

DRAFT

OPERATING CONTRACT

BETWEEN

CANADIAN SPACE AGENCY

AND

XXXXXXXXXXXXXXXXXX

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Appendices

<u>Appendix</u>	<u>Title</u>	<u># of Pages</u>
A.	Canadian Space Agency Request for Proposals dated [insert the date of the request for proposal] (minus the appendices);	
B	List and plans of local facilities provided by the Canadian Space Agency (comprising Appendix A of the application for Agency proposal dated [insert the date of the request for proposal]);	
C.	List of items and equipment provided by the Canadian Space Agency (comprising Appendix B of the Request for proposal from the Agency dated [insert the date of the request for proposal]);	
D.	Housekeeping - scope of work required (comprising Appendix B of the Agency's request for a proposal dated [insert the date of the request for proposal]);	
E.	Operator's proposal dated [insert the date of the proposal];	
F.	List of Operator's mobile equipment	

THIS OPERATING CONTRACT HAS BEEN DRAWN UP IN DUPLICATE.

Between: **THE CANADIAN SPACE AGENCY**, an agency of the Government of Canada, represented by the Minister of Innovation, Science and Industry.

(Hereinafter referred to as "the Minister" or "the Agency")

And: **[insert the legal name of the successful bidder]**, a company duly incorporated under **[insert the incorporation jurisdiction of the successful bidder]**, operates cafeterias, coffee shops and distributes food products under the name of **[insert the name of the successful bidder, if any]** and having its head office at xxxxx, (Hereinafter referred to as "The Operator")

(Hereinafter individually referred to as a "Party" and collectively "The Parties").

Which Parties, prior to the provisions of this contract, state:

WHEREAS the Agency is responsible for the management of a building, at 6767 Airport Road, in the City of Longueuil (Saint-Hubert borough), Province of Quebec;

WHEREAS the Operator wishes to operate work areas and items and equipment in the Building to provide food services to the persons working there and to visitors of the Agency, which are defined in Appendix A of these presents; and

WHEREAS the Agency consents to the Operator providing food services to employees and visitors under the terms and conditions of this contract.

IN CONSEQUENCE, the Agency and the Operator agree on the following:

Section 1 - Interpretation

- 1.1** Unless the context indicates a different meaning, the following definitions apply to the Contract: :
- a) "Work areas": premises located on the ground floor of the Building and provided to the Operator by the Food Services Agency, as shown in Appendix B;
 - b) "Contract": this agreement binding the Parties, including all the documents listed in paragraph 1.2 below;
 - c) "Building": the building at 6767 Airport Road, in the city of Longueuil (Saint-Hubert borough), province of Quebec;
 - d) "Food services": food services to people working in the Building and to agency visitors, who are more fully defined in Appendix A;
 - e) "Common areas": entrances, hallways, corridors, stairs, access roads and sidewalks in the building and on adjoining grounds;
- 1.2** The following documents are an integral part of the Contract:

The presents themselves, including the preamble.

- Appendix A- Canadian Space Agency Request for Proposal dated **[insert date of request for proposal]** (minus appendices)
- Appendix B - List and plans of premises provided by the Canadian Space Agency (comprising Appendix A of the Agency's request for proposal dated **[insert the date of the request for proposal]**)
- Appendix C - List of items and equipment provided by the Canadian Space Agency (comprising Appendix B of the Agency's request for proposal dated **[insert the date of the request for proposal]**)
- Appendix D - Housekeeping - scope of the required work (comprising Appendix B of the Agency's request for proposal dated **[insert the date of the request for proposal]**)
- Appendix E - Operator's Proposal dated [insert the date of the request for proposal]
- Appendix F - List of the Operator's mobile equipment

- 1.3 In the event of conflict or incompatibility, the order of precedence among the documents in the Contract is as follows:

The presents themselves

Appendix A - Request for Proposal (minus appendices)

Appendix B - List and map of local facilities provided by the CSA

Appendix C - List of items and equipment provided by the CSA

Appendix D - Housekeeping - scope of work required

Other appendices

- 1.4 The titles in the Contract are listed only as benchmarks and must not affect the scope, intent or interpretation of any of its provisions.

- 1.5 In all cases where the context of the Contract requires or permits it, the singular must be understood in the plural and the masculine must be understood by the feminine, as the case may be.

