

SERVICES AGREEMENT made effective as of the **xx** day of **month** 202**x** (the “**Effective Date**”).

BETWEEN:

THE CITY OF WINNIPEG
(called the “**The City**”),

- and -

Contractor Name
(called the “**Contractor**”)

WHEREAS:

- A.** The City wishes to engage the Contractor to Supply Advanced Meter Infrastructure and Water Meter Solution (the “**Goods and/or Services**”) as more particularly described in Request for Proposal number **497-2025** (the “**RFP**”);
- B.** On **Day, Month, Year** the **Award Authority** approved an award of contract to the Contractor for the Goods and/or Services in the amount of (\$**XXX,XXX.00** plus GST and MRST as applicable), in accordance with the terms and conditions contained in this Contract; and
- C.** The City wishes to engage the Contractor to provide the Goods and/or Services in accordance with the terms and conditions contained herein, and the Contractor wishes to be so engaged.

NOW THEREFORE, in consideration of the promises, terms, conditions, covenants, mutual undertakings, and foregoing recitals of the parties herein, it is agreed as follows:

1.00 TERM AND INTERPRETATION

1.01 Contract Term

- (a) This Contract comes into effect as of the Effective Date, and shall continue until **Day, Month, Year** (the “**Initial Term**”), unless otherwise terminated, or extended in accordance with the terms and conditions of this Contract.
- (a) **Professional Services and Hosted Services Terms**
 - (i) The Professional Services term shall commence on **Day, Month, Year of Award**, and shall continue until Go Live (the “**Professional Services Term**”), unless extended in accordance with this 1.01.
 - (ii) The Hosted Services term shall commence on Go Live, and shall continue until **Day, Month, Year** (the “**Hosted Services Term**”), unless extended in accordance with this 1.01.

- (b) The City may opt to extend the term of the **Insert Contract OR Professional Services and/or Hosted Services Terms** for up to **number(X)** additional **number(X)** year terms (each an “**Extension**”). The City may negotiate the extension option with the Contractor **within number(X)** Calendar Days prior to the expiry date of the Contract. The City shall incur no liability to the Contractor as a result of such negotiations.
- (c) The Parties shall have no less than **number(X)** Business Days from the commencement of negotiations to come to an agreement on the Extension. Thereafter this Contract shall automatically be extended on a month-to-month basis (each a “**Holdover**”) unless either Party provides written notice to the other of its intention to terminate no less than **number(X)** Calendar Days prior to the end of the Holdover. Holdovers may be terminated by the City immediately upon written notice.
- (d) The Extension(s) **and Holdover(s)** shall conform to the same terms and conditions as were in force during the Initial Term of the Contract.
- (e) The **Initial Term OR Professional Services and Hosted Services Terms**, Extension(s), and any Holdover(s) shall collectively be known as the “**Term**”.

2.00 GOODS AND/OR SERVICES

- 2.01 The Work to be done under the Contract shall consist of carrying out and doing all things of every kind, whether of a temporary or permanent nature that are not included in 1.01(a) – (b), that are expressly or impliedly required for, or incidental to, the provision of the Goods and/or Services and the fulfillment of the terms of the RFP, this Contract and a Change in Work which may be ordered pursuant to this Contract by the City, which include the Goods and/or Services, and the Contractor’s obligations and responsibilities set out in Schedule E – Statement of Work, and Schedule G – Contractor’s Main Service Agreement (the “**Work**”).
- 2.02 The Contractor shall, at its own cost, charge, and expense, provide the Work and the Good and/or Services to the reasonable satisfaction of the City in accordance with the terms and conditions outlined herein and in the following Schedules attached hereto:
 - (a) Schedule A – Data Sheet;
 - (b) Schedule B – High Level Business Goals;
 - (c) Schedule C – Record of Negotiations;
 - (d) Schedule D – Pricing Form;
 - (e) Schedule E – Statement of Work;
 - (f) Schedule F – Standard Legal Terms; and
 - (g) Schedule G – Contractor’s Main Services Agreement (and related attachments).

2.03 Order of Precedence

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 (Hosted Services Agreement);
- (b) Schedule C – Record of Negotiations;
- (c) Schedule A – Data Sheet;
- (d) Schedule B – High Level Business Goals;
- (e) Schedule D – Pricing Form;
- (f) Schedule F – Standard Legal Terms;
- (g) Schedule E – Statement of Work; and
- (h) Schedule G – Contractor’s Main Services Agreement (and related attachments).

2.04 If either the Contractor or the Solution Vendor (if applicable) requires the City to execute or otherwise agree to an Ancillary Agreement (whether or not included in this Contract as a Schedule, Appendix, or Attachment), no unilateral changes, amendments, or updates made by the Contractor or Solution Vendor to the Ancillary Agreement (“Unilateral Updates”) will come into effect or be applicable to the City unless the City has:

- (a) been provided notice of same; and
- (b) consented in writing to the Unilateral Updates.

Notwithstanding the City’s acceptance of Unilateral Updates as set out above, Unilateral Updates will not change the order of precedence and Ancillary Agreements will, at all times, remain subordinate to the Contract documents listed in 2.03(a) to (f).

