

## **The City of Winnipeg Public Water Service Outlets – Terms of Use**

Welcome to The City of Winnipeg's (the "**City**") Public Water Service Outlet Website. The Public Water Service Outlets and these Terms of Use are owned by The City of Winnipeg. The Website and the proprietary cloud-based software used to administer the Website are owned by Flowpoint Environmental Systems Limited Partnership ("**Flowpoint**").

Please read these Terms of Use carefully before using the Website:

### **1. AGREEMENT**

- 1.01 By using the Website and/or registering a Website Account you are agreeing to these Terms. You are not permitted to register an Account or to access or use the Website or the Outlets if you do not accept these Terms. If you do not agree with any of these Terms, you must immediately exit and stop using this Website and the Outlets. These Terms of Use constitute a contract between you and the City regarding access to and use of the Website and the Outlets. By applying for an Account or logging in to an Account, you certify that you have read and understood the Terms herein, and expressly accept and agree to comply with and be bound by them.
- 1.02 In the event that the entity or person agreeing to these Terms is doing so on behalf of a third party, that third party is deemed to be bound by these Terms. You accept and agree to these Terms on behalf of your company, organization, institution, employer, or client as their duly authorized legal representative by applying for an Account or logging in to an Account.
- 1.03 These Terms may be revised from time to time. You agree that your acceptance of such revisions, updates, or new Terms may be signified electronically, including (without limitation) by logging in to an Account or Terminal, checking a box, or by clicking on an "I agree" or similar button. It is your responsibility to consult these Terms of Use from time to time to be up-to-date.
- 1.04 The City may, at its sole discretion, decide to stop providing (permanently or temporarily), to you or to all, access to the Website or Outlets (or to a functionality of the Website or Outlets) without prior notice and without any liability or cost to the City.

Without limiting the generality of the foregoing, if the City experiences technical difficulties with the Website or the Outlets, you may be unable to access the Website, the Outlets, or your Account, or to complete a transaction, during such a period.

1.05 In order to use the Website or the Outlets you may be required to agree to third party terms issued by Flowpoint. The City is not an affiliate of Flowpoint and does not represent or endorse any such Flowpoint Content, and is not responsible or liable for its availability, accuracy, or quality. Your communication or business dealings with Flowpoint and any third parties found on or through the Website are solely between you and Flowpoint and/or such third parties at your sole risk. The City does not assume any liability or responsibility whatsoever for the operation of or information of any such Flowpoint Content or the Website, nor for any interpretations, comments, or opinions expressed therein, including damages that may be sustained, or viruses or other destructive items that may infect your device, operating system, network, browser, applications, files, or various accounts through your access to or use of the Website.

## 2. INTERPRETATION

2.01 In these Terms, the following definitions apply:

**“Account”** means a Website Account.

**“Account Information”** means the administrative information included in a person’s Account, such as a person or entity’s user ID, password/PIN, security question and answer, and login information.

**“Content”** means any and all information on or accessed through the Website and/or the Services including, but not limited to, all information, text, images, data, code, graphics, icons, knowhow, materials, and resources used in the presentation, development, and arrangement of the Website and Services.

**“FIPPA”** means *The Freedom of Information and Protection of Privacy Act* (CCSM c F175).

**“Outlet(s)”** means the Public Water Service Outlets owned and operated by the City, and includes the Terminal(s).

**“Personal Information”** has the meaning assigned to it in FIPPA.

**“Services”** means the functions or services provided through the Website or the Outlets, as specified. When not specified, “Services” collectively refers to both Website and Outlet Services.

**“Terminal(s)”** means the Public Water Service Outlet terminal(s) on site where users input their access number, PIN and amount of water to be dispensed

**“Terms”** means these terms and conditions, as updated by the City from time to time.

**“Third Party Content”** means websites, products, materials, services, information, or other such content that is not owned by the City or Flowpoint.

**“User Content”** means information submitted by you, and includes any Account Information, financial information, or Personal Information you submit to the Website.

“**Website**” means the Public Water Service Outlet Website, located at <https://winnipegmb.azurewebsites.net/>, and includes the Services and the Content.

“**Website Infrastructure**” means the servers, networks, and other underlying infrastructure supporting the Website.

“**Y/you**”, “**Y/your**” means the entity or person agreeing to these Terms.

### **3. REGISTRATION**

3.01 Access to the Website and use of certain Outlet and/or Website Services requires applying for and registering an Account. By applying for and registering an Account, you agree to provide accurate and current information as required for such Account application/registration and to update your information in a timely manner to ensure it remains accurate and complete.

3.02 By registering an Account, you acknowledge and agree that *The City of Winnipeg Water By-law* (By-law no. 107/2015, the “**By-law**”) applies to your use of the Outlets and the Outlet Services. You further certify that you have read and understood the By-law and will comply with all requirements thereunder.

