



**SECTION "I" – SUPPLEMENTARY CONDITIONS****SC 1 SECURITY REQUIREMENTS**

This document does NOT contain CLASSIFIED information; however all or part of the Work involves possible access to CLASSIFIED and/or PROTECTED information/materiel.

The Contractor shall NOT remove, without the express written approval of the Departmental Representative any CLASSIFIED and/or PROTECTED information from the work site, and shall ensure that the Contractor's personnel are made aware of and comply with this restriction.

Subcontractors who require access to CLASSIFIED and/or PROTECTED information or sensitive work sites, shall NOT be accessed without the prior, written approval of the Departmental Representative.

**SC 2 PRECONSTRUCTION SUBMISSIONS AND REVIEWS**

The acceptance of an estimate by DFATD does not in any way abrogate the Consultant's responsibility to maintain the construction cost limit. If cost overruns occur the Consultant must make revisions or participate in value engineering exercises in order to reduce the construction cost at no additional cost.

**SC 3 TIME SCHEDULE**

Where an increase in time to the approved time schedule for the performance of the Services is required, and such increase is due to the negligence, poor performance or default of the Consultant, such an increase shall be without prejudice to any rights or remedies of Her Majesty.

**SC 4 COST CONTROL**

If the lowest price obtained by construction tender exceeds the Construction Budget, and if the excess is due to reasons within the control of, or reasonably foreseeable by the Consultant, the Consultant must, if requested by the Departmental Representative, and without additional charge, cooperate in revising the project scope and quality as required to reduce the construction cost and must modify the Construction Documents as necessary to comply with the Construction Budget.

**SC 5 TRAVEL**

Where contract changes result in additional or extended travel deemed necessary by the Department of Foreign Affairs, Trade and Development Canada (DFATD), due to extraordinary and unexpected requirements, and with the approval of the Departmental Representative, DFATD will be responsible for the additional costs for transportation and accommodation. All approved travel expenses will be in accordance with Treasury Board directives for person under contract with the Canadian Federal Government (Treasury Board travel directive website): ([http://www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/tbm\\_113/td-dv\\_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tbm_113/td-dv_e.asp)).

Airfare shall be limited to full-fare economy class only. Contractors are required to seek the lowest possible airfares, including charters and other discounts for each trip, and to book immediately upon approval of this agreement, in order to take advantage of the lowest fares.

The Department of Foreign Affairs, Trade and Development (DFATD) retains the right to limit the reimbursement of the air portion when the lowest appropriate fare is not obtained and reserves the right to limit travel time payments – for example, travel time will be paid at the hourly rates indicated in the Terms of Payment, for the actual time spent travelling, up to a maximum of eight (8) hours per day plus 50% of the hourly rate for any additional hours over eight (8), to a maximum of 12 hours.

Upgrades to business or first class may be personally paid by the Contractor, where this is company policy.

All additional traveling and living expenses must be pre-approved by DFATD.

## SECTION "II" – GENERAL CONDITIONS

## GC1 DEFINITIONS

- 1.1 "Average Bank Rate" means the simple arithmetic mean of the Canadian Bank Rate 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.
- 1.2 "Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which it makes short term advances to members of the Canadian Payments Association;
- 1.3 "Construction Budget" means that portion of the 'Project Budget' applicable to a Construction Contract;
- 1.4 "Construction Contract" means a contract entered into between Her Majesty and a Contractor for the construction of the Project;
- 1.5 "Construction Contract Award Price" means the price at which a Construction Contract is awarded to a Contractor;
- 1.6 "Construction Cost Estimate" means an anticipated amount for which a Contractor will execute the construction of the Project;
- 1.7 "Construction Cost Limit" means that portion of the total amount of Project funds which shall not be exceeded on construction of the Project;
- 1.8 "Construction Documents" means all necessary working drawings and specifications.
- 1.9 "Consultant" means the party identified in the Articles of Contract to perform the Consultant's Services under this Contract, and includes the officer or employee of the Consultant identified in writing by the Consultant;
- 1.10 "Consultant's Representative" means the officer or employee of the Consultant identified in writing by the Consultant to perform the Consultant's Services under the Contract;
- 1.11 "Contractor" means a person, firm or corporation with whom Her Majesty enters, or intends to enter, into a Construction Contract;
- 1.12 "Cost Plan" means the allocation of proposed costs among the various elements of the Project;
- 1.13 "Days" means continuous calendar days, including weekends and statutory public holidays;
- 1.14 "Departmental Representative" means the officer or employee of Her Majesty identified in writing by a duly authorized departmental officer to perform the Departmental Representative's duties under this Contract;
- 1.15 "Deputy Minister" means the lawful deputy of the Minister or any person acting on behalf of the lawful deputy;
- 1.16 "Former Public Office Holder" means an employee of the executive or senior manager categories who was employed by the Canadian federal public service during the period one (1) year immediately preceding the date of this Contract;
- 1.17 "Invention" means any new and useful practice, process, machine, device, manufacture or composition of matter, or any new and useful improvement thereof;
- 1.18 Mediation is a process of dispute resolution in

which a neutral third party assists the parties involved in a dispute to negotiate their own settlement;

