



CONSULTING CONTRACT

Annex C – General Terms and Conditions of the Contract

A1. Definitions

For the purposes of this Contract:

Administrative Representative shall mean the person designated within the main body of this Contract.

Commencement Date shall mean the date on which the services described in the Contract are to commence.

Confidential Information shall mean any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, source codes, and formulae related to the current, future, and proposed products and services of the Centre, and includes, without limitation, the Centre's information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, and marketing plans and information.

Consultant shall mean either the individual, institution, corporation or partnership retained pursuant to this Contract, and its employees, directors, officers, partners, sub-Contractors and agents, as applicable, and any other representative for whom the Consultant is responsible at law.

Contract shall mean the main body of this contract including any and all attachments incorporated therein by reference. In the event of a conflict between the main body of the Contract and Attachment A, the main body of the contract shall prevail.

Day shall mean eight hours of work when working in the city or country of the Consultant's principal place of business and ten hours when working in a city or country away from the Consultant's principal place of business.

Termination Date shall mean the earlier of (a) the date on which the final contract outputs described in the Advance and Schedule of Payments section of this Contract have been delivered, and (b) the date on which the Contract automatically terminates by operation of the Termination provisions contained in this Contract.

A2. Entire Contract

This Contract supersedes all previous Contracts and correspondence, oral or written, between the Centre and the Consultant, and represents the whole and entire understanding between the parties.

A3. Conditions Precedent and Terms of Payment

The following sets out the conditions precedent that the Consultant must comply with to ensure payment for services pursuant to this Contract:

- a) Completion and delivery of the information requested in the Supplier, Tax and Bank Information form appended to this Contract.
- b) Satisfactory delivery of all Contract outputs, as per the Terms of Reference and Schedule section of this Contract.
- c) Proper completion of invoice(s) to set out:
 - Centre Contract number contained in the subject header of the Contract;
 - Invoice number
 - Invoice Date
 - Fees (daily rate and number of days or unit rate and number of units or fixed price);
 - Detailed expenses as stipulated in the Expenses section of the Contract;
 - GST (Goods and Services Tax) or HST (Harmonized Sales Tax), as applicable –Consultants not registered for Canadian GST purposes must itemize the taxes they paid; and
 - GST/HST registration number, if applicable.

Subject to the terms set out in the Advance and Schedule of Payments section of this Contract and the above conditions being met, the Centre will issue payment of fees and expenses according to the Centre's standard payment period of thirty (30) calendar days. The payment period is measured from the date the Centre receives the duly completed Supplier, Tax and Bank Information form, or the date the Centre receives an acceptable invoice, or the date the work is delivered in acceptable condition as required in the Contract, whichever is latest. If the content of the invoice or the requisite form is incomplete or the work is not acceptable, the Consultant will be notified and the payment period will be deferred until all deficiencies have been rectified to the Centre's satisfaction.

The Centre will reimburse the Consultant for any applicable GST or HST, only if the fees and expenses on which taxes are claimed are net of any input tax credit the Consultant is entitled to claim from Canada Revenue Agency.

Notwithstanding the above, if the Centre provided an advance to the Consultant for expenses, such advance must be deducted from subsequent invoice totals. If the amounts advanced are found to exceed the final invoice total, the Consultant must refund the balance to the Centre upon submitting the final invoice, which must be no later than thirty (30) calendar days following the Termination Date.

The Centre will not pay more than one day of fees per 24-hour period. The Centre will not pay any fee nor any expenses incurred after the termination date of the contract.

Following the Termination Date, and payment of the final invoices, all taxes due and owing in relation to the provision of services pursuant to this Contract are deemed to have been paid by the Centre. The Consultant will be liable for any tax claims, debts, actions or demands in relation to the services provided pursuant to this Contract (hereinafter referred to as "Tax Claims") and the Consultant shall indemnify and hold the Centre harmless against said Tax Claims.

