



STANDARD TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS

In addition to any terms defined elsewhere in these Standard Terms and Conditions, the following terms have the meanings set forth below:

- (a) **Agreement** means the agreement entered into between TBDSSAB and Vendor, which includes these Standard Terms and Conditions, together with all schedules, Purchase Orders, Bid Document, Bid Submission and other written documents made between TBDSSAB and Vendor.
- (b) **Bid Document** means the request for bids, tender, quotation, proposal or information, as applicable, issued by the TBDSSAB.
- (c) **Bid Submission** means the Vendor's submission in response to the Bid Document.
- (d) **Deliverables** means, collectively, the Products and the Services, as applicable.
- (e) **Effective Date** means the effective date of the Agreement.
- (f) **Intellectual Property** means trade or brand names, business names, trademarks, service marks, copyrights, patents, trade secrets, know-how, inventions, research data, drawings and designs, formulae, processes, technology, and other intellectual, industrial, or proprietary rights, together with all rights under licences and other agreements relating to any of the foregoing or which embody, emulate, or employ any part of the foregoing.
- (g) **Parties** means TBDSSAB and Vendor, and **Party** means either one of them.
- (h) **TBDSSAB** means Thunder Bay District Social Services Administration Board.
- (i) **Vendor** means the party identified as such in the Agreement.
- (j) **Work Product** means all Intellectual Property that arises or is developed, produced, or created in connection with the Agreement, whether independently or jointly by the Parties.

2. RETAINER AND SCOPE

- 2.1 **Products.** If the Deliverables include products, equipment, and any related software, TBDSSAB shall purchase the Products from Vendor, on a non-exclusive basis, and Vendor shall sell the Products to TBDSSAB, on the terms and conditions set out herein, supplemented or amended by any purchase order for Products and/or Services issued by TBDSSAB to Vendor from time to time (each a "**Purchase Order**"). The Parties acknowledge

and agree that these Standard Terms and Conditions apply to all Purchase Orders.

- 2.2 **Services.** If the Deliverables include any services described in the Agreement ("**Services**"), TBDSSAB retains Vendor, on a non-exclusive basis, to provide the Services and Vendor accepts such retainer.
- 2.3 **Purchase Order Required.** Vendor shall not commence delivering Products or performing Services until a Purchase Order is issued by TBDSSAB for such Deliverables.
- 2.4 **No Exclusivity.** TBDSSAB's retainer of Vendor to provide the Deliverables is not exclusive. TBDSSAB shall be entitled to contract with third parties, in its sole discretion, at any time and from time to time, for (a) the supply of any of the Products or similar products, and (b) the performance of any part of the Services or similar services. Vendor shall provide all reasonable cooperation as may be required by such third parties.
- 2.5 **No Minimum Commitment.** By entering into the Agreement, TBDSSAB makes no commitment to order or accept delivery or performance of any particular products or services or any minimum weekly, monthly, annual, or other amount or quantity of products or services, or to spend any amount. TBDSSAB shall have the right to reduce the scope of the Deliverables ("**Eliminated Work**") to be provided by Vendor under the Agreement for any reason whatsoever by notice in writing to Vendor. Upon receipt of such notice, Vendor shall immediately advise TBDSSAB of any work that it has already completed in respect of the Eliminated Work and provide TBDSSAB with documentation or other evidence satisfactory to TBDSSAB, acting reasonably, in support thereof and deliver to TBDSSAB any Work Product, whether completed or in progress, in connection with the Eliminated Work. Upon receipt of such Work Product, and such satisfactory documentation and evidence, TBDSSAB shall pay for the portion of the Eliminated Work properly performed under the Agreement to the satisfaction of TBDSSAB, up to and including the date on which TBDSSAB issued the notice in respect of the Eliminated Work, on a pro-rated basis.
- 2.6 **Additional General Terms.** Additional terms and conditions dealing with the specific requirements of the request for bids process may be included in the Bid Document.



3. SHIPMENT AND ACCEPTANCE OF DELIVERABLES

3.1 **Shipment.** TBDSSAB shall have no obligation with respect to unloading of the Products at the designated delivery point or the insurance of the Products during and after such unloading, and such obligations shall be the responsibility of Vendor. Unless otherwise specified in the applicable Purchase Order, Vendor shall be responsible for all shipping, insurance, and brokerage fees related to the Products and shall act as the importer of record of the Products. Without restricting the generality of the foregoing, Vendor shall be responsible for ensuring that the importation of the Products complies fully with the *Customs Act*, the *Customs Tariff*, and the *Excise Tax Act*.

3.2 **Acceptance.** TBDSSAB will inform Vendor in writing within thirty (30) business days of receiving a Deliverable whether it accepts that Deliverable. TBDSSAB may reject any Deliverable that does not comply with the terms of the Agreement. If TBDSSAB fails to notify Vendor within the specified time, TBDSSAB will be deemed to have accepted the Deliverable. If TBDSSAB does not accept the Deliverable then TBDSSAB may, in its sole discretion, either terminate the Agreement or it may notify Vendor in writing of the defects or deficiencies and allow Vendor an opportunity to replace the Deliverable, at Vendor's sole cost and expense. Any replacement Deliverables provided by Vendor shall be subject to the terms of acceptance in this Section 3.2.