Section 2 - Food Services

- 2.1 The Operator is committed to the Agency to provide Food Services to Agency staff and visitors as set out in Appendix A, and to fulfil all of its other obligations under the Contract in a diligent and professional manner and using competent and qualified staff.

Section 3 - Work areas available to the Operator

- 3.1 Subject to the other terms and conditions of the Contract, the Agency hereby makes the Work Areas available to the Operator for use in order to offer Food Services as well as to fulfil its other obligations stipulated in the Contract, and for no other purpose.

Section 4 - Right of access and exit

- 4.1 Subject to applicable government laws, regulations and policies, including security, the Operator has free access to the Work Areas described in Appendix B for himself, his employees, attendants, agents, clients and guests, as well as the right to use the Common Areas during the Building's normal hours of operation, from 7 a.m. to 6 p.m. on weekdays.
- 4.2 The Operator shall, from time to time and with the permission of the Agency, which shall not be unreasonably withheld, have access to the Work Areas outside the normal hours of operation of the Building to carry out urgent or extraordinary work. In such a case, the Operator shall reimburse the Agency for the actual costs incurred in providing access to the Work Areas and maintaining security in the Building outside the normal operating hours of the Building, excluding, however, the normal expenses incurred by the Agency to

maintain security in the Building outside the normal operating hours of the Building. For greater certainty, no management fees will be added by the Agency to the actual costs.

Section 5 - Loan of items and equipment

- 5.1** The Agency lends to the Operator, for the duration of the Contract and in accordance with the *Public Property Loan Regulations* (DORS/92-745), the items and equipment listed and described in Appendix C.
- 5.2** The Operator, at his own expense, maintains the items and equipment lent to the Operator hereby, ensures their cleanliness and keeps them in good condition and in order of operation. The Agency may, at any time, inspect items and equipment loaned to the Operator to determine their condition.
- 5.3** The Operator holds Her Majesty the Queen in Right of Canada, the Minister, the Agency and all their employees, agents and attendants, indemnified and covered, and absolves them of any liability, for any damages or losses and for any claim they may suffer, arising from the possession or use by the Operator of the items and equipment lent to the Operator by these presents.

Section 6 - Payments

- 6.1** The Operator undertakes to pay the Agency, for the duration of this contract, the following amounts:
- 6.2** The Operator shall pay, in accordance with the requirements of the Request for Proposal, an annual base rent of **[insert amount of rent in words]** DOLLARS **[insert amount of rent in figures]**\$ plus applicable taxes payable monthly to the Receiver General for Canada on the first day of each calendar month in equal and consecutive installments of **[insert amount of rent in words]** CENTS **[insert amount of rent in figures]**\$.
- 6.3** Any arrears in the payment of the amounts under Paragraph 6.2 of this Section will carry compound interest calculated monthly, at the average discount rate as defined in the Interest and Administrative Charges Regulations (DORS 96/188) and increased by three per cent (3%), from the due date to the date of payment.

Section 7 - Duration

- 7.1 The Contract enters into force [**insert the start date of the contract**], for an initial term of five (5) years (hereafter referred to as the "Initial Operating Period"), unless terminated earlier under one of these provisions.

Section 8 - Extension

- 8.1 At the latest sixty (60) days before the expiry date of the Initial Operating Period or any extension period that has been granted, the Operator may apply to the Agency for an extension. The Agency may then, provided that the Operator is not in breach of any of its obligations under the Contract, extend the Contract for three (3) consecutive periods of one (1) year each through a written notice that the Agency will have to send to The Operator at least thirty (30) days before the end of the initial operating period in the case of the first extension, and thirty (30) days before the end of the current extension in the case of any subsequent extension.

Section 9 - Legal status of the Parties

- 9.1 The Parties acknowledge and confirm that they are independent parties to each other and that there is nothing in the Contract to create a partnership, joint venture or mandate between the Parties. Neither the Operator nor its employees are employees, agents or attendants of the Agency and the Operator undertakes to stand and present itself before third parties as an independent part of the Agency
- 9.2 The Operator is required to make all deductions and payments required by law in relation to its employees, including for the purposes of Canada and Quebec pension plans, employment insurance, workers' compensation and income tax.

