

# ATTACHMENT A - General Terms and Conditions of the Standing Offer

## A1. DEFINITIONS

For the purposes of this Standing Offer:

*“Call-Up against the Standing Offer” or “Call-Up”* means the **order** for the Services described in this document.

*“Commencement Date”* shall mean the date on which the Standing Offer is to commence.

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

*“Day”* means seven and a half hours (7.5) hours, unless otherwise specified in the Standing offer, and exclusive of meal breaks, with no provision for annual leave, statutory holidays and sick leave.

*“Deliverables”* means the items to be written, developed or prepared by the Service Provider pursuant to this Standing Offer, including, without limitation, all works of authorship, reports, recordings, information, documents, materials, or software, whether in hard copy or electronic form.

*“Derivatives”* shall mean: 1. any translation, abridgement, revision, or other form in which an existing work may be recast, transformed, or adapted; 2. for patentable or patented material, any improvement thereon; and, 3. for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent, and/or trade secret.

*“IDRC” or “the Centre”* means the International Development Research Centre.

*“Service Provider”* shall mean either the individual, institution, corporation or partnership retained pursuant to this Offer, and its employees, directors, officers, partners, subcontractors and agents, as applicable, and any other representative for whom the Service Provider is responsible at law.

*“Services”* mean the services to be provided by the Service Provider in accordance with the Standing Offer, including the Deliverables as set out in the Standing Offer.

*“Standing Offer”* shall mean the **Specific Terms and Conditions of the Standing Offer**, including any and all **attachments** incorporated therein by reference. In the event of a conflict between the Specific Terms and Conditions versus the attachments, the Specific Terms and Conditions shall prevail.

*“Termination Date”* shall mean the earlier of (a) the date on which all Services and Deliverables have been performed and delivered; (b) the end date as specified in the Standing Offer; and (c) the date on which the Standing Offer terminates by operation of the Termination provisions contained in this Standing Offer.

## **A2. TIME OF ESSENCE**

Time shall be of the essence of every provision of this Standing Offer.

## **A3. ENTIRE AGREEMENT**

This Standing Offer supersedes all previous agreements and correspondence, oral or written, between IDRC and the Service Provider, pertaining to the subject matter of this Standing Offer, and represents the whole and entire understanding between the parties. No modification, variation or amendment of it shall be binding upon the parties unless it is in writing and signed by both parties.

## **A4. NON-EXCLUSIVITY**

This Standing Offer shall not grant the Service Provider exclusivity of supply. IDRC may perform services or develop items similar or identical to the Services or Deliverables, or obtain them from any third party.

## **A5. WARRANTY**

The Service Provider covenants that it will provide its Services pursuant to this Standing Offer in a diligent and workmanlike manner, with regard to the best interests of IDRC, and warrants that its personnel possess the skill and experience necessary to the satisfactory performance of the Services.

## **A6. TAXES**

IDRC is NOT exempt from Canadian sales tax (HST/GST), unless otherwise specified in the Standing Offer.

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

**Tax withholding of 15%:** Notwithstanding anything to the contrary in this Standing Offer, IDRC will withhold 15% of fees and non-exempt travel expenses of **non-resident Service Providers working in Canada** unless they hold a Contract-specific waiver from the CRA. IDRC will transmit the funds withheld to CRA, in accordance with the income tax regulations of Canada. Such funds can be reclaimed by the Service Provider from the CRA or from their own governments as the case may be.

## **A7. INVOICES**

Invoice requirements are noted in the **Invoices section** of the **Specific Terms and Conditions of the Standing Offer**.

## **A8. PAYMENTS**

Conditions precedent for payment are noted in the **Payments section** of the **Specific Terms and Conditions of the Standing Offer**.

## **A9. TERMINATION**

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

- a) The Service Provider breaches any material term of this Standing Offer, and fails to remedy such breach within thirty (30) calendar days of receiving notice to do so by IDRC.

