

# PROJECT MANAGEMENT AGREEMENT

BETWEEN:

COMMUNITY OF [PLEASE INSERT NAME] \_\_\_\_\_

AND:

\_\_\_\_\_

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**PROJECT MANAGEMENT AGREEMENT**

**THIS AGREEMENT** dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**BETWEEN:**

**COMMUNITY OF** \_\_\_\_\_

(hereinafter called the "Community")

**OF THE FIRST PART**

**AND:**

\_\_\_\_\_

(hereinafter called the "Contractor")

**OF THE SECOND PART**

**WHEREAS** the Contractor has agreed to provide to the Community the Services and the Community has agreed to pay to the Contractor certain sums in consideration of the Services.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises and the covenants herein contained, the Community and the Contractor covenant and agree each with the other as follows:

**ARTICLE 1 - DEFINITIONS**

**1.1 Definitions**

For the purposes of this Agreement, including the recitals hereto, each of the following expressions have the meanings ascribed to them in this Section 1.1, unless the context otherwise requires:

- (a) "Agreement", "hereto", "herein", "hereby", "hereunder", "hereof" and similar expressions when used in this Agreement refer to the whole of this Agreement which includes the attached

Schedules and not to any particular Article or Section or portion thereof and include any and every instrument supplemental hereto;

- (b) "**Agreement Amount**" means the amount set out in Schedule "C";
- (c) "**Commencement Date**" means the \_\_\_\_ day of \_\_\_\_\_, 20\_\_;
- (d) "**Completion Date**" means the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, or such later date as may be agreed upon in writing by the parties;
- (e) "**Confidential Information**" has the meaning ascribed to it in Section 5.1;
- (f) "**Community Contracts**" means those contracts for services between the Community and a third party under which the Community has subcontracted all or part of its obligations thereunder to the Contractor to perform;
- (g) "**Service Results**" has the meaning ascribed to it in Section 5.3;
- (h) "**Services**" means those Services to be provided and performed by the Contractor hereunder, as more particularly described in Schedule "A" hereto, and all other services to be provided or performed as directed by the Community;
- (i) "**Term**" means the period of time commencing on the Commencement Date and ending on the Completion Date.

1.2 **Number and Gender**

Words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter gender and words importing persons shall also mean firms, corporations and partnerships and vice versa.

1.3 **Headings and Division**

The division of this Agreement into Articles and Sections and the headings of any Articles or Sections are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**ARTICLE 2 - SERVICES**

2.1 **Services**

The Contractor shall provide the Services upon the terms and conditions contained herein.

## 2.2 **Commencement and Completion of Services**

The Contractor shall commence the Services no later than the Commencement Date and complete the Services on or before the Completion Date, subject always to sooner termination as provided for herein.

## 2.3 **Performance of Work**

The Contractor shall exercise the degree of care, skill and diligence normally used in performing services of a similar nature to those Services to be provided under this Agreement. All work done in performing the Services under this Agreement shall:

- (a) be supervised by competent and qualified personnel;
- (b) be performed in accordance with the Community's directions and to the Community's satisfaction;
- (c) comply with the requirements of this Agreement;
- (d) be documented according to the Community's requirements; and
- (e) be performed in compliance with the Community Contracts.

All work done in performance of the Services shall be subject to such review as the Community considers advisable or appropriate. Any work not meeting the requirements of this Agreement may be rejected by the Community and shall require appropriate correction by the Contractor. No such review by the Community shall relieve the Contractor from the performance of its obligations hereunder.

## 2.4 **Warranty of Contractor**

The Contractor represents and warrants to the Community:

- (a) that it has sufficient skill, knowledge, expertise and resources, including qualified and competent personnel, to perform and provide the Services in accordance with the provisions of this Agreement;
- (b) that it is not involved in and is not aware of any actual or potential law suit or circumstance which would or could materially affect its ability to perform the Services hereunder and, upon becoming aware of such, it shall immediately notify the Community and provide the Community with details of the nature of the law suit or circumstance; and
- (c) that the entering into of this Agreement and the performance of the Services hereunder shall not cause the Contractor to be in breach of any obligation of confidentiality which the Contractor may owe to any third party, or otherwise cause the Contractor to be in breach of any agreement or undertaking with any third party.

