



**MUNICIPAL PROPERTY ASSESSMENT CORPORATION**  
**SOCIÉTÉ D'ÉVALUATION FONCIÈRE DES MUNICIPALITÉS**

**PURCHASE ORDER TERMS AND CONDITIONS**

The standard purchase order terms and conditions set out below (“**Terms and Conditions**”) form part of each purchase order to which these Terms and Conditions are attached or are incorporated by reference (a “**PO**” and, together with the Terms and Conditions, the “**Agreement**”) issued by the Municipal Property Assessment Corporation (“**MPAC**”) to the party indicated on the PO that is contracting with MPAC for the supply of Goods and/or Services (“**Vendor**”). Each PO is conditional upon Vendor’s agreement to these Terms and Conditions. Vendor shall be deemed to have agreed to be bound by these Terms and Conditions by accepting the PO, delivering the Goods, and/or performing the Services. “**Goods**” means the goods that are required to be delivered by Vendor pursuant to the PO, including all materials, component parts, packaging, and labelling of such goods. “**Services**” means any services to be provided by Vendor to MPAC pursuant to a PO, including all services, functions and responsibilities that are inherent, necessary, or customarily provided as part thereof, whether or not such services, functions, or responsibilities are expressly described in the PO. Where terms and conditions exist under an existing written contract between MPAC and Vendor in respect of the Goods and/or Services (as applicable), these Terms and Conditions shall not apply.

**1. Contract.** The Agreement shall consist only of: (i) these Terms and Conditions, (ii) the applicable PO, and (iii) any Specifications expressly referenced therein. “**Specifications**” means the requirements, attributes and specifications for the Goods or Services that are set out in the applicable PO, including (a) documentation published by Vendor relating to the Goods or Services, (b) operational and technical features and functionality of the Goods or Services, (c) standards or service levels for Services, (d) samples that are provided or made available by Vendor to MPAC, and (e) MPAC business requirements that are expressly set out in the applicable PO. If there is any conflict or inconsistency between the provisions in the applicable PO and these Terms and Conditions, the provisions in the applicable PO shall prevail. Unless MPAC agrees otherwise in writing, Vendor terms and conditions of supply shall not apply in respect of any purchase of Goods or Services by MPAC from Vendor, even if referenced in a PO, included with the Goods or Services, or appended to Vendor’s invoice. Notwithstanding anything to the contrary herein, nothing in this Agreement will be construed as granting Vendor any exclusive rights to provide all or any part of the Goods or Services.

**2. Delivery of Goods and Services.** Vendor will, at its own expense, pack, load, and deliver the Goods to the free on board (“**FOB**”) point set out on the face of the PO (or, if no FOB point is identified, at MPAC’s head office, 1340 Pickering Parkway, Suite 101, Pickering, Ontario, Canada L1V 0C4) (“**FOB Point**”) (i) in accordance with the invoicing, delivery, shipping, packing, and other instructions set out in the PO or otherwise provided to Vendor by MPAC in writing, and (ii) such that the Goods are protected against damage, deterioration, and contamination. Vendor shall ensure that instructions for installation, operation, maintenance, and repair of the Goods are shipped with the Goods. Goods containing hazardous material or that are fragile in nature shall be appropriately labelled and, upon request by MPAC, shall include all reasonably necessary documentation required by MPAC in order to comply with any applicable laws.

Time is of the essence with respect to the delivery of the Goods and performance of the Services. Goods shall be delivered and Services performed by the applicable date of delivery for Goods or performance of Services set out in a PO (“**Delivery Date**”). Vendor shall immediately notify MPAC if Vendor is likely to be unable to meet a Delivery Date.

Title and risks of loss or damage shall remain with Vendor until, and shall pass to MPAC upon, receipt of the Goods at the FOB Point. Goods shall be shipped transportation pre-paid (but recoverable from MPAC, if set out in the applicable PO) to the ultimate MPAC destination. If Goods are imported into Canada, Vendor is responsible for all legal, regulatory, and administrative requirements related to importation and the payment of all associated duties, customs, taxes, fees, and charges.

**3. Inspection: Acceptance and Rejection.** All shipments of Goods and performance of Services shall be subject to MPAC’s right of inspection and acceptance. MPAC shall have the right to reject any Goods or Services that are not in conformance with the Specifications or any term of this Agreement, and any Goods that are delivered in excess of the quantity ordered or are damaged or defective. Transfer of title to MPAC of Goods shall not constitute MPAC’s acceptance of those Goods.

