

SERVICE PURCHASE AGREEMENT

BETWEEN:

**THE GOVERNMENT OF MANITOBA
as represented by
THE MINISTER OF FAMILIES,**

("Manitoba"),

- and -

[INSERT NAME OF SERVICE PROVIDER]

("Service Provider").

WHEREAS the Service Provider is a non-share corporation;

AND WHEREAS the Service Provider was established to provide certain services, some or all of which may be required by Manitoba from time to time;

AND WHEREAS both parties believe they are responsible for and are committed to providing a high quality of services necessary to maintain the confidence of the individuals receiving the services;

AND WHEREAS Manitoba wishes to purchase certain services from the Service Provider and the Service Provider is prepared to deliver those services to Manitoba, in accordance with the terms and conditions of this Agreement;

NOW THEREFORE Manitoba and the Service Provider agree as follows:

SECTION 1.00 - INTERPRETATION, SCHEDULES, APPENDICES AND PRIORITIES

1.01 The following definitions apply in this Agreement:

- (a) "Agreement" means this document, the Schedules listed in subsection 1.02 and the Appendices listed in subsection 1.03.
- (b) "Financial Reporting Requirements" means the reporting requirements established by Manitoba, as may be varied from time to time during the term of this Agreement.
- (c) "Fiscal Year" means the period beginning on April 1 and ending on March 31 of the next calendar year.
- (d) "Programs" means Government of Manitoba programs described in the Schedules.
- (e) "Services" means the services and activities to be provided by the Service Provider to Manitoba under this Agreement as set out in the Schedules.
- (f) "Standards" refers to any applicable standards established by Manitoba, as may be varied from time to time during the term of this Agreement, and as they are related to the "Services" to be provided in accordance with this Agreement.

1.02 The following Schedules are attached and form part of this Agreement:

- (a) Schedule A – **INSERT ALL APPLICABLE SCHEDULES**

1.03 The following Appendices are attached and form part of this Agreement:

- (a) Appendix 1 – Deficit/Surplus Policy;

- (b) Appendix 2 – Manitoba’s Confidentiality of Information and Protection of Personal Information Requirements;
 - (c) Appendix 3 – Manitoba’s Conflict of Interest Policy and Guidelines;
 - (d) Appendix 4 – Financial and Program Reports; and
 - (e) Appendix 5 – Departmental Program Contacts.
- 1.04 Unless otherwise provided herein, in the event of any inconsistency between the main body of this Agreement and any Schedule or Appendix other than Appendix 2, the terms of the main body of this Agreement shall prevail. In the event of any inconsistency between a Schedule and an Appendix other than Appendix 2, the terms of the Schedule shall prevail. In the event of any inconsistency between Appendix 2 and any other Appendix, Appendix 2 shall prevail.
- 1.05 The headings in this Agreement are for convenience of reference only and shall not affect the scope, intent or interpretation of any provision of this Agreement.

SECTION 2.00 – TERM OF AGREEMENT

- 2.01 This Agreement shall take effect as of **INSERT START DATE** and shall continue until March 31, **INSERT END DATE** unless extended beyond that date under section 13.00 or terminated before that under section 16.00.

SECTION 3.00 – SERVICES TO BE PROVIDED

- 3.01 The Service Provider agrees to provide the Services as outlined in the Schedules, in accordance with the terms and conditions of this Agreement.
- 3.02 Manitoba and the Service Provider agree that any services provided by the Service Provider outside of the scope of the Schedules, without the prior written approval of Manitoba, shall be deemed to be gratuitous on the Service Provider’s part, and Manitoba has no liability with respect to such services.
- 3.03 Manitoba and the Service Provider agree that the Services outlined in the Schedules will be provided in a manner consistent with policies and procedures established by the Service Provider. The Service Provider will provide Manitoba with a copy of such policies and procedures upon request in writing.
- 3.04 The Service Provider agrees to comply with all Standards that have been provided to the Service Provider by Manitoba or that Manitoba has otherwise notified the Service Provider of prior to, or concurrent with the execution of this Agreement, as such Standards may be varied from time to time with notice in accordance with subsection 3.05.
- 3.05 Manitoba agrees to notify the Service Provider of any changes in the Standards which Manitoba feels are applicable to the Service Provider. Any concerns with respect to such changes in the Standards shall be handled in accordance with subsection 15.05.
- 3.06 Where required by Manitoba, the Service Provider shall inform Manitoba in writing of any plans for expansion of programs and services prior to that expansion occurring.
- 3.07 The Service Provider agrees to endeavour to accommodate any request for French language services.

SECTION 4.00 - REPRESENTATIONS AND WARRANTIES

- 4.01 The Service Provider represents and warrants that:
- (a) it is a valid and existing corporation, and shall continue to be a valid and existing corporation during the term of this Agreement;
 - (b) it has the corporate power and capacity to enter into this Agreement and to deliver the Services and it has taken all necessary corporate action to enter into and to deliver this Agreement;

- (c) it possesses the necessary skills, expertise and experience to perform the Services in accordance with the provisions of this Agreement;
 - (d) it has established policies and procedures respecting the delivery of the Services outlined in the Schedules;
 - (e) it has all licences, approvals and permits required to provide the Services, and such licences, approvals and permits have not been suspended or cancelled;
 - (f) it has informed Manitoba of all actions, suits or legal proceedings pending or, to the knowledge of the Service Provider, threatened against or adversely affecting the Service Provider which might materially affect the financial condition of the Service Provider or the Service Provider's ability to fulfil the terms of this Agreement;
 - (g) its fiscal year runs concurrently with the Fiscal Year, unless waived in writing by Manitoba; and
 - (h) it understands Manitoba's requirements under this Agreement and will be able to satisfy these requirements.
- 4.02 The Service Provider states that all representations and warranties in this Agreement are accurate statements of fact. The Service Provider acknowledges that Manitoba has relied on the accuracy of those facts in entering into this Agreement.
- 4.03 The Service Provider agrees that during the term of this Agreement it will:
- (a) ensure that it remains a corporation regulated under an appropriate statute or ordinance in Canada and Manitoba respecting corporations;
 - (b) provide the Services in accordance with good business practices as well as the Standards and any other requirements which may be stipulated by Manitoba from time to time;
 - (c) comply with all applicable laws and regulations in effect from time to time;
 - (d) maintain all licences, approvals and permits required to provide the Services in accordance with this Agreement, and will not do anything that would cause an authority to cancel or suspend any licence, approval or permit;
 - (e) ensure that any care facilities required to be provided by the Service Provider as part of the Services, their plumbing, electrical, heating, ventilation and cooling systems, and their appliances and furnishings are in a good state of repair and fit for human habitation and will effect such repairs or replacements as may be necessary for this purpose in a timely manner;
 - (f) not change its fiscal year, unless waived in writing by Manitoba;
 - (g) be responsible for all costs incurred with respect to the Services, including any deficits or cost over-runs and will comply with the terms of Appendix 1; and
 - (h) give Manitoba prompt written notice of the occurrence of any event which constitutes or may with the passage of time constitute a breach or default under this Agreement.
- 4.04 The Service Provider represents and warrants that all Services including all deliverables provided under this Agreement shall not:
- (a) violate or infringe any copyright (including moral rights), patent, trade name, trademark, license or intellectual property or other proprietary right of any person, business or other entity;
 - (b) violate or infringe any common law or legislative right of any person, business or other entity; or
 - (c) involve or constitute a breach of Appendix 2 with respect to any individual.