## 2.5 **Progress Reports**

If required by the Community, the Contractor shall provide progress reports to the Community and/or attend progress meetings regarding the performance of the Services, in such form and detail and whenever and as often as requested by the Community.

## 2.6 **Compliance with Legislation**

In performing the Services hereunder (including any portion thereof performed by any subcontractors), the Contractor shall comply with the provisions and requirements of all laws, rules and regulations by lawful authority applicable including, without limitation, all relevant legislation, codes, bylaws, regulations and ordinances as well as the Community policies, procedures and regulations as are made known to the Contractor by the Community. Where there are two or more laws, codes, bylaws, regulations, ordinances, policies, procedures or regulations applicable to the Services, the more restrictive shall apply. Evidence of compliance with such laws shall be furnished by the Contractor to the Community at such times as the Community may reasonably request. In the event the Contractor, its personnel, any agent or subcontractor or their respective personnel, fail to comply with any legislation or any regulations thereunder and the Community is required to do anything or take any steps or pay any amounts to rectify such non-compliance, the provisions of Section 4.4 of this Agreement shall apply.

## 2.7 **Permits and Licenses**

The Contractor shall obtain and pay for all necessary permits or licenses required in connection with providing or performing the Services.

# **ARTICLE 3 - PERSONNEL**

## 3.1 **No Substitution**

If specific personnel are designated by this Agreement to perform the Services or any part thereof, the Contractor shall not substitute other personnel for those designated without the prior written consent of the Community. If any such personnel shall become no longer available for any reason, the Contractor shall supply a similarly experienced and skilled individual as soon as practicable subject to approval of such individual by the Community.

## 3.2 **No Subcontractors**

The Contractor shall not engage or retain any agent, subcontractor or any other third party for purposes of providing the Services hereunder in whole or in part without the prior written consent of the Community (which may be arbitrarily withheld) and on terms and conditions satisfactory the Community in its sole discretion. The use of any agents, subcontractor or any other third parties by the Contractor shall in no way relieve the Contractor from its responsibility and obligation to provide the Services in accordance with the provisions of this Agreement.

### 3.3 **Removal of Personnel**

The Contractor shall forthwith remove from the Community's premises and from performance of the Services any officer, employee, agent or subcontractor who is for any reason unsatisfactory to the Community including, without limitation, and such person who:

- (a) is charged with and convicted of a criminal offence;
- (b) fails, in the opinion of the Community or in the opinion of the Contractor, to carry out the work required in the performance of the Services in a satisfactory manner including, without limitation, causing any delays in the performance of the Services;
- (c) removes any property not belonging to the Contractor, its personnel or any agent or subcontractor, as the case may be, from the Community premises without the prior written consent of the Community, or
- (d) discloses or uses any Confidential Information contrary to the provisions of Section 5.1 of this Agreement, without the prior written permission of the Community;

and, in the case of paragraphs (c) and (d), the Contractor shall take all reasonable steps to ensure that any property removed from the Community is promptly returned, or to restrain any further improper disclosure or use of the Confidential Information, as the case may be. Any costs or expenses associated with removal of any such officer, employee, agent or subcontractor shall be the responsibility of the Contractor, including any necessary training costs or expenses associated with replacement persons, as determined by the Community.

### 3.4 **Compliance with Policies**

The Contractor shall ensure that its personnel and agents and subcontractors, when using the Community premises, comply with all security, safety, emergency and access policies, procedures or regulations in effect from time to time on such premises.

### 3.5 **Safety**

The Contractor shall be responsible for the safety of its personnel and any agents or subcontractors, and all property of the Contractor or its personnel, agents or subcontractors while on the Community premises. The Community shall not be responsible for any personal property, tools or equipment that the Contractor or its personnel, agents or subcontractors may bring onto the Community premises.

### 3.6 **No Solicitation**

During the Term of this Agreement, and for a period of twelve (12) months thereafter, the Contractor shall not, directly or indirectly, solicit for employment any the Community employee or agent. For the purposes of this Section 3.6, "employee" shall include any individual who was employed by the Community at any time during the six (6) month period prior to the time in question.



## **ARTICLE 4 - PAYMENT**

### 4.1 **Payment**

The Community shall pay the Contractor in accordance with the provisions of Schedule "B" (Terms of Payment), upon the diligent and timely performance of the Services to the satisfaction of the Community. No payment by the Community shall relieve the Contractor from the performance of its obligations hereunder.