Section 10 - General Terms and Conditions

- 10.1 The Operator is committed to:
- a) Pay the amounts under the Contract, on the dates and in the manner in which it is provided;
 - b) not to tolerate any deterioration of the work areas other than that caused by normal wear and tear;
 - c) to occupy and use the Work Areas solely for the purpose of providing the Food Services and not to use, occupy or permit to be used or occupied, in whole or in part, for any other purpose or in any manner other than as expressly provided for in the Contract;

- d) without restricting the generality or scope of paragraph (c) above, not to commit or permit acts in the Work Areas, by action or omission, that could constitute an infringement of public or private rights, applicable laws, national security, or otherwise illegal or reprehensible;
- e) not to make or authorize any changes or additions to the Work Areas without the Agency's prior and written consent;
- f) to comply with fire regulations in the operation of Food Services and, in particular, comply with applicable rules and guidelines issued by the Agency from time to time and all applicable regulations and orders of the Office Canada's Fire Marshal;
- g) to provide the Agency with a list and description of the mobile equipment and of the equipment it intends to install in the Work Areas including the value of this equipment, on the understanding that the amount identified as value may be used, if necessary, as the basis for any damage settlement that could be attributed to the Agency or its attendants;
- h) not to keep flammable materials in the Work Areas that may increase the risk of fire or explosive materials of any kind, except those that are strictly necessary for the operation of Food Services;
- i) not enter into any food services concession agreement without the Agency's prior and written permission;
- j) to allow the Agency, as well as its agents and attendants, to have free access at all times to the Work Areas for inspections, whether or not they are explicitly provided for in the Contract, to carry out, if necessary, the necessary repairs, Ensure that the terms and conditions of the Contract are met, or for any other reason;
- k) to pay, as soon as they are due, permits, duties and other similar charges or taxes that may be payable in relation to the operation of the Work Areas, on the understanding that the Building is considered "federal property" Under the *Payment in Lieu of Taxes Act (P.L.T.A.)*, 1985, Ch.. M-13, and:
- l) to pay for the installation and operation of any telephone line that it may need.

Section 11 - Claims Protection

- 11.1** The Operator holds Her Majesty the Queen in Right of Canada, the Minister, the Agency and all their employees, agents and attendants, unharmed and covered by any claim, lawsuit, remedy or action relating to an act or omission of the Operator or its executives, employees, agents or agents, as well as for any action taken by the Agency to remedy an act or omission by the Operator, where the claim, lawsuit, remedy or action is attributable to:
- a) the Operator's breach of its obligations under the Contract;
 - b) any activity in or around the Work Areas or their immediate surroundings;
 - c) any activity related to the use of items and equipment; or
 - d) any activity related to Food Services.
- 11.2** The Operator pays all costs and expenses attributable to a claim, lawsuit, remedy or action covered in paragraph 11.1 above, including legal fees and fees.
- 11.3** The Operator exonerates and releases Her Majesty the Queen in Right of Canada, the Minister, the Agency and all their employees, attendants and agents of any liability for any damage to the Work areas and losses, which may result for the Operator, and waives any claim, lawsuit, remedy or action against Her Majesty the Queen in Right of Canada, the Minister, the Agency and all their employees, attendants and agents for such damages or losses, except in the event of a fault employees, agents, agents, suppliers or subcontractors.
- 11.4** There is nothing in this section to free the Agency from liability for damages caused by the misconduct of its employees or agents acting in the performance of their duties.

Section 12 - Insurance

- 12.1** The Operator underwrites and retains the following insurance for the duration of the Contract:
- (a) civil liability insurance protecting the Operator and the Agency from any claim for property damage, personal injury or loss of life in the Work Areas, in any area adjacent to them and in all locations to which the Operator is entitled to access by the Contract, and arising from the operation of Food Services. The amount of coverage for this insurance is at least **two million dollars (\$2,000,000)**;
 - (b) insurance protecting the Operator and the Agency in relation to the liability of the Operator for the damage or destruction of the Work Areas or the Building, whether this damage or destruction is caused by fire, explosion, smoke, fire protection equipment or leaks.
- 12.2** The insurance policies listed in paragraph 12.1 above must include a clause stipulating that the insurer may not terminate or modify them without giving the Agency thirty (30) days' notice by registered mail.
- 12.3** Any insurance whose provisions of the Contract require the continuation of the agreement must be underwritten by a company that holds a license issued under the laws of the Province of Quebec and whose ordinary activity is the risk insurance described in the Contract.
- 12.4** The Operator provides the Agency with a compliant copy of the insurance policies required at the time of the contract at the beginning of each of the two years, and at least fifteen (15) days before the start of any extension period.
- 12.5** The Operator does not commit or tolerate any act contrary to any insurance policy required of this section or which may result in its termination.