A4. Tax Implications

The Canada Revenue Agency (CRA) is responsible for the administration of the GST or HST and income tax regulations. Contact CRA to discuss questions, concerns or obtain current regulations especially with respect to refunds or credits. The main CRA website can be found at <http://www.cra-arc.gc.ca>.

a) Non-Resident Consultants

Notwithstanding anything to the contrary in this Contract, the Centre will withhold 15% of fees and non-exempt expenses of non-resident Consultants working in Canada unless they hold a contract-specific waiver from the CRA. The Centre will transmit the funds withheld to CRA, in accordance with the income tax regulations of Canada. Such funds can be reclaimed by the consultant from the CRA or from their own governments as the case may be.

b) Consultants Hired by a Centre Regional Office working in the country where the Regional Office is located

Regional offices of the Centre issuing Contracts will apply the national fiscal regulations relevant to the hiring of local Consultants.

A5. Air Travel Policy

The Centre's policy is that all air travel be prepaid. All Contract personnel must travel economy class by the most direct and economical routing (taking advantage where possible of excursion fares). The Consultant is free to reroute or upgrade, where possible, at his or her own expense and settle any additional cost directly with the travel agency or airline.

Consultants will receive their ticket(s) either by courier at the address set out in this contract, from a nearby airline office (via a prepaid ticket advice), or via electronic ticketing.

Under no circumstances will the Centre entertain the Consultant making his or her own reservations and billing the Centre. When the Consultant's travel includes destinations not covered under the scope of this Contract, the Consultant must contact the Centre's Administrative Representative to exercise one of the following options:

- to prepay to the Centre's designated travel agency his or her share of the itinerary unrelated to this Contract; or
- to have the Centre prepay its share of the itinerary directly to the Consultant's travel agency.

Consultants who find significantly less expensive fares to those offered by the Centre's travel agency for the same travel parameters are also encouraged to contact the Centre's Administrative Representative to discuss the possibility of taking advantage of the less expensive fares, which are nonetheless to be prepaid by the Centre.

For further information or clarifications, contact the Centre Administrative Representative.

A6. Confidentiality of Information

a) Non-Disclosure and Non-Use of Confidential Information

The Consultant agrees that it will not, without authority, make use of, disseminate or in any way disclose any Confidential Information to any person, firm or business.

The Consultant shall take all reasonable precautions at all times (and in any event, efforts that are no less than those used to protect its own confidential information) to protect Confidential Information from disclosure, unauthorized use, dissemination or publication, except as expressly authorized by this Contract.

The Consultant agrees that it, he, or she shall disclose Confidential Information only to those of its, his, or her employees or subcontractors who need to know such information and certifies that such employees or subcontractors have previously agreed, either as a condition to employment or service or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Contract.

The Consultant will immediately give notice to the Centre of any unauthorized use or disclosure of the Confidential Information. The Consultant agrees to indemnify the Centre for all damages, costs, claims, actions and expenses (including court costs and reasonable legal fees) incurred by the Centre as a result of the Consultant's failure to comply with its obligations under this section, and the Consultant further agrees to defend and participate in the defence of any claim or suit alleging that the Centre has a liability with respect to any confidential information it may have acquired from a third party; with regard to any unauthorized disclosure, provision or making available of any such Confidential Information.

b) Exclusions from Nondisclosure and Non-use Obligations

The Consultant's obligations under the preceding subsection (A6.a) with respect to any portion of the Confidential Information shall terminate when the Consultant can document that:

- i. it was in the public domain at or subsequent to the time it was communicated to the Consultant by the Centre through no fault of the Consultant;
- ii. it was rightfully in the Consultant's possession free of any obligation of confidence at or subsequent to the time it was communicated to Consultant by the Centre; or
- iii. it was developed by the Consultant, its employees or agents independently of and without reference to any information communicated to the Consultant by the Centre.

