

GENERAL CONDITIONS – CONSULTANT AGREEMENT

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1.0 GENERAL PROVISIONS

1.1 DEFINITIONS

- 1.1.1 'Budget Fee' is used when the Scope of Work is not well defined.
- 1.1.2 'Calendar Days' means continuous calendar days, including weekends and statutory public holidays.
- 1.1.3 'Contract' means the agreement between the Consultant and the Corporation for the required Work.
- 1.1.4 'Contract Award Price' means the price at which a Contract is awarded to the Consultant.
- 1.1.5 'Corporation/NAC' means the National Arts Centre Corporation.
- 1.1.6 'Cost Estimate' means an anticipated amount for which a Consultant would execute the required Work.
- 1.1.7 'Cost Limit' means the total amount which shall not be exceeded for required Work.
- 1.1.8 'Dispute' means any disagreement regarding any issue identified by the Consultant in the notice submitted to the Corporation which includes any claim by the Consultant arising from such disagreement and any counterclaim by the Corporation as a response, but does not include any claim by either party for punitive or exemplary damages, injury to person, death, or any claim based on an allegation of libel or slander.
- 1.1.9 'Instruments of Service' means: (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 Agreement; 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 Agreement; and (iii) operating and maintenance manuals prepared or collected for the Agreement. Instruments of Service does not include data concerned with the administration of the Agreement by NAC or the Consultant, such as internal financial or management information, unless it is a deliverable under the terms of the Agreement.
- 1.1.10 'IP Rights' means any intellectual property rights recognized by law, including any intellectual property right protected through legislation (such as that governing copyright, patents or industrial design) or arising from protection of information as a trade secret or as confidential information.
- 1.1.11 'Maximum Upset Fee' means the Consultant is expected to complete the Services within this upset fee unless changes to the Scope of Work increase the level of effort.
- 1.1.12 'Mediation' is a process of dispute resolution in which a neutral third party assists the parties involved in a dispute to negotiate their own settlement.

- 1.1.13 'NAC Representative' means the person that may be specifically designated by or on behalf of the Corporation, upon contract award and includes the person specially authorized by Corporation to act on his behalf.
- 1.1.14 'Project Brief' or 'Terms of Reference' or 'Statement of Work' means a document describing the detailed Services to be provided by the Consultant.
- 1.1.15 'Project Schedule' means a time plan, including the sequence of tasks, milestone dates and critical dates which must be met for the implementation of the planning and design of the project.
- 1.1.16 'Services/Work' means everything that is necessary to be done, furnished or delivered by the Consultant, as detailed in the Agreement.
- 1.1.17 'Specialist Consultant' means any Architect, Professional Engineer, or other specialist, other than the Consultant, engaged by NAC directly, or at the specific request of NAC, engaged by the Consultant.
- 1.1.18 'Sub-Consultant' means any Architect, Professional Engineer, or other specialist engaged by the Consultant for the Services included in the Agreement.

1.2 CONFLICT OF INTEREST

- 1.2.1 The Consultant declares that the Consultant has no pecuniary interest in the business of any third party that would cause, or seem to cause, a conflict of interest in carrying out the Services, and should such an interest be acquired during the life of the Contract; the Consultant shall declare it immediately to the NAC Representative.
- 1.2.2 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 test or investigations.
- 1.2.3 The Consultant shall not submit, either directly or indirectly, a bid for any Construction Contract related to the Agreement.

1.3 STATUS OF THE CONSULTANT

- 1.3.1 The Consultant is engaged under the Agreement as an independent Consultant for the purpose of performing the Services.

1.4 ENTIRE AGREEMENT

- 1.4.1 The Agreement constitutes the entire arrangement between the Corporation and the Consultant with respect to the subject matter of the Agreement, and supersedes all previous negotiations, communications and other arrangements relating to it, unless incorporated by reference hereof.

1.5 ORDER OF DOCUMENT PRECEDENCE

- 1.5.1 In the event of any discrepancy or conflict in the contents of the following documents, such documents shall take precedence and govern in the following order:

- 1.5.1.1 Articles of Agreement;
 - 1.5.1.2 Any amendment or variation of the Agreement documents that is made in accordance with the General Conditions-Consultant Agreement;
 - 1.5.1.3 Any amendment or addenda issued prior to closing;
 - 1.5.1.4 General Conditions-Consultant Agreement;
 - 1.5.1.5 The Consultant's cost proposal;
 - 1.5.1.6 The Consultant's technical proposal;
 - 1.5.1.7 'Project Brief' or 'Terms of Reference' or 'Statement of Work';
- Later dates shall govern within each of the above categories of documents.

