



C. ARTICLES OF AGREEMENT

C1. DEPARTMENTAL REPRESENTATIVE

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DRAFT

Services Contract

Between

Her Majesty the Queen in right of Canada (referred to herein as "Her Majesty") represented by the Minister of Foreign Affairs (referred to herein as the "Minister")

and

(INSERT FULL LEGAL NAME OF CONTRACTOR)
(INSERT ADDRESS OF CONTRACTOR) (referred to herein as the "Contractor")

for

Performance of the Work described in Appendix "A" – Statement of Work.

FOR VALUABLE CONSIDERATION, THE PARTIES AGREE TO THE STIPULATIONS, REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS CONTRACT.

Contract form with sections C2-C10. Includes a table for Milestone and Amount, and signature lines for Contractor and Minister.

SECTION "I" – SUPPLEMENTARY CONDITIONS

SC1

1. CONTRACTOR MUST USE THE SAME PROFESSIONALS NAMED IN THE PROPOSAL IN THE SAME ROLES AND RESPONSIBILITIES AS PRESENTED IN THEIR PROPOSAL. UNLESS PREVIOUSLY AUTHORIZED IN WRITING BY HER MAJESTY, THE CONTRACTOR MUST ENSURE THAT THE TEAM ACTUALLY PERFORMING THE WORK IS IDENTICAL TO THE ONE IDENTIFIED IN THE CONTRACTOR'S PROPOSAL.
2. WHERE NO SALE IS EXECUTED BY THE CONTRACTOR FOR ANY REASON WHATSOEVER DURING THE CONTRACT PERIOD, OR WHERE THE CONTRACT IS TERMINATED OR SUSPENDED, THE CONSULTANT SHALL HAVE NO RECOURSE TO RECOVER ANY MONEY, COMPENSATION OR PAYMENTS, DIRECTLY OR INDIRECTLY, FROM HER MAJESTY FOR ANY COSTS OR SERVICES RENDERED PURSUANT TO THIS CONTRACT.
3. WHERE NO SALE IS EXECUTED BY THE CONTRACTOR FOR ANY REASON WHATSOEVER DURING THE CONTRACT PERIOD, OR WHERE THE CONTRACT IS TERMINATED OR SUSPENDED, THE CONSULTANT SHALL HAVE NO CLAIM OF ANY KIND AGAINST HER MAJESTY AND THE CONSULTANT EXPRESSLY WAIVES ANY RIGHT TO PROCEED AGAINST HER MAJESTY FOR A LEGAL OR EQUITABLE CLAIM, INCLUDING FOR UNJUST ENRICHMENT, AND SHALL HOLD HER MAJESTY HARMLESS WITH RESPECT TO ANY BUSINESS COSTS, EXPENSES OR DAMAGES PURSUANT TO THIS CONTRACT.
4. THE CONTRACT AMOUNT SHALL BE PAID TO THE CONTRACTOR FOR EACH TRANSACTION WITHIN 30 DAYS OF TITLE TRANSFER FROM HER MAJESTY TO THE PURCHASER.
5. HER MAJESTY MAY, IN ITS SOLE DISCRETION, DETERMINE THE LIST PRICE OF ALL PROPERTIES. THE CONTRACTOR SHALL OBTAIN APPROVAL FROM HER MAJESTY BEFORE ADJUSTING ANY LIST PRICE.
6. HER MAJESTY HAS THE RIGHT TO REMOVE ANY PROPERTY FOR SALE FROM THE MARKET, AND NOTHING HEREIN WILL CONSTITUTE A GUARANTEE THAT THE PROPERTY WILL BE SOLD AT ALL.
7. THE CONTRACTOR SHALL RECEIVE NO REMUNERATION FROM HER MAJESTY FOR IDENTIFYING ACQUISITION OPPORTUNITIES.

SC2 BASIS OF PAYMENT

2.1 Limitation of Expenditure

1. Her Majesty's total liability to the Contractor under the Contract must not exceed \$1,750,000 USD. Customs duties are excluded and Goods and Services Tax or Harmonized Sales Tax is extra, if applicable.
2. Her Majesty shall not be liable for any amount in excess of the Contract Amount, except as otherwise specifically and expressly set out in this Contract. Her Majesty will not assume any increase in her total liability or in the price of the Work, whether or not such increase results from any modifications of the Work or interpretations of the Statement of Work, unless she has approved, in writing, those design changes, modifications or interpretations of the Work before their incorporation into the Work. The Contractor shall not perform any work or provide any service that

would result in the Contract Amount being exceeded before obtaining the written approval of Her Majesty. The Contractor shall notify the Departmental Representative in writing as to the adequacy of this sum:

- a. when it is 75 percent committed, or
 - b. four (4) months before the contract expiry date, or
 - c. as soon as the Contractor considers that the contract funds provided are inadequate for the completion of the Work,

whichever comes first.
3. If the notification is for inadequate contract funds, the Contractor shall provide to Her Majesty a written estimate for the additional funds required. Provision of such information by the Contractor will not increase Her Majesty's liability.
- 2.2 Any transaction that spans two tiers will be pro-rated accordingly. For example, should a sale result in exceeding \$5M in sales, the tier one percentage will be applied to the amount up to \$5M and the tier 2 rate will be applied for the portion exceeding \$5M.
- 2.3 The Contractor grants to Her Majesty the irrevocable option to extend the term of the Contract by up to two (2) additional one-year period(s) under the same conditions. The Contractor agrees that, during the extended period of the Contract, it will be paid in accordance with the applicable provisions as set out in the Basis of Payment. Her Majesty may exercise this option at any time by sending a written notice to the Contractor at least 30 calendar days before the expiry date of the Contract. The option may only be exercised by Her Majesty, and will be evidenced for administrative purposes only, through a contract amendment.

SECTION " II " – GENERAL CONDITIONS

GC1 INTERPRETATION

- 1.1 In the present Contract,
- 1.1.1 "Contract" an agreement between the Her Majesty and a Contractor for the acquisition by, or provision to, Her Majesty of good(s) and/or services;
- 1.1.2 "invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter;
- 1.1.3 "Minister", means Minister of Foreign Affairs and any person duly authorized to act on behalf of the Minister.
- 1.1.4 "Work", unless otherwise expressed in the Contract, means everything that is necessary to be done, furnished or delivered by the Contractor to perform the Contractor's obligations under the contract;
- 1.1.5 "Departmental Representative" means the officer or employee of Her Majesty who is designated by the Articles of Agreement and includes a person authorized by the Departmental Representative to perform any of the Departmental Representative's functions under the Contract. A Departmental representative may from time to time act as a technical authority;
- 1.1.6 "Technical Authority" (also sometimes referred to as "Project Authority"): Her Majesty's agent in charge of inspecting the accuracy of any aspects of the Work as described in the Statement of Work.
- 1.1.7 "Days" means continuous calendar days, including weekends and statutory public holidays.
- 1.1.8 The headings used in these general conditions are inserted for convenience of reference only and shall not affect their interpretation; and
- 1.1.9 In the Contract, words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine gender and the neuter.

GC2 INFORMATICS SECURITY

- 2.1 In accordance with the departmental informatics security policy, all diskettes, whether software or data must be scanned for viruses. The approval of the Information Management & Technology Bureau / SXD must be obtained prior to loading any software, computer programs or data onto any departmental computer.
- 2.2 Non-compliance with this requirement could result in your organization being excluded from consideration for future work contracted by Foreign Affairs and International Trade Canada.

GC3 SUCCESSORS AND ASSIGNS

- 3.1 The Contract shall ensure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.

GC4 ASSIGNMENT

- 4.1 The Contract shall not be assigned in whole or in part by the Contractor without the prior written consent of the Minister, and any assignment made without that consent is void and of no effect.
- 4.2 No assignment of the Contract shall relieve the Contractor from any obligation under the Contract or impose any liability upon Her Majesty or the Minister unless otherwise agreed to in writing by the Minister.

GC5 TIME OF THE ESSENCE

- 5.1 Time is of the essence of the Contract.
- 5.2 Any delay by the Contractor in performing the Contractor's obligations under the Contract which is caused by an event beyond the control of the Contractor, and which could not have been foreseen and could not have been avoided by the Contractor by means reasonably available to the Contractor, constitutes an excusable delay. Events may include, but are not restricted to: acts of God, acts of Her Majesty, acts of local or provincial governments, fires, floods, epidemics, quarantine restrictions, strikes or labour unrest, freight embargoes and unusually severe weather.
- 5.3 The Contractor shall give notice to the Minister immediately after the occurrence of the event that causes the excusable delay. The notice shall state the cause and circumstances of the delay and indicate the portion of the Work affected by the delay. When requested to do so by Her Majesty, the Contractor shall deliver a description in a form satisfactory to the Minister, of work-around plans including alternative sources and any other means that the Contractor will utilize to overcome the delay and endeavour to prevent any further delay. Upon approval in writing by the Minister of the work-around plans, the Contractor shall implement the work-around plans and use all reasonable means to recover any time lost as a result of the excusable delay. Any additional costs caused by the delay shall be supported by the Contractor.
- 5.4 Unless the Contractor complies with the notice requirements set forth in the Contract, any delay that would constitute an excusable delay shall be deemed not to be an excusable delay.
- 5.5 Notwithstanding that the Contractor has complied with the requirements of GC5.3, Her Majesty may exercise any right of termination contained in GC8.

