

This Agreement is between the Government of Manitoba ("Manitoba") Manitoba Central services, Procurement and Supply Chain Division, 6th Floor, 352 Donald St, Winnipeg, MB R3B 2H8 and Petal Solutions Inc (PetalMD) ("Contractor"), PetalMD, 17(1) & 17(3)(e) for the purchase of Services and/or Goods dated February 1, 2021.

1. **Term:** This Agreement starts on the date it is signed by the last party and will continue until January 31, 2022 with an option to extend for one (1) year at the discretion of Manitoba, unless terminated earlier or extended in writing by the parties.

2. **Documents:** This Agreement is comprised of this first page and the following schedules:

- (a) Schedule A – Goods and Services and Fees;
- (b) Schedule B – Terms and Conditions.

In the event of conflict, the order of priority is this first page, Schedule B, Schedule A.

3. **Terms and Conditions:** The terms and conditions in Schedule B apply to the purchase of the Goods and Services.

4. **Goods and Services:** The Contractor will provide the Goods or Services, or both, as described in Schedule A, in accordance with the terms and conditions in this Agreement. Manitoba has no liability with respect to any Goods or Services, or both, provided by the Contractor prior to the start of the Term or provided outside the scope of this Agreement.

5. **No Exclusivity:** This Agreement does not confer exclusivity on the Contractor, or limit or prohibit Manitoba from providing itself, or using any third party other than the Contractor to provide, the Goods or Services, or both.

6. **Fees:**

- (a) Subject to receipt of written invoices, submitted electronically to nishi.walia@gov.mb.ca, fees will be paid as set out in Schedule A.
- (b) Purchase Order number 4501199778, shall be referenced on the face of each invoice. Taxes payable shall be shown as separate line items on each invoice
- (c) If any funds are provided to the Contractor in advance of the goods/services being provided by the Contractor, such advance funds, or any part thereof, shall not be deemed nor considered earned, in the hands of the Contractor, but shall be considered as a debt due and owing to Manitoba until such time as the Goods/Services are provided in accordance with this Agreement and are therefore not subject to any third party interests whether by security agreement or otherwise. The contractor shall use all advance funds solely for the purposes of providing the Goods/Services for Manitoba, failing which the monies must be immediately repaid.

7. This Agreement may be executed in counterparts, each of which will be deemed to be an original of this Agreement and together will constitute one and the same instrument. Delivery of this Agreement

(including an executed signature page) by any party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

THIS AGREEMENT has been executed on behalf of the Government of Manitoba and the Contractor, by their duly authorized representatives, on the dates noted below.

SIGNED in the presence of:
17(1) & 17(3)(e)

FOR PETAL SC (17(1) & 17(3)(e))

Title: 17(1) & 17(3)(e)
Name: 17(1) & 17(3)(e)
Date: Feb 4th, 2021

17(1) & 17(3)(e)

17(1) & 17(3)(e)

(or designate)
Title: Deputy Minister
Date: Feb 4, 2021

SCHEDULE A – GOODS AND SERVICES AND FEES

A. The Contractor shall provide following services:

- a) Immunization appointments
- b) Weekly reports for the number of appointments booked and reminders

B. The Contractor shall provide following services if required with prior approval from Manitoba

- a) Appointment reminders
- b) Deployment and Support
- c) System requirement document and project management
- d) New feature development upon request by Manitoba, Contractor will provide a quote for approval

Manitoba shall pay a onetime fixed fee of **18(1)(b) & 28(1)** for 2,000,000 appointments.

The maximum fees payable under this agreement will not exceed \$1,653,500.

| Table A - (One-Time Fixed Fee) | | | | | |
|--------------------------------|-----------|--|--------------------------------|--|-----------------------------------|
| Appointments | | | | | |
| Description | Quantity | | Cost per appointment | | Cost |
| Appointments | 2,000,000 | | \$ 18(1)(b) & 28(1) | | \$ 18(1)(b) & 28(1)(b) |
| Subtotal – Table A | | | | | \$ 18(1)(b) & 28(1)(b) |

| Table B - (Estimate for Other Services) on as and when required basis with Manitoba's approval | | | | | |
|--|-------------------|------------------------------------|--------------------------------|--------------------------------|-----------------------------------|
| a) Appointments and Reminders, if required | | | | | |
| Description | Quantity | Number of reminder per appointment | Cost per appointment | Cost per reminder | Cost |
| Additional Appointments, if required | 800,000 | | \$ 18(1)(b) & 28(1) | | \$ 18(1)(b) & 28(1)(b) |
| Reminders, if required | 2,800,000 | 2 | | \$ 18(1)(b) | \$ 18(1)(b) & 28(1)(b) |
| Subtotal – a) Appointments and Reminders, if required | | | | | \$ 18(1)(b) & 28(1)(b) |
| b) Deployment & Support, if required | | | | | |
| Description | Quantity | Hours / week | Number of weeks | Hourly rate | Estimated Cost |
| | First 3 months | 20 | 13 | \$ 18(1)(b) & 28(1) | \$ 18(1)(b) & 28(1) |
| | 3rd to 6th month | 15 | 13 | \$ 28(1) | \$ (b) |
| | 6th to 12th month | 10 | 26 | \$ (b) | \$ (b) |
| Subtotal – b) Deployment & Support, if required | | | | | \$ (b) |
| c) System requirement document and project management, if required | | | | | |
| | | Estimated number of hours | | Hourly rate | |
| | | 250 | | \$ 18(1)(b) & 28(1) | \$ 18(1)(b) & 28(1) |
| Subtotal- c) System requirement document and project management, if required | | | | | \$ 18(1)(b) & 28(1) |

| | | |
|---|----|---------------------|
| d) New feature development (Upon request, PetalMD will provide a quote for approval) | | |
| Subtotal – d) New feature development This amount will allow for some medium-size features | \$ | 18(1)(b) & 28(1)(b) |
| Subtotal of a, b, c and d | \$ | |

| | | |
|--|----|--|
| Summary | | |
| Table A - (One-Time Fixed Fee) | \$ | |
| Table B - (Estimate for Other Services) on as and when required basis with Manitoba's approval | \$ | |
| Max Total Contract Value (subtotal A+B) | \$ | |

SCHEDULE B – TERMS AND CONDITIONS

1. DEFINITIONS

- (a) **“Business Day”** means Monday through Friday, excluding statutory holidays in the Province of Manitoba, between the hours of 8:30 a.m. and 4:30 p.m. (Winnipeg Time)
- (b) **“Confidential Material”** means all information, data, documents and materials acquired by one party, or to which access has been given to one party in the course of, or incidental to, this Agreement and includes Personal Information but excludes information, data, documents and materials if they:
 - (i) were in the public domain or known to the receiving party prior to the time of disclosure, or become publicly available other than through a breach of this Agreement; or
 - (ii) become known to the receiving party from a source other than the disclosing party without breach of any duty of confidentiality; or
 - (iii) are approved, in writing, for disclosure without restriction by the disclosing party; or
 - (iv) are developed independently by the receiving party without reference to the Confidential Material of the disclosing party and without a breach of any duty of confidentiality.
- (c) **“Delivered Duty Paid”** means that the Contractor delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport, and ready for unloading at the specified delivery location(s).
- (d) **“Key Personnel”** means Contractor’s key personnel and employees, and key personnel and employees of the Contractor’s approved subcontractors, identified in Schedule A, or as subsequently approved in writing by Manitoba, who will directly or indirectly provide the Services and/or Goods under the Agreement.
- (e) **“Goods”** means the goods, equipment and peripherals including all required labour, material, plant and equipment, described in Schedule A.
- (f) **“Personal Information”** has the meaning given to that term in Exhibit 1 to Schedule B.
- (g) **“Project Material”** means information, documents and materials discovered or produced by the Contractor, or any of its Representatives, in the performance of, or incidental to the performance of this Agreement.
- (h) **“Representatives”** means the directors, officers, officeholders, employees, consultants, business partners, agents and subcontractors of a party and any other party for whom that party is responsible at law. In the case of the Contractor, “Representatives” includes Key Personnel.
- (i) **“Services”** means the work and tasks set out in Schedule A, which will be delivered by the Contractor in accordance with this Agreement.

2. INTERPRETATION

2.1 Unless otherwise specified in this Agreement,:

- (a) any and all agreements, approvals or consents of a party required must be in writing and will not be unreasonably withheld or delayed;

- (b) words denoting inclusiveness (such as "including" or "includes") are not limited by their context or the words or phrases which precede or succeed them;
 - (c) discretions, options, elections or other similar words used with respect to a party, are deemed to mean such party's sole and absolute discretion, option, election or other such similar act;
 - (d) references to currency in this Agreement and all invoices and payments will be in Canadian dollars; and
 - (e) references to statutes include all regulations made under that statute as existing from replaced from time to time.
- 2.2 No provision of this Agreement shall be interpreted against any party merely because that party or its legal representative drafted the provision.

