

ANNEX II – GENERAL TERMS AND CONDITIONS FOR GOVERNMENT OF CANADA

1. Nothing in this agreement shall be deemed to authorize the Institution to contract for or incur any obligation on behalf of CHIN.
2. No member of the House of Commons or Senate or employee of the Government of Canada shall be admitted to any share or part of this agreement or to any benefit arising therefrom without the written consent of the official's or employee's Minister.
3. This agreement may not be assigned in whole or in part without the written consent of the parties and any assignment made without that consent shall be void and of no effect.
4. Time is of the essence of this agreement.
5. In the event of a dispute arising during the term of this Agreement, the parties agree to make a good faith attempt to settle the dispute. In the event that the parties could not resolve the dispute through negotiation, they agree to submit the dispute to mediation. The parties shall bear the costs of mediation equally.
6. In the event that this agreement is subject to a dispute and the parties choose not to exercise their right of termination or suspend the agreement, the agreement shall be considered in force until competent legal authority has resolved the dispute.
7. This agreement may be amended upon the mutual written consent of the parties.
8. This agreement shall be governed by and interpreted according to the laws in force in the province of Ontario.

9. PAYMENT

- 1) The institution is required to submit to the Departmental Representative for each payment (as per the payment schedule) a signed invoice showing the , Institution name, address and GST or HST number and certifying the work completed to date and the period covered by the invoice.
- 2) a) All payments under the agreement shall be conditional upon satisfactory completion and delivery of the work, or any part of the work, and its approval by CHIN, and upon submission of an invoice.
b) In the case of a progress payment other than the final payment, within thirty (30) days following the date of receipt of a satisfactorily completed work report or progress claim in accordance with the terms of the agreement, whichever date is the later;
c) In the case of a final payment, within thirty (30) days following the date of receipt of a satisfactorily completed final progress claim, or within thirty (30) days following the date on which the work is completed in accordance with the terms of the agreement, whichever is the later;
d) If CHIN has any objection to the form of the progress or final payment or the substantiating documentation, within fifteen (15) days of its receipt, he shall notify the Institution of the nature of the objection. "Form of the progress claim" means a progress claim which contains or is accompanied by such substantiating documentation as CHIN requires. Failure by CHIN to act within fifteen (15) days will only result in the date specified in paragraph 2)a) or 2)b) of this clause being applied for the purpose of calculating interest on overdue accounts.
- 3) Unless otherwise indicated the Goods and Services Tax (GST) or the Harmonized Sales Tax (HST) is excluded from the agreement price, the GST or HST to the extent applicable will be incorporated into all invoices and will be paid by CHIN.

10. GOODS AND SERVICES TAX (GST) or HARMONIZED SALES TAX (HST)

The Goods and Services Tax (GST) or the Harmonized Sales Tax (HST) in Nova Scotia, New-Brunswick and Newfoundland and Labrador is excluded from the Agreement price. The GST or HST to the extent applicable, shall be incorporated into all invoices and claims for progress payments made and will be paid by CHIN. The Institution agrees to remit to Revenue Canada-Customs and Excise the applicable GST or HST that the Institution receives from CHIN pursuant to this Agreement.

11. EXEMPTION CERTIFICATE FOR QUEBEC SALES TAX

Signature of this agreement by CHIN certifies that all goods and/or services purchased with public funds for the use of the department are not subject to the Quebec Sales Tax.

12. SALES TAX

The Institution shall not invoice or collect any Ad Valorem Sales Tax levied by the Province in which the goods or taxable services are delivered to federal Government Departments under authority of the following Provincial Sales Tax Licenses:

Prince Edward Island	OP-10000-250
Ontario	11708174G
Manitoba	390516-0
British Columbia	005521

In all other provinces to the exception of the provinces that are subject to HST, provincial Sales Taxes do not apply to goods or taxable services delivered to Federal Government Departments or Agencies under this contract.

The Institution is not relieved of any obligation to pay Provincial Sales Taxes on goods or taxable services which the Institution uses or consumes in the performance of this agreement.

13. PAYMENT OF INTEREST ON OVERDUE ACCOUNTS

- 1) a) In this clause, an amount is "due and payable" when it is due and payable by CHIN to the Institution according to the provisions of the Agreement.
- b) For the purposes of this clause, an amount is overdue when it is unpaid on the first day following the day upon which it is due and payable.
- c) In this clause, "date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable.
- d) In this clause, "Bank Rate" means the discount rate of interest set by the Bank of Canada.
- 2) a) CHIN shall be liable to pay to the Institution simple interest at the average rate plus 3 per cent on any amount that is overdue, from the day such amount becomes overdue until the date of payment. Interest shall be paid without notice from the Institution for payment that has been outstanding for more than 15 days. For payment made within 15 days that payment becomes overdue, interest will be paid at the request of the Institution. Interest will not be payable on overdue advance payments.
- b) The Bank Rate shall be the average (arithmetic mean) of the weekly bank discount rates for the previous month plus 3 per cent. The rates are published each Friday in the "Weekly Financial Statistics".
- 3) Interest shall only be paid when CHIN is responsible for the delay in paying the Institution. In the

event CHIN is not responsible for the delay in paying the Institution, no interest shall be paid.

- 4) CHIN shall not be liable to pay to the Institution any interest on unpaid interest.

