

FEDERAL PROCUREMENT INSTRUMENT ACCESS AGREEMENT

BETWEEN:

THE GOVERNMENT OF MANITOBA,
as represented by the Minister of Finance

(called "**Manitoba**"),

- and -

(called the "**Optional User**").

WHEREAS:

- A.** Manitoba has entered into a Master User Agreement;
- B.** Pursuant to section 5(e) of the Master User Agreement, when and where possible, Canada will include in its Procurement Instruments a requirement for suppliers to disclose to Manitoba's MASH Sector information contained in the Procurement Instrument;
- C.** Pursuant to section 6(f) of the Master User Agreement, Manitoba is permitted to provide information related to Procurement Instruments to its MASH Sector, where a requirement related to the MASH Sector is included in those Procurement Instruments in accordance with section 5(e) of the Master User Agreement;
- D.** Pursuant to the Master User Agreement and the Canadian Collaborative Procurement Guide, Manitoba is permitted to provide access to Procurement Instruments to its MASH Sector entities as Optional Users;
- E.** The Optional User is a Manitoba MASH Sector entity and would like to access such information in related Procurement Instruments and to access the Procurement Instruments as an included Optional User in accordance with the terms of the Procurement Instruments;
- F.** The purpose of this Agreement is to set out the terms and conditions under which Manitoba will provide information related to Procurement Instruments to the Optional User and under which they will be permitted to access the Procurement Instruments as an included Optional User;

NOW THEREFORE in consideration of the mutual obligations set out herein, the parties agree as follows:

DEFINITIONS

1. In this Agreement:

- a. **"Agreement"** means this Federal Procurement Instrument Access Agreement;
- b. **"Call-Up"** means an order issued by an Optional User against a particular Standing Offer or the entering into an agreement for good, services, or both, pursuant to a Supply Arrangement, RFP or other Procurement Instrument. Issuance of a Call-Up to the offeror constitutes acceptance of its offer and results in the creation of a contract between the Optional User and the offeror for the goods, services or both, described in the Call-Up;
- c. **"Canada"** means the Government of Canada, as represented by the Department of Public Services and Procurement Canada (PSPC), formerly known as the Department of Public Works and Government Services (PWGSC);
- d. **"Canadian Collaborative Procurement Guide"** means the guide established by Manitoba and Canada which sets out the process to access Canada's Procurement Instruments;
- e. **"Effective Date"** is the date it is signed by the last party;
- f. **"MASH" or "MASH Sector"** means municipal, academic institutions, schools and hospitals. The MASH Sector can include regional, local district or other forms of municipal government, school boards, publically-funded academic, health and social services entities, as well as any corporation or entity owned or controlled by one or more of the proceeding entities;
- g. **"Master User Agreement"** means the National Master User Agreement dated January 22, 2018 between Manitoba and Canada;
- h. **"Procurement Instrument"** means a procurement tool that is put in place by Canada with one or more suppliers for the provision of a specific commodity over a specified period of time for needs which are sometimes less well defined at the outset. It can result in, but is not limited to, Standing Offers, Supply Arrangements and Request for Proposals;
- i. **"Request for Proposal" ("RFP")** means a form of bid solicitation that is used where the selection of a supplier cannot be made solely on the basis of the lowest price. A RFP is used to procure the most cost-effective solution based upon evaluation criteria identified in the RFP;
- j. **"Standing Offer"** means an offer from a potential supplier, in response to a

request for standing offer issued by Canada, to provide goods and/or services at pre-arranged prices, under set terms and conditions, when and if required. It is not a contract until an Optional User issues a "Call-Up" against it;

- k. **"Supplier"** means a supplier who will provide a specific commodity over a specified period of time to an Optional User pursuant to a Procurement Instrument; and
- l. **"Supply Arrangement"** means a method of supply used to procure goods and services which includes a set of predetermined conditions that will apply to bid solicitations and resulting contracts and allows an Optional User to solicit bids from a pool of pre-qualified suppliers for specific requirements. A supply arrangement is not a contract and neither party is legally bound as a result of signing a supply arrangement alone.

TERM

- 2. This Agreement begins on the Effective Date and, subject to earlier termination below, continues in force for so long as the Master User Agreement is in effect. This Agreement shall terminate immediately upon termination of the Master User Agreement.
- 3. This Agreement may be terminated at any time by either party upon providing thirty (30) days written notice.
- 4. In the event that there is a breach of this Agreement that is not cured by the Optional User after thirty (30) days written notice, Manitoba may, in its sole discretion, immediately terminate this Agreement.

ACCESS PROCESS

- 5. Manitoba will:
 - a. provide a user guide and process direction to the Optional User; and
 - b. establish a communication process for providing the Optional User with information related to Procurement Instruments.
- 6. The Optional User acknowledges and agrees that:
 - a. if it wishes to be included in a Procurement Instrument , the onus is on the Optional User to provide written notice to Manitoba, , and Manitoba will thereafter notify Canada of same; and
 - b. in order to be included in a Procurement Instrument, the Optional User must be

listed in the Procurement Instrument (either as a text listing of the Optional Users, or as a weblink where a listing of the Optional Users of the Procurement Instrument are provided).

- c. if it is not included in a Procurement Instrument, the Optional User is not entitled to access and use the Procurement Instrument.

RESPONSIBILITIES OF MANITOBA

7. If the Optional User is included in a Procurement Instrument:

- a. Manitoba grants the right to the Optional User to access and use the Procurement Instruments to order goods and services through Call-Ups on the terms and conditions of the respective Procurement Instruments and this Agreement.
- b. Manitoba will provide the names and contact information of the successful Suppliers to the Optional User.