3. SERVICES TO BE PROVIDED

- 3.1 The Contractor agrees to provide the Goods and Services in accordance with the terms and conditions of the Agreement.

4. REPRESENTATIONS AND WARRANTIES AND PERFORMANCE OF CONTRACTOR'S OBLIGATIONS

- 4.1 The Contractor represents and warrants that

- a) the Contractor possesses the necessary personnel, skills, expertise and experience to provide the Services and Goods in accordance with the provisions of this Agreement.
- b) it has all necessary rights to use any software or systems to perform the Services and provide the Goods under this Agreement;
- c) to the best of its knowledge, the development, delivery or use of the Goods or Services, or both, will not infringe or cause the infringement of any intellectual property of any third party

The Contractor acknowledges that Manitoba has entered into this Agreement relying on these representations and warranties.

- 4.2 The Contractor agrees:

- (a) that the Services shall be provided by the Key Personnel, unless Manitoba agrees otherwise in writing;
- (b) that the Key Personnel shall devote the time, attention, abilities and expertise necessary to properly perform the Contractor's obligations under this Agreement;
- (c) all obligations will be performed and the Services or Goods, or both, provided in a professional manner; and
- (d) to comply with and to provide the Services or Goods, or both, in accordance with all applicable laws and regulatory requirements, whether federal, provincial or municipal.

5. FEES

- 5.1 Those amounts invoiced and approved that have not been paid by Manitoba within sixty (60) days after approval shall bear interest in accordance with the provisions of the Government of Manitoba's Financial Administration Manual issued under the authority of *The Financial Administration Act* from the 61st day after the date of approval until payment is made. Relevant excerpts of the Financial Administration Manual will be provided to the Contractor on request.
- 5.2 Manitoba certifies that the Services and Goods being provided pursuant to this Agreement are being purchased with Crown funds for the benefit of the Government of Manitoba and are therefore are not subject to the payment of the federal goods and services tax ("GST"). Manitoba's GST number is R107863847. The Contractor must not include GST in any invoice provided or claim for payment made under this Agreement.
- 5.3 Notwithstanding any other provision of this Agreement, the payment of Fees by Manitoba is conditional upon:
- (a) there being an appropriation of funds available from the Legislature of the Province of Manitoba for payments by Manitoba in the fiscal year in which they are required to be paid by Manitoba (for the purpose of this clause, fiscal year means April 1 of one year to March 31 of the next year); and
 - (b) the Contractor complying with its obligations under this Agreement.
- 5.4 If Manitoba is obligated by law or international treaties or conventions to withhold or deduct taxes from any payment of Fees to the Contractor, Manitoba shall remit such withheld amounts as required by the *Income Tax Act* (Canada) or under the terms of any other law or international treaty or convention to which Manitoba is subject, and shall furnish to the Contractor official receipts evidencing Manitoba's payment of such taxes.

6. CONFIDENTIALITY, SECURITY AND PERSONAL INFORMATION

- 6.1 While this Agreement is in effect and at all times thereafter, the Contractor and Manitoba and their respective Representatives who receive Confidential Material from the other party shall treat that Confidential Material as confidential, with the same degree of care as the receiving party uses to protect its own Confidential Information, but no less than with a reasonable degree of care.
- 6.2 The receiving party shall promptly notify the disclosing party in writing of any unauthorized access, use, dissemination or publication of Confidential Material of which it becomes aware.
- 6.3 Upon prior written notice to the disclosing party, the receiving party may disclose the disclosing party's Confidential Material:
- (a) as required by law or regulation to be disclosed or as required by order of a court or other governmental body, but only to the extent and solely for the purpose of such required disclosure; and
 - (b) in Manitoba's case, as required to enable Manitoba to satisfy its obligations under the terms of any trade agreements, international treaties or conventions to which it is subject.

The receiving party will assist the disclosing party (at the disclosing party's expense) in all proper ways to limit or prevent the disclosure of such Confidential Material.

- 6.4 Disclosure of any Confidential Material pursuant to subsection 6.3 will not be deemed to render it non-confidential and the receiving party's obligations with respect to such Confidential Material shall not be changed or lessened by virtue of any such disclosure.
- 6.5 Subject to subsection 6.6, the receiving party will promptly return or destroy (at the disclosing party's election) all Confidential Material acquired by the receiving party or any of its Representatives.
- 6.6 Confidential Material, provided by Contractor to Manitoba that is legislatively classified or defined as "government records" will be returned or destroyed by Manitoba in accordance with the applicable legislation.
- 6.7 The Contractor will not make or issue any public communications or respond to media inquiries related to the Services, Goods or this Agreement without Manitoba's prior written approval.
- 6.8 While using Manitoba's facilities, the Contractor and its Representatives must comply with all security requirements of Manitoba communicated by Manitoba to the Contractor.
- 6.9 Where the Contractor will have access to any Personal Information, it shall comply with requirements respecting the collection, use, disclosure and destruction of Personal Information as set out in *The Freedom of Information and Protection of Privacy Act* (Manitoba) and *The Personal Health Information Act* (Manitoba), including the requirements set out in Exhibit 1 to this Schedule.

7. LIABILITY AND INDEMNIFICATION

- 7.1 Except to the extent caused or contributed to by Manitoba, the Contractor shall indemnify and hold harmless and defend Manitoba in respect of third party claims made against Manitoba for any injury to persons (including death), damage or loss to property or infringement of rights caused by the negligence or willful acts or omissions of the Contractor or its Representatives, or breach of this Agreement by the Contractor or its Representatives. Notwithstanding anything in this Agreement to the contrary, the third party claims in this subsection 7.1 are not subject to any financial limits.
- 7.2 With respect to any third party claim arising under subsection 7.1:
- (a) Manitoba will promptly inform the Contractor, in writing, of any such claim or demand and allow the Contractor, at the Contractor's cost, to control the defence and any related settlement negotiations. The Contractor may proceed to settle any claim without Manitoba's consent if such settlement does not require any out of pocket payments by Manitoba does not require admission of liability by Manitoba.
 - (b) A failure to promptly notify the Contractor of any claim will only affect the Contractor's obligations under subsection 7.1 to the extent that Manitoba's failure materially prejudices the Contractor's ability to defend the claim or demand.
- 7.3 The Contractor's total cumulative liability for all direct claims, damages, losses or costs sustained or suffered by Manitoba shall be limited to the greater of 18(1)(b) or the Fees payable under this Agreement.
- 7.4 Neither party have any liability at any time for any indirect, special, or consequential damages, even if advised of the possibility of such damages.
- 7.5 The limitations set out in subsections 7.3 and 7.4 shall not apply to any liability or claim resulting from any criminal, fraudulent act or omission, or willful misconduct on the part of the Contractor or its Representatives.

8. INSURANCE

8.1 The Contractor will obtain and maintain, at its cost, throughout the Term:

- (a) commercial general liability insurance against claims for personal injury and death and damage to property in the amount of 18(1)(b) per occurrence which shall name Manitoba, its Ministers, its officers, employees and agents as Additional Insureds; and
- (b) if providing professional services, errors and omissions insurance for negligent acts, errors or omissions of the Contractor and its Representatives, in the amount of 18(1)(b) per occurrence or claim, which shall be purchased and maintained during the Term and for a minimum of twelve (12) months after the end of this Agreement (or alternatively, the Contractor will purchase and maintain extended claims reporting coverage for that twelve (12) month period).
- (c) Cyber-liability Insurance

The Contractor must obtain and maintain first and third-party cyber-liability insurance in the minimum amount of 18(1)(b) to provide coverage and indemnification against all liability, damages and costs associated with security or privacy breaches, expenses related to regulatory compliance and the costs associate with restoring data.

8.2 The Contractor will provide no less than thirty (30) days' prior written notice to Manitoba in the event of cancellation.

8.3 Each required insurance policy shall be underwritten by insurers licensed in Canada and be reputable and financially creditworthy insurers with an A.M. Best financial strength rating of "A-" or higher, or equivalent rating by an alternate insurance credit rating agency.

8.4 The Contractor shall ensure that all employees or subcontractors providing the Services or Goods, or both, are covered by workers' compensation insurance where such coverage is required by law.

