



C. ARTICLES OF AGREEMENT

C1. DEPARTMENTAL REPRESENTATIVE

Robert Edwards
Realty Manager - ARAK
125 Sussex Dr.
Ottawa, Ontario
Canada, K1A 0G2

Telephone: 613-954-0511

E-mail: robert.edwards@international.gc.ca

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.

C2. TITLE Wellington, NZ – Property Brokerage Services												
C3. CONTRACT PERIOD Start: _____ End: _____												
C4. CONTRACT NUMBER 0	C5. PROJECT NUMBER N/A	C6. DATE										
C7. CONTRACT DOCUMENTS <ol style="list-style-type: none">1. These Articles of Agreement2. Supplementary Conditions (Section "I")3. General Conditions (Section "II")4. Statement of Work (Appendix "A")5. The Request for Proposals6. The Contractor's Proposal7. Listing Agreement (if applicable) <p>In the event of discrepancies, inconsistencies or ambiguities of the wording of these documents, the document that appears first on the above list shall prevail.</p>												
C8. CONTRACT AMOUNT Her Majesty shall pay the Contractor as follows: <table border="1"><thead><tr><th>Milestone</th><th>Amount</th></tr></thead><tbody><tr><td>Upon sale of property</td><td>x%</td></tr><tr><td>Upon acquisition of property</td><td>n/a</td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr></tbody></table>			Milestone	Amount	Upon sale of property	x%	Upon acquisition of property	n/a				
Milestone	Amount											
Upon sale of property	x%											
Upon acquisition of property	n/a											
All Amounts are in NZD and exclusive of VAT												
C9. INVOICES Two (2) copies are to be sent to Departmental Representative showing: <ol style="list-style-type: none">a. the amount of the progress payment being claimed for Services satisfactorily performed;b. the amount for any tax (including VAT) calculated in accordance with the applicable legislation;c. the date;d. the name and address of the consignee;e. description of the Work performed;f. the project name; andg. the contract number.												
C10. GOVERNING LAWS Laws in force in the Province of Ontario, Canada												
FOR THE CONTRACTOR _____ Signature _____ Date _____ _____ Print Name and Capacity		Corporate Seal										
FOR THE MINISTER _____ Signature _____ Date _____ _____ Print Name and Capacity												

SECTION "I" – SUPPLEMENTARY CONDITIONS

SC1 – MISC.

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 THE DEPARTMENTAL REPRESENTATIVE, THE COMPOSITION OF THE CONTRACTOR'S TEAM ACTUALLY PERFORMING THE WORK MUST BE IDENTICAL TO THE ONE IDENTIFIED IN THE PROPOSAL.
2. NO TRAVEL COSTS WILL BE REIMBURSED AS A RESULT OF ANY WORK PERFORMED UNDER THIS CONTRACT.

SC2 – PAYMENT TERMS FOR DISPOSAL

3. IN CONSIDERATION OF THE CONTRACTOR COMPLETING ALL OF ITS OBLIGATIONS UNDER THE CONTRACT, INCLUDING THE CLOSING OF THE SALE AND TITLE TRANSFER OF THE PROPERTY, THE CONTRACTOR SHALL BE PAID A FIRM FIXED PRICE, DETERMINED AS X% OF THE FINAL SALE PRICE OF THE PROPERTY.
4. HER MAJESTY WILL PAY THE CONTRACTOR, UPON COMPLETION OF THE WORK, SALE OF THE PROPERTY AND TRANSFER OF THE PROPERTY, IN ACCORDANCE WITH THE PAYMENT PROVISIONS HEREIN IF:
 - a. AN ACCURATE AND COMPLETE INVOICE AND ALL OTHER DOCUMENTATION REQUIRED BY THE CONTRACT HAVE BEEN SUBMITTED IN ACCORDANCE WITH THE INVOICING INSTRUCTIONS;
 - b. ALL SUCH DOCUMENTS HAVE BEEN VERIFIED BY HER MAJESTY;
 - c. ALL SUCH DOCUMENTS HAVE BEEN ACCEPTED BY HER MAJESTY.
5. 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 CONTRACTOR 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.
6. 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 CONTRACTOR SHALL HAVE NO CLAIM OF ANY KIND AGAINST HER MAJESTY AND THE CONTRACTOR 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.
7. THE CONTRACT AMOUNT SHALL BE PAID TO THE CONTRACTOR WITHIN 30 DAYS OF TITLE TRANSFER FROM HER MAJESTY TO THE PURCHASER.
8. HER MAJESTY HAS THE RIGHT TO DETERMINE THE LIST PRICE OF THE PROPERTY AT ITS SOLE DISCRETION. THE CONTRACTOR SHALL REQUEST APPROVAL FROM HER MAJESTY SHOULD AN ADJUSTMENT BE REQUIRED TO THE LIST PRICE.
9. HER MAJESTY HAS THE RIGHT TO REMOVE THE PROPERTY FOR SALE, AND NOTHING HEREIN SHALL CONSTITUTE A GUARANTEE THAT THE PROPERTY WILL BE SOLD AT ALL.