### 4.2 **Excess Payments, Taxes**

The Community shall not pay any amount exceeding the Agreement Amount or make any payment for any work done by the Contractor after the Completion Date unless prior written authorization has been obtained by the Contractor from the Community. All customs duties, excise taxes (including G.S.T.), federal, provincial and municipal taxes and other duties, taxes or charges of a similar nature, and all travel and living expenses of the Contractor are included within the Agreement Amount, unless expressly stated otherwise in Schedule "C". If the total cost for man-days spent in performing the Services is less than the Agreement Amount, the Community shall not be required to pay to the Contractor any sum in excess of the total cost for man-days actually expended.

### 4.3 **No Payment for Costs, Expenses or Damages**

The Community shall not be required to make any payment to the Contractor under this Agreement for any costs, expenses, losses or damages suffered or incurred:

- (a) in performing any work reasonably incidental to the performance of the Services;
- (b) as a result of any delays in performing the Services from any cause whatsoever; or
- (c) to remedy errors or omissions for which, in the reasonable opinion of the Community, the Contractor is responsible.

### 4.4 **Performance upon Failure of Contractor**

Upon failure of the Contractor (including any of its subcontractors) to perform any of its obligations under this Agreement the Community may, but shall not be obligated to perform or engage a third party to perform any of those obligations without prejudice to any other remedy or right it may have and the Contractor, immediately upon written demand, shall pay an amount equal to all costs and expenses incurred by the Community in association therewith, plus interest on that amount from the date the cost or expense is incurred until it is paid at the rate of 1.5% per month (19.6% per annum). The Community may, in its discretion, deduct any such amount, together with interest, from any payment then or thereafter due by the Community to the Contractor, provided that such action shall not be deemed a waiver of any action that the Community may pursue to collect any costs or expenses incurred herewith that exceed the amounts owed to the Contractor.

### 4.5 **Withholdings**

Notwithstanding any other provision of this Agreement, the Community shall be entitled to withhold and remit to the appropriate taxing authorities, or otherwise withhold, federal withholding taxes or any

other amounts required by law to be withheld from payments made to the Contractor. If the Contractor is a non-Canadian resident the Community shall, as required by federal legislation, deduct all applicable federal withholding taxes. For this purpose, the Contractor shall separately identify in each invoice all work performed in Canada and that performed elsewhere. The Contractor will be provided with evidence of withholdings as required, upon written request. If the Contractor provides the Community with an exemption certificate from Revenue Canada, then the Community shall not withhold any federal withholding tax in respect of the payment made to the Contractor in reliance on such certificate of exemption.

The Contractor is responsible for all deductions and remittances required by law in relation to its employees including those required for Canada Pension Plan, unemployment insurance, workers' compensation or income tax. The Community shall have no liability or responsibility for the withholding, collection or payment of income taxes, unemployment insurance, statutory or other taxes or payments of any other nature on behalf of or in respect of or for the benefit of the Contractor or any other person. The Contractor shall pay all municipal, provincial, or federal sales, excise (including G.S.T.) or other taxes or payments of any type payable hereunder to any level of government, and shall indemnify and hold the Community, its officials, representatives, agents and employees harmless against any order, fine, penalty, interest or tax that may be assessed or levied against the Community or such persons as a result of the failure or delay of the Contractor to make any such payment or to file any return or information required by any law, ordinance, regulation or other lawful authority. The Community is authorized to pay any demand by any level of government or government agency, including the Workers' Compensation Board, due to a failure by the Contractor, in which event the provisions of Section 4.4 of this Agreement shall apply.

4.6 **Records**

The Contractor shall keep and maintain, at its principal place of business in \_\_\_\_\_, **[INSERT COMMUNITY ADDRESS]** or at such other location as may be agreed by the Community, adequate and complete records from which any fees, costs, charges, reimbursable expenses or other amounts payable by the Community to the Contractor may be readily and accurately determined and verified for each calendar month during the Term of this Agreement. The Contractor shall take such steps as are necessary to maintain such records in accordance with generally accepted accounting practices in Canada.