8.5 Within a reasonable period of time after the start of the Term, the Contractor shall provide Manitoba with a Certificate of Insurance evidencing the insurance required in this Section. Thereafter during the Term, the Contractor will provide Manitoba with certificates of renewals upon request.

9. FORCE MAJEURE

9.1 In this Section:

- (a) **"Affected Party"** means a party prevented from performing its obligations in accordance with this Agreement by Force Majeure Event;
- (b) **"Force Majeure Event"** means one of the following unforeseen events:
 - (i) a natural disaster, fire, flood, storm, disease epidemic or power failure;
 - (ii) a war (declared and undeclared), insurrection or act of terrorism or piracy; or
 - (iii) a freight embargo;

if the event prevents a party from performing the party's obligations in accordance with this Agreement and is beyond the reasonable control of that party. A Force Majeure Event does not include an event that merely renders fulfillment of a party's obligation under this Agreement more difficult such as financial hardship, or changes in market conditions.

- 9.2 An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party's obligations under this Agreement resulting from Force Majeure Event and any time periods for the performance of such obligations are automatically extended for the duration of the Force Majeure Event provided that the Affected Party complies with the requirements of subsection 9.3. For clarity, the occurrence of a Force Majeure Event shall not release the Affected Party from its obligations under the Agreement, but shall merely suspend the performance of any obligation so prevented during the continuance of the Force Majeure Event.
- 9.3 An Affected Party must promptly notify the other party in writing upon the occurrence of the Force Majeure Event and make all reasonable efforts to prevent, control or limit the effect of the Force Majeure Event, including activating its business continuity plans (as applicable), so as to resume compliance with the Affected Party's obligations under this Agreement as soon as possible.
- 9.4 If the Contractor is the Affected Party, it will continue to regularly provide communication to Manitoba no less than daily, during the continuance of the Force Majeure Event.
- 9.5 Whenever an Event of Force Majeure causes the Contractor to allocate limited resources to provide services and/or Goods between or among its customers, the Contractor will exercise best efforts to provide Manitoba priority allocation of such resources, Services and Goods.
- 9.6 Notwithstanding anything to the contrary in this Section, in the event the Contractor's performance under this Agreement is delayed for a period of five (5) consecutive Business Days or more, Manitoba may terminate this Agreement immediately upon notice to the Contractor. Manitoba will consult with the Contractor to discuss the Contractor's circumstances, concerns and potential work-arounds before exercising this right of termination.

10. TERMINATION

- 10.1 Manitoba may at any time terminate this Agreement for convenience on ten (10) days' notice in writing to the Contractor.
- 10.2 Without restricting any other remedies available:
- (a) either party may immediately terminate this Agreement with written notice if the other party has failed to comply with any material term or condition of this Agreement, and has failed to remedy the failure within five (5) Business Days following the receipt of the written notice of default; and
 - (b) Manitoba may immediately terminate this Agreement with written notice if the Contractor is dissolved or becomes bankrupt or insolvent.
- 10.3 Upon the Contractor's receipt of the notice of termination, the Contractor must cease to perform any further work and will only undertake such wind down activities as are authorized by Manitoba in writing. Manitoba will be under no obligation to the Contractor other than to pay, upon receipt of an invoice and supporting documentation, such compensation as the Contractor may be entitled to receive under this Agreement for work completed in satisfaction of this Agreement up to the date of termination.

11. OWNERSHIP OF INFORMATION AND EQUIPMENT

- 11.1 All Project Material and all intellectual property rights in the Project Material (including all copyright, patent, trade mark rights) will be the exclusive property of Manitoba, and will be delivered or assigned without cost to Manitoba upon request or when the Agreement is terminated or expires.
- 11.2 The Contractor retains all intellectual property rights in its methodologies, processes, techniques, ideas, concepts and trade secrets existing immediately prior to the start of the Term ("**Pre-Existing Material**").

- 11.3 The Contractor grants to Manitoba a perpetual, irrevocable, non-exclusive, world-wide, royalty free licence to use, reproduce, display, publish and distribute internally and externally the Pre-Existing Materials but only as part of the Project Material. This license includes the right of Manitoba to permit third parties to use the Pre-Existing Materials on condition that:
- (a) the Contractor's copyright notices are clearly identified with the Pre-Existing Materials;
 - (b) the third parties are obligated to use the Pre-Existing Materials solely for providing services and/or goods to or on behalf of Manitoba; and
 - (c) the third parties are obligated to maintain the Pre-Existing Materials in confidence.
- 11.4 The Contractor waives, and shall have each of its Representatives waive, all of their respective moral rights under the *Copyright Act* (Canada) in the Project Materials in favour of Manitoba, and the Contractor shall execute, or cause to be executed, any additional documents as may be required to evidence these waivers.
- 11.5 Any equipment, materials, and supplies provided by Manitoba to the Contractor for use in the performance of this Agreement will remain the property of Manitoba and will be returned without cost to Manitoba upon request.

12. NOTICES

- 12.1 Any notice under this Agreement must be in writing and will be sufficiently given if delivered or sent by courier or email or facsimile to the parties' addresses noted on the first page.
- 12.2 If courier or delivery service is disrupted by labour controversy, notice shall be delivered or sent by email or facsimile transmission.
- 12.3 The date of receipt of any such notice shall be deemed to be the date of delivery, electronic mail or facsimile of such notice if served personally, sent by electronic mail or couriered on a Business Day or if delivered, sent by electronic mail or couriered outside of the Business Day, then the next Business Day.

13. NO ASSIGNMENT/SUBCONTRACTING

- 13.1 The Contractor shall not assign or transfer this Agreement or subcontract any of its rights or obligations under this Agreement without Manitoba's prior written consent.
- 13.2 No assignment or transfer or subcontracting of any part of this Agreement will relieve the Contractor from any obligations under this Agreement, except to the extent that they are properly performed by Contractor's authorized or permitted assignees, transferees or subcontractors.
- 13.3 This Agreement will be binding upon the successors and any permitted assigns of the Contractor.

14. GENERAL

- 14.1 The Contractor is an independent contractor, and this Agreement does not create the relationship of employer and employee, or of principal and agent, between Manitoba and the Contractor or between Manitoba and any Representatives of the Contractor. The Contractor shall be responsible for any deductions or remittances, which may be required by law.
- 14.2 Time shall be of the essence of the Agreement. No change to this Agreement shall be valid unless in writing and signed by both parties. This Agreement shall be governed by the laws of the Province of

Manitoba (without reference to conflict of laws principles) and the courts of the Province of Manitoba will have exclusive jurisdiction to hear all matters related to this Agreement. This Agreement constitutes the entire agreement between the parties. There shall be no undertakings, representations or promises, express or implied, other than those contained in the Agreement.

- 14.3 Those sections that by their very nature are intended to survive the termination or expiration of this Agreement shall survive the expiration or termination of this Agreement, including:
- (a) Section 6 – Confidentiality, Security and Personal Information
 - (b) Section 7 – Liability
 - (c) Section 8 – Insurance
 - (d) Section 11 – Ownership of Information and Equipment
 - (e) subsection 10.3 – effect of termination
 - (f) subsection 14.1 – Manitoba laws and courts
 - (g) subsection 14.3 – survival.
- 14.4 If any provision of the Agreement is for any reason invalid, that provision shall be considered separate and severable from the Agreement, and the other provisions of the Agreement shall remain in force and continue to be binding upon the parties.
- 14.5 No provision of this Agreement shall be deemed waived and no breach or omission excused, unless the waiver is in writing and signed by the party granting the waiver. A waiver of a term or condition of this Agreement in any regard shall not constitute a waiver or breach of any different or subsequent breach or omission.

Exhibit 1 – Protection of Personal Information

Definition of Personal Information

- 1.01 In this Exhibit and in this Agreement, “Personal Information” has the meaning given to that term in *The Freedom of Information and Protection of Privacy Act* of Manitoba (C.C.S.M. c. F175), and includes:
- (a) personal information about an identifiable individual which is recorded in any manner, form or medium; and
 - (b) personal health information about an identifiable individual as defined in *The Personal Health Information Act* of Manitoba (C.C.S.M. c. P33.5).

These statutory definitions are attached at the end of this Exhibit.

1.02 The requirements and obligations in this Exhibit:

- (a) apply to all Personal Information received, collected or otherwise acquired by the Contractor in the course of carrying out its obligations under this Agreement, in whatever manner, form or medium;
- (b) apply whether the Personal Information was received, collected or acquired before or after the commencement of this Agreement; and
- (c) continue to apply after the termination or expiration of this Agreement.