3.00 FEES

- 3.01 In consideration of the Work and the Goods and/or Services provided to the City’s reasonable satisfaction, the City agrees to pay the Contractor (\$XXX,XXX.00 plus GST and MRST as applicable), in accordance with the terms of the Schedules, and in particular Schedule D – Pricing.
- 3.02 The Contractor shall submit invoices to the City for Work rendered. The City shall pay the Contractor’s invoices within thirty (30) Calendar Days of approving the invoice.
- 3.03 Payment shall be payable without deduction, including no deduction for income taxes, Canada Pension Plan, or Employment Insurance premiums or contributions.
- 3.04 The Contractor will be responsible to charge, collect and remit all applicable taxes, government assessments, Employment Insurance, Income Tax, Workers’ Compensation and Canada Pension Plan relating to the Work and the Goods and/or Services.

4.0 CONTRACT ADMINISTRATOR

- 4.01 The Contract Administrator is:

NAME

Department Name

Division Name

Appropriate Title
Telephone No. 204- xxx-xxxx
Email Address: X@winnipeg.ca

IN WITNESS WHEREOF the parties to this Contract have executed it as of the day and year first above written.

for **THE CITY OF WINNIPEG**

) for **INSERT FULL LEGAL NAME OF**
) **CONTRACTOR**

)

)

)

[Execution Authority]

I have the authority to bind The City of Winnipeg

) _____
Name & Title:

I/we have the authority to bind Contractor.

Reviewed as to Business Terms:

Certified as to Contract Details:

Title of Authority

Title of Authority

Legally Reviewed and Certified as to Form:

for Director of Legal Services and The City Solicitor
(Legal File No. #####)

SCHEDULE A - DATA SHEET

SCHEDULE B - HIGH LEVEL BUSINESS GOALS

Schedule B – High Level Business Goals, dated **insert date** as completed by the Contractor and accepted by the City, is hereby incorporated into this Contract by reference and shall form a part of, and be interpreted in accordance with, this Contract.

SCHEDULE C - RECORD OF NEGOTIATIONS

SCHEDULE D - PRICING

Schedule D – Pricing, dated insert date as completed by the Contractor and accepted by the City is hereby incorporated into this Contract by reference and shall form a part of, and be interpreted in accordance with, this Contract.

SCHEDULE E - STATEMENT OF WORK

SCHEDULE F - THE 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.

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.

F1.3.3 Wherever the singular is used, it shall be construed to mean the plural as the context may reasonably require.

F1.3.4 Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of the Contract.

F1.4 No Automatic Renewals

F1.4.1 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.

F1.5 Non-Appropriation of Funds

F1.5.1 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 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 its knowledge no member of Council or any officer or employee of the City has any pecuniary interest, direct or indirect, in the 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 it, beyond its 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 the 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 the City in the Contract to protect the Confidential Information of the City;
- (b) use and disclose Confidential Information of the 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 the City to third parties authorized by the 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 the 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 (iii) 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 the City with prompt notice thereof, deliver a copy of Contractor's proposed response to the City, and thereafter, subject to Contractor's good faith consideration of any feedback provided by the 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 the City, Contractor shall, at Contractor's own cost and expense, cooperate with the City in the 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 the City in writing, take all reasonable steps to prevent the recurrence of any such Confidentiality Breach and notify the 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, the City, any City personnel, or the Confidential Information, or publicly identify the City as a customer of Contractor, without the prior written authorization of the City.

F4.8 Liability

F4.8.1 Contractor will be liable to the 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 The 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, 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.

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 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 relation to the compliance or non-compliance of such terms by the Solution Vendor.

F5.1.5 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 Representatives 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 the 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 Personal 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 the City reasonably requires to respond to such occurrence in accordance with FIPPA.
- 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 the City or otherwise required by applicable law.
- F5.2.3** Except where the Confidentiality Breach is caused by the 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 the City in any attempts by the 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** The Contractor will notify the 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 F5.3.2 in order to allow the City to fully respond to such communications within forty-five (45) days. The Contractor will promptly notify the City if it is unable to meet any deadline, in order to allow the City to seek relief from such deadline.
- F5.3.3** Upon termination or expiration of the Contract, or at any time upon the City's written direction, Contractor will securely return or destroy all City Personal Information in accordance with the City's instructions and will certify to the 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.
- F5.4 Changes to Privacy Laws**
- F5.4.1** 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.
- F5.5 Injunctive Relief**

F5.5.1 Contractor acknowledges that failure to comply with the confidentiality provisions of the Contract will cause irreparable harm to the City and that monetary damages alone will not be a sufficient remedy for unauthorized disclosure of Confidential Information. Contractor agrees that the 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.

F5.5.2 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.

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, including the City’s employees, 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 and/or service.

F6.1.3 To the extent the Contractor is providing Goods and/or Services to the City and/or End Users, the Contractor agrees that some or all of the provisions of the AMA will apply to the Contractor. As such, throughout the Term, the Contractor agrees to comply with applicable provisions of the AMA, including the following service obligations:

- (a) providing barrier-free access to goods and services, including services provided online;
- (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) ensuring that web applications and web content provided to or on behalf of the City, meets WCAG 2.1 level AA, at minimum;
- (d) reasonably accommodating assistive devices, support persons, and support animals where applicable;
- (e) providing adequate training of staff and documentation of same; and
- (f) 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 Data provided by the City to the Contractor under this Contract 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.