- 1.19 "Minister" includes a person acting for, or if the office is vacant, in place of, the Minister and the Minister's successors in the office. Minister also includes the Minister's lawful deputy and any of the Ministers or their representatives appointed for the purpose of this Contract;
- 1.20 "Payroll Cost" means the actual cost of any person employed by the Consultant or the Consultant's Sub-Consultants as a staff member, including principals employed as staff members, and includes an amount for salary, statutory holidays, vacations with pay, unemployment insurance premiums and worker's compensation contributions where applicable, pension plan contributions, sick time allowance, medical/dental insurance premiums, and such other employee benefits as may be approved by the Departmental Representative;
- 1.21 "Project Brief" means a document describing the requirements of the project and the services to be provided and may include general project information, scope of the work, site and design data, and Project Schedule;
- 1.22 "Project Schedule" means a time plan, including the sequence of tasks, milestone dates and critical dates which must be met for the implementation of the planning, design and construction phases of the Project;
- 1.23 "Service(s)" means the Consultant Services as set forth in this Contract;
- 1.24 "Specialist Consultant" means any Architect, Professional Engineer, or other specialist, other than the Consultant, engaged by Her Majesty directly or, at the specific request of Her Majesty, engaged by the Consultant for "Additional Services";
- 1.25 "Sub-Consultant" means any Architect, Professional Engineer, or other specialist engaged by the Consultant for the Services included in this Contract;
- 1.26 "Technical Documentation" includes designs, reports, photographs, physical models, surveys, drawings, specifications, computer software developed for the purpose of the Project, computer printouts, design notes, calculations, CADD (Computer-aided Design and Drafting) files, and other data, information and material, prepared, computed, drawn, or produced and operating and maintenance manuals either prepared or collected for the Project.

## GC2 INTERPRETATIONS

- 2.1 Words importing the singular only also include the plural, and vice versa, where the context requires;
- 2.2 Headings or notes in this Contract shall not be deemed to be part thereof, or be taken into consideration in its interpretation;
- 2.3 "Herein", "hereby", "hereof", "hereunder" and similar expressions refer to this Contract as a whole and not to any particular subdivision or part thereof.

**GC3 SUCCESSORS AND ASSIGNS**

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

**GC4 ASSIGNMENT**

4.1 This Contract shall not be assigned, in whole or in part, by the Consultant without the prior consent of the Minister.

4.2 An assignment of this Contract without such consent shall not relieve the Consultant from any obligation under this Contract, or impose any liability upon Her Majesty.

**GC5 INDEMNIFICATION**

5.1 The Consultant shall indemnify and save harmless Her Majesty from and against all claims, losses, damages, costs, actions and other proceedings, made, sustained, brought or prosecuted in any manner based upon, occasioned by, or attributable to, any injury, infringement of any patent of invention or any other type of intellectual property, or damage arising from any negligent act or omission of the Consultant, the Consultant's servants or agents, or persons for whom the Consultant had assumed responsibility in the performance, or purported performance, of the Consultant's services under this Contract.

5.2 The Consultant's liability to indemnify or reimburse Her Majesty under this Contract shall not limit or prejudice Her Majesty from relying on the provisions of applicable provincial legislation.

5.3 Rights of Her Majesty: The Consultant'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.

**GC6 NOTICES**

6.1 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:

- 6.1.1 served personally to either the Departmental Representative or the Consultant's Representative (as the case may be), on the day it is delivered; or
- 6.1.2 forwarded by registered mail, on the day the postal receipt is acknowledged by the other party; or
- 6.1.3 forwarded by facsimile or other electronic means of transmission, three (3) days after it was transmitted.

6.2 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.

**GC7 SUSPENSION**

7.1 The Departmental Representative may require the Consultant to suspend the Services being

provided, or any part thereof, for a specified or unspecified period.

7.2 If a period of suspension does not exceed sixty (60) days and when taken together with other periods of suspension does not exceed ninety (90) days, the Consultant shall, upon the expiration of that period, resume the performance of the Services in accordance with the terms of this Contract, subject to any agreed adjustment of the time schedule.

7.3 If a period of suspension exceeds sixty (60) days or when taken together with other periods of suspension, the total exceeds ninety (90) days, and:

7.3.1 the Departmental Representative and the Consultant agree that the performance of the Services shall be continued, then the Consultant shall resume performance of the Services, subject to any terms and conditions agreed upon by the Departmental Representative and the Consultant, or

7.3.2 the Departmental Representative and the Consultant do not agree that the performance of the Services shall be continued, then this Contract shall be terminated by notice given by the Minister to the Consultant, in accordance with the terms of Clause GC8.

7.4 Suspension Costs related to this clause are as outlined in Clause TP7.

**GC8 TERMINATION**

8.1 The Minister may terminate this Contract at any time, and the fees paid to the Consultant shall be in accordance with the relevant provisions in Clause TP8.

