



# **ICBC SALVAGE BUYING AGREEMENT**



**ICBC SALVAGE BUYING AGREEMENT**  
**COVER SHEET**

ICBC operates a provincial salvage system throughout British Columbia through which designated buyers can bid on ICBC Salvage (the “**Program**”). This Agreement (the “**Agreement**”), which includes the attached Salvage Buying Terms and Appendices, sets out:

- The terms and conditions under which a Salvage Buyer may purchase ICBC Salvage,
- Your responsibilities and obligations as Salvage Buyer in the Program, and
- Your commitment to operate Your business with the required qualifications and in a manner that meets or exceeds the standards established by ICBC.

In this Agreement “**You**”, “**Your**” or “**the Salvage Buyer**” means your business entity (a sole proprietorship, a partnership, a corporation or another type of business entity) that will be purchasing ICBC Salvage from ICBC, and “**We**”, “**Our**”, “**Us**” and “**ICBC**” mean the Insurance Corporation of British Columbia. If You are an individual, You must be at least 19 years of age to become designated as a Salvage Buyer.

Your Business Entity Name:	[insert]
Address:	[insert]
Contact Name:	[insert]
Phone Number:	[insert]
Email:	[insert]

Our Business Entity Name:	<b>Insurance Corporation of British Columbia</b>
Address:	[insert]
Contact Position:	[insert]
Phone Number:	[insert]
E-mail:	[insert]





## **SALVAGE BUYING TERMS**

### **1. INTERPRETATION**

- 1.1. **Definitions:** Unless otherwise defined in this Agreement, capitalized terms used herein have the meaning ascribed to those terms in Appendix A attached to this Agreement.
- 1.2. **Headings:** The headings in this Agreement are inserted for the convenience of the parties and are not to be used to interpret any provision of this Agreement.
- 1.3. **Time Periods:** Unless expressly stated otherwise, any reference in this Agreement to a day, week, month, quarter or year, will mean a calendar day, week, month, quarter or year.

### **2. BECOMING A SALVAGE BUYER**

- 2.1 **Your Designation:** When both parties sign this Agreement, You will become a Salvage Buyer in the Program and will be permitted to purchase ICBC Salvage during the Term of this Agreement, subject to the terms of this Agreement..
- 2.2 **Term:** Subject to earlier termination under the terms of this Agreement, the term of this Agreement will start on the Effective Date set out on the Cover Sheet and will end on December 31, 2024 (the "**Initial Term**"). Thereafter, this Agreement shall automatically renew for consecutive periods of one (1) year each, (each a "**Renewal Term**") provided neither party has given the other written notice of intention not to renew at least 30 days prior to the end of the Term being renewed. Where the Agreement has been renewed any reference to Term within this Agreement shall refer to the Renewal Term and any successive Renewal Terms.
- 2.3 **Grant of Benefits:** You may purchase ICBC Salvage from ICBC and ICBC may sell You ICBC Salvage subject to the terms and conditions of this Agreement. For greater certainty, nothing in this Agreement obligates ICBC to put ICBC Salvage up for sale on the ICBC Salvage Website or award the sale of any individual Sale Lot, or for You to bid on ICBC Salvage on the ICBC Salvage Website.

### **3. YOUR RESPONSIBILITIES AND DUTIES**

- 3.1 **General Requirements:** During the Term of this Agreement, You agree to:
  - (a) possess a valid business license or equivalent specific to the business type You operate, for the area in which the business premises are located, as required by law, and provide ICBC with a copy of the license at the time of application to be designated as a Salvage Buyer, and at the time of any renewal of this Agreement, and as may be requested from time to time;
  - (b) remit, in a timely manner, all Fees that are applicable from time to time in accordance with the fee schedule posted on the ICBC Salvage Website. To the extent that any Fees are required on an annual basis, ICBC shall not refund any



portion of those annual Fees in the event of termination of this Agreement by You or ICBC.

