



Request for Standing Offers  
For  
**Building Supplies, Services and Walk In Option**

Request for Standing Offer No.: **19-12**

Issued: September 16, 2019

Submission Deadline: **November 8, 2019**

## Table of Contents

PART 1 – INVITATION AND SUBMISSION INSTRUCTIONS.....	4
1.1 Invitation to Respondents.....	4
1.2 Background and RFSO Summary.....	4
1.3 RFSO Contact.....	5
1.4 RFSO Timetable.....	6
1.5 Submission of Responses.....	6
1.5.1 Responses to be submitted at the Prescribed Location.....	6
1.5.2 Responses to be submitted on Time.....	6
1.5.3 Responses to be submitted in Prescribed Manner.....	7
1.5.4 Amendment of Responses.....	7
1.5.5 Withdrawal of Responses.....	7
PART 2 – EVALUATION AND SELECTION PROCESS.....	8
2.1 Stages of Evaluation.....	8
2.2 Stage I – Mandatory Submission Requirements.....	8
2.3 Stage II – Evaluation.....	8
2.4 The Evaluation Team.....	9
2.5 Selection.....	9
2.6 Notification.....	9
2.7 Negotiation of Master Agreement.....	9
2.8 Unsuccessful Negotiation.....	9
PART 3 – TERMS AND CONDITIONS OF THE RFSO PROCESS.....	10
3.1 General Information and Instructions.....	10
3.1.1 Respondents to Follow Instructions.....	10
3.1.2 Responses in English.....	10
3.1.3 No Incorporation by Reference.....	10
3.1.4 References and Past Performance.....	10
3.1.5 Information in RFSO Only an Estimate.....	10
3.1.6 Estimated Quantities.....	10
3.1.7 Specifications.....	11
3.1.8 Non-Exclusive.....	11
3.1.9 Respondents to Bear Their Own Costs.....	11
3.1.10 Response to be retained by Kinetic.....	11
3.2 Communication after Issuance of RFSO.....	11

3.2.1	Respondents to Review RFSO .....	11
3.2.2	All New Information to Respondents by Way of Addenda .....	12
3.2.3	Post-Deadline Addenda and Extension of Submission Deadline .....	12
3.2.4	Verify, Clarify and Supplement.....	12
3.3	Notification and Debriefing .....	12
3.3.1	Notification to Other Respondents .....	12
3.3.2	Debriefing.....	12
3.4	Conflict of Interest and Prohibited Conduct .....	12
3.4.1	Disqualification for Conflict of Interest .....	12
3.4.2	Disqualification for Prohibited Conduct .....	13
3.4.3	Prohibited Respondent Communications .....	13
3.4.4	Illegal or Unethical Conduct – Competition Act .....	13
3.4.5	Past Performance or Past Conduct.....	14
3.5	Confidential Information.....	14
3.5.1	Confidential Information of Kinetic.....	14
3.5.2	Confidential Information of Respondent .....	14
3.6	Procurement Process Non-binding.....	14
3.6.1	No Contract A and No Claims .....	14
3.6.2	No Legal Relationship or Obligation.....	15
3.6.3	Cancellation .....	15
3.7	Governing Law and Interpretation .....	15
	EXHIBIT A – STATEMENT OF WORK .....	16
	EXHIBIT B – MASTER AGREEMENT .....	17
	EXHIBIT C – EVALUATION PROCESS.....	18
	FORM 1 – MANDATORY SUBMISSION FORM.....	19
	EXHIBIT D – REFERENCE FORM .....	20
	EXHIBIT E – MARKET BASKET FORM .....	21
	EXHIBIT F – KINETIC CANADIAN PUBLIC SECTOR AGENCIES LISTINGS .....	24

## PART 1 – INVITATION AND SUBMISSION INSTRUCTIONS

### 1.1 Invitation to Respondents

This non-binding Request for Standing Offers (“**RFSO**”) is an invitation by Kinetic GPO (“**Kinetic**”) to interested suppliers to qualify for the opportunity to sign a standing offer agreement (for the supply of **Building Supplies, Services and Walk In Option** to Kinetic members (“**GPO Members**” or “**Members**”) as further described in Exhibit A (Statement of Work) to this RFSO.

The intent of this solicitation is to establish one or more contracts that include a comprehensive product offering with one or more suppliers that can accommodate a nationwide demand for **Building Supplies, Services and Walk In Option** and to fulfill obligations as nationwide suppliers to GPO Members as further specified herein.

Each contract shall be based on the Master Agreement, a draft of which is attached as Exhibit B, (“**Master Agreement**”) that includes the terms of the Standing Offer Agreement. It is Kinetics’ intention to contract with at least one qualified supplier and, if deemed to be in the best interest of Kinetics’ Members, Kinetic may contract with more than one supplier. Each Master Agreement shall be for a term of three (3) years plus two (2) optional years.

### 1.2 Background and RFSO Summary

Kinetic was established in 2017 to provide its private and public-sector Members with greater value for money in purchasing by (a) leveraging their collective purchasing power and (b) enhancing their operational efficiencies in purchasing and contract management. For more on Kinetic GPO please visit [www.kineticgpo.ca](http://www.kineticgpo.ca).

Kinetic intends to execute a Master Agreement with the successful bidder(s) (“**Respondent(s)**”). Each Master Agreement will include the terms of the standing offer agreement (“**Standing Offer Agreement**”) that serves as the basis for the purchase of products or services by GPO Members.

**Only submissions (“Proposals”) submitted by the Submission Deadline (set out below) will be evaluated. The evaluation of Proposals shall be done in accordance with the evaluation process as set out in this RFSO.**

Based on the evaluation of Proposals, the highest ranked Respondent(s) will be invited to enter into negotiations based on the terms of the Master Agreement which agreement will, when signed, govern the relationship between Kinetic and the Supplier(s) and establish the Standing Offer Agreement.

Following the execution of the Master Agreement by Kinetic and the successful Respondent (s), (the “**Supplier**”), the Standing Offer Agreement will be made available to the GPO Members for the purchase of **Building Supplies, Services and Walk In Option** from Supplier(s). Kinetic will actively promote and market Supplier’s offering as part of Kinetics’ promotional activities among its existing and future GPO Members across Canada.

### **1.3 Kinetic GPO Contracts Offers Competitive Advantages**

Securing a contract with Kinetic GPO offers suppliers a significant competitive advantage in the Canadian market.

Kinetic is constantly communicating with its Canadian members to raise awareness of potential purchase opportunities available through Kinetic's competitively tendered contracts.

Contracted suppliers' profiles are raised with both existing and potential members through Kinetic's participation in various conferences, through Kinetic marketing material and through mail and email campaigns, webinars, onsite training sessions and learning workshops. In 2019 alone, Kinetic will have attended 27 conferences, 10+ supplier kick off meetings, 10+ National Training / Webinar calls and 3+ connect events.

In addition to raising the profile of contracted suppliers among Kinetic Members and potential members, Kinetic assists suppliers with navigating the world of group buying and to generate business opportunities within that world as follows:

- Upon contract execution, Kinetic will announce the award and purchase opportunities to its Members.
- Kinetic will organize a kick off meeting between Kinetic and the successful supplier to provide an orientation on how to leverage the opportunities afforded by having a contract with Kinetic.
- During the term of the contract, Kinetic remains available to help educate supplier's sales force on the contract with a view to equipping the sales force with the tools needed to generate business opportunities within Kinetic's membership.
- Kinetic also works with supplier's marketing team to develop joint marketing collateral that can be used to promote the contract to Members.
- Kinetic helps facilitate introductions to Members who are interested in knowing more about supplier's goods and services and potentially purchasing the goods and services.

All of these efforts offer successful suppliers a significant competitive advantage and unique opportunity to increase sales within the Canadian market.

### **1.4 RFSO Contact**

For the purposes of this procurement process, the "RFSO Contact" is:

LouAnn Birkett

lbirkett@kineticgpo.ca

Respondents and their representatives are not permitted to contact any employees, officers, agents, or other representatives of Kinetic, other than the RFSO Contact, concerning matters regarding this RFSO. Failure to adhere to this rule may result in the disqualification of the Respondent and the rejection of the Respondent's Proposal.

## 1.5 RFSO Timetable

Issue Date of RFSO	Monday, September 16, 2019
Deadline for Questions	Friday, October 4, 2019
Deadline for Issuing Addenda	Friday, October 18, 2019
Submission Deadline	Friday, November 8, 2019
Rectification Period	5 Business Days
Anticipated Execution of Master Agreement	Friday December 20, 2019

The RFSO timetable is tentative only and may be changed by Kinetic at any time upon notice.

For greater clarity, business days means all weekdays that Kinetic is open for business in the Province of Ontario and excludes statutory holidays normally observed by private sector organizations in Ontario.

## 1.6 Submission of Responses

### 1.5.1 Responses to be submitted at the Prescribed Location

All Proposals must be uploaded to Bonfire – <https://kineticgpo.bonfirehub.ca/portal> by the closing date and time.

### 1.5.2 Responses to be submitted on Time

**Only Proposals received on or before the Submission Deadline set out in the RFSO Timetable will be evaluated.**

Respondents are cautioned that the timing of their Proposal submission is based on when the Proposal is received, not when the Proposal is submitted by a Respondent. Loading large documents may take significant time, depending on the size of the file(s) and your Internet connection speed. Respondents are advised to allocate sufficient time to upload documents and finalize their submissions prior to the Submission Deadline.

### 1.5.3 Responses to be submitted in Prescribed Manner

Respondents should organize their submission into the following files and upload each file individually.

File Name
Response Document
Market Basket Pricing
Insurance Document
Form 1 – Mandatory Submission Form
Exhibit D – Reference Form

The objective of the technical restrictions set out herein are to ensure electronic systems used in accepting Proposals are capable of doing so. Respondents are solely and exclusively responsible for ensuring their submissions satisfy the requirements.

Each file has a maximum allowable upload size of 100 MB.

Documents should not be embedded within uploaded files, as the embedded files will not be accessible or evaluated.

Please contact the RFSO Contact named above for technical questions related to submitting your Proposal documents.

### 1.5.4 Amendment of Responses

Respondents may edit their Proposals prior to the Submission Deadline in accordance with the instructions provided in the RFSO. Kinetic will not accept or evaluate any edits to Proposals after the Submission Deadline except as expressly set out in this RFSO.

### 1.5.5 Withdrawal of Responses

At any time throughout the RFSO process until the execution of a Master Agreement, a Respondent may withdraw a submitted Proposal.

Prior to the Submission Deadline, Respondents may withdraw their Proposal in accordance with the instructions provided in the electronic bidding system.

To withdraw a Proposal after the Submission Deadline, a notice of withdrawal must be sent to the RFSO Contact and must be signed by an authorized representative of the Respondent.

[End of Part 1]

## **PART 2 – EVALUATION AND SELECTION PROCESS**

### **2.1 Stages of Evaluation**

Kinetic will conduct the evaluation of Proposals submitted by the Submission Deadline in the following stages:

### **2.2 Stage I – Mandatory Submission Requirements**

Kinetic will review the Proposals to determine whether the mandatory requirements set out in Exhibit C (Evaluation Process) to this RFSO have been met. Questions or queries on the part of Kinetic as to whether a Proposal has met the requirements will be subject to the verification and clarification process set out in this document.

**Stage I** will consist of a review to determine which Proposals comply with all of the mandatory submission requirements.

If a Proposal fails to satisfy all of the mandatory submission requirements, Kinetic will issue the Respondent a rectification notice identifying the deficiencies and providing the Respondent an opportunity to rectify the deficiencies.

If the Respondent fails to satisfy the mandatory submission requirements within the Rectification Period (as defined above in under the RFSO Timetable), its Proposal will be excluded from further consideration. The Rectification Period will begin on the date and time that Kinetic issues a rectification notice to the Respondent.

The mandatory submission requirements are set out in Exhibit C (Evaluation Process).

### **2.3 Stage II – Evaluation**

Kinetic will evaluate each qualified Proposal on the basis of the rated criteria as set out in the Exhibit C (Evaluation Process) (the “**Rated Requirements**”).

Evaluation and scoring of each Proposal satisfying the mandatory requirements will be done on the basis of Rated Requirements set out in Exhibit C (Evaluation Process).

Each Proposal will be awarded points based on the information responding to the Rated Requirements.

Where contradictory information or information that contains conditional statements is provided with respect to a requirement, Kinetic will, in its sole and absolute discretion, determine whether the Proposal complies with the requirements, and may seek clarification from the Respondent. Contradictory or missing information may result in the Proposal receiving a low score for that particular Rated Requirement.

Proposals that do not respond to a particular Rated Requirement, are left blank or contain a Proposal that is not applicable will receive a zero (0) point score for that requirement. Where the evaluation team cannot reasonably find Proposals to a Rated Requirement, a zero (0) point score will be assessed for that Rated Requirement.

Submissions that receive a minimum technical score of 70% will move on to a Financial Evaluation.