**GC9 TAKING THE SERVICES OUT OF THE CONSULTANT'S HANDS**

9.1 The Minister may take all or any part of the Services out of the Consultant's hands and may employ reasonable means necessary to complete such Services in the event that:

9.1.1 the Consultant becomes bankrupt or insolvent, or a receiving order is made against the Consultant, or an assignment is made for the benefit of the creditors, or if an order is made, or resolution passed, for the winding up of the Consultant's affairs or business, or if the Consultant takes the benefit of any statute relating to bankrupt or insolvent debtors, or

9.1.2 the Consultant fails to perform any of the Consultant's obligations under this Contract or, in the Minister's opinion, so fails to make progress as to endanger performance of this Contract, in accordance with its terms.

9.2 Before the Services or any part thereof are taken out of the Consultant's hands under Clause GC9.1.2, the Departmental Representative shall provide notice to the Consultant, and may require such failure of performance or progress to be corrected. If within fourteen (14) days after

receipt of such notice such default shall not have been corrected or corrective action initiated to correct such fault, the Minister may, by notice, without limiting any other right or remedy, take all or any part of the Services out of the Consultant's hands.

- 9.3** If the Services or any part thereof have been taken out of the Consultant's hands, the Consultant shall be liable for, and upon demand pay to Her Majesty, an amount equal to all loss and damage suffered by Her Majesty by reason of the non-completion of the Services by the Consultant.
- 9.4** If the Consultant fails to pay on demand for the loss or damage as a result of Clause GC9.3, Her Majesty shall be entitled to deduct and withhold the same from any payments due and payable to the Consultant.
- 9.5** If the Services or any part thereof are taken out of the Consultant's hands as a result of Clauses GC9.1.2, and GC9.2, the amount referred to in Clause GC9.4 shall remain with the Department until an agreement is reached or a decision of a court or tribunal is rendered. At that time the amount, or any part of it, which may become payable to the Consultant shall be paid together with interest from the due date referred to in Clause TP2 and in accordance with the terms of this Contract.
- 9.6** The taking of the Services, or any part thereof, out of the Consultant's hands does not relieve or discharge the Consultant from any obligation under this Contract, or imposed upon the Consultant by law, in respect to the Services or any part thereof that the Consultant has performed.

**GC10 RECORDS TO BE KEPT BY THE CONSULTANT**

- 10.1** The Consultant shall keep accurate time sheets and cost records and, if required for the purposes of this Contract, shall make these documents available at reasonable times to the Departmental Representative who may make copies and take extracts therefrom.
- 10.2** The Consultant shall afford facilities for audit and inspection at mutually agreeable times and at places where the relevant documents are located, and shall provide the Departmental Representative with such information as the Minister may from time to time require with reference to the documents referred to in Clause GC10.1.
- 10.3** The Consultant shall, unless otherwise specified, keep the time sheets and cost records available for audit and inspection for a period of at least two (2) years following completion of the Services.

**GC11 NATIONAL OR DEPARTMENTAL SECURITY**

- 11.1** If Her Majesty is of the opinion that the Work is of a class or kind that involves National or Departmental security, the Consultant may be required:
- 11.1.1** to provide any information concerning persons employed for purposes of this

- Contract unless prohibited by law;
- 11.1.2** to remove any person from the Work and its site if that person cannot meet the prescribed security requirements; and
- 11.1.3** to retain the Work's Technical Documentation while in the Consultant's possession in a manner specified by the Departmental Representative.

- 11.2** If the Work is of a class or kind that involves National or Departmental security, the Consultant shall not issue, disclose, discard or use the Project Technical Documentation on another project without the written consent of Her Majesty.

**GC12 COPYRIGHT AND REUSE OF DOCUMENTS**

- 12.1** Without prejudice to any rights or privileges of Her Majesty, where any Services is, or has been, prepared or published by, or under the direction or control of, Her Majesty or any government department, the copyright in the Services shall, subject to any agreement with the author, belong to Her Majesty, and in such case shall continue for a period of fifty (50) years from the date of the first publication of the Work.
- 12.2** All plans, drawings, details, specifications, data, reports, other documents and information prepared by the Consultant pursuant to this Contract shall become the absolute property of Her Majesty upon the completion of the Services or as required and shall be delivered to the Departmental Representative.

**GC13 CONFLICT OF INTEREST**

- 13.1** The Consultant declares that the Consultant has no pecuniary interest in the business of any third party that would cause, or seem to cause, a conflict of interest in carrying out the Services, and should such an interest be acquired during the life of this Contract, the Consultant shall declare it immediately to the Departmental Representative.
- 13.2** The Consultant shall not have any tests or investigations carried out by any persons, firms, or corporations, that may have a direct or indirect financial interest in the results of those tests or investigations.
- 13.3** The Consultant shall not submit, either directly or indirectly, a bid for any Construction Contract related to the Project.
- 13.4** No former public office holder who is not in compliance with the post-employment provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders shall derive a direct benefit from this Contract.