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 death), damage to or loss of property, economic loss, incidental or consequential damages, or infringement of rights (including 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), 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 SUSPENSION AND FORCE MAJEURE

F9.1 Suspension

F9.1.1 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 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 exceeds ninety-three (93) days, the parties extend the delay or suspension by mutual written agreement.

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 The City may terminate the Contract for any reason or no reason with sixty (60) Calendar Days written notice.

F10.1.2 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.

F10.1.3 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 ("**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 CONTRACT ADMINISTRATOR

F12.1 General

F12.1.1 The Contract Administrator shall be the City's representative throughout the duration of the Contract and shall have authority to act on behalf of the City to the extent expressly provided for in the Contract.

F12.2 Contract

F12.2.1 The Contract Administrator shall interpret or clarify the Contract or any part thereof which appears indefinite, not clear or contradictory to the Contractor.

F12.2.2 The Contract Administrator may at any time correct errors or omissions in the Contract by issuing written instructions or clarifications, or issuing additional Specifications further detailing, explaining or modifying the Work. Such written instructions, or Specifications, shall either supplement or supersede those forming part of the Contract at the time the Contract was executed.

F12.3 Inspection

F12.3.1 The Contract Administrator may examine or inspect the Work or any part thereof and determine whether the Work meets the requirements of the Contract. The Contract Administrator may reject the Work or any part thereof which does not meet the requirements of the Contract.

F12.4 Control

- F12.4.1** The Contract Administrator may give instructions or orders, in writing, to the Contractor to the extent necessary to ensure that the Work is performed in an orderly manner and meets the requirements of the Contract.
- F12.4.2** The Contract Administrator may give instructions or orders, referred to above to the Contractor's representative and such instructions or orders shall be subsequently made in writing and shall be deemed to have been given to the Contractor.
- F12.4.3** The Contract Administrator may issue a written order directing the Contractor to remove from the Work any person employed or retained by the Contractor or a Subcontractor in the performance of the Work who the Contract Administrator determines and demonstrates reasonably is incompetent, negligent or guilty of misconduct.
- F12.4.4** The Contract Administrator may issue a written order directing the Contractor to alter or improve their methods, to furnish additional or more suitable Material, or to employ additional or more qualified labour if, at any time, the Contract Administrator determines and demonstrates reasonably that: the Work is not being, or will likely not be, constructed in accordance with the Contract; or progress is not being, or will likely not be, maintained in accordance with the Contract.
- F12.4.5** The Contract Administrator may order the Contractor to stop work or to take such remedial measures as the Contract Administrator considers necessary, if, at any time, the Contract Administrator reasonably determines that:
- (a) a danger to life or to property exists; or
 - (b) such stoppage or remedial measures may be necessary to ensure the performance of the Work in accordance with the requirements of the Contract.
- F12.4.6** Neither the giving of any orders by the Contract Administrator nor the carrying out of such orders by the Contractor shall: relieve the Contractor of their responsibilities under this Contract; nor entitle the Contractor to any extra payment unless warranted in accordance with a Change in Work.
- F12.4.7** The Contract Administrator shall determine if and when Total Performance is achieved and shall certify the date thereof.
- F12.4.8** If the Contractor disputes a Final Determination of the Contract Administrator on any of the foregoing matters, the Contractor shall act in accordance with the Contract Administrator's Final Determination. The Contractor may concurrently appeal the Final Determination of the Contract Administrator to the Chief Administrative Officer as provided for in this Contract.

F13 DISPUTE RESOLUTION

F13.1 General

- F13.1.1** If the Contractor disagrees with a Final Determination of the Contract Administrator they may, within seven (7) Calendar Days after receiving notice of the Contract Administrator's Final Determination, submit a properly completed Dispute Resolution Process Application Form ("**Application Form**"), as set out on the City's Purchasing Website, to the City of Winnipeg Legal Services Department ("**Legal Services**") at the address specified therein.
- F13.1.2** The Appeal Process detailed in F13.1.3 through F13.1.10 ("**Appeal Process**") will only be available to Contractors where the disagreement under F13.1.1 is with respect to factual

matters. There will be no access to the Appeal Process for disagreements with respect to legal matters. Legal Services is the sole and final authority to determine whether an Application Form raises a Disputed Matter that is a factual dispute and suitable for the Appeal Process, and no appeal is available to the Contractor from such a determination. If the Contractor neglects or fails to observe fully and faithfully the above and following conditions for participation in the Appeal Process, the Contractor shall be deemed to have waived any ability to participate in the Appeal Process with respect to the Disputed Matter.