The Proposal to each Rated Requirement should:

- Be complete (bullet point format is acceptable);
- Be concise and factual; and
- Demonstrate the Respondent's understanding of GPO Members' business needs by providing answers validating its capabilities.

## **2.4 The Evaluation Team**

An evaluation team comprised of representatives of Kinetic will evaluate the Proposals. Kinetic reserves the right to use the services of outside consultants and other resources, in the evaluation of the Proposals. Such consultants and resources will be required to hold Proposals in strict confidence.

## **2.5 Selection**

Based on the evaluation of the Proposals as described in **Stage II - Evaluation** the Respondent(s) that achieve the highest score(s) (Technical + Financial) as set out in Exhibit C (Evaluation Process) will be selected to enter into negotiations of a Master Agreement for the establishment of a Standing Offer agreement which negotiation shall be based on the terms and conditions of the Master Agreement attached as Exhibit B.

Kinetic reserves the right, in its sole discretion, to invite a second highest ranked Respondent to enter into negotiations of a Master Agreement where it is determined that having more than one supplier under contract is in Kinetics' Members' best interest. Reasons such a decision may be made include: (a) to expand the breadth of products available to Members; (b) expand the manufacturers whose products are made available, (c) expand the geographic area coverage.

## **2.6 Notification**

The successful Respondent(s) will be notified by Kinetic in writing.

## **2.7 Negotiation of Master Agreement**

The successful Respondent(s) will be invited to negotiate the negotiable terms of the Master Agreement and if agreement can be reached on the terms, the parties shall execute a Master Agreement. Respondents are advised that Kinetic has limited flexibility to negotiate the terms of the Master Agreement based on the provisions of the applicable trade agreements and Kinetic's Negotiation Protocol which is available at [kineticgpo.ca](http://kineticgpo.ca).

## **2.8 Unsuccessful Negotiation**

If for any reason Kinetic determines that it is unlikely to reach complete agreement with the successful Respondent(s), Kinetic may discontinue the discussions with the successful Respondent(s) and proceed in any manner that Kinetic may decide, in consideration of its and its Members' best interests including without limitation inviting one of the other Respondents to enter

into discussions to conclude a Master Agreement, commencing with the Respondent having the second highest combined score and so forth.

[End of Part 2]

## **PART 3 – TERMS AND CONDITIONS OF THE RFSO PROCESS**

### **3.1 General Information and Instructions**

#### **3.1.1 Respondents to Follow Instructions**

Respondents should structure their Proposals in accordance with the order of the evaluation criteria presented in Exhibit C (Evaluation Criteria) and other instructions in this RFSO. Where information is requested in this RFSO, any Proposal made in a Proposal should reference the applicable section numbers of this RFSO.

#### **3.1.2 Responses in English**

All Proposals are to be in English only.

#### **3.1.3 No Incorporation by Reference**

The entire content of the Respondent's Proposal should be submitted in a fixed form, and the content of websites or other external documents referred to in the Respondent's Proposal but not attached will not be considered to form part of its Proposal.

#### **3.1.4 References and Past Performance**

In the evaluation process, Kinetic may include information provided by the Respondent's references and may also consider the Respondent's past performance or conduct on previous contracts with Kinetic or other institutions.

#### **3.1.5 Information in RFSO Only an Estimate**

Kinetic and its advisers make no representation, warranty or guarantee as to the accuracy of the information contained in this RFSO or issued by way of addenda. Any quantities shown or data contained in this RFSO or provided by way of addenda are estimates only, and are for the sole purpose of indicating to Respondents the general scale and scope of the Deliverables. It is the Respondent's responsibility to obtain all the information necessary to prepare a Proposal to this RFSO.

#### **3.1.6 Estimated Quantities**

Kinetic GPO makes no guarantee or commitment of any kind concerning quantities or usage of contracts resulting from this solicitation. The successful Supplier(s) discount and pricing schedule shall apply regardless of the volume of business under the contract.

### **3.1.7 Specifications**

When a solicitation contains a specification that states no substitutions, no deviation from this requirement will be permitted. Supplier must comply with the true intent of the specifications and drawings and not take advantage of any unintentional error or omission. In cases where no type and kind of product is specified, specifications have been developed to indicate minimal standards as to the usage, materials, and contents based on the needs of the members.

References to manufacturer's specifications when used by Kinetic GPO, are to be considered informative to Respondents and not intended to require that a specific manufacturer's product be proposed. The naming of specifications is intended to provide the Respondent with information as to the general style, type and kind of product requested. Responses proposing similar goods, materials, or equipment regularly produced by a manufacturer shall be evaluated by Kinetic GPO which will, in its sole discretion, determine whether such proposed goods, materials or equipment are substantially equivalent to the named specifications, considering quality, workmanship, economy of operation, and suitability for the purpose intended. Suppliers should include all documentation required to ensure Kinetic is able to confirm the proposed goods, materials or equipment are substantially equivalent. Specifications deemed to be equivalent and acceptable will be at the sole discretion of Kinetic.

### **3.1.8 Non-Exclusive**

Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience and benefit of Kinetic Members. Kinetic Members reserve the right to obtain like goods from other sources.

### **3.1.9 Respondents to Bear Their Own Costs**

The Respondent will bear all costs associated with or incurred in the preparation and presentation of its Proposal, including, if applicable, costs incurred for interviews or demonstrations and neither Kinetic or its members shall have any responsibility or liability therefor.

### **3.1.10 Response to be retained by Kinetic**

Kinetic will not return any Proposal or any accompanying documentation submitted by a Respondent in connection with this RFSO.

## **3.2 Communication after Issuance of RFSO**

### **3.2.1 Respondents to Review RFSO**

Respondents should promptly examine all of the documents comprising this RFSO, and may direct questions or seek additional information in writing by email to the RFSO Contact on or before the Deadline for Questions set out above in the RFSO Timetable. No such communications are to be directed to anyone other than the RFSO Contact. Kinetic is under no obligation to provide additional information, and Kinetic will not be responsible for any information provided by or obtained from any source other than the RFSO Contact. It is the responsibility of the Respondent to seek clarification from the RFSO Contact on any matter it considers to be unclear. Kinetic will not be responsible for any misunderstanding on the part of the Respondent concerning this RFSO or its process.

### **3.2.2 All New Information to Respondents by Way of Addenda**

This RFSO may be amended only by way of an addendum communicated in accordance with this section. If Kinetic, for any reason, determines that it is necessary to provide additional information relating to this RFSO, such information will be communicated to all Respondents by addendum. Each addendum forms an integral part of this RFSO and may contain important information, including significant changes to this RFSO. Respondents are responsible for obtaining all addenda issued by Kinetic. Addenda when issued will be posted on the same electronic systems used for posting the RFSO. It is the responsibility of the Respondent to ensure it takes the appropriate steps to receive all addenda.

### **3.2.3 Post-Deadline Addenda and Extension of Submission Deadline**

If Kinetic determines that it is necessary to issue an addendum after the Deadline for Issuing Addenda, Kinetic may by notice extend the Submission Deadline for a reasonable period of time.

### **3.2.4 Verify, Clarify and Supplement**

When evaluating Proposals, Kinetic may, but shall have no obligation to, request further information from the Respondent or third parties in order to verify, clarify or supplement the information provided in the Respondent's Proposal including but not limited to clarification with respect to whether a Proposal meets the requirements set out in Exhibit C (Evaluation Process). Kinetic may revisit and re-evaluate the Respondent's Proposal or ranking on the basis of any such information.

## **3.3 Notification and Debriefing**

### **3.3.1 Notification to Other Respondents**

Once the selected Respondent(s) has executed a Standing Offer Agreement, the other Respondents will be notified of the outcome of the RFSO process.

### **3.3.2 Debriefing**

Respondents may request a debriefing after receipt of a notification of the outcome of the RFSO process. All requests must be in writing to the RFSO Contact and must be made within sixty (60) days of such notification. The intent of the debriefing information session is to aid the Respondent in presenting a better Proposal in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the RFSO process or its outcome.

## **3.4 Conflict of Interest and Prohibited Conduct**

### **3.4.1 Disqualification for Conflict of Interest**

Kinetic may disqualify a Respondent for any conduct, situation or circumstances, determined by Kinetic, in its sole and absolute discretion, to constitute a Conflict of Interest.

For the purposes of this RFSO, the term "Conflict of Interest" includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the RFSO process, the Respondent has an unfair advantage or engages in conduct, directly or indirectly, that may give them an unfair advantage, including but not limited to: (i) having, or having access to, confidential information of Kinetic or any GPO Member in the preparation of its Proposal that is not available to other Respondents; (ii) communicating with any person with a view to influencing preferred treatment in the RFSO process (including but not limited to the lobbying of decision makers involved in the RFSO process); or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive RFSO process or render that process non-competitive or unfair; or
- (b) in relation to the performance of its contractual obligations under a contract for the Deliverables, the Respondent's 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 judgement; or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

### **3.4.2 Disqualification for Prohibited Conduct**

Kinetic may disqualify a Respondent, rescind an invitation to negotiate or terminate a contract subsequently entered into if Kinetic determines that the Respondent has engaged in any conduct prohibited by this RFSO.

### **3.4.3 Prohibited Respondent Communications**

Respondents must not, in relation to this RFSO or the evaluation and selection process, engage directly or indirectly in any form of lobbying whatsoever to influence the selection of the successful Respondent(s).

Respondents must not engage in any communications that could constitute a Conflict of Interest and should take note of the Conflict of Interest declaration set out in the Mandatory Submission Form which is attached and forms part of Exhibit C (Evaluation Criteria).

Respondents must not at any time directly or indirectly communicate with the media in relation to this RFSO or any agreement entered into pursuant to this RFSO without first obtaining the written permission of the RFSO Contact.

### **3.4.4 Illegal or Unethical Conduct – Competition Act**

Respondents must not engage in any illegal business practices, including activities such as bid-rigging, price-fixing, bribery, fraud, coercion or collusion. Respondents must not engage in any unethical conduct, including lobbying, as described above, or other inappropriate communications; offering gifts to any employees, officers, agents, or other representatives of Kinetic; deceitfulness; submitting Proposals containing misrepresentations or other misleading or inaccurate information; or any other conduct that compromises or may be seen to compromise the competitive process provided for in this RFSO.

Under Canadian law, a proposal must be prepared without conspiracy, collusion, or fraud. For more information, refer to the Competition Bureau website, and in particular, part VI of the Competition Act, R.S.C. 1985, c. C-34.

### **3.4.5 Past Performance or Past Conduct**

Kinetic may prohibit a potential Respondent from participating in a procurement process based on past performance or based on inappropriate conduct in a prior procurement process, including but not limited to the following:

- (a) illegal or unethical conduct as described above;
- (b) the refusal of the supplier to honour its submitted pricing or other commitments or to achieve required performance standards or;
- (c) any conduct, situation or circumstance determined by Kinetic, in its sole and absolute discretion, to have constituted an undisclosed Conflict of Interest.

## **3.5 Confidential Information**

### **3.5.1 Confidential Information of Kinetic**

All information provided by or obtained from Kinetic in any form in connection with this RFSO either before or after the issuance of this RFSO

- (a) is the sole property of Kinetic and must be treated as confidential;
- (b) is not to be used for any purpose other than replying to this RFSO and the performance of any subsequent contract for the Deliverables;
- (c) must not be disclosed without prior written authorization from Kinetic; and
- (d) must be returned by the Respondent to Kinetic immediately upon the request of Kinetic.

### **3.5.2 Confidential Information of Respondent**

A Respondent should identify any information in its Proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by Kinetic. The confidentiality of such information will be maintained by Kinetic, except as otherwise required by law or by order of a court or tribunal. Respondents are advised that their Proposals will, as necessary, be disclosed, on a confidential basis, to advisers retained by Kinetic to advise or assist with the RFSO process, including the evaluation of Proposals, and may be disclosed to representatives of the GPO Members. If a Respondent has any questions about the collection and use of information pursuant to this RFSO, questions are to be submitted to the RFSO Contact.

## **3.6 Procurement Process Non-binding**

### **3.6.1 No Contract A and No Claims**

Although this RFSO process is designed to comply with the requirements of any trade agreements or Directives including but not limited to, Canadian Free Trade Agreement and the

Comprehensive European Trade Agreement applicable to GPO Members, this procurement process is not intended to create and will not create a formal, legally binding bidding process at Common Law. It will instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation:

- (a) this RFSO will not give rise to any Contract A based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and
- (b) neither the Respondent nor Kinetic will have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the award of a contract, failure to award a contract or failure to honour a Proposal submitted in Proposal to this RFSO.

### **3.6.2 No Legal Relationship or Obligation**

No legal relationship or obligation will be created between the Respondent and Kinetic or any GPO Member by this RFSO process unless and until a Master Agreement is signed.

### **3.6.3 Cancellation**

Kinetic may cancel or amend the RFSO process without liability at any time.