**GC14 STATUS OF CONSULTANT**

- 14.1** The Consultant is engaged under this Contract as an independent consultant for the sole purpose of providing Services.
- 14.2** Neither the Consultant nor any of the Consultant's employees shall be regarded as employees or agents of Her Majesty.
- 14.3** The Consultant, as employer, agrees to be solely responsible for any and all payments and

deductions required to be made by law in the jurisdiction where the Services are performed, including those required for Canada or Québec Pension Plans, Employment Insurance, Worker's Compensation, and Income Tax or any other applicable tax.

#### **GC15 DECLARATION BY CONSULTANT**

**15.1** The Consultant declares that:

- 15.1.1** based on the information provided pertaining to the Services required under this Contract, the Consultant has been provided sufficient information by the Departmental Representative to enable the Services required under this Contract to proceed and is competent to perform the Services and has the necessary licences and qualifications including the knowledge, skill and ability to perform the Services;
- 15.1.2** the quality of Services to be provided by the Consultant shall be consistent with generally accepted professional standards and principles.

#### **GC16 INSURANCE**

- 16.1** The Consultant shall obtain and maintain an appropriate level of professional liability insurance coverage (including but not limited to coverage for design errors and omissions) for the Services required under this Contract and shall furnish satisfactory evidence of such insurance and renewals to the Departmental Representative within fourteen (14) days of execution of this Contract.
- 16.2** The policy shall be issued with a deductible amount of not more than \$2,500.
- 16.3** Unless otherwise directed in writing by the Departmental Representative, the policy required in GC16.1 shall attach from the date of contract award and shall be maintained until the one (1) year following the issuance of the Final Certificate of Completion.
- 16.4** The costs associated with any insurance coverage required under this Contract shall be part of the quoted Fixed Price.

#### **GC17 RESOLUTION OF DISAGREEMENTS**

- 17.1** In the event of a disagreement regarding any aspect of the Services or any instructions given under this Contract:
  - 17.1.1** the Consultant may give a notice of disagreement to the Departmental Representative. Such notice shall be promptly given and contain the particulars of the disagreement, any changes in time or amounts claimed, and reference to the relevant clauses of the Contract;
  - 17.1.2** the Consultant shall continue to perform the Services in accordance with the instructions of the Departmental Representative; and
  - 17.1.3** the Consultant and the Departmental Representative shall attempt to resolve the disagreement by negotiations conducted in good faith. The negotiations shall be

conducted, first, at the level of the Consultant's project representative and the project representative of the Department and, secondly and if necessary, at the level of a principal of the Consultant firm and a senior manager of the Department.

- 17.2** The Consultant's continued performance of the Services in accordance with the instructions of the Departmental Representative shall be without prejudice to the Consultant in any disagreement.
- 17.3** If it was subsequently agreed or determined that the instructions given were in error or contrary to the Contract, Her Majesty shall pay the Consultant those fees the Consultant shall have earned as a result of the change(s) in the Services provided and which has been authorized by the Departmental Representative.
- 17.4** The fees mentioned in Clause GC17.3 shall be calculated in accordance with the Terms of Payment set out in this Contract.
- 17.5** If the disagreement is not settled, the Consultant may make a request to the Departmental Representative for a written corporate decision and the Departmental Representative shall give notice of the corporate decision within 14 days of receiving the request, setting out the particulars of the response and any relevant clauses of the Contract.
- 17.6** Within fourteen (14) days of receipt of the written corporate decision, the Consultant shall notify the Departmental Representative if the Consultant accepts or rejects the decision.
- 17.7** If the Consultant rejects the corporate decision, the Consultant, by notice may refer the disagreement to mediation.
- 17.8** If the disagreement is referred to mediation, the mediation shall be conducted with the assistance of a skilled and experienced mediator chosen by the Consultant from a list of mediators proposed by the Minister, and the Department's mediation procedures shall be used unless the parties agree otherwise.
- 17.9** Negotiations conducted under this Contract, including those conducted during mediation, shall be without prejudice to either party.

#### **GC18 MEMBERS OF CANADIAN HOUSE OF COMMONS**

- 18.1** No Member of the Canadian House of Commons shall be admitted to any share or part of this Contract, or to any benefit that may arise therefrom.

#### **GC19 AMENDMENTS**

- 19.1** This Contract may not be amended, or modified, nor shall any of its terms and conditions be waived, except by agreement in writing executed by both parties.

**GC20 ENTIRE CONTRACT**

**20.1** This Contract constitutes the entire arrangement between the parties with respect to the subject matter of the Contract, and supersedes all previous negotiations, communications and other arrangements relating to it, unless incorporated by reference herein.