- (c) comply at all times with all applicable laws, regulations or requirements of any Governmental Authority, including without limitation, Environmental Laws and any Zoning Laws;
- (d) comply and cause your Representatives to comply with all ICBC policies, rules and instructions posted to the ICBC Salvage Website or otherwise made known to You, including without limitation those concerning the protection, use and disposal of any Personal Information, including any Personal Information posted on the ICBC Salvage Website or in any ICBC System or any Personal Information contained in any ICBC Salvage;
- (e) if You are in the Wrecker/Dismantler/Recycler category, and Your place of business is located in British Columbia, provide ICBC with a Ministry of Environment Letter at time of application to be designated as a Salvage Buyer, and at the time of any renewal of this Agreement, and as may be requested from time to time;
- (f) if You are in the Rebuilder/Dealer category, be a duly licensed motor dealer by the Motor Vehicle Sales Authority of British Columbia, or be licensed by a substantially equivalent body in any jurisdiction other than British Columbia for substantially similar purposes, and provide ICBC with a copy of the licence at the time of application to be designated as a Salvage Buyer, and at the time of any renewal of this Agreement, and as may be requested from time to time;
- (g) have access to computer equipment capable of accessing the Internet with an e-mail account through an Internet Service Provider (ISP), and possess a current e-mail account;
- (h) pay all amounts owing by You to ICBC in respect of any Sale Lot awarded by ICBC to You in accordance with terms of this Agreement;
- (i) maintain applicable federal and provincial sales tax registrations and any other applicable tax registrations required by any Governmental Authority;
- (j) prior to the payment of any purchase price for any particular Sale Lot, advise ICBC if the Sale Lot in question is not for resale purposes;
- (k) if applicable, provide to ICBC a copy of Your certificate of incorporation or any business registration or business name registered with the British Columbia Registrar of Companies;
- (l) conduct reasonable independent enquiries to satisfy Yourself as to the condition and appropriateness of a Sale Lot prior to purchase;
- (m) ensure that any Representative, including any tower acting on Your behalf, picking up any purchased ICBC Salvage is registered, licensed and insured, and complies with any applicable facility requirements;



- (n) provide a copy of this Agreement to Your Bidder(s) and cause each Bidder to comply with the terms and conditions of this Agreement; and
- (o) in conducting business pursuant to this Agreement, be responsible at law and otherwise for all actions and omissions of Your contractors (including, without limitation, towers) and employees (including, without limitation, Bidders).

3.2 **Remit or Delete Personal Information:** You are responsible for the protection of Personal Information embedded or contained in ICBC Salvage that You purchase (including materials in electronic form) and You shall ensure that no Person collects, accesses, uses or discloses such Personal Information. You shall immediately notify ICBC by telephone (notwithstanding the notice provisions at section 19 of these Salvage Buying Terms) of any Personal Information found in ICBC Salvage and if requested promptly remit such item to ICBC, or delete or completely destroy the Personal Information in such manner as to render it irretrievable.

3.3 **No Contact:** Without in any way limiting Your obligations under subsections 3.1(d) and 3.2 above, You shall not use or permit (either expressly or impliedly) the use of any information (including Personal Information) obtained in the course of purchasing any ICBC Salvage, including information posted on the ICBC Salvage Website, in any ICBC Systems, or contained in any ICBC Salvage (including dashboard systems, GPS or other electronic devices or systems within the ICBC Salvage) to contact a previous owner of the ICBC Salvage or any individual whose Personal Information is contained in the ICBC Salvage under any circumstances. You shall contact ICBC if assistance or instruction is needed with respect to anything contained in this subsection 3.3 or subsections 3.1(d) and 3.2 above.

3.4 **Intellectual Property:** You will not use any of ICBC's trademarks, services names, slogans, expressions, titles, designs, logos, icons, graphics, designations, emblems, signs, symbols, trade names, official marks or any data residing on any ICBC System, including without limitation the ICBC Salvage Website, for any purpose whatsoever without the prior written approval of ICBC. Without limiting the foregoing, You will not use photographs from the ICBC Salvage Website for any purpose whatsoever, including without limitation for posting on internet sites and advertisements.

3.5 **Non-compliance:** You will immediately notify ICBC in writing of any non-compliance or anticipated non-compliance with Your obligations set out in this Section 3 and will also inform ICBC of all steps You propose to take to stop any continuing non-compliance, to mitigate any impacts arising from such non-compliance, and to prevent any further or anticipated non-compliance from occurring.

#### **4. BUYER CATEGORIES**

4.1 **Rebuilder/Dealer:** If designated by ICBC as a Rebuilder/Dealer, You must not bid on any Sale Lot that is identified as "dismantle only".

4.2 **Wrecker/Dismantler/Recycler:** If You are designated by ICBC as a Wrecker/Dismantler/Recycler, You acknowledge and agree that upon award of any Sale Lot to You it shall automatically be designated "non-reparable" without any further action by ICBC or any other party.



- 4.3 **Additional Categories:** ICBC may, from time to time, create and designate such other categories of Salvage Buyer, which may be subject to such restrictions as ICBC may deem fit.

## 5. **SALVAGE BUYER CONTACT**

You will designate a manager or other senior person within Your organization to act as Your primary contact in connection with Your activities as a Salvage Buyer in the Program and the purchase of ICBC Salvage (the "**ICBC Contact**"). The ICBC Contact will have the ability to make decisions and receive and give instructions on Your behalf that are binding on You, excluding decisions or instructions that would constitute an amendment to this Agreement or a waiver of any rights or entitlements under the Agreement. You must provide ICBC at least five (5) business days before a change of ICBC Contact, unless such prior request is not possible, and in that case, You will promptly give ICBC notice of the new name and title of the individual who replaced the ICBC Contact.

## 6. **RISK OF TITLE**

Custody, control, risk of, and title to all ICBC Salvage transfers from ICBC to You upon full payment of the applicable purchase price by You to ICBC for the applicable ICBC Salvage.