If, within 90 days after delivery, MPAC determines that any Goods and/or Services are defective, MPAC may reject them and, at MPAC’s option and at Vendor’s sole cost and expense, require Vendor to (i) provide a full credit or refund of all amounts paid by MPAC to Vendor for the rejected Goods, or (ii) replace the defective Goods or re-perform the defective Services within the time period specified by MPAC, acting reasonably. Title to rejected Goods that are returned to Vendor shall transfer to Vendor upon

such delivery. Should Vendor fail to comply with the foregoing, MPAC may, at its option and in addition to any other recourse available to MPAC under this Agreement, terminate the Agreement, in whole or in part, with Vendor bearing all costs and risks associated with the rejected Goods and/or Services. Vendor agrees to reimburse MPAC for all transportation and other related costs incurred and overpayments made in respect of the rejected Goods and/or Services. Vendor shall not deliver Goods that were previously rejected on grounds of non-compliance with this Agreement, unless delivery of such Goods is approved in advance by MPAC and is accompanied by a written disclosure of MPAC's prior rejection(s).

MPAC's inspection, testing, or acceptance or use of the Goods or Services hereunder shall not limit or otherwise affect Vendor's warranty obligations hereunder with respect to the Goods or Services, and such warranties shall survive inspection, testing, acceptance and use of the Goods or Services.

**4. Pricing / Payment Terms.** Prices for the Goods and/or Services will be set out in the applicable PO and are not subject to adjustment except as otherwise agreed to by the parties in writing. Unless stated otherwise, all prices shall be in Canadian dollars and exclude all applicable sales, goods and services, harmonized sales, value added, use, transfer, or similar taxes. Vendor shall issue all invoices on a timely basis and all invoices shall (i) reference the applicable PO, (ii) separately itemize all applicable taxes, and (iii) include Vendor's applicable tax registration number(s).

MPAC will pay Vendor all undisputed amounts within 30 days after receipt of such invoice. Payment by MPAC shall not be deemed acceptance of Goods and/or Services. In accordance with the applicable invoice, MPAC will pay, and Vendor will remit to the appropriate taxing authorities, all applicable taxes. Notwithstanding any other provision of this Agreement, MPAC may withhold all applicable withholding taxes and remit those taxes to the applicable governmental authorities as required by applicable laws. MPAC will have no obligation to pay any amount invoiced if the invoice was delivered to MPAC more than 60 days following the date on which Vendor's right to invoice MPAC for such payment arose, regardless of the invoice date.

#### **5. Representations, Warranties, and Covenants**

*(a) Goods:* Vendor represents, warrants, and covenants that the Goods provided hereunder will be: (i) of merchantable quality, (ii) fit and suitable for the purposes intended, (iii) new, (iv) free from all defects in material, workmanship, and design, (v) in strict compliance with the Specifications, (vi) free from any liens or encumbrances on title whatsoever, (vii) in conformance with any samples provided to MPAC, and (viii) compliant with all applicable laws.

*(b) Services:* Vendor represents, warrants, and covenants that it shall perform all Services: (i) exercising that degree of professionalism, skill, diligence, and integrity that would reasonably be expected from a skilled and experienced service provider providing services under the same or similar circumstances, (ii) in accordance with all Specifications and all applicable MPAC policies, guidelines, and codes of conduct, including the MPAC Supplier Code of Conduct and the Fraud and Other Irregularities Policy available on the MPAC website and (iii) using only personnel with the skills, training, expertise, and qualifications necessary to carry out the Services.

*(c) IP:* Vendor represents, warrants, and covenants that: (i) it is good standing with the laws of Canada, has the unfettered right to enter into the Agreement and to supply the Goods and/or Services hereunder, and (ii) at all times all Goods and Services, and the use by MPAC thereof, will not be in violation of or infringe or misappropriate any intellectual property right or any other right of any third party.

*(d) Manufacturer Warranty:* Vendor shall assign to MPAC all manufacturer's warranties for Goods not manufactured by or for Vendor, and shall take all necessary steps required by such third party manufacturers to assign such warranties to MPAC.

