reason other than to obtain information and submit on orders or procurement opportunities authorized or issued by YG, unless you have obtained the express prior written approval of YG;
- b.) conduct anti-competitive, illegal, unlawful activities;
- c.) provide false or inaccurate information or misrepresent any personal or corporate information regarding your identity or intentions with respect to any matter;

- d.) post, publish, transmit, distribute, or upload any information and materials through or link directly or indirectly any information or materials to the Online Marketplace that will harm YG or its officers and employees;
- e.) send a computer virus or any other harmful software code intended to damage, detrimentally interfere with, expropriate any system, data or personal information;
- f.) violate copyright, trademark or any other proprietary intellectual property rights of others.

16. YG retains and reserves all copyright and intellectual property rights in the orders and procurement information, documents, illustrations, and materials created or issued by YG or posted on the Online Marketplace.

17. The collection, use, disclosure, retention, and disposal of information collected by YG via the Procurement Site and Materials and Responses is subject to the Yukon's *Access to Information and Privacy Protection Act* RSY 2002, c. 1 ("ATIPP") and the *Archives Act* RSY 2002, c. 9. For the purposes of this Agreement, "personal information" has the same definition as "personal information" under ATIPP. Any personal information will be collected and used in accordance with the purposes stated in this Agreement by YG and its officers, employees, subcontractors, consultants or authorized representatives.

18. You fully acknowledge and agree to the following terms in order to access and use the Procurement Site and Materials:

- a.) you fully consent to and authorize YG to collect, use, store, and disclose any Responses and any information contained therein, personal information, and any other information and materials provided or submitted by you on, through, or related to the Procurement Site and Materials for government purposes, including, without limitation:
 - i.) operation, maintenance, updating, and administration of the Procurement Site and Materials, including, without limitation: registration or compilation of standing offer arrangement holders and publishing information from a Response to the public, including: names, pricing or amounts contained in Responses, bid security or bonding information;
 - ii.) government policy and procurement planning, programming, including, but not limited to: statistical and data compilation, analysis and reporting and vendor performance evaluation;
 - iii.) sending notices and updates related to procurement opportunities, events, conferences, trade shows, training, and procurement or contracting related news and updates from YG;
 - iv.) to inform you of changes to the Procurement Site and Materials or to resolve disputes;
 - v.) to detect and protect the process related to the Procurement Site and Materials and YG, and its officers and staff, against error, fraud, or illegal activity;
 - vi.) to enforce this Agreement;
 - vii.) for the purposes of compliance or clarification of a Response;

- viii.) for the purposes of the order procurement process, including, but not limited to: evaluation, revisions to orders, award of a contract, and performance of a contract; and
- ix.) for any other government purpose as otherwise described to you in the Procurement Site and Materials.

19. Specific questions or inquiries relating to: these terms of service; the collection, use, and disclosure of personal information; or withdrawal of consent to receive notices or updates related to or arising from the Procurement Site and Materials can be directed to:

Attention: Online Marketplace Admin Team
Supply Services Branch
Box 2703 (W-4)
Whitehorse, Yukon, Y1A 2C6
Email: yg.marketplace@yukon.ca Phone: (867) 667-3585

20. YG may, in its sole and absolute discretion, prohibit you from accessing or using the Procurement Site and Materials or prohibit you from submitting a Response, or reject a Response that has been prohibited.

21. This Agreement will be deemed to have been made in and will be governed, interpreted and enforced by the laws of the Yukon without regard to conflict of law principles that would impose a law of another jurisdiction, and you irrevocably attorn submit to the exclusive jurisdiction of the courts in Yukon.

22. Each term of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such term of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new terms to eliminate such invalidity, unenforceability, or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

23. No action or failure to act by YG shall constitute a waiver of any right or duty afforded to YG under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence of any breach thereunder, except as may be specifically and explicitly agreed to in writing by YG.

24. You shall execute such further documents and give such further assurances as are reasonably required to give effect to this Agreement.

25. Nothing in this Agreement shall create the relationship of principal and agent, employer and employee, partnership, or joint venture between you and YG.

26. The terms and conditions set out in this Agreement are the entire agreement between you and YG relating to your access and use of the Procurement Site and Materials, and supersedes all previous communications, representations, negotiations, understandings and other agreements, whether oral or written, between the parties. Where a conflict exists between this Agreement and any other terms of service related to or arising from the Online Marketplace, these terms of service shall govern.

27. You have read this Agreement thoroughly and fully understand its terms and acknowledge and agree that by clicking the "I ACCEPT" button you are fully accepting and agreeing to the terms of this

Agreement, and this will be deemed equivalent to affixing an electronic signature for the purposes of this Agreement and the *Electronic Commerce Act*, RSY 2002, c. 66.