A disclosure of Confidential Information (a) in response to a valid order by a court or other governmental body, (b) otherwise required by law, or (c) necessary to establish the rights of either party under this Contract, shall not be considered to be a breach of this Contract or a waiver of confidentiality for other purposes; provided, however, that the Consultant shall provide prompt written notice thereof to enable the Centre to seek a protective order or otherwise prevent such

disclosure.

c) Ownership of Confidential Information and Other Materials

All Confidential Information and any Derivatives thereof, whether created by the Centre or the Consultant, remain the property of the Centre and no license or other rights to Confidential Information is granted or hereby implied.

For purposes of this Contract, "Derivatives" shall mean:

- i. for copyrightable or copyrighted material, any translation, abridgement, revision, or other form in which an existing work may be recast, transformed, or adapted;
- ii. for patentable or patented material, any improvement thereon; and
- iii. for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent, and/or trade secret.

The Consultant shall, on request, promptly return to the Centre all of its proprietary materials together with any copies thereof.

This section shall survive the termination of this Contract.

A7. Use of Centre Property

A7.1 Access to Information Systems and Electronic Communication Networks

During the course of this Contract, the Consultant may be provided with access to Centre information systems and electronic communication networks. The Consultant, on behalf of its/his/her employees, sub-Contractors and representatives, agrees to abide by Centre policies concerning use of such information systems and networks. The Centre will provide the Consultant with any such policies upon commencement of services pursuant to this Contract, or as such policies are put into effect, and the Consultant will make such policies known to its personnel, and will take such steps as are necessary to ensure compliance with such policies.

A7.2 Access to Centre Premises

The parties agree that reasonable access to the Centre's premises by Consultant's authorized personnel and which is necessary for the performance of the services hereunder, in accordance with the terms of this contract, shall be permitted during normal business hours of the Centre. The Consultant agrees to observe all Centre security requirements and measures in effect at the Centre's premises to which access is granted by this agreement.

A8. Relationship with the Centre

Nothing in this Agreement shall be deemed in any way or for any purpose to constitute the parties hereto partners in the conduct of any business or otherwise. The Consultant shall have no authority to

assume or create any obligation whatsoever, expressed or implied, in the name of the Centre, or to bind the Centre in any manner whatsoever.

The Consultant acknowledges and agrees that, in carrying out this Contract, the Consultant is acting as an independent contractor and not as an employee of the Centre. The Contractor shall be responsible for all matters related to it or its employees, as the case may be, including but not limited to deducting or remitting income tax, Canada Pension Plan contributions, Employer Insurance contributions or any other similar deductions required to be made by law for employees, The Consultant agrees to indemnify the Centre in respect of any such remittances which may be subsequently required by the relevant authorities, together with any related interest or penalties which the Centre may be required to pay.

The Consultant is free to provide its services to others during the course of this Contract, provided however, the Consultant fully respects the commitments made to the Centre pursuant to this Contract, including all completion dates and deadlines for tasks and deliverables as may be indicated in the Terms of Reference and Schedule sections of the contract.

A9. Quality of Work

The consultant covenants that it will provide its services pursuant to this agreement in a diligent and workmanlike manner, with regard to the best interests of the Centre, and warrants that its personnel possess the skill and experience necessary to the satisfactory performance of the work contracted for.

A10. Assignment of Copyright and Waiver of Moral Rights

In consideration of the fees paid, the Consultant, its employees, sub-Contractors, successors and assignees expressly agree to assign to the Centre any copyright arising from the works (including audio-visual material, software, documents, books, pamphlets, memoranda or reports, including translations) the Consultant produces while executing this Contract. The Consultant hereby agrees to waive in favour of the Centre any moral rights in the works. The Consultant shall secure any additional waivers of moral rights in the works in favour of the Centre, from personnel and sub-contractors, as appropriate.

Furthermore, the Consultant may not use, reproduce or otherwise disseminate or authorize others to use, reproduce or disseminate such works without the prior written consent of the Centre.