4. TITLE AND RISK OF LOSS

4.1 **Risk of Loss.** Risk of loss for and title to, including financial responsibility for damage or loss to, the Products shall pass to TBDSSAB on the date and at the time at which the Products are inspected and accepted by TBDSSAB in accordance with Section 3.2.

4.2 **Delays.** Vendor shall immediately advise TBDSSAB of any delays being encountered, the reasons therefor, and the action being taken to recover from such delays.

4.3 **Right to Cancel.** If delivery of a Product or performance of a Service is late by more than ten (10) business days from the delivery date set out in the Agreement, then TBDSSAB may, at its option, cancel the purchase and delivery with respect to that Product or cancel that Service without incurring any charges or other costs and without prejudice to any of its other rights under the Agreement, at law, or in equity.

5. DOCUMENTATION

Vendor shall provide TBDSSAB, without additional cost to TBDSSAB, all documentation in English and, if required by TBDSSAB, in French required to properly install, use, and maintain the Products and to understand their functions and features, as well as any other relevant documentation reasonably requested by TBDSSAB ("**Documentation**"). Vendor hereby grants TBDSSAB a fully paid-up, royalty-free, non-exclusive, perpetual licence authorizing TBDSSAB and its employees, contractors, agents, subcontractors, and representatives (collectively, "**Representatives**") to use, copy, modify, and distribute the Documentation in connection with TBDSSAB's reasonable requirements.

6. TERM AND TERMINATION

6.1 **Term.** The Agreement shall become effective on the Effective Date, and the duration of the Agreement shall be stated in the Bid Submission, Bid Document or Purchase Order, as applicable ("**Term**"), unless terminated in accordance with the provisions of the Agreement.

6.2 **Termination for Convenience.** TBDSSAB may terminate all or any part of the Agreement at any time, without penalty or further liability, by providing Vendor with at least thirty (30) calendar days' prior written notice.

6.3 **Termination for Cause.** A Party may terminate the Agreement, without penalty, and without limiting any other remedy available to it under the Agreement, at law, or in equity, if:

- (a) the other Party is in breach of any provision of the Agreement and the breach has not been cured within thirty (30) calendar days after that Party is notified of the breach;
- (b) the other Party becomes insolvent, makes an assignment for the benefit of creditors, or is the subject of any proceeding under any bankruptcy or insolvency law;
- (c) the other Party winds up, dissolves, liquidates, or takes steps to do so or otherwise ceases to function as a going concern; or
- (d) a receiver or other custodian (interim or permanent) of any of the assets of the other Party is appointed by private instrument or by court order or if any execution or other similar process of any court becomes enforceable against the other Party or its assets or if distress is made against any of the other Party's assets.



STANDARD TERMS AND CONDITIONS OF PURCHASE

- 6.4 **Obligations upon Termination.** Upon expiration or termination of the Agreement for any reason, Vendor shall immediately (a) at TBDSSAB's request, deliver to TBDSSAB or destroy, using a destruction method deemed appropriate by TBDSSAB, all originals, copies, reproductions, and summaries of information related to the Agreement in Vendor's possession or control, including TBDSSAB Confidential Information; and (b) disclose to TBDSSAB the progress of the delivery or performance of any outstanding Deliverables, deliver to TBDSSAB all finished and unfinished Work Product existing at the time of expiration or termination, and transfer title to any such Work Product in the manner and to the extent directed by TBDSSAB.
- 6.5 **Liability of Vendor upon Termination.** Upon termination pursuant to Section 6.3, TBDSSAB may arrange, upon such terms and conditions as TBDSSAB deems appropriate, for the Deliverables to be completed, including, without limitation, for any Products not delivered and accepted in accordance with Section 3.2 to be substituted from an alternative supplier. Vendor shall be liable to TBDSSAB for any costs relating to the completion of the Deliverables in excess of the fees stipulated in the Agreement.
- 6.6 **Liability of TBDSSAB upon Termination.** Upon termination by TBDSSAB of all or any part of the Agreement or the Deliverables, TBDSSAB shall have no liability to Vendor for any Losses suffered or incurred by Vendor in connection therewith, and Vendor shall not bring a claim, demand, settlement, action, or proceeding (each a "**Claim**") against TBDSSAB in respect thereof, other than for any payments to be made by TBDSSAB to Vendor for all Products delivered and all Services properly performed up to the date of termination and accepted by TBDSSAB in accordance with Section 3.2, on a pro-rated basis. Vendor shall have no claim for damages, compensation, loss of profit, allowance, or otherwise by reason of, or directly or indirectly arising out of, any action taken or notice given by TBDSSAB under this Article 6 except as expressly provided herein.
7. **PRICING AND PAYMENT**
- 7.1 **Fees.** TBDSSAB shall pay Vendor fees for Deliverables properly supplied or performed and accepted, in accordance with the terms of acceptance in Section 3.2, or any Purchase Order, as applicable, within thirty (30) business days of receipt of each properly issued numbered invoice.
- 7.2 **Monthly Invoices.** Unless otherwise set out in the Purchase Order, at the end of each calendar month following the Effective Date, Vendor shall deliver an invoice to TBDSSAB detailing:
- (a) the Deliverables supplied or performed, the value attributable to each, the purchase order number, where they were supplied or performed, and the fees payable by TBDSSAB under Section 7.1;
 - (b) any applicable sales taxes, including any Goods and Services Tax/Harmonized Sales Tax ("**GST/HST**"), payable by TBDSSAB under Section 8.3 as a separate line item; and
 - (c) Vendor's GST/HST registration number, where applicable.
- Vendor shall certify that each invoice issued is based solely on Deliverables actually supplied, Services performed, and reasonable, agreed expenses actually incurred by Vendor.
- 7.3 **Interest.** Notwithstanding any other provision of the Agreement, Vendor shall not charge TBDSSAB, and TBDSSAB shall have no obligation to pay, any interest or other fees or penalties on or in relation to overdue payments owed to Vendor for any Deliverables.
- 7.4 **Set-Off.** TBDSSAB shall have the right to set off against any payments to Vendor any other amounts which may be owing or owed to TBDSSAB by Vendor under the Agreement or otherwise.
- 7.5 **Overpayment and Disallowed Expenditures.** Any overpayment or disallowed expenditure shall be repayable to TBDSSAB and, until repaid, constitutes a debt due to TBDSSAB. TBDSSAB may deduct such amount from any subsequent payment under the Agreement or, if no further payments remain, or such amount is determined after the termination or expiration of the Agreement, Vendor shall, unless otherwise agreed, repay the amount within thirty (30) days following written notice from TBDSSAB.
- 7.6 **Most Favoured Customer.** Vendor shall provide the Deliverables to TBDSSAB on terms and conditions no less favourable to TBDSSAB than those terms and conditions on which the same or substantially similar Deliverables are provided to any other customer by Vendor.
8. **TAXES**
- 8.1 **Taxes on Vendor.** All taxes incurred by or imposed on Vendor in the course of supplying the Deliverables are the



