



<b>NOTICE OF INTEREST EXPERT LABORATORY SERVICES AGREEMENT (Open)</b>	<b>DATE: JUNE 5, 2017</b>
<b>FOR THE CORRECTIONAL SERVICE OF CANADA <u>MATERIAL RESOURCES MANAGEMENT</u> 250 MONTEE ST-FRANÇOIS LAVAL, QUEBEC H7C 1S5</b>	
Please address all requests for information to Karine Clement, Regional Officer int., Contracts and Procurement Telephone: 450-661-9550, ext. 3214 Fax: 450-664-6626	
<b><u>EXPERT LABORATORY SERVICES/PROFESSIONAL SERVICES</u> NOTICE OF INTEREST FOR CSC'S DIRECTORY OF EXPERT LABORATORIES</b>	

The content of the clauses and conditions in this document is provided to inform the Bidder of the content of the Open Agreement that will subsequently be offered and will have to be signed by the Contractor.

Note: The Open Agreement is not a contract.x

Please note that no reimbursement for travel expenses will be allowed for the institution mentioned.

If you are interested in being on the "CSC Directory of Expert Laboratories," you must consult and complete the notice of interest: "CSC Directory of Expert Laboratories" reply form attached.

The Correctional Service of Canada has special security requirements.



## Security requirements

1. The Contractor's employees shall submit to security investigation by Correctional Service Canada at its arrival, prior to admittance to the facility/site. Correctional Service Canada reserves the right to deny access to the facility/site to a Contractor's employee at any time.

REGIONAL OFFICER INT.  
CONTRACTS AND PROCUREMENT

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## OPEN AGREEMENT

### 1 OFFER

- 1.1 This Expert Laboratory Service Agreement (Open) - (hereafter referred to as "Open Agreement") concerns the acquisition of services to be provided by the Expert Laboratory for projects designated by the Departmental Representative. The purpose of the Open Agreement is to ensure that we can call on the Expert Laboratory immediately to provide services as needed when we cannot establish the scope of services with reasonable certainty in advance. **The Expert Laboratory acknowledges that an Open Agreement is not a contract and that the issue of an Open Agreement does not obligate or commit Canada to pay for services or establish a contract in that regard.**
- 1.2 **The Expert Laboratory agrees to provide the services required only when the scope of services has been established in a Commitment for Services (also referred to as "Commitment" hereafter)**, which will be the contract. By service agreement, we mean the written instructions and changes made by the Departmental Representative, which describe, among other things, the services to be provided and the payment conditions agreed upon for the execution of these services.

### 2 LENGTH OF OFFER

- 2.1 This Offer remains effective for a period of up to two years, or may be terminated earlier by informing the other party that no other services are required or provided. If not all of the services begun have been provided before the period expiry date, the Agreement will end once all the services have been provided or with notice from Canada, in accordance with the provisions of clause A1.8 of the Open Agreement.

**Note: For some projects, the contract option will be favoured with general and special conditions related to the project in question.**

### 3 MAXIMUM AMOUNT PAYABLE

- 3.1 Subject to the provisions of this Open Agreement, Canada agrees to pay the Expert Laboratory, in exchange for its services, an amount calculated in accordance with Part C, Fee Arrangement.
- 3.2 The maximum amount payable by Canada under a Commitment, including fees and disbursements, shall not be exceeded, without the prior written authorization of the Departmental Representative.
- 3.3 Regardless of the maximum amount payable by Canada, the Open Agreement will have a maximum limitation of expenditure, including fees and disbursements, of **\$ 34 790.17** (taxes excluded) without prior authorization from the Contracting Authority.



## PART A – STANDARD CLAUSES

### A1 GENERAL CONDITIONS

#### A1.1 Definitions

- A1.1.1 **Contracting Authority:** The party identified on the first page, responsible for the establishment of the Open Agreement, its amendments, administration and any other contractual issues relating to each Commitment;
- A1.1.2 **Project Schedule:** 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;
- A1.1.3 **Canada:** Her Majesty the Queen in Right of Canada;
- A1.1.4 **Construction Contract:** Contract entered into between Canada and a Contractor for the construction of the Project;
- A1.1.5 **Construction Cost Estimate:** Anticipated amount for which a Contractor will execute the construction of the Project;
- A1.1.6 **Technical Documentation:** Includes studies, reports, photographs, physical models, statements, drawings, estimates, software developed for the project's needs, computer printouts, design notes, calculations, CADD (Computer-aided Design and Drafting) and other data, information and documents prepared, computed, drawn or produced for operation and maintenance manuals prepared or gathered for the project;
- A1.1.7 **Project Brief or Terms of Reference:** Document describing in sufficient detail the Services to be provided by the Consultant to permit the Consultant to proceed with the services and may include general project information, scope of the work, site and design data, and time plan, specifically related to the Project;
- A1.1.8 **Contractor:** Person, firm or corporation with whom Canada enters, or intends to enter, into a Construction Contract;
- A1.1.9 **Consultant:** The party identified in this Agreement to perform the Consultant Services under this Agreement and in the Commitments, and includes the officer or employee of the Consultant identified in writing by the Consultant;
- A1.1.10 **Days:** Continuous calendar days, including weekends and statutory public holidays;
- A1.1.11 **Mediation:** A process of dispute resolution in which a neutral third party assists the parties involved in a dispute to negotiate their own settlement;
- A1.1.12 **Construction Cost Limit:** That portion of the total amount of Project funds which shall not be exceeded on construction of the Project;
- A1.1.13 **Cost Plan:** Document in which the proposed costs are allocated in a detailed manner among the various elements of the Project, as described in the Project Brief or Terms of Reference.
- A1.1.14 **Construction Contract Award Price:** The price at which the Construction Contract is awarded to a Contractor;



- A1.1.15 **Departmental Representative:** The officer or employee of Canada designated in writing by an officer duly authorized by the Department to perform the Departmental Representative's duties under each Commitment;
- A1.1.16 **Services:** Means the Services provided by the Consultant and the services required for the project as set forth in the Open Agreement and Commitments;
- A1.1.17 **Sub-Consultant:** Any Architect, Engineer or other specialist engaged by the Consultant for the Services included in this Agreement and the Commitments;
- A1.1.18 **Specialist Consultant:** Architect, Professional Engineer, or other specialist, other than the Consultant, engaged by Canada directly or, at the specific request of Canada, engaged by the Consultant;
- A1.1.19 **Bank Rate:** 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;
- A1.1.20 **Average Bank Rate:** The simple arithmetic mean of the Bank Rate in effect at 4:00 p.m. Eastern Time each day during the calendar month which immediately precedes the calendar month in which the payment is made.