SECTION 5.00 – PAYMENTS

- 5.01 Subject to the terms and conditions of this Agreement, Manitoba will pay the Service Provider for the Services provided and described in the attached Schedules, up to the maximum amount specified therein.
- 5.02 Manitoba shall not be held responsible for the cost of services offered or projects undertaken by the Service Provider outside the scope of this Agreement unless expressly agreed to by Manitoba, in advance, in writing.
- 5.03 Manitoba may, in its sole discretion, upon approval of the Legislature of the Province of Manitoba, increase payments to the Service Provider on account of the Services provided pursuant to this Agreement for any period during the term of this Agreement.
- 5.04 The Service Provider understands and agrees that all payments made under this Agreement shall be used by the Service Provider in accordance with the Schedules and for the sole purpose of providing the Services for the Program for which the payment was provided in accordance with the provisions of this Agreement unless otherwise agreed, in writing, by Manitoba.
- 5.05 Except as otherwise provided in the Schedules, the Service Provider understands and agrees that no payments made under this Agreement shall be used for real property (land or buildings) expenditures, without the prior written approval of Manitoba.
- 5.06 Payments for the Services whether in whole or in part shall not be deemed nor considered earned, in the hands of the Service Provider until such time as the Services are provided and are therefore not subject to any third party interests, whether by security agreement or otherwise.
- 5.07 Any payments to be made to the Service Provider pursuant to this Agreement other than per diem funding will be made as specified in the Schedules.
- 5.08 In the case of any payments to be made to the Service Provider pursuant to this Agreement by way of per diem funding, the Service Provider shall provide invoices to Manitoba in the form and at such a time as Manitoba may specify from time to time. The Service Provider shall also provide to Manitoba such supporting documents, vouchers, statements and receipts as may be requested by Manitoba to substantiate the amount set out in the invoice.
- 5.09 The parties agree that any surpluses generated or deficits incurred by the Service Provider shall be subject to and dealt with in accordance with Appendix 1.
- 5.10 If Manitoba requests repayment of any of the following amounts, in writing, the Service Provider must immediately repay the amount to Manitoba:
- (a) any amount paid to the Service Provider by Manitoba in error; and
 - (b) any amount paid to the Service Provider by Manitoba that is applied contrary to subsection 5.04 or 5.05.
- 5.11 Manitoba may deduct any amount that the Service Provider owes to Manitoba from any payment to be made to the Service Provider under this Agreement.

SECTION 6.00 - CONDITIONS

- 6.01 The undertaking of Manitoba to make any payment to the Service Provider is subject to and conditional upon:
- (a) the Legislature of the Province of Manitoba duly appropriating the funds payable by Manitoba in the Fiscal Year in which they are required; and
 - (b) the Service Provider strictly complying at all times with all terms and conditions of this Agreement, and fulfilling all its obligations, undertakings, representations and warranties hereunder; and

- (c) any program specific payment terms or conditions contained in any of the Schedules.

SECTION 7.00 - REPORTING REQUIREMENTS

- 7.01 The Service Provider shall provide written reports to Manitoba in accordance with the Financial Reporting Requirements by the dates specified therein. The Financial Reporting Requirements are posted at <https://www.gov.mb.ca/fs/about/pubs/frr.pdf>. Manitoba agrees to notify the Service Provider of any changes in the Financial Reporting Requirements.
- 7.02 For the purpose of this reporting section, in reporting on funds received to deliver the Services described in the Schedules, the Service Provider shall report on all monies received by the Service Provider under the provisions of this Agreement as well as any other monies received by the Service Provider from any other sources.
- 7.03 The Service Provider is required to provide all other Program specific reports specified in the Schedules and summarized in Appendix 4.

SECTION 8.00 - EVALUATION, AUDIT, REVIEW BY MANITOBA

- 8.01 The Service Provider shall establish and maintain such accounting records, financial documents and other records, including supporting documents and client files, as are necessary to properly deliver the Services, provide the required reports and manage the Service Provider's finances in accordance with the terms and conditions of this Agreement.
- 8.02 The Service Provider acknowledges that Manitoba has authority under subsection 37(1) of *The Freedom of Information and Protection of Privacy Act* (Manitoba) to collect and access personal information indirectly, including personal information from a client file.
- 8.03 Manitoba or an authorized representative or agent of Manitoba may, at its sole discretion, and at its own cost and expense, conduct an evaluation, inspection or audit of the Services provided by the Service Provider under this Agreement. Such evaluation, inspection or audit may include, without limitation, a review of the management and financial practices of and the Services provided by the Service Provider. Any Service Provider records relating to such reviews will be made available upon demand and without limitation.
- 8.04 The Service Provider agrees that all accounting records, financial documents, client files and other records relating to the Services or to this Agreement shall be preserved and available:
 - (a) at all reasonable times while this Agreement is in effect; and
 - (b) for seven (7) years following the end of the fiscal year to which the record pertains, for inspection and audit by Manitoba or its representative or auditor, and shall be produced by the Service Provider on demand.
- 8.05 The Service Provider shall provide reasonable facilities for such inspections and audits, shall provide copies of any extracts from the accounts, financial documents, client files and other records as are requested, and shall promptly provide such other information as may be reasonably requested by Manitoba and its representatives and auditors, from time to time. All expenses incurred by Manitoba relating to such evaluations, audits or reviews which it conducts shall be borne by Manitoba.
- 8.06 The Service Provider, and its directors, officers, employees and agents shall cooperate in any evaluation, audit or review by Manitoba, and neither the Service Provider, nor any of its directors, officers, employees or agents shall interfere in any evaluation, audit or review by Manitoba, or its authorized representatives or agents, either directly or indirectly, nor will they take any action during the course of any evaluation, audit or review that may prejudice the outcome of that evaluation, audit or review. Manitoba will provide the Service Provider with a copy of the final written results of any such evaluation, audit or review.

- 8.07 The Service Provider must ensure that any and all contracts that the Service Provider enters into with external (third party) auditors or accountants shall require the auditors and accountants to similarly cooperate in any evaluation, audit or review by Manitoba and authorizes the auditors and accountants to provide Manitoba with all such information and documentation relating to matters covered by this Agreement as Manitoba may reasonably request.

SECTION 9.00 - MANITOBA NOT LIABLE FOR INJURY, ETC. TO THE SERVICE PROVIDER

- 9.01 Manitoba's responsibility under this Agreement is limited solely to providing the payments in accordance with the terms and conditions of this Agreement. Without limiting the foregoing, Manitoba shall not be liable for any injury to the Service Provider, or to any directors, officers, employees or agents of the Service Provider, or for any damage to or loss of property of the Service Provider, or of the directors, officers, employees or agents of the Service Provider, caused by or in any way related to providing the Services or to this Agreement.
- 9.02 Subsection 9.01 does not apply if the injury, damage or loss was caused by the wrongful or negligent act or omission of a Minister, officer, employee or agent of Manitoba while acting within the scope of their responsibilities as a Minister, officer, employee or agent.
- 9.03 Subject to section 10.00, Manitoba shall save harmless and fully indemnify the Service Provider, its directors, officers, employees and agents from and against all claims, liabilities and demands with respect to any injury, damage or loss caused by the wrongful or negligent act or omission of a Minister, officer, employee or agent of Manitoba while acting within the scope of their responsibilities as a Minister, officer, employee or agent.