### **4. YOUR USE OF THE OUTLETS AND THE WEBSITE**

#### **4.01 Account Information**

You will be solely responsible to maintain the confidentiality of any Account Information required for your access to the Outlets and the Website. You will be solely responsible for maintaining the confidentiality of your Account Information, and any Account Information that you download, access, view, or otherwise extract or copy from the Website.

You agree:

- (a) not to share or disclose your Account Information with others, and that you are responsible for ensuring the compliance of anyone with whom you share or to whom you disclose your Account Information;
- (b) to immediately notify the City if you believe that a third party may have obtained your Account Information or the Account Information of a third party, or if you suspect that there has been any unauthorized use of your Account Information;
- (c) not to use a third party’s Account Information for any illegal or improper purposes or without their express consent and direction.

#### 4.02 **Access to and Use of the Outlets**

Except as expressly permitted herein, you agree:

- (a) to ensure that backflow is prevented by an air gap that exists at all times or by a backflow preventer authorized by a designated employee;
- (b) to take reasonable care to minimize spilt water, as this can create a hazardous walking surface for others;
- (c) not to access or use the Outlets for any purposes not explicitly permitted herein; and
- (d) that if you break, lose, stain, soil, or otherwise damage any part of the Outlets that you will be responsible for the cost of repair, replacement, refurbishment, or cleaning of same.

#### 4.03 **Access to and Use of the Website**

Except as expressly permitted herein, you agree:

- (a) not to use or permit the use of any script, service, software, routine, crawler, scraper, third party, manual process, or automated query, program, or device to mirror, data-mine, extract, frame, collect, copy, or otherwise retain the Content;
- (b) not attempt to gain unauthorized access to any portion or feature of the Website, or any other systems or networks connected to the Website or Website Infrastructure, or to any of the Content offered on or through the Website, whether by hacking, password “mining”, or any other means;
- (c) not to interfere or permit others to interfere with or damage, deface, disrupt, undermine, alter, probe, scan, infect, test the vulnerability of, or otherwise threaten or jeopardize the Website, the Website Infrastructure, or either the City or Flowpoint’s other online services or their integrity;
- (d) not to forge headers or otherwise manipulate identifiers in order to disguise the origin of any message or transmittal you send on or through the Website;
- (e) not to overburden or otherwise impose an excessive or unreasonably large load on the Website Infrastructure, or to permit others to do so; and
- (f) not to use the Website or Website Infrastructure for any illegal or improper purposes.

#### 4.04 **Additional Obligations**

- (a) You agree that in accessing or using the Website or any Services or submitting any information or materials to the City or Flowpoint you shall:
  - (i) act in compliance with all applicable laws and regulations;

- (ii) not post, transmit, link to or otherwise distribute any information or software which contains a virus, or other harmful or disruptive property or component that may adversely affect the Terminals, Website, or the Website Infrastructure;
  - (iii) not post, transmit, link to or otherwise distribute any inappropriate, defamatory, indecent, offensive or unlawful material or information; and
  - (iv) not impersonate or falsely represent your association with an Account holder.
- (b) You have the sole responsibility for ensuring that you receive and regularly review your Account, and for the protection and recovery of your computer system. You must take reasonable and appropriate precautions to ensure that any computer system used to access the Website is secure and free of viruses or other harmful or destructive properties or components.

## **5. PRIVACY AND SECURITY**

### **5.01 Personal Information**

- (a) Any Personal Information required for registration of an Account or access to or use of the Website is collected pursuant to s.36(1)(b) of *The Freedom of Information and Protection of Privacy Act* (CCSM c F175). Your Personal Information will only be used for communication and administration related to your use of the Outlets or the Outlet Service and will not be used or disclosed for any other purposes, except as required by law.

If you have any questions about the collection of this information, contact the Corporate Access and Privacy Officer by mail to City Clerk's Department, Administration Building, 510 Main Street, Winnipeg MB, R3B 1B9, or by telephone at 311 or 1-877-311-4974.

- (b) By registering an Account you consent to having your Personal Information managed via the Website and Flowpoint (as Information Manager) in accordance with the above.

For further details regarding *The Freedom of Information and Protection of Privacy Act*, please refer to the following webpage: <http://www.winnipeg.ca/clerks/fippa/>.

### **5.02 Confidentiality Warning**

The Internet is not a secure medium and privacy cannot be ensured. Internet email and other communications are vulnerable to interception and forging. In registering a User Profile and accessing and using the Website, you agree to assume the risks associated with the transmission or loss of any data or Personal Information to or from the City, including the interception of such confidential data or Personal Information by third parties, and agree to be liable for any damages to yourself, the City, or third parties occurring as a result thereof.

## **6. DISCLAIMER**

6.01 Your use of or reliance on the Website, Outlets, and/or Services is at your sole risk, and you assume all responsibility for using same. Do not assume that the Website will be error-free, or that the Website, Outlets, and/or Services will be operated without interruption or without defect.