### **3.7 Governing Law and Interpretation**

The Terms and Conditions of this RFSO Process

- (a) are intended to be interpreted broadly and separately (with no particular provision intended to limit the scope of any other provision);
- (b) are non-exhaustive and will not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations; and
- (c) are to be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein.

[End of Part 3]

## **EXHIBIT A – STATEMENT OF WORK**

Please see separate document

## EXHIBIT B – MASTER AGREEMENT

See attached document for Exhibit B (Master Agreement).

### **Instructions to Respondents**

Respondents who wish to propose changes to the Master Agreement should provide responses to the proposed Master Agreement within the document included in the RFSO and return the marked-up or commented Master Agreement with their Proposal.

**NON-NEGOTIABLE TERMS ARE SHADED IN GREY. KINETIC WILL NOT NEGOTIATE CHANGES TO THE NON-NEGOTIABLE TERMS.** If a Respondent wishes to proposed changes to a non-negotiable term, this should be done **prior to submitting a Proposal** and before the Deadline for Questions.

## **EXHIBIT C – EVALUATION PROCESS**

Please see separate document

## **FORM 1 – MANDATORY SUBMISSION FORM**

Please see separate document

## **EXHIBIT D – REFERENCE FORM**

Please see separate document

## EXHIBIT E – MARKET BASKET FORM

Please see separate document for Exhibit E - Financial Proposal Form.

### Instructions to Respondents

1. Respondents to provide Pricing for both Products and Services.
2. The “Market Basket” 12 Categories for Products and 23 Labour Classifications list shall include the name of the product, generic description, manufacturer’s name and manufacture’s part number, manufacturer’s item description, unit of measure, suggested retail pricing, total number of units sold by the Respondent in 2017, Kinetics’ percentage discount and the maximum net prices for each product.
3. Respondents shall provide the proposed product lines, including the total number of products offered in your catalog. Offerors shall identify and describe their categories. For each proposed category, describe in detail and provide at a minimum the following types of information:
  - a. Identification and description of product categories offered.
  - b. Identification and description of sub categories.
4. The Respondent shall provide a list of all items in its standard published catalogue with public prices, minimum percentage discount off list and net prices, and;
5. A “**Market Basket**” consisting of a list of all available goods within the classes of products listed in the RFSO along with pricing shall be submitted by the Respondent. Kinetic reserves the right to request clarification of the Market Basket after close of the RFSO.
6. The Market Basket shall include the items by volume time quoted price that are currently being offered to public sector customers.
7. For ease of review and evaluation by the evaluation team, the listing shall be submitted in an electronic format as per Exhibit E (Market Basket Form).
8. Proposed prices shall be provided in Canadian funds and shall include all applicable Customs duties, tariffs, overhead, materials, fuel, office support, profit, permits, licences, labour, insurance, Workplace Safety Insurance Board costs, travel, and warranties, and further shall be subject to adjustment for fluctuation in foreign exchange rates at the time of order;
9. Propose a plan to adjust pricing as market conditions change. The plan must be verifiable and auditable. Identify calculation, formula, components, index, etc.

10. Provide details of and propose additional discounts for volume orders, special manufacturer's offers, minimum order quantity, free goods program, total annual spend, etc.
11. All prices shall be quoted exclusive of applicable taxes, each of which, if applicable, should be stated separately;
12. Kinetic GPO will review fully documented requests for price adjustment after the Master Agreement has been in effect for one (1) year. price adjustment will be effective upon the effective date of the Contract anniversary, unless otherwise agreed upon.
13. In the event of any discrepancy in the prices within a Proposal, the lowest price submitted

## **Additional Pricing Terms**

### **Electronic Price Lists**

1. Respondents shall offer pricing for products based on a discount off a price list specified; *i.e.* wholesale price; catalog; retail Point of Sale (POS) for each category with limited exceptions specifically identified in each price file.
2. Electronic Catalog and/or price lists must accompany the proposal. Include an electronic copy of the catalog in Excel format from which discount, or fixed price, is calculated. Multiple percentage discount structure is also acceptable. Please specify where different percentage discounts apply. If Respondent has existing GPO contracts in place, Respondent is requested to submit pricing equal to or better than those in place.
3. Suppliers are encouraged to offer additional discounts for one-time delivery of large single orders to GPO Members. GPO Members may seek to negotiate additional price concessions based on quantity purchases of any products offered under the particular Purchase Agreement. Kinetic Members shall document their files accordingly.
4. In addition, Supplier(s) may conduct sales promotions involving price reductions. Supplier(s) shall submit to Kinetic documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to quoted prices. Promotional prices shall be available to all GPO Members. Upon approval by Kinetic, the Supplier shall provide notice by email of the promotion.

5. Installation charges shall be clearly identified when applicable.
6. Prices listed in the Standing Offer Agreement will be used to establish the extent of a manufacturer's product lines that are available from a particular Supplier and the pricing per item.
7. Electronic price lists must contain manufacturer part #, supplier part # (*if different from manufacturer part #*); description; manufacturers list price and discounted price offered to GPO Members (excluding freight) based on the locations services as per Form 1.
8. Media submitted for price list must include the Respondents' company name, name of the solicitation, and date.

***Please submit price lists and/or catalogs in excel or delimited format only.***

### **Pricing Adjustments**

- All pricing submitted shall be "ceiling" or "not-to-exceed" pricing, subject to the price adjustment provisions below.
- The Supplier may adjust submitted pricing lower if needed but, cannot exceed the pricing submitted in its Proposal.

#### **OPTION 1 – Allowable Price Adjustments - Services**

Prices quoted in Respondents' Financial Proposal shall be fixed for the first twelve months of the Master Agreement (the "**Contract Year**"). Thereafter, prices may be increased once every Contract Year (including renewal years) by up to the Canadian Consumer Price Index Yearly Inflation Rate as reported in the last month of the previous Contract Year.

#### **OPTION 2 – Allowable Price Adjustments - Commodity**

Prices quoted in Respondents' Financial Proposal shall be fixed for the first twelve months of the Master Agreement (the "**Contract Year**"). Thereafter, prices may be adjusted once every Contract Year with supporting justification for the price increase, which may include evidence that original manufacturer's prices have been increased.

The Respondent is deemed to confirm that it has prepared its Proposal with reference to all of the provisions of the RFSO, that it has factored all of the provisions of the Agreement, if any, into its pricing assumptions, calculations and into its proposed prices.

## **EXHIBIT F – KINETIC CANADIAN PUBLIC SECTOR AGENCIES LISTINGS**

Kinetic GPO has included in a separate Excel spreadsheet labeled “Exhibit F Kinetic Canadian Public Sector Agencies Listing” a listing of Municipal, Academic, School Boards & Hospitals also referenced as MASH sector entities, and political subdivisions of the referenced public entities/agencies who would be eligible to access the contract award made pursuant to this solicitation.

This notice complies with the procedural requirements of certain Canadian procurement agreements and respective provisions for public agencies.

Please see separate document for the list of agencies

## EXHIBIT A – STATEMENT OF WORK

Kinetic GPO is seeking qualified Supplier(s) to supply **Building Supplies, Services and Walk In Option** throughout Canada (Respondents to specify and complete Form 1 attached in the bid package) where “**Building Supplies, Services and Walk In Option**” includes, but may not be limited to, the goods listed in this Statement of Work below.

Supplier(s) shall, at the request of Kinetic and/or GPO Members, provide these goods pursuant to the terms of this RFSO and the Standing Offer Agreement that forms part of the negotiated Master Agreement between Kinetic and the Supplier.

This RFSO consists of several main categories. This proposal has been divided into categories with items that generally represent those most frequently purchased from qualified suppliers that can provide all products at minimum of one entire category listed and be able to supply the products to a minimum of one entire Province.

In addition, a complete range of services available through the Supplier such as, but not limited to, installation, renovation services, repair services, training services, managing contractors, budget management, project management and any other related services offered by the Supplier.”

This Solicitation is to establish a nationwide purchasing agreement for the acquisition of the following products. The category descriptive examples below are not to be considered restrictive, but rather, provide a general, non-inclusive, description of the category. These are standard use in the commercial and industrial environments. Your firm may not have the ability to provide all categories.

All products offered shall be new, unused and of the latest design and technology.

The intent is for each Supplier to submit their complete product line so that Kinetic GPO’s members may order a wide array of product as appropriate for their needs. You may subcontract items your firm does not supply.

### **Services**

As part of your Proposal response, detail your firm’s program in offering services including:

Providing and managing qualified contractors

Budget management in keeping projects on budget

Project management services in design, planning, organizing, scheduling and managing all stages of a project.

### **Service Providers (Labor)**

Contractor shall serve as the single point of contact between Participating Public Agencies and Service Providers.

Contractor shall verify that all Service Providers are fully licensed for the type of work being performed in the respective Province(s).

Contractor shall verify each Service Provider maintains at a minimum, the levels of insurance specified under in draft contract.

## **PRODUCT CATEGORIES**

### **CATEGORY 1: APPLIANCES**

Large appliances: refrigerators, washers, dryers, dishwashing machines, stoves, cooktops, range hoods and ovens; TVs, DVR's, small appliances: mixers, toasters, microwave ovens, food processors, disposals and trash compactors.

### **CATEGORY 2: BUILDING MATERIALS**

Lumber (dimensional and timber), millwork, roofing, siding, plywood, paneling, hardwood, trim, molding, fencing, decking, gates, brick, block, doors, windows, bagged goods (concrete, mortar, sand, or asphalt), drywall, rebar, acoustical tiles, rain gutters, garage door openers and insulation.

### **CATEGORY 3: KITCHEN AND BATH CABINETS**

Kitchen cabinets, bath vanities, countertops, medicine cabinets and mirrors.

### **CATEGORY 4: LANDSCAPING EQUIPMENT AND SUPPLIES**

Lawn and landscape equipment (gasoline and electric), shovels, rakes, axes, hoes, hoses, nozzles, insect control, herbicides, fertilizers, plants, trees and sprinkler/irrigation equipment.

### **CATEGORY 5: PAINTS AND COATINGS**

All types of paints and coatings, wall paper, caulking, spray equipment, aerosol paints, pressure washers, sand blasters, finishes, abrasives, epoxy, cleaners, drywall supplies, tarps, compounds, adhesives and accessories.

### **CATEGORY 6: POOL SUPPLIES**

Pool chemicals, tools, timers, pump/motor units, vacuum equipment, patio furniture, parts, and all ancillary supplies.

### **CATEGORY 7: FLOORING AND WINDOW COVERINGS**

All flooring, including but not limited to, vinyl plank, VCT, vinyl tile, ceramic tile, hardwood, carpet tile, carpet and cove base; blinds, shades, screens, window glass, mirrors, parts, and all ancillary supplies.

### **CATEGORY 8: HOSPITALITY**

Guest room supplies and appliances, personal care amenities, telephones, bed and bath linens, carts, banquet and conference room supplies, guest room and suite furniture, fixtures and equipment.

**CATEGORY 9: ROOFING**

Felt underlayment, Asphalt shingles, Drip edge, Hook blades, Roofing nails, Sealant, Self-adhesive waterproof underlayment (“ice and water shield”), Staples, Step and dormer flashing, Valley flashing, Vent flashing, Gutters & Down Spouts.

**CATEGORY 10: IN STORE SERVICES**

Including, but not limited to: glass cutting, pipe threading, planning services (flooring and cabinet), verbal technical advice, special orders, rental equipment, etc.

**CATEGORY 11: ELECTRICAL**

Including but not limited to wiring, switches, electrical panels, boxes, outlets, etc.

**CATEGORY 12: SUPPLIER OPTIONAL CATEGORY**

**PRODUCT ORDERING:**

Contractors complete product line (Wholesale or Retail) shall be available for internet ordering 24/7.

Products may be ordered by any of the following methods:

- Internet
- Will Call (Phone or FAX order)
- POS (Point-of-sale)

**Current Products:**

All products being offered in response to this solicitation shall be in current and ongoing production; shall be formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.

**Outcome:**

The expected outcome of this proposal is to enter into a contractual relationship with a business partner who will provide Building Supplies, Services and Walk In Option to Kinetic members

The primary focus of this RFSO is to award a national contract(s), to those supplier(s) that offer the most comprehensive solutions to the above outcome statement.

Suppliers must demonstrate that they have comprehensive solutions to provide Building Supplies, Services and Walk In Option in an efficient and effective manner.

Suppliers are encouraged to detail in their proposal any related value added-services that will benefit participating agencies.

### **Estimated Volume:**

The estimated dollar volume of Building Supplies, Services and Walk In Option purchased under the proposed Master Agreement is approximately **\$8 Million Dollars** annually. Please note that no dollar volume is guarantee by Kinetic GPO. The estimated dollar volume is based on anticipated volumes and is subject to the number of agencies that Kinetic GPO has signed to use the contract. Suppliers are cautioned to use their own research to assist them in determining the potential size of the contract. For greater certainty, Kinetic GPO is not providing any promise or representation in respect of the estimated total quantities or values of the Building Supplies, Services and Walk In Option.