SC3 – PAYMENT TERMS FOR ACQUISITION

10. IN THE EVENT OF A PURCHASE (OR LEASE) FOR THE REPLACEMENT PROPERTY, THE CONTRACTOR SHALL BE COMPENSATED BY THE VENDOR. IN NO CIRCUMSTANCE IS HER MAJESTY RESPONSIBLE FOR PAYMENT TO THE CONTRACTOR OF ANY COMPENSATION/COMMISSION FOR WORK ASSOCIATED WITH ANY PURCHASE/LEASE OF A REPLACEMENT PROPERTY.
11. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A GUARANTEE THAT HER MAJESTY USE THE CONTRACTOR AS THE SOLE BUYER REPRESENTATIVE.

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, Canada 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"): Canada'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, Trade and Development 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 the Contracting Authority, 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 Canada.
- 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 MEMBERS OF THE CANADIAN HOUSE OF COMMONS

11.1 No member of the Canadian House of Commons shall be admitted to any share or part of this Contract or to any benefit to arise therefrom.

GC12 ACCOUNTS AND AUDIT

12.1 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.

12.2 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.

GC13 CONFLICT OF INTEREST

13.1 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.

13.2 It is a term of this Contract that no individual, for whom the post-employment provisions of the Canadian Conflict of Interest and Post-Employment Code for Public Office holders or the Conflict of Interest and Post-Employment Code for the Public Service apply, shall derive a direct benefit from this Contract unless that individual is in compliance with the applicable post-employment provisions.

GC14 CONTRACTOR STATUS

14.1 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.

GC15 WARRANTY

15.1 Notwithstanding inspection and acceptance of the Work by or on behalf of Canada 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.

15.2 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.

15.3 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.
- 15.4** Canada 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.
- 15.5** 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 Canada 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.
- 15.6** 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:
- 15.6.1** the warranty period remaining under GC15.5, or
 - 15.6.2** ninety (90) days or such other period as may be specified for that purpose in the written agreement between the Parties.
- 15.7** 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.
- GC16 AMENDMENTS AND WAIVERS**
- 16.1** 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.
- 16.2** While the Contractor may discuss any proposed changes or modifications to the scope of the Work with the Technical Authority, Canada 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.
- 16.3** 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 Canada, the Contracting Authority and, in the case of a waiver by the Contractor, the authorized representative of the Contractor.
- 16.4** 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.
- GC17 ENTIRE AGREEMENT**
- 17.1** 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.
- GC18 OFFICIAL LANGUAGE**
- 18.1** 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.
- GC19 CONFIDENTIAL INFORMATION**
- 19.1** 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.
- 19.2** All persons working through Foreign Affairs, Trade and Development 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, Trade and Development Canada premises and material shall cease with the termination of the Contract.
- GC20 PAYMENT**
- 20.1** 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.
- 20.2** Subject to Parliamentary appropriation of funds and to GC20.1, payment by the Minister for the Work shall be made:
- 20.2.1** 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,
 - 20.2.2** 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
 - 20.2.3** 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.
- 20.3** 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.
- 20.4** 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.
- 20.5** 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.
- 20.6** 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.
- GC21 INTEREST ON OVERDUE ACCOUNTS**
- 21.1** For the purposes of this section:
- 21.1.1** "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.
- 21.1.2** "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;
- 21.1.3** an amount is "due and payable" when it is due and payable by Canada to the Contractor in accordance with the terms of the Contract; and
- 21.1.4** an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable.
- 21.1.5** Canada 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.
- 21.1.6** Canada shall not be liable to pay interest in accordance with this clause if Canada is not responsible for the delay in paying the Contractor.
- 21.1.7** Canada shall not be liable to pay interest on overdue advance payments.
- GC22 GOODS AND SERVICES TAX / HARMONIZED SALES TAX (GST/HST) VAT OR OTHER LEGAL TAXES**
- 22.1** 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 Canada.
- 22.2** 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.
- GC23 INCAPACITY TO CONTRACT WITH GOVERNMENT**
- 23.1** 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:
- 23.1.1** Section 121, Frauds upon the Government;
- 23.1.2** Section 124, Selling or Purchasing Office; or
- 23.1.3** 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.)
- GC24 CERTIFICATION - CONTINGENCY FEES**
- 24.1** 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.
- 24.2** 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.
- 24.3** 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.
- 24.4** In this section:
- 24.4.1** "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.
- 24.4.2** "employee" means a person with whom the Contractor has an employer/employee relationship.
- 24.4.3** "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.