Section 13 - Agency obligations

- 13.1** The Agency undertakes, subject to applicable laws, regulations and policies of the Government of Canada, including security, as well as other terms and conditions of the Contract, to provide practical access to Food Service users and maintenance, repair and procurement personnel.

- 13.2** The Agency maintains the Work Areas in good condition and, on reasonable notice from the Operator, makes prompt and diligent repairs with the care of a prudent and diligent administrator.
- 13.3** The Agency provides the Work Areas with sufficient electric power and replaces lamps that do not work at its own cost and expense. The Operator is responsible for notifying the Agency of any intention to install in the Work Areas any equipment or items, including appliances or machinery, consuming or likely to consume large amounts of electricity. The Agency must then, within fifteen (15) days after receiving the Operator's notice, approve or refuse the installation of such materials or items.
- 13.4** The Agency heats, air-conditions and illuminates the Work Areas, according to the same standards of comfort applied in the rest of the Building, and maintains the common areas well lit.
- 13.5** The Agency collects waste at the refrigerated waste warehouse at least once a week.

Section 14 - No warranty

- 14.1** The Operator acknowledges that it has reviewed the Work Areas prior to the start of the Contract, accepts them as is, and acknowledges that there are no promises, representations, declarations or guarantees from the Agency:
- a) regarding the quality or safety of work areas or items and equipment lent to the Operator outside of the express stipulations of the Contract;
 - b) the use of the Work Areas and items and equipment loaned to the Operator will produce specific results; or
 - c) concerning traffic for Food Services.

Section 15 - Failure

- 15.1** In the event that the Operator informs the Agency in writing that it is in breach of any of its obligations and the Agency does not remedy the breach within forty-eight (48) hours of receipt of the notice, or within a shorter period where the breach is of such a nature as to cause, in all likelihood, loss or damage to the Operator unless remedied within less than forty-eight (48) hours, the Operator shall have the right without further notice, in each case, to take appropriate measures to remedy the breach.

15.2 Without restricting the Operator's other legal remedies, all reasonable costs incurred by the Operator under paragraph 15.1 above are charged to the Agency and, in the absence of the Agency's refunding on request, the Operator may deduct them from the amounts payable to the Agency under the other terms and conditions of the Contract.

15.3 Failure by the Operator paying all or part of an amount payable on time under any of the provisions of the Contract, or in the event of the Operator's failure to comply with any of its obligations under the Contract, the Agency may, through written notice, put the Operator on notice to remedy the breach within five (5) days of receipt of the notice.

Section 16 - Cancellation

16.1 Notwithstanding paragraph 15.3 above, the Agency may terminate the Contract, by written notice to the Operator, if any of the following events occur:

- a) The Operator is declared bankrupt or becomes insolvent;
- b) The Operator makes a proposal or a general transfer of its assets to its creditors;
- c) if there is an order to sequester or appoint a trustee to administer the Operator's property, or if the Operator consents to such an order or appointment;
- d) The Operator files a voluntary bankruptcy application or petition seeking restructuring or agreement, or uses a legislative provision to shield itself from the recourse of its creditors;
- e) The Operator admits that he is unable to pay his debts to the Agency at the time they become due;
- f) The Operator enters into or undertakes a concession agreement related to Food Services without the Agency's prior and written permission;
- g) the Operator yields, alienates or strikes or seeks to cede, alienate or burden the Contract in any way without the Agency's prior and written permission;

h) for a breach of the Contract other than those listed in this paragraph, the Operator does not remedy the breach within five (5) days of receiving the notice duly sent in accordance with paragraph 15.3 above.

16.2 Each Party may, at any time, terminate the Contract with a written notice of ninety (90) days given to the other Party.