**GC21 SUPPLEMENTARY CONDITIONS**

**21.1** Supplementary conditions, if required, shall be as described in Section "I" of this Contract.

**GC22 PROJECT INFORMATION, DECISIONS, ACCEPTANCES AND APPROVALS**

**22.1** The Departmental Representative shall provide, in a timely manner, project information, written decisions and instructions, including acceptances and approvals relating to the Services provided by the Consultant.

**22.2** No acceptance or approval by the Departmental Representative, whether expressed or implied, shall be deemed to relieve the Consultant of the professional or technical responsibility for the Services provided by the Consultant.

**GC23 LOBBYIST CERTIFICATION - CONTINGENCY FEES**

**23.1** The Consultant certifies that it has not directly or indirectly paid or agreed to pay and 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 negotiating of the Contract shall be subject to the accounts and audit provisions of the Contract.

**23.3** If the Consultant certifies falsely under this section or is in default of the obligations contained therein, the Minister may either take the Services out of the Consultant's hands in accordance with the provisions of the Contract or recover from the Consultant by way of reduction to the Fixed Price or otherwise the full amount of the Contingency Fee.

**23.4** In this clause:

**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 term.

**23.4.2** "Employee" means a person with whom the Consultant 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 any 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 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT PRACTICES**

**24.1** For the purpose of this General Condition, "person" includes the Consultant, the Consultant's Sub-Consultants and other firms forming the consultant team, and their respective employees, agents, licensees or invitees, and any other individual involved in the performance of the Services.

**24.2** The Consultant shall not refuse to employ and will not discriminate in any manner against any person because:

**24.2.1** of that person's race, national origin, colour, religion, age, sex or marital status,

**24.2.2** of the race, national origin, colour, religion, age, sex, or marital status of any person having any relationship or association with that person, or

**24.2.3** a complaint has been made or information has been given by or in respect of that person relating to an alleged failure by the Consultant to comply with paragraphs GC24.2.1 and GC24.2.2 above.

**24.3** Within four (4) days immediately following receipt of a written complaint pursuant to subclause GC24.2 above, the Consultant shall:

**24.3.1** cause to have issued a written direction to the person or persons named by the complainant to cease all actions that form the basis of the complaint; and

**24.3.2** forward a copy of the complaint to the Departmental Representative by registered mail.

**24.4** Within twenty four (24) hours immediately following receipt of a direction from the Departmental Representative to do so, the Consultant shall cause to have removed from the Consultant team any person or persons whom the Departmental Representative believes to be in breach of the provisions of subclause GC24.2 above.

**24.5** No later than thirty (30) days after receipt of the direction referred to in GC24.4 above, the Consultant shall cause the necessary action to be commenced to remedy the breach described in the direction.

**24.6** If a direction is issued pursuant to GC24.4 above, Her Majesty may withhold from monies that are due and payable to the Consultant an amount representing the sum of the costs and payment referred to in GC24.8 and GC24.9 below.

**24.7** If the Consultant fails to proceed in accordance with GC24.6 above, the Departmental Representative shall take the necessary action to have the breach remedied, and shall determine all supplementary costs incurred as a result by Her Majesty.

**24.8** Her Majesty may make a payment directly to the complainant from monies that are due and payable to the Consultant upon receipt from the complainant of:



- 24.8.1** a written award issued pursuant to the federal Commercial Arbitration Act, R.S., 1985, c. C-34.6; or
- 24.8.2** a written award issued pursuant to the Canadian Human Rights Act, R.S., 1985, c. H-6; or
- 24.8.3** a written award issued pursuant to provincial or territorial human rights legislation; or
- 24.8.4** a judgment issued by a court of competent jurisdiction.
- 24.9** The Consultant shall be liable for and upon demand shall pay to Her Majesty the supplementary costs referred to in GC24.8. If the Consultant fails to make payment on demand, Her Majesty may deduct the same from any amount due and payable to the Consultant.
- 24.10** A payment made pursuant to GC24.8 is, to the extent of the payment, a discharge of Her Majesty's liability to the Consultant under the terms of the Contract and may be deducted from any amount due and payable to the Consultant.
- 24.11** The Consultant shall ensure that the appropriate provisions of this Contract are included in all agreements and contractual arrangements entered into by the Consultant as a consequence of this Contract.
- GC25 APPROPRIATION**
- 25.1** In accordance with Section 40 of the 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.
- GC26 CONFIDENTIAL INFORMATION**
- 26.1** Any information of a character confidential to the affairs of Her Majesty to which the Consultant, or any officer, servant or agent of the Consultant 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.
- GC27 INCAPACITY TO CONTRACT WITH CANADIAN GOVERNMENT**
- 27.1** The Consultant certifies that the Consultant, including the Consultant's officers, agents and employees, has not been convicted of an offence under the following provisions of the Criminal Code:
- 27.1.1** Section 121, Frauds upon the Government;
- 27.1.2** Section 124, Selling or Purchasing Office;
- 27.1.3** 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.)
- GC28 INTERNATIONAL SANCTIONS**
- 28.1** 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 Consultant 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.
- 28.2** The Consultant agrees that Canada relies on the Consultant's undertaking in subsection (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 Consultant, and therefore to recover damages from the Consultant, including reprocurement costs arising out of such a termination.
- 28.3** The countries or groups currently subject to Canadian Economic Sanctions are listed on the Foreign Affairs, Trade and Development Canada site:  
<http://www.international.gc.ca/sanctions/index.aspx>
- 28.4** 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 Consultant, but the Consultant agrees that only the text as published in the Canada Gazette, Part II, is authoritative, and the Consultant waives any claim against Canada, the Minister, or their employees or agents for any costs, loss, or damage whatever that results from the Consultant's reliance on the text of a regulation as reproduced on the electronic bulletin board.
- 28.5** If the Contract is concluded prior to the imposition of a sanction as described in GC28.1, Her Majesty reserves the right to terminate the Contract in accordance with GC8.
- GC29 STATUS AND REPLACEMENT OF PERSONNEL**
- 29.1** If at any time during the period of the contract the Consultant is unable to provide the Services of any person who must perform the Services in the Contract, it shall immediately provide a replacement person with similar qualifications and experience. The Consultant shall, as soon as possible, give notice to the Minister of:
- 29.1.1** the reason for the removal of the person from the Services;
- 29.1.2** the name, qualifications and experience of the proposed replacement person; and
- 29.1.3** proof that the person has the required security clearance granted by Canada, if applicable.
- 29.2** The Minister may order the removal from the Services of any such replacement person and the Consultant shall immediately remove the person from the Services and shall, in accordance with