A11. Patent, Trade Mark, Trade Secret and Copyright Infringement

The Consultant covenants that no services or materials to be provided to the Centre under this agreement will infringe upon or violate the rights of any third parties, including such parties' intellectual property rights. Without limiting the generality of the foregoing, the Consultant represents and warrants that no services or materials provided pursuant to this agreement will infringe any existing patent, trade mark, trade secret or copyright registered or recognized in Canada or elsewhere, with respect to or in connection with the intended use of the services or materials by the Centre.

The Consultant agrees to indemnify and hold the Centre harmless from and against any and all damages, costs, and expenses (including court costs and reasonable legal fees) incurred by the Centre as a result

of the infringement or alleged infringement of any third party intellectual property rights, and further agrees to defend and participate in the defence of any claim or suit alleging that the Centre has a liability in this regard.

This section will survive termination of the contract.

A12. Sub-Contractors, Successors and Assignees

The Consultant is prohibited from entering into any sub-contract, designating any successor or assigning any rights under this Contract without the express written consent of the Centre.

A13. Conflict of Interest

The Consultant must avoid participating in activities or being in situations that place it, him, or her, in a real, potential or apparent conflict of interest that has the potential of influencing the contract outputs being contemplated by this Contract.

The Consultants must not accept, directly or indirectly, for themselves or on behalf of any person or organization with whom they are in a close social, family or economic relationship, any gift, hospitality, or other benefit from any person, group, or organization having dealings with the Centre where such gift, hospitality, or other benefit could reasonably foreseeably influence the Consultant in the exercise of its, his or her official duties and responsibilities pursuant to this Contract.

A14. Insurance, Personal Safety and Health

The Consultant is responsible for taking out at its own expense any insurance (travel, hospitalization, medical, trip cancellation or other) deemed necessary while executing this Contract. The Centre's travel agency will not advise the Consultant of the availability of insurances unless specifically requested by the Consultant at the time of booking travel. Any insurance acquired by the Consultant from the Centre's travel agency shall be at the expense of the Consultant.

Consultants have the exclusive responsibility for maintaining personal safety and good health during the period of this Contract. The Centre strongly suggests that they consult the diplomatic and consular authorities of the country of their nationality with a view to heed the travel recommendations applicable in the countries to be visited under this Contract. It is the responsibility of the Consultants to seek information and advice from any other reliable sources.

Should travel to the destinations of this Contract not be advised by the authorities, the Consultant must immediately upon making that determination advise one of the Centre representatives who will, at his or her option, either terminate the Contract, or with the Consultant's agreement, defer performance until such time as the restrictions on travel are removed, or propose an alternative work plan for the Consultant's agreement.

The Centre also strongly suggest that Consultants seek guidance from qualified health personnel concerning potential health risks in the areas to be visited. In preparing for a trip to a developing country, Consultants should receive all recommended immunizations and take malaria prophylaxis when

travelling to an area where malaria is endemic. The Centre especially recommends that:

- a traveler's clinic be consulted if possible;
- health and accident insurance, including coverage for emergency evacuation, be obtained.

Traveller's health information is available in the public domain, including from World Wide Web sites such as <http://www.tripprep.com/> or those maintained by the World Health Organization, Health Canada and the United States Centers for Disease Control and Prevention.

A15. National Legislation

In performing services under this Contract, the Consultant shall be responsible for complying with all legislation of the country (countries) in which it, he, or she must work (including but not limited to laws pertaining to immigration, taxation, customs, employment and foreign exchange control).

It is the individual's responsibility to comply with the travel visa regulations of any country visited or in transit.

The overhead (included in fees) and allowances paid under this Contract include provision for complying with national legislation of the countries the Consultant may visit (including Canada). The Centre will not entertain any claim for work visas, work permits, etc, or any other costs relating to compliance with the national legislation of any country in the world.

A16. Severability

The provisions of this Contract are severable and the invalidity or ineffectiveness of any part shall not affect or impair the validity and effectiveness of remaining parts or provisions of this Contract.

