

## GOVERNMENT OF MANITOBA PURCHASE ORDER TERMS AND CONDITIONS

### ARTICLE 1 – INTERPRETATION

#### 1.01 Defined Terms

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

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

**“Conflict of Interest”** includes, but is not limited to, any situation or circumstance where the Vendor’s other commitments, relationships or financial interests: (a) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (b) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Contract;

**“Contract”** means the purchase order for the Deliverables issued by the Purchaser to the Vendor (the **“Purchase Order”**), including these Purchase Order Terms and Conditions;

**“Deliverables”** means the goods and any related services as described in the Purchase Order;

**“Indemnified Parties”** means the Purchaser and its officials, directors, officers, agents, employees and volunteers;

**“Industry Standards”** includes, but is not limited to: (a) the provision of 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 Contract or customarily furnished by parties 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 Vendor 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;

**“Purchaser”** means **The Government of Manitoba**;

**“Rates”** means the price, in Canadian funds, to be charged for the Deliverables, as set out in the Purchase Order, representing the full amount chargeable by the Vendor for

the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes; (b) all labour and material costs; (c) all travel costs; (d) all costs associated with insuring, transporting and delivering the Deliverables to the Purchaser at the address specified in the Purchase Order; (e) all insurance costs; and (f) all other overhead, including any fees or other charges required by law;

**“Related Entities”** includes directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors;

**“Requirements of Law”** means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorizations, directions, and agreements with all authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them; and

**“Vendor”** means the vendor identified in the Purchase Order.

### ARTICLE 2 – GENERAL TERMS

#### 2.01 Governing Law

The Contract shall be governed by and construed in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein.

#### 2.02 Entire Contract

The Contract, together with any additional documentation referenced in the Purchase Order, sets forth 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, existing between the parties. In the event of any ambiguity, conflict or inconsistency between these Purchase Order Terms and Conditions and any terms and conditions contained in any acknowledgement, order or any other form issued by the Vendor, these Purchase Order Terms and Conditions shall prevail. Changes to the Contract shall be made only by the issuance of an amended Purchase Order by the Purchaser to the Vendor.

#### 2.03 Notices

Notices shall be in writing and shall be delivered by postage-prepaid mail, personal delivery or email, and shall be addressed to the contact identified in the Purchase Order. Notices shall be deemed to have been given: (a) in the case of postage-prepaid mail, five (5) Business Days after such notice is mailed; and (b) in the case of personal

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delivery or email, one (1) Business Day after such notice is delivered or emailed. In the event of a postal disruption, notices must be given by personal delivery or email.

### 2.04 Severability

If any term or condition of the Contract, or the application thereof, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition (except to the extent to which it is held invalid or unenforceable), shall not be affected.

### 2.05 No Indemnities from Purchaser

Nothing in the Contract, whether express or implied, will 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.

### 2.06 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control, such as natural disasters, acts of war, insurrection and terrorism. If a party seeks to rely on a force majeure event, that party shall immediately notify the other party of the reason therefor and anticipated period of any delay.

### 2.07 Survival

This paragraph and paragraphs 2.01, 2.04, 2.05, 3.02, 3.04, 4.01, 5.01, 7.02, 8.01 and 8.02 shall survive the termination or expiry of the Contract, as shall any other provision that by its nature ought to reasonably survive such termination or expiry.

## ARTICLE 3 – RELATIONSHIP BETWEEN PURCHASER AND VENDOR

### 3.01 Vendor's Power to Contract

The Vendor represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other party that would in any way interfere with the rights of the Purchaser under the Contract.

### 3.02 Vendor Not a Partner, Agent or Employee

The Vendor 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 Vendor shall not hold itself out as an agent, partner or employee of the Purchaser. Nothing in the

Contract shall have the effect of creating an employment, partnership or agency relationship between the Purchaser and the Vendor or any of the Vendor's Related Entities.

### 3.03 Non-Exclusive Contract, Work Volumes

The Purchaser makes no representation regarding the volume of goods and services required under the Contract and reserves the right to contract with other parties for goods and services the same as or similar to the Deliverables, and reserves the right to obtain the same or similar goods and services internally.