GC6 INDEMNIFICATION

- 6.1 The Contractor shall indemnify and save harmless Her Majesty and the Minister from and against all claims, losses, damages, costs, expenses, actions and other proceedings, made, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner based upon, occasioned by or attributable to any injury to or death of a person or damage to or loss of property arising from any wilful or negligent act, omission or delay on the part of the

- Contractor, the Contractor's servants or agents in performing the Work or as a result of the Work. Any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials, parts, work-in-process or finished Work furnished to, or in respect of which any payment has been made by Her Majesty.
- 6.2 The Contractor shall indemnify Her Majesty and the Minister from all costs, charges and expenses whatsoever that Her Majesty sustains or incurs in or about all claims, actions, suits and proceedings for the use of the invention claimed in a patent, or infringement or alleged infringement of any patent or any registered industrial design or any copyright resulting from the performance of the Contractor's obligations under the Contract, and in respect of the use of or disposal by Her Majesty of anything furnished pursuant to the Contract.
- 6.3 The Contractor's liability to indemnify or reimburse Her Majesty under the Contract shall not affect or prejudice Her Majesty from exercising any other rights under law.
- 6.4 The Contractor acknowledges that he is not an employee, servant or agent of Her Majesty and will not represent or hold himself out to third parties in that capacity. To the extent that any third party, in reliance upon representations by the Contractor, considers the Contractor to be an agent or employee of the Minister, the Contractor agrees to indemnify the Minister for any loss or damages and costs occasioned thereby by such third party.
- GC7 NOTICES
- 7.1 Any notice, request, direction, consent, decision, or other communication that is required to be given or made by either party pursuant to this Contract, shall be in writing, and shall be deemed to have been effectively given when:
- 7.1.1 served personally to either the Departmental Representative or the Consultant's Representative (as the case may be), on the day it is delivered; or
- 7.1.2 forwarded by registered mail, on the day the postal receipt is acknowledged by the other party; or
- 7.1.3 forwarded by facsimile or other electronic means of transmission, three (3) days after it was transmitted.
- 7.2 The address of either party, or the person authorized to receive notices, may be changed by notice in the manner set out in this provision.
- GC8 TERMINATION OR SUSPENSION
- 8.1 The Minister may, by giving notice to the Contractor, terminate or suspend the work with respect to all or any part or parts of the work not completed. The Contractor shall proceed to complete parts of the Work not affected by the termination notice. Additional notices for different parts of the Contract may be given subsequently.
- 8.2 All Work completed by the Contractor to the satisfaction of Her Majesty before the giving of such notice shall be paid for by Her Majesty in accordance with the provisions of the Contract.
- 8.3 All Work not completed before the giving of such notice shall be paid by Her Majesty to the Contractor on the following terms:
- 8.3.1 the amount of any capital expenditures actually incurred only if they were specifically authorized under the Contract or approved in writing by the Minister for the purpose of the Contract, less any depreciation in respect thereof already taken into account in determining Cost, to the extent that the capital expenditures are properly apportionable to the performance of the Contract;
- 8.3.2 all Costs of and incidental to the termination of the Work or part thereof, including the Cost of cancellation of obligations incurred by the Contractor with respect to the terminated Work or part thereof; but not including the cost of severance payments or damages to employees whose services are no longer required by reason of the termination;
- 8.3.3 where Her Majesty pays for costs for inventory under GC8, this inventory shall vest with Her Majesty.
- 8.4 Payment and reimbursement under the provisions of GC8 shall be made only to the extent that it is established to the satisfaction of the Minister that the costs and expenses were actually incurred by the Contractor and that the same are fair and reasonable and are properly attributable to the termination or suspension of the Work or the party thereof so terminated.
- 8.5 The Contractor shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to the Contractor under the contract, exceeds the contract amount applicable to the work or the particular part thereof.
- 8.6 The Contractor shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by the Minister under the provisions of GC8 except as expressly provided therein.
- GC9 TERMINATION DUE TO DEFAULT OF CONTRACTOR
- 9.1 Her Majesty may, by notice to the Contractor, terminate the whole or any part of the Work if:
- 9.1.1 the Contractor becomes bankrupt or insolvent, or a receiving order is made against the Contractor, or an assignment is made for the benefit of creditors, or if an order is made or resolution passed for the winding up of the Contractor, or if the Contractor takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors, or
- 9.1.2 the Contractor fails to perform any of the Contractor's obligations under the Contract, or, in the Minister's view, so fails to make progress as to endanger performance of the contract in accordance with its terms.
- 9.2 In the event that Her Majesty terminates the Work in whole or in part under GC9.1, Her Majesty may arrange, upon such terms and conditions and in such manner as Her Majesty deems appropriate, for the Work to be completed that was so terminated, and

