

Purchase Order Terms and Conditions

TABLE OF CONTENTS

Section

1. Definitions
 2. Agreement
 3. Delivery of Goods and Services
 4. Inspection and Acceptance
 5. Price and Payment Terms
 6. Taxes
 7. Hazardous Materials
 8. Legal Compliance; Workplace Safety
 9. Warranties
 10. Warranty Remedies
 11. Supplier Representations and Warranties
 12. Intellectual Property Rights
 13. Confidentiality
 14. Force Majeure
 15. Insurance
 16. Indemnities
 17. Suspension and Termination of Agreement
 18. Limitation of Liability
 19. Independent Contractors
 20. Conflict of Interest
 21. Further Assurances
 22. Severability
 23. Waiver
 24. Assignment
 25. Cumulative Remedies
 26. Survival
 27. Interpretation
 28. Entire Agreement
 29. Governing Law
 30. Language
- Schedule A – Privacy Protection Schedule

Purchase Order Terms and Conditions

1. Definitions.

In these Purchase Order Terms and Conditions, the following definitions apply:

- (a) "Agreement" means the agreement between Supplier and HRM for the purchase of Goods and/or Services, as is more fully described in Section 2.
- (b) "Delivery Date" means the date specified by HRM in a Purchase Order for the delivery of Goods or for the completion of Services.
- (c) "Delivery Point" means the location identified by HRM in a Purchase Order to which Supplier is to deliver Goods and/or perform the Services, or such other location which is specified in writing by HRM.
- (d) "Goods" means the items that are required to be delivered by Supplier pursuant to a Purchase Order, and includes all related products, materials, component parts, packaging, labelling, data and documentation.
- (e) "HRM" means Halifax Regional Municipality.
- (f) "Purchase Order" means any purchase order, order acknowledgement, invoice or any other document used by HRM to place an order from a Supplier for the purchase of Goods and/or Services.
- (g) "Services" means any work to be performed by Supplier for HRM pursuant to a Purchase Order and includes any related data or documentation.
- (h) "Specifications" means:
 - i. the requirements, attributes and specifications for the Goods or Services that are set out or referenced in the applicable Purchase Order;
 - ii. documentation published by Supplier relating to the Goods or Services;
 - iii. operational and technical features and functionality of the Goods or Services;
 - iv. standards or levels of service performance for Services; and
 - v. HRM business requirements that are expressly set out or referenced in a Purchase Order.
- (i) "Supplier" means the party indicated on the face page of the Purchase Order that is contracting with HRM for the purchase of Goods and/or Services.
- (j) "Supplier Proposal" means any acknowledgement, estimate, bid, quote, offer to sell, invoice, or proposal of Supplier relating to the supply of Goods and/or Services to HRM, including any documents or information delivered by Supplier to HRM in

connection with a request for quotations, request for tenders, request for proposals or similar process initiated by HRM.

2. **Agreement.**

- (a) The Agreement consists only of:
 - i. the applicable Purchase Order;
 - ii. any Specifications or other documents expressly referenced in the Purchase Order or in HRM's request for quotations, request for standing offer, request for tenders, request for proposals or similar process initiated by HRM; and
 - iii. these Purchase Order Terms and Conditions.
- (b) The Agreement excludes, and prevails over, any terms and conditions of sale of Supplier regardless of the form of such terms and conditions or the time at which such terms and conditions are presented to HRM. HRM and Supplier specifically agree that HRM will not be deemed to have accepted any of Supplier's terms and conditions including if HRM should fail to object to them in any communication received from Supplier or should HRM subsequently execute any of Supplier's field tickets, forms, receipts, invoices, or terms of services. For greater certainty, any document sent by Supplier to HRM, including but not limited to the Supplier Proposal, will not constitute part of the Agreement between HRM and Supplier.
- (c) Any reference in the Purchase Order to any Supplier Proposal is solely for the purpose of incorporating the descriptions and Specifications of the Goods and/or Services contained in Supplier Proposal, and only to the extent that the terms of Supplier Proposal do not conflict with the descriptions and Specifications set out in the Purchase Order.
- (d) If there is any conflict or inconsistency between the documents constituting the Agreement, then unless otherwise expressly provided, the documents will rank in the order of precedence in accordance with the order in which they are listed in Section 2(a).
- (e) A Purchase Order is not an exclusive contract for the provision of the Goods and/or Services listed therein. HRM may contract with one or more other suppliers for the same or similar Goods and/or Services to those described or may obtain the same or similar Goods and/or Services through HRM's own forces.

3. **Delivery of Goods and Services.**

- (a) Supplier agrees to supply and deliver the Goods to HRM and to perform the Services, as applicable, in accordance with the terms set out in the Agreement.