- F13.1.3** Within ten (10) Business Days of the receipt by Legal Services of the Application Form pursuant to the above F13.1.1, Legal Services shall: review the Application Form to determine if the matter(s) contained therein ("**Disputed Matter**") are permitted under the Appeal Process with respect to factual matters as provided in the above F13.1.2, and; issue a letter to the Contractor identifying Legal Services' determination ("**Legal Services Response Letter**").
- F13.1.4** If Legal Services has determined that the Disputed Matter may proceed in the Appeal Process, the Contractor must, within ten (10) Business Days of the date of the Legal Services Response Letter, submit its written Appeal Form, in the manner and format set out on the City's Purchasing Website, to the Chief Administrative Officer, and to the Contract Administrator. The Contractor may not raise any other disputes other than the Disputed Matter in its Appeal Form.
- F13.1.5** Prior to the Contract Administrator's issuance of a Final Determination, the following informal dispute resolution process shall be followed where the Contractor disagrees with any opinion, determination, or decision of the Contract Administrator ("**Dispute**"):
- (a) In the event of a Dispute, attempts shall be made by the Contract Administrator and the Contractor's equivalent representative to resolve Disputes within the normal course of project dealings between the Contract Administrator and the Contractor's equivalent representative.
 - (b) Disputes which in the reasonable opinion of the Contract Administrator or the Contractor's equivalent representative cannot be resolved within the normal course of project dealings as described above shall be referred to a without prejudice escalating negotiation process consisting of, at a minimum, the position levels as shown below and the equivalent Contractor representative levels:
 - (i) The Contract Administrator;
 - (ii) Supervisory level between the Contract Administrator and applicable Department Head;
 - (iii) Department Head.
- F13.1.6** The Contract Administrator shall submit an Appeal Form identifying their Department's position to the Chief Administrative Officer and to the Contractor within ten (10) Business Days of the Contract Administrator's receipt of the Contractor's Appeal Form.
- F13.1.7** The Contractor and Contract Administrator's respective Appeal Forms, and documents appended by reference, must contain all information, known to that Party to be relevant to the Disputed Matter, including relevant excerpts of the Contract. For the avoidance of doubt, sections of the Contract which are not relevant to the Disputed Matter, or any other irrelevant information or documents, should not be submitted in either Appeal Form.
- F13.1.8** The City's Chief Administrative Officer shall review the Appeal Forms submitted by the Contractor and Contract Administrator, and shall issue a written decision on the Disputed Matter contained therein ("**CAO's Determination**") within at any thirty (30) Business Days of their

receipt of the Contract Administrator's Appeal Form ("**CAO Review Period**"). The Chief Administrative Officer may request additional documents or information once from either party time during the CAO Review Period, and may extend the CAO Review Period by up to thirty (30) Business Days following receipt of new information or documents, up to a maximum period of sixty (60) Business Days after the Chief Administrative Officer's receipt of the Contract Administrator's Appeal Form. If the Chief Administrative Officer has requested additional information or documentation from one party during the CAO Review Period, the other Party shall also receive such additional information or documentation, and may issue a response thereto; however, each party is limited to one (1) additional response during the CAO Review Period.

F13.1.9 There is no opportunity for the parties to appear in person, or to present oral submissions to the Chief Administrative Officer.

F13.1.10 The CAO's Determination may not be further appealed. If the Contractor disagrees with the CAO's Determination they may request that the Disputed Matter be referred to arbitration in accordance with this F13, by providing notice to the Chief Administrative Officer within seven (7) Calendar Days after receiving notice of the Chief Administrative Officer's determination.

F13.2 Arbitration & Requests for Arbitration

F13.2.1 If, at any time before the termination of the warranty period (except as limited by the above F13.1.10), any dispute, difference or question shall arise between the City and the Contractor regarding the Work, then every such dispute, difference or question may, with the consent of the Chief Administrative Officer, on behalf of the City, and the Contractor, be referred to arbitration. Notwithstanding that the parties may have consented to arbitration, no arbitration shall proceed before the date of Total Performance.

F13.2.2 The party desiring arbitration (the "**Requesting Party**") shall request the consent of the other party (the "**Other Party**") to refer a particular dispute, difference or question to arbitration.

F13.2.3 The Other Party shall reply to the request within seven (7) Calendar Days of receiving same.

F13.3 Referral to a Single Arbitrator

F13.3.1 If the Other Party has consented to arbitration, the Requesting Party shall nominate an arbitrator (the "**Requesting Party's Nominee**") within seven (7) Calendar Days of receiving the reply. The Other Party shall have seven (7) Calendar Days after receiving notice of the nomination to accept or reject the Requesting Party's Nominee.

F13.3.2 If the Other Party accepts the Requesting Party's Nominee, the dispute, difference or question shall be promptly referred to the requesting Party's Nominee.

F13.4 Referral to a Panel of Arbitrators

F13.4.1 If the Other Party rejects the Requesting Party's Nominee, it shall, within seven (7) Calendar Days of rejection, appoint their own arbitrator.

F13.4.2 The Requesting Party shall, within seven (7) Calendar Days of receiving the Other Party's rejection, appoint their own arbitrator.

F13.4.3 The arbitrators appointed under F13.4.1 and F13.4.2 shall, within seven (7) Calendar Days of the date on which the last of them was appointed, appoint a third arbitrator (the "**Panel Chair**") who will act as chair of the arbitration panel.