Collection of Personal Information by the Contractor

- 1.03 The Contractor recognizes that, in the course of carrying out its obligations under this Agreement, the Contractor may receive Personal Information from Manitoba and may collect, acquire, be given access to and may otherwise come into possession of Personal Information about individuals.
- 1.04 Where the Contractor receives, collects, acquires, is given access to or otherwise comes into possession of Personal Information, the Contractor shall collect only as much Personal Information about an individual as is reasonably necessary to carry out the Contractor’s obligations under this Agreement.
- 1.05 Where the Contractor collects or acquires Personal Information directly from the individual it is about, the Contractor shall ensure that the individual is informed of:
- (a) the purpose for which the Personal Information is collected;
 - (b) how the information is to be used and disclosed;
 - (c) who in the Contractor’s organization can answer questions the individual may have about his or her Personal Information; and
 - (d) his or her right of access to the information, as set out in the Contractor’s policies under subsection 1.06 of this Exhibit.

Access to Personal Information by the individual it is about

- 1.06 The Contractor shall establish a written policy, acceptable to Manitoba, providing individuals whose Personal Information is received, collected or acquired by the Contractor under this Agreement with:

- (a) a right to examine Personal Information about themselves which is maintained by the Contractor, subject only to specific and limited exceptions; and
- (b) a right to request corrections to this Personal Information.

Restrictions respecting use of Personal Information by the Contractor

1.07

- (a) The Contractor shall keep the Personal Information in strict confidence and shall use the Personal Information only for the purpose of properly carrying out the Contractor's obligations under this Agreement and not for any other purpose.
- (b) The Personal Information shall be used solely by Contractor personally, or (where the Contractor is a corporation, business, organization or other entity) by the officers and employees of the Contractor, except as otherwise specifically permitted by Manitoba in writing.
- (c) The Contractor shall:
 - (i) limit access to and use of the Personal Information to those of the Contractor's officers and employees who need to know the information to carry out the obligations of the Contractor under this Agreement,
 - (ii) ensure that every use of and access to the Personal Information by the Contractor and by the authorized officers and employees of the Contractor is limited to the minimum amount necessary to carry out the obligations of the Contractor under this Agreement,
 - (iii) ensure that each officer and employee of the Contractor who has access to the Personal Information is aware of and complies with the requirements, obligations and fair information practices in this Exhibit, and
 - (iv) ensure that each officer and employee who has access to the Personal Information signs a pledge of confidentiality, satisfactory in form and content to Manitoba, that includes an acknowledgement that he or she is bound by the requirements, obligations and fair information practices in this Exhibit and by the Contractor's security policies and procedures and is aware of the consequences of breaching any of them.

1.08 The Contractor shall ensure that:

- (a) no person can make unauthorized copies of the Personal Information;
- (b) no person shall disclose the Personal Information except as authorized under subsection 1.10 of this Exhibit; and
- (c) no person can modify or alter the Personal Information in a manner which is not authorized.

1.09 The Contractor shall not link or match the Personal Information with any other Personal Information, except where necessary to carry out the obligations of the Contractor under this Agreement.

Restrictions respecting disclosure of Personal Information by the Contractor

1.10 The Contractor shall not give access to, reveal, disclose or publish, and shall not permit anyone to give access to, reveal, disclose or publish, the Personal Information to any person, corporation, business, organization or entity outside the Contractor's organization, except as follows:

- (a) to Manitoba, and to Manitoba's officers, employees and agents, for the purposes of this Agreement;
- (b) to the individual the Personal Information is about, upon satisfactory proof of identity;
- (c) to any person, corporation, business, organization or entity with the voluntary, informed consent of the individual the information is about;
- (d) where the individual the information is about is a child under the age of 18 years, to the custodial parent or parents or to the legal guardian of the child, upon satisfactory proof of identity and authority, provided that the Contractor is of the opinion the disclosure would not be an unreasonable invasion of the child's privacy;
- (e) where disclosure is required or authorized by legislation;
- (f) where disclosure is required by an order of a court, person or body with jurisdiction to compel production of the Personal Information or disclosure is required to comply with a rule of court that relates to the production of the Personal Information; or
- (g) where disclosure is necessary to prevent or lessen a serious and immediate threat to the health or safety of the individual the information is about or of any other individual or individuals.

1.11 Without limiting subsection 1.10 of this Agreement, the Contractor shall not:

- (a) sell or disclose the Personal Information, or any part of the Personal Information, for consideration; or
- (b) exchange the Personal Information for any goods, services or benefit; or
- (c) give the Personal Information to any individual, corporation, business, agency, organization or entity for any purpose, including (but not limited to) solicitation for charitable or other purposes;

and shall not permit any of these activities to take place.

Protection of the Personal Information by the Contractor

1.12 The Contractor shall protect the Personal Information by putting in place reasonable security arrangements, including administrative, technical and physical safeguards, that ensure the confidentiality and security of the Personal Information and protect the Personal Information against such risks as use, access, disclosure or destruction which are not authorized under this Exhibit. These security arrangements shall take into account the sensitivity of the Personal Information and the medium in which the information is stored, handled, transmitted or transferred.

- 1.13 Without limiting subsection 1.12 of this Exhibit:
- (a) where Personal Information is in paper form, on diskette or other removable media, the Contractor shall ensure that:
 - (i) the paper records, diskettes and removable media used to record the Personal Information are kept in a physically secure area and are subject to appropriate safeguards,
 - (ii) the Personal Information is accessible only to those of the Contractor's officers and employees who need to know the Personal Information to carry out the obligations of the Contractor under this Agreement, and
 - (iii) the paper records, diskettes and removable media used to record the Personal Information are stored securely when not in use;
 - (b) where Personal Information is stored in electronic format, the Contractor shall:
 - (i) ensure that the computer system or computer network on which the Personal Information is stored is secure and is accessible only to officers and employees of the Contractor who need to know the Personal Information to carry out the obligations of the Contractor under this Agreement,
 - (ii) ensure that the Personal Information is protected by a series of passwords to prevent unauthorized access, and
 - (iii) limit access to and use of these passwords to those of the Contractor's officers and employees who need to know the Personal Information to carry out the obligations of the Contractor under this Agreement.
- 1.14 When disposing of any paper records and media containing a record of the Personal Information, the Contractor shall destroy the paper records or erase or destroy any Personal Information contained on the media in a manner which adequately protects the confidentiality of the Personal Information.
- 1.15 The Contractor shall establish and comply with written policies and procedures respecting the use of, access to, disclosure, protection and destruction of the Personal Information which shall be consistent with and reflect the requirements of this Exhibit. These security policies and procedures shall include:
- (a) provisions for identifying and recording security breaches and attempted security breaches; and
 - (b) corrective procedures to address security breaches.
- 1.16 The Contractor shall, immediately upon becoming aware of any of the following, notify Manitoba in writing of any use of, access to, disclosure or destruction of Personal Information which is not authorized by this Exhibit, with full details of the unauthorized use, access, disclosure or destruction. The Contractor shall immediately take all reasonable steps to prevent the recurrence of any unauthorized use, access, disclosure or destruction of the Personal Information and shall notify Manitoba in writing of the steps taken.
- 1.17 The Contractor shall provide training for its officers and employees about the requirements of this Exhibit and the Contractor's security policies and procedures.

- 1.18 The Contractor shall comply with any regulations made, policies issued and reasonable requirements established by Manitoba respecting the protection, retention or destruction of the Personal Information.

Destruction of Personal Information by the Contractor

- 1.19 After the Personal Information has been used for its authorized purpose, or where destruction of the Personal Information is requested by Manitoba or is required by this Agreement, the Contractor shall destroy the Personal Information (and all copies of the Personal Information in any form or medium) in a manner which adequately protects the confidentiality of the Personal Information.

Inspections by Manitoba

- 1.20 Manitoba and its representatives may carry out such inspections or investigations respecting the Contractor's information practices and security arrangements as Manitoba considers necessary to ensure the Contractor is complying with the terms and conditions of this Exhibit and that the Personal Information is adequately protected. The Contractor shall co-operate in any such inspection or investigation, and shall permit Manitoba and its representatives access, at all reasonable times, to the Contractor's premises and to records and information relating to the Contractor's information practices and security arrangements or to this Exhibit for these purposes.
- 1.21 If an inspection or investigation identifies deficiencies in the Contractor's information practices or security arrangements which expose the Personal Information to risk of unauthorized use, disclosure or destruction, the Contractor shall take reasonable steps to promptly correct the deficiencies to Manitoba's satisfaction.

Destruction of Personal Information on expiration or termination of Agreement

- 1.22 On expiration or termination of this Agreement for any reason, the Contractor shall, unless otherwise directed by Manitoba, destroy the Personal Information (including all copies of the Personal Information in any form or medium) in a manner which adequately protects the confidentiality of the Personal Information.

