

**Submission Deadline: Thursday, September 21, 2023 before 2:00:00 p.m. MB Time**

Vendor's Legal Name: \_\_\_\_\_  
Vendor's Address: \_\_\_\_\_  
\_\_\_\_\_  
Vendor's Representative: \_\_\_\_\_ (name & title)  
Telephone Number: \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Agreement Signatory: \_\_\_\_\_ (name & title)

**Your firm is invited to submit a Proposal for the following:**

**Consulting services to conduct a Privacy Impact Assessment and Threat Risk Assessment to ascertain the risks associated with the WCB's Digital Modernization Program, as further described in this RFP and in accordance with the Instructions to Vendors.**

If a Vendor finds discrepancies or omissions in the RFP, or is unsure of the meaning or intent thereof, the Vendor may contact the WCB through the Agreement Administrator to seek clarification. The WCB will, if deemed necessary, issue a written response via an addendum on MERX. **Vendors are encouraged to direct all inquiries to the Agreement Administrator in writing by Thursday, September 14, 2023 before 2:00:00 p.m. MB Time** to allow time for the preparation and distribution of the WCB's response via MERX.

**DIRECT INQUIRIES TO:**

Agreement Administrator\*  
E-mail: [AgreementAdministrator@wcb.mb.ca](mailto:AgreementAdministrator@wcb.mb.ca)  
Facsimile: 204-954-4002

\*Vendors are not permitted to contact any employees, officers, or agents of the WCB for matters regarding this RFP, except in writing to the Agreement Administrator. Failure to adhere to this rule may result in the disqualification of a Vendor and rejection of its Proposal.

**Schedule "A"**  
**INSTRUCTIONS TO VENDORS**

**1. Definitions**

1.1 When used in this RFP these terms have the following definitions:

"**Agreement**" means the written contract to be entered into between the WCB and the Contractor for the Services contemplated by this RFP.

"**Business Day**" means any calendar day (excluding Saturdays and Sundays) on which the WCB's offices are open for normal business.

"**Business Hours**" means 8:30 a.m. to 4:30 p.m. MB Time on a Business Day.

"**Contractor**" means the Successful Vendor providing the Services to the WCB.

"**Fee Schedule**" means the RFP schedule to be completed by a Vendor outlining the fees of the Vendor for providing the Services.

"**MB Time**" means the official time as defined in *The Official Time Act* (Manitoba) and as recorded by the timestamp mechanism provided by MERX.

"**MERX**" means the national electronic tendering service operated by MERX Networks Inc., an external service provider of the WCB.

"**Proposal**" means the non-binding submission received from a Vendor in response to this RFP.

"**RFP**" means this Request for Proposal, its addenda, schedules, appendices, WCB policies, and applicable legislation attached to or incorporated by reference.

"**RFP Number**" means the alpha-numeric identification which is provided at the top of RFP page 1 identified as the RFP No.

"**Services**" means the goods and services to be supplied to the WCB by the Successful Vendor as described within this RFP.

"**Submission Deadline**" means the time and date stated at the top of RFP page 1.

"**Subcontractor**" means any third party that is not an employee of the Successful Vendor with whom the Successful Vendor has identified in its Proposal as being contracted to perform all or part of the Services.

"**Successful Vendor**" means the Vendor whose Proposal has been selected and has been invited to enter into an Agreement with the WCB to provide the Services.

"**Vendor**" means any sole proprietor, partnership, or corporation who submits a Proposal in response to, and in accordance with, this RFP.

"**WCB**" means The Workers Compensation Board of Manitoba and includes all of its employees, officers, directors, agents and assigns.

## **2. MERX Submission**

- 2.1 This RFP will only be provided via MERX. Any Proposal from a Vendor whose name does not appear on the official MERX document request list (i.e. who has not downloaded the RFP directly from MERX) may have its Proposal rejected, in the sole and absolute discretion of the WCB.
- 2.2 The entire content of a Proposal should be submitted in fixed format, and the content of websites or other external documents referred to in the Proposal, but not submitted as part of the Proposal, may be excluded during evaluation, in the sole and absolute discretion of the WCB.
- 2.3 The Proposal must be submitted to MERX which will not accept a Proposal after the Submission Deadline. The WCB will reject any Proposal not submitted to MERX before the Submission Deadline, regardless of the cause of delay. The Submission Deadline may be extended in the WCB's sole and absolute discretion.
- 2.4 The WCB may modify and clarify any provisions of this RFP, in its sole and absolute discretion, by issuing a written addendum to Vendors via MERX prior to the Submission Deadline. Each addendum forms an integral part of this RFP and may contain important information, including significant changes to the RFP. Vendors are responsible for obtaining all addenda issued by the WCB. The WCB reserves the right to not respond to a Vendor's inquiry if the WCB does not consider it relevant, material, or substantive to the RFP.
- 2.5 Upon receipt of a Proposal via MERX, the WCB shall deem that the individual submitting the Proposal on behalf of the Vendor was duly authorized to do so and shall consider such act as evidence of the Vendor's intent to submit the Proposal.
- 2.6 Vendors are solely responsible for the delivery of their Proposal in the manner and time prescribed. Additional information is available from MERX at its website <http://marketing.merx.com/Support/EBSGuide.pdf>. Questions concerning MERX should be addressed to:

MERX Customer Support  
Phone: 1-800-964-6379  
E-mail: [merx@merx.com](mailto:merx@merx.com)

## **3. Vendor Responsibilities**

- 3.1 The Vendor is solely responsible for the correctness and sufficiency of its Proposal. The Vendor should include all assumptions made in the preparation of its Proposal.
- 3.2 The Vendor shall be responsible for all costs associated with or incurred in the preparation and presentation of its Proposal, including, if applicable, costs incurred for interviews or demonstrations.

- 3.3 The Vendor is to submit its Proposal in English, unless otherwise stated in this RFP.
- 3.4 The Vendor represents and warrants that it will not deliver any document which a scan with an industry standard virus-checking software program shows to be infected with a virus, worm, or other harmful code which may damage, disrupt, or permit access to the WCB's software, hardware, networks, data, or information.
- 3.5 The Vendor is not restricted to only offering the Services specifically described herein and may describe in its Proposal another solution which is an equivalent alternative as the Vendor considers appropriate to meet the WCB's requirements listed in this RFP and which may bring added value to its Proposal. Such an equivalent alternative must be clearly specified and itemized separately in the Proposal, including its description and pricing.
- 3.6 All information which has been and may subsequently be made available by the WCB to Vendors is provided on the following conditions:
- (a) in deciding to submit or not to submit a Proposal or in interpreting this RFP, Vendors are not to rely on any representation, whether oral or written, other than expressed in this RFP and its addenda issued via MERX;
  - (b) while the content of this RFP is believed to be accurate, the statements, opinions, forecasts, or other information in this RFP may change;
  - (c) this RFP is designed to reflect and summarize information concerning the WCB's needs and requirements and may not be a comprehensive description of all that is required to provide the Services; and
  - (d) Vendors should seek their own professional advice where appropriate.
- 3.7 Vendors are considered to have examined:
- (a) this entire RFP, including any documents referenced herein and any other information made available by the WCB to Vendors via MERX for the purpose of submitting a Proposal;
  - (b) all further information which is obtainable by the making of reasonable inquiries relevant to the risks, contingencies, and other circumstances having an effect on their Proposal; and
  - (c) where applicable, the location where the Services are to be carried out, the nature of the Services to be done, and local conditions that may affect the Vendor's ability to provide the Services, assuming the risk for conditions existing or arising in the course of the Services which have been or could have been reasonably determined by such due diligence.
- 3.8 If the WCB enters into an Agreement for the Services with multiple Contractors, the Contractors will co-operate with one another.