### **Participating Public Agency Access.**

Supplier is strongly encouraged to establish the following communication links to facilitate customer access and communication:

- (i) (A) A dedicated Kinetic GPO internet web-based homepage containing:
  - (1) Kinetic GPO standard logo;
  - (2) Summary of Services pricing;
  - (3) Electronic link to Kinetic GPO's online registration page;
  - (4) Other promotional material as requested by Kinetic GPO.
  - (5) A dedicated toll-free national hotline, or email address, for inquiries regarding Kinetic GPO.
- (ii) Electronic Registration. Supplier shall be responsible for ensuring that each Public Agency has completed Kinetic GPO's online registration process prior to processing the Public Agency's first sales order.
- (iii) Supplier's Performance Review. Upon request by Kinetic GPO, Supplier shall participate in a performance review meeting with Kinetic GPO to evaluate Supplier's performance of the covenants set forth in this Agreement

### **Product Pricing**

Retail:

Pricing shall be a fixed percentage (%) off **marked price** at the POS; not a percent off **list**.

Kinetic GPO will consider other retail pricing options (ex. Rebate on gross sales).

Wholesale:

Pricing shall be a fixed percentage (%) off catalog pricing by Product Category. Kinetic GPO will consider other retail pricing options (ex. Rebate on gross sales). Pricing **must be provided** for both commodities and services.

### **Rebate on Sales**

If this pricing option is offered, describe your firm's ability to provide this service.

### **On-Line Catalog Discount Pricing**

Presently, the capability exists to access an on-line catalog reflecting contract pricing of all products. Describe your firm's ability to provide this service.

### **Related Products and Services (Installation, Repair and Renovation Services) Pricing**

All Participating Public Agencies shall receive a detailed written quotation for all services to be performed, and product(s) to be provided.

All quotations shall be for a "not to exceed" amount.

As an audit tool, the Contractor(s) shall provide a copy of the most current R.S. Means Bare Cost Data (including any city cost index adjustment) pertaining to all written quotations.

### **Sales Reporting**

Describe your firm's ability to provide detailed management reporting by Participating Public Agency. Identify the level(s) (Agency, Division, Department, Individual) of reporting detail available in the following categories:

Sales Dollars

Sales histories by manufacturer, item description, part number, quantity, NIGP codes  
Procurement card (MasterCard or Visa brand)

### **Ordering Capabilities**

Suppliers that have retail stores shall have appropriate systems and procedures in place to ensure they charge the applicable contract pricing on all Products to GPO Members.

Supplier shall have an electronic on-line catalogue, including shopping cart capabilities, for order entry that can be used by Kinetic Members. Features will include: product lookup that shows Kinetic member's contract price; ability to set purchasing authorization limits; ability to download order and invoice history reports.

Suppliers that have storefronts will have a process to register an entity's purchasing cards to ensure the entity is getting the Kinetic contract price or the store price, whichever is lowest.

## Product Ordering

Members may use a variety of ordering methods, including phone, fax, email, and electronic transactions as further described below:

### Online Ordering

Members may choose to use the Supplier's website to place orders. At a minimum, the website shall:

- Allow generic or individual user login ID and password;
- Provide a customizable landing page for an individual Member;
- Contain Product offerings specifically for an individual Member (e.g. unapproved Products shall be blocked from access as requested);
- Feature search function to allow easy Product lookup by description, manufacturer and Product code;
- Contain real time inventory information; back ordered Products and expected shipping time shall be clearly marked at time of order check out; an option to cancel the back ordered Products shall be also provided at time of order check out;
- Provide information related to website maintenance, warehouse closing and other situations where orders will be impacted.
- **Optional:** the program should provide the user with the option of economic alternative products and/or green products as available

### Electronic Commerce

Members may use a variety of Enterprise Resource Planning (“**ERP**”) systems (PeopleSoft, Dynamics & others), E-Procurement (e.g. JAGGAER, formerly SciQuest) or financial systems. When Members implement various methods for electronic ordering, the Respondent will use commercially reasonable efforts to provide technology and implementation support to Members at no extra cost.

### Product Updates

Suppliers may introduce additional or substitute goods during the term of the contract upon written request issued by Supplier to Kinetic, and such goods will qualify to be added or substituted, provided it is within the original scope of this RFSO. All requests are subject to review and approval by Kinetic. At no time is the Supplier allowed to unilaterally change

products or increase pricing. Suppliers shall be responsible for notifying Kinetic of all obsolete and discontinued products in writing and in a timely manner.

### **Inventory Stocking**

Upon prior written agreement between the Supplier and a GPO Member, payment may be charged to ship goods and to store them or maintain an inventory of goods on behalf of a GPO Member, for use by that Member at a later date. If required by a Member, the terms and conditions applicable to such arrangement shall be as negotiated by the Member and the Supplier.

### **Additional Terms to Be Included in The Standing Offer**

#### **GPO Member Order Process:**

Members will have the option of two (2) approaches when purchasing Products from the Standing Offer Agreements resulting from this RFSO including purchasing products from the Standing Offer Agreements directly using the prices set out and/or a request for pricing process which will be included in the Master Agreement.

### **Product Quality and Product Substitutions**

All products shall be new and of high quality. Products that are re-manufactured shall be labeled as such.

Private label products may be offered. Any change of manufacturers of a private label during the term of the standing offer must result in offerings equal to or superior to the originally approved manufacturer at a price equal to or lower than the original offering.

The Supplier will provide and honour any 3<sup>rd</sup> party warranties that may exceed the terms of this RSFO and the master agreement.

### **Shipping and Delivery**

Supplier shall ship stocked products within their standard delivery areas within 48 hours of receipt of order (as per completed Form 1 Section 2 of this Exhibit). The GPO Member shall be notified by the Supplier if the Product ordered cannot be shipped within this time period to give the GPO Member the opportunity to secure a Product elsewhere. Delivery charges shall not be imposed for regular non-emergency or special orders to standard delivery areas above \$50.00 for the life of the Purchase Agreement, including any possible renewals.

Supplier will maintain a minimum monthly average fill rate of 95%. Line items that are reordered, backordered, or partially filled are not considered filled line items when calculating this service level.

Supplier may not charge restocking fees:

- on orders cancelled due to a failure to be shipped and delivered by the agreed delivery date.
- if an item is returned due to damage, incorrect product shipped, or Supplier customer service order entry error.

Restocking fees shall otherwise be capped at 10% of the price of the items that require restocking.

All deliveries shall be accompanied by a packing/delivery slip(s). Packing/delivery slips shall contain the Member's purchase order number, supplier name and name of product. Cartons shall be identified by purchase order number and Supplier name.

Where orders are not filled or are partially filled, Supplier shall ensure this is indicated on the packing list accompanying the shipment. Supplier shall also inform the GPO Member of anticipated delivery date for unfilled or partial orders.

### **Service Level Reports:**

As stipulated in the Master Agreement, the Supplier shall be responsible for providing Kinetic with monthly sales report. The report shall also include a service level agreement report in Excel spreadsheet format as outlined below:

- On-Time Delivery Rate – Number of orders delivered complete within the 2-business day requirement divided by total number of orders delivered
- Order Fill Rate – Number of orders with order fill rate of more than 95% divided by total number of orders
- Order Accuracy Rate – Number of orders with order accuracy rate of more than 98% divided by total number of orders
- Total Number of Purchase Orders Placed
- Total Dollar Value of Purchase Orders Placed
- Average Value of purchases placed by Member

## MASTER AGREEMENT

**BETWEEN:**

**Kinetic GPO Inc.**

(referred to as “Kinetic”)

**AND:**

**[\*LEGAL NAME OF SUPPLIER\*]**

(referred to as the “Supplier”)

**WHEREAS**, Kinetic issued **RFSO 19-12** (the “**Solicitation Document**”) to solicit offers for the supply of **Building Supplies, Services and Walk-in Option** (the “**Deliverables**”) to Kinetic GPO members (each referred to in the singular as the “**Purchaser**” or collectively as the “**Purchasers**”);

**AND WHEREAS**, the Supplier was selected to enter into this Master Agreement to establish a Standing Offer by the Supplier (the “**Standing Offer**”) for the potential provision of the Deliverables to the Purchasers pursuant to agreements that will set out the particulars of the contract between a Purchaser and the Supplier for the purchase of Deliverables (the “**Purchase Agreement**”);

**NOW THEREFORE**, the parties agree as follows:

**1.0 Term of Master Agreement**

This Master Agreement shall take effect on the **[\*insert date\*]** and shall be in effect for a period of **three (3)** years, with an option in favour of Kinetic to extend the term for an additional period of up to **two (2)** years, unless it is terminated earlier in accordance with the terms of this Master Agreement or otherwise by operation of law.

**2.0 Kinetic and Supplier Representatives**

The Kinetic Representative and contact information for the Master Agreement is:

Chris Penny  
Kinetic GPO.  
817-915-3156  
chris@kineticgpo.ca

The Supplier Representative and contact information for the Master Agreement is:

[\*insert name and title of Supplier representative for the purposes of the Master Agreement and contact details, including mailing address and email address\*]

### **3.0 Provision Of Deliverables**

#### **3.1 Deliverables Provided under Purchase Agreements**

The Supplier agrees that the provision of the Deliverables to a Purchaser will be governed by the terms of the Standing Offer, including the Standing Offer Terms and Conditions, as set out in Schedule A to this Master Agreement, and the terms of the Purchase Agreement entered into between the Supplier and a Purchaser in respect of the Deliverables.

#### **3.2 Pricing of Deliverables**

When entering into Purchase Agreements, the Purchaser and Supplier may negotiate improvements to the pricing set out in the Standing Offer; however, pricing offered by the Supplier to any Purchaser for the Deliverables must not exceed the pricing set out in the Standing Offer except as permitted by the Solicitation Document.

#### **3.3 Authorized Subcontractors, Distributors and Dealers**

The Supplier is prohibited from authorizing additional subcontractors, distributors or dealers, other than those identified in the Standing Offer, to provide Deliverables under the Standing Offer without seeking and obtaining prior written approval from Kinetic. Purchase Agreements may only be entered into by the Supplier and must provide for payment to be made only to Supplier, unless otherwise approved by Kinetic. Pricing provided to Purchasers by any authorized subcontractors, distributors or dealers must be less than or equal to the pricing set out in the Standing Offer, unless otherwise approved by Kinetic.

#### **3.4 No Duties, Obligation or Liabilities on the part of Kinetic**

While Kinetic has entered into the Master Agreement to facilitate a group purchasing arrangement, the execution of this Master Agreement shall not in any way create any legal duties, obligations or liabilities on the part of Kinetic in respect of the purchase and sale of the Deliverables. Any contract for the purchase and sale of any Deliverables shall be between the Supplier and each individual Purchaser in accordance with the terms of each specific Purchase Agreement. Kinetic shall not be responsible for the payment of any Deliverables provided by the Supplier to a Purchaser under any Purchase Agreement.

#### **3.5 No Exclusivity or Volume Guarantees**

The Supplier acknowledges that in entering into this Master Agreement no form of exclusivity has been conferred on, or volume guarantee has been granted by Kinetic in relation to the provision of the Deliverables by the Supplier.

No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by Kinetic in respect of the total quantities or values of the Deliverables required by the Purchasers pursuant to this Master Agreement and the Supplier acknowledges and agrees that it has not entered into this Master Agreement on the basis of any such undertaking, statement, promise or representation.

#### **4.0 Monthly Fees and Sales Reports**

##### **4.1 Fees Payable by Supplier to Kinetic**

The Supplier shall pay Kinetic monthly fees in the amount of 2.75% of the value of all purchases of the Deliverables made by the Purchasers during the month. Fees for each calendar month are payable by the 15<sup>th</sup> day of the following month and shall be accompanied by the Supplier's Sales Report, as defined below in section 4.3.

##### **4.2 Interest on Late Payment**

Any fees in arrears are subject to interest payable by the Supplier to Kinetic at the Bank of Canada's prime rate, in effect on the date that the payment of the fees went into arrears.

##### **4.3 Monthly Sales Reports**

The Supplier shall provide Kinetic with an electronic accounting report, in a format prescribed by Kinetic, on a monthly basis summarizing all sales of Deliverables under the Standing Offer for the applicable month ("Sales Reports").

Sales Reports including all sales to Purchasers in each calendar month shall be provided by to Kinetic by the 15<sup>th</sup> day of the following month. If there are no sales to report, the Supplier shall communicate that information via email.

Failure to provide a monthly Sales Report within the time and manner specified herein shall constitute a material breach of this Master Agreement and if not cured within thirty (30) days of written notice to Supplier shall be deemed a cause for termination of the contract at Kinetic's sole discretion.

##### **4.4 Marketing and Promotion of Master Agreement**

Supplier shall be required to use reasonable commercial efforts to market its relationship with Kinetic GPO by, among other things, participating in a co-branded press release within thirty (30) days of contract award, publishing the award of contract on Supplier's social media sites, consenting to the announcement by Kinetic of the award through applicable social media sites, publishing the relationship with Kinetic on Supplier's company website with a link to the Kinetic website, consenting to the publication of the relationship and use of Supplier's logo on Kinetic's website.