- b) IDRC, in its sole discretion, determines that the Service Provider made a misrepresentation during the process of selection.
- c) The Service Provider:
  - i. ceases to carry on business,
  - ii. commits an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act (*Bankruptcy and Insolvency Act, R.S., 1985, c. B-3*) or is deemed insolvent within the meaning of the Winding-up and Restructuring Act (*Winding-up and Restructuring Act, R.S., 1985, c. W-11*) or makes an assignment, against whom a receiving order has been made under the applicable bankruptcy legislation or in respect of whom a receiver, monitor, receiver-manager or the like is appointed, or
  - iii. becomes insolvent or makes an application to a court for relief under the Companies' Creditors Arrangement Act, the Bankruptcy and Insolvency Act or the Winding Up and Restructuring Act (*Companies' Creditors Arrangement Act, R.S., c. C-25*) or comparable local legislation.

**Termination without Cause:** IDRC may at any time by notice in writing suspend the work of the Service Provider or any part thereof. This Standing Offer may be terminated in its entirety or in part by IDRC upon written notice. On such termination or suspension, the Service Provider shall have no claim for damages, compensation, or loss of profit against IDRC except payment for Services performed and Deliverables submitted up to the date of notice of such suspension or termination, or completed thereafter in accordance with the notice.

#### **A10. INSURANCE**

The Service Provider is responsible for taking out at its own expense any insurance deemed necessary while executing this Standing Offer.

If the Service Provider will be working on-site at IDRC, the Service Provider shall maintain during the term of this Standing Offer, Commercial General Liability insurance in the amount of not less than CAD 5,000,000.00 inclusive per occurrence, with IDRC named as "additional insured", unless otherwise specified in the Standing Offer.

Upon the request of IDRC, the Service Provider shall provide the **insurer's certificate**.

#### **A11. USE OF IDRC PROPERTY**

**Access to Information Systems and Electronic Communication Networks:** During the course of this Standing Offer, the Service Provider may be provided with access to IDRC information systems and electronic communication networks. The Service Provider, on behalf of its/his/her employees, subcontractors and representatives, agrees to abide by IDRC policies concerning use of such information systems and networks. IDRC will provide the Service Provider with any such policies upon commencement of Services pursuant to this Standing Offer, or as such policies are put into effect, and the Service Provider will make such policies known to its personnel, and will take such steps as are necessary to ensure compliance with such policies.

**Access to IDRC Premises:** The parties agree that reasonable access to IDRC's premises by the Service Provider's authorized personnel and which is necessary for the performance of the Services hereunder, in accordance with the terms of this Standing Offer, shall be permitted during normal business hours of IDRC. The Service Provider agrees to observe all IDRC security requirements and measures in effect at

IDRC's premises to which access is granted by this Standing Offer.

#### **A12. SUB-CONTRACTORS, SUCCESSORS AND ASSIGNEES**

The Service Provider is prohibited from entering into any sub-contract, designating any successor or assigning any rights under this Standing Offer without the express written consent of IDRC.

#### **A13. RELATIONSHIP WITH IDRC**

Nothing in this Standing Offer shall be deemed in any way or for any purpose to constitute the parties hereto partners in the conduct of any business or otherwise. The Service Provider shall have no authority to assume or create any obligation whatsoever, expressed or implied, in the name of IDRC, or to bind IDRC in any manner whatsoever.

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

#### **A14. CONFIDENTIALITY OF INFORMATION**

**Non-Disclosure and Non-Use of Confidential Information:** The Service Provider agrees that it will not, without authority, make use of, disseminate or in any way disclose any Confidential Information to any person, firm or business.