## A1.2 Interpretation

- A1.2.1 Words importing the singular only also include the plural, and vice versa, where the context requires.
- A1.2.2 Headings or notes in the Agreement shall not be deemed to be part thereof, or be taken into consideration in its interpretation.
- A1.2.3 "Herein," "hereby," "hereof," "hereunder" and similar expressions refer to the Open Agreement as a whole and not to any particular subdivision or part thereof.

## A1.3 Successors and assigns

- A1.3.1 A Commitment for Services against an Open Agreement shall ensure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns, which are all bound by its provisions.

## A1.4 Assignment

- A1.4.1 The Commitment for Services shall not be assigned, in whole or in part, by the Consultant without the prior consent of Canada.
- A1.4.2 The assignment of the Commitment for Services without such consent shall not relieve the Consultant or the assignee from any obligation under the Commitment for Services, or impose any liability upon Canada.

## A1.5 Indemnification

- A1.5.1 The Consultant shall indemnify and save harmless Canada, its employees and agents, from losses arising out of the errors, omissions or negligent acts of the Consultant, its employees and agents, in the performance of the Commitment for Services under the Open Agreement.



A1.5.2 The Consultant's liability to indemnify or reimburse Canada under the Agreement shall not affect or prejudice Canada from exercising any other rights under the law.

### **A1.6 Notices**

A1.6.1 Any notice, request, direction, consent, decision, or other communication that is required to be given or made by either party pursuant to the Agreement, shall be in writing, and shall be deemed to have been effectively given when:

- (a) served personally, on the day it is delivered;
- (b) forwarded by registered mail, on the day the postal receipt is acknowledged by the other party; or
- (c) forwarded by facsimile or other electronic means of transmission, one working day after it was transmitted.

A1.6.2 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.

### **A1.7 Suspension**

A1.7.1 The Departmental Representative may require the Consultant to suspend the Services being provided, or any part thereof, for a specified or unspecified period.

A1.7.2 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 will, upon the expiration of that period, resume the performance of the Services in accordance with the terms of the Open Agreement and Commitment for Services, subject to any agreed adjustment of the time schedule, as referred to in clause A3.3.

A1.7.3 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:

- (a) 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
- (b) the Departmental Representative and the Consultant do not agree that the performance of the Services shall be continued, then the Commitment shall be terminated by notice given to the Consultant, in accordance with clause A1.8.

A1.7.4 Suspension costs related to this clause are as outlined in clause A2.7.

### **A1.8 Termination**

A1.8.1 Canada may terminate the Commitment for Services under the Open Agreement at any time in its sole discretion, and the fees paid to the Consultant will be in accordance with the relevant provisions in clause A2.8.





### **A1.9 Taking the Services Out of the Consultant's Hands**

A1.9.1 Canada may take all or part of the Services out of the Consultant's hands and may employ reasonable means necessary to complete such Services in the event that:

- (a) The Consultant has become insolvent or has committed an act of bankruptcy, and has neither made a proposal to the Consultant's creditors nor filed a notice of intention to make such a proposal, pursuant to the Bankruptcy and Insolvency Act, or
- (b) The Consultant fails to perform any of the Consultant's obligations under this Agreement or under one of the Commitments for Services or, in Canada's opinion, so fails to make progress as to endanger performance of the Open Agreement or any of its Commitments for Services, in accordance with its terms.

A1.9.2 If the Consultant has become insolvent or has committed an act of bankruptcy, and has either made a proposal to the Consultant's creditors or filed a notice of intention to make such a proposal, pursuant to the *Bankruptcy and Insolvency Act*, the Consultant shall immediately forward a copy of the proposal or the notice of intention to the Contracting Authority.

A1.9.3 Before the Services or any part thereof are taken out of the Consultant's hands under clause A1.9.1(b), the Departmental Representative will 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 notice the default is not corrected or corrective action is not initiated to correct such a fault, Canada may, by notice, without limiting any other right or remedy, take all or any part of the Services out of the Consultant's hands.

A1.9.4 If the Services or any part thereof have been taken out of the Consultant's hands, the Consultant will be liable for, and upon demand pay to Canada, an amount equal to all loss and damage suffered by Canada by reason of the non-completion of the Services by the Consultant.

A1.9.5 If the Consultant fails to pay on demand for the loss or damage as a result of clause A1.9.4, Canada will be entitled to deduct and withhold the same from any payments due and payable to the Consultant.

A1.9.6 If the Services or any part thereof are taken out of the Consultant's hands as a result of clause A1.9.1(b) and A1.9.2, the amount referred to in clause A1.9.5 shall remain in the Treasury 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 A2.2 and in accordance with the provisions of the Open Agreement.

A1.9.7 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 the Open Agreement or Commitment, or imposed upon the Consultant by law, in respect to the Services or any part thereof that the Consultant has performed.

### **A1.10 Records to be Kept by the Consultant**

A1.10.1 Time charged and the accuracy of the *Consultant's* time recording system may be verified by the Departmental Representative before or after payment is made to the Consultant under the terms and conditions of the Commitment for Services.

A1.10.2 The Consultant shall keep accurate time and cost records and, if required for the purposes of the Open Agreement, shall make these documents available to the Departmental Representative who may make copies and take extracts therefrom.



A1.10.3 The Consultant shall afford facilities for audit and inspection upon request and shall provide the Departmental Representative with such information as may be required from time to time with reference to the documents referred to in clause A1.10.1.

A1.10.4 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.

A1.10.5 If the verification is done after payment by Canada, the *Consultant* agrees to repay any overpayment immediately upon demand.

### **A1.11 National or Departmental Security**

A1.11.1 If the Departmental Representative is of the opinion that the Project is of a class or kind that involves national or departmental security, the Consultant may be required:

- (a) to provide any information concerning persons employed for purposes of this Agreement unless prohibited by law;
- (b) to remove any person from the Project and its site if that person cannot meet the prescribed security requirements; and
- (c) to retain the Project Technical Documentation while in the Consultant's possession in a manner specified by the Departmental Representative.

A1.11.2 If the Project is of a class or kind that involves national or departmental security, the Consultant shall not issue, disclose, discard or use this documentation without the written consent of the Departmental Representative.

### **A1.12 Rights to Intellectual Property**

#### **A1.12.1 Definitions**

"Background": all Technical Output that is not Foreground and that is proprietary to or the confidential information of the Consultant, the Consultant's Sub-Consultants, or any other entity engaged by the Consultant in the performance of the Services.