- 3.9 The Vendor must appoint a Vendor Representative for the purpose of answering inquiries which may arise during the examination of its Proposal.
- 3.10 The Vendor is to indicate in its Proposal who will be its duly authorized signatory to execute an Agreement.
- 3.11 For the purposes of this RFP, the term "Conflict of Interest" includes, but is not limited to, any situation or circumstance where:
- (a) in relation to the RFP process, the Vendor has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of the WCB in the preparation of its Proposal that is not available to other Vendors; (ii) having been involved in the development of the RFP; (iii) receiving advice or assistance in the preparation of its Proposal from any individual or entity that was involved in the development of the RFP; (iv) communicating with any person with a view to influencing preferred treatment in the RFP process (including but not limited to the lobbying of decision makers involved in the RFP process); or (v) engaging in conduct that compromises, or could reasonably be seen to compromise, the integrity of the open and competitive RFP process or render that process non-competitive or unfair; or
  - (b) in relation to the performance of its contractual obligations under an Agreement for the Services, the Vendor's other commitments, relationships, or financial interests (i) could, or could reasonably be seen to, exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or (ii) could, or could reasonably be seen to, compromise, impair, or be incompatible with the effective performance of its contractual obligations.
- 3.12 The Vendor warrants that, at the time it submits its Proposal, no Conflict of Interest exists, or is likely to arise, which would affect the performance of its obligations. If a Vendor believes there could be potential for a Conflict of Interest, then the Vendor must notify the WCB of same, in writing, as soon as reasonably possible.
- 3.13 The WCB may disqualify a Vendor for any conduct, situation, or circumstance, determined by the WCB, in its sole and absolute discretion, to constitute a Conflict of Interest as defined above.
- 3.14 The WCB may disqualify a Vendor, rescind notice of selection, or terminate an Agreement subsequently entered into if the WCB determines the Vendor has engaged in any conduct prohibited by this RFP.

- 3.15 Vendors must not, in relation to this RFP or the evaluation and selection process, engage directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the Successful Vendor.
- 3.16 Vendors must not engage in any illegal business practices, including activities such as bid-rigging, price fixing, bribery, fraud, coercion, or collusion. Vendors must not engage in any unethical conduct, including lobbying, as described above, or other inappropriate communications; offer gifts to any employees, officers, agents, or other representatives of the WCB; deceitfulness, submitting a Proposal containing misrepresentations or other misleading or inaccurate information; or any other conduct that compromises or may be seen to compromise the competitive process provided for in this RFP.
- 3.17 Each Vendor must genuinely compete for the Services and not act in collusion with any other potential Vendor in preparing a Proposal. The Vendor represents that it has no knowledge of the contents of any other Proposal and the Vendor has made no comparison of figures, agreement, or arrangement, express or implied, with any other Vendor in connection with the making of its Proposal, except as declared within its Proposal. Vendors are expected to offer their best and final price, not a starting position for negotiations.
- 3.18 The Agreement will be governed by the Standard Terms and Conditions provided in this RFP unless the WCB agrees to proposed amendments of same requested in a Proposal. If a Vendor does not provide alternative language for its proposed changes to specific clauses, and instead attempts to rely on a statement indicating generic types of contractual obligations it does not fully accept, the WCB may, in its sole and absolute discretion: (i) deem the Vendor to have accepted the Standard Terms and Conditions as originally drafted; (ii) choose to seek further clarification to negotiate specific amendments with the Vendor; or (iii) eliminate the Vendor for failing to submit a Proposal which adequately responded to this requirement.
- 3.19 Each Vendor represents and warrants that:
- (a) it has the necessary power and authority to submit its Proposal;
  - (b) if its Proposal is selected and it is invited it to enter into an Agreement, it will act in good faith to negotiate and enter into a binding Agreement; and
  - (c) it is not bound by any agreement, instrument, indenture, charter or by-law provision, order, judgment, or law which would be breached by, or under which any default would occur as a result of delivering the Services described in its Proposal or in entering into an Agreement with the WCB.

#### **4. Limitations of Liability**

- 4.1 Except for a claim for costs of preparing its Proposal or other costs awarded in a proceeding pursuant to an applicable bid challenge process to which the WCB is bound and attorns, each Vendor, by submitting a Proposal, irrevocably waives any claim, action, or proceeding against the WCB including without limitation any judicial review or injunction application against any of the WCB's officers, employees, and agents for damages, expenses, or costs including costs of Proposal preparation, loss of profits, loss of opportunity, or any consequential loss for any reason including: (i) any actual or alleged unfairness on the part of the WCB at any stage of the RFP process; (ii) if the WCB does not award or execute an Agreement; or (iii) if the WCB is subsequently determined to have accepted a non-compliant Proposal or otherwise breached or fundamentally breached the terms of its Instructions to Vendors.
- 4.2 Each Vendor, by submitting its Proposal, irrevocably agrees that: (i) if the Vendor has any dispute arising out of this RFP, including these Instructions to Vendors, or any of the tender process, the Vendor will make good faith efforts to resolve the dispute by amicable negotiations with the WCB, and the Vendor shall provide frank, candid, and timely disclosure of all relevant facts, information, and documents relating to the dispute to the WCB; and (ii) if there is a failure to resolve the Vendor's dispute through amicable negotiations, the Vendor will submit its dispute to the applicable bid dispute resolution process that governs the procurement process. Each Vendor, by submitting a Proposal, consents to the disclosure of its Proposal and the WCB's evaluation of its Proposal to the relevant bid dispute resolution representatives.
- 4.3 Despite any other term in this RFP and any applicable common law, except for a claim for costs awarded in a proceeding under a binding dispute resolution process, each Vendor by submitting a Proposal, permanently and irrevocably waives any: claim, liability, action, proceeding (including any judicial review or injunction application), damages (including: direct, indirect, consequential, incidental, general, special, or exemplary damages, any economic losses, lost profits, lost opportunities, or any other costs, expenses, or losses for any reason), or any other legal remedy whatsoever (collectively "Claims") against the WCB, its officers, employees, and agents arising from or related to this procurement process or RFP, and fully releases the WCB, its officers, employees, and agents from all Claims of the Vendor or any third party against the WCB arising from or related to this procurement process or RFP, including without limitation: any actual or alleged unfairness on the part of the WCB at any stage of the procurement process or the RFP, including: evaluation of Proposals; any breach of a statutory or other duty; failure by the WCB to award or execute an Agreement; cancellation of the RFP and re-procurement of the Services on the same terms and specifications, or other terms; acceptance by the WCB of a non-compliant Proposal; rejection of a compliant Proposal; negligence, misrepresentation (negligent or otherwise), or any other tort; bad faith, or violation of common law duties; any breach or fundamental breach of

express or implied duties or terms of this RFP; and any decisions, acts, omissions, or errors by the WCB in relation to this procurement process, the RFP, or an Agreement. This clause shall survive the Submission Deadline, expiry, or cancellation of this RFP.

- 4.4 If it is reasonably determined that any decisions, acts, omissions, or errors by the WCB in relation to or arising from this procurement process, the RFP, or an Agreement is inapplicable, unconscionable, contrary to public policy, or otherwise unenforceable or invalid, in whole or in part, or where the Vendor is otherwise entitled to a remedy or compensation at common law or otherwise, from the WCB in relation to this procurement process or the RFP, the sole and absolute remedy and total maximum compensation for any and all Claims against the WCB in relation to or arising from this procurement process or the RFP, either individually or cumulatively, will not exceed the lesser of: the Vendor's reasonable and direct costs of preparing its Proposal or Five Thousand Dollars (\$5,000.00). This clause shall survive the Submission Deadline, expiry, or cancellation of this RFP.