1.6 JOINT AND SEVERAL LIABILITY

- 1.6.1 If at any time there is more than one legal entity constituting the Consultant, their covenants under the Agreement shall be considered to be joint and several and apply to each and every entity. If the Consultant is or becomes a partnership or joint venture, each legal entity who is a member or becomes a member of the partnership or joint venture or its successors is and continues to be jointly and severally liable for the performance of the Services and all covenants of the Consultant pursuant to this Agreement, whether or not that entity ceases to be a member of the partnership, joint venture or its successor.

1.7 INTERNATIONAL SANCTIONS

- 1.7.1 Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. As a result, the Corporation cannot accept delivery of goods or Services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions.
- 1.7.2 The Consultant must not supply to the Corporation any goods or Services which are subject to economic sanctions. Details on existing sanctions are available on the Government of Canada web site.
- 1.7.3 The Consultant must comply with changes to the regulations imposed during the period of the Agreement. The Consultant must immediately advise the Corporation 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 Agreement will be terminated for convenience by the Corporation in accordance with terms and conditions of the Agreement.

1.8 EMPLOYEES AND TRUSTEES OF THE CORPORATION

- 1.8.1 No employee or member of the Board of Trustees of the Corporation may receive, directly or indirectly any benefit arising from this Agreement.

1.9 UNFORSEEN OCCURRENCES

- 1.9.1 If the fulfillment of the Agreement by the Consultant is prevented, or rendered impossible or unfeasible, by any act or regulation of any public authority, civil tumult, strike lock-out or labour dispute (whether or not involving the Corporation), epidemic, interruption war conditions or emergencies, or any cause beyond the control of the parties of this agreement, then and thereupon this agreement shall terminate and the respective obligations of the parties shall be deemed waived, and there shall be no claim for damage by either party to this Agreement arising from its termination.

2.0 ADMINISTRATION OF THE CONTRACT

2.1 NOTICES

- 2.1.1 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:
- 2.1.1.1 served personally, on the day it is delivered;
 - 2.1.1.2 forwarded by registered mail, on the day the postal receipt is acknowledged by the other party; or
 - 2.1.1.3 Forwarded by facsimile, e-mail or other electronic means of transmission at the time of transmission.
- 2.1.2 The address of either party, or the person authorized to receive notices, may be changed by notice in the manner set out in the provision.

2.2 TIME AND COST RECORDS TO BE KEPT BY THE CONSULTANT

- 2.2.1 Time charged and the accuracy of the Consultant's time recording system may be verified by the NAC Representative before or after payment is made to the Consultant under the terms and conditions of the Agreement.
- 2.2.2 The Consultant shall keep accurate time and cost records and, if required for the purposes of the Agreement, shall make these documents available to the NAC Representative who may make copies and take extracts.
- 2.2.3 The Consultant shall afford facilities for audit and inspection upon request and shall provide the NAC Representative with such information as may be required from time to time with reference to the documents referred to in 2.2.2 above.
- 2.2.4 The Consultant shall, unless otherwise specified, keep the time and cost records available for audit and inspection for a period of at least seven (7) years following completion of the Services.
- 2.2.5 If the verification is done after payment by the Corporation, the Consultant agrees to repay any overpayment immediately upon demand.

2.3 WORKPLACE HARRASMENT

- 2.3.1 Workplace harassment means engaging in a comment or conduct that is known or should reasonably be known to be unwelcome by an individual in the workplace.
- 2.3.2 The NAC is committed to providing a safe, healthy and respectful work environment where all employees, contractors, patrons, artists and members of the public are treated with respect and dignity. In order to fulfill this commitment, the NAC maintains a ‘zero tolerance’ policy for harassment or violence in the workplace. All individuals engaged by and with the NAC are required to uphold this policy and are held accountable for their actions and behaviour.
- 2.3.3 Incidents and complaints of workplace harassment and violence will be investigated and addressed in a fair and timely manner.

3.0 CONSULTANT SERVICES

3.1 DECLARATION BY CONSULTANT

- 3.1.1 The Consultant declares that based on the information provided pertaining to the Services required under the Agreement, the Consultant has been provided sufficient information to enable the Services required under the Agreement to proceed and is competent to perform the Services and has the necessary licenses and qualifications including the knowledge, skill and ability to perform the Services.

3.2 SERVICES

- 3.2.1 The Consultant shall perform the described Services, in accordance with the terms and conditions of the Agreement.
- 3.2.2 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 similar Services at the time when and at the location in which the Services are provided.

3.3 TIME SCHEDULE

- 3.3.1 The Consultant shall:
 - 3.3.1.1 submit in a timely manner to the NAC Representative, for approval, a time schedule for the Services to be performed, in detail appropriate to the size and complexity of the Agreement, and in the prescribed format;
 - 3.3.1.2 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 NAC Representative.