subsection (1), secure a further replacement.  
**29.3** The fact that the Minister does not order the removal of a replacement person from the Services shall not relieve the Consultant from its responsibility to meet the requirements of the Contract.

**29.4** If the Consultant intends to use any person in fulfillment of this contract who is or who is not an employee of the Consultant, the Consultant 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 Work in relation to the Services and, the Consultant has written permission from the person or (the employer of such a person) to propose the services of the person in relation to the Services to be performed in fulfillment of this contract.

**GC30 NO BRIBE**

**30.1** The Consultant 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.

**GC31 SOVEREIGN IMMUNITY**

**31.1** Notwithstanding any provision in this Contract, Her Majesty the Queen in Right of Canada, does not waive any immunity to which she is or may be entitled to by virtue of domestic or international law.

**GC32 HEALTH AND SAFETY**

**32.1** The Consultant 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.

**32.2** The Consultant 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.

## SECTION "III" – TERMS OF PAYMENT

**TP1 PAYMENTS TO THE CONSULTANT**

- 1.1** The Consultant shall be entitled to receive progress payments at the stages identified in Clause TP2. Such payments shall be made not later than the due date, which shall be the thirty (30) days following receipt of a properly submitted invoice.
- 1.2** The Departmental Representative shall notify the Consultant within fifteen (15) days after the receipt of an invoice of any error or missing information therein. Payment shall be made not later than 30 days after receipt of the corrected invoice or the required information.
- 1.3** Upon completion of each stage identified in TP2, provided at least one progress payment has been made, the Consultant shall provide a Statutory Declaration evidencing that all the Consultant's financial obligations for services rendered to the Consultant or on the Consultant's account, in connection with this Contract, have been satisfied, before any further payment is made.
- 1.4** Upon written notice by a Sub-Consultant, with whom the Consultant has a direct contract, of an alleged non payment to the Sub-Consultant, the Departmental Representative may provide the Sub-Consultant with a copy of the latest approved progress payment made to the Consultant for the Services.
- 1.5** Upon the satisfactory completion of all Services, the amount due, less any payments already made, shall be paid to the Consultant not later than thirty (30) days after receipt of a properly submitted invoice, together with the Final Statutory Declaration in accordance with Clause TP1.3.

**TP2 PAYMENT STAGES**

- 2.1** Payments in respect of the Fixed Price shall be made during the performance of the Services at the following stages, up to the amounts specified below:
- Stage 1 Analysis of project requirements and Design Concept. Upon approval of the Design Concept Documents, an amount up to ten percent (10%) of the Fixed Price;
- Stage 2 Design Development. Upon approval of the Design Development Documents, an accumulative amount up to twenty percent (20%) of the Fixed Price (ten percent (10%) this Stage);
- Stage 3 Construction Documents. Upon approval of the Construction Documents, an accumulative amount up to fifty percent (50%) of the Fixed Price (thirty percent (30%) this Stage);
- Stage 4 Tender Call and Construction Contract Award. Upon award of a Construction Contract, an accumulative amount up to sixty percent (60%) of the Fixed Price (ten percent (10%) this Stage);
- Stage 5 Construction and Contract Administration. Upon issuance of the Interim Certificate of Completion of the Construction Contract, an accumulative amount up to ninety percent (90%) of the Fixed Price (thirty percent (30%) this Stage); and
- Stage 6 Post Construction. Upon completion of the warranty reviews, an accumulative amount up to one hundred percent (100%) of the Fixed Price (ten percent (10%) this Stage).
- 2.2** Progress payments in respect of stages 1 to 4 inclusive may be made up to an amount not exceeding the value of the price indicated for each stage under consideration.
- 2.3** Progress payments in respect of Stage 5 may be made in proportion to the Fixed Price of the

construction work completed and approved for payment under the Construction Contract.