GC25 PROVINCIAL SALES TAX

- 25.1 The property and/or services ordered/purchased hereby are for the use of, and are being purchased by Foreign Affairs, Trade and Development Canada with Crown funds, and are therefore not subject to visible Provincial Sales Tax.

GC26 INTERNATIONAL SANCTIONS

- 26.1 From time to time, in compliance with United Nations obligations or other international agreements, Canada 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.
- 26.2 The Contractor agrees that Canada relies on the Contractor's undertaking in GC26.1 to enter into the Contract, and that any breach of the undertaking shall entitle Canada 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 repurchase costs arising out of such a termination.
- 26.3 The countries or groups currently subject to Canadian Economic Sanctions are listed on the Foreign Affairs, Trade and Development Canada site:
<http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp>
- 26.4 Canada 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.
- 26.5 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.

GC27 STATUS AND REPLACEMENT OF PERSONNEL

- 27.1 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:
- 27.1.1 the reason for the removal of the person from the Work;
- 27.1.2 the name, qualifications and experience of the proposed replacement person; and

- 27.1.3 proof that the person has the required security clearance granted by Canada, if applicable.
- 27.2 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.
- 27.3 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.
- 27.4 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.

GC28 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 Canada 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.

GC29 SEVERABILITY

- 29.1 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.

GC30 COPYRIGHT

- 30.1 In this section,
- 30.1.1 "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;
- 30.1.2 "Moral Rights" has the same meaning as in the Copyright Act, R.S.C. 1985, c. C-42.
- 30.2 Copyright in the Material shall vest in Canada and the Contractor shall incorporate in all Material the copyright symbol and the following notice:
- 30.3 HER MAJESTY THE QUEEN IN RIGHT OF CANADA (year)
- 30.4 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.
- 30.5 Where copyright in any Material vests in Canada under the Contract, the Contractor shall execute such conveyances and other documents relating to title or copyright as the Minister may require.

30.6 The Contractor shall not use, copy, divulge or publish any Material except as it is necessary to perform the Contract.

30.7 At the request of the Minister, the Contractor shall provide to Canada, 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.

30.8 If the Contractor is the author of the Material, the Contractor hereby permanently waives the Contractor's Moral Rights in respect of the Material.

GC31 COMPLIANCE WITH NETWORK ACCEPTABLE USE POLICY

31.1 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.

GC32 HANDLING OF PERSONAL INFORMATION

32.1 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, Trade and Development Canada, and the Contractor shall have no right in or to that information. The Contractor shall deliver to Foreign Affairs, Trade and Development 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, Trade and Development 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.

GC33 LANGUAGE

33.1 The language of communication between Her Majesty and the Contractor shall be English or French.

GC34 PROACTIVE DISCLOSURE

34.1 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.

GC35 HEALTH AND SAFETY

35.1 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 (SOW)**STATEMENT OF WORK**

The Contractor shall perform and complete the work described herein on an as and when required basis.