3.4 PROJECT INFORMATION, DECISIONS, ACCEPTANCE, APPROVALS

- 3.4.1 The Corporation shall provide, in a timely manner, project information, written decisions and instructions, including acceptances and approvals relating to the Services provided by the Consultant.
- 3.4.2 No acceptance or approval by the Corporation, whether expressed or implied, shall be deemed to relieve the Consultant of the professional or technical responsibility for the Services provided by the Consultant.

3.5 CODES, BY LAWS, LICENSES, PERMITS

- 3.5.1 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, licenses and permits required for the Contract may be applied for and obtained.

3.6 PROVISION OF STAFF

- 3.6.1 The Consultant shall, on request, submit to the NAC Representative for approval, the names, work addresses, qualifications, experience and proposed roles of all persons, including principals, to be employed by the Consultant to provide the Services under the Agreement.

3.7 SUB-CONSULTANTS

- 3.7.1 The Consultant shall:
 - 3.7.1.1 subsequent to the Agreement notify the NAC Representative of any other Sub-Consultants with whom the Consultant intends to enter into agreements for part of these Services and, or request, provide details of the terms and Services to be performed under the said agreements and the names, work addresses, qualifications, experience and proposed roles of the personnel of these Sub-Consultants proposed to be employed on the Agreement;
 - 3.7.1.2 include in any agreements entered into with Sub-Consultants such provisions of the Agreement as they apply to the Sub-Consultants responsibilities; and
 - 3.7.1.3 upon written notice by a Sub-Consultant, with whom the Consultant has a direct contract, inform the Sub-Consultant and the Consultant's obligations to the Sub-Consultant under the Agreement.
- 3.7.2 The NAC Representative may object to any Sub-Consultant within six (6) calendar days of receipt of notification given in accordance with 3.7.1.2 above and, on notification of such objection, the Consultant shall not enter into the intended agreement with the Sub-Consultant.
- 3.7.3 Neither an agreement with a Sub-Consultant nor the NAC Representative's consent to such an agreement by the Consultant shall be construed as relieving the Consultant

from any obligation under the Agreement, or as imposing any liability upon the Corporation.

3.8 COST CONTROL

- 3.8.1 Throughout design development, the prepared Cost Estimate shall not exceed the Cost Limit where such a limit was set elsewhere in the Agreement.
- 3.8.2 In the event that the Consultant considers that the Cost Estimate will exceed the Cost Limit, the Consultant shall immediately notify the NAC Representative and
 - 3.8.2.1 if the excess is due to factors under the control of, or reasonably foreseeable by the Consultant, the Consultant shall, if requested by the NAC Representative, and at no additional cost to the Corporation, make such changes or revisions to the design as may be necessary to bring the Cost Estimate within the Cost Limit; or
 - 3.8.2.2 if the excess is due to factors that are not under the control of the Consultant, changes or revisions may be requested by the NAC Representative. Such changes or revisions shall be undertaken by the Consultant at the Corporation's expense, and the cost involved shall become an amount to be mutually agreed, prior to the performance of the said changes or revisions.
- 3.8.3 If the lowest price obtained by procurement process or negotiations exceeds the 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 NAC Representative, and without additional charge, cooperate in revising the project scope and quality as required to reduce the cost and shall modify the documents as necessary to comply with the Cost Limit.

4.0 INTELLECTUAL PROPERTY

4.1 RIGHTS TO INTELLECTUAL PROPERTY

- 4.1.1 Subject to Section 4.6 and without affecting any IP Rights or interest thereof that have come into being prior to the Agreement or that relate to information or data supplied by the Corporation for the purposes of the Agreement, all IP Rights in the Instruments of Service shall immediately, as soon as they come into existence, vest in and remain the property of the Consultant.

4.2 LICENCE TO USE THE INSTRUMENTS OF SERVICE FOR THE AGREEMENT

- 4.2.1 Without limiting any implied licences that may otherwise vest in the Corporation, and in consideration of the Corporation's contribution to the cost of development of the Instruments of Service, the Consultant hereby grants to the Corporation a non-exclusive, perpetual, irrevocable, worldwide, fully-pain and royalty-free licence to use the Instruments of Service for the purpose of:

- 4.2.1.1 the construction or implementation of any building, built works, structures and facilities, contemplated by the Project;
- 4.2.1.2 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;
- 4.2.1.3 the further development, modification (including additions or deletions), completion, translation, or implementation of the Instruments of Service and any addition to it as the Corporation may require for the purposes of the completion, utilization and subsequent evolution of the Project;
- 4.2.1.4 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;
- 4.2.1.5 the publishing and transmission of reproductions of the Project or any part thereof in the form of paintings, drawings, reports, engravings, photographs, models, graphics or cinematographic works, to the public, in hard copy or by any electronic or other means, except for copies in the nature of architectural and engineering drawings or plans.