##### **4.5 Document Retention and Audit**

For seven (7) years after the Expiry Date or any date of termination of the Master Agreement, the Supplier shall maintain all necessary records to substantiate all charges and payments under all Purchaser Agreement. During the term of this Master Agreement, and for seven (7) years after the expiration or termination of this Master Agreement, the Supplier shall permit and assist Kinetic in conducting audits of the operations of the Supplier to verify all charges and payments under all Purchase Agreements. Kinetic shall provide the Supplier with at least ten (10) Business Days prior notice of its requirement for such audit. The Supplier's obligations under this paragraph shall survive any termination or expiry of the Master Agreement.

## **5.0 General Terms and Conditions Governing the Master Agreement**

### **5.1 No Indemnities from Kinetic**

Any express or implied reference to Kinetic providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of Kinetic, whether at the time of execution of the Master Agreement or at any time during the term of the Master Agreement or the term of any Purchase Agreement, shall be void and of no legal effect.

### **5.2 Failure to Enforce Not a Waiver**

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

### **5.3 Changes by Written Amendment Only**

Any changes to the Master Agreement shall be by written amendment signed by the Supplier and Kinetic. No changes shall be effective or shall be carried out in the absence of such an amendment.

### **5.4 Notices by Prescribed Means**

Notices relating to the Master Agreement shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or email and shall be addressed to, respectively, Kinetic Representative and to the Supplier Representative. 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 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.

### **5.5 Supplier's Power to Contract**

The Supplier represents and warrants that it has the full right and power to enter into the Master Agreement and there is no agreement with any other Person which would in any way interfere with the rights of Kinetic.

### **5.6 Supplier Not a Partner, Agent or Employee**

The Supplier shall have no power or authority to bind Kinetic or to assume or create any obligation or responsibility, express or implied, on behalf of Kinetic. The Supplier shall not hold itself out as an agent, partner or employee of Kinetic. Nothing in the Master Agreement shall have the effect of creating an employment, partnership or agency relationship between Kinetic and the Supplier or any of the Supplier's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors.

### **5.7 No Assignment**

The Supplier shall not assign the Master Agreement without the prior written consent of Kinetic. Such consent shall be in the discretion of Kinetic and subject to the terms and conditions that may be imposed by Kinetic.

#### **5.8 Duty to Disclose Change of Control**

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

#### **5.9 Confidentiality and Promotion Restrictions**

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

#### **5.10 No Use of Insignia**

The Supplier shall not use any insignia or logo of Kinetic without Kinetic's written authorization to do so.

#### **5.11 Immediate Termination**

Kinetic may immediately terminate the Master Agreement upon giving notice to the Supplier where (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency; (b) the Supplier, prior to or after executing the Master Agreement, fails to disclose a conflict of interest, makes a material misrepresentation or omission or provides materially inaccurate information to Kinetic; (c) the Supplier undergoes a change in control which adversely affects the Supplier's ability to satisfy some or all of its obligations under the Master Agreement; (d) the Supplier assigns the Master Agreement without first obtaining the written approval of Kinetic; or (e) the Supplier's 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.

#### **5.12 Dispute Resolution by Rectification Notice**

Subject to the above paragraph, where the Supplier fails to comply with any of its obligations under the Master Agreement, Kinetic may issue a rectification notice to the Supplier setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice, the Supplier shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to Kinetic. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, Kinetic may immediately terminate the Master Agreement. Where the Supplier has been given a prior rectification notice, the same subsequent type of non-compliance by the Supplier shall allow Kinetic to immediately terminate the Master Agreement.

#### **5.13 Expiry and Extension of Master Agreement**

The Master Agreement shall expire on the original expiry date, unless Kinetic exercises its option to extend the Master Agreement, such extension to be upon the same terms (including the rates in effect at the time of extension), conditions and covenants contained herein. The option shall be exercisable Kinetic giving notice to the Supplier not less than thirty (30) days prior to the original expiry date. The notice shall set forth the precise duration of the extension.

#### **5.14 Supplier's Obligations on Expiration or Termination**

The expiry or termination of the Master Agreement shall not relieve the Supplier of any of its obligations under any Purchase Agreement, whether entered into prior to or subsequent to the

expiration or termination of the Master Agreement. This paragraph shall survive any termination of the Master Agreement.

**6.0 Execution**

This Agreement may be executed and (i) delivered by facsimile transmission or (ii) scanned and delivered by electronic transmission, and when so executed and delivered, will be deemed an original.

**IN WITNESS WHEREOF** the parties hereto have executed this Master Agreement as of the date written below.

**Kinetic GPO Inc.**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

I have authority to bind the corporation.

**[\*Insert Supplier's Full Legal Name\*]**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

I have authority to bind the Supplier.

## SCHEDULE 1

### **STANDING OFFER 19-12 Building Supplies, Services and Walk-in Option**

[\*insert supplier's full business name\*] (the "**Supplier**") was selected to establish this Standing Offer in accordance with a Request for Standing Offer - RFSO No. 18-16 — issued by Kinetic GPO ("**Kinetic**") for the potential provision of the goods and services described herein (the "**Deliverables**") to Kinetic GPO members (the "**Purchasers**").

This Standing Offer will take effect on the [\*insert date\*] and will be in effect for a period of **three (3) years**, unless it is terminated earlier in accordance with the terms and conditions of the agreement between Kinetic and the Supplier or otherwise by operation of law, and may be extended for an additional term of **two (2) years** in accordance with the terms and conditions of the agreement between Kinetic and the Supplier.

If and when a Purchaser requires the Deliverables during the term of the Standing Offer, the Purchaser may enter into an agreement with the Supplier for the purchase of the required Deliverables in accordance with the terms of this Standing Offer (the "**Purchase Agreement**"). The Purchase Agreement may be in form of agreement attached hereto or in the form of a purchase order issued by the Purchaser to the Supplier, or any other form of agreement the Purchaser and Supplier may agree to use.

The provision of the Deliverables by the Supplier to the Purchaser will be governed by the Standing Offer Terms and Conditions attached hereto and any specific requirement and supplementary terms and conditions set out in the Purchase Agreement.

### **Deliverables, Rates and Specific Provisions**

#### **A. Description of Deliverables**

Deliverables as described in RFSO **19-12 Building Supplies, Services and Walk-in Option**, Exhibit A Statement of work, and Supplier's completed Exhibit E Market basket form.

#### **B. Rates and Disbursements**

Rates to be as submitted in Exhibit E of **RSFO 19-12**

#### **C. Authorized Subcontractors, Distributors and Dealers**

As specified in the Suppliers Submission.

#### **D. Specific Provisions**

[\*Insert any additional contract terms and conditions to form part of the Standing Offer. \*]

[\*If other documents are incorporated by reference, include an Order of Precedence clause. \*]

# STANDING OFFER 19-12 Building Supplies, Services and Walk-in Option

## Standing Offer Terms and Conditions

### Index

#### Article 1 - Interpretation

1.01 Defined Terms

5.06 Interest on Late Payment

5.07 Document Retention and Audit

#### Article 2 - General Provisions

2.01 No Indemnities from Purchaser  
2.02 Entire Contract  
2.03 Severability  
2.04 Failure to Enforce Not a Waiver  
2.05 Changes by Written Amendment Only  
2.06 Force Majeure  
2.07 Notices by Prescribed Means  
2.08 Governing Law

#### Article 6 – Confidentiality

6.01 Confidentiality and Promotion Restrictions  
6.02 Supplier's Consent to Disclosure  
6.03 Purchaser Confidential Information  
6.04 Restrictions on Copying  
6.05 Notice of Breach  
6.06 Injunctive and Other Relief  
6.07 Notice and Protective Order  
6.08 Records and Compliance  
6.09 Survival

#### Article 3 – Nature of Relationship Between Purchaser and Supplier

3.01 Supplier's Power to Contract  
3.02 Representatives May Bind Parties  
3.03 Supplier Not a Partner, Agent or Employee  
3.04 Non-Exclusive Contract, Work Volumes  
3.05 Responsibility of Supplier  
3.06 No Subcontracting or Assignment  
3.07 Duty to Disclose Change of Control  
3.08 Conflict of Interest  
3.09 Contract Binding

#### Article 7 - Intellectual Property

7.01 Purchaser Intellectual Property  
7.02 No Use of Purchaser Insignia  
7.03 Ownership of Intellectual Property  
7.04 Supplier's Grant of Licence  
7.05 No Restrictive Material in Deliverables  
7.06 Supplier Representation and Warranty Regarding Third-Party Intellectual Property  
7.07 Survival

#### Article 4 – Performance by Supplier

4.01 Commencement of Performance  
4.02 Deliverables Warranty  
4.03 Compliance with Laws  
4.04 Shipment of Goods  
4.05 Use and Access Restrictions  
4.06 Notification by Supplier of Discrepancies  
4.07 Supplier to Comply with Reasonable Change Requests  
4.08 Pricing for Requested Changes  
4.09 Performance by Specified Individuals Only  
4.10 Time  
4.11 Purchaser Rights and Remedies & Supplier Obligations Not Limited to Contract

#### Article 8 - Indemnity and Insurance

8.01 Supplier Indemnity  
8.02 Insurance  
8.03 Proof of Insurance  
8.04 Workplace Safety and Insurance

#### Article 9- Termination, Expiry and Extension

9.01 Immediate Termination of Purchase Agreement  
9.02 Dispute Resolution by Rectification Notice  
9.03 Termination on Notice  
9.04 Supplier's Obligations on Termination  
9.05 Supplier's Payment Upon Termination  
9.06 Termination in Addition to other Rights  
9.07 Expiry and Extension of Purchase Agreement

#### Article 5 - Payment for Performance and Audit

5.01 Payment According to Purchase Agreement Rates  
5.02 Hold Back or Set Off  
5.03 No Expenses or Additional Charges  
5.04 Payment of Taxes and Duties  
5.05 Withholding Tax

## ARTICLE 1 – INTERPRETATION

### 1.01 Defined Terms

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

**“Authority”** means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Purchase Agreement; and **“Authorities”** means all such authorities, agencies, bodies and departments;

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

**“Conflict of Interest”** includes, but is not limited to, any situation or circumstance where (a) in relation to the procurement process, the Supplier 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 Purchaser 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 Purchase Agreement, the Supplier’s 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 everything developed for or provided to the Purchaser in the course of performing under the Purchase Agreement or agreed to be provided to the Purchaser under the Purchase Agreement by the Supplier or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

**“Effective Date”** is as set out in the Purchase Agreement;

**“Information and Privacy Legislation”** means any legislation and regulations dealing with freedom of information or access to information and protection of privacy that are applicable to the Purchaser;

**“Indemnified Parties”** means the Purchaser and the Purchaser’s 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 Purchase Agreement 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 Supplier 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 Purchaser;

**“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;

**“Newly Created Intellectual Property”** means any Intellectual Property created by the Supplier in the course of performance of its obligations under the Purchase 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;

**“Purchaser Confidential Information”** means all information of the Purchaser that is of a confidential nature, including all confidential information in the custody or control of the Purchaser, 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 Supplier in connection with the Purchase Agreement. For greater certainty, Purchaser Confidential Information shall: (a) include: (i) all new information derived at any time from any such information whether created by the Purchaser, the Supplier or any third-party; (ii) all information (including Personal Information) that the Purchaser 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 Supplier of any duty of confidentiality owed by the Supplier to the Purchaser or to any third-party; (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Supplier; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Purchase Agreement or at law;

**“Purchaser Representative”** is as set out in the Purchase Agreement;

**“Proceeding”** means any action, claim, demand, lawsuit, or other proceeding;

**“Rates”** means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in the Purchase Agreement;

**“Record”**, for the purposes of the Purchase Agreement, means any recorded information, including any Personal Information, in any form: (a) provided by the Purchaser to the Supplier, or provided by the Supplier to the Purchaser, for the purposes of the Purchase Agreement; or (b) created by the Supplier in the performance of the Purchase Agreement;

**“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 the Purchase Agreement or the Deliverables or any part of them;

**“Supplier Representative”** is as set out in the Purchase Agreement;

**“Supplier’s Intellectual Property”** means Intellectual Property owned by the Supplier prior to its performance under the Purchase Agreement or created by the Supplier during the Term of the Purchase Agreement independently of the performance of its obligations under the Purchase Agreement;

**“Term”** is as set out in the Purchase Agreement; and

**“Third-Party Intellectual Property”** means any Intellectual Property owned by a party other than the Purchaser or the Supplier.

## **ARTICLE 2 – GENERAL TERMS**

### **2.01 No Indemnities from the Purchaser**

Notwithstanding anything else in the Purchase Agreement, any express or implied reference to the Purchaser 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 Purchaser beyond the obligation to pay the Rates in respect of Deliverables accepted by the Purchaser, whether at the time of entering into the Purchase Agreement or at any time during the Term, shall be void and of no legal effect.