*(e) Remedies:* If either of the warranties in Sections 5(a) or 5(b) is breached, and without prejudice to any other right or remedy available to MPAC, Vendor will, at MPAC's option and Vendor's sole cost and expense, refund the purchase price for, or correct or replace the affected Goods, or re-perform the affected Services, within 10 days after notice by MPAC to Vendor of such warranty breach. All associated costs, including costs of re-performance, costs to inspect the Goods and/or Services, transport the Goods from MPAC to Vendor, and return shipment to MPAC will be borne by Vendor.

If any Goods are subject to a claim or allegation of violation, infringement, or misappropriation of intellectual property rights or any other right of any third party, Vendor shall, at its sole option, cost, and expense, and without prejudice to any other right or remedy available to MPAC, promptly provide MPAC with a commercially reasonable alternative, including the procurement for MPAC of the right to continue using the Goods in question, the replacement of such Goods with a non-infringing alternative satisfactory to MPAC, or the modification of such Goods (without affecting functionality) to render them non-infringing.

**6. Intellectual Property Rights.** MPAC will own all right, title and interest including all intellectual property and proprietary rights in and to all works, results, solutions, outcomes, innovations, business processes, ideas, inventions and all other manifestations arising from or out of the Services ("MPAC Property"). Vendor hereby grants to MPAC a worldwide, fully paid-up, royalty-free, non-exclusive, sub-licensable, transferable, perpetual, and irrevocable license to use, copy, modify, and distribute any intellectual property and related intellectual property rights licensed, acquired or developed by Vendor (other than MPAC Property) for the sole purpose of using the Goods and/or Services. Vendor will obtain from all persons contributing to the creation of the MPAC Property written assignments of all such persons' right, title and interest in the MPAC Property for the sole benefit of MPAC and Vendor will obtain from all such contributors and authors of the MPAC Property irrevocable, unconditional and written waivers of all moral rights and similar rights that such individuals may have in the MPAC Property for the benefit of MPAC and its successors, assigns and licensees. As between the parties, MPAC will own and continue to own, all right, title and interest

(including intellectual property and proprietary rights) in and to MPAC Existing Property. MPAC hereby grants to Vendor a revocable, non-exclusive, non-transferable and limited licence to use MPAC Existing Property strictly and solely for the purpose of, and only to the extent necessary for, providing Goods or Services to MPAC pursuant to this Agreement. All rights that are not expressly granted herein are hereby reserved by MPAC. “**MPAC Existing Property**” means all information, intellectual property, documentation, works, processes, systems, methodologies, materials, know how, trade secrets, diagrams, reports, communications, strategic plans, technology, or other property of any kind which has been licensed, acquired or developed by MPAC.

**7. Termination.** MPAC may terminate this Agreement, in whole or in part, upon giving notice to Vendor where:

(a) MPAC determines that Vendor has breached the Agreement, in which case MPAC shall not be required to make any further payment to Vendor and may claim for amounts already paid to the Vendor;

(b) MPAC unilaterally decides to terminate the Agreement for convenience, in which case MPAC will reimburse to Vendor only those costs reasonably incurred by Vendor up to the effective date of termination; or

(c) Vendor ceases to carry on business or is adjudicated bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, has a receiver, and/or administrator appointed over Vendor or its assets, or makes or proposes any arrangement for the compromise of its debts, in which case MPAC may make whatever payment, if any, to the Vendor as MPAC shall determine.

**8. MPAC Policies; Insurance.** Where all or part of the Services are to be performed on MPAC’s premises, Vendor agrees to fully comply with and adhere to all relevant MPAC policies and rules of conduct (including, without limitation, policies and rules of conduct concerning health and safety, security, workplace environment, fraud, discrimination, sexual harassment, and technology and Internet use policies) and will cause all of its personnel involved in the provision of the Services to comply with and adhere to such policies. Upon request by Vendor, MPAC will supply Vendor with a copy of such policies.

Vendor will, at its sole cost and expense, take out and maintain, and will ensure that each of its subcontractors takes out and maintains, in full force and effect at all times during the Term, with insurers having a secure A.M. Best rating of A- or greater, all the necessary and appropriate insurance that a prudent person in the business of the Vendor would maintain. Upon request, Vendor will provide MPAC with proof of the insurance required in this section in the form of valid certificates of insurance (including WSIB Clearance Certificates, if required under the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, as amended from time to time, and similar legislation in other applicable jurisdictions) that reference this Agreement and confirm the required coverage, before the execution of this Agreement and renewal replacements on or before the expiry of such insurance. Failure to provide proof of insurance as required will not release Vendor’s obligation to maintain them as required in this section.