- responsibility of Vendor. TBDSSAB will not reimburse such taxes.
- 8.2 **Tax Representation.**
- (a) Vendor represents and warrants that it is a GST/HST registrant for the purposes of the *Excise Tax Act* (Canada).
 - (b) Vendor shall immediately notify TBDSSAB of any change in its status as a GST/HST registrant.
- 8.3 **Compliance with Applicable Tax Laws.** Without limiting any other provisions herein, Vendor shall charge tax to TBDSSAB, collect tax from TBDSSAB, and remit tax to all applicable taxation authorities, each in the proper amount, in accordance with all applicable tax laws with respect to any fees, payments, or charges to be paid to Vendor hereunder.
- 8.4 **Withholding Taxes.** Notwithstanding any other provision of the Agreement, TBDSSAB is expressly authorized and directed to deduct from all amounts otherwise payable to Vendor and remit to the applicable taxation authority all withholding taxes that may apply, now or in the future. If TBDSSAB does not withhold such taxes, and it is subsequently determined that such taxes should have been withheld, Vendor shall indemnify, defend, and hold harmless TBDSSAB from all claims arising therefrom for the full amount of such taxes.
9. **CHANGE ORDERS**
- To the extent that TBDSSAB requests additional products or services or any changes to any Deliverables, such requests will be subject to a mutually agreed written change order ("**Change Order**") which shall include a description of the change and any additional fees.
10. **CONFIDENTIAL INFORMATION**
- 10.1 **Confidentiality.** No Party (the "**Receiving Party**") will disclose the Confidential Information of the other Party (the "**Disclosing Party**") to any third party except as specifically permitted by way of prior written consent or as required by law. "**Confidential Information**" means any information identified by either Party (or a Party's affiliate or Representative) as confidential or proprietary or which, under the circumstances, ought to be treated as confidential or proprietary. Confidential Information includes all Personal Information and the existence and contents of the Agreement. Notwithstanding the foregoing, Vendor acknowledges and agrees that TBDSSAB may disclose the existence and contents of the Agreement to third parties.
- 10.2 **Exclusions.** Confidential Information does not include information that (i) entered the public domain without the Receiving Party's or any of the Receiving Party's Representatives' breach of any obligation owed to the Disclosing Party; (ii) became known to the Receiving Party from a source other than the Disclosing Party other than by the breach of an obligation of confidentiality owed to the Disclosing Party; or (iii) was independently developed by the Receiving Party without reference to Confidential Information of the Disclosing Party and such independent development is adequately documented.
- 10.3 **Security Safeguards.** Each Party shall have in place appropriate technical, physical, and organizational security safeguards to protect Confidential Information against unauthorized, unlawful, or accidental access, collection, use, loss, theft, threats, alteration, disclosure, copying, destruction, or disposal, and provide a level of security for Confidential Information that is appropriate to the sensitivity thereof. Each Party shall cause its Representatives to comply with this Section 10.3.
- 10.4 **Remedies.** In the event of unauthorized access, collection, use, disclosure, or disposal of Confidential Information, the Receiving Party agrees to:
- (a) immediately notify the Disclosing Party, in writing, of the unauthorized incident with full details;
 - (b) provide regular and comprehensive updates about the unauthorized incident to the Disclosing Party; and
 - (c) immediately take all reasonable steps to respond and prevent a recurrence of the unauthorized incident.
- 10.5 **Injunction and Equitable Relief.** Notwithstanding Article 23, if the Receiving Party or any of its Representatives breaches a confidentiality obligation, then the Disclosing Party shall be entitled to seek injunctive and/or equitable relief to prevent breaches related to disclosure of Confidential Information in addition to any other remedy to which it may be entitled under this Contract, at law, or in equity. For the purposes of this Section 10.5, the Parties irrevocably attorn to the exclusive jurisdiction of the courts located in Ottawa, Ontario.
11. **APPLICATION OF PRIVACY LEGISLATION**
- Notwithstanding any other provision of the Agreement, Vendor hereby acknowledges that TBDSSAB may be required to disclose records relating to the Agreement pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) ("**MFIPPA**"). Subject to