### **2.02 Entire Contract**

The Purchase Agreement embodies the entire agreement between the parties with regard 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 Purchase Agreement.

### **2.03 Severability**

If any term or condition of the Purchase Agreement, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the

remainder of the Purchase Agreement, 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 Purchaser to insist in one or more instances upon strict performance by the Supplier of any of the terms or conditions of the Purchase Agreement shall not be construed as a waiver by the Purchaser of its right to require strict performance of any such terms or conditions, and the obligations of the Supplier with respect to such performance shall continue in full force and effect.

**2.05 Changes by Written Amendment Only**

Any changes to the Purchase Agreement shall be by 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 Purchase Agreement.

**2.06 Force Majeure**

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Purchase Agreement where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Purchase Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under the Purchase Agreement due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Purchase Agreement by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Purchase Agreement, at law or in equity.

**2.07 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 Purchaser Representative and the Supplier Representative. 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.

**2.08 Governing Law**

The Purchase Agreement shall be governed by and construed in accordance with the laws of the province or territory in which the Purchaser is located and the federal laws of Canada applicable therein.

**ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN PURCHASER AND SUPPLIER**

**3.01 Supplier's Power to Contract**

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

**3.02 Representatives May Bind the Parties**

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

**3.03 Supplier Not a Partner, Agent or Employee**

The Supplier shall have no power or authority to bind the Purchaser or to assume or create any obligation or responsibility, express or implied, on behalf of the Purchaser. The Supplier shall not hold itself out as an agent, partner or employee of the Purchaser. Nothing in the Purchase Agreement shall have the effect of creating an employment, partnership or agency relationship between the Purchaser and the Supplier or any of the Supplier's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors.

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

The Supplier acknowledges that it is providing the Deliverables to the Purchaser on a non-exclusive basis. The Purchaser makes no representation regarding the volume of goods and services required under the Purchase Agreement. The Purchaser reserves the right to contract with other parties for the same or similar goods and services as those provided by the Supplier and reserves the right to obtain the same or similar goods and services internally.

**3.05 Responsibility of Supplier**

The Supplier agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. This paragraph is in addition to any and all of the Supplier's liabilities under the Purchase Agreement and under the general application of law. The Supplier shall advise these individuals and entities of their obligations under the Purchase Agreement and shall ensure their compliance with the applicable terms of the Purchase Agreement. In addition to any other liabilities of the Supplier pursuant to the Purchase Agreement or otherwise at law or in equity, the Supplier shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Purchase Agreement resulting from the actions of the above mentioned individuals and entities. This paragraph shall survive the termination or expiry of the Purchase Agreement.

**3.06 No Subcontracting or Assignment**

Unless specifically authorized under the Standing Offer, the Supplier shall not subcontract or assign the whole or any part of the Purchase Agreement or any monies due under it. Where authorized, every contract entered into by the Supplier with an authorized subcontractor shall adopt all of the terms and conditions of the Purchase Agreement as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Purchase Agreement shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the Purchaser.

**3.07 Duty to Disclose Change of Control**

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

**3.08 Conflict of Interest**

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

**3.09 Contract Binding**

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

**ARTICLE 4 – PERFORMANCE BY SUPPLIER**

**4.01 Commencement of Performance**

The Supplier shall commence performance upon receipt of written instructions from the Purchaser.

**4.02 Deliverables Warranty**

The Supplier hereby represents and warrants 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 Purchase Agreement; (b) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion

of the Purchaser, are inadequately provided or require corrections, the Supplier shall forthwith make the necessary corrections at its own expense as specified by the Purchaser in a rectification notice.

**4.03 Compliance with Laws**

Without limiting the generality of section 4.02, the Supplier warrants and agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, all applicable provincial and federal laws and regulations in relation to the goods and services to be supplied hereunder and in the performance of the Supplier's obligations under the Purchase Agreement. The Supplier shall provide the Purchaser with evidence of the Supplier's compliance with this section upon request by the Purchaser.

**4.04 Shipment of Goods**

To the extent that the Deliverables include the shipment of goods to the Purchaser, all such goods shall be Delivered Duty Paid (DDP) (Incoterms 2010) to the Purchaser's place of business or such other location as may be specified in the Purchase Agreement. No transportation or delivery charges of any kind, including, without limitation, packing, boxing, storage, cartage or customs brokerage charges, shall be paid by the Purchaser, unless specifically agreed by the Purchaser in writing. The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Supplier until the Deliverables are received by the Purchaser. Receipt of the Deliverables at the Purchaser's location does not constitute acceptance of the Deliverables by the Purchaser. The Deliverables are subject to the Purchaser's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the Purchaser, are inadequately provided or require corrections, the Supplier shall make the necessary corrections at its own expense as specified by the Purchaser in a rectification notice.

**4.05 Use and Access Restrictions**

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

**4.06 Notification by Supplier of Discrepancies**

During the Term, the Supplier shall advise the Purchaser promptly of: (a) any contradictions, discrepancies or errors found or noted in the Purchase Agreement; (b) supplementary details, instructions or directions that do not correspond with those contained in the Purchase Agreement; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Purchase Agreement and Requirements of Law.

**4.07 Supplier to Comply with Reasonable Change Requests**

The Purchaser may, in writing, request changes to the Purchase Agreement, which may include altering, adding to, or deleting any of the Deliverables. The Supplier shall comply with all reasonable Purchaser change requests and the performance of such request shall

be in accordance with the terms and conditions of the Purchase Agreement. If the Supplier is unable to comply with the change request, it shall promptly notify the Purchaser 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.

**4.08 Pricing for Requested Changes**

Where a Purchaser change request includes an increase in the scope of the previously contemplated Deliverables, the Purchaser 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 Supplier 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 Purchaser and the Supplier 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.

**4.09 Performance by Specified Individuals Only**

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

**4.10 Time**

Time is of the essence.

**4.11 Purchaser Rights and Remedies and Supplier Obligations Not Limited to Contract**

The express rights and remedies of the Purchaser and obligations of the Supplier set out in the Purchase Agreement are in addition to and shall not limit any other rights and remedies available to the Purchaser or any other obligations of the Supplier at law or in equity.

**ARTICLE 5 – PAYMENT FOR PERFORMANCE AND AUDIT**

**5.01 Payment According to Purchase Agreement Rates**

The Purchaser shall, subject to the Supplier's compliance with the provisions of the Purchase Agreement, pay the Supplier for the Deliverables provided at the Rates established under the Purchase Agreement.

- 5.02 **Hold Back or Set Off**  
The Purchaser may hold back payment or set off against payment if, in the opinion of the Purchaser acting reasonably, the Supplier has failed to comply with any requirements of the Purchase Agreement.
- 5.03 **No Expenses or Additional Charges**  
There shall be no other charges payable by the Purchaser under the Purchase Agreement to the Supplier other than the Rates established under the Purchase Agreement.
- 5.04 **Payment of Taxes and Duties**  
Unless otherwise stated, the Supplier shall pay all applicable taxes, including excise taxes incurred by or on the Supplier's behalf with respect to the Purchase Agreement. The Supplier is responsible for knowing the tax laws applicable in each province and territory.
- 5.05 **Withholding Tax**  
The Purchaser shall withhold any applicable withholding tax from amounts due and owing to the Supplier under the Purchase Agreement and shall remit it to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Purchase Agreement.
- 5.06 **Interest on Late Payment**  
If a payment is in arrears through no fault of the Supplier, the interest charged by the Supplier, if any, for any late payment shall not exceed the Bank of Canada's prime rate, in effect on the date that the payment went into arrears.
- 5.07 **Document Retention and Audit**  
For seven (7) years after the Expiry Date or any date of termination of the Purchase Agreement, the Supplier shall maintain all necessary records to substantiate (a) all charges and payments under the Purchase Agreement and (b) that the Deliverables were provided in accordance with the Purchase Agreement and with Requirements of Law. During the Term, and for seven (7) years after the Term, the Supplier shall permit and assist the Purchaser in conducting audits of the operations of the Supplier to verify (a) and (b) above. The Purchaser shall provide the Supplier with at least ten (10) Business Days prior notice of its requirement for such audit. The Supplier's obligations under this paragraph shall survive any termination or expiry of the Purchase Agreement.

## **ARTICLE 6 – CONFIDENTIALITY**

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

**6.02 Supplier's Consent to Disclosure**

In addition to any other disclosure rights and obligations the Purchaser may have in respect of any information provided by the Supplier to the Purchaser in connection with the Purchase Agreement, the Supplier consents to the Purchaser's disclosure to Kinetic of all information related the Purchase Agreement, whether or not the Supplier may consider such information to be confidential.

**6.03 Purchaser Confidential Information**

During and following the Term, the Supplier shall: (a) keep all Purchaser Confidential Information confidential and secure; (b) limit the disclosure of Purchaser 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 Purchaser 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 Purchaser and (ii) in respect of any Purchaser Confidential Information about any third-party, the written consent of such third-party; (d) provide Purchaser Confidential Information to the Purchaser on demand; and (e) return all Purchaser Confidential Information to the Purchaser before the end of the Term, with no copy or portion kept by the Supplier.

**6.04 Restrictions on Copying**

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

**6.05 Notice of Breach**

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

**6.06 Injunctive and Other Relief**

The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to the Purchaser or to any third-party to whom the Purchaser owes a duty of confidence, and that the injury to the Purchaser or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the Purchaser is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

**6.07 Notice and Protective Order**

If the Supplier or any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any Purchaser Confidential Information, the Supplier will provide the Purchaser with prompt notice to that effect in order to allow the Purchaser to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the

Purchaser and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of Purchaser Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the Purchaser) that such Purchaser Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Purchase Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Purchaser Confidential Information subject to those terms and conditions.

**6.08 Records and Compliance**

The Supplier acknowledges that Information and Privacy Legislation applies to all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees (a) to keep Records secure; (b) to provide Records to the Purchaser within seven (7) calendar days of being directed to do so by the Purchaser for any reason including an access request or privacy issue; (c) not to access any Personal Information and Privacy Legislation and is necessary in order to provide the Deliverables; (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the Purchaser; (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so; (f) to restrict access to Personal Information to 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 by a Purchaser representative to have such access for the purpose of providing the Deliverables; (g) to implement other specific security measures that in the reasonable opinion of the Purchaser would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any confidential information supplied to the Purchaser may be disclosed by the Purchaser where it is obligated to do so under Information and Privacy Legislation, by an order of a court or tribunal or pursuant to a legal proceeding and the provisions of this paragraph shall prevail over any inconsistent provisions in the Purchase Agreement.

**6.09 Survival**

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

**ARTICLE 7 – INTELLECTUAL PROPERTY**

**7.01 Purchaser Intellectual Property**

The Supplier agrees 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 Purchaser to the Supplier shall remain the sole property of the Purchaser at all times.

**7.02 No Use of the Purchaser Insignia**

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

**7.03 Ownership of Intellectual Property**

The Purchaser shall be the sole owner of any Newly Created Intellectual Property. The Supplier irrevocably assigns to and in favour of the Purchaser and the Purchaser 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 Purchaser 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 Supplier's Intellectual Property, the Supplier grants to the Purchaser a licence to use that Supplier Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Supplier by the Purchaser.

**7.04 Supplier's Grant of License**

For those parts of the Deliverables that are Supplier Intellectual Property, the Supplier grants to the Purchaser 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 Purchaser.

**7.05 No Restrictive Material in Deliverables**

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

**7.06 Supplier Representation and Warranty Regarding Third-Party Intellectual Property**

The Supplier represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The Supplier further represents and warrants that it has obtained assurances with respect to any Supplier 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 Purchase Agreement.

## ARTICLE 8 – INDEMNITIES AND INSURANCE

### 8.01 Supplier Indemnity

The Supplier hereby agrees 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 Supplier, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Supplier’s obligations under, or otherwise in connection with, the Purchase Agreement. The Supplier further agrees 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 Purchaser, claimed or resulting from such Claims. The obligations contained in this paragraph shall survive the termination or expiry of the Purchase Agreement.

### 8.02 Insurance

In addition to any insurance requirements set out in the Purchase Agreement, the Supplier hereby agrees to put in effect and maintain insurance 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 in the business of the Supplier 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:
  - the Purchaser as an additional named insured with respect to liability arising in the course of performance of the Supplier’s obligations under, or otherwise in connection with, the Purchase Agreement
  - contractual liability coverage
  - cross-liability and severability of interests clause
  - employers liability coverage
  - 30 day written notice of cancellation, termination or material change
  - tenants legal liability coverage (if applicable and with suitable sub-limits)
  - non-owned automobile coverage with blanket contractual coverage for hired automobiles

### 8.03 Proof of Insurance

The Supplier shall provide the Purchaser with proof of the insurance required by the Purchase Agreement in the form of valid certificates of insurance that reference the Purchase Agreement and confirm the required coverage. The Supplier shall provide the

Purchaser with renewal replacements on or before the expiry of any such insurance. Upon the request of the Purchaser, a copy of each insurance policy shall be made available to it. The Supplier shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the Purchaser and Indemnified Parties are named as additional insured with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables.