- the Contractor shall be liable to Her Majesty for any excess costs relating to the completion of the Work.
- 9.3 Upon termination of the Work under GC9.1, the Minister may require the Contractor to deliver and transfer title to Her Majesty, in the manner and to the extent directed by the Minister, any finished Work which has not been delivered and accepted prior to such termination and any materials or work-in-process which the Contractor has specifically acquired or produced for the fulfilment of the Contract. Her Majesty shall pay the Contractor for all such finished Work delivered pursuant to such direction and accepted by Her Majesty, the cost to the Contractor of such finished Work plus the proportionate part of any fee fixed by the said Contract and shall pay or reimburse the Contractor the fair and reasonable cost to the Contractor of all materials or Work-in-process delivered to Her Majesty pursuant to such direction. Her Majesty may withhold from the amounts due to the Contractor such sums as the Minister determines to be necessary to protect Her Majesty against excess costs for the completion of the Work.
- 9.4 The Contractor shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to the Contractor under the Contract, exceeds the contract amount applicable to the work or the particular part thereof.
- 9.5 If, after the Minister issues a notice of termination under GC9.1, it is determined by the Minister that the default of the Contractor is due to causes beyond the control of the Contractor, such notice of termination shall be deemed to have been issued pursuant to GC8.1 and the rights and obligations of the parties hereto shall be governed by GC8.
- GC10 APPROPRIATION
- 10.1 In accordance with Section 40 of the Canadian Financial Administration Act, payment under the Contract is subject to there being an appropriation for the particular service for the fiscal year in which any commitment hereunder would come in course of payment.
- GC11 ACCOUNTS AND AUDIT
- 11.1 The Contractor shall keep proper accounts and records of the cost to the Contractor of the Work and of all expenditures or commitments made by the Contractor in connection therewith, and shall keep all invoices, receipts and vouchers relating thereto. The Contractor shall not, without the prior written consent of the Minister, dispose of any such accounts, records, invoices, receipts or vouchers until the expiration of six (6) years after final payment under this Contract, or until the settlement of all outstanding claims and disputes, whichever is later.
- 11.2 All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the retention period referred to in GC12.1 be open to audit, inspection and examination by the authorized representatives of the Minister, who may make copies and take extracts thereof. The Contractor shall provide all facilities for such audits and inspections and shall furnish all such information as the representatives of the Minister may from time to time require with respect to such accounts, records, invoices, receipts and vouchers.
- GC12 CONFLICT OF INTEREST
- 12.1 The Contractor declares that the Contractor has no interest in the business of any third party that would cause a conflict of interest or seem to cause a Conflict of Interest in carrying out the Work. Should such an interest be acquired during the life of the Contract, the Contractor shall declare it immediately in writing to the Departmental Representative.
- 12.2 It is a term of this Contract that no individual for whom the provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders or the Values and Ethics Code for the Public Service apply, or for whom any other conflict of interests rules binding on public office holders, public servants, Senators or members of Parliament apply, derive any direct benefit from this Contract unless it is clear that the individual remains in full compliance with those applicable Codes despite deriving the benefit.
- 12.3 Prior to the signing of this Contract, the Contractor shall disclose the involvement of former federal public office holders, former federal public servants, Senators or members of Parliament who are still bound by the Post-Employment Code of Public Office Holders, the Values and Ethics Code for the Public Service or any other conflict of interest rules binding on public office holders, public servants, Senators or members of Parliament.
- 12.4 Prior to execution and delivery of this Contract, the Contractor shall disclose the involvement of former federal public servants who have received a lump sum payment pursuant to any workforce adjustment program implemented to reduce the size of the public service, including but not limited to the following:
- 12.4.1 Workforce Adjustment Directive;
- 12.4.2 Early Departure Incentive Program;
- 12.4.3 Early Retirement Incentive Program; and
- 12.4.4 Executive Employment Transition Program.
- 12.5
- GC13 CONTRACTOR STATUS
- 13.1 This is a Contract for the performance of a service and the Contractor is engaged under the Contract as an independent Contractor for the purpose(s) of delivering a good or goods and/or providing a service. Neither the Contractor nor any of the Contractor's personnel is engaged by the Contract as an employee, servant or agent of Her Majesty. The Contractor agrees to be solely responsible for any and all payments and/or deductions required to be made including those required for Canada or Quebec Pension Plans, Employment Insurance, Workmen's Compensation, or Income Tax.
- GC14 WARRANTY
- 14.1 Notwithstanding inspection and acceptance of the Work by or on behalf of Her Majesty and without restricting any other provision of the Contract or any condition, warranty or provision implied or imposed