### 3.04 Responsibility of Vendor

The Vendor agrees that it is liable for the acts and omissions of its Related Entities. The Vendor shall advise its Related Entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract.

### 3.05 No Subcontracting or Assignment

The Vendor shall not subcontract or assign the whole or any part of the Contract without the prior written consent of the Purchaser. Such consent shall be in the sole discretion of the Purchaser and subject to the terms and conditions that may be imposed by the Purchaser. Nothing in the Contract, or in such consent, creates a contractual relationship between any subcontractor and the Purchaser.

### 3.06 Conflict of Interest

The Vendor shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) give notice to the Purchaser without delay of 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.

### 3.07 Contract Binding

The Contract is enforceable by and is binding upon, the parties and their successors, executors, administrators and permitted assigns.

## ARTICLE 4 – PERFORMANCE BY VENDOR

### 4.01 Deliverables Warranty

The Vendor represents and warrants that the Deliverables shall be: (a) provided diligently in a professional and competent manner by persons qualified and skilled in their occupation in accordance with: (i) the Contract; (ii) Industry Standards; and (iii) Requirements of Law; and (b)

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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. The Vendor represents and warrants that the use or sale of the Deliverables purchased under the Contract will not infringe any patent, copyright or trademark.

### 4.02 Delivery

To the extent that the Deliverables include the shipment of goods to the Purchaser, unless otherwise stated in the Purchase Order, all Deliverables shall be delivered F.O.B. Destination, Freight Prepaid to the address specified in the Purchase Order. No transportation or delivery charges of any kind, including, without limitation, packing, storage, cartage or customs brokerage charges, shall be paid by the Purchaser, unless specifically provided for in the Purchase Order.

### 4.03 Packaging and Risk

To the extent that the Deliverables include the shipment of goods to the Purchaser, the Deliverables shall 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 Vendor until the Deliverables are received by the Purchaser.

### 4.04 Inspection and Acceptance

To the extent that the Deliverables include the shipment of goods to 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 Vendor 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 Vendor acknowledges that, unless it obtains specific written preauthorization from the Purchaser, any access to or use of the Purchaser's property, technology or information that is not necessary for the performance of its contractual obligations with the Purchaser is strictly prohibited. The Vendor further acknowledges that the Purchaser may monitor the Vendor to ensure compliance with this paragraph. To the extent that the premises of the Purchaser are used in the provision of the Deliverables, when using the premises of the Purchaser, the Vendor and its Related Entities shall comply with all security

regulations in effect from time to time. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Vendor.

### 4.06 Time

Time is of the essence of the Contract.

## ARTICLE 5 – PAYMENT FOR DELIVERABLES

### 5.01 Invoices

Invoices for completed Deliverables shall be submitted to the Purchaser as set out in the Purchase Order. All invoices shall be in writing and satisfactory to the Purchaser in both form and content. The Vendor shall also provide to the Purchaser such supporting documents as may be requested by the Purchaser, including but not limited to details in writing of the Deliverables actually completed, vouchers, statements and receipts.

### 5.02 Payment According to Contract Rates

The Purchaser shall endeavour to pay the Vendor for the Deliverables, in accordance with the Rates, within thirty (30) days of receipt by the Purchaser of a satisfactory invoice from the Vendor requesting payment for Deliverables that have been received and accepted by the Purchaser.

The Purchase Order number must appear on all documentation relating to the Contract, including, but not limited to, invoices and delivery/packing slips. Invoices that do not include the applicable Purchase Order number, item number and order description shall not be processed, and shall be returned to the Vendor until the appropriate information is provided.

### 5.03 No Expenses or Additional Charges

There shall be no charges payable by the Purchaser to the Vendor other than the Rates.

### 5.04 Payment of Taxes and Duties

Unless otherwise stated in the Purchase Order, the Vendor shall pay all applicable taxes, including excise taxes incurred by or on the Vendor's behalf, with respect to the Contract.

### 5.05 Goods and Services Tax

The Purchaser certifies that the Deliverables being provided by the Vendor pursuant to the Contract are being purchased with Crown funds for the benefit of the Government of Manitoba and therefore are not subject to federal goods and services tax ("GST"). The Vendor

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represents and warrants that GST shall not be included in any invoice provided or claim for payment made under the Contract.

