

Schedule F

SCHEDULE F - CITY OF WINNIPEG STANDARD LEGAL TERMS

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F1 SCOPE AND INTERPRETATION

F1.1 Scope

F1.1.1 The Contractor agrees to provide the Goods and/or Services to the City's reasonable satisfaction.

F1.1.2 The City and the Contractor agree that any work performed by the Contractor outside the scope of the Work identified in the Contract without the prior written approval of the City shall be deemed to be gratuitous on the Contractor's part, and that the City has no liability with respect to such services.

F1.1.3 If the Contractor begins the Work with the City's permission before the start of this Contract's term, all Work provided by the Contractor before the start of this Contract's term will be considered to have been provided under all of the terms and conditions of this Contract.

F1.1.4 The City reserves the right to change, modify, delete, or add to the Work, if necessary. In addition to the foregoing, the Contractor shall provide to the City any other services, documentation, or data related to the Work as may be reasonably required by the City.

F1.1.5 The Contractor agrees to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Contract.

F1.2 Entire Contract

F1.2.1 The Contractor agrees to be bound solely by this Contract. The provisions of this Contract shall supersede all previous agreements, arrangements, or understandings, whether written or oral, between the City and the Contractor in connection with and incidental to the Work, and it is agreed that this Contract constitutes the sole and entire agreement between the City and the Contractor relating to the Work, and no other terms, conditions, representations, covenants, or warranties, whether expressed or implied, shall form a part hereof. There are no undertakings, representations, or promises, either express or implied, other than those contained in this Contract and none have been relied on.

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F1.3 Interpretation

- F1.3.1** Headings, titles, and marginal notes in this Contract are inserted for convenience of reference only and shall not be used as explanatory of the clauses or paragraphs below or opposite which they appear.
- F1.3.2** The various portions of the Contract are intended to be read together and complement each other, and what is called for by any one shall be deemed to be called for by all unless explicitly stated otherwise.

F1.4 Form of Contract

- F1.4.1** At the City's discretion the City will determine the form of the Contract, which may be one of the following, issued by the City:
- (a) Purchase Order;
 - (b) Award Letter alone; or
 - (c) Award Letter followed by a document package comprising the Contract to sign, which may be in the form of the Indicative Contract or Contractor-supplied agreement documents.
- F1.4.2** If the Contractor has accepted all of the City's Standard Legal Terms and Specifications, the form of the Contract may be a Purchase Order or Award Letter alone, in which case the Contract is formed upon receipt of the Purchase Order or Award Letter by the Contractor.
- F1.4.3** If the Contractor and the City have engaged in negotiations that modify either the Standard Legal Terms or the Specifications in any way, the form of Contract may be an Award Letter alone (if the modifications subsequent to negotiation are minor) or an Award Letter followed by a document package comprising the Contract to sign (if the modifications subsequent to negotiation are more complex).
- F1.4.4** In the event that the form of Contract is as described in the above F1.04(c), Following issuance of the Award Letter a document package comprising the Contract will be provided to the Contractor for execution and return to the City.
- (a) The Contractor shall execute the Contract in the manner stipulated by the City Solicitor and shall return the Contract within seven (7) Calendar Days of receipt to the City Solicitor at the address indicated in the Supplemental Conditions.
 - (b) Payments may be suspended or withheld by the City to the Contractor until the Contractor has executed and returned the Contract as set out herein.

F1.5 Order of Precedence

- F1.5.1** In the event of a conflict or inconsistency, the following is the order of precedence of the documents comprising this Contract.
- (a) The main body of the Contract;
 - (b) Schedule C – Record of Negotiations;
 - (c) Schedule A – Data Sheet;
 - (d) Schedule B – High Level Business Goals;
 - (e) Schedule D – Definitions; and
 - (f) Schedule E – Standard Legal Terms.

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F1.6 No Automatic Renewals

F1.6.1 Notwithstanding any statement to the contrary in any Contractor-issued documents, this Contract may only be renewed by the mutual agreement in writing of both Parties, and is not subject to automatic renewal.

F1.7 Non-Appropriation of Funds

F1.7.1 Notwithstanding any statement to the contrary in the RFP or this Contract, the type and quantity of Work to be performed under this Contract is subject to annual approval of monies therefore in a budget by Council ("**Funds**"). If the Funds are at any time not forthcoming or insufficient due to Council declining to provide Funds in a budget therefore or due to a change in a funding program under which Funds were provided to the City, the City reserves the right to alter the type or quantity of Work performed under this Contract, or to terminate the Contract, upon thirty (30) Calendar Days' written notice by the Contract Administrator documenting the lack of funding. In such an event, no claim may be made against the City for damages of any kind resulting from the termination, including, but not limited to, on the ground of loss of anticipated profit. This F1.07(c) shall survive termination of the Contract.

F2 PERFORMANCE OF CONTRACTOR'S OBLIGATIONS

F2.1 Representations and Warranties

F2.1.1 The Contractor represents and warrants that:

- (a) it possess the necessary skills, expertise, and experience to perform the Work in accordance with this Contract;
- (b) the Work shall be provided in a professional manner following Good Industry Practice, and as outlined in this Contract unless the City and the Contractor agree otherwise in writing;
- (c) the Work shall be provided in compliance with every federal, provincial, and municipal law which is or could be applicable to the Work;
- (d) the Representatives designated to perform the Work shall devote the time, attention, abilities, and expertise necessary to properly perform the Contractor's obligations;
- (e) it shall comply with all reasonable directions and requests of the City within the scope of the Work as set out in this Contract;
- (f) all representations and warranties contained in this Contract are true and correct and shall so remain throughout the term of this Contract;
- (g) The City shall have the right of prior approval of any Representatives designated to provide the Work and to request the removal of any Representatives so designated, and the Contractor shall immediately comply with all such requests for removal;
- (h) it shall conduct itself in a manner that does not negatively affect the Reputation of the City, and,
- (i) it has full right and authority to enter into this Contract.