the provisions of MFIPPA, TBDSSAB will use reasonable commercial efforts to safeguard the confidentiality of any information appropriately identified by Vendor as confidential but shall not be liable in any way whatsoever to Vendor or any of Vendor's Representatives if such information is disclosed based on an order or decision of the Office of the Information and Privacy Commissioner of Ontario or otherwise as required under applicable law.

12. PRIVACY

12.1 **Acknowledgements.** Without limiting any other provision of this Article 12, Vendor acknowledges and agrees that:

- (a) TBDSSAB is subject to MFIPPA, and MFIPPA applies to and governs all records related to personal information, as that term is defined in MFIPPA ("**Personal Information**");
- (b) it may receive Personal Information in order to carry out its obligations under the Agreement;
- (c) the privacy provisions of MFIPPA governing the collection, use, disclosure, and security of Personal Information continue to apply while the Agreement is in effect and thereafter;
- (d) all records containing Personal Information that are created or maintained in the course of providing the Deliverables shall be and remain the property of TBDSSAB; and
- (e) all records shall be returned to TBDSSAB at the end of the Term, or sooner if required by TBDSSAB.

12.2 **Vendor's Privacy Obligations.** Without limiting the generality of Section 12.1, but for greater clarity, Vendor agrees:

- (a) to keep all files, documents, and other materials containing Personal Information secure, including ensuring its computer security is adequate to protect Personal Information against unauthorized access or disclosure;
- (b) to provide any and all records to TBDSSAB within seven (7) business days of being directed to do so by TBDSSAB for any reason;
- (c) not to directly or indirectly collect, use, disclose, or destroy any Personal Information for any purposes not directly related to the performance of its obligations under the Agreement;
- (d) to restrict access to Personal Information to those of its employees or subcontractors who have a need to know for the purposes of providing the Deliverables;

- (e) that any Personal Information cannot be used by Vendor for its own purposes, or for any other purpose not identified in the Agreement;
- (f) that Personal Information and any records, files, documents, or other materials containing Personal Information can only be disclosed or transferred to a third party with the informed prior written consent of TBDSSAB;
- (g) to immediately notify TBDSSAB in writing where Personal Information is collected, used, or disclosed contrary to the provisions of the Agreement, including this Article 12;
- (h) to immediately notify TBDSSAB of and refer to TBDSSAB any individual who contacts Vendor to request access or correction to, or with any inquiries or complaints about, their Personal Information in connection with or otherwise relating to the Agreement, and to provide, in a timely manner, all reasonable cooperation, assistance, information, and access to Personal Information in its possession, custody, or control as is necessary for TBDSSAB to promptly (and, in any event, within any time frame required by applicable privacy laws) respond to such request, inquiry, or complaint; and
- (i) not to match or otherwise link or associate Personal Information collected in the performance of its obligations under the Agreement with Personal Information obtained from other sources.

12.3 **Personal Information in Canada.** Vendor represents, warrants, and covenants that no Personal Information, regardless of the form or medium in which it is disclosed or stored, will be held, stored, located, transferred, or processed outside of Canada.

12.4 **Subcontracting of Obligations.** Vendor shall not subcontract, assign, or delegate to any third party its obligations in respect of the protection of Personal Information without TBDSSAB's prior written approval.

12.5 **Right to Audit.** Vendor shall:

- (a) permit TBDSSAB or its designee to inspect any Personal Information in the custody or possession of Vendor in connection with the Agreement and to audit Vendor's compliance with its obligations described under this Article 12;
- (b) permit TBDSSAB to enter onto Vendor's premises for such purposes; and
- (c) otherwise promptly and properly respond to all reasonable inquiries from TBDSSAB with respect to Vendor's handling of Personal Information in



connection with the Agreement or Vendor's compliance with this Article 12.

- 12.6 **Precedence.** In the event of any inconsistency between the terms of this Article 12 and the terms of Article 10 or any other terms relating to Confidential Information, the terms of this Article 12 shall prevail.