Statutory definitions of Personal Information and Personal Health Information

1. **"Personal Information"** means recorded information about an identifiable individual, including
- (a) the individual's name,
 - (b) the individual's home address, or home telephone, facsimile or e-mail number,
 - (c) information about the individual's age, sex, sexual orientation, marital or family status,
 - (d) information about the individual's ancestry, race, colour, nationality, or national or ethnic origin,
 - (e) information about the individual's religion or creed, or religious belief, association or activity,
 - (f) Personal Health Information about the individual,
 - (g) the individual's blood type, fingerprints or other hereditary characteristics,
 - (h) information about the individual's political belief, association or activity,
 - (i) information about the individual's education, employment or occupation, or educational, employment or occupational history,
 - (j) information about the individual's source of income or financial circumstances, activities or history,

- (k) information about the individual's criminal history, including regulatory offences,
- (l) the individual's own personal views or opinions, except if they are about another person,
- (m) the views or opinions expressed about the individual by another person, and
- (n) an identifying number, symbol or other particular assigned to the individual.

2. **"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,

and includes

- (d) the PHIN and any other identifying number, symbol or particular assigned to an individual, and
- (e) any identifying information about the individual that is collected in the course of, and is incidental to, the provision of health care or payment for health care.

"health care" means any care, service or procedure

- (a) provided to diagnose, treat or maintain an individual's physical or mental condition,
- (b) provided to prevent disease or injury or promote health, or
- (c) that affects the structure or a function of the body,
and includes the sale or dispensing of a drug, device, equipment or other item pursuant to a prescription.

"PHIN" means the personal health identification number assigned to an individual by the minister to uniquely identify the individual for health care purposes.

This Agreement is between the Government of Manitoba ("Manitoba") Manitoba Central services, Procurement and Supply Chain Division, 6th Floor, 352 Donald St, Winnipeg, MB R3B 2H8 and PetalMD ("Contractor"), PetalMD, [REDACTED] for the purchase of Services and/or Goods dated October 29, 2020.

- Term:** This Agreement starts on the date it is signed by the last party and will continue until April 30, 2021 with an option to extend for 3 months at the discretion of Manitoba, unless terminated earlier or extended in writing by the parties.
- Documents:** This Agreement is comprised of this first page and the following schedules:
 - Schedule A – Goods and Services and Fees;
 - Schedule B – Terms and Conditions.In the event of conflict, the order of priority is this first page, Schedule B, Schedule A.
- Terms and Conditions:** The terms and conditions in Schedule B apply to the purchase of the Goods and Services.
- Goods and Services:** The Contractor will provide the Goods or Services, or both, as described in Schedule A, in accordance with the terms and conditions in this Agreement. Manitoba has no liability with respect to any Goods or Services, or both, provided by the Contractor prior to the start of the Term or provided outside the scope of this Agreement.
- No Exclusivity:** This Agreement does not confer exclusivity on the Contractor, or limit or prohibit Manitoba from providing itself, or using any third party other than the Contractor to provide, the Goods or Services, or both.
- Fees:**
 - Subject to receipt of written invoices, submitted electronically to nishi.walia@gov.mb.ca, fees will be paid as set out in Schedule A.
 - Purchase Order number 4501191744, shall be referenced on the face of each invoice. Taxes payable shall be shown as separate line items on each invoice.
- This Agreement may be executed in counterparts, each of which will be deemed to be an original of this Agreement and together will constitute one and the same instrument. Delivery of this Agreement (including an executed signature page) by any party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

THIS AGREEMENT has been executed on behalf of the Government of Manitoba and the Contractor, by their duly authorized representatives, on the dates noted below.

SIGNED in the presence of:

[REDACTED]
[REDACTED]
WITNESS

FOR PETALMD

[REDACTED]
Title: [REDACTED]
Name: [REDACTED]
Date: October 29, 2020

THE GOVERNMENT OF MANITOBA

[REDACTED]

[REDACTED]
Per: [REDACTED]
Minister [REDACTED] (or designate)
Title: Deputy Minister
Date: Nov 5, 2020

SCHEDULE A – GOODS AND SERVICES AND FEES

PetalMD -Reference: 20201013-181353262

| Service | Qty | Unit Price (\$) | Total (\$) |
|---|-----|---------------------|------------|
| PetalBooking –Standard Online Booking for 6 months | 21 | 18(1)(b) & 28(1)(b) | |
| PetalBooking Deployment –Standard One-time deployment | 21 | | |
| PetalBooking Website Add-On | 1 | | |
| Total | | | |

Initial Contract is for 21 clinic locations. More can be added under the same terms and conditions at the discretion Manitoba.

Basic Elements are as follows:

- 18(1)(b) & 28(1)(b) month per clinic for Software. Deployed via Azure Cloud (SaaS)
- Transaction for communication and appointment confirmations - email, SMS, automated
- Clinic Deployment (one time fee/clinic deployed)
- Website Build
- for ongoing support, training, development if required.

SCHEDULE B – TERMS AND CONDITIONS

1. DEFINITIONS

- (a) **“Business Day”** means Monday through Friday, excluding statutory holidays in the Province of Manitoba, between the hours of 8:30 a.m. and 4:30 p.m. (Winnipeg Time)
- (b) **“Confidential Material”** means all information, data, documents and materials acquired by one party, or to which access has been given to one party in the course of, or incidental to, this Agreement and includes Personal Information but excludes information, data, documents and materials if they:
 - (i) were in the public domain or known to the receiving party prior to the time of disclosure, or become publicly available other than through a breach of this Agreement; or
 - (ii) become known to the receiving party from a source other than the disclosing party without breach of any duty of confidentiality; or
 - (iii) are approved, in writing, for disclosure without restriction by the disclosing party; or
 - (iv) are developed independently by the receiving party without reference to the Confidential Material of the disclosing party and without a breach of any duty of confidentiality.
- (c) **“Delivered Duty Paid”** means that the Contractor delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport, and ready for unloading at the specified delivery location(s).
- (d) **“Key Personnel”** means Contractor's key personnel and employees, and key personnel and employees of the Contractor's approved subcontractors, identified in Schedule A, or as subsequently approved in writing by Manitoba, who will directly or indirectly provide the Services and/or Goods under the Agreement.
- (e) **“Goods”** means the goods, equipment and peripherals including all required labour, material, plant and equipment, described in Schedule A.
- (f) **“Personal Information”** has the meaning given to that term in Exhibit 1 to Schedule B.
- (g) **“Project Material”** means information, documents and materials discovered or produced by the Contractor, or any of its Representatives, in the performance of, or incidental to the performance of this Agreement.
- (h) **“Representatives”** means the directors, officers, officeholders, employees, consultants, business partners, agents and subcontractors of a party and any other party for whom that party is responsible at law. In the case of the Contractor, “Representatives” includes Key Personnel.
- (i) **“Services”** means the work and tasks set out in Schedule A, which will be delivered by the Contractor in accordance with this Agreement.

2. INTERPRETATION

2.1 Unless otherwise specified in this Agreement,:

- (a) any and all agreements, approvals or consents of a party required must be in writing and will not be unreasonably withheld or delayed;
- (b) words denoting inclusiveness (such as "including" or "includes") are not limited by their context or the words or phrases which precede or succeed them;

- (c) discretions, options, elections or other similar words used with respect to a party, are deemed to mean such party's sole and absolute discretion, option, election or other such similar act;
- (d) references to currency in this Agreement and all invoices and payments will be in Canadian dollars; and
- (e) references to statutes include all regulations made under that statute as existing from replaced from time to time.

2.2 No provision of this Agreement shall be interpreted against any party merely because that party or its legal representative drafted the provision.

3. DELIVERY OF SERVICES

3.1 The Contractor shall be responsible for delivery of services within the delivery times specified in this Agreement, unless otherwise agreed to by Manitoba, in writing.

4. REPRESENTATIONS AND WARRANTIES AND PERFORMANCE OF CONTRACTOR'S OBLIGATIONS

4.1 The Contractor represents and warrants that the Contractor possesses the necessary personnel, skills, expertise and experience to provide the Services and Goods in accordance with the provisions of this Agreement. The Contractor acknowledges that Manitoba has entered into this Agreement relying on these representations and warranties.