F2.2 Good Faith

F2.2.1 The Contractor declares that, in entering into the Contract, it:

- (a) does so in good faith and that to the best of his knowledge no member of Council or any officer or employee of the City has any pecuniary interest, direct or indirect, in the

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- Contract which has not been disclosed to and approved by the authority having jurisdiction;
- (b) has not participated in any collusive scheme or combine; and
 - (c) shall forfeit all claims under the Contract as well as refund to the City any monies paid to him, beyond his actual proven expenses for Work done, if F2.02(a) or (b) are shown to be false.

F2.3 Responsibility to Perform the Work

- F2.3.1** Where the Contractor consists of more than one Person, the liability to perform the Work shall be joint and several.

F2.4 Exclusivity

- F2.4.1** Unless specifically stated to the contrary, nothing in this Contract grants the Contractor exclusivity in providing the Goods and/or Services to the City.

F3 INDEPENDENT CONTRACTOR

- F3.1.1** The Contractor is an independent contractor, and this Contract does not create the relationship of employer and employee, of principal and agent, of joint venture, or of partnership between the City and the Contractor or between the City and any Representatives of the Contractor.

- F3.1.2** The Representatives of one Party shall not be deemed or construed to be the Representatives of the other Party for any purpose whatsoever.

- F3.1.3** The Contractor is responsible for any deductions or remittances, which may be required by law.

- F3.1.4** Except as authorized in this Contract, the Contractor shall not incur any expenses or debts on behalf of, nor make any commitments for the City without first obtaining written permission from the City.

F4 INFORMATION SECURITY & CONFIDENTIALITY

F4.1 Information Security

- F4.1.1** The Contractor represents and warrants that it has established information security measures that meets or exceeds Good Industry Practice, and that it will adhere to and meet any applicable data security standards identified in the Specifications ("**Information Security Practices**").

- F4.1.2** The Contractor shall ensure Information Security Practices which include technical, administrative, organizational, and physical safeguards, controls, and measures are employed and maintained, and are consistent with current Good Industry Practice.

F4.2 Confidential Information

- F4.2.1** The Contractor will:

- (a) hold and protect the Confidential Information of City in strict confidence using no less than the reasonable care and in accordance with such other security requirements and standards as are specified by City in the Contract to protect the Confidential Information of City;

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- (b) use and disclose Confidential Information of City only as necessary and for the purpose of performing the Contract as expressly permitted under the Contract; and
- (c) only disclose Confidential Information of City to third parties authorized by City and be liable for all persons to which it discloses confidential information compliance with the confidentiality terms of the Contract.

F4.3 Ownership and Obligation of Confidentiality

F4.3.1 All Confidential Information is and will remain the property of City. During and after the Term of the Contract, the Contractor shall, and shall ensure that all Contractor Representatives, treat as confidential all Confidential Information which Contractor acquires or uses, to which Contractor is given access, or which in any other way comes into the possession or knowledge of the Contractor in connection with the Contract.

F4.4 Confidentiality Standards

F4.4.1 During the Term of this Contract and at all times thereafter, the Contractor shall take reasonable precautions to prevent any unauthorized disclosure of the Confidential Information. Contractor shall ensure that reasonable security arrangements, including administrative, technical, and physical safeguards that ensure the confidentiality and security of the Confidential Information are put into place. The standard of such security arrangements shall be the greater of: (i) the standards Contractor has in place to protect its own confidential information; (ii) Good Industry Practice; and (ii) the standards imposed on Contractor under the Contract.

F4.5 Compelled Disclosure

F4.5.1 Upon receiving a subpoena or other validly issued administrative or judicial order from a court or other governmental authority seeking disclosure of Confidential Information, Contractor shall provide City with prompt notice thereof, deliver a copy of Contractor's proposed response to City, and thereafter, subject to Contractor's good faith consideration of any feedback provided by City with respect to such proposed response, Contractor will be entitled to comply with the demand to the extent permitted or required by applicable law (unless the demand has been time-limited, quashed, or extended), provided that Contractor discloses only that portion of the Confidential Information which Contractor is legally required and compelled to disclose. If requested by City, Contractor shall, at Contractor's own cost and expense, cooperate with City in City's defense of the demand.

F4.6 Confidentiality Breach

F4.6.1 Upon becoming aware of any actual or suspected breach of the confidentiality requirements of the Contract, Contractor shall immediately notify City in writing, take all reasonable steps to prevent the recurrence of any such Confidentiality Breach and notify City when implemented.

F4.7 Public Announcement

F4.7.1 Contractor shall not, and shall ensure that its personnel do not, make any public announcement, press release, or statement of fact or opinion regarding the Contract, City, any City personnel, or the Confidential Information, or publicly identify City as a customer of Contractor, without the prior written authorization of City.

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F4.8 Liability

F4.8.1 Contractor will be liable to City for any breaches of the confidentiality requirements of the Contract by Contractor Representatives who receive access to Confidential Information from or through Contractor.

F4.9 Survival

F4.9.1 City's rights and Contractor's obligations concerning Confidential Information will survive any termination or expiration of the Contract.