Such records shall be open to inspection by the Community, or its agents, during the Contractor's regular business hours. The Contractor shall be required to retain such records for a period of seven (7) years following expiration or termination of this Agreement.

4.7 **Audit**

The Community or its agents shall, from time to time during the Term of this Agreement, and for a period of two (2) years thereafter, during business hours and upon reasonable notice to the Contractor, be entitled to review all or any of the security, quality assurance procedures, accounting or other records and procedures of the Contractor regarding the Services or business relationship between the Community and the Contractor affecting any fees, costs, charges, reimbursable expenses or other amounts payable by the Community, or any commitments to the Community, and to have such records reviewed, audited, inspected or examined by an independent chartered accountant or other auditor or party designated by the Community to determine:

- (a) whether the Contractor has accurately recorded events or transactions requiring payments of fees, costs, charges, reimbursable expenses or other amounts by the Community, as applicable;
- (b) the status of the provision of the Services; and
- (c) whether the Contractor is complying with the terms of this Agreement.

The costs of any such inspection or audit shall be payable by the Community.

#### 4.8 **Acceptance is Not Waiver**

The acceptance by the Community, from time to time, of any statement of fees, costs, charges, reimbursable expenses or other amounts delivered by the Contractor or any payment of such amounts based thereon shall not be deemed to be a waiver by the Community of any of the Contractor's obligations or the Community's rights under this Agreement. However, if the Community has not caused an audit or inspection of the Contractor's accounting records or Services for any calendar month to commence within two (2) years of the last day of any such calendar month, the Community and the contractor agree that the accounting records and all such amounts paid for that calendar month shall have been deemed to have been made accurately and in full compliance with the provisions of this Agreement.

### **ARTICLE 5 - INFORMATION AND PROPERTY RIGHTS**

#### 5.1 **Confidential Information**

The Contractor agrees that:

- (a) all data, information and material of a confidential nature provided or disclosed to the Contractor by or on behalf of the Community;
- (b) all data, information and material of a confidential nature concerning the Community's business, systems, operations, processes, technology, trade practices, marketing or other strategic plans, which is obtained by the Contractor in the performance of its obligations under this Agreement;
- (c) the Service Results; and
- (d) any and all information or material provided to the Contractor by or on behalf of the Community which is marked "CONFIDENTIAL";

and all copies thereof (hereinafter collectively called the "Confidential Information") are confidential and constitute valuable and proprietary information and materials of the Community and shall be kept strictly confidential, both during and after the Term of this Agreement, and shall only be used for the purpose of providing the Services hereunder. In that regard, such Confidential Information may only be disclosed by the Contractor to those of its officers, employees, agents or subcontractors who have a need to know such information for the purposes of this Agreement and the Contractor shall take appropriate steps, whether by instruction, agreement or otherwise to ensure that such officers, employees, agents and subcontractors keep such information strictly confidential and

otherwise comply with the provisions of this Section 5.1. No Confidential Information shall be copied or provided or disclosed to any other party without the prior written consent of the Community, which consent may be arbitrarily withheld. The Contractor acknowledges that it has no interest in the Confidential Information and shall surrender all Confidential Information in its possession or control (including all copies thereof) to the Community immediately upon termination or expiration of this Agreement or at any earlier time upon the Community's request, and shall thereafter cease all use of the Confidential Information.

## 5.2 **Injunctive Relief**

The parties agree that improper disclosure or use of the Confidential Information will cause irreparable harm to the Community, which harm may not be adequately compensated by damages. As a result, the parties agree that, in addition to all other remedies the Community may have and not in derogation thereof, the Community may seek and obtain from any court of competent jurisdiction injunctive relief in respect of any actual or threatened disclosure or use contrary to the provisions of this Agreement.