"Foreground": any Invention first conceived, developed or reduced to practice as part of the Services and all other Technical Output conceived, developed, produced or implemented as part of the Services.

"IP Rights": any intellectual property rights as recognized by law, including any intellectual property right protected through legislation (such as that governing copyright, patents, industrial design or integrated circuit topography) or arising from protection of information as a trade secret or as confidential information.

"Invention": 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, whether or not patentable and without limiting the foregoing, the term includes any unique design and construction system.

"Technical Output": (i) all information of a scientific, technical or artistic nature relating to the Services, whether oral or recorded in any form or medium and whether or not subject to copyright, including but not limited to any Inventions, designs, methods, reports, photographs, physical models, surveys, drawings,



specifications developed for the purpose of the Project; as well as (ii) computer printouts, design notes, calculations, CADD (computer-aided Design and Drafting) files, and other data, information and material, prepared, computed, drawn, or produced for the purpose of the Project; and (iii) operating and maintenance manuals prepared or collected for the Project; and (iv) any buildings, built works, structures and facilities constructed as, or as part of, the Project. Technical Output does not include data concerned with the administration of the contract by Canada or the Consultant, such as internal financial or management information, unless it is deliverable under the terms of the contract.

#### A1.12.2 Identification and Disclosure of Foreground

The Consultant shall:

- (a) promptly report and fully disclose to Canada all Foreground that could be Inventions, and shall report and fully disclose to Canada all other Foreground not later than the time of completion of the Services or such earlier time as Canada or the contract may require;
- (b) for each disclosure referred to in (a), indicate the names of all Consultants at any tier, if any, in which IP Rights to any Foreground have vested or will vest.

Before and after final payment to the Consultant, Canada shall have the right to examine all records and supporting data of the Consultant which Canada reasonably decides is pertinent to the identification of the Foreground.

#### A1.12.3 IP Rights Vest with Consultant

Subject to articles A1.12.10 and A1.12.11 and the provisions of article A1.11 (National or Departmental Security), and without affecting any IP Rights or interests therein that have come into being prior to the conclusion of the contract or that relate to information or data supplied by Canada for the purposes of the contract, all IP Rights in the Foreground shall immediately, as soon as they come into existence, vest in and remain the property of the Consultant.

#### A1.12.4 Ownership Rights in Deliverables

Notwithstanding the Consultant's ownership of the IP Rights in the Foreground that is a prototype, built work, building, structure, facility, model or custom or customized system or equipment together with associated manuals and other operating and maintenance documents and tools, Canada shall have unrestricted ownership rights in those deliverables, including the right to make them available for public use, whether for a fee or otherwise, and the right to sell them.

#### A1.12.5 Licence to Foreground

Without limiting any implied licences that may otherwise vest in Canada, and in consideration of Canada's contribution to the cost of development of the Foreground, the Consultant hereby grants to Canada a non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free licence to exercise all IP Rights in the Foreground that vest in the Consultant pursuant to article A1.12.3, for the purpose of:

- (a) the construction or implementation of any building, built works, structures and facilities contemplated by the Project;
- (b) the further development or alteration or evolution of any part of the constructed or implemented Project, including procurement of materials and components for this purpose;



- (c) the further development, modification (including additions or deletions), completion, translation, or implementation of the Foreground and any addition to it as Canada may require for the purposes of the completion, utilization and subsequent evolution of the Project;
- (d) the use, occupancy, operation, exploitation, maintenance, repair or restoration of the constructed or implemented or subsequently modified Project, including the procurement of replacement materials and components required for any such purpose; and
- (e) the publishing and transmission of reproductions of the Project or any part thereof in the form of paintings, drawings, engravings, photographs or cinematographic works, to the public, in hard copy or by any electronic or other means, except for copies in the nature of architectural drawings or plans.

#### A1.12.6 Licence to Foreground for Other Projects

The Consultant hereby grants to Canada a non-exclusive, perpetual, worldwide, irrevocable licence to exercise all IP Rights that vest in the Consultant pursuant to paragraph A1.12.3, for the purpose of planning, designing and constructing or otherwise implementing any project other than the Project, and for any purposes set out in paragraph A1.12.5 as it relates to such other project. In the event that Canada exercises such IP Rights in another project and provided that Canada does not already have equivalent rights under a previous contract or otherwise, Canada agrees to pay the Consultant reasonable compensation determined in accordance with current industry practice and having regard to Canada's contribution to the cost of development of the Foreground. The Consultant shall ensure that in any sale, assignment, transfer or licence of any of the IP Rights that vest in the Consultant under the contract, the purchaser, assignee, transferee or licensee agrees to be bound by the terms of this provision and to accept reasonable compensation as is contemplated herein. The Consultant shall also ensure that any such purchaser, assignee, transferee or licensee of the IP Rights is required to impose the same obligations on any subsequent purchaser, transferee, assignee or licensee.

#### A1.12.7 Licence to Background

Without limiting any implied licences that may otherwise vest in Canada, the Consultant hereby grants to Canada a non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free licence to exercise such of the IP Rights in any Background incorporated into the Services or necessary for the performance of the Services as may be required:

- (a) for the purposes contemplated in articles A1.12.5 and A1.12.6;
- (b) for disclosure to any contractor engaged by Canada, or bidder for such a contract, to be used solely for a purpose set out in articles A1.12.5 and A1.12.6.

The Consultant agrees to make any such Background available to Canada upon request.

#### A1.12.8 Canada's Right to Disclose and Sub-license

The Consultant acknowledges that Canada may wish to award contracts, which may include a competitive process, for any of the purposes contemplated in articles A1.12.5, A1.12.6 and A1.12.7. The Consultant agrees that Canada's licence in relation to the IP Rights in the Foreground and in the Background, includes the right to disclose that Foreground and Background to bidders for such contracts, and to sub-license or otherwise authorize the use of that Foreground and Background by any contractor or consultant engaged by Canada for the purpose of carrying out such a contract.



#### A1.12.9 Consultant's Right to Grant Licence

- (a) The Consultant represents and warrants that the Consultant has, or the Consultant shall obtain without delay, the right to grant to Canada the licence to exercise the IP Rights in the Foreground and the Background as required by the contract.
- (b) Where the IP Rights in any Background or Foreground are or will be owned by a Sub-Consultant, the Consultant shall either obtain licence from that Sub-Consultant that permits compliance with articles A1.12.5, A1.12.6 and A1.12.7 or shall arrange for the Sub-Consultant to convey directly to Canada the same rights by execution of the form provided for that purpose by Canada no later than the time of disclosure to Canada of that Background and Foreground.