4.2 The Contractor agrees:

- (a) that the Services shall be provided by the Key Personnel, unless Manitoba agrees otherwise in writing;
- (b) that the Key Personnel shall devote the time, attention, abilities and expertise necessary to properly perform the Contractor's obligations under this Agreement;
- (c) all obligations will be performed and the Services or Goods, or both, provided in a professional manner; and
- (d) to comply with and to provide the Services or Goods, or both, in accordance with all applicable laws and regulatory requirements, whether federal, provincial or municipal.

5. FEES

5.1 Those amounts invoiced and approved that have not been paid by Manitoba within sixty (60) days after approval shall bear interest in accordance with the provisions of the Government of Manitoba's Financial Administration Manual issued under the authority of *The Financial Administration Act* from the 61st day after the date of approval until payment is made. Relevant excerpts of the Financial Administration Manual will be provided to the Contractor on request.

5.2 Manitoba certifies that the Services and Goods being provided pursuant to this Agreement are being purchased with Crown funds for the benefit of the Government of Manitoba and are therefore are not subject to the payment of the federal goods and services tax ("GST"). Manitoba's GST number is R107863847. The Contractor must not include GST in any invoice provided or claim for payment made under this Agreement.

5.3 Notwithstanding any other provision of this Agreement, the payment of fees by Manitoba is conditional upon:

- (a) there being an appropriation of funds available from the Legislature of the Province of Manitoba for payments by Manitoba in the fiscal year in which they are required to be paid by Manitoba (for the purpose of this clause, fiscal year means April 1 of one year to March 31 of the next year); and
- (b) the Contractor complying with its obligations under this Agreement.

5.4 If Manitoba is obligated by law or international treaties or conventions to withhold or deduct taxes from any payment of fees to the Contractor, Manitoba shall remit such withheld amounts as required by the *Income Tax Act* (Canada) or under the terms of any other law or international treaty or convention to which Manitoba is subject, and shall furnish to the Contractor official receipts evidencing Manitoba's payment of such taxes.

6. CONFIDENTIALITY, SECURITY AND PERSONAL INFORMATION

6.1 While this Agreement is in effect and at all times thereafter, the Contractor and Manitoba and their respective Representatives who receive Confidential Material from the other party shall treat that Confidential Material as confidential, with the same degree of care as the receiving party uses to protect its own Confidential Information, but no less than with a reasonable degree of care.

6.2 The receiving party shall promptly notify the disclosing party in writing of any unauthorized access, use, dissemination or publication of Confidential Material of which it becomes aware.

6.3 Upon prior written notice to the disclosing party, the receiving party may disclose the disclosing party's Confidential Material:

- (a) as required by law or regulation to be disclosed or as required by order of a court or other governmental body, but only to the extent and solely for the purpose of such required disclosure; and
- (b) in Manitoba's case, as required to enable Manitoba to satisfy its obligations under the terms of any trade agreements, international treaties or conventions to which it is subject.

The receiving party will assist the disclosing party (at the disclosing party's expense) in all proper ways to limit or prevent the disclosure of such Confidential Material.

6.4 Disclosure of any Confidential Material pursuant to subsection 6.3 will not be deemed to render it non-confidential and the receiving party's obligations with respect to such Confidential Material shall not be changed or lessened by virtue of any such disclosure.

6.5 Subject to subsection 6.6, the receiving party will promptly return or destroy (at the disclosing party's election) all Confidential Material acquired by the receiving party or any of its Representatives.

6.6 Confidential Material, provided by Contractor to Manitoba that is legislatively classified or defined as "government records" will be returned or destroyed by Manitoba in accordance with the applicable legislation.

6.7 The Contractor will not make or issue any public communications or respond to media inquiries related to the Services, Goods or this Agreement without Manitoba's prior written approval.

6.8 While using Manitoba's facilities, the Contractor and its Representatives must comply with all security requirements of Manitoba communicated by Manitoba to the Contractor.

6.9 Where the Contractor will have access to any Personal Information, it shall comply with requirements respecting the collection, use, disclosure and destruction of Personal Information as set out in *The Freedom of Information and Protection of Privacy Act* (Manitoba) and *The Personal Health Information Act* (Manitoba), including the requirements set out in Exhibit 1 to this Schedule.

7. LIABILITY AND INDEMNIFICATION

7.1 Except to the extent caused or contributed to by Manitoba, the Contractor shall indemnify and hold harmless and defend Manitoba in respect of third party claims made against Manitoba for any injury to persons (including death), damage or loss to property or infringement of rights caused by the negligence or willful acts or omissions of the Contractor or its Representatives, or breach of this Agreement by the Contractor or its Representatives. Notwithstanding anything in this Agreement to the contrary, the third party claims in this subsection 7.1 are not subject to any financial limits.

7.2 With respect to any third party claim arising under subsection 7.1:

- (a) Manitoba will promptly inform the Contractor, in writing, of any such claim or demand and allow the Contractor, at the Contractor's cost, to control the defence and any related settlement negotiations. The Contractor may proceed to settle any claim without Manitoba's consent if such settlement does not require any out of pocket payments by Manitoba does not require admission of liability by Manitoba.
- (b) A failure to promptly notify the Contractor of any claim will only affect the Contractor's obligations under subsection 7.1 to the extent that Manitoba's failure materially prejudices the Contractor's ability to defend the claim or demand.

7.3 The Contractor's total cumulative liability for all direct claims, damages, losses or costs sustained or suffered by Manitoba shall be limited to the greater of 18(1)(b) or the fees payable under this Agreement.

7.4 Neither party have any liability at any time for any indirect, special, or consequential damages, even if advised of the possibility of such damages.

7.5 The limitations set out in subsections 7.3 and 7.4 shall not apply to any liability or claim resulting from any criminal, fraudulent act or omission, or willful misconduct on the part of the Contractor or its Representatives.

8. INSURANCE

8.1 The Contractor will obtain and maintain, at its cost, throughout the Term:

- (a) commercial general liability insurance against claims for personal injury and death and damage to property in the amount of 18(1)(b) per occurrence which shall name Manitoba, its Ministers, its officers, employees and agents as Additional Insureds; and
- (b) if providing professional services, errors and omissions insurance for negligent acts, errors or omissions of the Contractor and its Representatives, in the amount of 18(1)(b) per occurrence or claim, which shall be purchased and maintained during the Term and for a minimum of twelve (12) months after the end of this Agreement (or alternatively, the Contractor will purchase and maintain extended claims reporting coverage for that twelve (12) month period).
- (c) Cyber-liability Insurance

The Service Provider must obtain and maintain first and third-party cyber-liability insurance in the minimum amount of 18(1)(b) to provide coverage and indemnification against all liability, damages and costs associated with security or privacy breaches, expenses related to regulatory compliance and the costs associate with restoring data.

- 8.2 The Contractor will provide no less than thirty (30) days' prior written notice to Manitoba in the event of cancellation.
- 8.3 Each required insurance policy shall be underwritten by insurers licensed in Canada and be reputable and financially creditworthy insurers with an A.M. Best financial strength rating of "A-" or higher, or equivalent rating by an alternate insurance credit rating agency.
- 8.4 The Contractor shall ensure that all employees or subcontractors providing the Services or Goods, or both, are covered by workers' compensation insurance where such coverage is required by law.
- 8.5 Within a reasonable period of time after the start of the Term, the Contractor shall provide Manitoba with a Certificate of Insurance evidencing the insurance required in this Section. Thereafter during the Term, the Contractor will provide Manitoba with certificates of renewals upon request.

9. FORCE MAJEURE

9.1 In this Section:

- (a) **"Affected Party"** means a party prevented from performing its obligations in accordance with this Agreement by Force Majeure Event;
- (b) **"Event of Force Majeure"** means one of the following unforeseen events:
 - (i) a natural disaster, fire, flood, storm, disease epidemic or power failure;
 - (ii) a war (declared and undeclared), insurrection or act of terrorism or piracy; or
 - (iii) a freight embargo;

if the event prevents a party from performing the party's obligations in accordance with this Agreement and is beyond the reasonable control of that party. An Event of Force Majeure does not include an event that merely renders fulfillment of a party's obligation under this Agreement more difficult such as financial hardship, or changes in market conditions.

- 9.2 An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party's obligations under this Agreement resulting from Force Majeure Event and any time periods for the performance of such obligations are automatically extended for the duration of the Force Majeure Event provided that the Affected Party complies with the requirements of subsection 9.3.
- 9.3 An Affected Party must promptly notify the other party in writing upon the occurrence of the Force Majeure Event and make all reasonable efforts to prevent, control or limit the effect of the Force Majeure Event, including activating its business continuity plans (as applicable), so as to resume compliance with the Affected Party's obligations under this Agreement as soon as possible.
- 9.4 If the Contractor is the Affected Party, it will continue to regularly provide communication to Manitoba no less than daily, during the continuance of the Force Majeure Event.
- 9.5 Whenever an Event of Force Majeure causes the Contractor to allocate limited resources to provide services and/or Goods between or among its customers, the Contractor will exercise best efforts to provide Manitoba priority allocation of such resources, Services and Goods.