SECTION 10.00 - INDEMNIFICATION BY SERVICE PROVIDER

- 10.01 The Service Provider shall use due care in the performance of the obligations under this Agreement to ensure that no person is injured, no property is damaged or lost and no rights are infringed including, without limitation, privacy rights.
- 10.02 The Service Provider shall be solely responsible for:
- (a) any injury to persons (including death), damage to or loss of property or damage or loss arising from an infringement of rights caused by, or related to, the performance of this Agreement or the breach of any term or condition of this Agreement by the Service Provider, or the directors, officers, employees or agents of the Service Provider; and
 - (b) any wrongful or negligent act or omission of the Service Provider, or of the directors, officers, employees or agents of the Service Provider;

and shall save harmless and indemnify Manitoba, its Ministers, officers, employees and agents from and against all claims, liabilities, demands and costs including, without limitation, legal costs on a solicitor and own client basis, with respect to clauses (a) and (b).

SECTION 11.00 - INSURANCE

- 11.01 The Service Provider agrees to purchase and maintain throughout the term of this Agreement commercial general liability insurance against claims for personal and bodily injury, death or damage to property of others, arising out of the performance of any of the Services under this Agreement.
- 11.02 Without limiting or restricting the generality of subsection 11.01 above, such insurance shall:
- (a) name Manitoba, its Ministers, officers, employees and agents as additional insureds with respect to the Services being delivered pursuant to this Agreement; and

- (b) provide two million (\$2,000,000) dollars per occurrence, minimum limits, of third party liability.

11.03 The Service Provider shall ensure that:

- (a) all professionals, as designated by legislation, employed by or otherwise providing any of the Services on behalf of the Service Provider, and who are working in their designated professional capacity in providing the Services, obtain professional liability insurance;
- (b) the professionals in (a) are covered by professional liability insurance for a minimum amount of one million (\$1,000,000) dollars per occurrence or claim; and
- (c) the professionals in (a) obtain the professional liability insurance through their membership in a professional association or by a separate professional liability insurance policy.

11.04 The Service Provider shall purchase and maintain throughout the term of this Agreement:

- (a) property insurance for the full replacement value of all property of the Service Provider used in the delivery of the Services; and
- (b) where Manitoba is providing financial assistance for capital projects, property insurance for full replacement value of the capital project.

11.05 The Service Provider shall purchase and maintain throughout the term of this Agreement comprehensive dishonesty, disappearance and destruction coverage including Insuring Agreement 1 – Employee Dishonesty Coverage Form A subject to a minimum limit of twenty-five thousand (\$25,000) dollars naming Manitoba, its Ministers, officers, employees and agents as additional insureds.

11.06 The Service Provider shall submit to Manitoba a Certificate(s) of Insurance as written evidence of the required insurance prior to commencing the Services set out in this Agreement. The Certificate(s) of Insurance shall state that the insurer(s) will not cancel, materially alter or cause the policy(ies) to lapse without giving thirty (30) days' prior notice, in writing, to Manitoba.

11.07 The above are minimum insurance requirements intended to provide basic coverage for the Service Provider. It is the responsibility of the Service Provider and its insurance advisors to determine whether higher limits or additional insurance coverage are required.

11.08 The Service Provider shall ensure that it is in compliance with *The Workers Compensation Act* (Manitoba) with respect to all its employees and volunteers providing Services and shall provide evidence of such coverage to Manitoba upon request.

SECTION 12.00 – CONFIDENTIALITY AND PROTECTION OF PERSONAL INFORMATION

12.01 While this Agreement is in effect, and at all times thereafter, the Service Provider and its directors, officers, employees and agents shall comply with any rules or directions made or given by Manitoba with respect to the safeguarding or ensuring of the confidentiality of information, data, documents or materials acquired or by which access has been given in the course of or incidental to the performance of this Agreement.

12.02 Manitoba acknowledges that personal information provided by the Service Provider to Manitoba respecting individuals receiving Services provided by the Service Provider pursuant to this Agreement will be collected, used, disclosed and protected by Manitoba and its officers and employees in accordance with the provisions of *The Freedom of Information and Protection of Privacy Act* (Manitoba), *The Personal Health Information Act* (Manitoba) and all other applicable legislation.

12.03 The Service Provider recognizes that, in the course of carrying out its obligations under this Agreement, the Service Provider may receive, collect, acquire, be given access to and may otherwise be in possession of personal information about individuals receiving Services from the Service Provider under this Agreement. The Service Provider shall take all reasonable steps to protect the privacy of individuals receiving Services from the Service Provider, which shall include protecting personal information respecting these

individuals from risks such as unauthorized collection, use or disclosure. The Service Provider shall comply with the requirements respecting the collection, use, protection, disclosure, storage and destruction of personal information set out in Appendix 2 to this Agreement.

- 12.04 If the Service Provider becomes aware of any breach or possible breach of this section, it shall notify Manitoba immediately.
- 12.05 The Service Provider shall ensure that all persons who will have direct contact with persons in connection with the Services are made aware of their obligations under subsection 110(1) of the *Youth Criminal Justice Act* not to publish or communicate in any manner information that would identify a person as being or having been dealt with under the *Youth Criminal Justice Act*.

SECTION 13.00 – EXTENSION OF AGREEMENT

- 13.01 This Agreement may be extended by written agreement between Manitoba and the Service Provider.
- 13.02 If no notice to terminate has been given by either party, then this Agreement shall remain in full force and effect without change for a period of six (6) months beyond the expiry date and any extension(s) thereof, at which time it shall expire and be at an end, unless a new service purchase agreement is signed prior to the end of that six (6) month period or this Agreement is terminated pursuant to section 16.00.

SECTION 14.00 – AMENDMENT OF AGREEMENT

- 14.01 Except as otherwise provided in the Schedules, no amendment to this Agreement will be valid unless it is in writing and signed by both parties.
- 14.02 If Manitoba wishes to contract with the Service Provider for the provision of services or activities under a program not already provided under this Agreement, Manitoba will enter in an amending agreement with the Service Provider to add the new Program and related funding for it by attaching a further Schedule for the new Program to this Agreement.

SECTION 15.00 – RESOLVING CONCERNS

- 15.01 The Service Provider is responsible to notify Manitoba in writing of any concerns arising with respect to any terms and conditions of this Agreement. Without limiting the foregoing, the Service Provider must notify Manitoba, without delay, of:
- (a) any possibility that the Service Provider may not be able to carry out its obligations under this Agreement;
 - (b) any change in its legal structure, management or operations that could reasonably be expected to have an adverse effect on the Service Provider's ability to comply with this Agreement; and
 - (c) any other fact or event that might compromise its ability to carry out this Agreement or the Services, either immediately or in the long term, including pending or possible lawsuits and audits.
- 15.02 If any concern arises as to the meaning, interpretation, application or alleged breach of this Agreement, the parties agree to meet within thirty (30) days of written notification by either party to try to resolve the concern through discussions.
- 15.03 The parties shall attempt to arrive at a mutually satisfactory resolution within thirty (30) days of the above meeting, unless both parties agree to a longer period of time to come to a resolution.
- 15.04 If both parties agree, an independent mediator may be used to assist the parties in resolving any concern. The costs of an independent mediator will be jointly shared between Manitoba and the Service Provider.