4.3 LICENCE TO USE THE INSTRUMENTS OF SERVICE FOR OTHER PROJECTS

- 4.3.1 The Consultant hereby grants to the Corporation a non-exclusive, perpetual, worldwide, irrevocable license to use the Instruments of Service for the purpose of planning, designing and constructing or otherwise implementing any work other than the Work, and for any purpose as detailed in Section 4.2.1 as it relates to such other work. In the event that the Corporation exercises such rights to use the Instruments of Service in other work and provided that the Corporation does not already have equivalent rights under a previous contract or otherwise, the Corporation agrees to pay to the Consultant reasonable compensation determined in accordance with current industry practice and having regards to the Corporation's contribution to the cost of development of the Instruments of Service.
- 4.3.2 The Consultant shall ensure that in any sale, assignment, transfer or licence of any of the IP Rights that vest in the Consultant under this Agreement, 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 of any subsequent purchaser, transferee, assignee or licensee.
- 4.3.3 In any sale, assignment, transfer or licence of IP Rights by the Consultant except a sale or licence for end use of a product based on Instruments of Service, the Consultant shall

impose on the other party all of its obligations to the Corporation in relation to the IP Rights in the Instruments of Service and any restrictions set out in the Agreement on the use or disposition of the IP Rights in the Instruments of Service, including the obligation to impose the same obligations and restrictions on any subsequent transferee, assignee or licensee. The Consultant shall promptly notify the Corporation of the name, address and other pertinent information in regard to any transferee, assignee or licensee.

4.4 THE CORPORATION’S RIGHTS TO DISCLOSE AND SUB-LICENSE

4.4.1 The Consultant acknowledges that the Corporation may wish to award contracts, which may include a competitive process, for any of the purposes contemplated in Section 4.3 hereof. The Consultant agrees that the Corporation’s licence in relation to the use of the Instruments of Service includes the right to disclose the Instruments of Service to bidders for such contracts, and to sub-license or otherwise authorize the use of the Instruments of Service by any Contractor or Consultant engaged by the Corporation for the purpose of carrying out such a contract.

4.5 CONSULTANT’S RIGHT TO GRANT LICENCE

4.5.1 The Consultant represents and warrants that the Consultant has, or the Consultant shall obtain without delay, the right to grant to the Corporation the licence to use the Instruments of Service as required by the Agreement.

4.6 CORPORATION SUPPLIED INFORMATION

4.6.1 The Consultant shall not use or disclose any Corporation supplied information for any purpose other than completing the performance of the Services. The Consultant shall maintain the confidentiality of such information. Unless the Agreement otherwise expressly provides, the Consultant shall deliver to the Corporation all such information together with every copy, draft, working paper and note thereof that contains such information upon the completion or termination of the Agreement, or at such earlier time as the Corporation may require.

4.7 TRANSFER OF IP RIGHTS

4.7.1 Until the Consultant completes the performance of the Services, the Consultant shall not, without the prior written permission of the Corporation, sell, assign or otherwise transfer title to the IP Rights in any of the Instruments of Service, or license or otherwise authorize the use of the IP Rights in any of the Instruments of Service by any person.

5.0 TERMS OF PAYMENT

5.1 FEES

- 5.1.1 Subject to the terms and conditions of the Agreement, and in consideration for the performance of the Services, the Corporation shall pay to the Consultant a sum of money calculated in accordance with the provisions herein.
- 5.1.2 The Consultant's fees are only payable when the Consultant has performed the Services as determined by the NAC Representative.
- 5.1.3 The maximum amount payable under the Agreement, including fees and disbursements, shall not exceed the sum specified in the Agreement particulars, without the prior written authorization of the NAC Representative.

5.2 FEE ARRANGEMENT(S) FOR SERVICES

- 5.2.1 The fee to be paid to the Consultant for the Services described in the Agreement shall be determined by one or more of the following arrangements:
 - 5.2.1.1 Fixed Fee-may be in the form of a fixed lump sum or an amount made up of fixed unit priced multiplied by a number of units of deliverables in the amount(s) specified in the Agreement.
 - 5.2.1.2 Time Based Fee-may in the form of a Maximum Upset Fee or a Budget Fee.
 - 5.2.1.2.1 Maximum Upset Fee means the Consultant is expected to complete the services within this upset fee unless changes to the Scope of Work increase the level of effort.
 - 5.2.1.2.2 Budget Fee is used when the Scope of work is not well defined and NAC wants to establish a budget envelope.
- 5.2.2 Personnel shall be paid at the hourly rates quoted in the Consultant's cost proposal. The rates shall include all costs for salary, labour burden, profit, administrative overhead, disbursements as per Section 5.8.1, and all sub-consultant coordination costs.
- 5.2.3 These will be the only rates payable to the Consultant and shall be applicable for the entire SO, subject to the provisions for Consumer Price Index (CPI) rate adjustments in Section 5.10 and authorized in writing by the NAC Representative.