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

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

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

**Exclusions from Nondisclosure and Non-use Obligations:** The Service Provider's obligations under the preceding subsection with respect to any portion of the Confidential Information shall terminate when

the Service Provider can document that:

- a) it was in the public domain at or subsequent to the time it was communicated to the Service Provider by IDRC through no fault of the Service Provider;
- b) it was rightfully in the Service Provider's possession free of any obligation of confidence at or subsequent to the time it was communicated to Service Provider by IDRC; or
- c) it was developed by the Service Provider, its employees or agents independently of and without reference to any information communicated to the Service Provider by IDRC.

A disclosure of Confidential Information (1) in response to a valid order by a court or other governmental body, (2) otherwise required by law, or (3) necessary to establish the rights of either party under this Standing Offer, shall not be considered to be a breach of this Standing Offer or a waiver of confidentiality for other purposes; provided, however, that the Service Provider shall provide prompt written notice thereof to enable IDRC to seek a protective order or otherwise prevent such disclosure.

**Ownership of Confidential Information and Other Materials:** All Confidential Information and any Derivatives thereof, whether created by IDRC or the Service Provider, remain the property of IDRC and no license or other rights to Confidential Information is granted or hereby implied.

The Service Provider shall, on request, promptly return to IDRC all of its proprietary materials together with any copies thereof.

This section shall survive the termination of this Standing Offer.

#### **A15. ASSIGNMENT OF COPYRIGHT AND WAIVER OF MORAL RIGHTS**

In consideration of the fees paid, the Service Provider, its employees, subcontractors, successors and assignees expressly agree to assign to IDRC any copyright arising from the Deliverables. The Service Provider hereby agrees to waive in favour of IDRC any moral rights in the Deliverables. The Service Provider shall secure any additional waivers of moral rights in the works in favour of IDRC, from personnel and subcontractors, as appropriate.

Furthermore, the Service Provider may not use, reproduce or otherwise disseminate or authorize others to use, reproduce or disseminate such Deliverables without the prior written consent of IDRC.

#### **A16. PATENT, TRADE MARK, TRADE SECRET AND COPYRIGHT INFRINGEMENT**

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

The Service Provider agrees to indemnify and hold IDRC harmless from and against any and all damages, costs, and expenses (including court costs and reasonable legal fees) incurred by IDRC as a result of the infringement or alleged infringement of any third party intellectual property rights, and further agrees to defend and participate in the defence of any claim or suit alleging that IDRC has a liability in this regard.

This section will survive termination of the Standing Offer.

#### **A17. CONFLICT OF INTEREST**

The Service Provider must avoid participating in activities or being in situations that place it, him, or her, in a real, potential or apparent conflict of interest that has the potential of influencing the Services and Deliverables being contemplated by this Standing Offer.

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

#### **A18. COMPLIANCE WITH LAWS**

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

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

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

#### **A19. GOVERNING LAW**

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

#### **A20. SEVERABILITY**

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

#### **A21. WAIVER**

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

#### **A22. FORCE MAJEURE**

Neither party shall be in default by reason of its delay or failure to perform its obligations by reason of strikes, lockout or other labour disputes (whether or not involving the party's employees), floods, riots, fires, acts of war or terrorism, explosions, travel advisories or any other cause beyond the party's reasonable control. Each party will use its best efforts to anticipate such delays and failures, and to

devise means to eliminate or minimize them.

### **A23. NOTICES**

Any notices, requests, or demands or other communication relating to this Standing Offer shall be in writing and may be given by: 1. hand delivery, 2. commercial courier, 3. facsimile, 4. registered mail, postage prepaid, or, 5. electronic mail.

Any notice so sent shall be deemed received as follows: 1. if hand delivered, on delivery, 2. if by commercial courier, on delivery, 3. if by registered mail, three (3) business days after so mailing, or, 4. if by facsimile or electronic e-mail, on the date sent. The initial address and facsimile number for notice are set out in this Standing Offer and may be changed by notice hereunder.

### **A24. REVIEW AND AUDIT**

The Service Provider agrees, if IDRC so requests at any time up to two (2) years following the Termination Date to:

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

This section will survive termination of the Standing Offer.

### **A25. LANGUAGE**

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