**9. Indemnities; Limitation of Liability.** Vendor shall indemnify, defend, and hold harmless MPAC, its directors, officers, employees, consultants, agents, and other representatives (“**MPAC Indemnified Parties**”) from and against any claims, actions, suits, demands, fines, losses, damages, expenses, legal fees, and all other liabilities brought against or incurred by the MPAC Indemnified Parties arising out of: (i) Vendor’s breach of any covenant, warranty, or other provision of, or any of its obligations under, the Agreement, (ii) any defect with respect to Goods, irrespective of when the defect is discovered, (iii) any violation, infringement, or misappropriation (including allegations thereof) of intellectual property rights or any other right of any third party by the Vendor and/or in connection with the Goods and/or Services (iv) any intentional, wrongful, or negligent act or omission of Vendor or any of its employees, agents, affiliates or contractors, or (v) any statutory requirement which Vendor or any subcontractor is required by law to pay.

Neither party shall be liable for any special, incidental, indirect, or consequential damages arising out of Vendor’s or MPAC’s performance under the Agreement, except in respect of: (i) Vendor’s breach of its obligations under Section 6 (Intellectual Property Rights), (ii) Vendor’s breach of its obligations under Section 10 (Confidentiality), or (iii) fraud or willful misconduct of Vendor or any of its employees, agents, affiliates or contractors. Except as set forth in this section, neither party’s liability for damages under this Agreement (whether in contract or tort, including negligence, or otherwise) will in any event exceed the greater of: (a) the amount payable by MPAC pursuant to this Agreement in the 12 month period preceding the event giving rise to the damages; and (b) \$100,000.

**10. Confidentiality.** Vendor shall: (i) safeguard and keep confidential any and all information, including personal information, relating to MPAC or its business obtained or accessed by Vendor or provided to Vendor in connection with this Agreement (“**Confidential Information**”) in the strictest of confidence and non-disclosure to protect such Confidential Information from any loss, destruction, harm, unauthorized access or viewing, sabotage, corruption, theft, unauthorized reproduction or deletion, (ii) use such Confidential Information solely in Canada or the continental United States for the purposes of carrying out its obligations under this Agreement, (iii) not release such Confidential Information to any third party without MPAC’s prior written consent; (iv) upon request by MPAC, enter into a non-disclosure agreement with MPAC regarding such Confidential Information; (v) upon termination or expiry of this Agreement for any reason whatsoever, at MPAC’s option, (a) deliver to MPAC all records of the Confidential Information, or (b) securely destroy the Confidential Information; and (vi) immediately notify MPAC if the security and/or confidentiality of the Confidential Information has been compromised in any way. Vendor obtains no right, title, interest or licence in or to any of the Confidential Information except for the rights expressly set forth in this Agreement.

Vendor acknowledges that the Confidential Information is the commercially valuable and exclusive property of MPAC, the development of which required a significant investment of its human resources and financial assets. Vendor further acknowledges

and agrees that any use or disclosure of the Confidential Information in breach of this Agreement will cause serious, material, immediate and irreparable damage to MPAC, for which monetary remedies alone will not adequately compensate or remedy MPAC. Accordingly, Vendor agrees that Vendor will not defend against, oppose, or otherwise interfere with an application by MPAC for equitable relief in any connection with MPAC's rights and protections under this section (whether to prevent or remedy a breach of this Agreement by Vendor), to a court of competent jurisdiction. Vendor further acknowledges, confirms and agrees that the provisions of this section are fair and reasonable in the circumstances of this Agreement, and that this section has been a material inducement for the parties to enter into this Agreement and for MPAC to retain Vendor to provide the Goods or Services. Vendor also agrees to reimburse MPAC for all reasonable costs and expenses, including legal fees, incurred by MPAC in successfully enforcing obligations under this section.

**11. Compliance with Applicable Laws.** Vendor shall comply with all applicable federal, provincial, and municipal laws, regulations, standards, and codes relevant to the performance and execution of Vendor's obligations under this Agreement. Vendor shall also obtain all applicable permits, licenses, exemptions, consents and approvals required for Vendor to manufacture (if applicable) and deliver the Goods and perform the Services.

Without limiting the foregoing, Vendor shall be at all times registered, and will be solely responsible for registering, itself and all persons engaged for service by it under applicable workers' compensation legislation and will pay all applicable workers' compensation premiums and maintain such registrations and workers' compensation coverage in each jurisdiction where Services are performed. Upon request by MPAC, Vendor shall provide MPAC with evidence of compliance with this section in form satisfactory to MPAC.