F5 Personal Information

F5.1.1 The Contractor acknowledges that the City is obligated to Process Personal Information in accordance with FIPPA and PHIA.

F5.1.2 Without limiting the generality of the foregoing F4.00, in the event that the Contractor will be Processing any Personal Information of, for, or on behalf of the City, the provisions of this F5.00 shall apply above and beyond those of F4.00.

F5.1.3 The Contractor:

- (a) Shall be deemed to be an Information Manager;
- (b) Shall be responsible to ensure that all Personal Information is Processed only and strictly in accordance with the Contract; and
- (c) Shall, in respect of all City Personal Information, implement and comply with the security requirements, controls, policies, and standards set out in the Contract and the Specifications.

F5.1.4 Without limiting its other obligations under the Contract, the Contractor will:

- (a) Process City Personal Information solely as, and only to the extent necessary, to perform the Contract and for no other purposes;
- (b) restrict access to City Personal Information to Contractor personnel who require access to perform Contractor's obligations;
- (c) not disclose or transfer City Personal Information to any third parties other than:
 - (i) to subcontractors who are bound by data protection terms equivalent to those imposed on Contractor under the Contract;
 - (ii) as instructed in writing by City;
 - (iii) as required pursuant to a Demand (provided Contractor complies with subsection (i) below); or
 - (iv) as otherwise permitted in the Contract; and
- (d) inform its applicable Representatives of the obligations imposed upon it in this Contract with respect to Confidential Information, and shall take whatever steps are necessary to ensure that all of its applicable Representatives comply with those obligations.

F5.2 Confidentiality Breach – Personal Information

F5.2.1 The Contractor will comply with its obligations to report, within the specified timeframes, any Confidentiality Breach and, without limiting such obligations, will provide the City with the known facts and details concerning any such occurrence and any assistance that City reasonably requires to respond to such occurrence in accordance with FIPPA.

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- F5.2.2** The Contractor will not communicate with any residents of the City of Winnipeg, any privacy commissioner or similar authorities with oversight over FIPPA (each a “**Privacy Authority**”), or any other third party or individual concerning such occurrence unless so authorized or requested by City or otherwise required by applicable law.
- F5.2.3** Except where the Confidentiality Breach is caused by City, if the Confidentiality Breach involves information that the City has identified as Data Sensitivity Level 4 information, the Contractor will, in addition to any other damages for which the Contractor may be liable under the Contract, bear and reimburse the City for all costs incurred by the City in responding to the Confidentiality Breach, including costs associated with legal, forensic and other experts, notifications, reporting and other communications, and provision of credit monitoring services to impacted individuals (where appropriate).
- F5.3 Demands**
- F5.3.1** Unless prohibited by applicable law from doing so, the Contractor will immediately notify the City upon receipt of a Demand. Contractor will provide reasonable cooperation to City in any attempts by City to limit, restrict, or prevent disclosure of City Personal Information pursuant to the Demand. To the extent that Contractor is required to disclose City Personal Information pursuant to a Demand, Contractor shall only disclose such City Personal Information as is strictly required to comply with the Demand.
- F5.3.2** Contractor will notify City within seventy two (72) hours (or earlier if required by FIPPA) if it receives any communications concerning an individual’s City Personal Information. Contractor will not respond to any such requests except to inform the individual that the communication has been referred to the City. Contractor will provide reasonable co-operation and assistance at no cost to the City, and within time frames reasonably required by the City, in relation to any of the matters covered by this F5.06(b) in order to allow City to fully respond to such communications within forty five (45) days. Contractor will promptly notify City if it is unable to meet any deadline, in order to allow the City to seek relief from such deadline.
- F5.4** Upon termination of the Contract, or at any time upon City’s written direction, Contractor will securely return or destroy all City Personal Information in accordance with City’s instructions and will certify to City having done so, except that where applicable law or professional regulations require the continued retention of such City Personal Information, Contractor may retain such City Personal Information for the length of time required to comply with applicable law or professional regulations. Any retained City Personal Information shall remain subject to the obligations of this Contract concerning City Personal Information.
- F5.5 Changes to Privacy Laws**
- F5.5.1** For Contracts with Terms greater than one (1) year, if any of the provisions in the Contract need to be updated, supplemented or revised as a result of a change any to applicable laws (including FIPPA or PHIA), then the City may provide the Contractor with a written notice of the potential changes (the “**Updated Privacy Terms**”), and the parties will meet to negotiate and agree on the Updated Privacy Terms in good faith. Contractor may not unreasonably refuse or delay its consent to any Updated Privacy Terms that are required by a change in applicable laws, including FIPPA or PHIA.

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F5.6 Injunctive Relief

F5.6.1 Contractor acknowledges that failure to comply with the confidentiality provisions of the Contract will cause irreparable harm to City and that monetary damages alone will not be a sufficient remedy for unauthorized disclosure of Confidential Information. Contractor agrees that City will be entitled, without waiving any other rights or remedies, to seek such interlocutory and permanent injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction to restrain any anticipated, present or continuing breach of the confidentiality provisions of the Contract.

F5.6.2 The Contractor shall cooperate with the City so that the City can verify that the Contractor has complied, and is complying, with the provisions of this F5.00.

F6 ACCESSIBILITY

F6.1.1 The Contractor acknowledges that the AMA imposes obligations on the City to provide accessible customer service to all persons, and to achieve accessibility in its business and administrative practices.