- F13.4.4** The Arbitration Act (Manitoba) or any successor legislation thereto shall apply to the arbitration in all respects except as expressly otherwise provided in this Contract.
- F13.4.5** The single arbitrator or the Panel Chair, as the case may be, shall determine the procedure to be followed in the arbitration, which shall be consistent with The Arbitration Act (Manitoba) or any successor legislation thereto.
- F13.4.6** Where the matter proceeds with a single arbitrator, each party shall be responsible for their own legal expenses, expenses to produce expert evidence or other expenses voluntarily incurred, and for an equal share of the fees and expenses of the single arbitrator and of any other expenses related to the arbitration.
- F13.4.7** Where the matter proceeds with an arbitration panel, each party shall be responsible for their own legal expenses, expenses to produce expert evidence or other expenses voluntarily incurred, for the fees and expenses of the arbitrator appointed by it, and for an equal share of the fees and expenses of the Panel Chair and of any other expenses related to the arbitration.
- F13.4.8** If the Contractor disagrees with any opinion, determination, or decision of the Contract Administrator, the Contractor shall act in accordance with the Contract Administrator's opinion, determination, or decision unless and until same is modified by the process followed by the parties pursuant to this F13.
- F13.4.9** Names and positions of Contractor representatives equivalent to the above City position levels shall be determined by the Contractor and communicated to the City at the pre-commencement or kick off meeting.
- F13.4.10** As these negotiations are not an adjudicative hearing, neither party may have legal counsel present during the negotiations.
- F13.4.11** Both the City and the Contractor agree to make all reasonable efforts to conduct the above escalating negotiation process within twenty (20) Business Days, unless both parties agree, in writing, to extend that period of time.
- F13.4.12** If the Dispute is not resolved to the City and Contractor's mutual satisfaction after discussions have occurred at the final escalated level as described above, or the time period set out above, as extended if applicable, has elapsed, the Contract Administrator will issue a Final Determination, at which point the Parties will be governed by the Dispute Resolution process set out above.

F14 CITY'S RIGHTS AND REMEDIES

F14.1 General

- F14.1.1** If an event of default has occurred, and the Contractor has failed to comply with the curative provisions set out in this Contract, the City may, without process or action at law, do any one or more of the following:
- (a) withhold or retain the whole or part of any payment;
 - (b) take the whole of the Work, or any part or parts thereof out of the hands of the Contractor;
 - (c) demand payment for any amount owed to the City, including amounts paid or costs incurred by the City in connection with the event of default;

(d) terminate the Contract; all as more particularly set forth in this F14.

F14.1.2 The duties and obligations imposed upon the Contractor by the Contract and the rights and remedies available to the City hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed upon the Contractor or available to the City at law.

F14.2 Withholding of Payment

F14.2.1 If the City withholds or retains the whole or part of any payment pursuant to F14.1.1(a) the City may apply the amount withheld or retained to: pay any person to whom the Contractor is indebted in respect of Material, labour or services furnished for the Work; secure the discharge of a lien or trust claim served upon the City; indemnify, compensate or reimburse the City for amounts paid or costs incurred by the City in connection with the event of default.

F14.2.2 Payment of such amounts shall discharge the City's liability to the Contractor to the same extent as payment directly to the Contractor.

F14.2.3 Upon remedy of the event of default, any amount remaining from the amount withheld will be released to the Contractor.

F14.3 Taking the Work out of the Contractor's Control

F14.3.1 If the City takes the whole of the Work, or any part or parts thereof out of the hands of the Contractor pursuant to F14.1.1(b), the Contractor shall immediately discontinue the Work or any part or parts thereof specified in the said notice.

F14.3.2 The taking of the Work or any part thereof out of the Contractor's control pursuant to F14.3.1 shall not relieve or discharge the Contractor from any obligation under the Contract or imposed upon them by law except the obligation to complete the performance of that part of the Work that was taken out of the Contractor's control.

F14.3.3 If the Work or any part thereof is taken out of the Contractor's control pursuant to F14.3.1, all Material, and the interest of the Contractor in all licences, powers and privileges acquired, used or provided by the Contractor under the Contract shall be assigned by the Contractor to the City without compensation to the Contractor.

F14.3.4 The City shall have the right, to complete, by contract or with their own forces, the Work taken out of the Contractor's control, and the Contractor agrees that the City shall have the right to take possession of and use any of the Contractor's material and property of every kind provided by the Contractor for the purpose of the Work, and to procure other Material for the completion thereof. The City shall not be required to obtain the lowest price to complete the Work taken out of the Contractor's control.

F14.3.5 When the Contract Administrator certifies that any Material or any interest of the Contractor referred to in F14.3.3, is no longer required for the purposes of the Work, or that it is not in the best interest of the City to retain that Material or interest, it shall revert to the Contractor.

F14.3.6 If the cost to the City of completing the Work or portion thereof as aforesaid is less than the amount to which the Contractor would have been entitled under the Contract for so doing, the Contractor shall have no claims in respect thereof against the City. If the cost of the Work performed by the City is more than the amount to which the Contractor would have been entitled under the Contract for the same Work, the City shall have a claim against the Contractor for such excess costs.

F14.3.7 When any portion of the Work is being carried on by the City, by contract or otherwise, the Contractor shall continue to perform the remainder of the Work in accordance with the Contract, and in such manner as in no way to hinder or interfere with the persons performing the portion of the Work being carried on by the City.

F14.4 Demand for Payment

F14.4.1 If the City demands payment pursuant to F14.1.1(c) the Contractor shall, within seven (7) Calendar Days of receipt of a notice from the City, pay the City the amount set out in the notice.