### 5.06 Withholding Tax

The Purchaser shall withhold any applicable withholding tax from amounts due and owing to the Vendor under the Contract and shall remit it to the appropriate government in accordance with applicable tax laws.

### 5.07 Interest on Late Payment

Those invoices not paid by the Purchaser within sixty (60) days of receipt and approval will bear interest in accordance with the provisions of the Government of Manitoba's Financial Administration Manual issued under the authority of *The Financial Administration Act* (Manitoba), from the 61<sup>st</sup> day after the date of receipt and approval until payment is made.

### 5.08 Payment Subject to Appropriation

The payment of money under the Contract by the Purchaser is subject to an appropriation by the Legislative Assembly of Manitoba for the Fiscal Year during which payment is to be made. For the purposes of the Contract, "**Fiscal Year**" means the period from April 1<sup>st</sup> of one year to March 31<sup>st</sup> of the immediately following year.

## ARTICLE 6 – CONFIDENTIALITY

### 6.01 Purchaser Information

All information provided by the Purchaser to the Vendor under the Contract is the exclusive property of the Purchaser and must be promptly returned to the Purchaser upon request.

### 6.02 Confidential Information

If the Purchaser provides information to the Vendor in confidence, the Vendor agrees to treat such information as confidential and shall ensure that it is not disclosed to any other person or used for any purpose other than to provide the Deliverables under the Contract, except where disclosure is required by law, or with the prior written consent of the Purchaser.

## ARTICLE 7 – INSURANCE AND INDEMNIFICATION

### 7.01 Insurance

The Vendor shall put into effect commercial general liability insurance, in a form acceptable to the Purchaser, in an amount not less than \$2,000,000, with the Purchaser as an additional insured. The Vendor will also put into

effect such other additional insurances as required by the Purchaser. The Vendor shall provide the Purchaser with evidence of insurance upon request.

### 7.02 Vendor Indemnity

The Vendor shall indemnify and save harmless the Indemnified Parties from and against all claims, liabilities, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever brought or prosecuted in any manner (including third-party claims) based upon or occasioned by any injury to persons (including death), damage to or loss or destruction of property, economic loss or infringement of rights, caused by or arising from: (a) the performance of the Contract or the breach of any term or condition of the Contract by the Vendor or its Related Entities; or (b) any omission or wrongful or negligent act of the Vendor or its Related Entities; except to the extent to which such claims, liabilities, demands, losses, costs, damages, actions, suits or other proceedings are caused by the wrongful or negligent act of the Indemnified Parties.

### 7.03 Workers Compensation

Where the Vendor's industry is included in the scope of The Workers Compensation Act (Manitoba) and the Vendor is required under the Act to maintain coverage: (a) the Vendor shall be registered with the Workers Compensation Board of Manitoba; and (b) shall provide and maintain in good standing workers compensation coverage throughout the term of the Contract. At the written request of Manitoba, at any time during the term of the Contract, the Vendor must provide Manitoba with evidence, in a form satisfactory to Manitoba, of coverage and standing. The Vendor must ensure that, where a subcontractor is required under The Workers Compensation Act to maintain workers compensation coverage, the subcontractor is registered with the Workers Compensation Board of Manitoba and provides and maintains in good standing workers compensation coverage throughout the term of the Contract.

## ARTICLE 8 – TERMINATION

### 8.01 Immediate Termination of Contract

The Purchaser may immediately terminate the Contract upon giving notice to the Vendor for any reason, notwithstanding that the Vendor might not be in default under the Contract, and in such event the Purchaser shall be liable to the Vendor only for the payment of the Rates in respect of Deliverables accepted by the Purchaser up to the date of termination. The express rights of termination in the Contract are in addition to, and shall in no way limit,



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any rights or remedies of the Purchaser under the Contract, at law or in equity.

### 8.02 **Vendor's Obligations on Termination**

On termination of the Contract, the Vendor shall, in addition to its other obligations under the Contract and at law: (a) at the request of the Purchaser, provide the Purchaser with any completed or partially completed Deliverables; and (b) comply with any other instructions provided by the Purchaser.