F6.1.2 For the purposes of this Contract, “accessible customer service” shall mean service which ensures that all persons who are reasonably expected to seek to obtain, use, or benefit from a good or service have equal and equitable opportunity to obtain, use, or benefit from a good or service.

F6.1.3 Throughout the Term of this Contract, the Contractor agrees to comply with the following accessible customer service obligations:

- (a) providing barrier-free access to goods and services;
- (b) making reasonable efforts to ensure that when communicating with individuals who self-identify as being disabled by a barrier, said communication takes that barrier into account;
- (c) reasonably accommodating assistive devices, support persons, and support animals;
- (d) providing adequate training of staff and documentation of same; and
- (e) providing a mechanism or process for receiving and responding to public feedback on the accessibility of all Work and Goods and/or Services.

F7 OWNERSHIP OF INFORMATION

F7.1.1 Any property provided by the City to the Contractor under this Contract (“**Content**”) is only provided for the limited use of the performance of the Work, shall remain the property of the City, and shall be returned, without cost, to the City upon request or upon termination of this Contract. The foregoing shall not give the Contractor or its Representatives any rights in any of the City’s intellectual property.

F7.1.2 In the event that the Solution is intended to be accessed by End Users who are not City Representatives (“**External Users**”), any Personal Information or property provided by these External Users via the Solution is only provided to the Contractor for the limited use of the performance of the Work, and shall remain the property of the External Users. The foregoing shall not give the Contractor or its Representatives any rights in any of the External Users’ intellectual property.

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F8 INDEMNIFICATION

F8.1 Indemnification by the Contractor

F8.1.1 Unless otherwise stated in the Data Sheet, the Contractor shall indemnify and save harmless the City and its Representatives from and against all losses, damages, costs, causes of action, claims, liabilities, or demands of any kind with respect to any injury to persons (including, without limitation, death), damage to or loss of property, economic loss, incidental or consequential damages, or infringement of rights (including, without limitation, privacy rights) caused by, or arising directly or indirectly from:

- (a) the default of the Contractor or its Representatives of any term of this Contract; or
- (b) any negligent or willful act, error, or omission of the Contractor or its Representatives;

to a maximum of:

- (c) two (2) times the Contract Price (for Contracts with an Impact Assessment Level of 3 or below); or
- (d) two (2) times the Contract Price or two million dollars (\$2,000,000.00 CAD), whichever is greater (for Contracts with an Impact Assessment Level of 4 or above).

F8.1.2 The above includes all costs and expenses associated therewith, including reasonable solicitors' fees.

F8.2 Indemnification by the City

F8.2.1 The Contractor acknowledges that, pursuant to Article 213(c) of *The Winnipeg Charter* (SM 2002 c 39), the City is not authorized to indemnify or guarantee the liability of another person. As such, any contractual term or agreement which purports to bind the City to indemnify another is null and void to the extent that such contractual term or agreement obligates the City to indemnify or guarantee the liability of any Person aside from the City and its authorized representatives acting in the course of their duties.

F9 FORCE MAJEURE & SUSPENSION

F9.1 Suspension

F9.1.1 Further to F1.07, the City may, at its sole option, from time to time, delay or suspend the Work being provided under this Contract, in whole or in part, for such period of time as may, in the opinion of the City, be necessary to obtain Funds for the Contract.

F9.1.2 Unless another notice period has been provided elsewhere in this Contract, the City shall provide five (5) days prior written notice to the Contractor of its intention to delay or suspend the Work. The City shall not be obliged to make payments to the Contractor except with respect to any Work already satisfactorily performed prior to such delay or suspension.

F9.1.3 Where there is a delay or suspension under this F9.00 of ninety three (93) days or less, all terms and conditions of this Contract shall continue in full force and effect against the Contractor. The Contractor shall not be entitled to make any claim for damages by reason of the delay or suspension. In the event that a delay or suspension under this F9.00 exceeds ninety three (93) days, the parties extend the delay or suspension by mutual written agreement.

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F9.2 Force Majeure

F9.2.1 “Force majeure” means any circumstances beyond the reasonable control of the affected Party and not caused by its default or act of commission or omission and not avoidable by the exercise of reasonable effort or foresight by such Party. Without restricting the generality of the foregoing, force majeure shall include any one or more of the following: any act of God; embargo, confiscation, acts or restraints of governments or public authorities; wars, sabotage, act of public enemy or riot; strikes, slow-downs, lockouts or other labour or employee interruptions or disturbances, whether involving employees of that Party or of any other person over which that Party has no reasonable control; explosion, fire, radioactive contamination, flood or natural disaster. Lack of Contractor finances or increases in Contractor’s costs shall in no event be deemed to be a cause beyond a Party’s reasonable control.

F9.2.2 Neither Party shall be responsible for any failure to comply with, or for any delay in performance of the terms of this Contract where such failure or delay is directly or indirectly caused by, or results from events of Force Majeure beyond the control of either Party.

F9.2.3 The performance of any obligation suspended or delayed due to force majeure shall resume as soon as reasonably possible after the force majeure ends and the work schedule shall be adjusted by a period of time equal to the time lost due to such delays, provided that in the event the extended period of time exceeds, or is reasonably anticipated to exceed a period of fourteen (14) days, then the City may terminate this Contract and pay the Contractor for all Work performed to the date of the force majeure event.