A17. Interpretation of the Contract

This Contract shall be governed and construed in accordance with the laws of the Province of Ontario, Canada. Where a dispute cannot be resolved by mutual agreement, the parties agree that any legal action or claim must be brought before the courts of the Province of Ontario, Canada, which will have exclusive jurisdiction over all such actions and claims.

A18. Non-Waiver

Failure by a party to enforce any right or to exercise any election provided for in this Contract shall not be considered a waiver of such right or election. The exercise of any right or election of this Contract shall not preclude or prejudice a party from exercising that or any other right or election in future.

A19. Notices

Any notices, requests, demands or other communication relating to this Contract shall be in writing and may be given by

- a) hand delivery,

- b) commercial courier,
- c) facsimile, or
- d) registered mail, postage prepaid.

Any notice so sent shall be deemed received as follows:

- a) if hand delivered, on delivery,
- b) if by commercial courier, on delivery,
- c) if by registered mail, three (3) business days after so mailing, and
- d) if by facsimile, upon receipt. The initial address and facsimile number for notice are set out in this Contract and may be changed by notice hereunder.

A20. Language

The parties have requested that this Contract and all notices or other communications relating thereto be drawn up in English. Les parties ont exigé que ce contrat ainsi que tous les avis et toutes autres communications qui lui sont relatifs soient rédigés en anglais.

A21. Force Majeure

The Consultant may interrupt any service by notice to the Centre if prevented from providing the service by reason of strikes, lockout or other labour disputes (whether or not involving the Consultant's employees), floods, riots, fires, acts of war or terrorism, explosions, travel advisories or any other cause, whether or not a superior force, beyond Consultant's reasonable control. During any such interruption, the Centre shall not be obliged to pay the rates associated with such interruption of service and may terminate this Contract as upon providing 10 calendar days' written notice or as otherwise contemplated by the Contract.

A22. Termination

Termination for Cause: In addition to or in lieu of any other remedies that the Centre has in law or in equity, the Centre may terminate this Contract immediately without notice in the event:

- a) The Consultant breaches any material term of this Contract, and fails to remedy such breach within thirty (30) days of receiving notice to do so by the Centre,
- b) The Centre, in its sole discretion, determines that the Consultant made a misrepresentation during the process of selection,
- c) The Consultant:
 - i. ceases to carry on business,
 - ii. commits an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act (Bankruptcy and Insolvency Act, R.S., 1985, c. B-3) or is deemed insolvent within the meaning of the Winding-up and Restructuring Act (Winding-up and Restructuring Act, R.S., 1985, c. W-11) or makes an assignment, against whom a receiving order has been made under the applicable bankruptcy legislation or in respect of whom a receiver, monitor, receiver-manager or the like is appointed, or
 - iii. becomes insolvent or makes an application to a court for relief under the Companies' Creditors Arrangement Act, the Bankruptcy and Insolvency Act or the

Winding Up and Restructuring Act (Companies' Creditors Arrangement Act, R.S., c. C-25) or comparable local legislation.

Termination without cause. This Contract or any part of the Terms of Reference or Statement of Work may be terminated by the Centre for any reason whatsoever upon providing at least ten (10) business days' advance written notice to the Consultant. The Consultant will have no claim for damages, compensation, or loss of profit arising out of such termination.

Effect of Termination. Upon termination of the Contract under this section A22, the Centre will pay the Consultant, in accordance with section A3 of the General Terms and Conditions of the Contract, for Services performed and Deliverables submitted in accordance with this Contract prior to the date of the notice or completed thereafter in accordance with the notice.

A23. Centre Review and Audit

The Consultant agrees, if the Centre so requests at any time up to two years following the Termination date to:

- a) submit a complete financial accounting of expenses, supported by original (or certified copies of) invoices, timesheets or other documents verifying the transactions (excluding any receipts which have been submitted at the time of invoicing as deemed necessary according to the terms of the Contract);
- b) give officers or representatives of the Centre reasonable access to all financial records relating to the work to permit the Centre to audit the use of its funds. This shall include books of account, banking records and, in the case of individuals, credit card statements.

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