## 7. **CONDITION OF ICBC SALVAGE**

- 7.1 **"As Is, Where Is"**. All ICBC Salvage sold through the ICBC Salvage Website is sold on an "as is, where is" basis, without any warranty, express or implied, including any warranty as to condition or fitness for any use or purpose. Without limiting the foregoing, ICBC does not guarantee (a) the accuracy of any odometer readings, (b) the structural or mechanical condition of any Sale Lot, and (c) the Sale Lot to be exactly as shown in images on the ICBC Salvage Website.
- 7.2 **"As Is, Where Is" - Liens**. Without limiting subsection 7.1 immediately above, ICBC does not guarantee that any ICBC Salvage is free from liens or other charges.
- 7.3 **Keys**. ICBC does not guarantee that keys are available for any vehicle sold through the ICBC Salvage Website, regardless of whether keys are shown in the vehicle listing or ICBC Salvage Website vehicle images, or were present in the vehicle prior to the time of purchase by You.

## 8. **DAMAGE TO ICBC SALVAGE**

ICBC shall not be responsible or liable for any damage to or loss associated with any ICBC Salvage that is awarded to You under the terms of this Agreement, except that ICBC shall be responsible for damage to or loss of any ICBC Salvage or parts thereof caused by a grossly negligent act or omission of ICBC in its handling of the ICBC Salvage at any ICBC Salvage Facility, whether before or after title has passed to You



pursuant to Section 6 of these Salvage Buying Terms, in which case the damages shall be limited to the lesser of:

- (a) the amount of the diminution in value, based on the value of the item in question as salvage, as a result of the damages suffered by the ICBC Salvage as reasonably estimated by ICBC; and
- (b) the purchase price paid by You for the applicable ICBC Salvage (in which case You shall be obligated to return the ICBC Salvage to ICBC).

ICBC is not responsible for any claim of damage made after the ICBC Salvage has left the ICBC Salvage Facility.

## **9. BIDDERS**

- 9.1 **Nomination and Approval:** You may nominate up to three Bidders and such Bidders will be registered under Your name in ICBC Systems. If You are an individual, You may nominate Yourself as a registered Bidder.

Each nominated Bidder must be approved by ICBC. ICBC reserves the right, at its sole discretion, to decline or revoke the registration of a Bidder. Each registered Bidder approved by ICBC will receive a unique number (a "**Bidder Number**") and identity card (a "**Bidder Card**"), neither of which can be assigned, loaned or transferred to another Person. Only registered Bidders nominated by You are entitled to bid on ICBC Salvage on Your behalf, and must do so only using their own Bidder Number.

- 9.2 **Withdrawal:** You may at any time withdraw the registration of any of Your Bidders, and must withdraw the registration of any Ineligible Bidder, by notifying an ICBC Salvage Facility in writing and returning the applicable Bidder Card. In such event, ICBC shall not accept any nominations from You for any new Bidders until the earlier of the following occurrences:

- (a) the Bidder whose registration is being withdrawn has returned their Bidder Card; and
- (b) if the Bidder Card is not returned within thirty (30) days, You pay ICBC a Fee plus any applicable taxes in accordance with the fee schedule posted to the ICBC Salvage Website.

- 9.3 **Replacement of Bidder:** Upon reaching the maximum of three Bidders on Your account, You are only permitted to replace one (1) Bidder within any given twelve (12) month period at no cost to You other than the cost to replace the Bidder Card, if applicable (even if a replacement is the result of the withdrawal of an Ineligible Bidder). If You wish to otherwise replace a Bidder in contravention of the foregoing sentence, then ICBC shall charge You a Fee plus any applicable taxes in accordance with the fee schedule posted to the ICBC Salvage Website.

- 9.4 **Access to ICBC Salvage Facilities:** Access to ICBC Salvage Facilities will be limited to authorized Bidders and such persons as may be permitted by ICBC from time to time. In order to access ICBC Salvage Facilities, authorized Bidders or other persons





must follow any relevant identification or security protocols, and such access may be subject to limitations, as may be established by ICBC at its sole discretion.

- 9.5 **Unauthorized Use of Bidder Card or Number:** You will ensure that no Bidder Card or Bidder Number assigned to You or Your Bidder(s) is used by any other Person aside from the Bidder to whom the Bidder Card or Bidder Number is assigned. You will immediately notify ICBC of any unauthorized use of the Bidder Card or Bidder Number, or if the Bidder Card has been lost or stolen.