6.02 Without limiting the generality of the foregoing, Content may become out of date, is subject to change without notice, and is provided solely on an “as is” and “as available” basis. The City is not responsible for transmission errors, or corruption or security of Content carried over telecommunications carriers’ or other providers’ systems and/or facilities, and disclaims any duty to update Content, and any liability therefor.

6.03 **THE CITY DOES NOT MAKE ANY WARRANTIES, REPRESENTATIONS, OR GUARANTEES, WHETHER EXPRESS OR IMPLIED, (COLLECTIVELY, “WARRANTIES”) WITH RESPECT TO THE WEBSITE, THE OUTLETS, OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES THAT: THE WEBSITE OR WEBSITE SERVICES WILL BE ERROR-FREE, FREE OF VIRUSES OR OTHER HARMFUL OR DESTRUCTIVE PROPERTIES OR COMPONENTS, OR PROVIDED WITHOUT INTERRUPTION; WARRANTIES AS TO THE ACCURACY, VALIDITY, CORRECTNESS, CURRENCY, TIMELINESS, COMPLETENESS, RELIABILITY, QUALITY, OR ADEQUACY OF THE WEBSITE OR WEBSITE SERVICES, OR FOR ANY LINKED THIRD PARTY WEBSITES OR INFORMATION; AND WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE WEBSITE, OUTLETS, OR SERVICES. THE CITY ALSO EXPRESSLY DISCLAIMS THE AFORESAID WARRANTIES AND ANY LIABILITY THEREFOR.**

**IF YOU ARE DISSATISFIED OR DISAGREE WITH ALL OR ANY PART OF THE WEBSITE, OUTLETS, OR SERVICES, WITH THESE TERMS, OR WITH ANY RULES, POLICIES, OR PRACTICES THE CITY OR FLOWPOINT MAY IMPLEMENT OR ENFORCE REGARDING THE WEBSITE, OUTLETS, OR SERVICES, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE WEBSITE, OUTLETS, OR SERVICES.**

## **7. LIMITATION AND WAIVER OF LIABILITY**

You agree that the City and its council, committees of council, affiliated bodies, officers, directors, employees, agents, and other representatives (collectively, “**Representatives**”) are not liable or responsible for any direct, indirect, incidental, consequential, punitive, or special damages, including, without limitation, any loss of use, lost data, lost business profits, business interruption, personal injury (up to and including death), property damage, or any pecuniary loss arising out of or in any way connected with your access to or use of the Website, the Outlets, or the Services, or any software, information, or documents contained in or accessed through the Website or any of the Website Services, or the quality of the water accessed through the Outlets or the Outlet Services, even if the City has been advised of the possibility of such damages, whether based in contract, tort (including negligence), equity, strict liability, or otherwise.

By using or accessing the Website or Outlets you hereby waive any and all claims that you or your Representatives may have, have had, or may in the future have against the City in respect of same, and you hereby release and forever discharge the City of any losses you or your Representatives may suffer, have suffered, or may in the future suffer in relation thereto.

#### **8. INDEMNITY**

You agree to defend, indemnify, and hold harmless the City and its Representatives from and against any and all losses, costs, damages and expenses, including reasonable legal fees, suffered or incurred by the City as a result of or in connection with your violation of these Terms or your access to or use of the Website, the Outlets, or the Services.

#### **9. MODIFICATIONS AND TERMINATION**

The City reserves the right to suspend, discontinue, terminate, or modify any aspect of the Website, Outlets, or Outlet Services, your access thereto or use thereof, or these Terms at any time and for any reason whatsoever with or without warning or notice to you. The City further reserves the right to determine, in its sole and absolute discretion, that your Account and/or User Content is illegal, violates these Terms or other related City policies, or is otherwise inappropriate, and may remove or refuse to display same.

#### **10. GENERAL**

10.01 These Terms form the entire agreement between you and the City with respect to your use of the Website, the Outlets, and the Services. Failure or delay by the City to enforce the provisions of these Terms or the City’s rights or remedies at any time will not be construed to be a waiver of the City’s rights hereunder and will not prejudice the City’s right to take subsequent action. If any provision in these Terms is held to be illegal, invalid, or unenforceable at law by a court of competent jurisdiction, it shall be deemed

to be severed from these Terms and the remaining provisions shall continue in full force and effect.

- 10.02 Should any provision of these Terms require mediation, arbitration, or judicial interpretation, it is agreed that the mediator, arbitrator, court, or other equivalent party or entity interpreting or construing same shall not apply any presumption that these Terms shall be more strictly construed against the party who itself or through its agent prepared them (otherwise known as the doctrine of *contra proferentem*).
- 10.03 These Terms and any disputes or actions arising from or in connection with the Website, Outlets, or Services shall be governed by the laws of the province of Manitoba, Canada without reference to conflict of laws principles, and you hereby submit to the jurisdiction of the courts of the province of Manitoba, Canada and agree to bring any action exclusively in such courts.