**TP3 DELAYED PAYMENT**

- 3.1 Subject to Clause TP3.4 below, if Her Majesty delays in making a payment that is due in accordance with Clause TP1, the Consultant will be entitled to receive interest on the amount that is overdue for the period of time as defined in Clause TP3.2 including the day previous to the date of payment. Such date of payment shall be deemed to be the date on the cheque given for payment of the overdue amount. An amount is overdue when it is unpaid on the first day following the due date described in Clause TP1.1.
- 3.2 Except as provided for in Clause TP3.4, interest shall be paid on all amounts that are not paid by the due date or fifteen (15) days after the Consultant has delivered a Statutory Declaration in accordance with Clauses TP1.2 or TP1.3, whichever is the later.
- 3.3 The rate of interest shall be the Average Bank Rate plus three percent (3%) per year on any amount which is overdue pursuant to Clause TP3.1.
- 3.4 With respect to amounts which are less than fifteen (15) days overdue, no interest shall be payable or paid if a payment is made within the said fifteen (15) days unless the Consultant so demands after such amounts have become due.

**TP4 CLAIMS AGAINST, AND OBLIGATIONS OF THE CONSULTANT**

- 4.1 The Consultant shall discharge all lawful obligations, and shall satisfy all lawful claims against the Consultant, for services rendered to, or on behalf of, the Consultant in respect of the Contract, at least as often as the Contract requires Her Majesty to pay the Consultant.
- 4.2 Her Majesty may, in order to discharge lawful obligations of, and satisfy lawful claims against, the Consultant for services rendered to, or on behalf of, the Consultant in respect of the Contract, pay any amount that is due and payable to the Consultant pursuant to the Contract directly to the claimants against the Consultant.
- 4.3 A payment made pursuant to Clause TP4.2 is, to the extent of the payment, a discharge of Her Majesty's liability to the Consultant under the Contract, and will be deducted from an amount payable to the Consultant under the Contract.
- 4.4 For the purposes of this clause a claim shall be considered lawful when it is so determined:
- 4.4.1 by a court of legal jurisdiction, or
  - 4.4.2 by an arbitrator duly appointed to arbitrate the said claim, or
  - 4.4.3 by a written notice delivered to the Departmental Representative and signed by the Consultant authorizing payment of the said claim or claims.

**TP5 NO PAYMENT FOR ERRORS AND OMISSIONS**

- 5.1 The Consultant shall not be entitled to payment in respect of costs incurred by the Consultant in remedying errors and omissions in the Services that are attributable to the Consultant, the Consultant's employees, or persons for whom the Consultant has assumed responsibility in performing the Services.

**TP6 PAYMENT FOR CHANGES AND REVISIONS**

- 6.1 Payment for any additional or reduced Services provided by the Consultant and authorized by the Departmental Representative shall be made in accordance with the terms of such authorization and these Terms of Payment.
- 6.2 Notwithstanding clause TP6.1, Her Majesty accepts no liability for any additional Services done by the Consultant over and above that required to be done by this Contract, unless a specific amendment is issued authorizing the Consultant to do such additional Services. Payment for any additional or reduced Services provided by the Consultant and authorized by the Departmental Representative shall be made in accordance with the terms of such authorization and these Terms of Payment.

6.3 The following table provides ceiling rates for the following categories of personnel. These rates may be used should any additional work arise throughout the duration of the Contract that the Minister deems to be considered reasonable and outside the scope of the Statement of Work.

The ceiling rates are subject to downward adjustment.

**Professional Services Rates (rates to be inserted at time of Contract Award)**

Category of Personnel	Ceiling Hourly Rate (CAD)
Senior Architect - Canada	
Intermediate Architect - Canada	
Junior Architect - Canada	
Senior Engineer - Canada	
Intermediate Engineer - Canada	
Junior Engineer - Canada	
Senior Architect – local Kenyan partner	
Intermediate Architect – local Kenyan partner	
Junior Architect – local Kenyan partner	
Senior Engineer– local Kenyan partner	
Intermediate Engineer– local Kenyan partner	
Junior Engineer– local Kenyan partner	

**TP7 SUSPENSION COSTS**

- 7.1 During a period of suspension of the Services, the Consultant shall minimize all costs and expenses relating to the Services that may occur during the suspension period.
- 7.2 Within fourteen (14) days of notice of such suspension, the Consultant shall submit to the Departmental Representative a schedule of costs and expenses, if any, that the Consultant expects to incur during the period of suspension, and for which the Consultant will request reimbursement.
- 7.3 Payment shall be made to the Consultant for those costs and expenses that are substantiated as having been reasonably incurred during the suspension period.