#### A1.12.10 Trade Secrets and Confidential Information

The Consultant shall not use or incorporate any trade secrets or confidential information in any Foreground or Background used or created in performance of the contract.

#### A1.12.11 Canada Supplied Information

- (a) Where performance of the Services involves the preparation of a compilation using information supplied by Canada, then the IP Rights that shall vest under paragraph A1.12.3 shall be restricted to the IP Rights in Foreground that are capable of being exploited without the use of the information supplied by Canada. All IP Rights in any compilation, the Foreground in which cannot be exploited without the use of such Canada supplied information shall vest in Canada. The Consultant agrees that the Consultant shall not use or disclose any Canada supplied information for any purpose other than completing the performance of the Services. The Consultant shall maintain the confidentiality of such information. Unless the contract otherwise expressly provides, the Consultant shall deliver to Canada all such information together with every copy, draft, working paper and note thereof that contains such information upon the completion or termination of the contract, or at such earlier time as Canada may require.
- (b) If the Consultant wishes to make use of any Canada supplied information that was supplied for purposes of the contract for the commercial exploitation or further development of any of the Foreground, then the Consultant may make a written request for a licence to exercise the required IP Rights in that Canada supplied information to Canada. The Consultant shall give Canada an explanation as to why such a licence is required. Should Canada agree to grant such a licence, it shall be on terms and conditions to be negotiated between the parties, including payment of compensation to Canada.

#### A1.12.12 Transfer of IP Rights

- (a) If Canada takes the Services out of the Consultant's hands in accordance with article A1.9, in whole or in part, or if the Consultant fails to disclose any Foreground in accordance with A1.12.2, Canada may upon reasonable notice, require the Consultant to convey to Canada all of the IP Rights in the Foreground not provided. The IP Rights to be conveyed shall include the IP Rights in any Foreground that have vested or are to vest in a Sub-Consultant. In the case of IP Rights in the Foreground which have been sold or assigned to a party other than a Sub-Consultant, the Consultant shall not be obligated to convey those IP Rights to Canada, but shall pay to Canada on demand an amount equal to the consideration which the Consultant received from the sale or assignment of the IP Rights in that Foreground or, in the case of a sale or assignment that was not at arms length, the fair market value of the IP Rights in that Foreground, in each case, including the value of future royalties or licence fees.
- (b) In the event of the issuance by Canada of a notice referred to in (a), the Consultant shall, at the Consultant's own expense and without delay, execute such conveyances or other documents relating to title to the IP Rights as Canada may require, and the Consultant shall, at Canada's expense, afford Canada all reasonable assistance in the preparation of applications and in the prosecution of any



applications for, or any registration of, any IP Right in any jurisdiction, including without limitation the assistance of the inventor in the case of inventions.

- (c) Until the Consultant completes the performance of the Services and discloses all of the Foreground in accordance with article A1.12.2, and subject to the provisions of article A1.11 (National or Departmental Security), the Consultant shall not, without the prior written permission of Canada, sell, assign or otherwise transfer title to the IP Rights in any of the Foreground, or license or otherwise authorize the use of the IP Rights in any of the Foreground by any person.
- (d) In any sale, assignment, transfer or licence of IP Rights in Foreground by the Consultant except a sale or licence for end use of a product based on Foreground, the Consultant shall impose on the other party all of its obligations to Canada in relation to the IP Rights in the Foreground and any restrictions set out in the contract on the use or disposition of the IP Rights in the Foreground (and, if applicable, the Foreground itself), including the obligation to impose the same obligations and restrictions on any subsequent transferee, assignee or licensee. The Consultant shall promptly notify Canada of the name, address and other pertinent information in regard to any transferee, assignee or licensee.

### **A1.13 Conflict of Interest and Values and Ethics Codes for the Public Service**

A1.13.1 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. Should such an interest be acquired during the life of the Open Agreement, the Consultant shall declare it immediately to the Departmental Representative.

A1.13.2 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.

A1.13.3 The Consultant shall not submit, either directly or indirectly, a bid for any Construction Contract related to the Project.

A1.13.4 The Consultant acknowledges that no individuals who are subject to the provisions of the Conflict of Interest Act, 2006, c. 9, s. 2, the Conflict of Interest Code for Members of the House of Commons, the Values and Ethics Code for the Public Service, or all other codes of values and ethics applicable within specific organizations cannot derive any direct benefit resulting from the Open Agreement or Commitments for Services.

### **A1.14 Legal Status of Consultant**

A1.14.1 The Consultant is an independent contractor engaged by Canada to perform the Services. Nothing in the Open Agreement through a Commitment for Services is intended to create a partnership, a joint venture or an agency between Canada and the other party or parties. The Consultant must not represent itself as an agent or representative of Canada to anyone. Neither the Consultant nor any of its personnel is engaged as an employee or agent of Canada. The Consultant is responsible for all deductions and remittances required by law in relation to its employees.

### **A1.15 Declaration by Consultant**

A1.15.1 The Consultant declares that:

- (a) based on the information provided pertaining to the Services required under the Open Agreement, the Consultant has been provided sufficient information by the Departmental Representative to enable the Services required under the Open Agreement 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; and



- (b) the quality of Services to be provided by the Consultant shall be consistent with generally accepted professional standards and principles.

## **A1.16 Insurance Requirements**

### A1.16.1 General

- (a) The Consultant shall ensure that the appropriate liability insurance coverage is in place to cover the consultant and the members of the consultant team and shall maintain all required insurance policies as specified herein.
- (b) The Consultant shall, if requested by the Contracting Officer at any time, provide to the Contracting Officer an Insurer's Certificate of Insurance and/or the originals or certified true copies of all contracts of insurance maintained by the Consultant pursuant to the provisions contained herein.
- (c) The payment of monies up to the deductible amount made in satisfaction of a claim shall be borne by the Consultant.
- (d) Any insurance coverage additional to those required herein that the Consultant and the other members of the consultant team may deem necessary for their own protection or to fulfill their obligations shall be at their own discretion and expense.

### A1.16.2 Commercial General Liability

- (a) The insurance coverage provided shall not be less than that provided by IBC Form 2100, as amended from time to time, and shall have a limit of liability of not less than \$2,000,000 per occurrence, an aggregate limit of not less than \$2,000,000 within any policy year.
- (b) The policy shall insure the Consultant and shall include Her Majesty the Queen in right of Canada, represented by the Correctional Service of Canada, with respect to liability arising out of the performance of the Services.