RESPONSIBILITIES OF THE OPTIONAL USER

8. If the Optional User is included in a Procurement Instrument, the Optional User acknowledges and agrees:

- a. it is responsible for obtaining the Standing Offer, Supply Arrangement and RFP information directly from the Supplier and for submitting Call-Ups directly to the Supplier;
- b. it will abide by the terms and conditions of each Procurement Instrument and respective Call-Up upon making a Call-Up against a Procurement Instrument;
- c. to include in each Call-Up forwarded to a Supplier pursuant to a Procurement Instrument:
 - I. the Procurement Instrument reference number;
 - II. a purchase order number, if required;
 - III. the specified quantity and description of the goods or services being ordered; and
 - IV. any other information required pursuant to the Procurement Instrument and this Agreement.
- d. is solely responsible for all payments and other obligations to the Supplier incurred

through making a Call-Up against the Procurement Instrument;

- e. will use any applicable selection methodology established by Canada when using the Procurement Instruments;
- f. will not renegotiate any part of the Procurement Instrument with the Supplier, unless such renegotiation is specifically contemplated in the Procurement Instrument; and
- g. will not use the Procurement Instrument as a bargaining tool with the Supplier for the purposes of entering into a separate agreement for the same or similar goods or services.

9. The Optional User further acknowledges and agrees that it:

- a. will not permit any person who is not an authorized employee responsible for the Optional User's procurement activities to have access to the Call-Ups, the Procurement Instruments, or any other information provided pursuant to this Agreement;
- b. will maintain, respect and fully protect the confidentiality of any information received about an upcoming Procurement Instrument or under a Procurement Instrument and that it will not release any confidential information to anyone or any other organization without the prior written consent of Canada and Manitoba, unless the release thereof is clearly authorized in the Procurement Instrument or specifically required by law;
- c. will designate an individual to represent the Optional User in matters related to this Agreement;
- d. each Call-Up issued under a Procurement Instrument is intended to form a separate binding contractual agreement between the Supplier and the Optional User for the goods or services described in the Call-Up, and the Optional User is bound under the terms of such agreement or instrument;
- e. neither Canada nor Manitoba are a party to any agreement between the Optional User and a Supplier that is formed upon the issuance of a Call-Up by the Optional User;
- f. the Optional User is solely responsible for determining whether the issuance of a Call-Up under a particular Procurement Instrument is in accordance with applicable laws, trade agreement and policy obligations, including without limitation any law, policy or agreement applicable to the procurement of goods or services, and Manitoba makes no representation or warranty that the issuance of any Call-Up by

the Optional User under a Procurement Instrument will meet any requirements to which the Optional User is subject under any law, policy or agreement;

- g. the Procurement Instruments and the contractual terms and conditions applicable on Call-Up have been established in the interests of, and on terms and conditions appropriate to, the Government of Canada or Manitoba, or both, as applicable. Manitoba makes no warranties or representations of any kind with respect to the appropriateness or suitability of any goods or services drawn-down by the Optional User, and expressly disclaim any warranties or representations as to the appropriateness or suitability of the terms and conditions of the Procurement Instrument or of any Call-Up for the Optional User;
 - h. in no event will Manitoba be liable to the Optional User or to any third party for any damages or losses of any kind in connection with this Agreement, any Procurement Instrument, any Call-Up or any goods or services drawn-down, including without limitation direct, special, indirect, consequential, punitive, exemplary damages, damages for lost profits or lost savings; and
 - i. the Optional User will indemnify and save harmless Manitoba and its employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that it or any of its employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, which are based upon, arise out of or occur, directly or indirectly, by reason of, any act or omission by the Optional User or by any of its agents, employees, officers, directors, or subcontractors in respect of any Procurement Instrument or any goods or services obtained under a Procurement Instrument.
10. The Optional User agrees to provide Manitoba reporting annually, and when requested, which may include, but is not limited to, unit quantity and dollars spent on Call-Ups or access of the Procurement Instruments and net savings from accessing the Procurement Instruments.

GENERAL

- 11. No partnership, joint venture, agency or other legal relationship is created or deemed to be created by this Agreement or any actions of the parties hereunder.
- 12. This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all prior negotiations, communications and other agreements, whether written or oral, relating to the subject matter of this Agreement.
- 13. Each of the parties will, upon the reasonable request of the other, make, do, execute or

cause to be made, done or executed all further documents, instruments and assurances for performance of the terms and conditions of this Agreement.

14. If any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, it shall be deemed to be severed from this Agreement, and the remaining terms and conditions shall nevertheless remain in full force and effect.
15. This Agreement shall be binding upon Manitoba and its assigns and upon the Optional User, its successors and permitted assigns.
16. The Optional User shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Manitoba.
17. A waiver of any term of this Agreement or of any breach by the Optional User of this Agreement is effective only if it is in writing and signed by Manitoba and is not a waiver of any other term or any other breach.
18. This Agreement may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by fax transmission or e-mailed in PDF shall constitute good delivery.

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19. This Agreement shall be governed by and interpreted in accordance with the laws of Manitoba and the laws of Canada applicable therein.

THIS AGREEMENT has been executed on behalf of The Government of Manitoba by its duly authorized representative(s) and on behalf of the Optional User by its duly authorized representative(s) on the dates noted below.

FOR THE GOVERNMENT OF MANITOBA

Witness

Minister of Finance
or duly authorized delegate

Print Name and Title

Date signed

FOR THE OPTIONAL USER

Witness

Authorized Signature

Name and Title

I have the authority to bind the Optional User

Date signed