- 15.05 Notwithstanding subsection 15.04, if a concern arises over whether the Service Provider can accommodate a change in Standards as referred to in subsections 3.04 and 3.05, within the funding levels specified in the Schedule(s) to this Agreement, the Service Provider shall notify Manitoba, in writing, of its concerns. Such concerns cannot be referred to an independent mediator.
- 15.06 Manitoba and the Service Provider may agree to enter into a co-management agreement and to appoint a co-manager(s) to assist the Service Provider in complying with this Agreement or to assist the Service Provider in remedying a breach or default under this Agreement. The Service Provider shall work co-operatively with the co-manager(s).
- 15.07 In order to promote open dialogue to resolve concerns under this section, the Service Provider shall provide all information reasonably requested by Manitoba about the issue.
- 15.08 Nothing in this section shall prevent Manitoba from exercising its rights under section 16.00.

SECTION 16.00 – TERMINATION OF AGREEMENT OR OF SERVICES

- 16.01 Either party may terminate this Agreement, or all or part of the Services described in one or more of the Schedules, by providing the other party with a minimum of ninety (90) days prior written notice.
- 16.02 The Service Provider is in breach of or default under this Agreement if at any time:
- (a) the Service Provider becomes, or is about to become, bankrupt or insolvent, goes into receivership or takes the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors; or
 - (b) an order is made or resolution is passed for the dissolution or winding-up of the Service Provider or it is otherwise likely to lose its corporate status; or
 - (c) the Service Provider knowingly makes false statements or entries in any invoices, documents or records required to be presented, kept, maintained or provided under this Agreement or if any representation or warranty made by the Service Provider is false or misleading in any material respect; or
 - (d) any creditor of the Service Provider attaches or garnishes or attempts to attach or garnish any monies paid by Manitoba to the Service Provider, whether pursuant to this Agreement or otherwise, or seizes or encumbers any substantial asset used in connection with the provision of the Services by the Service Provider; or
 - (e) the Service Provider fails to provide the necessities of life or to maintain safety for clients; or
 - (f) Manitoba is reasonably of the opinion that:
 - (i) the Service Provider is not carrying out the Services in accordance with the terms and conditions of this Agreement; or
 - (ii) the Service Provider has failed to comply with, or is about to fail to comply with, any of its obligations or undertakings under this Agreement; or
 - (iii) the outcome of a review, evaluation or audit is unsatisfactory.
- 16.03 If the Service Provider is in breach or default under this Agreement, in addition to any other remedies available to Manitoba at law, Manitoba may do or require one or more of the following:
- (a) request a plan of action satisfactory to Manitoba that includes timelines for remediation of a breach or default under clauses 16.02 (a) to (f);
 - (b) if the breach or default relates to an amount of money that the Service Provider would otherwise have been entitled to receive under this Agreement but for the breach or default, then Manitoba may suspend, withhold or reduce such payments, or any part thereof, until the Service Provider has remedied the breach or default

to the satisfaction of Manitoba provided Manitoba suspends, withholds or reduces only those payments directly related to the breach or default;

- (c) if the breach or default relates to a general provision of this Agreement and cannot be tied to a specific amount due to the Service Provider, then Manitoba may suspend, withhold or reduce any payment due to the Service Provider under this Agreement until the Service Provider has remedied the breach or default to the satisfaction of Manitoba;
- (d) set off against any sum payable under this Agreement by Manitoba to the Service Provider any amount payable by the Service Provider to Manitoba under this Agreement or under any other contract;
- (e) if any one or more of the following applies:
 - (i) Manitoba is reasonably of the opinion that the health and safety of individuals are threatened; or
 - (ii) after exhausting all remedies listed in 16.03 (a) to (d), Manitoba is reasonably of the opinion that the Service Provider is not properly carrying out or exercising its responsibilities or duties under this Agreement; or
 - (iii) the Service Provider so requests;

Manitoba may appoint a provisional administrator to exercise all the powers, responsibilities and authority of the Service Provider and its board of directors as they relate to the Services to be provided pursuant to this Agreement;

- (f) immediately require the Service Provider to cease providing all or part of the Services described in one or more Schedules, and reduce any financial obligation of Manitoba in respect thereof, by giving notice in writing, effective upon receipt; or
- (g) immediately terminate this Agreement, and all further financial obligations of Manitoba hereunder, by giving notice in writing to the Service Provider, effective on receipt.

16.04 Upon notice to cease providing part of the Services or notice of termination of this Agreement being provided, the Service Provider shall:

- (a) cease providing part or all of the Services on Manitoba's account, as applicable;
- (b) provide to Manitoba all reports, statements and documents required or requested by Manitoba upon ceasing part of the Services or termination; and
- (c) where applicable, cooperate with Manitoba to assist in the transition of individuals to alternative services.

16.05 Upon notice to cease providing part of the Services, Manitoba shall be under no obligation to the Service Provider in respect to those Services other than to pay upon receipt of an invoice and supporting documentation satisfactory to Manitoba, such compensation as the Service Provider may be entitled to receive under this Agreement for those Services provided to the satisfaction of Manitoba up to the effective date of the notice to cease providing the Services.

16.06 Upon notice of termination of this Agreement, Manitoba shall be under no obligation to the Service Provider other than to pay upon receipt of an invoice and supporting documentation satisfactory to Manitoba, such compensation as the Service Provider may be entitled to receive under this Agreement for the Services completed to the satisfaction of Manitoba up to the effective date of termination.

16.07 Payments under subsections 16.05 and 16.06 may not be unreasonably withheld.

SECTION 17.00 – WAIVER

17.01 Any waiver given by Manitoba or the Service Provider with respect to any breach or default or anticipated breach or default of this Agreement shall not be effective unless given in

writing by an authorized person and shall not constitute a subsequent waiver of a similar or of any other breach or default.

SECTION 18.00 – ASSIGNMENT AND SUBCONTRACTING

- 18.01 The Service Provider shall not assign or transfer all or any part of this Agreement to a third party so that the third party directly assumes any of the Service Provider's rights or obligations under this Agreement without the prior written consent of Manitoba, which consent may be withheld for any or no reason or consent given with or without conditions.
- 18.02 Unless prohibited by the Schedule(s), the Service Provider may engage a third party subcontractor to perform any of the Services under the supervision of the Service Provider. The Service Provider shall advise Manitoba in the event that the third party subcontractor is a non-arm's length party to the Service Provider or if any Conflict of Interest, as defined in Appendix 3, exists between the Service Provider and the subcontractor. In addition, the Service Provider shall advise Manitoba in the event that a subcontractor performing any of the Services on the Service Provider's behalf becomes a non-arm's length party to the Service Provider.
- 18.03 The Service Provider shall ensure that all subcontracts to provide all or part of the Services shall:
- (a) be consistent with the provisions of this Agreement;
 - (b) require compliance by the subcontractor with the terms and conditions of this Agreement, including, without limitation:
 - (i) all insurance requirements;
 - (ii) the confidentiality provisions, including any requirement for signed confidentiality agreements;
 - (iii) the requirement to comply with all applicable legislation and standards, whether federal, provincial or municipal; and
 - (iv) all record-keeping and reporting requirements;
 - (c) require the subcontractor to indemnify and save harmless Manitoba and its Ministers, officers, employees and agents from and against all claims, liabilities and demands of any kind with respect to any injury to persons (including, without limitation, death), damage or loss to property, or infringement of rights (including without limitation, privacy rights) caused by, or arising directly or indirectly from:
 - (i) the provision of any portion of the Services with respect to which the subcontractor is involved;
 - (ii) the performance of the subcontract or the breach of any term or condition of the subcontract by the subcontractor or its officers, employees or agents; and
 - (iii) any omission or any wilful or negligent act of the subcontractor or its officers, employees or agents.
- 18.04 This Agreement shall be binding upon the successors and any permitted assigns of the Service Provider.
- 18.05 No assignment or transfer of this Agreement or subcontracting of the Services shall relieve the Service Provider of any obligations under this Agreement, except to the extent that they are properly performed by the Service Provider's permitted assigns, transferees or subcontractors.