- (b) Upon request, Supplier shall promptly report to HRM of its progress in performing its obligations under the Agreement and provide such explanations as HRM may require in connection therewith.
- (c) Unless otherwise agreed to by HRM in writing, Supplier shall furnish at its own expense all labour, machinery, equipment, tools, transportation and other inputs required to perform the Services and provide the Goods. HRM will not be liable for any loss of or damage to machinery, equipment or tools furnished by Supplier.
- (d) Supplier shall, at its own expense, and in accordance with the invoicing, delivery terms, shipping, packing, and other instructions printed on the face of the Purchase Order or otherwise provided to Supplier by HRM in writing, pack, load, and deliver Goods to the Delivery Point. No charges for freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging or similar charges will be accepted or paid by HRM unless explicitly stated in the applicable Purchase Order or otherwise agreed to in writing by HRM.
- (e) Time is of the essence with respect to delivery of the Goods and performance of Services. Goods shall be delivered and Services completed by the applicable Delivery Date. Supplier must immediately notify HRM if Supplier anticipates it will likely be unable to meet a Delivery Date.
- (f) At any time prior to the delivery of the Goods or performance of the Services, HRM may, upon notice to Supplier, cancel or change a Purchase Order, or any portion thereof, for any reason, including, without limitation, for the convenience of HRM or due to failure of Supplier to comply with the Agreement, unless otherwise noted.
- (g) Unless otherwise agreed to by HRM in writing, all Goods shall be shipped F.O.B. per Incoterms 2010 to HRM's Delivery Point.
- (h) Title, ownership and risk of loss to any Goods shall only pass to HRM, upon successful delivery of the Goods at the Delivery Point. It shall be the responsibility of Supplier to obtain appropriate insurance for the Goods while they are in transit from Supplier's loading point to the Delivery Point.
- (i) Supplier shall follow all instructions of HRM and cooperate with HRM's customs broker as directed by HRM (including by providing requested shipping documentation) with respect to all Goods that originate from sources or suppliers based outside Canada. Supplier shall comply with all the requirements of the Canada Border Services Agency with respect to the importation of Goods from outside Canada.
- (j) Supplier shall not supply a substitute for the Goods or Services specified in the Purchase Order without the prior written approval of HRM. Approval of substitutes shall be at the sole discretion of HRM.

4. Inspection and Acceptance

- (a) All shipments of Goods and all Services performed by Supplier are subject to HRM's right of inspection and testing.
- (b) HRM has ninety (90) days (the "**Inspection Period**") following the delivery of the Goods to the Delivery Point or the completion of Services by Supplier to undertake such inspection, and upon such inspection HRM, in its sole but reasonable discretion, shall either accept the Goods or Services or reject them.
- (c) HRM has the right to reject any Goods that are delivered in excess of or below the quantity ordered or are damaged or defective. In addition, HRM has the right to reject any Goods or Services that are not in conformance with the Specifications or any term of the Agreement.
- (d) The delivery of Goods or transfer of title to Goods from Supplier to HRM does not constitute HRM's acceptance of those Goods.
- (e) HRM shall provide Supplier, no later than the end of the Inspection Period, a written notice of any Goods or Services that are rejected, together with the reasons for such rejection. If HRM does not provide Supplier with any notice of rejection before the end of the Inspection Period, HRM will be deemed to have accepted such Goods or Services.
- (f) HRM's inspection (or non-inspection), testing (or non-testing), acceptance or use of the Goods or Services shall not limit or otherwise affect Supplier's warranty obligations with respect to the Goods or Services.
- (g) If HRM rejects any Goods or Services, Supplier shall arrange to have rejected Goods returned to Supplier at Supplier's expense, and the Supplier shall at HRM's option:
 - i. provide a full credit or refund of all amounts paid by HRM to Supplier for the rejected Goods or Services; or
 - ii. provide replacement Goods or Services to be received within the time period specified by HRM.
- (h) Supplier shall not deliver Goods that were previously rejected by HRM unless delivery of such Goods is approved in advance by HRM, and is accompanied by a written disclosure of HRM's prior rejection(s).

5. **Price and Payment Terms.**

- (a) Prices for the Goods and/or Services will be set out in the applicable Purchase Order and shall be in Canadian dollars. Price increases or additional charges not expressly set out in the Purchase Order shall not be effective unless agreed to in writing by HRM.
- (b) Each invoice submitted by Supplier for payment must include the Purchase Order number, an itemized and detailed description of the Goods delivered and/or Services

performed in respect of which it is being remitted, a Supplier contact name and phone number for invoice problem resolution should the need arise, and all such other information as specified by HRM from time to time for inclusion therein.

- (c) Payments will be administered through HRM's electronic payment process. Supplier shall send payables information to hmaplink@halifax.ca.
- (d) Subject to verification by HRM, HRM will pay the undisputed portion of properly rendered invoices thirty (30) days from the date of the invoice.
- (e) HRM encourages vendors to offer prompt payment discounts. Subject to the conditions of this Section, where discounts are offered HRM will endeavour to pay invoices within the discount period.
- (f) HRM shall have the right to withhold payment of any invoices that are disputed in good faith until the parties reach an agreement with respect to such disputed invoices and such withholding of full payment of disputed invoices shall not be deemed a breach of the Agreement nor shall any interest be charged on such amounts.
- (g) HRM may set-off any amount due or owing to Supplier pursuant to the Agreement against any amounts Supplier owes to HRM, whether pursuant to the Agreement or otherwise.

6. Taxes.

- (a) Unless otherwise stated in a Purchase Order, all prices or other payments stated in the Purchase Order are exclusive of any taxes.
- (b) Supplier shall separately itemize all applicable taxes each on each invoice and indicate on each invoice its applicable tax registration number(s).
- (c) HRM will pay all applicable taxes to Supplier when HRM pays the applicable invoice. Supplier will remit all applicable taxes to the applicable government authority as required by applicable laws.
- (d) Notwithstanding any other provision of the Agreement, HRM may withhold, from all amounts payable to Supplier, all applicable withholding taxes and remit such taxes directly to the applicable governmental authorities as required by applicable laws.