F14.5 Termination

F14.5.1 If the City terminates the Contract pursuant to F14.1.1(d), the Contractor shall immediately discontinue the Work, and shall: deliver any Work completed prior to termination; and transfer control of the Site to the City, in the condition as it was upon termination of the Contract.

F14.5.2 Upon termination of the Contract, all Material, and the interest of the Contractor in all licences, powers and privileges acquired, used or provided by the Contractor under the Contract shall be assigned by the Contractor to the City, at the City's sole discretion, without compensation to the Contractor. Upon termination, the City's only obligation to the Contractor is to pay for Work satisfactorily performed up to the date of termination, in accordance with this Contract.

F15 CHANGES IN WORK

F15.1.1 The City shall have the right to order a Change in Work at any time after award of the Contract.

F15.1.2 If, at any time after award of the Contract, the Contractor is of the opinion that a Change in Work is necessary to accomplish the result intended by the Contract or if the Contractor considers it desirable that a Change in Work be approved, they shall promptly provide notice thereof to the Contract Administrator, including:

- (a) the reason for the proposed Change in Work;
- (b) a detailed description of the proposed Change in Work;
- (c) the total cost payable by the City in relation to the Change in Work and the overall impact to the Contract Price;
- (d) the time frame for completing the requested changes; and
- (e) the impact of the Change in Work to the Goods and/or Services.

F15.1.3 If the Contract Administrator determines that no Change in Work is necessary or desirable, they will issue a written notice stating their determination.

F15.1.4 If the Contract Administrator determines that a Change in Work is necessary or desirable but no corresponding adjustment to the Contract Price or applicable timelines is required, they will issue a written notice approving the Change in Work and stating their determination.

F15.1.5 If the Contract Administrator determines that a Change in Work is necessary or desirable, which requires a corresponding adjustment to the Contract Price or applicable timelines, they shall issue a written notice approving the Change in Work.

F15.1.6 If the Contract Administrator determines that a Change in Work is necessary or desirable, which requires a corresponding adjustment to the Contract Price or applicable timelines, and they

require further information to determine such adjustment, they shall, within fourteen (14) Calendar Days, issue a written notice stating their determination and requiring the Contractor to submit the Contractor's proposed method(s) to determine the adjustment in Contract Price or applicable timelines, within fourteen (14) Calendar Days or such other period of time as determined by the Contract Administrator given the relative complexity of the proposed change and upon receipt and evaluation of such information from the Contractor, they shall issue a written notice in accordance with this Contract.

F15.1.7 If the Contract administrators agrees to the adjustment to the Contract Price and/or applicable timelines, the Contractor may proceed with the work and it may invoice the City accordingly.

F15.1.8 To the extent that the City accepts the Contractor's Change in Work, as evidenced by the Contract Administrator's signed notice, then this Contract and the applicable Statements of Work will be deemed amended to incorporate the changes agreed to by the City.

F16 MINIMUM INSURANCE REQUIREMENTS

F16.1 Unless otherwise stated in Schedule A – Data Sheet, the Contractor shall acquire and maintain the following insurance coverage during the Initial Term, any applicable Renewal Terms and for 12 months after expiration or termination of this Contract:

F16.1.1 Commercial general liability insurance in the amount of at least two million dollars (\$2,000,000), with the City to be listed as an additional insured, with a cross-liability clause, contractual liability, unlicensed equipment liability (contractor's equipment) non-owned automobile liability and products and completed operations endorsement;

F16.1.2 Professional errors and omissions liability insurance in the amount of not less than two million dollars (\$2,000,000); and

F16.1.3 Any other insurance policy or policies in such amounts and covering such risks as is reasonable and customary for the business for which the Contractor is engaged.

F16.2 Deductibles shall be borne by the Contractor.

F16.3 The Contractor shall take out the above insurance policies with financially sound and reputable insurance companies that are licensed to operate within the Contractor's jurisdiction.

F16.4 The Contractor shall provide the City with a certificate(s) of insurance, in a form satisfactory to the City, at least two (2) Business Days prior to the commencement of any Work. The Contractor shall not cancel, materially alter, or cause any insurance policy to lapse without providing at least thirty (30) Calendar Days prior written notice to the Contract Administrator.

F17 GENERAL TERMS

F17.1 Binding Upon Successors.

F17.1.1 This Contract shall be binding upon the executors, administrators, heirs, successors, and any permitted assigns of the parties.

F17.2 Survival

F17.2.1 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 the City remedy provisions.

F17.3 Assignment

- F17.3.1** 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.

F17.4 Amendments

- F17.4.1** No amendment or change to, or modification of, this Contract shall be valid unless it is in writing and signed by both parties.

F17.5 Jurisdiction and Venue

- F17.5.1** 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.

F17.6 Severability

- F17.6.1** 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.

F17.7 Waiver

- F17.7.1** 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.
- F17.7.2** 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.
- F17.7.3** 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.
- F17.7.4** 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.

F17.8 Notice

- F17.8.1** 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
- (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.

F17.9 Counterparts

F17.9.1 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.

F17.10 Supplier code of conduct

F17.10.1 The Contractor has reviewed and understands the City's Supplier Code of Conduct. This document is located at: <https://www.winnipeg.ca/media/4891>.