16.3 If, during the duration of the Contract, the Work areas are damaged or destroyed by fire or otherwise and thus rendered unusable, in the Operator's view, the Operator may declare, through written notice to the Agency, that the Contract does not run beyond the date of the loss; if, however, in the operator's opinion and provided the damage occurred other than through the fault of the Operator or his employees, subcontractors, agents or any other person or entity, under the responsibility of the Operator or by the result of the Operator's failure to comply with any of its obligations under the Contract, and that the damage is not such that the Work Areas are unusable, the Contract, at the Operator's choice, does not end in the event that the Agency immediately repairs the Work Areas and restores them in good condition for the Operator, in which case the calculation of the amounts payable will exclude the pro-rata period of the Food Services interruption.

16.4 There is nothing in the Contract to restrict the Agency's right to make any recourse or claim authorized by law or the applicable law in bankruptcy, insolvency or receivership orders.

Section 17 - Obligations at the end of the Contract

17.1 At the end of the Contract, whether by expiry, termination, mutual consent or otherwise, the Operator removes from the Work Areas any equipment and mobile equipment that belongs to him, and provides the Agency with the Work Areas and items and equipment listed in Appendix C in good condition, with the exception of:

- a) normal wear and tear, or
- b) a claim as stipulated in paragraph 16.2 above, provided that the damage occurred other than through the fault of the Operator or its employees, subcontractors, agents or any other person or entity under the responsibility of the Operator or by the result of the Operator's failure to comply with any of its obligations under the Contract.

17.2 In the event that the Operator is unable to return the Work Areas or any of the items and equipment listed in Schedule C in good condition in accordance

with paragraph 17.1 above, the Operator compensates the Agency for any damage to the Work Areas and reimburses the Agency for the replacement value of any damaged items or equipment, whether the damage is due to the removal of the Operator's mobile equipment and or any other cause.

Section 18 - Notice

18.1 As for, under the terms of the Contract, one of the Parties must give notice, this notice is done in writing and is valid only if it is delivered in person or transmitted to the other Party by messenger, registered mail, fax or any other electronic means that prints the notice, to the person and address mentioned in this Section. The notice is deemed to take effect on the day it is received at this address.

18.2 Notices for the Agency are forwarded to the person and to the following address:

Director, Security and Facilities
Canadian Space Agency
6767 Route de l'Aéroport
Longueuil (Québec)
J3Y 8Y9

18.3 Notices for the Operator are forwarded to the person and to the following address:

[insert the legal name of the successful bidder] [insert the function of the representative/proxy]
Attention: **[insert the name of the representative/proxy]**
[insert address]

18.4 Each Party may change, through a written notice sent to the other Party, the identity and address of the person to whom the notices intended for the Party are sent.

Section 19 - Laws and Regulations

19.1 The Operator complies, at his own expense, with all laws, orders and regulations of the competent authorities concerning the Work Areas, their use and occupation.

Section 20 - Signs

- 20.1** The Operator does not construct, install, register, paint or display any signs, inscriptions or billboards, either inside or outside the Work Areas, or above them, including the exterior surface of the windows or glass doors, without first obtaining, in each case, the Agency's written permission.

Section 21 - Disputes

- 21.1** Disputes of any kind that are related to the Contract are governed by this Section.
- 21.2** Any dispute shall first be submitted in the form of a notice by the Operator to the Director, Safety and Facilities of the Agency, who shall render his decision by notice served on the Operator within fifteen (15) days.
- 21.3** The decision of the Director, Safety and Facilities made under paragraph 21.2 above shall become final and binding on the Parties on the thirtieth (30th) day following duly served notice of such decision, unless the Operator has previously sent notice to the Agency that it is appealing such decision to the Executive Director, Corporate Services and HR. The Executive Director, Corporate and HR Services shall render its decision by notice served on the Operator within fifteen (15) days of receipt of the notice of appeal.
- 21.4** If the Agency's Executive Director, Corporate Services and HR's decision under paragraph 21.3 above is not satisfied, the Operator can then take all measures, bring all appeals or exercise all rights that he could have exercised immediately in the absence of this section.

Section 22 - Minister's Rights

- 22.1** The rights or powers conferred on the Agency and the Minister by law and contract are cumulative and not mutually exclusive.

Section 23 - Successors and rights holders

- 23.1** The Contract applies to and binds successors and authorized rights holders of the Agency and the Operator.