F10 TERMINATION

F10.1.1 Without restricting any other remedies available, following a cure period of thirty (30) days following notice by the City to the Contractor of any of the following enumerated breaches, the City may immediately terminate, or immediately suspend this Contract, if:

- (a) the Contractor makes an assignment for the benefit of creditors, takes any other action for the benefit of creditors, becomes bankrupt or insolvent, or takes the benefit of or becomes subject to any legislation in force relating to bankruptcy and insolvency;
- (b) in the opinion of the City, the Work provided by the Contractor or its Representatives is unsatisfactory, inadequate, or otherwise improperly performed;
- (c) in the opinion of the City, the Contractor or its Representatives have failed to comply with, or breached any material term or condition of this Contract; or
- (d) in the opinion of the City, continuing to engage the Contractor under this Contract may adversely affect the City’s Reputation.

F10.1.2 Upon termination or expiration of this Contract, the Contractor shall cease to perform any further Work. The City shall be under no obligation to the Contractor other than to pay, upon receipt of an invoice or statement and supporting documentation satisfactory to the City acting reasonably, such compensation as the Contractor may be entitled to receive under this Contract for Work satisfactorily completed up to the date of termination. Upon the City’s request, the Contractor will work in good faith to facilitate the orderly transition of the Work, in whole or in part, to the City or to a successor service provider.

F11 PROFESSIONAL SERVICES

F11.1.1 In the event that the Contractor will be providing professional services such as data migration, configuration, support, training, or customization alongside providing Hosted Services

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(“**Professional Services**”), the following terms apply above and beyond all other terms in this Schedule F:

- (a) **Restriction on Other Work.** While this Contract is in effect, the Contractor and its Representatives shall not provide services to any other person, corporation, or entity in a manner that interferes or conflicts with the proper performance of the Contractor’s obligations under this Contract.
- (b) **Ownership of Information**
 - (i) Unless otherwise explicitly stated in this Contract, upon payment of all amounts due to the Contractor, all Submitted Materials shall be the exclusive property of the City and shall be forthwith delivered to the City, at no further cost to the City. The Contractor agrees to execute all documents that may be necessary to transfer ownership of, or waive moral rights to the submitted Materials to the City.
 - (ii) In the event that the Contractor is licensing or reselling to the City a license for the Goods and/or Services, the Goods and/or Services shall be subject to the specific licensing terms and conditions agreed to between the City and the licensor.
- (c) **Reliance.** Except as otherwise specifically provided in this Contract, the City shall be entitled to rely in good faith upon the advice, recommendations, reports, services, due diligence, and direction performed by, or given to the City by, the Contractor in the course of the Work.

F12 GENERAL TERMS

F12.1 Binding Upon Successors.

F12.1.1 This Contract shall be binding upon the executors, administrators, heirs, successors, and any permitted assigns of the parties.

F12.2 Survival

F12.2.1 All rights and obligations under this Contract that necessarily extend beyond termination of this Contract in order to fully achieve their intended purpose shall survive termination or expiry of this Contract, including without limiting the generality of the foregoing, all indemnification provisions, intellectual property provisions, confidentiality provisions, and all Contractor default and City remedy provisions.

F12.3 Assignment

F12.3.1 The Contractor shall not assign or transfer this Contract or any of its rights or obligations under this Contract without first obtaining written permission from the City. In the event that the Contract was assigned by the Contractor without obtaining the written permission of the City, the City may (in its sole discretion) unilaterally terminate the Contract without penalty or prejudice.

F12.4 Entire Contract

F12.4.1 This Contract contains the entire agreement between the parties with respect to the subject matter hereof. There are no undertakings, representations, or promises, either express or implied, other than those contained in this Contract and none have been relied on.

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F12.5 Amendments

F12.5.1 No amendment or change to, or modification of, this Contract shall be valid unless it is in writing and signed by both parties.

F12.6 Jurisdiction and Venue

F12.6.1 This Contract shall be interpreted, performed, and enforced in accordance with the laws of Manitoba and the laws of Canada applicable therein. The parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the Province of Manitoba and all courts competent to hear appeals therefrom.

F12.7 Severability.

F12.7.1 Each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Contract is declared invalid, unenforceable, or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability, or illegality shall not prejudice or affect the validity, enforceability, and legality of the remaining provisions of this Contract. Further, any such severed provision shall be modified only to the extent necessary to render it enforceable and shall then become binding on the parties.

F12.8 Waiver

F12.8.1 The waiver by any Party of the strict observance or performance of any term of this Contract or of any breach of it on the part of any Party shall not be held or deemed to be a waiver of any subsequent failure to observe or perform the same or any other term of this Contract.

F12.8.2 Any failure or delay by either Party to exercise or partially exercise any right hereunder shall not be deemed a waiver of any of the rights under this Contract.

F12.8.3 The election of any one or more remedies by either Party shall not constitute a waiver of that Party's right to pursue other available remedies.

F12.8.4 Any waiver of any term of this Contract or any waiver of any breach of the Contract on the part of any Party shall only be valid if issued in writing by the Party who would have benefitted from the term to be waived, or been harmed by the breach to be waived. Such waiver must specifically cite the term or breach to be waived, and must explicitly state that such term or breach is being waived.

F12.9 Notice

F12.9.1 Any notice or communication required or permitted to be given under the Contract shall be in writing and delivered by mail, hand, facsimile transmission (fax), or electronic transmission such as email that provides a written record of the text of the notice or communication. Any notice or communication shall:

- (a) if delivered by mail, be deemed to have been received on the second Business Day on which mail is delivered by Canada Post following the date of mailing;
- (b) if delivered by hand, be deemed to have been received on the day of delivery;
- (c) if delivered by fax, be deemed to have been received on the day of transmission, if a Business Day, and if not a Business Day, on the next Business Day after the day of transmission; and

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- (d) if delivered by email, be deemed to have been received on the day the sender receives an email 'read' receipt confirming receipt of the notice at the recipient's email address
- (e) Either Party may, by giving written notice to the other Party, designate an alternate address from any cited in the Contract at which it will accept notices or other communications.