**8.04 Workplace Safety and Insurance**

The Supplier warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if applicable will provide proof of valid coverage by means of a current clearance certificate to the Purchaser upon request. The Supplier covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it and its subcontractors under all applicable workplace safety and insurance laws and regulations during the Term. The Supplier further agrees to indemnify the Kinetic Members for any and all liability, loss, costs, damages and expenses (including legal fees) or other charges in connection with the Supplier's failure to comply with any applicable workplace safety and insurance laws or related to the Supplier's status with any workplace safety and insurance board or body.

**ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION**

**9.01 Immediate Termination of Purchase Agreement**

The Purchaser may immediately terminate the Purchase Agreement upon giving notice to the Supplier where (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency; (b) the Supplier breaches any provision in Article 6 (Confidentiality); (c) the Supplier breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between Purchaser and Supplier); (d) the Supplier, prior to or after entering into the Purchase Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the Purchaser; (e) the Supplier undergoes a change in control which adversely affects the Supplier's ability to satisfy some or all of its obligations under the Purchase Agreement; (f) the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the Purchase Agreement without first obtaining the written approval of the Purchaser; or (g) the Supplier's 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 Supplier fails to comply with any of its obligations under the Purchase Agreement, the Purchaser may issue a rectification notice to the Supplier setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice, the Supplier shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the Purchaser. If the

Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, the Purchaser may immediately terminate the Purchase Agreement. Where the Supplier has been given a prior rectification notice, the same subsequent type of non-compliance by the Supplier shall allow the Purchaser to immediately terminate the Purchase Agreement.

**9.03 Termination on Notice**

The Purchaser reserves the right to terminate the Purchase Agreement, without cause, upon thirty (30) calendar days prior notice to the Supplier.

**9.04 Supplier's Obligations on Termination**

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

**9.05 Supplier's Payment Upon Termination**

On termination of the Purchase Agreement, the Purchaser shall only be responsible for the payment of the Deliverables provided under the Purchase Agreement up to and including the effective date of any termination. Termination shall not relieve the Supplier of its 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 Purchaser may hold back payment or set off against any payments owed if the Supplier fails to comply with its obligations on termination.

**9.06 Termination in Addition to Other Rights**

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

**9.07 Expiry and Extension of Purchase Agreement**

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

**STANDING OFFER 19-12 Building Supplies, Services and Walk-in Option  
Form of Purchase Agreement**

*For the purchase of Deliverables under the Standing Offer, the Purchaser and the Supplier may enter into a Purchase Agreement in accordance with the following form:*

**PURCHASE AGREEMENT**

**BETWEEN:**

**[\*INSERT FULL LEGAL NAME OF THE GPO MEMBER\*]**

(referred to as the "Purchaser")

**AND:**

**[\*LEGAL NAME OF SUPPLIER\*]**

(referred to as the "Supplier")

**WHEREAS**, the Purchaser is a member of Kinetic GPO ("Kinetic");

**WHEREAS**, Kinetic and the Supplier have entered into an agreement to establish Standing Offer **19-12 Building Supplies, Services and Walk-in Option** (the "Standing Offer") for the supply of the Deliverables by the Supplier to Kinetic's members;

**AND WHEREAS**, the Supplier has agreed to provide the particular Deliverables described herein to the Purchaser pursuant to the terms of the Standing Offer and the terms set out below;

**NOW THEREFORE**, the parties agree as follows:

**Article 1 – Terms and Conditions**

This Purchase Agreement is made pursuant to the Standing Offer and is governed by the terms and conditions contained herein, including Appendix A of this Purchase Agreement, and the Standing Offer Terms and Conditions set out in the Standing Offer.

In the event of any ambiguity, conflict or inconsistency between them, the terms and conditions expressly set out in this Purchase Agreement, including Appendix A, shall take precedence over the Standing Offer Terms and Conditions.

**Article 2 - Term of Purchase Agreement**

This Purchase Agreement shall take effect on the [\*insert date\*] (the "Effective Date") and shall be in effect for a period of [\*insert # of years or months] (the "Term"), with an option in favour of the Purchaser to extend the term for an additional period of [\*insert extension period, if applicable, or revise this language as necessary\*], unless it is terminated earlier in accordance with the terms of the Purchase Agreement or otherwise by operation of law.

If the Standing Offer expires or is terminated prior to the expiration or termination of this Purchase Agreement, the Purchase Agreement shall survive the expiration or termination of the Standing Offer.

### **Article 3 – Representatives**

The Supplier Representative and Purchaser Representative shall represent the respective parties for the purposes of the Purchase Agreement:

The Purchaser Representative and contact information for the Purchase Agreement is:

[\*insert name and title of the Purchaser's representative and contact details, including mailing address and email address\*]

The Supplier Representative and contact information for the Purchase Agreement is:

[\*insert name and title of Supplier representative and contact details, including mailing address and email address\*]

### **Article 4 – Performance and Payment**

The Supplier agrees to provide the Deliverables to the Purchaser as described in the Standing Offer and as more particularly specified in Appendix A to this Purchase Agreement ("Appendix A") for the Rates not to exceed those established under the Standing Offer and as more particularly specified in Appendix A. The Supplier will invoice the Purchaser for the Deliverables provided under this Purchase Agreement in accordance with the payment terms set out in Appendix A.

The Supplier and Purchaser acknowledge that Kinetic, shall not be responsible for the payment of any Deliverables or for any liability arising out of the provision of the Deliverables or failure to provide any Deliverables.

### **Article 5 - Execution**

This Agreement may be executed and (i) delivered by facsimile transmission or (ii) scanned and delivered by electronic transmission, and when so executed and delivered, will be deemed an original.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date written below.

**[Purchaser's Full Legal Name]**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

I have the authority to bind the Purchaser.

**[Supplier's Full Legal Name]**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

I have authority to bind the Supplier.

## Appendix A to the Purchase Agreement

### A. Description of Deliverables

Supply and delivery of **Building Supplies, Services and Walk-in Option**

Include for example:

- description of specific Deliverables to be provided, reference can be made to the description set out in the Standing Offer, as appropriate
- location Deliverables are to be provided
- milestones, dates, time lines
- identify any particular personnel to be used by the Supplier, including any authorized subcontractors, distributors or dealers
- identify any specific reporting requirements

### B. Rates and Disbursements

Pricing to be as per Exhibit E submitted with **RFSO 19-12**

Provide detail for:

- Rates as per Standing Offer OR indicate if any reduction from the Standing Offer pricing has been agreed upon
- Ceiling cost limit for Purchase Agreement, if applicable: “Notwithstanding anything else in the Purchase Agreement, the total amount payable by the Purchaser to the Supplier under the Purchase Agreement shall not exceed [\*insert maximum contract amount\*] (\$xxx).”

### C. Payment Terms

See 4.1 in the terms and conditions in the Master Agreement

[\*insert payment terms (i.e. invoice requirements, full payment upon acceptance, progress payments, etc.) \*]

### D. Supplementary Terms and Conditions

[\*include any additional terms and conditions not already addressed in the Standing Offer Terms and Conditions, such as specific performance requirements, applicable policies, additional insurance requirements or performance security\*]

# EXHIBIT C – EVALUATION PROCESS

## 1. Mandatory Submission Requirements

Each Proposal must include a Mandatory Submission Form (See Form 1 in the bid package) completed and signed by an authorized representative of the Respondent. Kinetic will accept electronic signatures as valid signatures. A failure to include the Mandatory Submission Form may be rectified using the rectification process set out in this RFSO.

## 2. General Submission Proposal Requirements

Proposals should include thorough details to allow for a comprehensive evaluation of Proposals based on the Evaluation Criteria disclosed under Exhibit C.

**In determining the level of detail to submit for evaluation, refer to the following evaluation criteria breakdown (the points breakdown can be found under the section following titled “EVALUATION”):**

### I. General Company Background Experience

1. Respondent to provide a list of locations supplier is capable of assigning to service GPO Member accounts. (Form 1 Section 2 to be completed)
2. Respondent to provide a Company overview highlighting the history, number of years in business, average number of full time and part employees and related corporate information.
3. Respondent to provide a summary of past experience working with the government sector and/or Government Purchasing Organizations and/or Government Purchasing Cooperatives.
4. Respondent to provide a minimum of 3 customer references relevant to the size and scope of products being provided to clients who have obtained goods similar to those requested in this RFSO from the supplier in the last 3 years. Information to be completed in Exhibit D (Reference Form).

### II. Company Experience

1. Respondent to provide a description of its knowledge, skills and experience relevant to the Deliverables

#### Team Experience

2. Respondent to provide a list of key staff assigned to this contract including the roles and responsibilities of the Respondent and any of its agents, employees and sub-contractors who will be involved in providing the Deliverables, together with the identity of those who will be performing those roles and their relevant respective expertise including resumes and the % of time team members are assigned to this contract.

## RFSO 19-12 **Building Supplies, Services and Walk In Option**

### **III. Project Support**

1. Respondent to provide an organizational chart which clearly defines the structure in which this contract will be supported.

#### **Customer Service Support**

1. Respondent to provide the days and hours that customer service support is available.
2. Respondent to provide a description of the online support available.

### **IV. Performance Capability**

1. Respondent to provide proposal times for emergency orders & provide service levels by regions that are going to be covered.
2. Respondent to provide average fill rate and on time delivery statistics since the last reporting period (provide copy of report)
3. Respondent to provide a description of how it will ensure compliance with the contract and the pricing submitted. For example, an audit of pricing charged to the GPO Members be done on an annual basis to confirm that the prices charged to the GPO Members are the same prices as those that were submitted in the RFSO response.
4. Respondent to provide a detailed GPO Member onboarding process plan.
5. Respondent to provide a GPO member service/problem resolution plan (copy of your standard service level agreement to be included with submission)

### **V. Value Add**

1. Respondent to provide a Marketing plan to promote this agreement (outline schedule and roll out). Please refer to Schedule A Statement of Work and the RFSO 1.3 Kinetic GPO Contracts Offers Competitive Advantages
2. Availability of Green/Sustainability Program:
  - a. **Policies:** Efforts and policies pertaining to green and sustainability.
  - b. **Products:** Impact on product offerings.
  - c. **Distribution:** Impact on distribution process.
  - d. **Certifications:** The industry recognized certifications and standards obtained and those represented through its catalog of products.

How are "green" products identified in your catalog? Online ordering? How many "green" products are in your catalog?

3. Innovative investments
4. Technology advancements

## RFSO 19-12 **Building Supplies, Services and Walk In Option**

5. Training and Education: Respondent may explain their organizations ability to provide participating agencies with on-site and/or online training and educational programs/seminars as well as providing technical product knowledge and support.
6. Consulting Services: Examples may include inventory solutions, emergency preparedness programs, and safety services.
7. Repair Services: Respondent to provide their ability to provide repair services of equipment through authorized manufacturer's facilities or other avenues.
8. Other Services/Programs: Other value-add services not included in above categories.
9. Respondent to provide detail regarding their ability to provide any additional savings or benefits to Kinetic and its members (outline specifics).

### **VI. Financial Products/Pricing**

1. See Appendix E for Financial Proposal Requirements.

## **EVALUATION**

### **Mandatory Submission Form**

Each Proposal must include a Mandatory Submission Form (See Form 1 in the bid package) completed and signed by an authorized representative of the Respondent.

### **Evaluation Criteria**

#### **I. General Company Background Experience**

GPO Member Support & Account Management. (60 points)- 10 points per item

##### **1. Location of Supplier — 10 points**

Number and suitability of locations supplier is capable of assigning to service GPO Member accounts. (Form 1 Section 2 to be completed)

10 points — full geographic coverage

8-9 points — exceeds 80% but less than 100% geographic coverage

6-7 points— exceeds 70% but less than 80%geographic coverage

4-5 points— exceeds 50% but less than 70% geographic coverage

0-3 points — less than 50% geographic coverage

##### **2. Past Experience — 10 points**

Number, Relevance and applicability of past experience working with the government

## RFSO 19-12 **Building Supplies, Services and Walk In Option**

sector and/or Government Purchasing Organizations and/or Government Purchasing Cooperatives

10 points — experience with more than 5 purchasing cooperatives and or GPO's plus government sector

8-9 points — experience with 3 but less than 5 purchasing co-operatives or GPO's plus government sector

6-7 points — experience with 2 purchasing co-operatives or GPO's plus government sector

4-5 points — experience with 1 purchasing co-operative or GPO plus government sector

2-3 points — experience with government sector only

0-1 points — no experience with purchasing co-operatives, GPO's or government sector

### 3. Team Experience – 10 points

Degree of appropriateness of all key team members, including supervisor/manager, agents, employees and subcontractors, relevant experience, education, qualifications and the % of time the Supervisor/Manager is assigned to this contract.

### 4. Financial Condition -10 points

Where the financial condition of the Respondent does not substantiate to an acceptable degree the Respondent's ability to perform the Work, Kinetic, in its sole discretion, reserves the right to disqualify the Respondent and move to consider the next highest scoring Respondent.