Vendor will, upon the written request of MPAC and bearing its own costs and expenses, cooperate and assist, as MPAC may request and direct, in any regulatory proceeding, hearing, review, inquiry, investigation, examination or other deliberation that is, in any way, related to any part or aspect of the Services or this Agreement.

## **12. General.**

*(a) Governing Law:* This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario, and the laws of Canada applicable therein. Vendor and MPAC irrevocably submit to the exclusive jurisdiction of the courts of the Province of Ontario located in the Greater Toronto Area in relation to any dispute or proceeding arising out of this Agreement.

*(b) Entire Agreement; Waiver:* This Agreement contains the entire agreement between the parties and supersedes all prior and contemporaneous agreements and understandings between the parties relating to the subject matter hereof. Except with respect to any non-disclosure agreement entered into pursuant to Section 10, there are no other agreements, guarantees, representations, understandings, statements, promises or inducements, oral or otherwise, contrary or in addition to the terms of this Agreement. All waivers must be in writing and signed by the party to be bound by the waiver. No waiver will be inferred from or implied by any failure to act or delay in acting by a party in respect of any default, breach, non-observance under this Agreement, or the failure to exercise or the delay in exercising a right or remedy under this Agreement.

*(c) Assignment:* Vendor shall not assign any of its rights, duties or obligations under this Agreement to any other person without MPAC's prior written consent, which consent may be unreasonably withheld. MPAC may assign all or part of this Agreement without the consent of Vendor. This Agreement will be binding upon and will enure to the benefit of and be enforceable by each of the parties and their respective successors and permitted assigns.

*(d) Subcontracting:* Vendor may not use any subcontractors or agents in connection with the performance of its obligations hereunder without MPAC's prior written consent, such consent not to be unreasonably withheld. Vendor will be fully responsible, without restriction or qualification, for all acts and omissions of its subcontractors (and all persons retained and employed by such subcontractors), and to the same extent as if any Goods delivered or Services performed by the subcontractor had been performed by Vendor, and shall ensure that such subcontractors comply with the provisions of this Agreement.

Vendor will not assign any person to deliver Goods or perform Services who (i) has in the last ten years been convicted of an offence; (ii) does not meet the requirements under any applicable law (including applicable immigration and child labour laws) to be employed; or (iii) does not possess the necessary qualifications, training, experience, reputation, or expertise to be capable of performing their responsibilities hereunder in a timely, efficient, and reliable manner. MPAC may require criminal record verification of any subcontractors or agents at the federal, provincial and local level.

MPAC may revoke such consent if in the reasonable opinion of MPAC, is either incompetent, not complying with the MPAC Policies, security requirements and operating procedures, has conducted himself or herself improperly to the detriment of MPAC, or who is in breach of this Agreement, or who is otherwise deemed by MPAC, acting reasonably, to be unsuitable for any reason. Thereafter Vendor will use commercially reasonable efforts to promptly replace that person with a replacement who will be

acceptable to MPAC, acting reasonably. Vendor will be solely responsible for the supervision, conduct, direction, control, and compensation of any other individuals Vendor assigns to provide any part of the Goods or Services.

*(e) Language:* The parties acknowledge and agree that this Agreement be prepared in the English language. Les parties reconnaissent avoir exigé que les présentes soient rédigées en langue anglaise.

*(f) Independent Contractors:* The parties to this Agreement are independent contractors and nothing will be construed to create any partnership, joint venture, or relationship of principal and agent or employee and employer between MPAC and Vendor/its personnel.

*(g) Further Assurances:* Each party will perform, at its own cost, such further acts and give such further assurances, as may be reasonably required to fully perform or give effect to any part of this Agreement.

*(h) Severability:* If any provision of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions will not be affected or impaired thereby, and such provision will be deemed to be restated to reflect the parties' original intentions as nearly as possible in accordance with applicable laws.

*(i) Survival:* The provisions of this Section 12, Sections 1, 3, 5, 6, 7, 9, and 10, and such other provisions, the nature and intent of which is to survive termination or expiration of this Agreement, will survive the earlier termination or expiration of this Agreement.

*(j) No Amendment:* No amendment to this Agreement will be effective or binding on the parties unless it is set forth in writing and has been signed by an authorized representative of each of the parties.