- by law, the Contractor warrants that, for a period of twelve (12) months from the date of delivery, or if acceptance takes place on a later date, the date of acceptance, or for such other period as may be specified in the written agreement between the Parties, the Work shall be free from all defects in design, materials or workmanship, and shall conform with the requirements of the Contract, provided that with respect to Government Property, the Contractor's warranty shall extend only to its proper incorporation into the Work. In addition, the Contractor has the obligation to respect any other warranty provided for by law.
- 14.2 In the event of a defect or non-conformance in any part of the Work during the warranty period defined in GC15.1 and GC15.5, the Contractor, at the request of the Minister to do so, shall as soon as possible repair, replace or otherwise make good at its own option and expense the part of the Work found to be defective or not in conformance with the requirements of the Contract.
- 14.3 The Work or any part thereof found to be defective or non-conforming shall be returned to the Contractor's plant for replacement, repair or making good; provided that, when in the opinion of the Minister it is not expedient to remove the Work from its location, the Contractor shall carry out any necessary repair or making good of the Work at that location, and to the extent the defect does not occur during the warranty period, shall be paid the fair and reasonable Cost (including reasonable traveling and living expenses) incurred in so doing, with no allowance therein by way of profit, less an amount equal to the Cost of rectifying the defect or non-conformance at the Contractor's plant.
- 14.4 Her Majesty shall pay the transportation cost associated with returning any Work or part thereof to the Contractor's plant pursuant to GC15.3, and the Contractor shall pay the transportation cost associated with forwarding the replacement or returning the Work or part thereof when rectified to the delivery point specified in the Contract, or such lesser cost as may be required to transport the Work or part thereof to another location directed by the Technical Authority.
- 14.5 The warranty period set out in GC15.1 shall be extended by the duration of any period or periods during the life of the warranty, including any such extension, in which the Work is unavailable for use or cannot be used because of a defect or non-conformance referred to in this section, less the duration of any delay by Her Majesty in informing the Contractor of the defect or non-conformance or in returning the Work or part thereof to the Contractor's plant. Upon returning the Work or part remaining, including any such extension.
- 14.6 The warranties set out in GC15.1 shall apply to any part of the Work repaired, replaced or otherwise made good pursuant to GC15.2, for the greater of:
- 14.6.1 the warranty period remaining under GC15.5, or
- 14.6.2 ninety (90) days or such other period as may be specified for that purpose in the written agreement between the Parties.
- 14.7 All of the provisions of GC15.2 to GC15.6 inclusive apply, with such minimum changes as the context may require, to any such part of the Work that is found during that period to be defective or not in conformance with the Contract.
- GC15 AMENDMENTS AND WAIVERS
- 15.1 No design change, modification to the Work, or amendment to the Contract shall be binding unless it is incorporated into the Contract by written amendment or design change memorandum executed by the authorized representatives of the Minister and of the Contractor.
- 15.2 While the Contractor may discuss any proposed changes or modifications to the scope of the Work with the Technical Authority, Her Majesty shall not be liable for the cost of any such change or modification until it has been incorporated into the Contract in accordance with GC16.1.
- 15.3 No waiver shall be valid, binding or affect the rights of the Parties unless it is made in writing by, in the case of a waiver by Her Majesty, Her Majesty and, in the case of a waiver by the Contractor, the authorized representative of the Contractor.
- 15.4 The waiver by a Party of a breach of any term or condition of the Contract shall not prevent the enforcement of that term or condition by that Party in the case of a subsequent breach, and shall not be deemed or construed a waiver of any subsequent breach.
- GC16 ENTIRE AGREEMENT
- 16.1 The Contract constitutes the entire agreement between the parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements relating to it unless they are incorporated by reference in the Contract.
- GC17 OFFICIAL LANGUAGE
- 17.1 In accordance with the Official Languages Act, any survey, questionnaire, report or other forms may be required to be conducted and prepared in both Official Languages at the discretion of the Departmental Representative.
- GC18 CONFIDENTIAL INFORMATION
- 18.1 Any information of a character confidential to the affairs of Her Majesty to which the Contractor, or any officer, servant or agent of the Contractor becomes privy as a result of the Work to be performed under this Contract, shall be treated as confidential, during as well as after the performance of the said services.
- 18.2 All persons working through Foreign Affairs and International Trade Canada on a contract basis must sign a declaration of secrecy, and consent to be cleared through a security check to the level designated for the work assignment. Rights to access Foreign Affairs and International Trade Canada premises and material shall cease with the termination of the Contract.
- GC19 PAYMENT