### 5. References -10 points

Where references contacted do not substantiate to an acceptable degree the Respondent's ability to perform the Work, Kinetic, in its sole discretion, reserves the right to disqualify the Respondent and move to consider the next highest scoring Respondent.

### 6. Project Support -10 points

#### 1. Structure of Contract Support — 5 points

Degree of appropriateness of the organizational chart which clearly defines the structure in which this contract will be supported

#### 2. Customer Service Support — 5 points

- Time Availability of customer support
- Availability of online support

## II. **Performance Capability** (240 Points)

## RFSO 19-12 **Building Supplies, Services and Walk In Option**

Based on the Scope of Work as detailed in the RSFO, the Respondent shall demonstrate successful performance by illustrating the degree to which this proposal demonstrates Performance Capability including Technology and Innovation by:

1. Appropriate Proposal times of standard, as well as, emergency orders and service levels by regions that are going to be covered—70 points
2. Suitability and effectiveness for Kinetic to ensure compliance with the contract and the pricing submitted such as an annual pricing audit, to confirm that the prices charged to the GPO Members are the same prices that were submitted to Kinetic GPO in Respondent's RFSO response. – 70 points
3. Ease and completeness of the GPO Member onboarding process and plan—45 points
4. Thoroughness and suitability of Member problem resolution—55 points

### **III. Pricing** (250 Points)

1. Pricing for Market Basket Categories and Classifications (2 points per Market Basket Item) as further explained below.
2. Additional Charges – 50 points
  - (i) Restocking fees – 25 points
    - 25 points – Capped at 10% of the price of the items that require restocking.
    - 15 points – Capped at more than 10% of the price of the items that require restocking.
    - 5 points – Restocking fees are uncapped.
    - 0 points – Restocking fees are added to every order.
  - (ii) Shipping fees – 25 points
    - 25 points – No shipping fees charged on minimum orders of \$350 AND no shipping fees charged on deliveries within 50 km of the Supplier's warehouse(s).
    - 15 points — No threshold for free shipping and delivery fees are shipping fees are capped within 50 km of the Supplier's warehouse(s).
    - 5 points — No threshold for free shipping.
    - 0 points — No threshold for free shipping fees and shipping fees are not capped within 50 km of the Supplier's warehouse(s).

### **IV. Products** (20 points, 10 points each)

1. Range of products and services offered – 10 points
2. Number of products and services offered – 10 Points

## RFSO 19-12 **Building Supplies, Services and Walk In Option**

### **V. Value Add**

(130 Points)

1. Suitability of Marketing plan to promote this agreement, with reference to Schedule A Statement of Work, and the RFSO 1.3 Kinetic GPO Contracts Offers Competitive Advantages – 50 points

This should include:

- a. An outline schedule;
  - b. Roll out time frame;
  - c. Respondents estimated dollar value potential for the contract;
  - d. A brief description of how your company will market and transition the Master Agreement into a primary offering to participating agencies; and
  - e. A brief overview on how your company will educate its national sales force about the Master Agreement.
2. Availability of Green products or alternatives – 10 points
  3. Innovation investment – 10 points
  4. Degree to which Technology advancements benefits Kinetic and its members – 10 points
  5. :Suitability of organizations ability to provide participating agencies with on-site and/or online training and educational programs/seminars as well as providing technical product knowledge and support. – 10 points
  6. Degree to which Consulting Services benefit Kinetic and its members: Examples may include inventory solutions, emergency preparedness programs, and safety services. – 10 points
  7. Suitability and range of repair services through authorized manufacturer's facilities or other avenues.- 10 points
  8. Degree to which Other value-add services not included in above categories benefit Kinetic and its members- 10 points.
  9. Degree to which additional savings benefit Kinetic and its members 10 points

### **Rated Technical Evaluation**

Technical Proposals will be evaluated based on the following criteria and weightings:

The following is an overview of the point allocation and minimum score requirements for the applicable technical proposal component of this RFSO. Respondents must achieve an overall minimum Technical score of 70% in order to proceed to a review of the financial proposal submitted. Please see chart on next page.

## RFSO 19-12 **Building Supplies, Services and Walk In Option**

Rated Requirements Components	Points per Section	Section % of Total	Points Breakdown
<b>General Company Background Experience</b>	<b>60</b>	<b>13%</b>	
Location of Supplier			10
Past Experience			10
Team Experience			10
Financial Condition			10
References			10
Project Support			10
<b>Performance Capability</b>	<b>240</b>	<b>53%</b>	
Standard / Emergency Orders and Service Levels			70
Pricing Verification Audits			70
Onboarding Process			45
Problem Resolution			55
<b>Products</b>	<b>20</b>	<b>5%</b>	
Range of products and services offered			10
Number of products and services offered			10
<b>Value Add</b>	<b>130</b>	<b>29</b>	
Marketing Plan			50
Green Products			10
Innovation Investment			10
Technology Advancements			10
Training			10
Consulting Services			10
Repair Services			10
Other Services			10
Additional Benefits, Savings			10
<b>Total Points for Rated Requirements</b>	<b>450</b>	<b>100.0%</b>	<b>450</b>

Respondents should set out the information that is listed in the order in which it will be evaluated as set out below. Respondents are encouraged to provide as much detail as possible to maximize points and allow Kinetic to evaluate their Proposals.

## RFSO 19-12 **Building Supplies, Services and Walk In Option**

### Financial Evaluation - Market Basket

Rated Requirements Components	Points Breakdown	% of total
<b>Pricing</b>		
Market basket 100 items (2.0 points per item)	200	80%
Additional Charges (i) restocking fees	25	10%
Additional Charges (ii) shipping fees	25	10%
<b>Total Points for Rated Requirements</b>	<b>250</b>	<b>100.0%</b>

### Products/Pricing

(200 Points, 2.0 per item)

Pricing for Market Basket top 100 items

Each Market Basket Item will be evaluated and scored using a relative formula (i.e. by dividing that supplier's price into the lowest price bid) for proposed prices.

The table below illustrates how points will be calculated for proposed prices for each Market Basket item that is selected by Kinetic to form the evaluated "Market Basket".

<b>Example of pricing for common item</b>		
<b>Proposed Prices</b>	<b>Calculation</b>	<b>Resulting Multiplier</b>
If Respondent A proposes the lowest price of \$1.00 that Respondent will receive 100% of the possible points	$\$1.00 \div \$1.00 \times 100\%$	1
If Respondent Q bids the second lowest price of \$1.25 they will receive 80% of the possible points	$\$1.00 \div \$1.25 \times 80\%$	.64
If Respondent J bids the third lowest price of \$2.00, they will receive 50% of the possible points	$\$1.00 \div \$2.00 \times 50\%$	.25

## RFSO 19-12 **Building Supplies, Services and Walk In Option**

### **Additional Charges – 50 points**

Respondent to provide a list of any shipping charges, return and restocking policy and applicable fees such as credit card charges (state charges or indicate not applicable). The calculations for additional charges are based on (1) restocking fees are capped at 10% of the price of the items that require restocking and (2) free shipping for minimum orders of \$350 and whether shipping is charged on orders within 50 km of the Supplier's warehouse. If the Respondent does not meet the thresholds outlined in (1) and (2) then less points will be awarded.

The resulting financial evaluation scores for all Market Basket items and Additional Charges will be totalled for each Respondent and added to the total technical score to determine a total overall score.

## APPENDIX D – REFERENCE FORM

Each Respondent is required to provide three (3) references (Government Purchasing Organization (GPO), Shared Services Group or Government Cooperative Purchasing Group) for which the Respondent has provided the same or similar Deliverables within the past five (5) years.

Kinetic, in its sole discretion, may confirm the Respondent’s experience and or ability to provide the Deliverables required and described in its Proposal by checking the Respondent’s references, and the provision of the references by the Respondent is deemed to be consent to such confirmation/contact with the references.

Kinetic reserves the right to revisit the Respondent’s scores in the rated requirements based on information learned during reference checks, should they reveal that there is inconsistency between the Respondent’s answers to the rated requirements and the results of the reference check.

Kinetic may check references other than those provided by the Respondent.

### Reference #1

<b>Company name:</b>	
<b>Company address:</b>	
<b>Contact name:</b>	
<b>Contact telephone number:</b>	
<b>Contact email address:</b>	
<b>Date work undertaken:</b>	From: _____ To: _____
<b>Nature of services &amp; total yearly value of the service:</b>	

### Reference #2

<b>Company name:</b>	
<b>Company address:</b>	
<b>Contact name:</b>	
<b>Contact telephone number:</b>	
<b>Contact email address:</b>	
<b>Date work undertaken:</b>	From: _____ To: _____
<b>Nature of services total yearly value of the service:</b>	

### Reference #3

<b>Company name:</b>	
<b>Company address:</b>	
<b>Contact name:</b>	
<b>Contact telephone number:</b>	
<b>Contact email address:</b>	
<b>Date work undertaken:</b>	From: _____ To: _____
<b>Nature of services total yearly value of the service:</b>	

# FORM 1 – MANDATORY SUBMISSION FORM

## 1. Respondent Information

Please fill out the following form, naming one person to be the Respondent's contact for the RFSO process and for any clarifications or communication that might be necessary.

Full Legal Name of Respondent:	
Any Other Relevant Name under which Respondent Carries on Business:	
Street Address:	
City, Province/State:	
Postal Code:	
Phone Number:	
Company Website (if any):	
Respondent Contact Name and Title:	
Respondent Contact Phone:	
Respondent Contact Email:	

**2. Product Availability**

Indicate any and/or all provinces and territories where products can be offered.

**Provinces / Territories** (Selecting this box is equal to checking all boxes below)

Alberta	<input type="checkbox"/>
British Columbia	<input type="checkbox"/>
Manitoba	<input type="checkbox"/>
New Brunswick	<input type="checkbox"/>
Newfoundland	<input type="checkbox"/>
Northwest Territories	<input type="checkbox"/>
Nova Scotia	<input type="checkbox"/>
Nunavut	<input type="checkbox"/>
Ontario	<input type="checkbox"/>
Prince Edward Island	<input type="checkbox"/>
Quebec	<input type="checkbox"/>
Saskatchewan	<input type="checkbox"/>
Yukon	<input type="checkbox"/>

**Outline your distribution zones or coverage areas with delivery service levels for each of the provinces/Territories that you will be servicing.**

**3. Acknowledgment of Non-Binding Procurement Process**

The Respondent acknowledges that the RFSO process will be governed by the terms and conditions of the RFSO, and that, among other things, such terms and conditions confirm that this procurement process does not constitute a formal, legally binding bidding process (and for greater certainty, does not give rise to a Contract A bidding process contract), and that no legal relationship or obligation will be created between Kinetic and the Respondent unless and until Kinetic and the Respondent execute a Master Agreement.

**4. Ability to Provide Deliverables**

The Respondent has carefully examined the RFSO documents and has a clear and comprehensive knowledge of the Deliverables required. The Respondent represents and warrants its ability to provide the Deliverables in accordance with the requirements of the RFSO. The Respondent acknowledges that any inaccurate, misleading or incomplete information could adversely impact the acceptance of its Proposal or its eligibility for future work.

**5. Addenda**

The Respondent has examined the RFSO package (including all documents and any attachments and appendices thereto) and Addenda as listed hereunder, and the Respondent is fully informed as to the nature of the work and conditions for its performance.

The Respondent has received the following addendums as listed below. (If addendum(s) were not received, leave blank.)

<u>Addendum No.</u>	<u>Dated</u>
No. 01 _____	_____
No. 02 _____	_____
No. 03 _____	_____

**6. No Prohibited Conduct**

The Respondent declares that it has not engaged in any conduct prohibited by this RFSO.

**7. Conflict of Interest**

Respondents must declare all potential Conflicts of Interest, as defined in this document. If the box below is left blank, the Respondent will be deemed to declare that (a) there was no Conflict of Interest in preparing its Proposal; and (b) there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the RFSO.

Otherwise, if the statement below applies, check the box.

- The Respondent declares that there is an actual or potential Conflict of Interest relating to the preparation of its Proposal, and/or the Respondent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFSO.

If the Respondent declares an actual or potential Conflict of Interest by marking the box above, the Respondent must set out below details of the actual or potential Conflict of Interest:

---



---



---



---



---



---



---



---

---

## 8. Disclosure of Information

The Respondent hereby agrees that any information provided in this Proposal, even if it is identified as being supplied in confidence, may be disclosed where required by law or by order of a court or tribunal. The Respondent hereby consents to the disclosure, on a confidential basis, of this Proposal by Kinetic to representatives from any GPO Members and to the advisers retained by Kinetic to advise or assist with the RFSO process, including with respect to the evaluation this Proposal.

---

Signature of Witness

---

**Signature of Respondent Representative**

---

Name of Witness

---

Name of Respondent Representative

---

Title of Respondent Representative

---

Date

Authorized Corporate Signature.