SECTION 19.00 - INDEPENDENT CONTRACTOR

- 19.01 Nothing in this Agreement shall be construed as implying an agency, joint venture or partnership relationship between the parties, nor between Manitoba and any agents or

subcontractors of the Service Provider. The relationship of the Service Provider to Manitoba is that of an independent contractor.

- 19.02 Neither party has the right or authority to assume or to create any obligations or responsibility on behalf of the other party, except as may be set out in this Agreement or from time to time provided by written instrument signed by both parties.

SECTION 20.00 - CONFLICT OF INTEREST

- 20.01 The Service Provider shall ensure that they manage appropriately any conflict of interest, or potential or foreseeable conflict of interest, between the personal interests of its officers, directors, employees or agents and the performance of the Service Provider's obligations under this Agreement. In this regard and in addition to the requirements of this section 20.00, the Service Provider acknowledges the provisions of *The Corporations Act* with respect to the disclosure of director or officer interests in contracts.
- 20.02 The Service Provider acknowledges that Manitoba requires the Service Provider to have a conflict of interest policy at all times while this Agreement is in effect, and that such policy must meet or exceed the requirements set out in Manitoba's Conflict of Interest Policy and Guidelines attached as Appendix 3.
- 20.03 The Service Provider agrees to provide Manitoba with a copy of its conflict of interest policy, upon request.
- 20.04 The Service Provider agrees to abide by its conflict of interest policy and to require all of its directors, officers, employees and agents to abide by such policy as a condition of employment or engagement by the Service Provider.

SECTION 21.00 - ENTIRE AGREEMENT

- 21.01 This document, including:
- (a) the attached Schedules;
 - (b) any documents that are not attached but are stated in a Schedule to form part of this Agreement;
 - (c) the attached Appendices;
 - (d) the Standards that are not attached but form part of this Agreement; and
 - (e) the Financial Reporting Requirements that are not attached but form part of this Agreement,

contains the entire agreement between the parties. There are no undertakings, representations or promises, expressed or implied, other than those contained in this Agreement.

SECTION 22.00 - SURVIVAL OF AGREEMENT

- 22.01 Those sections containing obligations that by their very nature are intended to survive the termination or expiration of this Agreement shall survive including, without limitation, subsection 5.09, subsection 5.10, subsection 5.11, sections 7.00, 8.00, 9.00, 10.00, 11.00, 12.00, 15.00, 16.00, 18.00, subsection 22.01 and section 24.00.
- 22.02 If any provision of this Agreement is for any reason held to be invalid or unenforceable, that provision shall be considered separate and severable from this Agreement, and the other provisions of this Agreement shall remain in force and continue to be binding upon the parties as though the invalid or unenforceable provision had never been included in this Agreement.

SECTION 23.00 - TIME OF ESSENCE

23.01 Each party has the right to require strict observance by the other party of all deadlines imposed by this Agreement.

SECTION 24.00 - APPLICABLE LAW

24.01 This Agreement shall be interpreted, performed and enforced in accordance with the laws of Manitoba and of Canada as applicable therein.

24.02 The Services are being purchased under this Agreement by the Government of Manitoba and are therefore not subject to the federal Goods and Services Tax. The Service Provider represents and warrants that Goods and Services Tax shall not be included in any claim for payment for Services under this Agreement (other than reimbursement for Goods and Services Tax properly incurred by the Service Provider in the course of the Services).

SECTION 25.00 – NOTICES UNDER AGREEMENT

25.01 Except as otherwise provided in the Schedule(s) and Appendix 5, the representatives for notices, reports and communications under this Agreement are:

(a) Service Provider:

INSERT SERVICE PROVIDER CONTACT INFORMATION

Fax: (204)

E-mail:

Attention: Chairperson

(b) Manitoba:

INSERT MANITOBA CONTACT INFORMATION

Fax: (204)

E-mail: aasu@gov.mb.ca

Attention:

25.02 Any notice, report or communication under this Agreement is not effective unless:

- (a) it is in writing;
- (b) it is sent to the other party's representative identified in subsection 25.01, and
- (c) it is submitted as specified in this Agreement or the Schedules.

25.03 Any notice, report or communication that is:

- (a) delivered by hand shall be deemed to have been received on the date of the delivery; or
- (b) sent by regular mail, shall be deemed to have been received on the third business day of the recipient, following the date of mailing; or
- (c) sent by facsimile transmission or electronic transmission, shall be deemed to have been received on the next business day of the recipient, following the date of transmission.

25.04 If mail service is disrupted by labour controversy on or within three business days from the date of mailing, the notice, report or communication shall be delivered or sent by facsimile transmission.

25.05 Manitoba or the Service Provider may change the address and other information set out in subsection 25.01, by giving notice in writing to the other party.

SECTION 26.00 – EMPLOYEE RECORD CHECKS

- 26.01 In addition to any specific requirements that may be contained in the Schedule(s), the Service Provider shall adopt and enforce a policy addressing the requirement for employees and volunteers to obtain a criminal record check, including a vulnerable sector search, together with either one or both of a child abuse registry check and an adult abuse registry check.
- 26.02 In addition to any specific requirements that may be contained in the Schedules, the policy adopted and enforced by the Service Provider shall require that:
- (a) any required searches / checks are conducted prior to or as soon as reasonably possible after the date of hire or volunteer service;
 - (b) that where the required searches / checks have not been conducted prior to the date of hire or volunteer service, that the employee or volunteer is monitored by another employee(s) while providing Services; and
 - (c) that all employees and volunteers immediately disclose to the Service Provider any change to any required searches / checks.

SECTION 27.00 – PUBLIC ANNOUNCEMENTS AND SIGNS

- 27.01 Where required by Manitoba, and as specified within a Schedule, the Service Provider shall ensure that any and all communications, publications, advertisements and news releases referring to the Services include an appropriate acknowledgement of Manitoba's contribution in terms satisfactory to Manitoba. The Service Provider shall give notice to Manitoba in advance of any and all such communications, publications, advertisements and news releases.

SECTION 28.00 – WHISTLEBLOWER PROTECTION

- 28.01 The Service Provider acknowledges that it may be designated as a "government body" for the purpose of *The Public Interest Disclosure (Whistleblower Protection) Act* (Manitoba). On an annual basis the Service Provider shall:
- (a) assess whether it is designated as a "government body" for the purpose of *The Public Interest Disclosure (Whistleblower Protection) Act*;
 - (b) where the Service Provider is designated as a "government body" for the purpose of *The Public Interest Disclosure (Whistleblower Protection) Act*, the Service Provider shall establish procedures for disclosures; and
 - (c) where the Service Provider is designated as a "government body" for the purpose of *The Public Interest Disclosure (Whistleblower Protection) Act*, the Service Provider shall provide information and education to employees regarding *The Public Interest Disclosure (Whistleblower Protection) Act* and the procedures for disclosures.