F12.10 Counterparts

F12.10.1 The City may request, in its sole discretion, that this Contract or any part thereof be executed in counterparts, each of which is an original, and all of which taken together shall constitute one agreement. For greater clarity, a satisfactory facsimile or electronically scanned copy delivered in response to such a request shall be deemed a valid counterpart and original execution of same.

F12.11 Unfair Labour Practices

F12.11.1 The City of Winnipeg is committed to, and requires its Contractors and their Subcontractors to be committed to, upholding and promoting international human and labour rights, including fundamental principles and rights at work covered by the United Nations Universal Declaration of Human Rights (the "UDHR", <https://www.un.org/en/about-us/universal-declaration-of-human-rights>) and the International Labour Organization (the "ILO", <https://www.ilo.org/global/lang-en/index.htm> conventions as ratified by Canada).

F12.11.2 In becoming a Party to the Contract the Contractor warrants that both it and any proposed direct Subcontractor(s) conduct their respective business in accordance with established international codes embodied in the ILO eight (8) fundamental conventions and the UDHR.

F12.11.3 In the event that the City, in its sole discretion, determines that the Contractor has violated the requirements of this F.12.11, it will be considered a fundamental breach of the Contract and the Contractor shall pay to the City a sum specified by the Contract Administrator in writing ("**Unfair Labour Practice Penalty**").

F12.11.4 The Unfair Labour Practice Penalty shall be such a sum as determined appropriate by the City, having due regard to the gravity of the Contractor's violation of the above requirements, any cost of obtaining replacement goods/ services or rectification of the breach, and the impact upon the City's reputation in the eyes of the public as a result of same. The Contractor shall pay the Unfair Labour Practice Penalty to the City within thirty (30) Calendar Days of receiving a demand for same in accordance with F12.11.4. The City may also hold back the amount of the Unfair Labour Practice Penalty from payment for any amount it owes the Contractor.

F12.11.5 The obligations and rights conveyed by this clause survive the expiry or termination of this Contract, and may be exercised by the City following the performance of the Work, should the City determine, that a violation by the Consultant of the above clauses has occurred following same. In no instance shall the Unfair Labour Practice Penalty exceed the total of twice the Contract Price.

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APPENDIX 1 - DEFINITIONS

- 1.1 “**Accessibility**” means preventing and removing barriers that disable people.
- 1.2 “**AMA**” means The Accessibility for Manitobans Act (CCSM C A1.7), including the Customer Service Standard Regulation (MR 171/2015), as amended from time to time.
- 1.3 “**Award Authority**” means the authority having the jurisdiction to award the Contract according to the City’s by-laws, policies, or procedures;
- 1.4 “**Business Day**” means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday;
- 1.5 “**Calendar Day**” means the period from one midnight to the following midnight;
- 1.6 “**Change in Work**” means an addition, deletion or modification to the Work as described in the Contract at the time that the Contract is awarded and includes modifications in quantity or nature of Work, methods, location or work schedule;
- 1.7 “**Chief Administrative Officer**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- 1.8 “**City**” means The City of Winnipeg as continued under *The City of Winnipeg Charter Act (SM 2002, c 39)* and any subsequent amendments thereto;
- 1.9 “**City Solicitor**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- 1.10 “**Confidentiality Breach**” means any unauthorized use, alteration, retention, disclosure, or destruction of, or any unauthorized access to, Confidential Information and/or Content.
- 1.11 “**Confidential Information**” means any and all information, whether disclosed in writing, electronically, orally, in machine readable form or otherwise, of any nature and in any form, including but not limited to the terms and conditions contained in this Contract, any and all information concerning the City, the Goods and/or Services, and the Work, Data, business plans, business strategies, research and development plans, marketing plans, pricing information and any other technical, engineering, manufacturing, business, or financial information that is collected by, supplied by, produced by, obtained from, provided by, or to which access is otherwise given to the Contractor by the City or which in any other way comes into the possession or knowledge of the Contractor during the course of performance of the Work or in connection with the Contractor’s duties under this Contract, and includes (without limitation) Personal Information.

Confidential Information does not include information (other than Personal Information) that is lawfully in the public domain, wholly and completely de-identified or aggregated (and unable to be used, alone or in combination with other information, to identify an individual), previously known to or in the possession of Contractor free from any obligation to keep it confidential, independently developed by Contractor without any access to or use of the City’s confidential information, and rightfully obtained by Contractor from a third party lawfully in possession of the information and who is not bound by confidentiality obligations to City.