- 19.1 Payments under this Contract except advance payments, shall be conditional upon performance, completion and delivery of the Work, or any part of the Work to the satisfaction of the Minister but subject to the submission to the Departmental Representative of a claim for payment.
- 19.2 Subject to Parliamentary appropriation of funds and to GC20.1, payment by the Minister for the Work shall be made:
- 19.2.1 in the case of an advance payment, within thirty (30) days of the signing of this Contract by both parties or within thirty (30) days of receipt of an invoice requesting payment, whichever is later,
- 19.2.2 in the case of progress payment, within thirty (30) days following the date of receipt of a duly completed work or progress report or within thirty (30) days of receipt of an invoice requesting payment, whichever is later, and
- 19.2.3 in the case of a final payment, within thirty (30) days following the date of receipt of the completed work or within thirty (30) days or receipt of an invoice requesting payment whichever is later.
- 19.3 For purposes of this Contract, a full day is any period of seven and one half (7.5) hours within any twenty-four (24) hour period.
- 19.4 If the Contractor is engaged in the performance of the work for any period that exceeds or is less than a full day, the Contractor will be paid a pro-rata portion of the firm daily rate that corresponds to the number of hours during which the Contractor was so engaged.
- 19.5 If Her Majesty has any objections to the form of the invoice or the substantiating documentation, within fifteen (15) days of its receipt, She shall notify the Contractor of the nature of the objection. "Form of the invoice" means an invoice which contains or is accompanied by such substantiating documentation as Her Majesty requires. Failure by Her Majesty to act within fifteen (15) days only result in the date specified in GC20.1 of the clause to apply for the sole purpose of calculating interest on overdue accounts.
- 19.6 Notwithstanding any other provision of the Contract, no payment shall be made to the Contractor unless and until, with respect to all parts of the Work in respect of which payment is claimed, the Contractor, where required to do so, establishes to the satisfaction of the Minister that such parts of the Work will be free from all claims, liens, attachments, charges or encumbrances.
- GC20 INTEREST ON OVERDUE ACCOUNTS
- 20.1 For the purposes of this section:
- 20.1.1 "Average Rate" means the simple arithmetic mean of the Canadian Bank Rates in effect at 4:00 p.m. Eastern Standard Time each day during the calendar month which immediately precedes the calendar month in which payment is made, where the "Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association.
- 20.1.2 "date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable;
- 20.1.3 an amount is "due and payable" when it is due and payable by Her Majesty to the Contractor in accordance with the terms of the Contract; and
- 20.1.4 an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable.
- 20.1.5 Her Majesty shall be liable to pay to the Contractor simple interest at the Average Rate plus three percent (3%) per annum on any amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest shall be paid without notice from the Contractor.
- 20.1.6 Her Majesty shall not be liable to pay interest in accordance with this clause if Her Majesty is not responsible for the delay in paying the Contractor.
- 20.1.7 Her Majesty shall not be liable to pay interest on overdue advance payments.
- GC21 GOODS AND SERVICES TAX / HARMONIZED SALES TAX (GST/HST) VAT OR OTHER LEGAL TAXES
- 21.1 All prices and amounts of money in the Contract are exclusive of GST, HST, VAT or other legal taxes as applicable, unless otherwise indicated. The Goods and Services Tax (GST) or Harmonized Sales Tax (HST), Value Added Tax (VAT) or other legal taxes, whichever is applicable, is extra to the price herein and will be paid by Her Majesty.
- 21.2 The estimated GST, HST, VAT or other legal taxes is included in the total estimated cost. GST, HST, VAT, or other legal taxes to the extent applicable, will be incorporated into all invoices and progress claims and shown as a separate item on invoices and progress claims. All items that are zero-rated, exempt or to which the GST, HST, VAT or other legal taxes does not apply, are to be identified as such on all invoices. The Contractor agrees to remit to the appropriate Government Agency any amounts of GST, HST, VAT or other legal taxes paid or due.
- GC22 INCAPACITY TO CONTRACT WITH GOVERNMENT
- 22.1 The Contractor certifies that the Contractor, including the contractor's officers, agents and employees, has not been convicted of an offence under the following provisions of the Criminal Code:
- 22.1.1 Section 121, Frauds upon the Government;
- 22.1.2 Section 124, Selling or Purchasing Office; or
- 22.1.3 Section 418, Selling Defective Stores to Her Majesty;
- (Subsection 750(3) of the Criminal Code prohibits anyone who has been so convicted from holding public office, contracting with the government or benefiting from a government contract.)
- GC23 CERTIFICATION - CONTINGENCY FEES
- 23.1 The Contractor certifies that it has not directly or indirectly paid or agreed to pay any covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this Contract to any person other than an employee acting in the normal course of the employee's duties.