7. Hazardous Materials.

- (a) Supplier shall ensure that all hazardous materials are properly, safely and securely packaged and labelled and accompanied by prescribed Safety Data Sheets (SDS) and any other documentation that may be required under applicable legislation related to shipments of hazardous materials or hazardous physical agents.
- (b) Supplier agrees to provide HRM with the following upon request:

- i. all reasonably necessary documentation to verify the material composition, on a substance by substance basis, including quantity used of each substance, of any Goods, and/or of any process used to make, assemble, use, maintain or repair any Goods; and
- ii. all reasonably necessary documentation to verify that any Goods and/or any process used to make, assemble, use, maintain or repair any Goods, do not contain, and the Services do not require the use of, any particular hazardous substances specified by HRM.

8. Legal Compliance; Workplace Safety.

- (a) In carrying out its obligations under the Agreement, including the delivery of Goods and performance of Services, Supplier shall at all times comply with all applicable federal, provincial, and municipal laws, by-laws, regulations, standards, and codes and applicable HRM policies.
- (b) Supplier shall be at all times registered with the Workers' Compensation Board under the *Workers' Compensation Act* (Nova Scotia) and shall maintain its workers' compensation accounts in good standing. The Workers Compensation Board of Nova Scotia "MyAccount" website will be the sole source of this information. The Owner reserves the right to reject bids from Bidders who are not in good standing.
- (c) If requested by HRM the Supplier shall, at the Supplier's expense provide a current and valid Letter of Good Standing issued by an audit firm endorsed by Workers' Compensation Board of Nova Scotia to audit for the type of work covered by this contract. Where the Supplier has not yet obtained a Certificate of Recognition, the tenderer must submit a letter from the WCB endorsed audit firm indicating the tenderer is "in the process" (maximum six (6) months) of obtaining the Certificate of Recognition. "In the process" is defined as the completion of the four mandatory courses (Safety Basics, Safety Orientation, Safety Audit and Leadership) and completion of training required by the Occupational Health and Safety Act (such as, but not limited to WHMIS, TDG, TCP, Confined Space and First Aid) and for a period no greater than six (6) months
- (d) Supplier shall obtain all applicable permits, licences, exemptions, consents and approvals required for Supplier to manufacture and deliver the Goods and perform the Services and provide copies thereof to HRM upon HRM's request.
- (e) If requested by HRM the Supplier shall, at the Supplier's expense, provide a criminal record check, vulnerable sector check, or any other requested security check for any employee that the Supplier has assigned or proposes to assign to the performance of the Services. Unless agreed to in writing, all record checks must be issued by the relevant authority within the previous 12 months.
- (f) HRM may object to any of Supplier's personnel engaged or proposed by Supplier to be engaged in the performance of Services who, in the reasonable opinion of HRM,

constitute a safety risk, lack appropriate skills or qualifications, engage in misconduct, or are incompetent or negligent. Supplier shall promptly remove such personnel from the performance of any Services upon receipt of such notice, provide a replacement at Supplier's expense, and shall not re-employ the removed person in connection with the Services without the prior written consent of HRM.

9. **Warranties.**

- (a) **Manufacturer Warranties.** Supplier shall, to the extent possible, assign to HRM all manufacturer warranties for Goods, and shall take all necessary steps as required by such third party manufacturers to effect assignment of such warranties to HRM.
- (b) **Goods Warranties.** Supplier warrants to HRM that in addition to any applicable manufacturer warranties, all Goods shall be:
 - i. of merchantable quality;
 - ii. safe and fit for the purposes intended;
 - iii. new, unless otherwise agreed to by HRM in writing;
 - iv. free from any overt or latent defects in design, material and workmanship;
 - v. in strict compliance with the Specifications;
 - vi. free from any liens or encumbrances on title whatsoever;
 - vii. in conformance with any samples provided to HRM; and
 - viii. compliant with all applicable federal, provincial, and municipal laws, by-laws, regulations, standards, and codes.
- (c) **Service Warranties.** Supplier warrants to HRM that all Services shall be performed:
 - i. exercising that degree of professionalism, skill, diligence, care, prudence, judgment, and integrity which would reasonably be expected from a skilled and experienced service provider providing services under the same or similar circumstances as the Services under the Agreement;
 - ii. in accordance with all Specifications and all HRM policies, guidelines, by-laws and codes of conduct applicable to Supplier; and
 - iii. using only personnel legally entitled to work in Canada and who possess the skills, training, expertise, and qualifications necessary to carry out the Services.
- (d) **Intellectual Property Warranty.** Supplier warrants to HRM that the performance of Supplier of its obligations hereunder, and the use of the Goods or Services by HRM for their intended purpose, shall not violate, misuse, misappropriate or infringe the intellectual property rights or any other property or rights of any other person or entity.

10. Warranty Remedies.

- (a) Unless a longer warranty period is specified on the face of the Purchase Order, or is otherwise provided by Supplier, the warranty period for Goods and Services shall be valid for one year from the date of acceptance of the Goods and Services by HRM.
- (b) If HRM, acting reasonably, determines that Supplier has breached any of the warranties in Section 9, and without prejudice to any other right or remedy available to HRM (including HRM's indemnification rights hereunder), Supplier will, within ten (10) days after written notice by HRM to Supplier of a warranty breach, and at HRM's option and Supplier's sole expense, either:
 - i. refund the purchase price for any affected Goods or Services, or
 - ii. correct, replace or re-perform the affected Goods or Services.

All associated costs, including costs of re-performance, costs to inspect the Goods and/or Services, costs to transport the Goods from HRM to Supplier, and return shipment to HRM, and costs resulting from supply chain interruptions, will be borne by Supplier.