### A1.16.3 Professional Liability

- (a) The Professional Liability insurance coverage shall be in an amount usual for the nature and scope of the Services but shall have a limit of liability of not less than \$250,000 per claim, and be continually maintained from the commencement of performance of the Services until five (5) years after their completion.
- (b) The following provision must be incorporated into the conditions of the Consultant's Professional Liability insurance coverage: "Notice of Cancellation of Insurance Coverage: The Insurer agrees to give the Contracting Authority at least thirty (30) days' prior written notice of any policy cancellation and before making any adverse material changes."

## **A1.17 Resolution of Disagreements**

A1.17.1 In the event of a disagreement regarding any aspect of the Services or any instructions given under the Open Agreement and Commitments for Services:



- (a) 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 Open Agreement and Commitment for Services;
- (b) The Consultant shall continue to perform the Services in accordance with the instructions of the Departmental Representative; and
- (c) 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 Departmental Representative and, secondly and if necessary, at the level of a principal of the Consultant firm and senior departmental manager.

A1.17.2 The Consultant's continued performance of the Services in accordance with the instructions of the Departmental Representative shall not jeopardize the legal position of the Consultant in any disagreement.

A1.17.3 If it was subsequently agreed or determined that the instructions given were in error or contrary to the Open Agreement or Commitment for Services, Canada shall pay the Consultant those fees the Consultant shall have earned as a result of the change(s) in the Services provided, together with those reasonable disbursements arising from the change(s) and which have been authorized by the Departmental Representative.

A1.17.4 The fees mentioned in clause A1.17.3 shall be calculated in accordance with the Terms of Payment set out in the Commitment for Services.

A1.17.5 If the disagreement is not settled, the Consultant may make a request to the Departmental Representative for a written departmental decision and the Departmental Representative shall give notice of the departmental decision within fourteen (14) days of receiving the request, settling out the particulars of the response and any relevant clauses of the Open Agreement or Commitment for Services.

A1.17.6 Within fourteen (14) days of receipt of the written departmental decision, the Consultant shall notify the Departmental Representative if the Consultant accepts or rejects the decision.

A1.17.7 If the Consultant rejects the departmental decision, the Consultant, by notice may refer the disagreement to Mediation.

A1.17.8 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 Canada, and departmental Mediation procedures shall be used unless the parties agree otherwise.

A1.17.9 Negotiations conducted under the Open Agreement and any Commitments for Services, including those conducted during Mediation, shall be without prejudice.

#### **A1.18 Contingency Fees**

A1.18.1 The Consultant certifies that it has not, directly or indirectly, paid or agreed to pay and agrees that it will not, directly or indirectly, pay a contingency fee for the solicitation, negotiation or obtaining of the contract to any person, other than an employee of the Consultant acting in the normal course of the employee's duties. In this section, "contingency fee" means any payment or other compensation that depends or is calculated based on a degree of success in soliciting, negotiating or obtaining the contract and "person" includes any individual who is required to file a return with the registrar pursuant to section 5 of the Lobbying Act, 1985, c. 44 (4th Supplement).



**A1.19 Harassment in the Workplace**

A1.19.1 The Consultant acknowledges the responsibility of Canada to ensure, for its employees, a healthy work environment, free of harassment. A copy of the Treasury Board policy, the Policy on the Prevention and Resolution of Harassment in the Workplace, which is also applicable to the Consultant, is available on the Treasury Board Web site.

A1.19.2 The Consultant must not, either as an individual or as a corporate or unincorporated entity, through its employees or Sub-Consultants, harass, abuse, threaten, discriminate against or intimidate any employee, consultant or other individual employed by, or under contract with Canada. The Consultant will be advised in writing of any complaint and will have the right to respond in writing. Upon receipt of the Consultant's response, the Contracting Authority will, at its entire discretion, determine if the complaint is founded and decide on any action to be taken.

**A1.20 Amendments**

A1.20.1 The Open Agreement or any Commitments for Services may not be amended, or modified, nor shall any of its terms and conditions be waived, except by agreement in writing executed by the Consultant and the Contracting Authority.

**A1.21 Entire agreement**

A1.21.1 The Open Agreement and Commitment for Services constitutes the entire and only agreement between the parties and supersedes all previous negotiations, communications and other agreements, whether written or oral, unless they are incorporated by reference in the Open Agreement and/or Commitment for Services. There are no terms, covenants, representations, statements or conditions binding the parties other than those contained in the Open Agreement and Commitment for Services.

**A1.22 Taxes****A1.22.1 Municipal Taxes**

Municipal taxes do not apply.

**A1.22.2 Goods and Services Tax (GST)/Harmonized Sales Tax (HST)**

GST/HST is not included in price quoted herein. Where applicable, GST/HST shall be applied to all invoices and progress claims as a separate item and shall be paid by Canada. The Contractor agrees to remit to the Canada Revenue Agency all GST/HST paid or due.

**A1.22.3 Changes in Taxes and Duties**

In the event of changes to any tax of duty payable to any tier of government after the bid submission date that changes the cost of Services for the Consultant, the Contract Price will be rectified to take into account the increase or decrease in cost for the Consultant. However, there will be no rectification for any change that increases the cost of services for the Consultant if, before the bid submission date, a public notice of the change was communicated in sufficient detail that the Consultant can calculate the effect of the change on the Consultant's cost. There will be no rectification if the change enters into effect after the service delivery date set out in the contract.

**A1.22.4 GST or HST**

In this Agreement, unless otherwise indicated, all the prices and amounts exclude any applicable GST/HST. Any amount levied in respect of the GST or HST will be billed as a separate item and will be paid in addition to the amount approved for the Services provided, in accordance with the terms and conditions set out in



article A2.2.2. The *Contractor* agrees to remit to Canada Revenue Agency any amounts of GST and HST paid or due.

#### A1.22.5 Tax Withholding of 15 Percent

Pursuant to the Income Tax Act, 1985, c. 1 (5th Supp.) and the Income Tax Regulations, Canada must withhold 15 percent of the amount to be paid to the Consultant in respect of services provided in Canada if the Consultant is not a resident of Canada, unless the Consultant obtains a valid waiver. The amount withheld will be on account for the Consultant in respect to any tax liability which may be owed to Canada.