## **10. PAYMENT AND REMOVAL OF SALVAGE**

- 10.1 **Payment:** You shall pay for all purchases of ICBC Salvage within two (2) business days of the Award Date. ICBC shall not release a particular Sale Lot until payment has been received by ICBC for that particular Sale Lot and any other Sale Lot purchased by You on the same day and from the same ICBC Salvage Facility. Payment in full for all Sale Lots purchased will be accepted at any ICBC Salvage Facility that is both owned and operated by ICBC, any claim centre designated by ICBC or as otherwise agreed to by ICBC from time to time.
- 10.2 **Failure to Pay:** If You fail to pay for purchased ICBC Salvage within two (2) business days of the Award Date, ICBC may, in its sole and absolute discretion, relist the ICBC Salvage for sale through the ICBC Salvage Website or otherwise. ICBC shall be entitled to offer the applicable Sale Lot to the next highest Bidder. At ICBC's sole discretion, Your bidding privileges may be suspended in accordance with section 16 of these Salvage Buying Terms until such date as ICBC notifies You that the suspension has ceased.
- 10.3 **Removal of Salvage: When You successfully purchase a given Sale Lot You are** obligated to take possession of the ICBC Salvage and remove it from the ICBC Salvage Facility within two (2) business days of the Award Date. If You fail to remove purchased ICBC Salvage within two (2) business days of the Award Date:
- (a) You will be responsible for any applicable storage fees after the two (2) business days of the Award Date;
  - (b) ICBC may, in its sole and absolute discretion, relist the ICBC Salvage for sale through the ICBC Salvage Website or otherwise; and
  - (c) Your bidding privileges may be suspended under the terms of section 16 of these Salvage Buying Terms.

## **11. ICBC RIGHTS AND RESPONSIBILITIES**

- (a) ICBC may withdraw any ICBC Salvage from a sale or postpone or cancel a sale of any particular ICBC Salvage, in its sole and absolute discretion, without notice and without any liability or obligation to You.
- (b) ICBC reserves the right to reject a bid for any reason whatsoever, in its sole and absolute discretion.



- (c) ICBC reserves the right to offer ICBC Salvage for sale subject to a minimum bid.
- (d) ICBC reserves the right to sell ICBC Salvage using third parties.
- (e) If, through withdrawal, loss or error, ICBC cannot make a Sale Lot available to You after You have been awarded such Sale Lot, then ICBC's liability shall be limited in any circumstance whatsoever to a refund to You of the applicable purchase price paid.

## **12. REPRESENTATIONS AND WARRANTIES**

### **12.1 Salvage Buyer:** You represent and warrant that:

- (a) if You are a corporation, the corporation was incorporated or was formed by way of amalgamation, and is and will remain during the Term of this Agreement, a corporation organized and validly existing, and You have taken the necessary corporate action to authorize this Agreement;
- (b) You have the power and capacity to enter into this Agreement and observe, perform and comply with the terms of this Agreement;
- (c) You have no knowledge of any fact that materially adversely affects, or that You can foresee might materially adversely affect, Your ability to fulfil Your obligations under this Agreement;
- (d) by observing and performing the terms and conditions of this Agreement, You will not be in breach or default of any laws applicable to You or Your organizing documents (if You are a corporation, partnership or other entity);
- (e) You have the necessary skills, expertise, and experience to carry out and complete Your obligations and duties under this Agreement; and
- (f) You hold, and at all times during the Term of this Agreement will hold, all permits and governmental authorizations necessary to operate Your business under the terms of this Agreement and in compliance with all applicable laws, regulations or requirements of any Governmental Authority, including without limitation, Environmental Laws.

All representations and warranties made by You under this Agreement are material and will be considered to have been relied upon by Us, regardless of any investigation by Us before or after the Effective Date.

### **12.2 ICBC:** ICBC represents and warrants that:

- (a) We are a legal entity organized and validly existing under the laws of British Columbia;
- (b) We have the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement; and



- (c) We have taken all necessary action to authorize this Agreement.

All representations and warranties made by ICBC under this Agreement are material and will be considered to have been relied upon by You, regardless of any investigation by You before or after the Effective Date.