9.6 Notwithstanding anything to the contrary in this Section, in the event the Contractor's performance under this Agreement is delayed for a period of five (5) consecutive Business Days or more, Manitoba may terminate this Agreement immediately upon notice to the Contractor. Manitoba will consult with the Contractor to discuss the Contractor's circumstances, concerns and potential work-arounds before exercising this right of termination.

10. TERMINATION

10.1 Manitoba may at any time terminate this Agreement for convenience on ten (10) days' notice in writing to the Contractor.

10.2 Without restricting any other remedies available:

- (a) either party may immediately terminate this Agreement with written notice if the other party has failed to comply with any material term or condition of this Agreement, and has failed to remedy the failure within five (5) Business Days following the receipt of the written notice of default; and
- (b) Manitoba may immediately terminate this Agreement with written notice if the Contractor is dissolved or becomes bankrupt or insolvent.

10.3 Upon the Contractor's receipt of the notice of termination, the Contractor must cease to perform any further work and will only undertake such wind down activities as are authorized by Manitoba in writing. Manitoba will be under no obligation to the Contractor other than to pay, upon receipt of an invoice and supporting documentation, such compensation as the Contractor may be entitled to receive under this Agreement for work completed in satisfaction of this Agreement up to the date of termination.

11. OWNERSHIP OF INFORMATION AND EQUIPMENT

11.1 All Project Material and all intellectual property rights in the Project Material (including all copyright, patent, trade mark rights) will be the exclusive property of Manitoba, and will be delivered or assigned without cost to Manitoba upon request or when the Agreement is terminated or expires.

11.2 The Contractor retains all intellectual property rights in its methodologies, processes, techniques, ideas, concepts and trade secrets existing immediately prior to the start of the Term ("**Pre-Existing Material**").

11.3 The Contractor grants to Manitoba a perpetual, irrevocable, non-exclusive, world-wide, royalty free licence to use, reproduce, display, publish and distribute internally and externally the Pre-Existing Materials but only as part of the Project Material. This license includes the right of Manitoba to permit third parties to use the Pre-Existing Materials on condition that:

- (a) the Contractor's copyright notices are clearly identified with the Pre-Existing Materials;
- (b) the third parties are obligated to use the Pre-Existing Materials solely for providing services and/or goods to or on behalf of Manitoba; and
- (c) the third parties are obligated to maintain the Pre-Existing Materials in confidence.

11.4 The Contractor waives, and shall have each of its Representatives waive, all of their respective moral rights under the *Copyright Act* (Canada) in the Project Materials in favour of Manitoba, and the Contractor shall execute, or cause to be executed, any additional documents as may be required to evidence these waivers.

11.5 Any equipment, materials, and supplies provided by Manitoba to the Contractor for use in the performance of this Agreement will remain the property of Manitoba and will be returned without cost to Manitoba upon request.

12. NOTICES

12.1 Any notice under this Agreement must be in writing and will be sufficiently given if delivered or sent by courier or email or facsimile to the parties' addresses noted on the first page.

12.2 If courier or delivery service is disrupted by labour controversy, notice shall be delivered or sent by email or facsimile transmission.

12.3 The date of receipt of any such notice shall be deemed to be the date of delivery, electronic mail or facsimile of such notice if served personally, sent by electronic mail or couriered on a Business Day or if delivered, sent by electronic mail or couriered outside of the Business Day, then the next Business Day.

13. NO ASSIGNMENT/SUBCONTRACTING

13.1 The Contractor shall not assign or transfer this Agreement or subcontract any of its rights or obligations under this Agreement without Manitoba's prior written consent.

13.2 No assignment or transfer or subcontracting of any part of this Agreement will relieve the Contractor from any obligations under this Agreement, except to the extent that they are properly performed by Contractor's authorized or permitted assignees, transferees or subcontractors.

13.3 This Agreement will be binding upon the successors and any permitted assigns of the Contractor.

14. GENERAL

14.1 The Contractor is an independent contractor, and this Agreement does not create the relationship of employer and employee, or of principal and agent, between Manitoba and the Contractor or between Manitoba and any Representatives of the Contractor. The Contractor shall be responsible for any deductions or remittances, which may be required by law.

14.2 Time shall be of the essence of the Agreement. No change to this Agreement shall be valid unless in writing and signed by both parties. This Agreement shall be governed by the laws of the Province of Manitoba (without reference to conflict of laws principles) and the courts of the Province of Manitoba will have exclusive jurisdiction to hear all matters related to this Agreement. This Agreement constitutes the entire agreement between the parties. There shall be no undertakings, representations or promises, express or implied, other than those contained in the Agreement.

14.3 Those sections that by their very nature are intended to survive the termination or expiration of this Agreement shall survive the expiration or termination of this Agreement, including:

- (a) Section 6 – Confidentiality, Security and Personal Information
- (b) Section 7 – Liability
- (c) Section 8 – Insurance
- (d) Section 11 – Ownership of Information and Equipment
- (e) subsection 10.3 – effect of termination
- (f) subsection 14.1 – Manitoba laws and courts
- (g) subsection 14.3 – survival.

- 14.4 If any provision of the Agreement is for any reason invalid, that provision shall be considered separate and severable from the Agreement, and the other provisions of the Agreement shall remain in force and continue to be binding upon the parties.
- 14.5 No provision of this Agreement shall be deemed waived and no breach or omission excused, unless the waiver is in writing and signed by the party granting the waiver. A waiver of a term or condition of this Agreement in any regard shall not constitute a waiver or breach of any different or subsequent breach or omission.

Exhibit 1 – Protection of Personal Information

Definition of Personal Information

- 1.01 In this Exhibit and in this Agreement, “Personal Information” has the meaning given to that term in *The Freedom of Information and Protection of Privacy Act* of Manitoba (C.C.S.M. c. F175), and includes:
- (a) personal information about an identifiable individual which is recorded in any manner, form or medium; and
 - (b) personal health information about an identifiable individual as defined in *The Personal Health Information Act* of Manitoba (C.C.S.M. c. P33.5).

These statutory definitions are attached at the end of this Exhibit.

1.02 The requirements and obligations in this Exhibit:

- (a) apply to all Personal Information received, collected or otherwise acquired by the Contractor in the course of carrying out its obligations under this Agreement, in whatever manner, form or medium;
- (b) apply whether the Personal Information was received, collected or acquired before or after the commencement of this Agreement; and
- (c) continue to apply after the termination or expiration of this Agreement.

Collection of Personal Information by the Contractor

- 1.03 The Contractor recognizes that, in the course of carrying out its obligations under this Agreement, the Contractor may receive Personal Information from Manitoba and may collect, acquire, be given access to and may otherwise come into possession of Personal Information about individuals.
- 1.04 Where the Contractor receives, collects, acquires, is given access to or otherwise comes into possession of Personal Information, the Contractor shall collect only as much Personal Information about an individual as is reasonably necessary to carry out the Contractor's obligations under this Agreement.
- 1.05 Where the Contractor collects or acquires Personal Information directly from the individual it is about, the Contractor shall ensure that the individual is informed of:
- (a) the purpose for which the Personal Information is collected;
 - (b) how the information is to be used and disclosed;
 - (c) who in the Contractor's organization can answer questions the individual may have about his or her Personal Information; and
 - (d) his or her right of access to the information, as set out in the Contractor's policies under subsection 1.06 of this Exhibit.

Access to Personal Information by the individual it is about

- 1.06 The Contractor shall establish a written policy, acceptable to Manitoba, providing individuals whose Personal Information is received, collected or acquired by the Contractor under this Agreement with:

- (a) a right to examine Personal Information about themselves which is maintained by the Contractor, subject only to specific and limited exceptions; and
- (b) a right to request corrections to this Personal Information.