- 23.2 All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the Contract shall be subject to the Accounts and Audit provision of the Contract.
- 23.3 If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Minister may either terminate this Contract for default or recover from the Contractor by way of reduction to the Contract Price or otherwise the full amount of the contingency fee.
- 23.4 In this section:
- 23.4.1 "contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a Government Contract or negotiating the whole or any part of its terms.
- 23.4.2 "employee" means a person with whom the Contractor has an employer/employee relationship.
- 23.4.3 "person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes an individual who is required to file a return with the registrar pursuant to section 5 of the Lobbyist Registration Act R.S. 1985 c.44 (4th supplement) as the same may be amended from time to time.
- GC24 PROVINCIAL SALES TAX
- 24.1 The property and/or services ordered/purchased hereby are for the use of, and are being purchased by Foreign Affairs and International Trade Canada with Crown funds, and are therefore not subject to visible Provincial Sales Tax.
- GC25 INTERNATIONAL SANCTIONS
- 25.1 From time to time, in compliance with United Nations obligations or other international agreements, Her Majesty imposes restrictions on trade, financial transactions or other dealings with a foreign country or its nationals. These sanctions may be implemented by regulation under the United Nations Act (UNA), R.S.C. 1985, c. U-2, the Special Economic Measures Act (SEMA), S.C. 1992, c. 17, or the Export and Import Permits Act (EIPA), R.S.C. 1985, c. E-19. The Contractor agrees that it will, in the performance of the Contract, comply with any such regulations that are in force on the effective date of the Contract, and will require such compliance by its first-tier subcontractors.
- 25.2 The Contractor agrees that Her Majesty relies on the Contractor's undertaking in GC26.1 to enter into the Contract, and that any breach of the undertaking shall entitle Her Majesty to terminate the Contract under the provisions of the Contract relating to default by the Contractor, and therefore to recover damages from the Contractor, including procurement costs arising out of such a termination.
- 25.3 The countries or groups currently subject to Canadian Economic Sanctions are listed on the Foreign Affairs and International Trade Canada site:
<http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp>
- 25.4 Her Majesty will use reasonable efforts to make the text of any such regulations available on its electronic bulletin board on a reasonably current basis by way of assistance to the Contractor, but the Contractor agrees that only the text as published in the Canada Gazette, Part II, is authoritative, and the Contractor waives any claim against Canada, the Minister, or their employees or agents for any costs, loss, or damage whatever that results from the Contractor's reliance on the text of a regulation as reproduced on the electronic bulletin board.
- 25.5 If the Contract is concluded prior to the imposition of a sanction as described in GC26.1, Her Majesty reserves the right to terminate the Contract in accordance with GC8.
- GC26 STATUS AND REPLACEMENT OF PERSONNEL
- 26.1 If at any time during the period of the Contract the Contractor is unable to provide the services of any person who must perform the Work in the Contract, it shall immediately provide a replacement person with similar qualifications and experience. The Contractor shall, as soon as possible, give notice to the Minister of:
- 26.1.1 the reason for the removal of the person from the Work;
- 26.1.2 the name, qualifications and experience of the proposed replacement person; and
- 26.1.3 proof that the person has the required security clearance granted by Her Majesty, if applicable.
- 26.2 The Minister may order the removal from the Work of any such replacement person and the Contractor shall immediately remove the person from the Work and shall, in accordance with GC27.1, secure a further replacement.
- 26.3 The fact that the Minister does not order the removal of a replacement person from the Work shall not relieve the Contractor from its responsibility to meet the requirements of the Contract.
- 26.4 If the Contractor intends to use any person in fulfillment of this Contract who is or who is not an employee of the Contractor, the Contractor hereby warrants that such a person is under no restrictive covenants in relation to a constraint of trade that would prevent the person from fulfilling his or her services in relation to the work and, the Contractor has written permission from the person or (the employer of such a person) to propose the services of the person in relation to the work to be performed in fulfillment of this Contract.
- GC27 NO BRIBE
- The Contractor represents and covenants that no bribe, gift, benefit, or other inducement has been or will be paid, given, promised or offered directly or indirectly to any official or employee of Her Majesty or to a member of the family of such a person, with a view to influencing the entry into the Contract or the administration of the Contract.
- GC28 SEVERABILITY
- 28.1 If any provision of the Contract is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from

- the Contract and all other provisions of the Contract shall remain in full force and effect.
- GC29 COPYRIGHT
- 29.1 In this section,
- 29.1.1 "Material" includes anything that is created or developed by the Contractor as part of the Work under the Contract, and in which copyright subsists, but does not include computer programs and related software documentation;
- 29.1.2 "Moral Rights" has the same meaning as in the Copyright Act, R.S.C. 1985, c. C-42.
- 29.2 Copyright in the Material shall vest in Her Majesty and the Contractor shall incorporate in all Material the copyright symbol and the following notice:
- 29.3 HER MAJESTY THE QUEEN IN RIGHT OF CANADA (year)
- 29.4 At the completion of the Contract, or at such other time as the Contractor or the Minister may require, the Contractor shall fully and promptly disclose to the Minister all Material created or developed under the Contract.
- 29.5 Where copyright in any Material vests in Her Majesty under the Contract, the Contractor shall execute such conveyances and other documents relating to title or copyright as the Minister may require.
- 29.6 The Contractor shall not use, copy, divulge or publish any Material except as it is necessary to perform the Contract.
- 29.7 At the request of the Minister, the Contractor shall provide to Her Majesty, at the completion of the Work, or at such other time as the Minister may require, a written permanent waiver of Moral Rights, in a form acceptable to the Minister, from every author that contributed to the Material.
- 29.8 If the Contractor is the author of the Material, the Contractor hereby permanently waives the Contractor's Moral Rights in respect of the Material.
- GC30 COMPLIANCE WITH NETWORK ACCEPTABLE USE POLICY
- 30.1 The Contractor must at all times during the performance of the Work comply with the Policy on the Use of the DFAIT Electronic Networks. A Contractor who does not abide by the terms and conditions of the policy may be subject to termination of the Contract as per GC8.
- GC31 HANDLING OF PERSONAL INFORMATION
- 31.1 The Contractor acknowledges that DFAIT is bound by the Privacy Act, R.S.C. 1985, c. P-21, with respect to the protection of personal information as defined in that Act. The Contractor shall keep private and confidential any such personal information collected, created or handled by the Contractor under the Contract, and shall not use, copy, disclose, dispose of or destroy such personal information except in accordance with this clause and the delivery provisions of the Contract. All such personal information is the property of Foreign Affairs and International Trade Canada, and the Contractor shall have no right in or to that information. The Contractor shall deliver to Foreign Affairs and International Trade Canada all such personal information in whatever form, including all working papers, notes, memoranda, reports, data in machine-readable format or otherwise, and documentation which have been made or obtained in relation to this Contract, upon the completion or termination of the Contract, or at such earlier time as the Minister may request. Upon delivery of the personal information to Foreign Affairs and International Trade Canada, the Contractor shall have no right to retain that information in any form and shall ensure that no record of the personal information remains in the Contractor's possession.
- GC32 LANGUAGE
- 32.1 The language of communication between Her Majesty and the Contractor shall be English or French.
- GC33 PROACTIVE DISCLOSURE
- 33.1 The Government of Canada is committed to publicly disclose all contracts entered into it for amounts over \$10,000, with only very limited exceptions such as national security. These requirements cover the procurement contracts for goods and services. It is a term of this Contract that information contained in it in relation to the following data elements - vendor name, reference number, contract date, description of Work, contract period or delivery date, contract value - will be gathered, and posted on the departmental Intranet site <http://www.fac-aec.gc.ca/department/disclosure/menu-en.asp>. Information that would normally be withheld under the Access to Information Act and Privacy Act will not appear on that website. This "public disclosure" is intended to ensure that contract information is collected and presented consistently across government and in a manner that promotes transparency and facilitates public access.
- GC34 HEALTH AND SAFETY
- 34.1 The Contractor shall ensure, in fulfilling its contractual obligations under this Contract, that its employees and agents are appropriately equipped with all safety clothing and equipment required to perform the Work.
- The Contractor shall further ensure that its employees and agents adhere to and follow all applicable health and safety regulations, standards and procedures in force in the jurisdiction and have been trained and will use all mandatory safety equipment imposed by local law when completing the Work under this Contract.