SECTION 29.00 – COUNTERPARTS AND ELECTRONIC TRANSMISSION

- 29.01 This Agreement may be executed and delivered in separate counterparts and such counterparts together shall constitute a single instrument. Delivery of an executed counterpart of this Agreement by electronic means, by facsimile or by electronic mail in portable document format (".pdf"), shall be equally effective as delivery of a manually executed counterpart.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF this Agreement has been signed by the Minister of Families, or authorized signatory, on behalf of the Government of Manitoba and by the duly authorized representative(s) of the Service Provider on the dates noted below.

FOR THE GOVERNMENT OF MANITOBA

Witness

Minister of Families
or Authorized Signatory

Date

FOR THE SERVICE PROVIDER

Witness

Name:
Office Held:

I/We have the authority to bind the Service
Provider

Date

Witness

Name:
Office Held:

I/We have the authority to bind the Service
Provider

Date

SCHEDULE "A"

This is Schedule "A" to the Service Purchase Agreement between Manitoba and the Service Provider dated _____.

APPENDIX 1
DEFICIT/SURPLUS POLICY

Manitoba's policy respecting Service Provider deficits/surpluses, calculated in accordance with the *Funding Surplus Declaration* of the *Financial Reporting Requirements* (as such *Funding Surplus Declaration* may be amended by Manitoba from time to time in accordance with Section 7.01), is that:

1. deficits are not funded; and
2. surpluses generated from Manitoba's contribution to the Services (as defined by this Agreement), being the “**DoF Surplus**” calculated under the *Funding Surplus Declaration*, the “**Retainable Surplus**” calculated under the *Funding Surplus Declaration* and the “**Excess Amount**” calculated under the *Funding Surplus Declaration* shall be addressed as follows:

The Service Provider will be permitted to retain the Retainable Surplus, subject to and conditional upon the Retainable Surplus being used for the purposes of the Services. If requested by Manitoba, the Service Provider shall within fifteen (15) business days of such request, submit to Manitoba a written report, satisfactory to Manitoba, detailing the use of the Retainable Surplus.

The Excess Amount is deemed to be an overpayment and a debt due and owing by the Service Provider to Manitoba. On or before October 31st of the fiscal year immediately following the fiscal year reported under the *Funding Surplus Declaration*, the Service Provider shall either:

- (a) repay the Excess Amount to Manitoba via cheque payable to the Minister of Finance; or
- (b) if the Service Provider wishes to retain all or a portion of the Excess Amount for the purposes of the Services or for other purposes, submit a Proposal to Retain Department of Families Funding Surplus Form (a “Proposal”) to Manitoba for Manitoba’s consideration. **Proposals received after October 31st will not be considered.** If the Proposal concerns only a portion of the Excess Amount, the Service Provider shall repay the balance of the Excess Amount to Manitoba via cheque payable to the Minister of Finance on or before the October 31st deadline.

Manitoba may, in its sole discretion, either approve (with or without conditions) or not approve a Proposal submitted under clause (b) above and Manitoba will notify the Service Provider in writing of its decision in this regard. If the Proposal is not approved by Manitoba or the Service Provider is not prepared to accept any conditions imposed by Manitoba, the Service Provider shall repay the Excess Amount to Manitoba (or where a portion of the Excess Amount has already been paid under clause (b) above, the balance of the Excess Amount) via cheque payable to the Minister of Finance within 30 days of notification of Manitoba’s decision respecting the Proposal.

Upon termination or expiration of this Agreement, all surpluses generated from Manitoba’s contribution to the Services, being the “**DoF Surplus**” calculated under the *Funding Surplus Declaration* in every Fiscal Year during the term of this Agreement, less any amounts properly expended in accordance with this Policy, is deemed to be an overpayment and a debt due and owing by the Service Provider to Manitoba, payable upon written demand by Manitoba in accordance with Manitoba’s instructions.

The Service Provider’s obligation to repay any amounts to Manitoba under this Appendix shall survive the termination or expiration of this Agreement.

Service Providers must complete and submit the *Funding Surplus Declaration* to Manitoba in accordance with the timelines set out in the *Financial Reporting Requirements*.

Service Providers are encouraged to seek revenues/funding from sources other than Manitoba.

APPENDIX 2
MANITOBA'S CONFIDENTIALITY OF INFORMATION AND PROTECTION OF
PERSONAL INFORMATION REQUIREMENTS

Manitoba recognizes that funded, external service providers may receive, collect, acquire, be given access to, and may otherwise come into possession of personal information about individuals receiving Services from the Service Provider under this Agreement. Under *The Freedom of Information and Protection of Privacy Act*, (C.C.S.M. c. F175) and *The Personal Health Information Act* (C.C.S.M. c. P33.5) Manitoba is responsible for ensuring that personal information is handled appropriately by external service providers.

The Service Provider shall comply with the requirements in Appendix 2 respecting the collection, use, protection, disclosure storage and destruction of personal information. These requirements reflect the principles of *The Freedom of Information and Protection of Privacy Act*

It is the responsibility of the governing Board of directors of the Service Provider to ensure that the Service Provider takes all reasonable steps to protect the privacy of individuals receiving Services from the Service Provider. This shall include protecting personal information respecting these individuals from risks such as unauthorized collection, use, or disclosure.

It is also the responsibility of the Board of directors of the Service Provider to ensure that the requirements set out in this Appendix are communicated to all Board members, officers, employees, agents, subcontractors and volunteers of the Service Provider and to establish policy and procedures for ensuring compliance with these requirements.

Definition of Personal Information

1.01 "Personal information" has the meaning given to that term in *The Freedom of Information and Protection of Privacy Act* of Manitoba (C.C.S.M. c. F175) (as amended from time to time), and includes:

- (a) personal information about an identifiable individual which is recorded in any manner, form or medium; and
- (b) personal health information about an identifiable individual as defined in *The Personal Health Information Act* of Manitoba (C.C.S.M. c. P33.5) (as amended from time to time).

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

1.02 The requirements and obligations in this Appendix:

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

Collection of personal information by the Service Provider

1.03 The Service Provider recognizes that, in the course of carrying out its obligations under this Agreement, the Service Provider may receive personal information from Manitoba and may collect, acquire, be given access to and may otherwise come into possession of personal information about individuals participating in the programs operated by or receiving Services from the Service Provider under this Agreement.

1.04 Where the Service Provider receives, collects, acquires, is given access to or otherwise comes into possession of personal information, the Service Provider shall receive, collect or acquire only as much personal information about an individual as is reasonably necessary to carry out the Service Provider's obligations under this Agreement.

1.05 Where the Service Provider collects or acquires personal information directly from the individual it is about, the Service Provider shall ensure that the individual is informed of:

- (a) the purpose for which the personal information is collected;
- (b) how the information is to be used and disclosed;
- (c) who can answer questions the individual may have about their personal information; and

- (d) the individual's right of access to the personal information about themselves, as set out in the Service Provider's policies established in accordance with subsection 1.06 of this Appendix.

Access to personal information by the individual it is about

- 1.06 The Service Provider shall establish a written policy, acceptable to Manitoba, providing individuals participating in programs operated by the Service Provider or receiving Services provided by the Service Provider with:
- (a) a right to examine personal information about themselves which is maintained by the Service Provider, subject only to reasonable, limited and specific exceptions; and
 - (b) a right to request corrections to personal information about themselves.