- (c) If Goods are corrected or replaced or Services are re-performed, the warranties in Section 9 will continue as to the corrected or replaced Goods or Services for a further warranty period of one year commencing on the date of acceptance of the corrected or replaced Goods or Services by HRM. If Supplier fails to repair or replace the Goods or Services within the time periods required above, HRM may repair or replace the Goods or Services at Supplier's expense.
- (d) In the event that any Goods provided by Supplier to HRM are subject to a claim or allegation of infringement of intellectual property rights of a third party, Supplier shall, at its own option and expense, without prejudice to any other right or remedy of HRM (including HRM's indemnification rights hereunder), promptly:
 - i. provide HRM with a commercially reasonable alternative, including the procurement for HRM of the right to continue using the Goods in question;
 - ii. replace such Goods with a non-infringing alternative satisfactory to HRM; or
 - iii. modify such Goods (without affecting functionality) to render them non-infringing.

11. Supplier Representations and Warranties.

- (a) Supplier represents and warrants, as a present and ongoing affirmation of facts in existence at all times when the Agreement is in effect and after its termination:
 - i. that Supplier is and shall be the legal and beneficial owner of all such Goods or Services at the time of delivery thereof to HRM and (if different) at the time title to the Goods or Services passes to HRM;

- ii. that Supplier is duly organized and subsisting under the laws of the jurisdiction of its incorporation or existence and has full power and authority to enter into the Agreement;
- iii. that the execution and/or performance of the Agreement does not and will not violate or interfere with any other agreement by which Supplier is bound, which violation or interference would have a material adverse effect on Supplier or on the Agreement and that Supplier will not enter into any agreement, the execution and/or performance of which would violate or interfere with the Agreement so as to have a material adverse effect on HRM;
- iv. that Supplier has the resources, skills and ability to provide the Goods and perform the Services in accordance with the Agreement and applicable industry standards;
- v. that Supplier is duly registered for tax (including GST/HST) purposes in the jurisdiction(s) in which such Goods or Services are to be provided;

12. Intellectual Property Rights.

- (a) Other than as may be required for the provision of the Goods or Services, nothing in the Agreement shall be construed as granting Supplier any license or other right to use any intellectual or other property that HRM may now or hereafter own, possess, or in which it may hold licensing rights.
- (b) HRM and Supplier agree that, with the exception of any pre-existing intellectual property rights of the Supplier, all work product, materials, documents and intellectual property (including without limitation all inventions, designs, ideas, discoveries, works, creations, patents, copyrights and trade-marks) or other rights relating thereto developed by Supplier during the course of, or in connection with, the provision of the Goods or Services, by Supplier to HRM (collectively "**Work Product**") shall be the property of and owned by HRM. Supplier agrees that, except for any pre-existing intellectual property rights, it has no ownership rights of any kind in the Work Product, and Supplier hereby agrees to assign, and upon provision of each element of the Goods or Services automatically assigns, to HRM, all of Supplier's right, title and interest, if any, in any such Work Product. This assignment includes, without limitation, any and all rights to secure any patent, trade-mark, copyright, industrial design or other registrations (including without limitation, any renewals or extensions thereto) with respect of the Work Product, in Canada, the United States and elsewhere.
- (c) Supplier hereby unconditionally and irrevocably waives and shall cause its subcontractors or representatives to unconditionally and irrevocably waive all moral rights of Supplier or its subcontractors or representatives that exist or may exist in any Work Product. Supplier shall, upon HRM's request, obtain from each and every one of its subcontractors or representatives any agreement or assignment required to

confirm ownership rights in the Work Product in favour of HRM, the licenses granted herein and the waiver of all moral rights therein.

- (d) If Supplier or its subcontractors or representatives incorporate into any Work Product any pre-existing intellectual property owned by Supplier or its subcontractors or representatives or in which Supplier or its subcontractors or representatives has an interest, HRM is hereby granted and shall have a worldwide, royalty-free, non-exclusive, perpetual license to make, use, copy, modify distribute, sell, license (at any level) and in any other way exploit such pre-existing intellectual property as part of or in connection with such Work Product, without obligation to account to, or obtain consent from, Supplier or its subcontractors or representatives. Supplier agrees to provide to HRM all assistance reasonably requested by HRM to perfect the rights described herein, including obtaining all assignments and waivers of moral rights necessary or appropriate to vest the entire right, title and interest in such materials in HRM and its successors and assigns.

13. Confidentiality.

- (a) **“Confidential Information”** means any information disclosed by HRM to Supplier that is either marked “Confidential”, or that by its nature, a reasonable person would consider to be confidential. Confidential Information shall not, however, include information that:
 - i. was already known to Supplier at the time of its disclosure by HRM;
 - ii. is available to the public or becomes generally available to the public other than through a breach of these Purchase Order Terms and Conditions by Supplier;
 - iii. was received by Supplier from a third party free to disclose it without obligation (whether contractual, legal, fiduciary or otherwise) to HRM; or
 - iv. was developed independently by Supplier without breach of these Purchase Order Terms and Conditions.
- (b) Supplier shall use the Confidential Information only for the purpose of providing the Goods and/or Services to HRM, and shall protect such Confidential Information from disclosure to third parties, using the same degree of care used to protect its own proprietary information of like importance, but in any case using no less than a reasonable degree of care. Supplier shall not disclose the Confidential Information to third parties without the written consent of HRM.
- (c) Supplier shall implement and maintain security standards and procedures for the safeguarding of HRM’s Confidential Information. Supplier agrees to promptly notify HRM in writing upon becoming aware of a breach of either Supplier’s security standards and procedures or HRM’s security policies, or any unauthorized disclosure of Confidential Information that Supplier is required to keep confidential. Supplier shall take immediate steps to mitigate any breach or unauthorized disclosure.