Appendix "A"
Statement of Work

1.0 Requirement

Working directly with the Department Representative, the Contractor agrees to undertake the provision of professional real estate agency services for the Government of Canada with the aim of selling several residential properties in the United States.

2.0 Program of Disposals

The properties to be sold shall be identified over the duration of the contract at Her Majesty's sole discretion.

All properties would be sold with vacant possession.

Her Majesty reserves the right to add or remove properties for sale, including removing them all from, or not bringing them to, the market. The Contractor shall not take anything in the Contract and in this Statement of Work to mean or to entail a guarantee that Her Majesty guarantees that it will put any property for sale by the Contractor.

3.0 Access to the Sites :

Access to the sites during the provision of the services is to be made by arrangement with the Mission Property Officer at the Canadian Consulates.

The Contractor must be locally available to undertake the Work. Contractor will not be compensated for any local or travel or other expenses. The Contractor is responsible for all of its secretarial, administrative and travel arrangements and costs related to this Contract.

4.0 Program of Services:

Contractor shall provide vendor representation real estate brokerage services on behalf of Her Majesty, including, but not limited to:

- § analyse requirements of each project;
- § develop, recommend and implement a strategy in consultation with Her Majesty;
- § perform market analysis to determine competing properties in each market where a transaction is contemplated including future estimates on supply and demand, asking and estimated sale pricing, and any recommended modifications to the property that would enhance and increase the value of the property by a value greater than their cost;
- § at the Contractor's own cost, prepare all marketing materials, as well as list and market the property, administer auctions or tenders as applicable, and accompany all prospective buyers and their agents on visits to the property;
- § report on project progress on a weekly basis, including prospects, feedback from viewings and market developments;
- § negotiate commercial terms with prospective purchasers in consultation with Her Majesty. Although Contractor will serve as Her Majesty's representative, the Contractor acknowledges and understands that it has no power or authority to bind Her Majesty to any contract, representation or warranty;
- § provide comparative financial and non-financial analysis, evaluate creditworthiness of prospective purchasers, as well as advise and recommend optimal course of action;
- § work in cooperation with Her Majesty's solicitors to provide market-based advice on legal context and contract language;
- § assemble, arrange execution of, transmit and receive document packages, including all offers, counteroffers, and contracts; and

- § certify work and fees received from other parties, if any;
- § at Her Majesty's request, assist Her Majesty in identifying acquisition opportunities in certain cities, being understood, however, that:
 - there will be no remuneration from Her Majesty for this service; and
 - the broker will receive payment from the vendor only in the case of acquisition by Her Majesty.

5.0 Constraints:

- Her Majesty may be exempted from certain sales, goods and services, and value added taxes and other registration and stamp duties. The Contractor shall assist in, facilitate and not hinder Her Majesty's efforts in securing any tax and duties exemptions.
- Her Majesty may be required to obtain the approval of federal authorities in the host country, e.g., the Department of State, before it can legally sell property.
- Contractor will utilize locally accepted standards for brokerage and representation services. Contractor agrees and warrants that it will use reasonable efforts to negotiate the best possible commercial terms for Her Majesty.
- Contractor may not use or publicise the name or logos of Her Majesty, the Government of Canada, the Canadian Embassy, or the Department of Foreign Affairs and International Trade Canada or of any successor Government Department without the express written permission of Her Majesty.
- Her Majesty retains the right to engage other contractor should the initial selected Contractor fail to sell the property within the agreed listing period.