1. Requirement:

The Contractor agrees to undertake the provision of professional real estate services for the Government of Canada with the aim of selling one (1) residential property and purchasing one (1) replacement residential property, both in Wellington, NZ. The Contractor agrees to consult with the Departmental Representative, Robert Edwards, for the duration of the service Contract. Email: robert.edwards@international.gc.ca.

2. Program of Disposal:

The property to be sold is located at 11 Dillon St., Lowry Bay, Lower Hutt, NZ. The property is ready for immediate sale.

Please note that Her Majesty has the right to remove the property for sale, and nothing herein shall constitute a guarantee that the property will be sold in the anticipated year, or at all.

Access to the site during the provision of the services is to be made by arrangement at the Consulate General of Canada in Wellington, NZ. Contact June Hughes at june.hughes@international.gc.ca

The services include:

- 2.1 Analysis of project requirements;
- 2.2 Developing, recommending and implementing a strategy in consultation with the client;
- 2.3 Market analysis to determine competing properties, asking and estimated sale pricing;
- 2.4 Preparation of marketing materials, listings and marketing of the property, administration of auctions or tenders as applicable, and accompanying all prospective buyers on visits to the property;
- 2.5 Marketing the property on either a sole agency or multiple agency listings basis;
- 2.6 Reporting on project progress, viewings and market developments;
- 2.7 Negotiating commercial terms with prospective purchasers in consultation with the client;
- 2.8 Providing comparative financial and non-financial analysis, evaluating creditworthiness of prospective purchasers, and advising and recommending optimal course of action;
- 2.9 Working in cooperation with the client's solicitor providing market-based advice on legal context and contract language;
- 2.10 Assembling, arranging execution of, transmitting and receiving document packages, including offers, counteroffers, and contracts;
- 2.11 Certifying work and fees received from other parties, if any.
- 2.12 Selling the property.

3. Program of Acquisition:

Services will include:

- 3.1 Market Analysis: Contractor shall provide broker representation services on behalf of Her Majesty and conduct a market / property search in all geographical locations covered under this Agreement to determine current values, availability and conformance with Her Majesty's needs and desired terms and conditions.
- 3.2 Comparative Analysis / Recommendation: Contractor will arrange site visits to permit Departmental Representative and other employees or agents of Her Majesty to view and perform due diligence on prospective properties. Contractor shall perform or assist Her Majesty in performing analyses of alternatives presented, including a description of the potential advantages and disadvantages of each prospective property. Contractor shall advise and recommend solution best matching Her Majesty's objectives in support of Her Majesty's internal approval process.

3.3 Negotiation: Contractor shall negotiate terms for such real estate agreements as are required to meet Her Majesty's requirements. Although Contractor will serve as Her Majesty's representative, Contractor acknowledges and understands that it has no power or authority to bind Her Majesty to any purchase, contract, representation or warranty and that only authorized signing representatives Her Majesty are capable of binding Her Majesty in such transactions. For the avoidance of doubt, Contractor's obligations in this regard shall extend to negotiation of residential real estate terms only and not to drafting formal legal terms, which shall be a matter for Her Majesty and its legal representatives.

3.4 Purchase Interpretation: Contractor shall provide Her Majesty with interpretation of potential purchase agreement language; including consents, financials, incentives, accessibility issues, over-holdings, retrofit requirements, restorations, approval requirements, etc.

3.5 Documentation / Processing: Upon approval in writing by Departmental Representative, Contractor shall provide to vendor or agent to a vendor, offers, letters of intent, or other letters to prospective vendor as required. Contractor shall provide other services; including, ii) completing all process control documents, including project close-out and reporting, required by Her Majesty and ii) preparing document execution packages, routing for approval, monitoring approval and notifying parties once approvals are received.

3.6 Certification of Fees and Payment: Contractor shall have certified by a financial officer of the Contractor's company and provide Her Majesty with copies of i) all fee invoices presented to vendor and ii) evidence (i.e. cheques or wire confirmation notices) indicating all payments, compensation or consideration made by vendor and/or any third party to Contractor resulting from the real estate transaction contemplated in this Service Contract.

4. Other

The Government of Canada retains the right to engage other firm qualified under the same Request for Proposal process should the Contractor named herein fail to sell the property and/or acquire a replacement property within the agreed period.