- (d) If Supplier becomes legally required to disclose any Confidential Information, Supplier will give HRM prompt notice of such requirement to the extent that Supplier is legally able to do so. If HRM consents to such disclosure, or if HRM declines or is unable to obtain a protective order or other appropriate remedy with respect to such disclosure, then Supplier shall disclose only that portion of the Confidential Information necessary to ensure compliance with such legal requirement.
- (e) Immediately upon termination of the Agreement, or at any time upon demand of HRM, Supplier shall return or supply to HRM any of the Confidential Information in Supplier's possession or under its control and any analysis or derivative work relating to the Confidential Information, and no copies of the Confidential Information, analysis or derivative work shall be made or retained.

Supplier acknowledges and agrees that HRM may disclose the Supplier Proposal, the Agreement or portions thereof at HRM's discretion or as may be required pursuant to the Freedom of Information and Protection of Privacy provisions contained in Part XX of the *Municipal Government Act* (Nova Scotia).

If Supplier is a "service provider" as defined in the *Personal Information International Disclosure Protection Act*, (Nova Scotia) ("PIIDPA") as a result of the type of Services that it is providing to HRM under the Agreement, Supplier represents, warrants and undertakes to HRM that it shall comply with its obligations under PIIDPA and the terms and conditions contained in the Privacy Protection Schedule, attached as Schedule A to these Purchase Order Terms and Conditions.

Supplier acknowledges that HRM has entered into a service agreement with IBM Canada for the provision of SAP Enterprise Resource Planning (ERP) solutions and related services and may enter into service agreements with other providers of comparable services. Supplier irrevocably agrees that notwithstanding anything contained in the Agreement, HRM is authorized to disclose the Agreement or portions thereof to IBM Canada and SAP Canada and to any other provider of comparable services to HRM, to enable IBM Canada and SAP Canada, and where applicable such other service provider, to fulfill its obligations under its service agreement with HRM.

Supplier's obligations under this Section survive any termination of the Agreement.

14. **Force Majeure.**

- (a) Supplier shall not be liable for a failure or delay in performing any of its obligations under the Agreement due to a "**Force Majeure Event**", which, for the purposes of this Agreement is defined as any circumstance not within the reasonable control of Supplier, but only if and to the extent that such circumstance:
 - i. could not have been reasonably prevented or avoided by Supplier, despite Supplier's exercise of utmost diligence, taking of reasonable precautions and due care and documented attempts to take all reasonable alternative measures;

- ii. occurred without the fault or negligence of Supplier; and
 - iii. materially and adversely affected the ability of Supplier to perform its obligations under the Agreement.
- (b) Where Supplier claims that a Force Majeure Event has occurred, Supplier shall be required to give immediate written notice thereof to HRM, which notice shall describe the Force Majeure Event, its cause, the probable duration of the delay resulting therefrom, and the steps being taken by Supplier to mitigate the impact of the Force Majeure Event on the performance of Supplier's obligations.
- (c) Notwithstanding the foregoing provisions, if a delay or failure arising from a Force Majeure Event continues for ten (10) consecutive days, HRM may, in its sole discretion, terminate the Agreement upon three (3) days prior written notice to Supplier. In the case of termination by HRM pursuant to this Section, Supplier will be entitled to receive payment only for the Goods it has delivered to HRM and for which acceptance has been provided, and for Services it has satisfactorily performed up to the date of termination.

15. Insurance.

- (a) Supplier shall without limiting any of its obligations and liabilities under the Agreement, procure and maintain at its own expense, with respect to and for claims arising during the term of the Agreement, appropriate insurance covering its obligations under the Agreement, including the following minimum insurance coverage and such other insurance as may be required from time to time in the course of providing the Goods or Services:
 - i. Professional liability insurance (if applicable to the Services);
 - ii. Comprehensive commercial general liability insurance;
 - iii. Automobile liability insurance; and
 - iv. Any other insurance requested by HRM.
- (b) Each of the aforementioned policies shall have policy limits not less than two million dollars (\$2,000,000) per claim, aggregate limits not less than two million dollars (\$2,000,000) within any policy year, and deductible amounts not exceeding fifty thousand dollars (\$50,000).
- (c) Supplier shall provide HRM with a certificate of renewal for each insurance policy not later than fifteen (15) days prior to the expiry date of the applicable policy.
- (d) The insurance to be maintained by Supplier shall:
 - i. be issued by financially sound insurers acceptable to HRM and licensed to carry on business in Canada;