## **5. Confidentiality**

- 5.1 By participating in this RFP and submitting a Proposal, the Vendor acknowledges the WCB may be required to disclose records under the WCB's control to third parties pursuant to *The Freedom of Information and Protection of Privacy Act*, an order of a court of competent jurisdiction, or other valid legal process. The WCB will only disclose confidential information as permitted by law.
- 5.2 The WCB has the right to release the name of a Vendor and its Proposal to the public once an Agreement has been executed with that Vendor. In submitting its Proposal the Vendor should identify any information in its Proposal or accompanying documentation supplied in confidence for which confidentiality is to be maintained by the WCB. A blanket statement of confidentiality for the entire Proposal shall not be recognized as a valid or reasonable notice of confidentiality.
- 5.3 Once an Agreement is executed by the WCB and the Contractor, the other Vendors may be notified directly in writing or notified by publicly posting the outcome of the procurement process.
- 5.4 Vendors must not at any time directly or indirectly communicate with the media in relation to this RFP or any Agreement entered into pursuant to this RFP without first obtaining the written permission of the WCB.



## **6. Procurement Process Non-Binding**

- 6.1 This procurement process is not intended to create and will not create a formal, legally binding bidding process and will instead be governed by the law applicable to direct commercial negotiation. For greater certainty and without limitation:
- (a) this RFP will not give rise to any contract A-based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and
  - (b) neither the Vendor nor the WCB will have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the award of an Agreement, failure to award an Agreement, or failure to honour a Proposal submitted in response to this RFP.
- 6.2 This RFP process is intended to solicit non-binding Proposals for consideration by the WCB and may result in an invitation by the WCB to a Vendor to enter into an Agreement. No legal relationship or obligation regarding the procurement of any goods or services will be created between the Vendor and the WCB by this RFP process until the execution of a written Agreement for the acquisition of the Services.

## **7. Evaluation & Invitation to Enter an Agreement**

- 7.1 When evaluating a Proposal, the WCB may request further information from the Vendor or any third party in order to verify, clarify, or supplement the information provided in the Vendor's Proposal, including but not limited to whether a Proposal meets the mandatory requirements set out in this RFP. The WCB may revisit, re-evaluate, and rescore the Vendor's Proposal or ranking on the basis of such information. The information can also be used for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in a Proposal.
- 7.2 When evaluating a Proposal, the WCB may also consider the Vendor's past performance or conduct on previous contracts with the WCB or other institutions.
- 7.3 While the pricing information provided in a Proposal will be non-binding prior to the execution of an Agreement, such information will be assessed during the evaluation of Proposals and the ranking of the Vendors. Any inaccurate, misleading, or incomplete information, including withdrawn or altered pricing, could adversely impact any such evaluation or ranking or the decision of the WCB to enter into an Agreement for the Services.

- 7.4 Immediately after the Submission Deadline a Proposal becomes a written record under the control of the WCB. A Vendor may withdraw its Proposal at any time prior to execution of an Agreement with the WCB by providing written notice. The WCB will not return a Proposal or accompanying documentation submitted by a Vendor if it was submitted via MERX and was not removed prior to the Submission Deadline, even if the Vendor advises it is withdrawing its Proposal.
- 7.5 The Successful Vendor will be invited to enter into an Agreement for the provision of the Services. Acceptance of a Proposal is conditional on obtaining all necessary internal approvals and the WCB has no obligation to enter into an Agreement unless this condition has been met. The internal approvals shall be evidenced by an Agreement duly executed by the WCB's authorized signatories.
- 7.6 Mandatory elements are to be complied with and a Vendor's non-compliance with a mandatory element of the RFP will be one of the primary evaluation criteria used to disqualify a Vendor. If all of the Proposals received have failed to comply with the same mandatory requirement, the WCB reserves the right, in its sole and absolute discretion, to deem that mandatory requirement a non-mandatory element so that the RFP does not have to be cancelled.
- 7.7 The WCB's intent is to request but not require strict compliance with non-mandatory elements listed in this RFP. The WCB reserves the right, in its sole and absolute discretion, to waive a Vendor's non-compliance with any non-mandatory element of this RFP, in form or content of a Proposal, where such non-compliance does not materially affect the quality or overall price of the Services offered in the Proposal.
- 7.8 The WCB may, in its sole and absolute discretion, following an initial evaluation of all Proposals on the disclosed evaluation criteria, select up to three (3) Vendors' Proposals that were substantively compliant for further evaluation, including those amended with additional information collected after the Submission Deadline (the "Short-Listed Vendors"). Short-Listed Vendors may be requested to provide a representative(s) to attend an in-person interview at the WCB's facilities located in Manitoba. Alternatively, the WCB may ask the Vendor to participate in an interview via a video/phone conference call.
- 7.9 The WCB will make a reasonable effort to notify any Short-Listed Vendor at least five (5) Business Days in advance of such requirement to meet in-person onsite or to participate via a video/phone conference call.
- 7.10 A Short-Listed Vendor attending onsite rather than participating via a video/phone conference call shall be responsible for all costs related to such attendance including travel and accommodation. A Short-Listed Vendor not attending onsite or participating via video/phone conference as requested by the WCB may have its Proposal eliminated from further consideration.

- 7.11 The WCB will be entitled to seek and receive additional information from the Short-Listed Vendors, which information, if supplied, will form part of each Short-Listed Vendor's Proposal and may be used by the WCB in the final evaluation of the respective Proposals.
- 7.12 With final scoring being equal between two (2) or more Proposals, the WCB may request information as to the Vendors' workforce diversity and use such information to award to the Vendor whose overall workforce has the better representation of Aboriginal persons, visible minorities, persons with disabilities and women. In the event of a tie, the Successful Vendor will be determined by way of a single coin toss.
- 7.13 The WCB shall not be obligated to offer an Agreement or have any contractual obligation to a Vendor submitting the only compliant Proposal in response to this RFP or to a Short-Listed Vendor even if that Short-Listed Vendor is the only one that agrees to attend onsite or to participate in a video/phone conference call.
- 7.14 The WCB is not required to invite a Vendor, who has submitted the lowest priced Proposal, to enter into an Agreement.
- 7.15 The WCB reserves the right to negotiate details of an Agreement containing terms and conditions different to those specified in this RFP with a Successful Vendor without having any duty or obligation to advise any other Vendor of such negotiation. The WCB shall have no liability to any other Vendor as a result of such negotiations, modifications, or changes. The delivery of the Services shall be governed by the final terms and conditions of the executed Agreement.
- 7.16 The WCB may, in its sole and absolute discretion, award the Services to multiple Successful Vendors or award only a portion of the Services to a Successful Vendor.
- 7.17 The WCB reserves the right, in its sole and absolute discretion, to cancel this RFP at any time without liability. Thereafter the WCB may (i) re-tender; (ii) choose to contract with one or more persons, whether or not they submitted a Proposal, on such terms and conditions as the parties agree; (iii) sole source; or (iv) do nothing, without liability, at any time prior to executing an Agreement.
- 7.18 These Instructions to Vendors are: (i) intended to be interpreted broadly and independently (with no particular provision intending to limit the scope of any other provisions); (ii) are non-exhaustive and must not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations; and (iii) are to be governed by and construed in accordance with the laws of the Province of Manitoba and the federal laws of Canada, as applicable.

- 7.19 This RFP and the Contractor's Proposal shall be incorporated within to form a part of an Agreement between the WCB and the Contractor.