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- 1.12 “**Content**” means any and all information, data, communications, text, images, configuration and/or settings data, or other digital property provided by the City to the Hosted Solution, the Solution Vendor, or the Contractor.
- 1.13 “**Contract**” means this agreement, and any schedules, appendices, attachments, or other documents attached thereto.
- 1.14 “**Contract Administrator**” means the person designated as such in the Supplemental Conditions;
- 1.15 “**Contract Price**” means the price agreed upon for the Work and any adjustments thereto which may be required or agreed to pursuant to the Contract;
- 1.16 “**Contract Time**” means the time from the date of award until any milestone including a critical stage, Substantial Performance and/or Total Performance, excluding the warranty period;
- 1.17 “**Contractor**” means the person undertaking the performance of the Work under the terms of the Contract;
- 1.18 “**Council**” means the elected Council of The City of Winnipeg;
- 1.19 “**Data**” means all reports, drawings, calculations, designs, plans, leading practices, specifications, and other data, information, content, and materials utilized, collected, compiled, drawn, and produced (including, but not limited to digital files and the Deliverables) to carry out the Work contemplated in this Contract.
- 1.20 “**Data Sensitivity Level**” means the level of data sensitivity identified in A3.04 (please refer to the First Attachment to this Appendix 1 for further details).
- 1.21 “**Demand**” means any request, communication, demand, notice, subpoena, order, or other such information request relating to legal proceedings or investigations by third parties (including law enforcement or any competent Privacy Authority) relating to City Personal Information.
- 1.22 “**Final Determination**” means a written notice approving a Change in Work or including the term Final Determination;
- 1.23 “**FIPPA**” means *The Freedom of Information and Protection of Privacy Act* (CCSM c F175) as amended from time to time.
- 1.24 “**Fixed Fee**” means a flat, aggregate fee or fees for Work based on the scope defined in the Contract, regardless of the time, effort, or resources expended by the Contractor and/or its subcontractors, and inclusive of (but not limited to) all applicable taxes, surcharges, expenses, and disbursements.
- 1.25 “**Goods and/or Services**” means the goods, services, outputs, and/or deliverables that are the subject or object of, or otherwise cited in, this Contract, Statement of Work, and/or Purchase Order, as applicable.
- 1.26 “**Good Industry Practice**” means using standards, practices, methods, and procedures to a good commercial standard, conforming to applicable law and exercising that degree of skill, care, diligence, prudence, and foresight which would reasonably and ordinarily be expected

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from a qualified, skilled, and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

- 1.27 “**Hosted Services**” means SaaS, IaaS, and/or PaaS, collectively.
- 1.28 “**IAAS**” or “**IaaS**” means Infrastructure-as-a-Service.
- 1.29 “**includes**” and “**including**” means “includes without limitation” and “including without limitation”, respectively, unless otherwise indicated.
- 1.30 “**Information Manager**” means a person or body that either processes, stores or destroys personal information for a public body, or provides information management or information technology services to a public body.
- 1.31 “**Laws**” means all applicable federal, provincial, and municipal laws, regulations, by-laws, ordinances, orders, notices, policies, codes, and regulatory body decisions that are or come to be in force during the Term.
- 1.32 “**Legal Terms**” means the general terms and conditions laid out in Schedule D of this Contract.
- 1.33 “**Manager of Materials**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- 1.34 “**Material**” means any things, including goods, parts and equipment, which are to form part of the permanent Work;
- 1.35 “**Materials Management Website**” means the City’s website that can be accessed at <https://winnipeg.ca/MatMgt/>
- 1.36 “**may**” indicates an allowable action or feature which will not be evaluated;
- 1.37 “**must**” or “**shall**” indicates a mandatory requirement which will be evaluated on a pass/fail basis;
- 1.38 “**Notice**” means any notice, nomination, consent, request, approval, statement, authorization, document, or other communication made or required to be made under, pursuant to, or as a result of this Contract.
- 1.39 “**Order**” means an authoritative direction or instruction to do something or a determination in relation to any aspect of the Work or the Contract given by the Contract Administrator to the Contractor;
- 1.40 “**Party**” means a party to the Contract.
- 1.41 “**PAAS**” or “**PaaS**” means Platform-as-a-Service.
- 1.42 “**Person**” means an individual, firm, partnership, association or corporation, joint venture, syndicate, trust, regulatory body, agency, government. or entity however designated or constituted, or any combination thereof, and includes the heirs, administrators, executors, or other legal representatives of a person.
- 1.43 “**Personal Health Information**” means recorded information about an identifiable individual that relates to:

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- (a) the individual's health, or health care history, including genetic information about the individual;
 - (b) the provision of health care to the individual, or
 - (c) payment for health care provided to the individual.
 - (d) "Personal Information" means recorded information about an identifiable individual, including:
 - (e) The individual's name, address, telephone or facsimile number, or e-mail address;
 - (f) information about the individual's age, sex, sexual orientation, marital or family status;
 - (g) information about the individual's ancestry, race, colour, nationality, or national or ethnic origin;
 - (h) information about the individual's religion or creed, or religious belief, association or activity;
 - (i) Personal Health Information;
 - (j) the individual's blood type, fingerprints or other hereditary characteristics;
 - (k) information about the individual's political belief, association or activity;
 - (l) information about the individual's education, employment or occupation, or educational, employment or occupational history;
 - (m) information about the individual's source of income or financial circumstances, activities or history;
 - (n) information about the individual's criminal history, including regulatory offences;
 - (o) the individual's own personal views or opinions, except if they are about another person;
 - (p) the views or opinions expressed about the individual by another person;
 - (q) an identifying number, symbol or other particular assigned to the individual; and
 - (r) any other information that could be used, alone or with other information, to identify the individual.
- 1.44** "PHIA" means *The Personal Health Information Act* (CCSM c P33.5) as amended from time to time.
- 1.45** "Process" and "Processing" mean any operation or set of operations which is performed, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction of digital information.
- 1.46** "Professional Services" is defined in F11.1.1.
- 1.47** "Prohibited Item" means any design, device, material, or process covered by letters patent, copyright, trademark, or trade name which the City or the Contractor is prevented by injunction from using.
- 1.48** "Record" means a collection of related information or data that is created, recorded, transmitted, or stored in any tangible or intangible form, including electronic form, and includes part of a record or a copy of a record, but does not include a mechanism or system for generating, sending, receiving, storing or otherwise processing records.