- ii. name "Halifax Regional Municipality" as an additional insured party;
 - iii. require the insurer to provide HRM with at least thirty (30) days' prior written notice of a material change in the policy or termination or cancellation of the policy;
 - iv. provide coverage for liability arising out of property damage, loss, personal injury (including death), or any other damage resulting from any act or omission of Supplier, its officers, directors employees, servants, and agents;
 - v. be primary insurance without right of contribution of any other insurance carried by Supplier or by HRM;
 - vi. be endorsed to include waivers of any right of subrogation of the insurers against HRM, its mayor, councillors, officers and directors, employees, consultants and agents; and
 - vii. contain cross liability coverage via a separation of insured's clause.
- (e) Supplier shall at the request of HRM carry additional insurance against such risks and in such amounts as HRM shall deem necessary.
- (f) Supplier shall report to HRM within twenty four (24) hours in writing full details of any occurrence involving bodily injury, death or property damage.
- (g) Supplier shall provide HRM with certificate(s) of insurance on a form reasonably satisfactory to HRM, evidencing all insurance requirements hereunder prior to commencement of the provision of Goods or performance of Services as the case may be, and replacement certificate(s) of insurance during the term hereof. Each certificate shall be signed by an authorized agent or representative of the insurer.
- (h) By entering into the Agreement, Supplier hereby warrants and represents that it has complied in full with the provisions of this Section, and if requested shall promptly provide HRM with a certified Certificate of Insurance evidencing placement in good standing of all insurances required by this Section.
- (i) Neither the failure of Supplier to provide the certificates of insurance required under this Section nor HRM's failure to demand delivery of said certificates will operate or be deemed to operate as a waiver of the insurance and associated endorsements required under this Section. Supplier will hold HRM harmless from any liability arising as a result of any such failure(s).

16. **Indemnities.**

- (a) Supplier shall indemnify, defend and hold harmless HRM and its mayor, councillors, officers, directors, employees, consultants, and agents (the "**HRM Indemnified**

Parties“) from and against any claims, fines, losses, actions, damages, expenses, legal fees and all other liabilities brought against or incurred by HRM Indemnified Parties or any of them arising out of:

- i. death, bodily injury, or loss or damage to real or tangible personal property resulting from the use of or any actual or alleged overt or latent defect in the Goods or Services, or from the failure of the Goods or Services to comply with the warranties hereunder;
- ii. any claim that the Goods or Services infringe or violate the intellectual property rights or other rights of any person;
- iii. any intentional, wrongful or negligent act or omission of Supplier or any of its affiliates, agents or subcontractors;
- iv. Supplier’s breach of any of its obligations under the Agreement; or
- v. any liens or encumbrances relating to any Goods or Services.

17. Suspension and Termination of Agreement.

- (a) HRM shall be entitled to suspend and/or terminate the Agreement for cause, upon the occurrence of any of the following events, each of which shall constitute an **“Event of Default”**:
 - i. Supplier breaches or fails to comply with the Agreement and such breach or failure is not remedied by Supplier to the reasonable satisfaction of HRM within ten (10) days after written notice from HRM to remedy the breach or failure;
 - ii. Supplier becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors, or otherwise acknowledges its insolvency, or a receiver or receiver manager is appointed for any property of Supplier;
 - iii. Supplier repudiates its obligations under the Agreement; or
 - iv. HRM determines that any statement, representation or warranty made by Supplier in its Supplier Proposal or in the Agreement was untrue or incorrect.
- (b) If the Agreement is suspended or terminated as a result of an Event of Default, Supplier shall be responsible for and shall reimburse HRM for all loss, costs and damages incurred by HRM as a result of or arising from the Event of Default, including any costs incurred by HRM to correct any defects or deficiencies in any of the Goods or Services, and any costs incurred by HRM to procure the Goods or Services or any part thereof from another provider.
- (c) HRM may, at its sole discretion, and at any time suspend all or part of the Agreement with or without cause, upon giving written notice to Supplier. When a notice of

suspension is received by Supplier, Supplier shall suspend all operations in respect of the Agreement except those that HRM determines are necessary to continue. Supplier shall, subject to taking all reasonable measures to mitigate, be paid its reasonable costs associated with any such suspension. If a period of suspension lasts for more than sixty (60) days, Supplier may, upon giving notice in writing to HRM, terminate the Agreement.

- (d) HRM may, at its sole discretion, and at any time, terminate the Agreement without cause upon giving thirty (30) days prior written notice of termination to Supplier. In such event, Supplier shall be entitled to receive payment for the Goods it has delivered to HRM and for which acceptance has been provided, and for Services it has satisfactorily performed up to the date of termination. Payments to Supplier of the foregoing amounts shall constitute full and final satisfaction of HRM's obligations to Supplier under the Agreement.
- (e) In the event the Agreement is terminated by HRM pursuant to this Section, Supplier shall not be reimbursed for any profits that may have been anticipated but not earned up to the termination date, and Supplier shall not have any claim or entitlement to any additional compensation or damages arising from such termination.

18. Limitation of Liability.

- (a) EXCEPT FOR SUPPLIER'S OBLIGATIONS TO INDEMNIFY HRM UNDER SECTION 16, AND EXCEPT FOR DAMAGES THAT ARE THE RESULT OF THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF A PARTY, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING ANY LOST PROFITS, DATA, GOODWILL, OR BUSINESS OPPORTUNITY FOR ANY MATTER RELATING TO THE AGREEMENT.

19. Independent Contractors.

- (a) The relationship of Supplier to HRM is that of an independent contractor and not an employee, partner or agent, and nothing contained herein shall be regarded or construed as creating a partnership, joint venture, agency or employer/employee relationship. Supplier shall not enter into any contract or commitment in the name of or on behalf of HRM or bind HRM in any respect whatsoever. Supplier confirms and agrees that there are no employee related benefits or fringe benefits of any kind receivable in connection with the provision of the Goods or performance of the Services. Supplier, its subcontractors and assignees are solely responsible for making contributions for *Employment Insurance, Workers Compensation, Canada Pension Plan*, employee income tax deductions (submitted directly to the government), insurance costs or other similar levies. Supplier shall indemnify and save harmless HRM, its directors, officers and affiliates from and against all payments, costs, damages, expenses, interest, penalties and other liabilities

assessed against, paid or incurred by HRM or its directors, officers or affiliates in connection with such contributions or payments.