### A1.23 International Sanctions

A1.23.1 Persons in Canada and Canadians abroad are bound by the economic sanctions imposed by Canada. Therefore, the Government of Canada may not accept delivery of any good or service originating directly or indirectly from one or more countries or persons subject to economic sanctions (<http://www.international.gc.ca/sanctions/index.aspx?lang=eng>).

A1.23.2 The Consultant must not supply to the Government of Canada any goods or services which are subject to economic sanctions.

A1.23.3 The Consultant must comply with changes to the regulations imposed during the contract period. The Consultant must immediately advise Canada if it is unable to perform the Services as a result of the imposition of economic sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services. If the parties cannot agree on a work around plan, the contract will be terminated for the convenience of Canada in accordance with the terms and conditions of the contract.

### A1.24 Performance Evaluation

A1.24.1 The performance of the Consultant during and upon completion of the Services shall be evaluated by Canada. This evaluation is based on the following criteria: Design, Quality of Results, Management, Time and Cost. Should the Consultant's performance be considered unsatisfactory, the Consultant may be declared ineligible for future contracts. Form CSC/SCC 0996 (R2009-01) – Consultant Performance Evaluation Report - is used to evaluate performance.

### A1.25 Code of Conduct for Procurement

A1.25.1 To comply with the Code of Conduct for Procurement (<http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html>), proponents must respond to Requests for Standing Offers (RFSO) in an honest, fair, and comprehensive manner, accurately reflect their ability to satisfy the requirements stipulated in the RFSOs, Standing Offers and resulting contracts, submit proposals and enter into contracts only if they will fulfill all obligations of the contract. To ensure fairness, openness and transparency in the procurement process, the following activities are prohibited:

- (a) the payment of contingency fees by any party to a contract to a person to whom the Lobbyists Registration Act (1985, c. 44 (4th Supp.)) (<http://laws-lois.justice.gc.ca/eng/acts/L-12.4/page-1.html>) applies;
- (b) corruption, collusion, bid-rigging or any other anti-competitive activity in the procurement process for contracts for the provision of goods and services.



- A1.25.2 By submitting a proposal, the Proponent certifies that neither he nor his affiliates have been found guilty of a criminal offence related to the activities set out in (a) or (b), or have outstanding charges related to the activities in question, that were laid after September 1, 2010.
- A1.25.3 Bidders understand that the commission of certain offences may render them ineligible to be awarded a contract. By submitting a proposal, the Proponent certifies that neither he nor his affiliates have been found guilty or have outstanding charges under one of the following provisions: Section 121 (*Frauds on the government and Contractor subscribing to election fund*), section 124 (*Selling or Purchasing Office*), section 380 (*Fraud committed against Her Majesty*) or section 418 (*Selling defective stores to Her Majesty*) of the Criminal Code of Canada, or one of the offences set out in paragraph 80(1)(d) (*False entry, false certificate or false return*), in paragraph 80(2) (*Fraud against Her Majesty*) or section 154.01 (*Fraud against Her Majesty*) of the *Financial Administration Act*.
- A1.25.4 For the purpose of this section, companies, organizations or individuals are the Proponent's affiliates if 1) directly or indirectly either one controls or has the power to control the other, or 2) a third party has the power to control both. Indicia of control include but are not limited to interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity created following the acts or convictions specified in this section which has the same or similar management, ownership or principal employees, as the case may be.
- A1.25.5 Except in the specific cases mentioned in paragraph 6 below, the Contracting Authority will declare a proposal non-responsive when it finds that the information contained in the above certifications is false.
- A1.25.6 Paragraph 5 does not apply when the Proponent has pleaded guilty to an offence in section 1.1 (b) and has included in its proposal documentation from Canada's Competition Bureau demonstrating that it has been granted immunity or that it obtained a pardon from the Parole Board of Canada for the offence in question.
- A1.25.7 The Proponent acknowledges and agrees that the certifications must remain in effect for the duration of the Open Agreement and any Commitment for Services resulting from the Open Agreement.

#### A1.26 Integrity provisions

The *Ineligibility and Suspension Policy* (The "Policy") in effect on the date the bid solicitation is issued, and all related Directives in effect on that date, are incorporated by reference into, and form a binding part of the bid solicitation. The Bidder must comply with the Policy and Directives, which can be found at [Ineligibility and Suspension Policy](#).

## A2 TERMS OF PAYMENT

### A2.1 Fees

- A2.1.1 The Consultant's fees and disbursements are calculated and paid in accordance with the fee calculation formulas established herein.
- A2.1.2 The Consultant's fees are only payable when the Consultant has performed the Services as determined by the Departmental Representative. Payment in respect of a Service, or part of a Service, is not to be deemed a waiver of Canada's rights of off-set at law or under this contract for costs or expenses arising from default or negligence of the Consultant.

### A2.2 Payments to the Consultant

- A2.2.1 The Consultant shall be entitled to receive progress payments at monthly or other agreed intervals, subject to the relevant restrictions in Part C. Payments will be made on the due date. For the purposes of this Agreement, the due date shall be the thirtieth (30th) day following receipt of an acceptable invoice.



- A2.2.2 An "acceptable invoice" shall be an invoice delivered to the Departmental Representative in the agreed format with sufficient detail and information to permit verification. The invoice shall also identify, as separate items:
- (a) the amount of the progress payment being claimed for Services satisfactorily performed,
  - (b) the amount for any tax calculated in accordance with the applicable federal legislation, and
  - (c) the total amount which shall be the sum of the amounts referred to in A2.2.2(a) and A2.2.2(b).
- A2.2.3 The amount of the tax shown on the invoice shall be paid by Canada to the Consultant in addition to the amount of the progress payment for Services satisfactorily performed.
- A2.2.4 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 thirty (30) days after acceptance of the corrected invoice or required information.
- A2.2.5 Upon completion of each Service, provided that a progress payment has at least been paid, the Consultant shall provide a Statutory Declaration evidencing that all the Consultant's financial obligations for Services rendered to the Consultant or the Consultant's account, in connection with the Commitment for Services, have been satisfied before the Consultant obtains any additional payment.
- A2.2.6 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.
- A2.2.7 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 an acceptable invoice, together with the final statement, in accordance with clause A2.2.5.

### **A2.3 Delayed Payment**

- A2.3.1 If Canada delays in making a payment that is due in accordance with clause A2.2, the Consultant will be entitled to receive interest on the amount that is overdue for the period of time as defined in clause A2.3.2, 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 A2.2.1.
- A2.3.2 Interest shall be paid automatically on all accounts that are not paid by the due date of fifteen (15) days after the Consultant has delivered a Declaration in accordance with clauses A2.2.5 or A2.2.7, whichever is the later.
- A2.3.3 The rate of interest shall be the Average Bank Rate plus 3 percent per year on any amount which is overdue pursuant to clause A2.3.1.