### **13. ACCESS TO ICBC SYSTEMS**

- 13.1 **ICBC Salvage Website:** ICBC Systems and ICBC Data are exclusively owned by Us and Our licensors. Use of the ICBC Systems by You does not transfer any ownership or other rights in the ICBC Systems or ICBC Data to You or Your Representative. You shall only have access to the ICBC Salvage Website for the purpose of viewing ICBC Salvage for sale or to conduct other legitimate business relating to Your activities or operations as they relate to the performance of this Agreement, including, among other things, accessing accounts payable or auction rules. To the extent that the You have access to any ICBC System other than the ICBC Salvage Website pursuant to other agreements or arrangements with ICBC, You are strictly prohibited from accessing those other ICBC Systems (excluding the ICBC Salvage Website) for purposes of collecting any data or information that informs or otherwise influences Your activities on the ICBC Salvage Website or in connection with this Agreement.
- 13.2 **Responsibility for Your Representatives:** You are fully responsible and liable for:
- (a) access to and use of the ICBC Systems and the ICBC Data by You and Your Representatives;
  - (b) all acts and omissions by each of You and Your Representatives; and
  - (c) all uses of the Passwords (defined below) issued to You and Your Representatives.
- 13.3 **Passwords:** We will issue usernames and passwords (collectively, the "**Passwords**") to You and Your Representatives (where applicable). You will, and will ensure that Your Representatives, keep the Passwords secure and confidential at all times and will not disclose them to any other Person or permit any other Person to use them. You will immediately notify ICBC if any Passwords may have become known to or used by any other Person.
- 13.4 **No Privacy:** You will advise Your Representatives that there is no protection of their privacy when using or accessing the ICBC Systems and that by using the ICBC Systems they consent to ICBC and its service providers monitoring and maintaining information relating to their access to and use of the ICBC Systems.
- 13.5 **Technical Requirements:** You are solely responsible and liable for obtaining, paying for, configuring, maintaining, updating, and protecting from loss and damage (including virus protection and regular data backup) any and all equipment and services necessary for You and Your Representatives to access and use the ICBC Systems and the ICBC Data. You agree to comply with any technology or security standards that may be published by ICBC on the ICBC Salvage Website concerning reasonable minimum technology and equipment requirements and standards necessary for participation in the Program.



13.6 **Disclaimer:** Access to and use of the ICBC Systems and the ICBC Data is provided on an “as is” and “as available” basis, and without any representations, warranties or conditions of any kind (whether express or implied) and including without limitation any representations, warranties or conditions of or relating to: accuracy; availability; capacity; completeness; delays; durability; errors; fitness for a particular purpose; lack of negligence, viruses or other harmful component, errors, or interrupted service; merchantability; non-infringement; performance; results; suitability; quality; timeliness; title; or workmanlike effort; all of which are hereby disclaimed by ICBC to the fullest extent permitted by law. Furthermore, We will not under any circumstances be liable to You, Your Personnel, Your Representatives or any other Person for any Damages or losses of any nature or kind whatsoever (whether in contract, tort, negligence, strict liability, or under any other theory of law or equity) arising from, connected with, or relating to the access to and use of the ICBC Systems and the ICBC Data, regardless of any negligence or other fault or wrongdoing (including without limitation gross negligence or fundamental breach) by ICBC or any other Person for whom We may be responsible at law, whether or not the affected parties are aware or have been advised of the possibility of such potential losses or damages. In this subsection, We and ICBC includes ICBC Personnel.

#### **14. INDEMNIFICATION**

14.1 **Your Indemnity:** Subject to subsection 14.2 below, You will defend, indemnify and hold harmless ICBC and its Representatives from and against any claims and damages directly or indirectly caused by or resulting from:

- (a) the negligence, willful act or breach of or default under this Agreement by You, any of Your Representatives or any Person that You are responsible for under law;
- (b) any contamination or non-compliance with Environmental Laws of any nature whatsoever by You or Your Representatives, in respect of Your activities that are within the scope of this Agreement; or
- (c) any Third Party Claim brought against ICBC arising from or relating to Your conduct or the purchase of ICBC Salvage pursuant to this Agreement.

14.2 **Mechanics of Indemnity:** Despite subsection 14.1 above, Your duties set out above will depend on ICBC:

- (a) giving You prompt written notice of any claims or damages for which the indemnified party is seeking indemnity;
- (b) granting control of the defense and settlement of a Third Party Claim to the You, provided that the Third Party Claim will not be settled without the prior written consent of ICBC, which cannot be unreasonably withheld or delayed, unless such settlement is made without any liability to ICBC; and
- (c) reasonably assisting and co-operating with You, at Your expense, with respect to a Third Party Claim.



Despite anything contrary in this Agreement, ICBC retains the right to participate in the defense or any settlement negotiations involving any Third Party Claim at its own cost and expense and with its own counsel.

## **15. TERMINATION, SUSPENSION AND OTHER CORRECTIVE ACTIONS**

15.1 **Term and Termination**: This Agreement will continue in effect until such time that the Agreement expires or is terminated by either of the Parties in accordance with the provisions of this Section 15.

15.2 **Immediate Termination by ICBC for Cause**: Despite any other provision of this Agreement, if any of the following occurs (each a "**Subsection 15.2 Incident**"), You are considered to be in default under this Agreement and ICBC may, in its sole discretion, elect to terminate this Agreement effective immediately upon providing written notice of the termination to You:

- (a) **False Statements**: You made a material false statement in Your application to ICBC for Your designation as a Salvage Buyer in the Program or in the course of performing the obligations set out in this Agreement;
- (b) **Misrepresentations**: By Your action or inaction You or Your Representative make an intentional, negligent or fraudulent misrepresentation to ICBC, its agents or otherwise;
- (c) **Unlawful Acts and Fraud**: You or Your Representative, including specifically any Bidder for whom You are responsible, commits an act of willful misconduct, fraudulent misconduct or any other unlawful or illegal act, regardless of whether or not such misconduct or act is connected with or related to Your business or the salvage buying activities under this Agreement and without limiting the generality of the foregoing, including specifically coordination of bids or disclosure of the purchase price of a given Sale Lot without a commercial reasonable business purpose;
- (d) **Conduct Detrimental to the Image of ICBC**: You operate Your business in a manner which adversely affects or which is damaging or detrimental to the public image, reputation or goodwill of ICBC or ICBC's salvage operations;
- (e) **Unauthorized Taking**: You or Your Representatives take, without authorization by ICBC, any property or tamper with any property in, on, or attached to, or associated with, any ICBC Salvage while located at an ICBC Salvage Facility, whether or not the property is removed from the ICBC Salvage Facility;
- (f) **Breach of Agreement**: If You or any of Your Representatives breach any provision of this Agreement;
- (g) **Failure to Qualify**: You fail to meet and maintain the requirements and obligations set out in this Agreement, and without limiting the generality of the foregoing, including specifically the obligations set out in section 3 of these Salvage Buying Terms.



- (h) Ineligibility of Salvage Buyer: ICBC determines, in its sole discretion, that, based on information about You contained in ICBC's records, which ICBC reserves the right to obtain and review at any time for the purpose of making such determination, You are not eligible (even if You otherwise qualify under subsection 3.1 above) to purchase or continue to purchase ICBC Salvage from ICBC pursuant to this Agreement;
  - (i) Failure to Remove Ineligible Bidder: Within thirty (30) days of receiving a notice from ICBC requiring You to do so, You fail to withdraw any Bidder for whom You are responsible and who ICBC determines, in its sole discretion, is not eligible to bid on ICBC Salvage hereunder (the "**Ineligible Bidder**") based on information about that Bidder contained in ICBC's records, which ICBC reserves the right to obtain and review at any time for the purpose of making such determination; or
  - (j) Failure to Consent: For the purposes of subsections 15.2(h) and 15.2(i), You fail to deliver to ICBC the consent as may be necessary for ICBC to obtain and review information about You or a Bidder for whom You are responsible within thirty (30) days of ICBC's request for such consent, or You fail to promptly provide relevant information reasonably requested by ICBC. For certainty, You shall be solely responsible for obtaining and delivering to ICBC the consent of Bidders for whom You are responsible.
- 15.3 Other Termination: ICBC may terminate this Agreement effective immediately upon providing notice of termination to You provided such termination is part of a mass termination of all Salvage Buyers or a portion of Salvage Buyers in a particular geographic area for the purposes of establishing a new agreement or arrangement in respect of the subject matter hereof.
- 15.4 Termination for Convenience: Either party may terminate this Agreement at any time upon provision to the other party of 30 days notice.

## 16. **SUSPENSION**

If any of the following occurs, You are considered to be in default under this Agreement and ICBC may, in its sole discretion, suspend Your bidding privileges and/or access to ICBC Salvage Facilities pursuant to this Agreement effective immediately upon providing You notice of the suspension, until such time as You are in compliance and ICBC is satisfied, in its sole discretion, that You have taken certain steps deemed necessary by ICBC to avoid such non-compliance in the future:

- (a) Failure to Pay: You fail to pay in full for an awarded Sale Lot as directed by ICBC;
- (b) Failure to Remove: You refuse or neglect to remove an awarded Sale Lot from the ICBC Salvage Facilities within the time period specified in this Agreement; or
- (c) Subsection 15.2 Incident: You are the subject of a Subsection 15.2 Incident.



At its sole discretion, ICBC may apply the progressive discipline model set out in Appendix B to this Agreement, which may be amended by ICBC from time to time pursuant to subsection 18.1 below.

## **17. FORCE MAJEURE EVENT**

- 17.1 **Obligations:** Neither party will be responsible or liable for any delay or failure to perform any of its obligations under this Agreement (other than a payment obligation) caused by an event or circumstance beyond the party's control by reason of any act of god, act, law or regulation of any governmental or military authority, embargoes, pandemics (including, without limitation, the existing COVID-19 pandemic), epidemics, viral outbreaks, war, terrorism, riots, insurrections, mob violence, fires, explosions, earthquakes, floods, unusually severe weather conditions, such as hurricanes, power outages, strikes (actual or imminent), walkouts, labour disruptions or unavoidable casualty, or any act or event which is beyond the reasonable control of a party (a "**Force Majeure Event**"). If a party experiences a Force Majeure Event, their inability to perform an obligation due to such Force Majeure Event shall not be deemed a breach of this Agreement.
- 17.2 **Notice:** If a party is affected by a Force Majeure Event, prompt notice of same must be provided to the other party. Performance by the party experiencing the Force Majeure Event shall be suspended during such period of inability. The party experiencing the Force Majeure Event shall use commercially reasonable efforts to remove, rectify, mitigate or contain the applicable Force Majeure Event.