20. **Conflict of Interest.**

- (a) Supplier shall not take any actions that would result in an actual or perceived conflict of interest between its obligations to HRM under the Agreement and its obligations to any third party. Supplier shall immediately notify HRM in writing if any actual or perceived conflict of interest arises at any time during the Agreement.

21. **Further Assurances.**

- (a) The parties shall sign such further and other documents, cause such meetings to be held, resolutions passed and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to the Agreement and every part thereof.

22. **Severability.**

- (a) If any provision of the Agreement is determined to be unenforceable or invalid for any reason whatsoever, in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part thereof and all other provisions shall continue in full force and effect.

23. **Waiver.**

- (a) No waiver of any provision of the Agreement shall be enforceable against that party unless it is in writing and signed by that party. The failure of HRM to insist upon the strict performance of any term or condition of the Agreement will not be deemed to be a waiver of any of the rights or remedies of HRM, nor of its right to insist upon strict performance of such term or of any other term in the future.

24. **Assignment.**

- (a) Supplier shall not assign the Agreement, in whole or in part, without HRM's prior written consent.
- (b) HRM may assign the Agreement, in whole or in part, or extend the Agreement to any affiliate or agent of HRM, without the consent of Supplier. Upon request, Supplier shall provide the Goods or Services at the same pricing and upon substantially similar terms as set out in the Agreement to any affiliate or agent of HRM, any organization operating facilities on behalf of HRM, and any other municipality, public utility or public sector entity.
- (c) The Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

25. Cumulative Remedies.

- (a) The rights and remedies of HRM in the Agreement are cumulative and in addition to any other rights and remedies at law or in equity.

26. Survival.

- (a) Any provision of the Agreement which expressly or by implication from its nature is intended to survive the termination or completion of the Agreement will continue in full force and effect after any termination, expiry or completion of the Agreement.

27. Interpretation.

- (a) The headings used in the Agreement and its division into articles, sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.
- (b) Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.
- (c) References in the Agreement to articles, sections, schedules, exhibits, appendices, and other subdivisions are to those parts of the Agreement.
- (d) Where the Agreement uses the word "including," it means "including without limitation," and where it uses the word "includes," it means "includes without limitation."
- (e) The language used herein shall be deemed to be the language chosen by the parties hereto to express their mutual intent and shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the agreement. No rule of strict construction will be applied against any person.

28. Entire Agreement.

- (a) Except as specifically set forth herein, the Agreement constitutes the final written expression of all of the agreements between the parties with respect to the subject matter herein, and supersedes all understandings and negotiations concerning the matters specified herein.

29. Governing Law.

- (a) The Agreement shall be governed by the laws of the Province of Nova Scotia and the federal laws of Canada applicable therein.
- (b) HRM and Supplier attorn to the exclusive jurisdiction of the courts of Nova Scotia in Halifax, in respect of any matter arising out of the Agreement.

- (c) Subject to Supplier's obligations to indemnify, defend and hold harmless, HRM and Supplier shall be responsible for their own legal expenses, costs and disbursements for all legal proceedings (including discoveries) related to the Agreement.

30. **Language.**

- (a) It is the express wish of the parties that the Agreement and any related documentation be drawn up in English. *Il est de la volonté expresse des parties que cette convention ainsi que tout document connexe soient rédigés en langue anglaise.*

SCHEDULE A
PRIVACY PROTECTION SCHEDULE

Definitions

1. In this Schedule,
 - (a) “**access**” means disclosure by the provision of access;
 - (b) “**applicable legislation**” means the *Personal Information International Disclosure Protection Act* and the Freedom of Information and Protection of Privacy provisions contained within Part XX of the *Municipal Government Act*;
 - (c) “**contact information**” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
 - (d) “**Municipality**” means the Halifax Regional Municipality;
 - (e) “**personal information**” means recorded information about an identifiable individual, including (i) the individual’s name, address or telephone number, (ii) the individual’s race, national or ethnic origin, colour, or religious or political beliefs or associations, (iii) the individual’s age, sex, sexual orientation, marital status or family status, (iv) an identifying number, symbol or other particular assigned to the individual, (v) the individual’s fingerprints, blood type or inheritable characteristics, (vi) information about the individual’s health-care history, including a physical or mental disability, (vii) information about the individual’s educational, financial, criminal or employment history, (viii) anyone else’s opinions about the individual, and (ix) the individual’s personal views or opinions, except if they are about someone else.

Purpose

2. The purpose of this Schedule is to:

- (a) enable the Municipality to comply with the Municipality's statutory obligations under the applicable legislation with respect to personal information; and
- (b) ensure that, as a service provider, Supplier is aware of and complies with Supplier's statutory obligations under the applicable legislation with respect to personal information.

Collection of personal information

- 3. Unless the Agreement otherwise specifies or the Municipality otherwise directs in writing, Supplier may only collect or create personal information that is necessary for the performance of Supplier's obligations, or the exercise of Supplier's rights, under the Agreement.
- 4. Unless the Agreement otherwise specifies or the Municipality otherwise directs in writing, Supplier must collect personal information directly from the individual the information is about.
- 5. Unless the Agreement otherwise specifies or the Municipality otherwise directs in writing, Supplier must tell an individual from whom Supplier collects personal information:
 - (a) the purpose for collecting it;
 - (b) the legal authority for collecting it; and
 - (c) the title, business address and business telephone number of the person designated by the Municipality to answer questions about Supplier's collection of personal information.