## 5.3 **Ownership of Service Results**

The Contractor agrees that all discoveries, designs, inventions, works of authorship, improvements in any apparatus, device, process, technology or thing, know-how, base materials, research results, data, surveys, maps, plans, schematics, reports (including progress reports referred to in Section 2.5), charges, tabulations, compilations, diagrams, flow-charts, processes, formulae, computer programs, specifications, screen or program layouts, drawings, documents, and notes or materials of any type whatsoever developed, created, conceived of, first reduced to practice or prepared by or on behalf of the Contractor or any officer, employee, agent or subcontractor in performance of the Services either alone or jointly with others (hereinafter collectively called the "Services Results") shall be fully and promptly disclosed to the Community and shall be the absolute and exclusive property of the Community, including any patent, copyright, other intellectual property or other rights of any kind in relation thereto. The Contractor hereby assigns, transfers and conveys to the Community all of its right, title and interest in and to the Service Results and the Contractor shall promptly execute and do or cause to be executed and done any and all documents and things necessary or desirable to give effect to the provisions of this Section 5.4, including the execution of a written assignment of all right, title and interest, whether in law or in equity, to the Community for any or all of the Services Results, in form acceptable to the Community. Upon completion of the Services or expiration or termination of this Agreement, whichever is sooner (and from time to time upon request by the Community), the Service Results and all copies thereof shall be delivered by the Contractor to the Community without demand by the Community without demand by the Community, together with all supporting materials, explanatory notes and know-how required or reasonably necessary for full and complete disclosure of such Service Results and to enable the Community to understand, use and modify the Service Results without assistance. No use may be made of the Service Results by the Contractor other than in connection with the performance of the Services hereunder. The Contractor hereby waives absolutely (and shall cause any other persons to waive absolutely) in favour of the Community, its successors and assigns, any moral rights the Contractor or such other persons have or may at any time hereafter have in the Service Results.

## 5.4 **Protection of Rights**

The Contractor shall, at the request and expense of the Community, execute or cause to be executed any documents and do or cause to be done all things which may be necessary or desirable to enable the Community

to file of and prosecute applications for patents, file for and obtain copyright registrations or otherwise protect any of the Community's interest in and to the Service Results or any part thereof, in Canada or any other country. The Community shall have complete control of and responsibility for the filings and prosecution of applications for patents, copyrights or other registrations in Canada and in foreign countries. The Community shall assume all expenditures necessary to prepare and prosecute such applications and maintain or renew any resulting registrations.

#### 5.5 **Records of Contractor**

The Contractor shall make and maintain during the Term of this Agreement, adequate and current written records of all Service Results, which records shall be made available to and remain the property of the Community at all times, both during and after the Term of this Agreement.

#### 5.6 **Warranty of Original Work**

The Contractor warrants that all Service Results will be original development by the Contractor, will not infringe any rights of any third parties and will otherwise be free of any claims of third parties, and will be specifically developed for the fulfilment of this Agreement.

#### 5.7 **No Challenge**

The Contractor shall not challenge or deny nor assist any third party in challenging or denying any of the Community's rights in and to the Service Results.

### **ARTICLE 6 - TERMINATION**

#### 6.1 **Termination for Convenience**

This Agreement may be terminated at any time, with or without cause, by the Community providing written notice to the Contractor at least seven (7) days prior to the termination date specified in the notice.

#### 6.2 **Termination for Default**

The Community may forthwith terminate this Agreement by providing written notice of termination to the Contractor, without prejudice to any other right or remedy the Community may have, if the Contractor at any time:

- (a) fails to comply with any of the terms or conditions of this Agreement; or
- (b) is adjudged or otherwise becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, if a receiver is appointed for the property of the Contractor, or if the Contractor ceases to carry on business in the normal course;

such termination to be effective on the date such notice of termination is received.

### 6.3 **Payment upon Termination**

The Community shall, in the event of termination of this Agreement, other than pursuant to Section 6.2(a), pay to the Contractor all amounts for completed work due to the Contractor in accordance with this Agreement, less any amounts which may be owing by the Contractor to the Community as provided for hereunder. The Community shall have no further liability of any nature whatsoever to the Contractor for any losses or damages suffered or sustained, either directly or indirectly, by the Contractor including, without limitation, loss of profit, as a result of the termination of this Agreement.

### 6.4 **Effect of Termination**

Upon termination or expiration of this Agreement:

- (a) the Contractor shall forthwith return to the Community all Confidential Information in written form within its possession or control, together with all copies thereof or, at the Community's written direction, destroy all such Confidential Information and provide the Community with a certificate confirming such destruction; and
- (b) no further use may be made by the Contractor of the Service Results or any portion thereof, for any purpose whatsoever.