5.3 COST BREAKDOWN

- 5.3.1 When requested by the NAC Representative, the Consultant shall provide a cost breakdown with the level of details requested.
- 5.3.2 The cost breakdown will be used to assess progress and payments during the contract and cannot be changed without the prior consent of the NAC Representative.

5.4 PAYMENT TO THE CONSULTANT

- 5.4.1 The Consultant shall be entitled to receive progress payments at monthly or other agreed intervals, subject to the limitations of the Terms of payment. Such payments

shall be made prior to or on the due date. The due date shall be the 30th day following receipt of an acceptable invoice.

- 5.4.2 An acceptable invoice shall be an invoice delivered to the NAC Representative in the agreed format with sufficient detail and information to allow verification.
- 5.4.3 The amount of tax shown on the invoice shall be paid by the Corporation to the Consultant in addition to the amount of the progress payment for Services satisfactorily performed.
- 5.4.4 The NAC Representative shall notify the Consultant within fifteen (15) calendar days after the receipt of an invoice of any error, missing information or discrepancy.
- 5.4.5 Upon written notice by a Sub-Consultant, with whom the Consultant has a direct contract, of an alleged not-payment to the Sub-Consultant, the NAC Representative may provide the Sub-Consultant with a copy of the latest approved progress payment made to the Consultant for the Services.

5.5 DELAYED PAYMENT

- 5.5.1 Any delay by the Corporation in making any payment when it is due shall not be a breach of the Agreement by the Corporation.
- 5.5.2 An amount is overdue when it remains unpaid on the first day following the day upon which it is due and payable.

5.6 CLAIMS AGAINST, AND OBLIGATIONS OF, THE CONSULTANT

- 5.6.1 The Consultant shall ensure that all his lawful obligations and lawful claims against him arising out of the execution of the Services are discharged and satisfied, at least as often as the Agreement requires the Corporation to discharge its obligations to the Consultant and shall supply the NAC Representative with a Statutory Declaration deposing to the existence and condition of such claims and obligations when called upon to do so.
- 5.6.2 The Corporation may, in order to discharge lawful obligations of an satisfy lawful claims against the Consultant or a Sub-Consultant arising out of the execution of the Services, pay any amount, which is due and payable to the Consultant under the Agreement directly to the obligees of and the claimants against the Consultant or the Sub-Consultant.

5.7 NO PAYMENT FOR ERRORS AND OMISSIONS

- 5.7.1 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.

5.8 DISBURSEMENTS

- 5.8.1 The following costs must be included in the hourly rates or fees required to deliver the consultant Services and will not be reimbursed separately;
 - 5.8.1.1 reproduction and delivery costs of drawings, CADD files, specifications and other technical documentation specified in the Project Brief/Terms of Reference/Statement of Work;
 - 5.8.1.2 standard office expenses such as any photocopying, computer costs, Internet, cellular phone costs, long distance telephone and fax costs, including that between the Consultant's main office and branch offices or between the Consultant's offices and other team members offices;
 - 5.8.1.3 courier and delivery charges for deliverables specified in the Project Brief/Terms of Reference/Statement of Work;
 - 5.8.1.4 plotting; and
 - 5.8.1.5 presentation material.
- 5.8.2 The following disbursements reasonably incurred by the Consultant, that are related to the Services and approved by the NAC Representative, will be reimbursed to the Consultant at actual cost:
 - 5.8.2.1 reproduction and delivery costs of drawings, CADD files, specifications and other technical documentation **additional** to that specified in the Project Brief/Terms of Reference/Statement of Work;
 - 5.8.2.2 other disbursements made with the prior approval and authorization of the NAC Representative.

5.9 TRAVEL ALLOWANCES

- 5.9.1 The travel allowances to be paid to the Consultant for the Services described hereof, shall be determined by one or more of the following arrangements as specified in the Agreement:
 - 5.9.1.1 Fixed Amount – may be in the form of a fixed lump sum or an amount made up of fixed unit prices multiplied by a number of units in the amount(s) specified in the Arrangement and includes travel time. The Consultant is expected to complete the Services within the Fixed Amount unless changes to the Scope of Work increase the amount of travel required to complete the Services.
 - 5.9.1.2 Actual Cost – travel time plus reasonable expenses for travel by air, rail or car, for commercial accommodation, and for meals in accordance with the current Treasury Board Secretariat Travel Directive, up to the Cost of Return Trip per Person and the Maximum Upset Travel Amount, as specified in the Agreement. The Consultant is expected to complete the Services within the Maximum Upset Travel Amount unless changes to the Scope of Work increase the amount of travel required to complete the Services.