Accuracy of personal information

- 6. Supplier must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by Supplier or the Municipality to make a decision that directly affects the individual the information is about.

Requests for access to personal information

7. If Supplier receives a request for access to personal information from a person other than the Municipality, Supplier must promptly advise the person to make the request to the Municipality unless the Agreement expressly requires Supplier to provide such access and, if the Municipality has advised Supplier of the name or title and contact information of an official of the Municipality to whom such requests are to be made, Supplier must also promptly provide that official's name or title and contact information to the person making the request.

Correction of personal information

8. Within 5 Business Days of receiving a written direction from the Municipality to correct or annotate any personal information, Supplier must annotate or correct the information in accordance with the direction.
9. When issuing a written direction under section 8, the Municipality must advise Supplier of the date the correction request to which the direction relates was received by the Municipality in order that Supplier may comply with section 10.
10. Within 5 Business Days of correcting or annotating any personal information under section 8, Supplier must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Municipality, Supplier disclosed the information being corrected or annotated.
11. If Supplier receives a request for correction of personal information from a person other than the Municipality, Supplier must promptly advise the person to make the request to the Municipality and, if the Municipality has advised Supplier of the name or title and contact information of an official of the Municipality to whom such requests are to be made, Supplier must also promptly provide that official's name or title and contact information to the person making the request.

Protection of personal information

12. Supplier must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

Storage and access to personal information

13. Unless the Municipality otherwise directs in writing, Supplier must not store personal information outside Canada or permit access to personal information from outside Canada.

Retention of personal information

14. Unless the Agreement otherwise specifies or unless the Municipality directs otherwise in writing, Supplier must retain personal information for at least one year following the date of its use and securely dispose of personal information no later than three years after its use.

Use of personal information

15. Unless the Municipality otherwise directs in writing, Supplier may only use personal information if that use is for the performance of Supplier's obligations, or the exercise of Supplier's rights, under the Agreement.

Disclosure of personal information

16. Unless the Municipality otherwise directs in writing, Supplier may only disclose personal information inside Canada to any person other than the Municipality if the disclosure is for the performance of Supplier's obligations, or the exercise of Supplier's rights, under the Agreement.
17. Unless the Agreement otherwise specifies or the Municipality otherwise directs in writing, Supplier must not disclose personal information outside Canada.

Notice of foreign demands for disclosure

18. In addition to any obligation Supplier may have to provide the notification contemplated by section 6(1) of the *Personal Information International Disclosure Protection Act*, if in relation to personal information in the custody or under the control of Supplier, Supplier:
 - (a) receives a foreign demand for disclosure;

- (b) receives a request to disclose, produce or provide access that Supplier knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
- (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure,

Supplier must immediately notify the Municipality and, in so doing, provide the information described in section 6(2) of the *Personal Information International Disclosure Protection Act*. In this section, the phrases “foreign demand for disclosure” and “unauthorized disclosure of personal information” will bear the same meanings as in section 2(1) of the *Personal Information International Disclosure Protection Act*.

Notice of unauthorized disclosure

- 19. If Supplier knows that there has been an unauthorized disclosure of personal information in the custody or under the control of Supplier, Supplier must immediately notify the Municipality. In this section, the phrase “unauthorized disclosure of personal information” will bear the same meaning as in section 2(1) of the *Personal Information International Disclosure Protection Act*.

Inspection of personal information

- 20. In addition to any other rights of inspection the Municipality may have under the Agreement or under statute, the Municipality may, at any reasonable time and on reasonable notice to Supplier, enter on Supplier’s premises to inspect any personal information in the possession of Supplier or any of Supplier’s information management policies or practices relevant to Supplier’s management of personal information or Supplier’s compliance with this Schedule and Supplier must permit, and provide reasonable assistance to, any such inspection.

Compliance with the applicable legislation and directions

- 21. Supplier must in relation to personal information comply with:
 - (a) the requirements of the applicable legislation to Supplier as a service provider, including any applicable order under the applicable legislation; and

- (b) any direction given by the Municipality under this Schedule.
22. Supplier acknowledges that it is familiar with the requirements of the applicable legislation governing personal information that are applicable to it as a service provider.

Notice of non-compliance

23. If for any reason Supplier does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, Supplier must promptly notify the Municipality of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

Termination of Agreement

24. In addition to any other rights of termination which the Municipality may have under the Agreement or otherwise at law, the Municipality may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by Supplier, terminate the Agreement by giving written notice of such termination to Supplier, upon any failure of Supplier to comply with this Schedule in a material respect.

Interpretation

25. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
26. Any reference to the "Supplier" in this Schedule includes any subcontractor or agent retained by Supplier to perform obligations under the Agreement and Supplier must ensure that any such subcontractors and agents comply with this Schedule.
27. The obligations of Supplier in this Schedule will survive the termination of the Agreement.
28. If a provision of the Agreement (including any direction given by the Municipality under this Schedule) conflicts with a requirement of the applicable legislation or an applicable order under the applicable legislation, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.

29. Supplier must comply with the provisions of this Schedule despite any conflicting provision of the Agreement or, subject to section 30, the law of any jurisdiction outside Canada.
30. Nothing in this Schedule requires Supplier to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the applicable legislation.