Restrictions respecting use of Personal Information by the Contractor

1.07

- (a) The Contractor shall keep the Personal Information in strict confidence and shall use the Personal Information only for the purpose of properly carrying out the Contractor's obligations under this Agreement and not for any other purpose.
- (b) The Personal Information shall be used solely by Contractor personally, or (where the Contractor is a corporation, business, organization or other entity) by the officers and employees of the Contractor, except as otherwise specifically permitted by Manitoba in writing.
- (c) The Contractor shall:
 - (i) limit access to and use of the Personal Information to those of the Contractor's officers and employees who need to know the information to carry out the obligations of the Contractor under this Agreement,
 - (ii) ensure that every use of and access to the Personal Information by the Contractor and by the authorized officers and employees of the Contractor is limited to the minimum amount necessary to carry out the obligations of the Contractor under this Agreement,
 - (iii) ensure that each officer and employee of the Contractor who has access to the Personal Information is aware of and complies with the requirements, obligations and fair information practices in this Exhibit, and
 - (iv) ensure that each officer and employee who has access to the Personal Information signs a pledge of confidentiality, satisfactory in form and content to Manitoba, that includes an acknowledgement that he or she is bound by the requirements, obligations and fair information practices in this Exhibit and by the Contractor's security policies and procedures and is aware of the consequences of breaching any of them.

1.08 The Contractor shall ensure that:

- (a) no person can make unauthorized copies of the Personal Information;
- (b) no person shall disclose the Personal Information except as authorized under subsection 1.10 of this Exhibit; and
- (c) no person can modify or alter the Personal Information in a manner which is not authorized.

1.09 The Contractor shall not link or match the Personal Information with any other Personal Information, except where necessary to carry out the obligations of the Contractor under this Agreement.

Restrictions respecting disclosure of Personal Information by the Contractor

1.10 The Contractor shall not give access to, reveal, disclose or publish, and shall not permit anyone to give access to, reveal, disclose or publish, the Personal Information to any person, corporation, business, organization or entity outside the Contractor's organization, except as follows:

- (a) to Manitoba, and to Manitoba's officers, employees and agents, for the purposes of this Agreement;
- (b) to the individual the Personal Information is about, upon satisfactory proof of identity;
- (c) to any person, corporation, business, organization or entity with the voluntary, informed consent of the individual the information is about;
- (d) where the individual the information is about is a child under the age of 18 years, to the custodial parent or parents or to the legal guardian of the child, upon satisfactory proof of identity and authority, provided that the Contractor is of the opinion the disclosure would not be an unreasonable invasion of the child's privacy;
- (e) where disclosure is required or authorized by legislation;
- (f) where disclosure is required by an order of a court, person or body with jurisdiction to compel production of the Personal Information or disclosure is required to comply with a rule of court that relates to the production of the Personal Information; or
- (g) where disclosure is necessary to prevent or lessen a serious and immediate threat to the health or safety of the individual the information is about or of any other individual or individuals.

1.11 Without limiting subsection 1.10 of this Agreement, the Contractor shall not:

- (a) sell or disclose the Personal Information, or any part of the Personal Information, for consideration; or
- (b) exchange the Personal Information for any goods, services or benefit; or
- (c) give the Personal Information to any individual, corporation, business, agency, organization or entity for any purpose, including (but not limited to) solicitation for charitable or other purposes;

and shall not permit any of these activities to take place.

Protection of the Personal Information by the Contractor

1.12 The Contractor shall protect the Personal Information by putting in place reasonable security arrangements, including administrative, technical and physical safeguards, that ensure the confidentiality and security of the Personal Information and protect the Personal Information against such risks as use, access, disclosure or destruction which are not authorized under this Exhibit. These security arrangements shall take into account the sensitivity of the Personal Information and the medium in which the information is stored, handled, transmitted or transferred.

- 1.13 Without limiting subsection 1.12 of this Exhibit:
- (a) where Personal Information is in paper form, on diskette or other removable media, the Contractor shall ensure that:
 - (i) the paper records, diskettes and removable media used to record the Personal Information are kept in a physically secure area and are subject to appropriate safeguards,
 - (ii) the Personal Information is accessible only to those of the Contractor's officers and employees who need to know the Personal Information to carry out the obligations of the Contractor under this Agreement, and
 - (iii) the paper records, diskettes and removable media used to record the Personal Information are stored securely when not in use;
 - (b) where Personal Information is stored in electronic format, the Contractor shall:
 - (i) ensure that the computer system or computer network on which the Personal Information is stored is secure and is accessible only to officers and employees of the Contractor who need to know the Personal Information to carry out the obligations of the Contractor under this Agreement,
 - (ii) ensure that the Personal Information is protected by a series of passwords to prevent unauthorized access, and
 - (iii) limit access to and use of these passwords to those of the Contractor's officers and employees who need to know the Personal Information to carry out the obligations of the Contractor under this Agreement.
- 1.14 When disposing of any paper records and media containing a record of the Personal Information, the Contractor shall destroy the paper records or erase or destroy any Personal Information contained on the media in a manner which adequately protects the confidentiality of the Personal Information.
- 1.15 The Contractor shall establish and comply with written policies and procedures respecting the use of, access to, disclosure, protection and destruction of the Personal Information which shall be consistent with and reflect the requirements of this Exhibit. These security policies and procedures shall include:
- (a) provisions for identifying and recording security breaches and attempted security breaches; and
 - (b) corrective procedures to address security breaches.
- 1.16 The Contractor shall, immediately upon becoming aware of any of the following, notify Manitoba in writing of any use of, access to, disclosure or destruction of Personal Information which is not authorized by this Exhibit, with full details of the unauthorized use, access, disclosure or destruction. The Contractor shall immediately take all reasonable steps to prevent the recurrence of any unauthorized use, access, disclosure or destruction of the Personal Information and shall notify Manitoba in writing of the steps taken.
- 1.17 The Contractor shall provide training for its officers and employees about the requirements of this Exhibit and the Contractor's security policies and procedures.

- 1.18 The Contractor shall comply with any regulations made, policies issued and reasonable requirements established by Manitoba respecting the protection, retention or destruction of the Personal Information.

Destruction of Personal Information by the Contractor

- 1.19 After the Personal Information has been used for its authorized purpose, or where destruction of the Personal Information is requested by Manitoba or is required by this Agreement, the Contractor shall destroy the Personal Information (and all copies of the Personal Information in any form or medium) in a manner which adequately protects the confidentiality of the Personal Information.

Inspections by Manitoba

- 1.20 Manitoba and its representatives may carry out such inspections or investigations respecting the Contractor's information practices and security arrangements as Manitoba considers necessary to ensure the Contractor is complying with the terms and conditions of this Exhibit and that the Personal Information is adequately protected. The Contractor shall co-operate in any such inspection or investigation, and shall permit Manitoba and its representatives access, at all reasonable times, to the Contractor's premises and to records and information relating to the Contractor's information practices and security arrangements or to this Exhibit for these purposes.
- 1.21 If an inspection or investigation identifies deficiencies in the Contractor's information practices or security arrangements which expose the Personal Information to risk of unauthorized use, disclosure or destruction, the Contractor shall take reasonable steps to promptly correct the deficiencies to Manitoba's satisfaction.

Destruction of Personal Information on expiration or termination of Agreement

- 1.22 On expiration or termination of this Agreement for any reason, the Contractor shall, unless otherwise directed by Manitoba, destroy the Personal Information (including all copies of the Personal Information in any form or medium) in a manner which adequately protects the confidentiality of the Personal Information.

Statutory definitions of Personal Information and Personal Health Information

1. **"Personal Information"** means recorded information about an identifiable individual, including
- (a) the individual's name,
 - (b) the individual's home address, or home telephone, facsimile or e-mail number,
 - (c) information about the individual's age, sex, sexual orientation, marital or family status,
 - (d) information about the individual's ancestry, race, colour, nationality, or national or ethnic origin,
 - (e) information about the individual's religion or creed, or religious belief, association or activity,
 - (f) Personal Health Information about the individual,
 - (g) the individual's blood type, fingerprints or other hereditary characteristics,
 - (h) information about the individual's political belief, association or activity,
 - (i) information about the individual's education, employment or occupation, or educational, employment or occupational history,
 - (j) information about the individual's source of income or financial circumstances, activities or history,

- (k) information about the individual's criminal history, including regulatory offences,
- (l) the individual's own personal views or opinions, except if they are about another person,
- (m) the views or opinions expressed about the individual by another person, and
- (n) an identifying number, symbol or other particular assigned to the individual.

2. **"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,

and includes

- (d) the PHIN and any other identifying number, symbol or particular assigned to an individual, and
- (e) any identifying information about the individual that is collected in the course of, and is incidental to, the provision of health care or payment for health care.

"health care" means any care, service or procedure

- (a) provided to diagnose, treat or maintain an individual's physical or mental condition,
- (b) provided to prevent disease or injury or promote health, or
- (c) that affects the structure or a function of the body,
and includes the sale or dispensing of a drug, device, equipment or other item pursuant to a prescription.

"PHIN" means the personal health identification number assigned to an individual by the minister to uniquely identify the individual for health care purposes.