## **8. Proposal Checklist**

- 8.1 The following checklist is intended to assist the Vendor in the preparation of its Proposal and may not be exhaustive. It is the Vendor's sole responsibility to ensure that it has complied with all requirements of this RFP.
- 8.2 It is recommended the Vendor include the following information (as applicable and where available) in its Proposal:
- (a) page 1 of the RFP completed with Vendor's legal name, mailing address, Agreement signatory, and contact details of the Vendor's representative;
  - (b) statement of Vendor's ability to provide the Services which may include:
    - proposed methodology for the Services;
    - relevant experience, qualifications, and expertise providing similar goods/services to other customers;
    - prior experience and knowledge of the WCB's operations (if any);
    - relevant professional memberships, certifications, and affiliations;
    - resource(s) to be assigned to provide the Services, including their relevant project experience and expertise; and
    - specialized expertise or equipment relevant to the Services;
  - (c) equivalent alternatives being offered (listed separately, if any);
  - (d) statement if any of the Services will be subcontracted, including details of such arrangement with the full legal name of the Subcontractor(s);
  - (e) three (3) client references, if available, within last three (3) years listing contact name, phone number, and e-mail (prefer external to the WCB);
  - (f) statement accepting the WCB's Standard Terms and Conditions OR a statement identifying each of the specific Standard Terms and Conditions that is objectionable with (i) reason for objection; and (ii) proposed alternative language;
  - (g) completed Fee Schedule;
  - (h) statement that all resources will personally execute a confidentiality pledge described in Standard Terms and Conditions before providing the Services;
  - (i) statement that the Vendor, if a corporation or partnership, will be prior to providing the Services, in good standing with the Manitoba Companies Office to carry on business in Manitoba, if required by law or this RFP;
  - (j) such other information the Vendor believes will assist in evaluation of its Proposal. Elaborate brochures or voluminous examples are not encouraged.

## **9. Evaluation Criteria**

9.1 Invitation to enter into an Agreement with the WCB to a Successful Vendor shall be based on the following evaluation criteria:

- (a) Vendor's abilities to meet or exceed requirements of this RFP;
- (b) apparent quality, dependability, and timeliness in providing the Services;
- (c) Vendor's prior experience and satisfactory client references;
- (d) fees – estimated total cost for best value to the WCB; and
- (e) such other evaluation criteria stated elsewhere in this RFP.

## **10. Instructions to Vendors Non-Negotiable**

10.1 The WCB cannot modify its tendering rules included in the Instructions to Vendors except via an addendum posted on MERX prior to Submission Deadline. A request in a Proposal to amend any clause in the Instructions to Vendors will be denied.

## **11. Vendor Debriefing**

11.1 Vendors may request a debriefing after receipt of notification regarding the outcome of the RFP. Debriefing requests must be submitted in writing to the Agreement Administrator within ten (10) Business Days of such notification. The debriefing shall be to discuss only the Vendor's own Proposal and shall not include information contained in any other Vendor's Proposal.

## **12. Vendor Debarment**

12.1 The WCB may debar a supplier from participating in a procurement process based on past poor performance (substantive performance issues under a prior engagement with the WCB which were not rectified in a timely fashion to the satisfaction of the WCB, acting reasonably) or based on inappropriate conduct in a prior procurement process with the WCB or other organization, including but not limited to the following:

- (a) illegal or unethical conduct as described above;
- (b) refusal of the Vendor to honour its pricing or other commitments stated in its Proposal; or
- (c) any conduct, situation, or circumstance determined by the WCB, in its sole and absolute discretion, to be an undisclosed Conflict of Interest.

12.2 The WCB shall exercise procedural fairness by providing the supplier a written notice of intent to debar, which shall include reasoning for debarment and proposed duration. The supplier shall be given a reasonable opportunity to respond in writing before the WCB makes its final decision. The WCB's decision to debar will be final and binding and will not be subject to any form of appeal.

**Schedule "B"**  
**STANDARD TERMS AND CONDITIONS**

**Services**

1. The Services shall be provided in English, unless otherwise agreed, and the Contractor will report directly to the representative designated by the WCB, during the delivery of the Services and will provide the WCB with verbal reports or written updates, as the WCB reasonably requests.
2. The WCB may from time to time give the Contractor reasonable written instructions as to the performance of the Services. The Contractor must comply with those instructions, provided such instructions do not expand the scope of the Services, but, unless otherwise specified in the Agreement, the Contractor may determine the manner in which the instructions are carried out.
3. If any of the Contractor's key resources assigned in the Proposal or Agreement should become unable or unwilling to perform the Services on a temporary or permanent basis, the WCB may permit the Services to be provided by an alternate key resource of the Contractor. The Contractor shall notify the WCB as soon as reasonably possible should a key resource become unable or unwilling to perform the Services. The WCB reserves the right to reject the proposed replacement key resource and terminate the Agreement if the original key resource was performing a substantive and material component of the Services and the WCB determines, in its sole and unfettered discretion, it will not be in the WCB's best interest to have the Services continued with a replacement key resource.
4. At any time, upon request of the WCB, acting reasonably, the Contractor shall remove within five (5) Business Days any resource of the Contractor (whether employed or otherwise engaged by the Contractor or its Subcontractor) who in the opinion of the WCB is deemed to be unsuitable and thereafter the Contractor shall replace that resource with one who is acceptable to the WCB, acting reasonably.
5. The Services are to commence and be completed in accordance with the dates and times agreed upon in writing by the parties, unless mutually amended in writing by the parties or sooner terminated hereunder (the "Term").
6. The Services shall be deemed to end once the WCB has confirmed the Services have been completed in accordance with the terms of the Agreement.
7. Where applicable, the Contractor shall be responsible to provide and pay for all labour, materials, equipment, tools, temporary works, licences, and fees necessary to complete the Services, including the items provided by its Subcontractors. Any goods or services not explicitly listed in the Agreement which may be reasonably implied as necessary and usual for inclusion with providing the Services shall be deemed included in the Services.

8. Where applicable, the Contractor shall be responsible for the storage, transportation, and handling of any goods which need to be delivered as part of the Services, including costs of same, until accepted by the WCB, acting reasonably.
9. The Contractor warrants to the WCB that any products it provides with the Services will conform to official published specifications. The warranty period for such a product will be for a fixed original manufacturer's period commencing the date of installation and if the product does not function as warranted during the warranty period and the Contractor is either (i) unable to make it do so; or (ii) replace it with one that is at least functionally equivalent, the WCB may return it to the Contractor for a refund.
10. The Contractor's resources providing the Services shall have the necessary skills, expertise, and experience and will devote the proper time, care, and attention necessary to provide the Services in a professional manner, in conformity with generally accepted industry standards.
11. The Contractor's resources hold and will continue to hold all current licenses and certification required to provide the Services and will continue to remain in good standing with such relevant licensing and certification bodies for the duration of the Services.
12. The Contractor owns or possesses sufficient legal rights to all the intellectual property necessary for its business as now conducted and as currently proposed to be conducted to provide the Services without violation or infringement of the rights of others, provided however that the foregoing representation is made to the Contractor's knowledge with respect to third party patents, trademarks, and applications for same.
13. When specified as a requirement in the RFP, a Contractor that is a corporation or partnership will be in good legal standing to carry on business in Manitoba for the duration of the Services. If no such requirement is specified in the RFP the Contractor shall provide written proof of good standing within its home jurisdiction, and remain so for the duration of the Services.
14. The Services will be performed according to the WCB's policies which are applicable to external vendors. The WCB shall provide the Contractor with a copy of such policies upon request.
15. The Contractor shall provide a list of its resources working on WCB premises, if applicable, and ensure:
  - a) compliance with applicable occupational health and safety laws and regulations;
  - b) resources are provided and use proper protective equipment, as required;
  - c) material safety data sheets are provided and used, as required
  - d) resources are not impaired by the influence of drugs or alcohol;
  - e) equipment provided with the resources is in safe operating condition; and
  - f) resources are oriented on WCB evacuation procedures and emergency exits.