13. OWNERSHIP AND LICENCES

- 13.1 **Ownership of Work Product.** TBDSSAB will own all right, title, and interest in and to all Work Product and Vendor irrevocably assigns to TBDSSAB all Intellectual Property in the Work Product. When requested, Vendor will obtain from all individuals involved in the development of such Work Product an express and irrevocable waiver in favour of TBDSSAB of any and all moral rights arising under the *Copyright Act* (Canada) as amended (or its successor legislation) or under similar legislation in other jurisdictions or at common law that Vendor or such individuals, as authors, have with respect to the Work Product.
- 13.2 **TBDSSAB Background IP.** TBDSSAB retains all right, title, and interest in and to any and all Intellectual Property conceived, developed, reduced to practice, or otherwise made or acquired prior to the Effective Date or outside the scope of the Agreement ("**Background IP**") by TBDSSAB. TBDSSAB hereby grants to Vendor a non-transferable licence to use and reproduce TBDSSAB's Background IP solely as necessary to provide the Deliverables to TBDSSAB and for no other purpose. Vendor will maintain all TBDSSAB's Background IP in confidence and will not provide it to any third party.
- 13.3 **Patent, Trade-mark, Trade Secret, and Copyright Infringement.** Vendor covenants that all Deliverables and Work Product provided to TBDSSAB do not infringe any existing patent, trade-mark, trade secret, or copyright registered or recognized in Canada or elsewhere with respect to or in connection with the intended use of the Deliverables and Work Product by TBDSSAB.
- 13.4 **Licence to Use Vendor's Related Rights.** To the extent that Vendor has proprietary rights, including Vendor's Background IP, which are incorporated in or necessary to the use of the Work Product ("**Vendor's Related Rights**"), Vendor grants to TBDSSAB and its affiliates a royalty-free, irrevocable, worldwide, non-exclusive licence to use, disclose, reproduce, modify, sub-license, and distribute Vendor's Related Rights. Vendor will indemnify, hold harmless, and, at TBDSSAB's request, defend TBDSSAB and its affiliates from and against all Losses

and Claims arising out of or in connection with any allegation that the use or disclosure of Vendor's Related Rights violates any third party's rights

- 13.5 **Third Party Property.** Vendor shall not use, embed, integrate, or incorporate any tangible property or Intellectual Property owned by a third party ("**Third Party Property**") in providing the Work Product or Deliverables, unless TBDSSAB has given prior written approval and Vendor has the necessary licences from the third party for such use. If TBDSSAB grants such approval, Vendor shall grant to TBDSSAB an irrevocable, perpetual, worldwide, non-exclusive, paid-up licence to sub-license, make, sell, reproduce, and otherwise use such Third Party Property to the extent necessary to permit TBDSSAB to fully exploit the Work Product and Deliverables.

- 13.6 **TBDSSAB Names and Logos.** Vendor shall not use the name "The District of Thunder Bay Social Services Administration Board" or any logos, designs, colours, trade-marks, official marks, or trade names used, owned, or licensed by TBDSSAB, except with TBDSSAB's prior written approval.

14. RECORDS, AUDIT, AND INSPECTION

- 14.1 **Record Retention.** Vendor shall keep proper accounts and records of the cost to perform or supply the Deliverables including any related invoices, receipts, or vouchers. Vendor shall not dispose of the documents referred to in this Section 14.1, without the written consent of TBDSSAB, for a period of three (3) years following completion of the Deliverables.

- 14.2 **Audit and Inspection.** On reasonable notice, TBDSSAB has the right to inspect Vendor's work-in-progress. During the Term and for three (3) years thereafter, TBDSSAB also has the right to access and copy all materials relating to the Agreement and the Deliverables, including but not limited to files, data, correspondence, books, and accounting records. Vendor shall make no charge to TBDSSAB for any such audit.

15. PERFORMANCE OF VENDOR OBLIGATIONS

- 15.1 **No Subcontractors.** Vendor shall not delegate, assign, or subcontract any of Vendor's obligations hereunder to any other person, firm, or corporation without the prior written consent of TBDSSAB.

- 15.2 **Health and Safety.** Vendor shall take all reasonable precautions in performing its obligations hereunder to protect the safety and health of the Parties' employees and of members of the public.