F17.10.2 The Contractor shall comply with the Supplier Code of Conduct as it may be amended or replaced from time to time during the Term. The Contractor is responsible for periodically checking the above link for updates to the Supplier Code of Conduct.

F17.10.3 If there is a conflict between the Contract and the Supplier Code of Conduct – the Contract shall prevail.

F17.11 Unfair Labour Practices

- F17.11.1** 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](https://www.ilo.org/global/lang-en/index.htm) conventions as ratified by Canada).
- F17.11.2** 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.
- F17.11.3** In the event that the City, in its sole discretion, determines that the Contractor has violated the requirements of this F17.11, 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**”).
- F17.11.4** 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 and/or 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 this F17.11.4. The City may also hold back the amount of the Unfair Labour Practice Penalty from payment for any amount it owes the Contractor.
- F17.11.5** Upon request from the Contract Administrator, the Contractor shall provide, to the City, the sources (by company and country) of the raw materials, including object code and source code, used in the Work and the provision of the Good and/or Services and a description of the working environment or processes (labour unions, minimum wages, safety, etc.).
- F17.11.6** Failure to provide the evidence required under F17.11.5, may be determined to be an event of default in accordance with this Contract.
- F17.11.7** 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 Contractor 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.

F18 ADJUSTMENTS FOR CHANGES IN LAWS, TAXES, OR TARIFFS

- F18.1** The Contract Price shall be adjusted if any change in a law or tax imposed under the Excise Act, the Excise Tax Act, the Customs Act, the Customs Tariff, The Mining Tax Act (Manitoba), or The Retail Sales Tax Act (Manitoba), by an act of the Congress of the United States of America, or by Executive Order by the President of the United States under the International Emergency Economic Powers Act of the United States of America or similar legislation:
- (a) occurs after the Effective Date;
 - (b) applies to Material; and
 - (c) affects the cost of that Material to the Contractor.

- F18.2** If a change referred to in F18.1 occurs, the Contract Price shall be increased or decreased by an amount equal to the amount that is established, by an examination of the relevant records of the Contractor, to be the increase or decrease in the cost incurred that is directly attributable to that change and which the Contractor has proven to the Contract Administrator represents the minimum amount of increase necessary in order to obtain necessary Material. For the avoidance of doubt, the Contractor shall be required to provide satisfactory proof that it has investigated alternative options for obtaining equivalent Material and reducing or eliminating the increase in Contract Price, up to and including entering into purchase agreements with vendors located in other jurisdictions, in order for Contractor to be able to avail itself of the increase in Contract Price permitted.
- F18.3** For the purpose of F18.1 where a tax is changed after the Effective Date but public notice of the change has been given by either the Federal or Provincial Minister of Finance before that date, the change shall be deemed to have occurred before the Effective Date and the Contractor shall not be entitled to an increase in the Contract Price

APPENDIX 1 – DEFINITIONS

- 1.1 The definitions in the “Definitions” tab of Schedule B – High Level Business Goals are incorporated herein by reference. Notwithstanding clause 2.03 of the main body of the Contract, In the event of a conflict, the definitions in this Appendix 1 of Schedule F shall govern. Capitalized terms not defined in the Contract (including Schedules and Appendices), are defined in this Appendix 1.
- 1.2 “**Accessibility**” means preventing and removing barriers that prevent people from accessing goods or services.
- 1.3 “**Accessible Customer Service**” is defined in F6.1.2.
- 1.4 “**AMA**” means The Accessibility for Manitobans Act (CCSM C A1.7), including the Customer Service Standard Regulation (MR 171/2015) and the Accessible Information and Communication Standard Regulation (M.R. 47/2022), as amended from time to time.
- 1.5 “**Ancillary Agreement**” means an agreement ancillary to this Contract such as, but not limited to, a software licensing agreement, end user licensing agreement, privacy policy, or terms of service document, which either the Contractor or the Solution Vendor requires the City to execute or otherwise agree to in order to access and/or use the Goods and/or Services. Written amendments to the Contract mutually agreed to and executed by both Parties are not Ancillary Agreements for the purposes of this definition.
- 1.6 “**Award Authority**” means the authority having the jurisdiction to award the Contract according to the City’s by-laws, policies, or procedures.
- 1.7 “**Business Day**” means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday in Manitoba.
- 1.8 “**Calendar Day**” means the period from one midnight to the following midnight;
- 1.9 “**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.
- 1.10 “**Chief Administrative Officer**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office.
- 1.11 “**The City**” means The City of Winnipeg as continued under *The City of Winnipeg Charter Act* (SM 2002, c 39) and any subsequent amendments thereto.
- 1.12 “**The City Solicitor**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office.
- 1.13 “**Confidentiality Breach**” means any unauthorized use, alteration, retention, disclosure, or destruction of, or any unauthorized access to, Confidential Information.
- 1.14 “**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, Information, 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 the City.