- .1 Cost of Return Trip per person is the cost of one return trip, including travel time and reasonable out-of-pocket expenses, for one individual to travel to the site of work.

5.10 HOURLY RATES ADJUSTMENT

- 5.10.1 The hourly rates, when included in the cost proposal, shall remain firm for a period of two years after award. Rate adjustment will be made in accordance with the percentage change in the Statistics Canada CORE Consumer Price Index (CPI) for the province of Ontario. Where rates will be adjusted at the two-year anniversary of the award by calculating the percentage change in the CPI between the month in which the award took place and the month of the two-year anniversary.
- 5.10.2 The adjustment would be applied to the hourly rates submitted in the cost proposal and be in effect starting the month after the two-year anniversary. The rates will then be adjusted annually thereafter on the anniversary of the award by calculating the percentage change in the CPI over each twelve-month period.
- 5.10.3 There will be no retroactive rate adjustments. The CORE CPI used for calculation will not be seasonally adjusted.
- 5.10.4 For Standing Offers (SO), Standing Offer Agreements (SOA) and Source Lists (SL), the adjustment will be applied to call-ups and commissions initiated **AFTER** the anniversary date of the adjustment. Call-ups and commissions awarded prior to the anniversary date will receive no adjustment unless explicitly stated in the call-up or commission agreement.

6.0 CHANGES

6.1 CHANGES IN THE SERVICES

- 6.1.1 The Consultant shall:
 - 6.1.1.1 make changes in the Services to be provided as part of the Agreement, including changes which may increase or decrease the original scope of Services, when requested in writing by the NAC Representative;
 - 6.1.1.2 prior to commencing such changes, advise the NAC Representative of any known and anticipated effects of the changes on the Construction Estimate, Consultant fees, Project Schedule and other matters concerning the Agreement; and
 - 6.1.1.3 comply with any request made by the NAC Representative pursuant to Section 3.7, regarding persons to be employed by the Consultant or his Sub-Consultants to provide the additional or reduced Services.

6.2 CHANGES IN THE CONSULTANT'S TEAM

- 6.2.1 Should any entity or person that is named in the Consultant's proposal be unable to perform or complete the Services, the Consultant shall obtain the concurrence of the NAC Representative prior to entering into an agreement with another equally qualified entity or person to perform or complete the Services.
- 6.2.2 No replacement entity or person will be considered until the Consultant has conclusively demonstrated to the satisfaction of the NAC Representative that the reason the entity or person are unavailable is beyond the Consultant's control.
- 6.2.3 In seeking to obtain the concurrence of the NAC Representative, the Consultant shall provide the following information in writing, to the NAC Representative:
 - 6.2.3.1 the reason for inability of the entity or person to perform the Services;
 - 6.2.3.2 the name, qualifications and experience of the proposed replacement entity or person.
- 6.2.4 The Consultant shall not, in any event, allow performance of any part of the Services by unauthorized replacement entities or persons, and acceptance or rejection of a replacement entity or person by the NAC Representative shall not relieve the Consultant from responsibility to perform the Services. No payment shall be made for Services performed by unauthorized replacement entities or persons.
- 6.2.5 The NAC Representative may order the removal from the Consultant Team of any unauthorized replacement entity or person and the Consultant shall immediately remove the entity or person from the performance of the Services and shall, as stated above, secure a further replacement.
- 6.2.6 The fact that the NAC Representative does not order the removal of a replacement entity or person from the performance of the Services shall not relieve the Consultant from the Consultant's responsibility to meet all the Consultant's obligations in the performance of the Services.
- 6.2.7 Failure to honour these requirements may result in default of the Agreement.

6.3 PAYMENT FOR CHANGES AND REVISIONS

- 6.3.1 Payment for any additional or reduced Services authorized by the NAC Representative prior to their performance, and for which a basis of payment has not been established at the time of execution of the Agreement, shall be in amount or amounts to be agreed to by the parties, acting reasonably, in accordance with Section 5.0.
- 6.3.2 Where it is not possible, or not appropriate, to determine a fixed price fee or percentage fee prior to the performance of the additional or reduced Services, payment shall be made on the basis of a time based fee in accordance with Section 5.2.1.2. Disbursements shall be paid in accordance with Section 5.8.
- 6.3.3 Prior to the performance of additional or reduced Services on the basis of a time based fee, the NAC Representative shall determine, based on industry practice, input from the

Consultant and their cost proposal, hourly rates for any of those persons for whom the relevant information does not appear in the Agreement.