Restrictions respecting use of personal information by the Service Provider

- 1.07 (a) The Service Provider shall keep the personal information in strict confidence and shall use the personal information only for the purpose of properly carrying out the Service Provider's obligations under this Agreement and not for any other purpose.
- (b) The personal information shall be used solely by the officers and employees of the Service Provider, except as otherwise specifically permitted by Manitoba in writing.
- (c) The Service Provider shall:
- (i) limit access to and use of the personal information to those of the Service Provider's officers and employees who need to know the information to carry out the obligations of the Service Provider under this Agreement;
 - (ii) ensure that every use of or access to the personal information by the authorized officers and employees of the Service Provider is limited to the minimum amount necessary to carry out the obligations of the Service Provider under this Agreement;
 - (iii) ensure that each officer and employee of the Service Provider who has access to the personal information is aware of and complies with the requirements, obligations and fair information practices in this Appendix; and
 - (iv) ensure that each officer and employee who has access to the personal information signs a pledge of confidentiality, satisfactory in form and content to Manitoba, that includes an acknowledgement that they are bound by the requirements, obligations and fair information practices in this Appendix, and by the Service Provider's security policies and procedures and is aware of the consequences of breaching any of them.
- 1.08 The Service Provider shall take all reasonable measures to ensure that:
- (a) no person can make unauthorized copies of the personal information;
 - (b) no person discloses, reveals or gives access to the personal information except as authorized under subsection 1.10 of this Appendix; and
 - (c) no person can modify or alter the personal information in a manner which is not authorized.
- 1.09 The Service Provider shall not link or match the personal information with any other personal information, except where necessary to carry out the obligations of the Service Provider under this Agreement.

Restrictions respecting disclosure of personal information by the Service Provider

- 1.10 The Service Provider shall not disclose, reveal or give access to, and shall not permit anyone to disclose, reveal or give access to, the personal information to any person, corporation, business, organization or entity, except as follows:
- (a) to Manitoba, and to Manitoba's representatives and agents, for the purposes of this Agreement;
 - (b) to the individual the personal information is about, upon satisfactory proof of identity;

- (c) to any person, corporation, business, organization or entity with the voluntary, informed consent of the individual the information is about;
 - (d) where the individual the information is about is a child under the age of 18 years, to the custodial parent or parents or to the legal guardian of the child, upon satisfactory proof of identity and authority, provided that the Service Provider is of the opinion the disclosure would not constitute an unreasonable invasion of the child's privacy;
 - (e) where disclosure is required or authorized by legislation;
 - (f) where disclosure is required by an order of a court, person or body with jurisdiction to compel production of the personal information or disclosure is required to comply with a rule of court that relates to the production of the personal information; or
 - (g) where disclosure is necessary to prevent or lessen a serious and immediate threat to the health or safety of the individual the information is about or of any other individual or individuals.
- 1.11 Without limiting subsection 1.10 of this Appendix, the Service Provider shall not:
- (a) sell or disclose the personal information, or any part of the personal information, for consideration; or
 - (b) exchange the personal information for any goods, services or benefit; or
 - (c) give the personal information to any individual, corporation, business, agency, organization or entity for any purpose, including (but not limited to) solicitation for charitable or other purposes;

and shall take reasonable steps to ensure that none of these activities take place.

Protection of the personal information by the Service Provider

- 1.12 The Service Provider shall protect the personal information by putting in place reasonable security arrangements, including administrative, technical and physical safeguards that ensure the confidentiality and security of the personal information and protect the personal information against such risks as use, access, disclosure or destruction which are not authorized under this Appendix. These security arrangements shall take into account the sensitivity of the personal information and the medium in which the information is stored, handled, transmitted or transferred.
- 1.13 Without limiting subsection 1.12 of this Appendix:
- (a) Where personal information is in paper form, on diskette or on other removable media, the Service Provider shall ensure that:
 - (i) the personal information is accessible only to those of the Service Provider's officers and employees who need to know the personal information to carry out the obligations of the Service Provider under this Agreement; and
 - (ii) all paper records, diskettes and removable media used to record the personal information are kept in physically secure areas and are subject to appropriate safeguards when not in use;
 - (b) Where personal information is stored in electronic format, the Service Provider shall:
 - (i) ensure that the computer system or computer network on which the personal information is stored is a secure system or network accessible only to officers and employees of the Service Provider who need to know the personal information to carry out the obligations of the Service Provider under this Agreement;
 - (ii) ensure that the personal information is protected by a series of passwords to prevent unauthorized access; and
 - (iii) limit access to and use of the passwords to those of the Service Provider's officers and employees who need to know the personal information to carry out the obligations of the Service Provider under this Agreement.

- 1.14 When disposing of any paper records and media containing a record of the personal information, the Service Provider shall destroy the paper records or erase or destroy any personal information contained on the media in a manner which adequately protects the confidentiality of the personal information.
- 1.15 The Service Provider shall establish and take all reasonable measures to ensure compliance with written policies and procedures respecting the use of, access to, disclosure, protection and destruction of the personal information which shall be consistent with and reflect the requirements of this Appendix. These security policies and procedures shall include:
- (a) provisions for identifying and recording security breaches and attempted security breaches; and
 - (b) corrective procedures to address security breaches.
- 1.16 The Service Provider shall provide training for its officers and employees about the requirements of this Appendix, and the Service Provider's security policies and procedures.
- 1.17 The Service Provider shall comply with any regulations made, policies issued or reasonable requirements established by Manitoba respecting the protection, retention or destruction of the personal information.

Destruction of personal information by the Service Provider

- 1.18 Except where there is legislation respecting destruction of records or information by the Service Provider, after the personal information has been used for its authorized purpose, or where destruction of the personal information is requested by Manitoba or is required by this Agreement, the Service Provider shall destroy the personal information (and all copies of the personal information in any form or medium) in a manner which adequately protects the confidentiality of the personal information.

Inspections by Manitoba

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

Destruction of personal information on termination of Agreement

- 1.21 Except where there is legislation respecting the destruction of records or information by the Service Provider, on expiration or termination of this Agreement for any reason, the Service Provider shall, unless otherwise directed by Manitoba, destroy the personal information (including all copies of the personal information in any form or medium) in a manner which adequately protects the confidentiality of the personal information.

Statutory definitions of personal information and personal health information

1. **"personal information"** means recorded information about an identifiable individual, including:
 - (a) the individual's name;
 - (b) the individual's home address, or home telephone, facsimile or e-mail number;
 - (c) information about the individual's age, sex, sexual orientation, marital or family status;
 - (d) information about the individual's ancestry, race, colour, nationality, or national or ethnic origin;
 - (e) information about the individual's religion or creed, or religious belief, association or activity;
 - (f) personal health information about the individual;
 - (g) the individual's blood type, fingerprints or other hereditary characteristics;
 - (h) information about the individual's political belief, association or activity;
 - (i) information about the individual's education, employment or occupation, or educational, employment or occupational history;
 - (j) information about the individual's source of income or financial circumstances, activities or history;
 - (k) information about the individual's criminal history, including regulatory offences;
 - (l) the individual's own personal views or opinions, except if they are about another person;
 - (m) the views or opinions expressed about the individual by another person; and
 - (n) an identifying number, symbol or other particular assigned to the individual.