14. INSTITUTION STATUS

This is a agreement for the performance of a service and the Institution is engaged under the agreement as an independent Institution for the sole purpose of providing a service. Neither the Institution nor any of the Institution personnel is engaged by the agreement as an employee, servant or agent of the Minister. The Institution agrees to be solely responsible for any and all payments and/or deductions required to be made including those required for Canada or Quebec Pension Plans, Unemployment Insurance, Worker's Compensation, or Income Tax.

15. ASSIGNMENT AND SUBCONTRACTING

- 1) No assignment or subcontract relieves the Institution from any obligation under the contract or imposes any liability upon Her Majesty or the Minister to an assignee or subcontractor.

16. NO BRIBES OR CONFLICT OF INTEREST

The Institution represents and warrants that:

- 1) no bribe, gift or other inducement has been paid, given, promised or offered to any person for or with a view to the obtaining of the agreement, by the Institution; and
- 2) the Institution has not employed any person to solicit or secure the agreement upon any agreement for a commission, percentage, brokerage or contingent fee; and
- 3) the Institution has no pecuniary interest in the business of any third party that would affect its objectivity in carrying out the work.

17. CONFLICT OF INTEREST AND POST-EMPLOYMENT CODE FOR PUBLIC OFFICE HOLDERS (1994) AND CONFLICT OF INTEREST AND POST-EMPLOYMENT CODE FOR THE PUBLIC SERVICE (1985)

- 1) The Institution declares that the Institution has no pecuniary interest in the business of any third party that would cause a conflict of interest or seem to cause a conflict of interest in carrying out the work. Should such an interest be acquired during the life of the agreement, the Institution shall declare it immediately to the Departmental Representative.
- 2) It is a term of the agreement:
 - a) that no former public office holder or public servant who is not in compliance with the post-employment provisions of the applicable code shall derive a direct benefit from this agreement;
 - b) that during the term of the agreement any persons engaged in the course of carrying out this agreement shall conduct themselves in compliance with the principles of the applicable Code. Should an interest be acquired during the life of the agreement that would cause a conflict of interest or seem to cause a departure from the principles, the Institution shall declare it immediately to the Departmental Representative.

18. CERTIFICATION - CONTINGENCY FEES

- 1) The Institution certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this agreement to any person other than an employee acting in the normal course of the employee's duties.
- 2) All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the agreement shall be subject to the Accounts and Audit provisions of the contract.
- 3) If the Institution certifies falsely under this clause or is in default of the obligations contained therein, CHIN may either terminate this agreement for default provisions of the agreement or recover from the Institution by way of reduction to the agreement price or otherwise the full amount of the contingency fee.
- 4) In this clause:
 - a) "Contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a Government Agreement or negotiating the whole or any part of its terms.
 - b) "employee" means a person with whom the Institution has an employer/employee relationship.
 - c) "person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the Lobbyist Registration Act R.S. 1985 c.44 (4th Supplement) as the same may be amended from time to time.

19. CONFIDENTIALITY

- 1) The Institution shall treat as confidential, during as well as after the performance of any work under this agreement, any information, including any personal information as defined in the Privacy Act, to which the Institution becomes privy as a result of acting under the agreement. For more certainty, the Institution shall not disclose any such information to any other person or party which is not participating in the agreement in a form that could reasonably be expected to identify the person, including individuals, to whom such information relates.
- 2) Where the work to be performed under the agreement involves access by the Institution to confidential, classified or protected documents, the Institution shall comply with all applicable security procedures and requirements which can be obtained at the Departmental Protection and Safety Services.

20. SUCCESSORS AND ASSIGNS

The agreement shall enure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.

21. ENTIRE AGREEMENT

The agreement constitutes the entire agreement between the parties with respect to the subject matter of the agreement and supersedes all previous negotiations, communications and other agreements relating to it unless they are incorporated by reference in the agreement.

22. NOTICES

Where in the agreement any notice, request, direction, or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person, sent by ordinary or registered mail, by telegram or by telex addressed to the party for whom it is intended at the address mentioned in the agreement and any notice, request, direction or other communication shall be deemed to have been given if by ordinary mail, when in the ordinary course the letter should have reached its destination; or by registered mail, when the postal receipt is acknowledged by the other party; by telegram, when transmitted by the carrier; and, by telex, when transmitted. The address of either party may be changed by notice in the manner set out in this provision.

23. LEGALITY

The Institution shall ensure that the agreement will be executed in compliance with all applicable laws.

24. INTERNATIONAL SANCTIONS

- 1) Persons and companies in Canada are bound by economic sanctions imposed by Canada by regulations passed pursuant to the *United Nations Act*. As a result, the Government of Canada cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries, entities or individuals subject to economic sanctions. Departments may obtain a list of sanctions from the Foreign Affairs and International Trade Canada site (<http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp>).

At the time of agreement award, the following regulations implement economic sanctions to:

- a) Côte d'Ivoire
 - b) Congo
 - c) Iraq
 - d) Liberia
 - e) Rwanda
 - f) Sierra Leone
 - g) Sudan
 - h) Terrorists
- 2) It is a condition of this agreement that the Institution not supply to the Government of Canada any goods or services which are subject to economic sanctions.
 - 3) During the performance of the agreement should the addition of a country to the list of sanctioned countries or the addition of a good or service to the list of sanctioned goods and services cause an impossibility of performance for the Institution, the situation will be treated by the Parties as a force majeure. The Institution shall forthwith inform Canada of the situation; the procedures applicable to force majeure shall then apply.