## **18. AMENDMENT OF THIS AGREEMENT**

- 18.1 **Amendment by ICBC:** ICBC may, in its sole discretion, amend this Agreement and any related forms or instructions from time to time by posting a bulletin containing any such amendments on the ICBC Salvage Website. Amendment(s) will be effective either as of the date the bulletin containing such amendment(s) is posted on the ICBC Salvage Website, or, if the applicable ICBC Salvage Website bulletin specifies a later effective date, then as of such later date. By continuing to place bids on the ICBC Salvage Website after any amendment to this Agreement become effective in accordance with this subsection 18.1, You signify Your acceptance and agreement, without qualification, to be bound by the amended Agreement.
- 18.2 **Amendment in Writing:** Except any amendments made by ICBC in accordance with subsection 18.2, all other terms of this Agreement can only be amended or modified by written agreement of the parties to this Agreement.

## **19. NOTICES**

- (a) All notices and communications required or permitted to be given under this Agreement must be in writing and must be delivered to the applicable party by one of the methods described in this paragraph 19(a) at the address or electronic mail address for the party set out in the Cover Sheet to this Agreement, or at such other addresses as a party may, from time to time,



advise the other party of by giving written notice under this section 19. Delivery of notices and communications will be deemed to have occurred for the various delivery methods as follows:

- i. by registered mail – 72 hours after being deposited in the mail service in Canada with first-class prepaid postage;
- ii. by personal delivery – when delivered;
- iii. by courier – on the date of delivery; and
- iv. any notice or communication given by electronic means will be considered given and received on the earlier of: (a) the day the party received the notice or communication, or (b) the day following the transmission of the notice or communication.

## **20. ASSIGNMENT**

20.1 **Assignment:** You acknowledge that the rights and duties created by this Agreement are personal to You. You may not assign, transfer or dispose of all or part of any direct or indirect interest in this Agreement except with the prior written consent of ICBC, and such consent may be granted or withheld by ICBC in its absolute discretion and without reason.

20.2 **Events Considered to be an Assignment:** Any sale or other disposition of all or substantially all of the Your assets or any change of Your Control is considered to be an assignment of this Agreement by You for the purpose of this section 20.

## **21. GENERAL TERMS**

21.1 **Time of Essence:** Time is of the essence of this Agreement.

21.2 **Entire Agreement:** This Agreement sets forth the entire agreement between the parties regarding the subject matter of this Agreement and supersedes any and all previous communications, representations, negotiations, discussions, agreements or understandings (whether oral or written) between them with respect to the subject matter of this Agreement.

21.3 **Governing Law:** This Agreement is governed by the laws of the Province of British Columbia, and the federal laws of Canada applicable in the Province of British Columbia, excluding any rules of private international law or the conflict of laws that would lead to the application of the laws of any other jurisdiction.

21.4 **Waiver: No waiver of any breach of any term of this Agreement will be effective or binding unless made in writing and signed by the party giving the waiver, or made otherwise agreed to by the parties. No condoning, excusing or waiver by any party to this Agreement of any default, breach or non-observance by any other party to this Agreement will operate as a waiver of that party's rights under this Agreement or will defeat or affect the right of that party in respect of any continuing, or subsequent default, breach or non-observance, and no waiver will be inferred from or implied by anything done or omitted to be done by the party having those rights.**





- 21.5 **Further Acts:** Each party will sign all further documents and do all other things as may be necessary to carry out the terms of this Agreement.
- 21.6 **Remedies Cumulative:** Except as specifically set out in this Agreement, all right and remedies of either party under this Agreement are cumulative and are in addition to and will be not be considered to exclude any other rights or remedies available to a party at law or in equity, and all rights and remedies may be exercised concurrently, consecutively and alternatively.
- 21.7 **Provisions May be Severed:** If any provision of this Agreement is decided to be unenforceable or invalid for any reason, that unenforceable or invalid provision will not affect the enforceability or validity of the remaining provisions of this Agreement, which will remain in full force and effect, and any unenforceable or invalid provisions will be severable from the rest of this Agreement.
- 21.8 **Enurement:** This Agreement will be binding upon and enure to the benefit of the parties and their respective heirs, executors, administrators, representatives, successors and permitted assigns.
- 21.9 **Survival:** Those provisions of this Agreement that by their nature are intended to survive the expiry or early termination of this Agreement shall survive the expiry or early termination of this Agreement.