STANDARD TERMS AND CONDITIONS OF PURCHASE

- 15.3 **Personnel.** Vendor shall provide fully trained, competent, and skilled personnel to perform the Services and shall ensure that its personnel comply with the Agreement.
- 15.4 **Removal of Personnel.** Vendor shall replace or cause to be replaced, within a reasonable time, any personnel engaged to perform the Services whose removal is requested by TBDSSAB acting reasonably. If Vendor takes any other action in respect of any such personnel, or causes any such action to be taken, Vendor shall indemnify, defend, and hold harmless TBDSSAB and its officers, directors, and Representatives from all Losses and Claims arising therefrom.
- 15.5 **Time of Performance.** Vendor acknowledges and agrees that it may be required to deliver or perform all or a portion of the Deliverables outside of regular business hours.
- 15.6 **Policies and Procedures.** Vendor acknowledges and agrees that, while on the premises used by TBDSSAB, or when otherwise applicable, it and its Representatives shall:
- (a) only bring food and beverages into the designated eating areas identified by TBDSSAB;
 - (b) restrict access to the acceptable access routes identified by TBDSSAB;
 - (c) safely remove, on a daily basis, and dispose of all waste products and debris in accordance with the instructions provided by TBDSSAB;
 - (d) maintain security standards consistent with security policies of TBDSSAB;
 - (e) not conduct noisy operations during TBDSSAB business hours without TBDSSAB's express authorization; and
 - (f) comply with all other policies and procedures of TBDSSAB from time to time in force which are brought to Vendor's notice or of which Vendor could reasonably be aware.
- 15.7 **Official Languages.** Vendor acknowledges and agrees that it shall comply with TBDSSAB's obligations under the *French Language Services Act (Ontario)* when providing Services to the public in both English and French, where those Services, if provided directly by TBDSSAB, would be required by law to be provided in both English and French.
16. **REPRESENTATIONS AND WARRANTIES**
- 16.1 **Representations and Warranties.** Vendor represents, warrants, and covenants that:
- (a) it has the full authority to enter into and perform its obligations under the Agreement;
 - (b) its knowledge, skill, experience, and abilities are appropriate and sufficient to supply or perform the Deliverables properly and efficiently;
 - (c) it has and shall maintain all such rights as are necessary to fulfil its obligations under the Agreement and it is not a party to any agreement or business relationship that prevents it from carrying out its obligations under the Agreement;
 - (d) it has not paid, given, promised, or offered any bribe, gift, or other inducement to any officer or employee of TBDSSAB for or with a view to influencing the entry into or administration of the Agreement;
 - (e) no person or agency has been employed or retained by or on behalf of Vendor to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee;
 - (f) the Agreement creates legal, valid, and binding obligations on it and is enforceable against it in accordance with its terms; and
 - (g) as of the Effective Date, there are no legal or financial circumstances with respect to Vendor that, if known by TBDSSAB, would reasonably be expected to cause TBDSSAB not to enter into the Agreement; Vendor shall advise TBDSSAB promptly if any such circumstances occur after the Effective Date.
- 16.2 **Additional Product Warranty.** Vendor shall provide the specific Product warranties set out in the Bid Document, if any, in addition to those Product warranties set out in Section 16.3.
- 16.3 **Product Warranties.** Vendor represents, warrants, and covenants to TBDSSAB that:
- (a) it has fully disclosed to TBDSSAB all developments, improvements, changes, and particulars in its knowledge, possession, or control that materially enhance or improve the design of any of the Products, and will continue to do so during the Term;
 - (b) it has good and marketable title to the Products supplied hereunder to TBDSSAB, free and clear of all liens, charges, encumbrances, security interests, mortgages, pledges, and other claims, rights, and obligations of every kind;
 - (c) there are no special tools, jigs, or test fixtures required to properly maintain the Products;
 - (d) it has obtained any and all rights, permits, licences, and third party consents required in connection with



the sale and use of the Products purchased by TBDSSAB; and

(e) the Products shall be:

- (i) manufactured, assembled, and tested in accordance with the specifications in the Bid Document, if any, and applicable quality-control standards and conditions;
- (ii) of new original equipment manufacturer materials, parts, and components only unless the Parties otherwise expressly agree in writing;
- (iii) produced, packaged, and shipped in compliance with good manufacturing practices, applicable licences, and all applicable laws, regulations, and rules, including all applicable environmental protection laws and regulations;
- (iv) of good and merchantable quality and free from defects in material, design, and workmanship;
- (v) fit for the purpose for which they are required by TBDSSAB; and
- (vi) certified and appropriately labeled by Vendor in accordance with current applicable Canadian standards, including those of the Canadian Standards Association.

16.4 **Repair or Replace.** During the applicable product warranty period set out in the Bid Document, or, if no product warranty is set out in the Bid Document, for a period of two (2) years following acceptance of the Products by TBDSSAB in accordance with Section 3.2 (“**Product Warranty Period**”), Vendor shall repair or replace any Product or part which is determined by TBDSSAB, in its sole discretion acting reasonably, to be in breach of the Product warranties set forth in Section 16.2 and Section 16.3, as applicable, and Vendor is solely responsible for paying all costs in any way associated with such repair or replacement.

16.5 **Service Warranty Period.** Without limiting any other representations or warranties, all Services shall have a warranty period of one (1) year from the date of delivery or completion, as applicable (“**Service Warranty Period**”), and Vendor represents and warrants that all Services shall be properly performed in a good and workmanlike manner and free from any defect or deficiency for the duration of the Service Warranty Period.

17. COMPLIANCE WITH LAWS

Vendor shall, in the performance of the Agreement, comply with all applicable laws, regulations, and orders, including those pertaining to health and safety,

immigration, customs, labour and employment, accessibility, and human rights. Vendor shall be responsible for obtaining all necessary permits, licences, and employment authorizations. Certified copies of required permits and licences will be made available upon request.

18. INDEMNITY

18.1 **Vendor Indemnity.** Vendor shall indemnify, defend, and hold harmless TBDSSAB and its Representatives from and against any and all action, damage, Claim, liability, cost, expense, or loss, whether in contract, statute, tort, or otherwise, including reasonable legal fees (“**Loss**”) that arises from any:

- (a) breach of the Agreement by Vendor or any of its Representatives;
- (b) incorrectness or breach of a representation or warranty by Vendor;
- (c) wilful or negligent act or omission of Vendor or any of its Representatives;
- (d) allegation or finding in law that the relationship between TBDSSAB and Vendor or any of Vendor’s Representatives is an employment or similar relationship, notwithstanding that such relationship is expressly denied; and
- (e) allegation that any Deliverable, Work Product, or Third Party Property infringes any Intellectual Property or other proprietary right of a third party.