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- 1.49 “**Representatives**” means the directors, officers, shareholders, employees, contractors, subcontractors, parents, subsidiaries, servants, volunteers, affiliates, agents, delegates, insurers, reinsurers, and other representatives of a party.
- 1.50 “**Reputation**” means the public perception, image, reputation, community standing, business operations, or goodwill of a Party.
- 1.51 “**RFI**” means a written communication from the Contractor to the Contract Administrator to obtain information that is not contained in, and cannot be inferred from, the Contract.
- 1.52 “**SAAS**” or “**SaaS**” means Software-as-a-Service.
- 1.53 “**Set-Off**” means the City deducting monies owed by the Contractor to the City from payment(s) due by the City to the Contractor.
- 1.54 “**Shop Drawings**” means all drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data which are prepared by the Contractor, Subcontractor, manufacturer, supplier, or distributor, and which illustrate some portion of the Work.
- 1.55 “**should**” indicates a desirable action or feature which will be evaluated on a relative scale;
- 1.56 “**Solution**” means the entire Hosted Services platform, which is made up of several components and includes any relevant Professional Services, and which will be provided by the Contractor (or by the Solution Vendor) pursuant to this Contract. For the avoidance of doubt, the term Work, as used in this Contract, includes the provision of the Solution, but is not limited to the provision of the Solution.
- 1.57 “**Solution Vendor**” means the entity that owns, hosts, and maintains the Hosted Services being procured under this Contract. If the Solution Vendor and Contractor are not the same entity, the Contractor warrants that it will ensure the Solution Vendor meets all of the relevant requirements and/or terms of this Contract, and will assume responsibility and liability for all such terms in the Solution Vendor’s stead if the Solution Vendor fails to live up to such requirements and/or terms.
- 1.58 “**Specifications**” means those portions of Schedules A, B, and C which set out the written description of the characteristics of the Goods and/or Services, or any part thereof, including without limitation any functional requirements.
- 1.59 “**Subcontractor**” means a person contracting with the Contractor for the performance of a part or parts of the Work or for the furnishing of Material and includes a Subcontractor’s subcontractor, etc.;
- 1.60 “**Submitted Materials**” means all goods, data, deliverables, output, and materials that are submitted or required to be submitted by the Contractor or its Representatives to the City in the performance of the Work, and all copyright therein.
- 1.61 “**Supplemental Conditions**” means those portions of the Contract which set out terms and conditions specific to the Contract that supplement or modify the Legal Terms.
- 1.62 “**Technical Documentation**” means the document(s) made available by the Contractor and/or the Solution Vendor which set out a description of the Hosted Services (including descriptions of specifications and functions) and User instructions for the use, troubleshooting, and/or maintenance of the Hosted Services.

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- 1.63** “**Term**” means the term of the Contract as identified in the Supplemental Conditions.
- 1.64** “**Third Party Data**” means data files, databases, tables, graphs, maps, and text for which a third party is the owner of all intellectual property rights and which are or have been accessed or used by, or made available to, the Contractor in the performance of the Work, whether at cost or no cost, regardless of form or medium.
- 1.65** “**Total Performance**” means that the entire Work has been performed in accordance with the Contract;
- 1.66** “**Value-Added Data**” means any product produced by analyzing, adapting, or incorporating Third Party Data, in whole or in part.
- 1.67** “**Work**” means the carrying out and the doing of all things, whether of a temporary or permanent nature, that are to be done by the Contractor pursuant to the Contract and, without limiting the generality of the foregoing, includes the furnishing of all Plant, Material, labour and services necessary for or incidental to the fulfilment of the requirements of the Contract, including all Changes in Work which may be ordered as herein provided;
- 1.68** “**Working Day**” means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday, on which the Contract Administrator determines atmospheric and Site conditions are such that the Contractor is able to work at least seven (7) hours during the period between 7:00 a.m. Winnipeg time or the time the Contractor's operations normally commence, whichever is the earlier, and 7:00 p.m. Winnipeg time.

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FIRST ATTACHMENT – DATA SENSITIVITY LEVELS

<p>Level 1 – General</p>	<p>Solution <u>absolutely will not</u> contain or have access to any of the following, even for administration or authentication:</p> <ul style="list-style-type: none"> • Personal Information (“PI”) • Personal Health Information (“PHI”)
<p>Level 2 – Low Sensitivity</p>	<p>Solution <u>will or may</u> contain or have access to the following, for administration or authentication only:</p> <ul style="list-style-type: none"> • Employee PI (“business card level”)
<p>Level 3 – Moderate Sensitivity</p>	<p>Solution <u>will or may</u> contain or have access to the following:</p> <ul style="list-style-type: none"> • PI, excluding Sensitive PI (“SPI”) <ul style="list-style-type: none"> ○ Privacy Impact Assessment required
<p>Level 4 – High Sensitivity</p>	<p>Solution <u>will or may</u> contain or have access to the following:</p> <ul style="list-style-type: none"> • PHI <ul style="list-style-type: none"> ○ Privacy Impact Assessment required • SPI - PI that contains: <ul style="list-style-type: none"> • Financial information (credit card numbers, banking information, etc.); or • Information relating to legal matters (e.g. claims, criminal records, tickets and infractions, etc.); or • Identification information (e.g. citizenship, driver’s license, SIN etc.) ○ Privacy Impact Assessment required