16. Electronic data created as part of the Services will be provided in a format compatible with the WCB's computer systems, as specified by the WCB to the Contractor.
17. If specified in the RFP or legally required pursuant to *The Workers Compensation Act*, a Contractor shall ensure its workers have workers compensation coverage in Manitoba.

### **Subcontracting**

18. The Contractor shall not subcontract to a third party any of the following activities: (i) provision of a significant portion of the Services; (ii) any use, hosting, or having access to any of the WCB's Confidential Information; (iii) any portion of the Services subject to a regulatory framework; or (iv) development of any intellectual property, unless clearly specified in its Proposal and accepted in writing by the WCB. If the Contractor has specified its intention to use a Subcontractor for any of the Services the WCB may require the Contractor to:
  - a) employ only a Subcontractor who has successfully carried out work similar in nature, scope, and value to the portion of the Services proposed to be subcontracted to that Subcontractor, or employ a Subcontractor fully capable of performing the work;
  - b) enter into a written agreement with a Subcontractor to require it to be in conformance with and subject to the terms and conditions of the Agreement, including the execution of confidentiality pledges by its individual resources;
  - c) be fully responsible for all acts and omissions of any said Subcontractor and of any person directly or indirectly engaged by the Subcontractor as if such person was an employee of the Contractor; and
  - d) replace, substitute, or not use any Subcontractor or any person directly or indirectly engaged by the Subcontractor if requested by the WCB, acting reasonably.
19. The Contractor shall remain responsible for all acts of its employees in breach of the Agreement, whether outside the ordinary course of their employment or otherwise, or in the case of a Subcontractor, whether in breach of the terms of their contract with the Contractor or otherwise. Nothing contained in the Agreement is intended to create a contractual relationship between the WCB and a Subcontractor.

### **Confidentiality**

20. To the extent that, in connection with the Agreement, each party comes into possession of any confidential or proprietary information of the other party, including without limitation any personal information as defined in *The Freedom of Information and Protection of Privacy Act* (the "Confidential Information"), each party shall use the Confidential Information of the other party solely for the purposes of the Agreement, and will not disclose such Confidential Information to any third party without the other party's prior consent. Each party shall maintain the Confidential Information of the other party in confidence using at least the same degree of care as it employs in maintaining in confidence its own Confidential Information, but in no event less than a reasonable degree of care.



21. The Contractor acknowledges confidentiality provisions of *The Workers Compensation Act* may apply to it and that the WCB is subject to Manitoba's *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*. In the event the WCB gives the Contractor access to the WCB's Confidential Information the Contractor will comply with *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*, and *The Workers Compensation Act*, together with reasonable procedures approved by the WCB to protect the confidentiality, security, disclosure, and destruction of such Confidential Information. The WCB has the right to obtain injunctive relief for any violation of this section by the Contractor.
22. Confidential Information shall not include information which (i) shall have otherwise become publicly available (other than as a result of disclosure by the receiving party in breach hereof); (ii) was disclosed to the receiving party on a non-confidential basis from a source other than the disclosing party which the receiving party believes is not prohibited from disclosing such information as a result of an obligation in favour of the disclosing party; (iii) is developed by the receiving party independently of, or was known by the receiving party prior to, any disclosure of such information made by the disclosing party; or (iv) is disclosed with the written consent of the disclosing party. A receiving party also may disclose Confidential Information to the extent required by an order of a court of competent jurisdiction, administrative agency, governmental body, by law, rule, or regulation, or by subpoena, summons, or other administrative or legal process, or by applicable regulatory or professional standards, or in connection with any judicial or other proceeding involving the Contractor and the WCB relating to the Services provided pursuant to the Agreement.
23. If the Services allow any individual engaged by the Contractor to have access to the WCB's Confidential Information, each individual allowed such access shall sign a confidentiality pledge prior to providing the Services which may state in part:
- a) I have been told of the issues and policies with respect to the confidentiality of the Confidential Information within the WCB in accordance with *The Workers Compensation Act*.
  - b) I acknowledge that I am aware of and understand the WCB's policies regarding the security of the Confidential Information and agree that I am bound by such policies, including policies for use, collection, disclosure, storage, and destruction of the Confidential Information.
  - c) As part of my association with the WCB in the performance of the Services, I promise that I will not at any time, during my association with the WCB or after my association ends, access, use, or disclose the Confidential Information except as may be required in the course of my duties in connection with the Services or under the WCB's authority.
  - d) I am aware that a violation of this confidentiality may result in disciplinary action up to and including termination of the Agreement, possible enforcement under *The Workers Compensation Act*, prosecution under applicable privacy law, and a report to any applicable professional regulatory body.

24. In the event of a security (or other) breach where it appears the WCB's Confidential Information was or may have been improperly accessed, used, disclosed, altered, lost, or destroyed, the Contractor shall as soon as reasonably possible (i) notify the WCB; (ii) take all actions necessary to address the breach and reasonably prevent a similar breach from occurring in the future; and (iii) provide the WCB with a summary of such actions.
25. Notwithstanding anything to the contrary in the Agreement, it is understood and agreed that the Contractor's computer system and the computer system of persons and legal entities to whom the WCB's Confidential Information needs to be disclosed by the Contractor in order to provide the Services, may automatically back-up the WCB's Confidential Information. To the extent that such computer back-up procedures create copies of the WCB's Confidential Information, the Contractor may retain such copies in its archival or back-up computer storage for the period it normally archives backed-up computer records, provided that such back-up copies shall be subject to the confidentiality provisions of the Agreement until destroyed.
26. The Contractor may also retain for a reasonable period of time such working papers, records, or other documentation which reasonably evidence the nature and extent of its work performed in respect of the Services, which may include the WCB's Confidential Information, as required by applicable standards or rules of professional conduct by which the Contractor is subject to.
27. The Contractor shall not transport or store the WCB's Confidential Information outside Canada, including but not limited to the storage of electronic data, without the express prior written consent of the WCB.
28. If the Contractor receives a subpoena or other validly issued administrative or judicial order seeking the WCB's Confidential Information, the Contractor shall provide prompt notice to the WCB and deliver to the WCB a copy of its proposed response to the demand. Unless the demand has been quashed, the Contractor shall thereafter be entitled to comply with the demand to the extent required by law. If so requested by the WCB, and at the expense of the WCB, the Contractor shall cooperate with the WCB in a defence of any demand for the WCB's Confidential Information.
29. Upon completion of the Services, the Contractor will return all paper and electronic copies of the WCB's Confidential Information, except as otherwise expressly provided in the Agreement.

### **Fees and Invoicing**

30. Following completion of each portion of the Services, or at such intervals agreed to in the Agreement, the Contractor shall invoice the WCB for the performance of the completed portion of the Services, with documentation satisfactory to the WCB, acting reasonably.