### 6.5 **Survival of Obligations**

Notwithstanding the expiration or termination of this Agreement for any cause, the provisions of this Agreement regarding payment obligations, indemnities, confidentiality obligations and proprietary rights, and those provisions which are expressly or impliedly intended to survive, shall survive any such expiration or termination and shall remain in force and shall include, without limitation, the provisions of Section 3.3, Section 3.6, Article IV, Article V, Section 6.3, Section 6.4, Section 6.5, Article VII and Section 8.8.

## **ARTICLE 7 - INDEMNITY AND INSURANCE**

### 7.1 **Indemnity**

Notwithstanding any other provision of this Agreement to the contrary, the Contractor shall:

- (a) be liable to the Community, its officials, representatives, agents and employees for any and all losses, costs, damages and expenses (and without limiting the generality of the foregoing, any direct losses, costs, damages and expenses of the Community or such persons, including costs as between a solicitor and his own client full indemnity basis) which the Community or such persons may pay or incur;
- (b) indemnify and hold harmless the Community, its officials, representatives, agents and employees from and against any and all liabilities, claims, suits or actions which may be brought or made against the Community or such persons;

as a result of or in connection with:

- (c) the performance of the Services; or
- (d) any breach, violation or non-performance of any covenant, condition or agreement in this Agreement set forth and contained on the part of the Contractor to be fulfilled, kept, observed or performed; or
- (e) any breach of confidentiality on the part of the Contractor or any agent or subcontractor, or employee of the Contractor or any agent or subcontractor; or
- (f) any damage to property (including loss of use thereof) or injury to person or persons, including death resulting at any time therefrom, arising out of or in consequence of the performance of the Services; or
- (g) the failure of the Community to withhold any taxes or other amounts in respect of payments made to the Contractor under this Agreement; or
- (h) any suit or proceeding based on a claim that the Service Results or any portion thereof infringes or constitutes wrongful use of any copyright, patent, trademark, trade secret or any other right of any third party;

and the Community shall be deemed to be the agent of its officials, representatives, agents and employees in regard thereto.

## 7.2 Insurance

**Note: We strongly recommend that the Community discuss insurance requirements with NCIP for each Project Management Agreement. This section will need to be revised accordingly, based on the insurance requirements suggested by the Community's risk management advisors.**

The Contractor shall without limiting its obligations or liabilities hereto, obtain and maintain at its sole expense and pay for during the period of this contract the following insurance coverage. The amount and type of insurance specified herein in no way reduces or limits the liability or responsibility of the Contractor hereunder.

Within 14 days after acceptance of the Contractors tender the Contractor shall, unless otherwise directed in writing by the Community, deposit with the Community an Insurer's Certificate of Insurance in a form acceptable to the Community and if requested, the originals or certified true copies of all insurance contracts maintained by the Contractor pursuant to the insurance coverage requirements shown hereunder.

The provisions of the insurance coverage requirements contained hereunder are not intended to cover all of the Contractors risk under this contract. Any additional risk management measures or additional insurance coverage the Contractor may deem necessary to fulfill its obligations under this contract shall be at the Contractors own discretion and expense.

The Contractor agrees to waive all rights of recourse against the Community for damages to any of the Contractor's property or property of others for which the Contractor is responsible and the Contractor's Insurers have no right of

subrogation against the Community except those claims which are the result of the negligent acts or omissions of the Community.

(a) **Commercial General Liability Insurance** with limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury, death and property damage including loss of use thereof. This insurance shall be maintained continuously from commencement of the work until not less than 12 months from the date of the Final Certificate of Completion. The insurance policy shall include but is not limited to:

- Premises, Property and Operations Liability
- Products and Completed Operations Liability
- Owners and Contractor's Protective Liability
- Blanket Written Contractual Liability
- Broad Form Property Damage Extension
- Personal Injury Liability
- Employees as Additional Insured
- Cross Liability
- Contingent Employers Liability
- Non-owned Automobile Liability SPF # 6

The Policy must show the Community Government as an additional but only with respect to the operations of the named insured. The policy will also be endorsed to provide 30 days written notice of cancellation or reduction in the insurance coverage to the Community Government.

(b) **Automobile liability insurance** with respect to Contractor's owned and leased, licensed vehicles used directly or indirectly in the performance of the work with limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury death and property damage as per Standard Policy Form # 1.