### **A2.4 Claims Against and Obligations of the Consultant**

- A2.4.1 Canada may, in order to discharge lawful obligations of and satisfy lawful claims against the Consultant by a Sub-Consultant, with whom the Consultant has a direct contract, for Services rendered to, or on behalf of, the Consultant, pay an amount from money that is due and payable to the Consultant directly to the claimant Sub-Consultant.



A2.4.2 For the purposes of clause A2.4.1, a claim shall be considered lawful when it is so determined:

- (a) by a court of legal jurisdiction;
- (b) by an arbitrator duly appointed to arbitrate the said claim;
- (c) by a written notice delivered to the Departmental Representative and signed by the Consultant authorizing payment.

A2.4.3 A payment made pursuant to clause A2.4.1 is, to the extent of the payment, a discharge of Canada's liability to the Consultant under the relevant Commitment for Services and will be deducted from any amount payable to the Consultant under any active Commitment for Services.

A2.4.4 Clause A2.4.1 shall only apply to claims and obligations

- (a) The notification of which has set forth the amount claimed to be owing and a full description of the Services or a part of the Services for which the claimant has not been paid. The notification must be received by the Departmental Representative in writing before the final payment is made to the Consultant and within one hundred twenty (120) days of the date on which the claimant:
  - (i) should have been paid in full under the claimant's agreement with the Consultant where the claim is for an amount that was lawfully required to be held back from the claimant; or
  - (ii) performed the last of the Services pursuant to the claimant's agreement with the Consultant where the claim is not for an amount referred to in A2.4.4(a)(i); and
- (b) the proceedings to determine the right to payment of which shall have commenced within one year from the date that the notification referred to in A2.4.4(a) was received by the Departmental Representative.

A2.4.5 Canada may, upon receipt of a notification of claim referred to in clause A2.4.4(a) withhold from any amount that is due and payable to the Consultant pursuant to the Commitment for Services the full amount of the claim or any portion thereof.

A2.4.6 The Departmental Representative shall notify the Consultant in writing of receipt of any notification of claim and of the intention of Canada to withhold funds pursuant to A2.4.5. The Consultant may, at any time thereafter and until payment is made to the claimant, post with Canada, security in a form acceptable to Canada in an amount equal to the value of the said claim. Upon receipt of such security, Canada shall release to the Consultant any funds which would otherwise be payable to the Consultant, that were withheld pursuant to the provision of A2.4.5.

A2.4.7 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 this Open Agreement at least as often as this Open Agreement requires Canada to discharge its obligations to the Consultant.

## **A2.5 No Payment for Errors and Omissions**

A2.5.1 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 had assumed responsibility in performing the Services.



## A2.6 Payment for Changes and Revisions

A2.6.1 Payment for any additional or reduced Services provided by the Consultant and authorized by the Departmental Representative shall be in accordance with this authorization and the provisions of these Terms of Payment.

## A2.7 Suspension Costs

A2.7.1 If Services are suspended pursuant to A1.7, the Consultant shall minimize all costs and expenses relating to the Services that may occur during the suspension period.

A2.7.2 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.

A2.7.3 Payment shall be made to the Consultant for those costs and expenses that, in the opinion of Canada, are substantiated as having been reasonably incurred during the suspension period.

## A2.8 Termination Costs

A2.8.1 In the event of termination of any Commitment for Services pursuant to A1.8, Canada shall pay, and the Consultant shall accept in full settlement, an amount based on the Terms of Payment, for Services satisfactorily performed and any reasonable costs and expenses incurred to terminate the contract.

A2.8.2 Within fourteen (14) days of notice of such termination, the Consultant shall submit to the Departmental Representative a schedule of costs and expenses reasonably incurred. The Consultant must ensure that it has mitigated its costs to the best of its ability.

A2.8.3 Payment shall be made to the Consultant for those costs and expenses that, in the opinion of Canada, are substantiated as having been reasonably incurred after the date of termination.

A2.8.4 The Consultant has no claim for damages, compensation, loss of profit, loss of opportunity, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or termination notice given by Canada under A1.8 Termination.

## A2.9 Disbursements (*applicable only when authorized by the Departmental Representative*)

A2.9.1 The following costs incurred by the Consultant, which are related to the Services and approved by the Departmental Representative, are reimbursed to the Consultant at cost price:

- (a) long-distance telephone and fax costs;
- (b) reproduction costs of drawings, CADD documents and specifications;
- (c) transportation costs for material samples and models, as well as courier and delivery charges;
- (d) other costs incurred with prior authorization from the Departmental Representative.

A2.9.2 Travel and living expenses associated with the project are reimbursed in accordance with the Treasury Board's directive on travel (<http://www.njc-cnm.gc.ca/directive/index.php?dlabel=travel-voyage&lang=eng&did=10&merge=2>).



A2.9.3 Disbursements shall be Project related and shall not include expenses that are related to the normal operation of the Consultant's business. The amounts payable shall not exceed the amount entered in the Commitment for Services without the prior authorization of the Departmental Representative.

### **A3 CONSULTANT SERVICES**

#### **A3.1 Services**

A3.1.1 The Consultant shall perform the Services described in the Commitment for Services, in accordance with the terms and conditions of the Open Agreement.

#### **A3.2 Standard of Care**

A3.2.1 In performing the *Services*, the *Consultant* shall provide and exercise the standard of care, skill and diligence required by customarily accepted professional practices and procedures developed by professional bodies in the performance of the *Services* at the time when and the location in which the *Services* are provided.

#### **A3.3 Time Schedule**

A3.3.1 The Consultant shall:

- (a) submit in a timely manner to the Departmental Representative, for approval, a time schedule for the *Services* to be performed, in detail appropriate to the size and complexity of the Project, and in a format as requested by the Departmental Representative;
- (b) adhere to the approved time schedule and, if changes in the approved time schedule become necessary, indicate the extent of and the reasons for such changes, and obtain the approval of the Departmental Representative.

#### **A3.4 Project Information, Decisions, Acceptances, Approvals**

A3.4.1 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.

A3.4.2 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.

#### **A3.5 Changes in Services**

A3.5.1 The Consultant shall:

- (a) make changes in the *Services* to be provided for the Project, including changes which may increase or decrease the original scope of *Services*, when requested in writing by the Departmental Representative; and
- (b) prior to commencing such changes, advise the Departmental Representative of any known and anticipated effects of the changes on the Construction Cost Estimate, Consultant fees, Project Schedule, and other matters concerning the Project.