31. Upon receipt of the invoice, the WCB shall promptly determine whether the Services, which are the subject of the invoice, are approved and the WCB shall pay to the Contractor the amount of the approved portion of the Services within thirty (30) calendar days of the Contractor's submission of the invoice. If the approved portion of the Services remains unpaid by the WCB thirty (30) calendar days after the invoice has been received it will bear interest at 1% per month. The WCB bears no responsibility for payment delays or interest if an invoice is improperly submitted by the Contractor.
32. If the WCB does not approve of any portion of the Services which is the subject of an invoice, the WCB shall within ten (10) Business Days notify the Contractor in writing, with reasons as to why the Services were not approved, and the Contractor shall remedy the Services at no additional cost to the WCB before the WCB shall be obliged to pay the unapproved portion of the Services which was the subject of the invoice.
33. No increase in the price of the Services or any additional payment will be authorized by the WCB or made to the Contractor as a result of any change to the Agreement unless such increase or additional payment was authorized in advance and in writing by the WCB's authorized representative.
34. Fees stipulated in the Fee Schedule are exclusive of applicable Provincial Sales Tax ("PST") and are expressed in Canadian dollars, unless otherwise clearly stated.
35. The Contractor shall not invoice the WCB for Goods and Services Tax ("GST"). The WCB is GST exempt and its GST exemption number is 107863847RT0013.
36. If the Contractor is a person that is a non-resident of Canada, the WCB may be required by the *Income Tax Act* (Canada) to deduct from the fees payable for the Services, a withholding tax, which will be submitted to the Receiver General of Canada on the Contractor's behalf.
37. Invoices should indicate:
  - a) detailed list of labour and materials supplied and fees charged;
  - b) any credits or refunds from prior invoices;
  - c) total amount payable with PST (if applicable) shown as separate amount; and
  - d) the WCB's GST exemption number.
38. The Contractor shall not invoice for any out-of-pocket expenses not expressly included in the Fee Schedule without prior written approval of the WCB. Upon request of the WCB, the Contractor shall provide legible copies of receipts (excluding meal receipts) for such invoiced expenses.

39. Expenses for travel, lodging, and meals (if specified as an extra charge in the Agreement) shall be based on the following guidelines:

**Travel**

- Air travel will be based on pre-booked economy seating;
- Reasonable steps will be taken to mitigate travel expenses;
- To be reimbursable travel expenses must be (i) reasonable; (ii) allocable; and (iii) necessary for the performance of the Services;
- Time incurred during travel is not billable unless specifically agreed to in writing by the WCB; and
- Invoices must include legible copy of receipts and individual's name, departure and destination cities, travel dates, and purpose.

**Lodging**

- Will be based on a corporate rate for a standard hotel room within walking distance of the WCB's location where feasible; and
- Invoices must include legible copy of receipts and individual's name, hotel, dates of stay, and purpose.

**Meals**

- Meal expenses associated with providing the Services will be based upon the WCB's current meal expenses reimbursement policy in effect for WCB staff at the time the Services are provided;
- Invoices must identify the individual's name, date, and claim for breakfast/lunch /dinner or full days total; and
- Invoices for meal expenses will be equal to the WCB's meal rates regardless of actual expense with no receipts required.

**Indemnification & Insurance**

40. The Contractor shall indemnify and save harmless the WCB from and against any and all liability arising from reasonably foreseeable losses, liens, charges, claims, demands, payments, suits, actions, recoveries, and judgments (including legal fees and expenses) which are brought or recovered against either the WCB or the Contractor by reason of a wilful or negligent act, error, or omission attributable to the Contractor, its Subcontractors, agents, employees, or licensees in performance or purported performance of the Services, including, without limiting the generality of the foregoing, loss or damage to tangible property, bodily injury, sickness, disease, or the death of any person, alleged copyright, patent, or other intellectual property rights infringement or interference, defective design, or damage to the environment.

41. Notwithstanding the foregoing, the Contractor's indemnity obligations will not apply to the extent that such intellectual property claim arises from, or could have been avoided except for: (i) modification of the Services other than by the Contractor; (ii) use of the Services in breach of the Agreement or in a manner not reasonably contemplated by the Agreement; (iii) failure of the WCB to use any corrections or modifications to the Services or its usage that were made available by the Contractor; (iv) use of the Services in combination with any data, product, service, software, platform, network, or other technology not provided or recommended by the Contractor.
42. The Contractor shall not be required to indemnify the WCB for any costs, damages, or expenses arising from losses, liens, charges, claims, demands, payments, suits, actions, recoveries, and judgments due to a wilful or negligent act, error, or omission of the WCB.
43. The Contractor will reasonably cooperate and consent to allow the WCB to control the defense and settlement, including mitigation efforts, of any liens, charges, claims, demands, suits, actions, recoveries, and judgments arising from a third party against the WCB, and to recover from the Contractor the amount so paid or to be paid in effecting a defense and settlement with a third party (including legal fees and expenses), where it has been determined by the WCB, acting reasonably, that such defense and settlement was necessary due to a wilful or negligent act, error, or omission of the Contractor, its Subcontractors, agents, employees, or licensees in performance or purported performance of the Services.
44. If the Contractor fails to make any payment required to be made as set forth herein, the WCB shall be entitled to deduct and set off the amount of such payment from any amount owing by the WCB to the Contractor under the Agreement or take whatever other remedies against the Contractor that the WCB may have at law or otherwise.
45. The Contractor shall have and maintain, at minimum, comprehensive general liability insurance at all times during the performance of the Services, with a limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the annual aggregate, to the reasonable satisfaction of the WCB.

#### **Events of Default**

46. An event of default ("Event of Default") will be deemed to have occurred if, in the reasonable judgment of the WCB as applicable, the Contractor:
  - a) has abandoned or is not performing the Services in all material respects with the requirements and specifications set out in the Agreement;
  - b) fails to submit schedules, documents, or information material to the Services;
  - c) fails to make prompt payment to any persons on account of the purchase or rental of equipment, materials, or labour relating to the Services;
  - d) fails to remedy or replace a defective product during any warranty period;

- e) is adjudged bankrupt or files for bankruptcy, becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets;
  - f) fails to promptly secure a discharge of a lien or trust claim served upon the WCB as a result of the Contractor providing the Services; or
  - g) commits any other material breach of the Agreement.
47. If an Event of Default occurs and is not cured by the Contractor within ten (10) Business Days, the WCB may do any one or more of the following:
- a) withhold, set off, and retain the whole or part of payment owing to the Contractor;
  - b) take the whole or any part of the Services out of the Contractor's control;
  - c) demand payment for any amount still owing to the WCB by the Contractor.
48. No failure or delay on the part of the WCB to exercise its rights in relation to an Event of Default will constitute a waiver by the WCB of such rights.
49. The duties and obligations imposed upon the Contractor and the rights and remedies available to the WCB under the Agreement are in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed upon the Contractor or available to the WCB at law, in equity or otherwise.

### **Termination**

50. The WCB may terminate the Agreement at any time, without cause, upon thirty (30) calendar days' written notice to the Contractor, whereupon the WCB shall only be liable to pay the Contractor for fees and expenses charged for satisfactorily completed Services up to the date of termination.
51. The WCB may terminate the Agreement at any time, with cause, (which includes but is not limited to an Event of Default not cured by the Contractor to the satisfaction of the WCB, acting reasonably) without penalty, expense, or further liability of any kind upon giving written notice to the Contractor.
52. Upon expiry or earlier termination of the Agreement the Contractor shall, if requested by the WCB, in addition to its obligations under the Agreement and at law: (i) within ten (10) calendar days return all the WCB's tangible property and Confidential Information in the Contractor's possession or under its control; (ii) advise the WCB in writing of the current state of the Services performed to date of termination or expiration; and (iii) if applicable, comply with the WCB's instruction to facilitate transfer of the Services over to another service provider (including execution of documents reasonably required for same, as agreed to by the parties).

53. The WCB's rights of termination shall be in addition to any other rights or remedies it has under the Agreement or at law.