- 1.15 **"Contract"** means this agreement, and any schedules, appendices, attachments, or other documents attached thereto.
- 1.16 **"Contract Administrator"** means the person designated as such in the Supplemental Conditions.
- 1.17 **"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.
- 1.18 **"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.
- 1.19 **"Contractor"** means the Person undertaking the performance of the Work and providing the Goods and/or Services under the terms of the Contract.
- 1.20 **"Council"** means the elected Council of The City of Winnipeg.
- 1.21 **"Data"** means any and all information, data, communications, text, images, configuration and/or settings data, or other digital property provided by the City to the Contractor or the Solution Vendor (as applicable).
- 1.22 **"Data Sensitivity Level"** means the level of data sensitivity identified in Schedule A – Data Sheet.
- 1.23 **"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 The City Personal Information.
- 1.24 **"Final Determination"** means a written notice approving a Change in Work or including the term Final Determination.

- 1.25 “**FIPPA**” means *The Freedom of Information and Protection of Privacy Act* (CCSM c F175) as amended from time to time.
- 1.26 “**Go Live**” means the date on which the Goods and/or Services are first used in production within the City of Winnipeg, following a successful implementation in accordance with all Contract terms (including any acceptance testing), to the satisfaction of the City.
- 1.27 “**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 from a qualified, skilled, and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.28 “**Hosted Services**” means SaaS, IaaS, and/or PaaS, collectively.
- 1.29 “**IAAS**” or “**IaaS**” means Infrastructure-as-a-Service.
- 1.30 “**includes**” and “**including**” means “includes without limitation” and “including without limitation”, respectively, unless otherwise indicated.
- 1.31 “**Information**” 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) to carry out the Work and provide the Goods and/or Services contemplated in this Contract.
- 1.32 “**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.
- 1.33 “**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.
- 1.34 “**Standard Legal Terms**” means the general terms and conditions laid out in Schedule F of this Contract.
- 1.35 “**Manager of Purchasing**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office.
- 1.36 “**Material**” means anything, including goods, parts and equipment, which are to form part of the permanent Work.
- 1.37 “**Purchasing Website**” means the City’s website that can be accessed at <https://winnipeg.ca/MatMgt/>.
- 1.38 “**may**” indicates an allowable action or feature which will not be evaluated.
- 1.39 “**must**” or “**shall**” indicates a mandatory requirement which will be evaluated on a pass/fail basis.

- 1.40** “**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.
- 1.41** “**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.
- 1.42** “**Party**” means a party to the Contract.
- 1.43** “**PAAS**” or “**PaaS**” means Platform-as-a-Service.
- 1.44** “**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.
- 1.45** “**Personal Information**” means recorded information about an identifiable individual, including:
- (a) The individual’s name, address, telephone or facsimile number, or e-mail address;
 - (b) information about the individual's age, sex, sexual orientation, marital or family status;
 - (c) information about the individual's ancestry, race, colour, nationality, or national or ethnic origin;
 - (d) information about the individual's religion or creed, or religious belief, association or activity;
 - (e) Personal Health Information;
 - (f) the individual's blood type, fingerprints or other hereditary characteristics;
 - (g) information about the individual's political belief, association or activity;
 - (h) information about the individual's education, employment or occupation, or educational, employment or occupational history;
 - (i) information about the individual's source of income or financial circumstances, activities or history;
 - (j) information about the individual's criminal history, including regulatory offences;
 - (k) the individual's own personal views or opinions, except if they are about another person;
 - (l) the views or opinions expressed about the individual by another person;
 - (m) an identifying number, symbol or other particular assigned to the individual; and
 - (n) any other information that could be used, alone or with other information, to identify the individual.

- 1.46** “**Personal Health Information**” means recorded information about an identifiable individual that relates to:
- (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.
- 1.47** “**PHIA**” means *The Personal Health Information Act* (CCSM c P33.5) as amended from time to time.
- 1.48** “**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.
- 1.49** “**Professional Services**” is defined in F11.1.1.
- 1.50** “**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.
- 1.51** “**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.
- 1.52** “**Representatives**” means the directors, officers, shareholders, employees, contractors, subcontractors, parents, subsidiaries, servants, volunteers, affiliates, agents, delegates, insurers, reinsurers, and other representatives of a party.
- 1.53** “**Reputation**” means the public perception, image, reputation, community standing, business operations, or goodwill of a Party.
- 1.54** “**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.
- 1.55** “**SAAS**” or “**SaaS**” means Software-as-a-Service.
- 1.56** “**Set-Off**” means the City deducting monies owed by the Contractor to the City from payment(s) due by the City to the Contractor.
- 1.57** “**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.
- 1.58** “**should**” indicates a desirable action or feature which will be evaluated on a relative scale;
- 1.59** “**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.

- 1.60 **“Solution Vendor”** means the entity that owns, hosts, and maintains the Hosted Services being procured under this Contract.
- 1.61 **“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.
- 1.62 **“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.;
- 1.63 **“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.
- 1.64 **“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.
- 1.65 **“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.
- 1.66 **“Term”** means the term of the Contract as set out in 1.01 of the main body of the Contract and any applicable Extensions or Holdovers as identified therein.
- 1.67 **“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.
- 1.68 **“Total Performance”** means that the entire Work has been performed in accordance with the Contract.

FIRST ATTACHMENT – DATA SENSITIVITY LEVELS

Level 1 – General	<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”)
Level 2 – Low Sensitivity	<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”)
Level 3 – Moderate Sensitivity	<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
Level 4 – High Sensitivity	<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

SCHEDULE G – CONTRACTOR MAIN SERVICE AGREEMENT