- 6.3.4 The NAC accepts no liability for any additional Services done by the Consultant over above that required of the Agreement, unless a Change Order is issued authorizing the Consultant to do such additional Services.

6.4 EXTENSION OF TIME

- 6.4.1 If the time for the contract is exceeded or extended through no fault of the Consultant, such an extension of time shall be administered and the Consultant shall be compensated based on agreement between the Corporation and the Consultant.

7.0 TERMINATION OR SUSPENSION

7.1 TAKING THE SERVICES OUT OF THE CONSULTANT'S HANDS

- 7.1.1 The Corporation may take all or any part of the Services out of the Consultant's hands and may employ reasonable means necessary to complete the Services if:
- 7.1.1.1 the Consultant has become insolvent or has committed an act of bankruptcy, and has neither made a proposal to its creditors nor filed a notice of intention to make such a proposal, pursuant to the Bankruptcy and Insolvency Act; or
 - 7.1.1.2 fails to observe or perform any of the Agreement provisions; or
 - 7.1.1.3 makes unauthorized changes in the Consultant Team.
- 7.1.2 Further to Section 7.1.1.1, the Consultant must immediately forward a copy of the proposal or the notice of intention to the NAC Representative.
- 7.1.3 Prior to the Services or any part of the Services are taken out of the Consultant's hands, the NAC Representative will provide notice to the Consultant, and may require such failure of performance or progress to be corrected. If within fourteen (14) calendar days after receipt of notice the default is not corrected or corrective action is not initiated, the NAC Representative may take all or any part of the Services out of the Consultant's hands.
- 7.1.4 If the Services or any part of the Services have been taken out the Consultant's hands, the Consultant will be liable for and shall pay the Corporation the amount equal to all loss and damage suffered by the Corporation for the Consultant's non-completion of the required Services under the Agreement.
- 7.1.5 If the Consultant does not pay the amount for loss and damage suffered by the Corporation, the Corporation will be entitled to deduct this amount from any payments due to the Consultant.
- 7.1.6 The taking of the Services, or any part of the Services, out of the Consultant's hands does not relieve or discharge the Consultant from any obligation under the Agreement, or imposed upon the Consultant by law, in respect to the Services or any part of the Services that the Consultant has performed.

- 7.1.7 For any action taken by the Corporation, as detailed in this Section, the Consultant has no claim for damages, compensation, loss of profit, loss of opportunity or allowance.

7.2 SUSPENSION

- 7.2.1 The NAC Representative may upon providing a notice in writing to the Consultant require the Consultant to suspend the Services or part of the Services being provided, for a specified or unspecified period.
- 7.2.2 If the NAC Representative suspends the work for thirty (30) calendar days or less the Consultant must resume the performance of the Services in accordance with the terms of the Agreement.
- 7.2.3 If the work is suspended in excess of thirty (30) calendar days the NAC Representative may decide to resume the performance of the Services or that the Agreement will be terminated under Section 7.0.
- 7.2.4 During the period of suspension of the Services the Consultant shall minimize all costs and expenses relating to the Services that may occur during the suspension period.
- 7.2.5 Within fourteen (14) calendar days of notice of suspension, the Consultant shall submit to the NAC Representative a schedule of all costs and expenses the Consultant incurred during the suspension period, for which the Consultant will request reimbursement.
- 7.2.6 Payment shall be made to the Consultant for those costs and expenses incurred within fourteen (14) calendar days of notice of suspension, if in the opinion of the Corporation, those costs are substantiated as having been reasonably incurred.

8.0 DISPUTE RESOLUTION

8.1 CONSULTATION AND CO-OPERATION

- 8.1.1 The parties agree to maintain open and honest communication throughout the Agreement.
- 8.1.2 The parties agree to consult and co-operate with each other in the furtherance of the Services and the resolution of problems or differences that may arise.

8.2 DISAGREEMENT AND NEGOTIATION

- 8.2.1 In the event of a disagreement regarding any aspect of the Services or any direction given under the Agreement:
- 8.2.1.1 the Consultant may give a written notice of disagreement to the NAC Representative. The written notice shall be promptly given and contain the particulars of the disagreement, any changes in time or amount claimed and make reference to the relevant clauses of the Agreement;
- 8.2.1.2 the Consultant shall continue to perform the Services in accordance with the Agreement and the NAC Representative instructions;