Vendor shall immediately notify TBDSSAB of such Claims and Vendor shall fully defend any Claims at its own expense. Vendor’s obligations under this Section 18.1 shall not restrict or prejudice TBDSSAB from exercising any other rights under law or equity.

18.2 **TBDSSAB Indemnity.** TBDSSAB shall indemnify, defend, and hold harmless Vendor and Vendor’s Representatives from and against all Claims and Losses that arise from any:

- (a) material breach of the Agreement by TBDSSAB; and
- (b) wilful or negligent act or omission by TBDSSAB.

TBDSSAB shall immediately notify Vendor of such Claims and shall fully defend such Claims at its own expense. TBDSSAB’s obligations under this Section 18.2 shall not restrict or prejudice Vendor from exercising any other rights under law or equity.

18.3 **Right to Participate.** Each party may participate, at its expense, in the defense or settlement of any Claim relating to any Loss for which the other party is required



STANDARD TERMS AND CONDITIONS OF PURCHASE

to indemnify that party, with counsel of its own choice on a non-controlling basis. The indemnifying party shall not enter into any settlement that does not contain an unconditional release of the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld.

18.4 **TBDSSAB Right to Products and Work Product.** When notified of an action or motion that seeks to restrict TBDSSAB from using any Product or Work Product created or provided by Vendor, Vendor may (and in the case of a judgment, order, or injunction that restricts the use of any such Product or Work Product, shall) at its expense:

- (a) obtain for TBDSSAB the right to use such Product or Work Product in accordance with the Agreement; or
- (b) modify or substitute such Product or Work Product so that TBDSSAB's use of such Product or Work Product in accordance with the Agreement is non-infringing.

19. LIMITATION OF LIABILITIES

In no event will a party be liable to another party for any special, incidental, indirect, consequential, or punitive damages or any damages for loss of profits, loss of data, business interruption, or loss of business information arising from or relating to the Agreement. These limitations will apply regardless of the Claim, and regardless of whether the other party had been advised of the possibility of such damages. If circumstances arise where Vendor is entitled to recover damages relating to the Agreement, the aggregate liability of TBDSSAB, if any, will in no event exceed the value of the fees paid to Vendor in the twelve (12) months preceding the event giving rise to such damages. Notwithstanding the foregoing, this Article 19 shall not apply to limit any party's liability for any Claim arising from such party's own fraud, wilful misconduct, gross negligence, intellectual property infringement or breach of confidentiality obligations.

20. INSURANCE

20.1 **Insurance.** Vendor shall maintain, at Vendor's expense throughout the Term, such adequate health, auto, workers' compensation, liability, and other insurance as is required or common practice in its trade or business. Vendor shall provide certificates of insurance and such additional evidence as TBDSSAB may from time to time request confirming that such policies are in good standing. All insurance maintained by Vendor shall be primary and shall not call into contribution any insurance maintained

by TBDSSAB. Any deductible or reimbursable clause contained in the policy shall not apply to TBDSSAB and shall be the sole responsibility of the Vendor.

20.2 **Specific Insurance.** Without limiting the generality of Section 20.1, Vendor shall:

- (a) obtain and maintain during the Term, and for a period of five (5) years thereafter, Professional Liability Insurance coverage in an amount not less than five million dollars (\$5,000,000) per claim and per policy period to compensate TBDSSAB for any Loss incurred by TBDSSAB as a result of the negligence of Vendor or Vendor's Representatives; and
- (b) obtain and maintain during the Term Public Liability and Property Damage Insurance coverage in an amount not less than five million dollars (\$5,000,000).

20.3 **Notice to TBDSSAB.** Each policy of insurance described in Section 20.2 shall include TBDSSAB as an additional insured and shall provide TBDSSAB with not less than thirty (30) business days' prior written notice of any material change, cancellation or termination thereof.

21. INDEPENDENT CONTRACTOR

The relationship between the Parties under the Agreement is that of independent contracting parties. The Parties shall remain independent contractors and under no circumstances will they or any of their Representatives be considered employees, agents, or representatives of the other Party, nor shall the Agreement be deemed to create any partnership, joint venture, association, or syndicate between the Parties, nor shall it be deemed to confer on any Party any express or implied right, power, or authority to enter into any agreement or commitment, express or implied, or to incur any obligation or liability, on behalf of the other Party.

22. FORCE MAJEURE

Except as expressly provided otherwise in the Agreement, no Party will be liable for any failure or delay in its performance under the Agreement due to any cause beyond its reasonable control that could not have been avoided by the exercise of reasonable foresight, including but not limited to acts of war, acts of God, earthquakes, floods, embargoes, riots, sabotage, terrorism, or governmental acts (not resulting from the actions or inactions of the Party relying on such failure or delay),



provided that the Party affected by such failure or delay gives the other Party prompt notice of such cause and uses reasonable efforts to promptly correct such failure or delay in performance.

23. DISPUTE RESOLUTION

23.1 **Good Faith Negotiations.** Without limiting the termination rights set out at Article 6, in the event of a dispute between the Parties arising out of or in connection with the Agreement, senior representatives of each Party shall make reasonable efforts to resolve the dispute through negotiation in good faith within thirty (30) days after a written request from either Party to the other.