## APPENDIX A – DEFINITIONS

The following terms will have the following meanings in this Agreement, and all other capitalized terms used in this Agreement have the meaning given to such terms elsewhere in this Agreement:

1. **"Award Date"** means the date upon which ICBC posts an award notification on the ICBC Salvage Website that a particular salvage buyer has been successfully awarded a particular Sale Lot offer for sale by ICBC through the ICBC Salvage Website;
2. **"Bidder"** means an individual nominated by You to bid on ICBC Salvage on Your behalf.
3. **"Control"** of any Person means: (i) with respect to any corporation or other Person having voting shares or the equivalent, the ownership or power to vote, directly or indirectly, shares or the equivalent, representing 50% or more of the power to vote in the election of directors, managers or persons performing similar functions; (ii) ownership of 50% or more of the equity or beneficial interest in that Person; or (iii) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.
4. **"Environmental Laws"** means any statutes, laws, regulations, orders, bylaws, standards, directions, policies, interpretations, rules, codes, orders, guidelines, permits or other requirements of any Governmental Authority, now or hereafter in force, relating in any way to the environment, human health, occupational health and safety or transportation of dangerous goods, including common law and equity and including the *Canadian Environmental Protection Act* (Canada), the *Fisheries Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Management Act* (British Columbia) and all rules and regulations promulgated thereunder from time to time including, the *Contaminated Sites Regulation* (British Columbia), the *Hazardous Waste Regulation* (British Columbia) and the *Vehicle Dismantling and Recycling Industry Environmental Planning Regulation* (British Columbia); and the *Workers Compensation Act* (British Columbia) and all rules and regulations promulgated thereunder from time to time including the *Occupational Health and Safety Regulation* (British Columbia).
5. **"Fees"** means the fees You will pay ICBC as set out in a fee schedule posted on the ICBC Salvage Website, which ICBC may change from time to time in its sole discretion, and for certainty excludes any amounts owing and payable by You to ICBC in respect of a particular Sale Lot awarded by ICBC to You pursuant to the terms and conditions of this Agreement.
6. **"Governmental Authority"** means a federal, provincial, regional, municipal or local government or subdivision thereof including an entity or Person exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government or subdivision, and a board or tribunal acting with jurisdiction over You.
7. **"ICBC Data"** means all of the information and data on or accessible through the ICBC Systems.



8. **"ICBC Salvage"** includes all manner of salvage offered for sale by ICBC through the ICBC Salvage Website, or any other medium selected by ICBC, including without limitation vehicles that have been written off by ICBC and general salvage.
9. **"ICBC Salvage Facilities"** includes all facilities located in British Columbia where ICBC Salvage is stored, regardless of whether they are owned or operated by ICBC.
10. **"ICBC Salvage Website"** means the electronic system through which ICBC offers ICBC Salvage for sale, accepts bids from registered buyers, and sells ICBC Salvage to registered buyers at the following website: <https://onlinebusiness.icbc.com/salvage>, or at such other website address as may be updated or amended by ICBC from time to time.
11. **"ICBC Systems"** means the computer systems and networks of ICBC and/or its affiliates, including all hardware, software and other components thereof, including without limitation the ICBC Salvage Website.
12. **"Ministry of Environment Letter"** means a letter issued by the British Columbia Ministry of Environment to You confirming Your registration under the *Vehicle Dismantling and Recycling Industry Environment Planning Regulation* promulgated under the *Environment Management Act* (British Columbia).
13. **"Person"** means an individual, corporation, partnership, trust, joint venture, unincorporated organization, legal representative, Governmental Authority or other legal entity;
14. **"Personal Information"** has the meaning set out in the BC Freedom of Information and Protection of Privacy Act.
15. **"Rebuilder/Dealer"** means a person who is licensed as a motor dealer by the Motor Vehicle Sales Authority of British Columbia or who is licensed for a substantially similar purpose by an equivalent body in any jurisdiction other than British Columbia, except in the case of a Rebuilder/Dealer who operates as a business not required to hold a motor dealer license or equivalent license in any jurisdiction other than British Columbia.
16. **"Representatives"** means, with respect to a party to this Agreement, all directors, officers, shareholders, personnel, employees, agents, affiliates, service providers, subcontractors, successors, permitted assigns, related Persons and each of them, jointly and severally;
17. **"Sale Lot"** means any discrete item of ICBC Salvage that is offered for sale by ICBC and may be purchased by any Salvage Buyer for a single aggregate price.
18. **"Third Party Claim"** means any claim asserted against an indemnified party by any Person who is not a party to this Agreement or an affiliate of a party to this Agreement;
19. **"Wrecker/Dismantler/Recycler"** means a Person whose business is that of substantially wrecking, dismantling, disassembling and/or compacting, shredding, otherwise processing for destruction or recycling a vehicle.



20. **“Vehicle”** means a device in, on or by which a person or thing is or may be transported or drawn on a highway, but does not include a device designed to be moved by human power, a device used exclusively on stationary rails or tracks, mobile equipment or a motor assisted cycle.
  
21. **“Zoning Laws”** means any statutes, laws, regulations, orders, bylaws, standards, directions, policies, interpretations, rules, codes, orders, guidelines, permits or other requirements of any Governmental Authority, now or hereafter in force, relating in any way to the development and use of real property, including common law and equity and including the *Local Government Act* (British Columbia) and the *Community Charter* (British Columbia) and all rules and regulations promulgated thereunder from time to time.