### **Independent Contractor**

54. The parties expressly acknowledge the Contractor is an independent contractor and not an employee or partner of the WCB. The Contractor is not an agent of the WCB unless expressly appointed in writing and duly executed by the WCB. The Contractor shall be solely responsible for all matters relating to statutory deduction of all taxes, employment insurance, Canada Pension, all licences and permits which may be or become required to perform the Services, and for all matters relating to leave, remuneration, workers compensation coverage, insurance premiums, and discipline of its employees and Subcontractors.

### **Ownership of Materials and Intellectual Property Rights**

55. Upon payment to the Contractor for the Services completed to date, the WCB shall own all property rights in the records, software, and other material, whether complete or not, that, as a result of the Agreement, are first produced or provided by the Contractor or its Subcontractor which are not intellectual property rights, but shall exclude any material in existence prior to the start of the Services or developed independently of the Agreement which is incorporated or embedded in the material produced by the Contractor or a Subcontractor.
56. All records, software, and other material, in any form, prepared by the Contractor for the WCB pursuant to the Agreement shall, upon payment to the Contractor for same, become the property of the WCB unless otherwise specifically indicated in the Agreement.
57. Upon any of the Contractor's material in existence prior to the start of the Services or developed independently of the Agreement being embedded or incorporated in the material produced for the WCB, as a result of the Agreement, and to the extent that it remains so embedded or incorporated, the Contractor grants to the WCB a non-exclusive, non-transferable, irrevocable, royalty-free, worldwide license to exercise, in respect of that incorporated material, the rights set out in the *Copyright Act* (Canada), including the right to use the incorporated material for the WCB's business purposes which includes the right to disclose the records, software, and other material to external service providers with whom the WCB has a written agreement for the supply of ancillary services to support its business operations, and with whom the WCB has a reasonable business purpose to disclose such information, and to other persons and entities as required by applicable law.

58. With regard to rights set out in the *Copyright Act*, the Contractor hereby warrants to the WCB that the Contractor is the sole author of the new work prepared, developed, or created by the Contractor, its employees, or agents during the performance of the Services (the "Work"), the Work is original, the Work does not infringe upon any existing copyright, the Work does not contain any libellous or obscene material and that the Contractor is the sole proprietor of all rights granted by the Agreement to the WCB and the Contractor has full right and power to execute the Agreement. The Contractor hereby assigns all copyright in the Work to the WCB for valuable consideration for the duration of the copyright in the Work unless specifically noted otherwise in the Agreement.
59. The WCB continues to exclusively retain its own intellectual property rights, including all copyright in the WCB's records, software, and other material, whether complete or not, that are received by the Contractor from the WCB as a result of the Agreement.

### **Notice**

60. Any notices to be given to either party by the other party under the Agreement shall be given in writing and shall be delivered personally, by courier, mailed by postage pre-paid mail, or transmitted by facsimile or e-mail transmission to the mailing address, facsimile number, or e-mail address provided by each party in the Agreement.
61. Any notice given by postage pre-paid mail shall be deemed to have been received by the party to whom it was addressed on the third Business Day after the date of mailing, and in the case of personal delivery, courier, facsimile, or e-mail transmission, on the date of such delivery or transmission if sent during Business Hours or on the next following Business Day if such delivery or transmission was sent after Business Hours, as the case may be. In case of actual or pending postal disruption of Canada Post, notice shall be provided by personal delivery, courier, facsimile, or e-mail transmission.

### **Time of Essence**

62. Time shall be considered of the essence in providing the Services, in accordance with all dates agreed to in writing by the parties.

### **Governing Law**

63. The parties agree the Agreement shall be governed by the laws of the Province of Manitoba and the federal laws of Canada applicable thereto. The parties further agree that the Courts of the Province of Manitoba shall have sole and exclusive jurisdiction over any dispute or lawsuit between the parties.



### **Interpretation**

64. Any capitalized words not defined in the Agreement shall have the same meaning originally defined in the RFP from which the Agreement arose. The RFP and the Proposal attach to and form part of the Agreement. In interpreting the Agreement, to the extent of any inconsistency between the Agreement, the RFP, and the Proposal, the Agreement shall prevail followed by the RFP and then the Proposal.

### **Severability**

65. If any provision of the Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of the Agreement and the application of such provision to any other person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.

### **Waiver**

66. A waiver of any term or breach of the Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving party. No express written waiver of a specific provision shall imply the waiver of any other provision.

### **Entire Agreement**

67. The Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior representations, negotiations, and understandings. The schedules to the Agreement (including any appendices or other documents attached to or incorporated by reference into those schedules) form part of the Agreement.
68. Any click-wrap, click-through, or shrink-wrap agreements, or any online terms on the Contractor's website, shall not supersede provisions of the Agreement, and such terms and conditions are not included as part of the Agreement, unless expressly agreed in writing by the WCB.

### **No Assignment**

69. The Contractor must not assign any of the Contractor's rights or delegate its duties under the Agreement without the WCB's prior written consent, acting reasonably, except that the Contractor may assign any claims for money due or to become due to it under the Agreement without prior written consent of the WCB.

### **Survival of Conditions**

70. Any accrued but unpaid payment obligations and any sections of the Agreement (including schedules) which, by their terms or nature, are intended to survive the completion of the Services or earlier termination of the Agreement, shall continue in force indefinitely subject to any applicable limitation period prescribed by law.

### **Execution and Delivery**

71. The Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which taken together, shall constitute one and the same document. A person's execution and delivery of the Agreement by electronic signature and electronic transmission shall constitute the execution and delivery of a counterpart of the Agreement by or on behalf of such person. The parties agree that the Agreement and any additional information incidental thereto may be maintained as electronic records. Any person delivering the Agreement by electronic signature further agrees to take any and all reasonable additional actions, if any, evidencing its intent to be bound by the terms of the Agreement, as may be reasonably requested by the WCB.

### **The Freedom of Information and Protection of Privacy Act**

72. The Contractor acknowledges the WCB may be required to provide a copy of the Agreement and any other records under the WCB's control to third parties pursuant to the disclosure requirements of *The Freedom of Information and Protection of Privacy Act*. The WCB understands that information may be provided in confidence and will only release such information as legally permitted under *The Freedom of Information and Protection of Privacy Act*.

### **The Accessibility for Manitobans Act**

73. The Contractor acknowledges that *The Accessibility for Manitobans Act* and the regulations made under it impose obligations on the WCB to provide accessible customer service to all persons in accordance with the *Customer Service Standard Regulation*, and to communicate information in an accessible manner in accordance with the *Accessible Information and Communication Standard Regulation*.
74. For the purposes of the Agreement, "accessible customer service" shall mean service which ensures that all persons who are reasonably expected to seek to obtain, use, or benefit from a good or service have the same opportunity to obtain, use, or benefit from the good or service.
75. For the purposes of the Agreement, "accessible communication" means communication of information in a manner that is free from barriers that prevent or hinder a person from obtaining, using or benefiting from the information.

76. Throughout the Term of the Agreement, the Contractor agrees that when providing the Services or otherwise acting on the WCB's behalf, the Contractor shall comply with all obligations under *The Accessibility for Manitobans Act* and regulations regarding accessible customer service and accessible communication that are applicable to government agencies.

### **Force Majeure**

77. Neither party shall be responsible for any failure to comply with, or for any delay in performance of, the terms of the Agreement where such failure or delay is directly or indirectly caused by or results from events of force majeure beyond the control of either party. The time in which the Services are to be provided shall be extended by a period of time at least equal to the length of the force majeure event, provided that in the event the extended period of time exceeds, or is reasonably anticipated to exceed a period of fourteen (14) calendar days, then the WCB may terminate the Agreement and pay the Contractor for all Services performed to the date of the force majeure event.