23.2 **Mediation and Arbitration.** Without limiting the termination rights set out at Article 6, in the event a dispute is not settled through negotiation in accordance with Section 23.1, then the Parties shall try in good faith to settle the dispute by mediation in accordance with the ADR Institute of Canada Mediation Rules. If mediation is not successful, then unresolved disputes shall be submitted to final and binding arbitration. Such arbitration will take place in Ottawa, Ontario, and will be governed by the ADR Institute of Canada Arbitration Rules (“**ADR Rules**”). A single arbitrator shall be selected in accordance with the ADR Rules. The arbitrator’s award may be entered into any court having jurisdiction. Expenses and fees of the mediator and arbitrator will be shared equally by each Party in the dispute, but each Party shall otherwise bear its own legal and other expenses.

23.3 **Continued Performance.** Vendor shall continue to perform its obligations in accordance with the Agreement and instructions of TBDSSAB during any dispute, negotiation, mediation, or arbitration.

24. CONFLICT OF INTEREST

24.1 **Vendor Conflict.** Vendor represents and warrants that Vendor has no financial or professional obligations or interests that could interfere or be perceived to interfere with Vendor’s ability to adequately perform its obligations under the Agreement. If Vendor acquires any such obligation or interests during the term of the Agreement, Vendor shall immediately notify TBDSSAB.

24.2 **Vendor Responsibility.** It is the Vendor’s sole responsibility to disclose to TBDSSAB if any TBDSSAB Representative or any person who was a TBDSSAB Representative at any time during the previous six (6) months, has or will have a direct or indirect financial

interest in the Agreement and/or any agreement executed with TBDSSAB.

25. GENERAL

25.1 **Notice.** When a notice is to be given or served by a Party, the notice shall be in writing and shall be delivered personally to the Party to whom it is given or sent by prepaid registered mail or confirmed receipt by electronic communications (e.g., email), addressed to Vendor as described in the Agreement and to TBDSSAB as follows:

The District of Thunder Bay Social Services Administration Board
231 May Street South
Thunder Bay, ON P7E 1B5
Attention: Chief Administrative Officer

A notice shall be deemed to have been received (a) if sent by personal delivery or email, on the date it was sent; (b) if sent by courier, on the next business day following delivery; or (c) if sent by regular mail, on the fifth (5th) business day following the date of mailing. Any party may change its address for the purpose of this Section 25.1 by giving written notice of such change to the other party in the manner set out above.

25.2 **Labour Policy.** The Vendor and the Vendor’s Representatives declare that they and their subcontractors conduct their respective business in accordance with established international codes as they relate to child labour in United Nations and International Labour Organizations.

25.3 **Accessibility Standards.** Vendor shall ensure that all of Vendor’s Representatives receive training regarding the provision of goods and services contemplated herein to persons with disabilities in accordance with Ontario Regulation 429/07, as may be amended from time to time.

25.4 **Tailgating.** Vendor agrees to offer the same privileges extended to the TBDSSAB to members of the Lakehead Purchasing Consortium (LPC) and/or any other public sector organization within the District of Thunder Bay.

25.5 **Waiver.** Except as otherwise expressly provided herein, a waiver by any Party of any rights or the failure to exercise any remedy will not operate or be construed as a continuing waiver of the same right or remedy or any of the other of such Party’s rights or remedies.

25.6 **Severability.** If any provision of the Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to



- such provision or part thereof and the remaining part of such provisions and all other provisions shall, to the extent reasonably possible, continue in force and effect.
- 25.7 **Survival.** The provisions of the Agreement which by their nature are intended to survive expiration or termination of the Agreement shall so survive.
- 25.8 **Assignment.** Vendor shall not assign, transfer, or pledge the Agreement, or any of its rights or obligations hereunder, without the prior written consent of TBDSSAB. TBDSSAB may assign the Agreement at any time. The Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns.
- 25.9 **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the exclusive jurisdiction of the courts located in Ottawa, Ontario. The Parties specifically exclude application of the *United Nations Convention on Contracts for the International Sale of Goods* and the application of any domestic statute that has adopted such Convention into law for its jurisdiction.
- 25.10 **Currency.** All sums of money to be paid or calculated pursuant to the Agreement shall be paid and calculated in Canadian dollars.
- 25.11 **Further Assurances.** Vendor shall, at its sole cost, execute and deliver any further agreements and documents and provide any further assurances as may be reasonably required by TBDSSAB to give effect to the Agreement.
- 25.12 **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any and all prior agreements, negotiations, representations, and understandings between the Parties, whether written or oral.
- 25.13 **Paramountcy.** In the event of any inconsistency, conflict, or ambiguity concerning the Agreement, the following, in order of precedence, shall control and supersede any such inconsistency, conflict, or ambiguity as follows: (a) these Standard Terms and Conditions; (b) the Bid Document; (c) applicable Purchase Order(s); and then (d) Vendor's Bid Submission.
- 25.14 **Amendments.** The Agreement shall not be amended, supplemented, or modified in any manner except by a further written agreement signed by a duly authorized representative of each Party.
- 25.15 **Time of the Essence.** Vendor acknowledges that time is of the essence in the performance of all of Vendor's obligations under the Agreement.
- 25.16 **Counterparts and Electronic Delivery.** The Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by email or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.