Section 24 - Divestiture

- 24.1** The Operator may not, without the Agency's prior and written permission, cede the Contract or dispose of it in any way. In addition to giving openness to the application of paragraph (g) of paragraph 16.1 above, any alleged assignment, alienation or graft of the Contract, in whole or in part, that the Agency has not duly authorized in advance is null and void.

24.2 No assignment, even duly authorized by the Agency, relieves the Operator of its obligations under the Contract or confers obligations on the Agency or the Minister, except on their explicit and written consent.

Section 25 - Members of the House of Commons

25.1 Members of the House of Commons may not participate in or benefit from the Contract.

Section 26 - Bribes

26.1 The Operator declares and certifies:

- (a) that no bribe, present, benefit or other benefit has been granted, promised or offered, directly or indirectly, to an employee or representative of the Government of Canada or to a family member, with a view to influencing the conclusion or management of the Contract.
- (b) that, with the exception of its sales representatives responsible for obtaining bona fide contracts, it has not used anyone to obtain the award of the Contract for a commission, percentage or other personal remuneration.

Section 27 - Conflicts of interest

27.1 The Operator agrees that this is an express condition of the Contract that persons who are subject to the provisions of the Conflict of Interest Act (L. C. 2006, 9, s. 2), the Public Sector Values and Ethics Code, the Conflict of Interest and Post-Term Policy, or any other code of values and existing ethics in specific bodies cannot benefit directly from the Contract unless it complies with applicable post-mandate provisions.

Section 28 - Contract Completeness

28.1 The Contract refers to the entire agreement between the Parties in relation to its purpose and replaces any subsequent negotiation, communication or agreement between the Parties, verbal or written, relating to it, unless it is incorporated by reference to the Contract. Only the commitments, conditions, declarations and terms contained in the Contract are included.

Section 29 - Capacity and Authorization

- 29.1** The Operator hereby declares and certifies that on the effective date of the Contract:
- (a) it is a duly incorporated corporation and in good standing under the laws of Canada;
 - (b) it has the power to conclude the Contract, to fulfil its obligations and, to that end, has taken all necessary or appropriate measures and has obtained all necessary authorizations;
 - (c) it has not entered into any contract, arrangement or agreement with any company, company, individual or corporation that may or may prevent it from fulfilling the obligations arising from the Contract; and
 - (d) it expressly authorized the signatory leaders of the Contract to accept the obligations under the Contract and sign it on its behalf.
- 29.2** The Operator undertakes not to take any action and to enter into any agreement that may or may jeopardize its legal capacity, or that may or may prevent it from fulfilling the obligations arising from the Contract.
- 29.3** The Operator undertakes to provide the Agency, upon request, with written evidence establishing to the Agency's satisfaction that the powers, authorizations and rights listed in paragraph 29.1 above have been validly conferred on their licensees.

Section 30 – Severability

- 30.1** Any provision of the Contract that a competent court deems invalid, illegal or not enforceable is severed from the Contract, and the other provisions of the Contract remain in force and applicable.

Section 31 - Prorogation

- 31.1** Statements, the Operator's certifications and guarantees, as well as the Operator's obligations to protect against claims and compensation in favour of the Agency, remain applicable and in effect after the end of the Contract, whether it occurs by expiry, termination, mutual consent or for any other reason, as well as any other provision that is reasonable to presume, because of the rights and obligations intended to extend them.

Section 32 - Applicable law

32.1 The Contract, as well as everything related to its validity and execution, is interpreted and governed in accordance with the laws in force in the Province of Quebec.

IN WITNESS WHEREOF, THE CONTRACT HAS BEEN SIGNED ON BEHALF OF THE CANADIAN SPACE AGENCY BY THE DULY AUTHORIZED REPRESENTATIVES OF THE MINISTER OF INDUSTRY AND BY THE DULY AUTHORIZED REPRESENTATIVES OF THE OPERATOR, THE SEAL OF THE CORPORATION BEING IN EVIDENCE THEREOF.

DULY NOTED

THE CANADIAN SPACE AGENCY
bidder]

[insert the legal name of the successful

Paul Bélair
Director, Security and Facilities

[Name]
[Title]

Date

Date

Witness

Witness