### A3.6 Codes, By-Laws, Licences, Permits

A3.6.1 The Consultant shall comply with all statutes, codes, regulations and by-laws applicable to the design and where necessary shall review the design with those public authorities having jurisdiction in order that the consents, approvals, licences and permits required for the project may be applied for and obtained.

### A3.7 Staff

A3.7.1 The Consultant shall, on request, submit to the Departmental Representative for approval the names, addresses, qualifications, experience and proposed roles of all persons, including principals, to be employed by the Consultant to provide the Services required for the Project and, on request, submit any subsequent changes to the Departmental Representative for approval.

### A3.8 Sub-Consultants

A3.8.1 The Consultant shall:

- (a) prior to any Commitment for Services notify the Departmental Representative of any other Sub-Consultants with whom the Consultant intends to enter into agreements for part of the Services and, on request, provide details of the terms and Services to be performed under these agreements and the qualifications and names of the personnel of the Sub-Consultants proposed to be employed on the Project;
- (b) include any agreements entered into with sub-consultants such as provisions of this Open Agreement as they apply to the Sub-Consultants' responsibilities; and
- (c) upon written notice by a Sub-Consultant with whom the Consultant has a direct contract, inform the Sub-Consultant of the Consultant's obligations to the Sub-Consultant under the Open Agreement.

A3.8.2 The Departmental Representative may object to any Sub-Consultant within six (6) days of receipt of notification given in accordance with A3.8.1(a) and, on notification of such objection, the Consultant shall not enter into the intended agreement with the Sub-Consultant.

A3.8.3 Neither an agreement with a Sub-Consultant nor the Departmental Representative's consent to such an agreement by the Consultant shall be construed as relieving the Consultant from any obligation under this Open Agreement and Commitments for Services, or as imposing any liability upon Canada.

### A3.9 Cost Control

A3.9.1 Throughout Project development, the Construction Cost Estimate prepared by the Consultant shall not exceed the Construction Cost Limit.

A3.9.2 In the event that the Consultant considers that the Construction Cost Estimate will exceed the Construction Cost Limit, the Consultant shall notify the Departmental Representative, and

- (a) if the excess is due to factors under the control of, or reasonably foreseeable by the Consultant, the Consultant shall, if requested by the Departmental Representative, and at no additional cost to Canada, make such changes or revisions to the design as may be necessary to bring the Construction Cost Estimate within the Construction Cost Limit; or
- (b) if the excess is due to factors that are not under the control of the Consultant, changes or revisions may be requested by the Departmental Representative. Such changes or revisions shall be undertaken by





the Consultant at Canada's expense, and the cost involved shall become an amount to be mutually agreed, prior to performance of the said changes or revisions.

- A3.9.3 If the lowest price obtained by bid process or negotiation exceeds the Construction Cost Limit, and if the excess is due to reasons within the control of, or reasonably foreseeable by the Consultant, the Consultant shall, if requested by the Departmental Representative, and without additional charge, be fully responsible for revising the project scope and quality as required to reduce the construction cost and shall modify the construction documents as necessary to comply with the Construction Cost Limit.

## PART B – PROJECT SERVICES

### B1.1 Services to be provided

- B1.1.1 The Departmental Representative shall provide a Commitment for Services describing the Services that must be provided by the Consultant.
- B1.1.2 The Consultant delivers these Services on time and within the budget established in the Commitment for Services.
- B1.1.3 For the standards for service delivery, please refer to the "Doing Business" document. The standards specified in this document must be respected, as well as the Commitment for Services and Open Agreement.
- B1.1.4 In anticipation of various construction and / or study projects, the consultant will be required to provide the Correctional Service of Canada with one or more of the following professional services:
- (a) meet with Departmental Representative and prepare a needs analysis;
  - (b) conduct necessary surveys and analyze the data;
  - (c) produce a budget estimate;
  - (d) produce a work schedule;
  - (e) prepare the plans and specifications;
  - (f) define the concepts with recommendations based on the mandate;
  - (g) participate in the bidding process (visit/ answer technical questions during the bidding process/ write addenda as needed);
  - (h) carry out partial supervision of the installation work (the number of visits may vary according to the mandate);
  - (i) participate in worksite meetings;
  - (j) prepare reports;
  - (k) review shop drawings;
  - (l) participate in acceptance testing.

## PART C – FEE ARRANGEMENT

### C1.1 Fee Arrangement for Services

- C1.1.1 The Departmental Representative shall provide a Request for Proposal requesting the fees for the roles of all persons, including principals, to be employed by the Consultant to provide the Services required for the Project or requesting a firm price for the whole Project to be completed.



C1.1.2 The fee schedule submitted by the Contractor cannot exceed the Cost Limit set by the following associations:

- ACLE (Association des consultants et laboratoires experts)
- AICQ (Association des ingénieurs-conseils du Québec)
- AAPPQ (Association des architectes en pratique privée du Québec)

Canada reserves the right to not issue the Open Agreement and/or Commitment to Service.

C1.1.3 Fees and disbursements are only payable once the Consultant has performed all of the Services indicated in the Commitment for Services.

C1.1.4 Canada shall pay the Consultant for the completion of Services set out in the Commitment for Services an amount calculated according to one or more of the following methods, which are specified in the Commitment for Services.

(a) Fixed Fee

The Fixed Fee agreed upon corresponds to the total amount payable for the services completed according to the Commitment for Services.

(b) Time Based Fee

(i) Bosses, principals and other employees authorized in that regard by the Departmental Representative will be paid at the hourly rate indicated in the Commitment for Services;

(ii) Employees approved by the Departmental Representative will be paid at the hourly rate indicated in the Commitment for Services;

(iii) Normal working hours

The Consultant's employees, bosses and principals normally work seven and a half (7.5) hours a day, in which they provide services;

(iv) Travel Time (***applicable only when authorized by the Departmental Representative***)

Time dedicated to project-related travel during normal working hours that has been authorized by the Departmental Representative is included in the working hours. Time dedicated outside normal working hours to project-related travel that has been authorized by the Departmental Representative is chargeable up to a maximum of three (3) hours a day, unless otherwise indicated;

(v) Maximum Amount(s) Payable

The maximum amount(s) that applies (apply) to the Services to be carried out at the fixed hourly rates shall be as specified in the Commitment for Services, which amount(s) shall not be exceeded without the prior authorization of the Departmental Representative.