- 8.2.1.3 The Consultant and the NAC 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 Representative and the NAC Representative and, secondly and if necessary, at the level of a principal of the Consultant’s firm and a senior representative of the NAC.
- 8.2.2 The Consultant’s continued performance of the Services in accordance with the instructions of the NAC Representative shall not jeopardize the legal position of the Consultant in any disagreement.
- 8.2.3 If it was subsequently agreed or determined that the instructions given were in error or contrary to the Agreement, the Corporation shall pay the Consultant fees the Consultant would 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 NAC Representative. The fees mentioned in this section shall be calculated in accordance with the Terms of Payment set out in the Agreement.
- 8.2.4 The Corporation and Consultant will make reasonable efforts to resolve disputes arising under this Agreement by amicable negotiations. They agree to provide frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations, without prejudice to their rights and recourses.
- 8.2.5 If a dispute has not been resolved by negotiations, either party may notify the other party, in writing, that it wishes the dispute to be resolved by mediation. If the parties are unable to agree upon the choice of a mediator, either party may apply to a superior court justice to appoint a mediator.
- 8.2.6 Should mediation not resolve the dispute, a party may refer the unresolved dispute to the courts or, upon mutual agreement, to any other form of dispute resolution, including binding arbitration.

9.0 INDEMNIFICATION AND INSURANCE

9.1 INDEMNIFICATION BY THE CONSULTANT

- 9.1.1 The Consultant shall indemnify and save harmless the Corporation, 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 Services under the Agreement.
- 9.1.2 The Consultant’s liability to indemnify or reimburse the Corporation under the Agreement shall not affect or prejudice the Corporation from exercising any other rights under law.

9.2 INDEMNIFICATION BY THE CORPORATION

- 9.2.1 The Corporation shall indemnify and save the Consultant harmless from and against all claims, demands, losses, costs, damage, actions, suits or proceedings arising out of the

Consultant's activities under the contract that are directly attributable to an infringement or an alleged infringement by the Consultant of any patent of invention or any other kind of intellectual property occurring while the Consultant was performing any act for the purposes of the contract employing a model, plan or design or any other thing related to the Services that was supplied by the Corporation to the Consultant.

9.3 INSURANCE REQUIREMENTS - GENERAL

- 9.3.1 The Consultant shall ensure that appropriate liability insurance coverage is in place to cover the Consultant and their Sub-Consultants and shall maintain all required insurance policies as specified herein for the duration of the Agreement.
- 9.3.2 The Consultant shall, if requested by the NAC Representative at any time, provide to the NAC Representative an Insurer's Certificate of Insurance.
- 9.3.3 The payment of monies up to the deductible amount made in satisfaction of a claim shall be borne by the Consultant.

9.4 COMMERCIAL GENERAL LIABILITY

- 9.4.1 This policy is written on the Comprehensive General Liability Form, insuring the Corporation and Consultant. This policy also includes any individual firm or corporation under the Contract for the supply of the Services specific to this Contract.
- 9.4.2 The minimum limit of the Policy is five million dollars (\$5,000,000.00) inclusive, for bodily injury and property damage, any one occurrence or series of occurrences, arising out of one cause.
- 9.4.3 The Policy contains, at a minimum, the following provisions:
 - 9.4.3.1 bodily injury and property damage on an occurrence basis;
 - 9.4.3.2 personal injury coverage;
 - 9.4.3.3 contingent employer's liability;
 - 9.4.3.4 contractual liability assumed under the Contract;
 - 9.4.3.5 completed operations coverage for two (2) years after the date of issue of Final Certificate of Completion of the entire project;
 - 9.4.3.6 cross liability clause; and
 - 9.4.3.7 legal liability for hired automobiles.
- 9.4.4 This insurance takes effect on the date of Contract award and remains in effect until the date the Final Certificate of Completion for the entire project is issued, and for two (2) years thereafter for completed operations.

9.5 PROFESSIONAL LIABILITY

- 9.5.1 The professional liability insurance coverage shall be in an amount usual for the nature of scope of the Services and be continually maintained from the date of Contract award

until five (5) years after their completion. The professional liability insurance coverage details will be identified between the Corporation and the Consultant.

10.0 PERFORMANCE EVALUATION

10.1 PERFORMANCE EVALUATION - DETAILS

- 10.1.1 The performance evaluation review purpose and process is described in the document entitled 'Performance Evaluation Guidelines', which forms part of the Agreement.
- 10.1.2 The Consultant will be evaluated according to the criteria and weight factors identified on the document entitled 'Consultant Performance Evaluation Review Form (CPERF)'.
- 10.1.3 A filled out CPERF will be provided to the Consultant at the completion of the Services or if the Services are taken out of the Consultant's hands as a result of default. The CPERF will be completed by the NAC Representative. The results will be provided to the Consultant.
- 10.1.4 Interim CPERFs may be provided to the Consultant to advise on their performance during the delivery of the Services.