## **Schedule "C"**

### **DESCRIPTION OF SERVICES**

#### **WCB Background**

1. The WCB is a mutual workplace injury and disability insurance agency funded by employer premiums. It promotes safety and health in the workplace, and aims to help prevent and reduce the occurrence of workplace injuries and disease. The WCB works with its partners to facilitate recovery and return to work, and provides compensation services for workers and employers. For more information please visit [www.wcb.mb.ca](http://www.wcb.mb.ca).
2. The WCB has its main office facilities located at 333 and 363 Broadway, in Winnipeg, Manitoba, a satellite office located in Thompson, Manitoba, and a regional office located in Brandon, Manitoba.

#### **Project Background**

3. As part of the WCB's new five (5) year strategic plan, the WCB is undertaking a significant multi-year digital modernization program. The scope of the program is expected to include the following:
  - a) Replacement of the WCB's existing legacy systems for Claims, Assessments, and Finance with state of the art of the commercial off the shelf (COTS) products;
  - b) Offer a digital first, omni channel individualized experience for workers, employers, and healthcare providers;
  - c) A new modern IT infrastructure that can be easily integrated with different technology solutions; and
  - d) A new target operating model which enables services that incorporate human centred design approaches, delivering services based on each customer's unique needs, an individualized service experience;

(collectively the "Digital Modernization Program").
4. Several organizational capabilities will need to be in place for the WCB to replace the existing legacy systems. Part of the WCB's preparation for the Digital Modernization Program includes engaging external vendors to assist with the following planned organizational areas of focus:
  - a) Developing an internal Enterprise Project Management Office (EPMO) to support the Digital Modernization Program;
  - b) Developing an internal Change Management Office (CMO) to support the Digital Modernization Program;
  - c) Developing an Enterprise Risk Management (ERM) function to support the Digital Modernization Program; and

- d) Review and potentially modify some internal procurement processes to support an increase in procurement of products and services for the Digital Modernization Program.
- 5. The Digital Modernization Program is expected to be completed within a five (5) to seven (7) year period [but the WCB may retain the external Program Director for up to an additional two (2) years]. The Services are divided in two (2) main phases:

Phase 1- **Foundation:** This phase is expected to last for two (2) years, with the goal to prepare the WCB for the Implementation (Phase 2) of the Digital Modernization Program.

Phase 2- **Implementation:** This phase, if approved, is expected to last for three (3) to five (5) years, with the goal to implement the scope of the Digital Modernization Program. Phase 2 will be further divided into smaller components to reflect the Digital Modernization Program implementation needs. Phase 2 of the program is contingent on receiving approval by the WCB's Board of Directors.

### **Description of Services**

- 6. The WCB requires a Contractor with specialized expertise in conducting Privacy Impact Assessments ("PIAs") and Threat Risk Assessments ("TRAs") to ascertain the business risks associated with the Digital Modernization Program. This will include, but not be limited to, any associated data sharing agreements, policies, procedures, and technical architecture solutions that govern the collection, use, disclosure, and retention of personal information ("PI") and personal health information ("PHI") in accordance with *The Freedom of Information and Protection of Privacy Act* (Manitoba), *The Personal Health Information Act* (Manitoba), and other relevant legislation, as applicable.
- 7. The Services will include identifying and evaluating risk by undertaking an assessment of threats and vulnerabilities to the security and integrity of PI and PHI during both the Foundation (Phase 1) and Implementation (Phase 2) of the Digital Modernization Program. The WCB's preference is to retain a Contractor that can provide expertise in performing both the PIAs and TRAs.
- 8. The Contractor will assess, analyse, and document the impacts on privacy that may result from the Digital Modernization Program. The PIAs will include any actual or potential risks and effects from the collection, use, disclosure, and retention of PI and PHI.
- 9. The Contractor will assess and analyse any new IT architecture and security framework and document in the TRAs, including any internal or external threats and risks associated with proposed changes to accepted rules, regulations, and industry best practices.

10. The Services shall normally be performed during Business Hours. However, the WCB may request some of the Services to be performed outside Business Hours from time to time, as deemed necessary, in the unfettered discretion of the WCB. The Contractor shall not be entitled to charge overtime rates unless specified in the Fee Schedule.
11. The Contractor *must* have expertise in the areas of privacy, security, legal, and information technology and a track record of conducting PIAs and TRAs with a similar level of complexity.
12. The Contractor *should* have experience and knowledge with the legislation and privacy principles applicable to public bodies operating in Manitoba.
13. The Proposal should include an overview of the proposed key resource(s) being offered, including profiles of work which highlight their experience performing similar projects.
14. The Contractor will not be required to have and maintain workers compensation coverage for its workers who will be providing the Services, unless required pursuant to *The Workers Compensation Act*.
15. The Services shall be provided onsite at the WCB's facilities and from the Contractor's facilities located in Canada, as applicable, unless otherwise agreed in writing.
16. It is expected PIAs and TRAs will be required at various points during the initial five (5) to seven (7) year period of the Digital Modernization Program. The WCB shall have an irrevocable option to extend the Services on the same terms and conditions and fees for an additional period of two (2) years if the WCB has not completed Phase 2 (Implementation) within seven (7) years.
17. The Services will be structured with an Agreement that will require the parties to enter into subsequent Statements of Work (collectively the "SOWs").
18. The full scope of work for the Services cannot be determined by the parties at the time the Agreement is executed because it is anticipated the WCB's needs and priorities for PIAs and TRAs will evolve as different components of the Digital Modernization Program are completed and further information is collected. The parties shall mutually agree upon the distinct scopes of work during the Services, including the total fees, deliverables, and completion dates for same, in writing, via the SOWs, prior to commencing work on such new PIAs and TRAs.

19. The Contractor must demonstrate it possesses the following criteria. The criteria will be weighted during the evaluation of Proposals as follows:

<b>Criteria</b>	<b>Weight</b>
a) Meets RFP mandatory requirements;	Pass/Fail
b) Capability to provide the Services (qualifications of the Vendor and its proposed resources);	30%
c) Demonstrated knowledge and experience of performing similar services with similar size customers;	30%
d) Proposed work methodology;	15%
e) Demonstrated value for estimated fees;	15%
f) Satisfactory meeting and client reference checks.	10%
<b>Total</b>	<b>100%</b>

**Schedule "D"**  
**FEE SCHEDULE**

1. The Vendor is to complete this Fee Schedule as fully as possible. Do not include sales tax in fees but specify which sales tax is applicable (the WCB is GST exempt).
2. Any increase in fees during delivery of the Services must be clearly stated in this Fee Schedule in order for such increase(s) to apply.
3. If more space is required please provide the information in a separate document.

Proposed Resource Name(s)	Earliest Available After Oct. 3/23	Resource Local to Wpg? (Yes/No)

Year 1 Hourly Rate*	Year 2 Hourly Rate*	Year 3 Hourly Rate*	Year 4 Hourly Rate*	Year 5 Hourly Rate*	Year 6 Hourly Rate*	Year 7 Hourly Rate*	Year 8 Hourly Rate*	Year 9 Hourly Rate*
\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr
\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr
\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr	\$ /hr

*\* The hourly flat rates provided above must be inclusive of all travel/lodging/meal costs and any other extra expenses expected to be incurred during delivery of the Services. If any of the Services are provided outside Business Hours no overtime rate shall apply unless clearly indicated by the Vendor. Hourly rates stated above are the basis for any SOWs.*