**TP8 TERMINATION COSTS**

- 8.1 In the event of termination of this Contract, Her Majesty shall pay, and the Consultant shall accept in full settlement, an amount based on these Terms of Payment, for Services satisfactorily performed, plus an amount to compensate the Consultant for reasonable costs and expenses, if any, that are related to the Services not performed and incurred after the date of termination.
- 8.2 Within fourteen (14) days of notice of such termination, the Consultant shall submit to the Departmental Representative a schedule of costs and expenses incurred plus any additional costs that the Consultant expects to incur after the date of termination, and for which the Consultant will request reimbursement.
- 8.3 Payment shall be made to the Consultant for those costs and expenses that are substantiated as having been reasonably incurred after the date of termination.

**TP9 DISBURSEMENTS**

Disbursements by the Consultant are included in the Fixed Price.

**APPENDIX “A” – STATEMENT OF WORK**

See Attached Document

## APPENDIX “B” – DESCRIPTION OF PROJECT

### DP1 PROJECT DESCRIPTION AND LOCATION

- 1.1 The Government of Canada, through Foreign Affairs, Trade and Development Canada (DFATD), is planning to complete a mid-life refit and space optimizations upgrade the High Commission in Nairobi, Kenya. The project consists of building a total of 4,600 m<sup>2</sup> in a 3 storey Chancery Building with a sub-basement and a basement level including underground parking and service space on the Canadian Compound located on 25 Limuru Road in Nairobi, Kenya.
- 1.2 A detailed list of objectives to be completed under this project must be referenced from the Building Condition Report (BRC) however they are summarized as follows:
- Temporary Enabling Works and Swing Space
  - Seismic Retrofit
  - Window Hardening
  - Space Optimization
  - Façade and Roof Improvements
  - Various Repairs Upgrades
  - Mechanical / Electrical and Commissioning
  - IT Infrastructure Upgrades

### DP2 PROFESSIONAL SERVICES REQUIRED

- 2.1 The Consultant is required to deliver the professional services required (see Appendix “A” Statement of Work) inclusive of architectural, civil and structural works; mechanical and electrical systems; fire alarm and firefighting systems; landscaping; interior design; commissioning; interior and exterior signage; and warranty inspection and as more fully described in the Project Brief. The proposed interior design will be subject to reviews by the DFATD project team and the Physical Resources Bureau's Design Review Committee in Ottawa. DFATD Interior Design Services will be responsible for the selection, procurement and installation of all furnishings throughout the building. DFATD is also responsible for any artwork that may be required. Also note that the acquisition and installation of security and information technology systems is the responsibility of DFATD. All documentation and communication will be produced in English.

### DP3 ESTIMATED PROJECT CONSTRUCTION COST

- 3.1 At present, the overall cost of construction for this project is estimated to be in the range of \$5M to \$10M CAD.

### DP4 PROJECT SCHEDULE

- 4.1 The Project Schedule and other project requirements are described in the Project Brief and Appendices included with this Table.

MILESTONES	DATE:
A&E Consultant contract(s) awarded	November 2016
Drawings, Specs and tender docs complete	April 2017
RFP/Tenders for Construction issued	July 2017
Bid Reviews/ Evaluation for Construction complete	September 2017
DFATD Internal reviews and approval	Oct-Dec 2017
Construction Contract Awarded	March 2018
Construction commences	April 2018
Construction complete	Jan 2020
Project Close out	Jan 2020

### DP5 ADVANCING PROJECT SCHEDULE

- 5.1 Advancing the Project Schedule may be considered at a later stage in the execution of the Services if the Consultant presents an accelerated and credible project delivery strategy for the design and

construction in accordance with the Foreign Affairs, Trade and Development Canada approval process and in keeping with the Project parameters of scope, schedule, cost, quality and communication.

**DP6 CONSULTANT TO SIGN AND SEAL ALL CONSTRUCTION DOCUMENTS**

- 6.1** All Services performed by the successful Consultant must conform to and comply with all applicable laws, regulations, codes and standards applicable to the project site as well as Canadian codes, regulations and standards including the 2015 National Building Code of Canada (especially the sections covering electrical design, earthquake design and fire protection). In cases of conflict, the higher standard shall prevail except in case of a conflict with a local mandatory requirement, in which case the local mandatory requirement shall prevail. Detailed references to other applicable codes, standards and regulations are presented in the Project Brief.
- 6.2** The Consultant, will be required to sign and seal all Project Plans, Specifications and other construction documents as required by the authorities having jurisdiction over the project site.

**DP7 QUALITY ASSURANCE SPECIALIST**

- 7.1** At the discretion of Foreign Affairs, Trade and Development Canada, an independent consultant (e.g., Quality Assurance specialist) may be engaged by Foreign Affairs, Trade and Development Canada to assist Foreign Affairs, Trade and Development Canada with design review, monitoring risk mitigation and quality certification. The Consultant will cooperate with the QA specialist in the discharge of the QA's responsibilities.