2. **"personal health information"** means recorded information about an identifiable individual that relates to
 - (a) the individual's health, or health care history, including genetic information about the individual,
 - (b) the provision of health care to the individual, or
 - (c) payment for health care provided to the individual,and includes
 - (d) the PHIN (as defined in *The Personal Health Information Act* and set out below) and any other identifying number, symbol or particular assigned to an individual, and
 - (e) any identifying information about the individual that is collected in the course of, and is incidental to, the provision of health care or payment for health care.

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

3. **"PHIN"** means the personal health identification number assigned to an individual by the Minister (who is charged with the administration of *The Personal Health Information Act*) to uniquely identify the individual for health care purposes.

APPENDIX 3
MANITOBA'S CONFLICT OF INTEREST POLICY AND GUIDELINES

I. INTRODUCTION

The Province of Manitoba is charged with the responsibility of protecting the public interest, particularly in regards to accountability for the spending of tax dollars. External service providers are perceived by the public as extensions of government. As such, Boards of Directors and employees of external service providers delivering services on behalf of government are accountable to the public and are particularly vulnerable to charges of conflict of interest. As a funder of many external service providers, the Province of Manitoba expects service providers to adopt the following conflict of interest policy and guidelines for their Boards of Directors and employees.

By stating clearly the standards of conduct expected of Board members and employees, the guidelines serve as a preventative measure so Board members and employees do not inadvertently place themselves in a position of perceived, potential or actual conflict of interest. Furthermore, the sections dealing with disclosure and appeals provide for avenues to clarify and resolve issues before they become a problem.

The aim of the conflict of interest guidelines is to strike a balance between legitimate protection of public interest and the protection of a Board member's and employee's personal and professional interests.

It is the responsibility of the Board of Directors to ensure that these guidelines are communicated to all Board members and employees of the individual external service providers and to establish procedures for ensuring compliance with the standards set out in the policy and guidelines.

II. POLICY STATEMENT

The Province of Manitoba expects Boards of Directors and employees of external service providers which it funds to maintain high standards of integrity, impartiality and ethical conduct. Board members and employees must be constantly aware of the need to avoid situations which might result either in actual, potential or perceived misconduct or conflicts of interest and to conduct themselves in a manner which commands the respect and confidence of their fellow citizens.

This policy, including disclosure requirements, applies to all members of the Boards of Directors and all employees of external service providers. The policy and guidelines contained herein should complement rather than replace the provisions of relevant legislation, or any other statute, collective agreement, rule or statement which applies to Boards of Directors or employees of external service providers, and in the event of a conflict, relevant legislation shall govern and supersede this policy.

III. DEFINITION

A "conflict of interest" is any situation in which a Board member or employee of an external service provider has an employment, business or personal interest which results or appears to result in:

- (i) an improper material interest or an advantage by virtue of the person's position; or
- (ii) an interference with the objective exercise of the person's duties.

A material interest includes any matter or situation where a Board member or employee has a direct or indirect financial or other interest beyond the interest of an ordinary citizen.

IV. REQUIREMENTS FOR DISCLOSURE

Members of the Boards of Directors and employees of external service providers are responsible for disclosure of any situation or matter where they have an actual or perceived conflict of interest or the potential for a conflict of interest.

Conflict of interest declarations should be filed annually at a minimum or updated immediately where:

- (i) an actual, potential or perceived conflict situation arises where none existed previously; or
- (ii) a change occurs which alters the nature or degree of the conflict, subsequent to a declaration being made.

Where a conflict of interest has been found to exist, the Board member or employee, if necessary, will be required to take steps to avoid the conflict of interest. As well, where a

perceived or potential conflict situation may exist, the Board member or employee will be provided with advice on what steps need to be taken to remove the perception of or the potential for a conflict of interest.

- 1) Where a Board member is unsure whether any conflict of interest may exist, it is their responsibility to seek clarification from the Board of Directors.

A Board member shall disclose in writing to the Board of Directors, or request to have entered in the minutes of meetings of the Board of Directors, the nature and extent of their interest.

The Board of Directors shall decide by majority vote of other members at the meeting whether a perceived or actual conflict of interest exists in the case of a Board member.

No Board member shall be present during any discussions of the Board or vote on any matter where it has been decided that a material interest exists. The minutes of the Board meeting shall in each case record the member's disclosure of interest and the fact they took no part in the discussion or decision. In addition, the Board member must refrain from attempting, directly or indirectly, to influence the decision of the Board.

- i) The Board of Directors may choose to delegate to an Executive Committee of the Board, the authority to decide whether a material interest exists for Board members;
 - ii) If the Executive Committee of the Board cannot decide, the matter shall be referred to the full Board for decision.
- 2) Where an employee is unsure whether any conflict of interest may exist, it is their responsibility to seek clarification from the Board of Directors or the Board's delegate.

A service provider employee shall disclose in writing to the Board of Directors, or the Board's delegate, the nature and extent of their interest.

The Board of Directors shall decide by majority vote whether a perceived, potential or actual conflict of interest exists in the case of an employee.

- i) The Board of Directors may choose to delegate to the Executive Director or Executive Management Committee, the authority to decide whether a material interest exists for employees, subject to a quarterly review and ratification of those decisions by the Board;
- ii) If the Board's delegate cannot decide, the matter shall be referred to the Board of Directors for decision.

No employee shall participate in negotiations, decision making or activities where it has been decided that a material interest exists.

V. GUIDELINES

The range, complexity, and unique nature of individual external service providers' activities are such that it is not possible to outline all conflict of interest situations.

- 1) Board members and employees shall not engage directly or indirectly in any personal business transaction or private arrangement for personal profit which accrues from or is based upon their official position or authority or upon confidential or non-public information which they gain by reason of such position or authority.
- 2) Board members and employees shall not divulge confidential or restricted information to any unauthorized person or release such information in advance of authorization for its release.
- 3) Board members and employees shall not act in any official matter where there is a personal interest which is incompatible with an unbiased exercise of official judgement.
- 4) Board members and employees must declare where they have direct or indirect personal business or financial activities which conflict with their official duties and responsibilities.

- 5) Board members and employees shall not place themselves in a position where they are under obligation to any persons who might benefit from special considerations or favours on their part.

VI. APPEALS

A Board member who disputes the manner of application of these guidelines within their service provider may appeal such application to an independent arbitrator agreed to by both parties.

An employee who disputes the manner of application of these guidelines may appeal such application to the Board of Directors.

A Board member or employee, at their option, may have a representative present at the appeal.

VII. DISCIPLINARY ACTION

Departure from any of these rules by Board members, without the specific prior approval of the majority of Board members, may be cause for dismissal from the Board.

Departure from any of these rules by employees, without the specific prior approval of a Board of Directors, or Board's delegate, may be cause for disciplinary action.

VIII. SPECIFIC PROVISIONS FOR SERVICE PROVIDERS

While the guidelines mentioned in Section V should be sufficient to protect against conflict of interest in a vast majority of cases, individual service providers may wish to develop more specific conflict of interest guidelines in addition to those in Section V. In certain cases, the Government may request more specific conflict of interest guidelines. These additional guidelines may also be necessary in response to particular statutory requirements, specific operational requirements, problems unique to a particular service provider or at the request of Government.

On request, additional guidelines developed under Section VIII should be made available to Government for approval prior to distribution and implementation.

APPENDIX 4
FINANCIAL AND PROGRAM REPORTS

APPENDIX 5
DEPARTMENTAL PROGRAM CONTACTS