(c) **Workers' Compensation coverage** for all employees, if any, engaged by the Contractor in accordance with the laws of the Northwest Territories;

(d) such other insurance as the Community may from time to time reasonably require.

## ARTICLE 8 - GENERAL

### 8.1 Schedules

The following Schedules attached hereto shall form part of this Agreement and are incorporated herein by reference:

- Schedule "A" - Services
- Schedule "B" - Terms of Payment
- Schedule "C" - Special Terms and Conditions



## 8.2 **Notices**

Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing.

Any Notice required or permitted hereunder shall be sent to the intended recipient at its address as set out in Schedule "C" or to such other address as each party may from time to time direct in writing.

Notice shall be served by one of the following means:

- (a) by delivering it to the party on whom it is to be served. Notice delivered in this manner shall be deemed received when actually delivered to such party;
- (b) if delivered to a corporate party, by delivering it to the address specified in above during normal business hours. Notice delivered in this manner shall be deemed received when actually delivered;
- (c) by fax or email to the party on whom it is to be served. Notice delivered in this manner shall be deemed received on the earlier of:
  - (i) if transmitted before 3:00 p.m. on a Business Day, on that Business Day; or
  - (ii) if transmitted after 3:00 p.m. on a Business Day, on the next Business Day after the date of transmission; or
- (d) by mailing via first class registered post, postage prepaid, to the party to whom it is served. Notice so served shall be deemed to be received five (5) days after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received.

## 8.3 **Assignment**

The Contractor shall not assign this Agreement or any portion thereof without the prior written consent of the Community, which consent may be arbitrarily withheld. Upon any transfer or assignment by the Community of this Agreement, the Community shall be released from its obligations hereunder. The Community may assign this Agreement in whole or in part to any person in the Community's sole discretion without notice to the Contractor.

## 8.4 **Waiver**

The failure of a party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such covenant or option and no waiver by the Community of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the Community.

#### 8.5 **Inurement**

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns or approved assigns, as the case may be.

#### 8.6 **No Agency**

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein nor any act of the parties hereto shall be deemed to create any relationship between the parties hereto other than an independent service agreement between the two parties at arm's length.

#### 8.7 **Whole Agreement**

The provisions of this Agreement constitutes the entire agreement between the parties and supersedes any prior agreements, letters of intent or understanding, whether written or oral, between the parties with respect to the matters contemplated herein. No terms, conditions, warranties, promises or undertakings of any nature whatsoever, express or implied, exist between the parties with respect to this Agreement except as herein set forth. This Agreement may be amended, changed or modified only by further written agreement between the parties.

#### 8.8 **Partial Invalidity**

If any term, condition or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, condition or provision shall be separately valid and enforceable to the fullest extent permitted by law.

#### 8.9 **Time of Essence**

Time shall be of the essence of this Agreement.

#### 8.10 **Expiration of Time**

In any case where the time limited by this Agreement expires on a Saturday, Sunday or legal holiday in the Northwest Territories, the time limited shall be extended to and shall include the next succeeding day which is not a Saturday, Sunday or legal holiday in the Northwest Territories.

#### 8.11 **Further Assurances**

Each of the parties to this Agreement shall at the request of the other party hereto, execute and deliver any further documents and do all acts and things as that party may reasonably require to carry out the full intent and meaning of this Agreement.

#### 8.12 **Independent Legal Advice**

Each party hereto acknowledges having read this Agreement and prior to executing the same acknowledges and agrees that it has been advised by the other party hereto to obtain independent legal advice and other professional advice prior to executing this Agreement. By executing this Agreement, each party hereto acknowledges and agrees that such party hereto has had the opportunity to seek independent legal and other professional advice prior to executing this Agreement, and:

- (a) has obtained such independent legal and other professional advice; or
- (b) has waived the right to obtain such independent legal and other professional advice.

#### 8.13 **Counterparts**

This Agreement may be executed and delivered in any number of counterparts, by facsimile copy, by electronic or digital signature or by other written acknowledgement of consent and agreement to be legally bound by its terms. Each counterpart when executed and delivered will be considered an original but all counterparts taken together constitute one and the same instrument.

#### 8.14 **Governing Law**

This Agreement shall be governed by the laws in force in the Northwest Territories and the courts of Northwest Territories shall have exclusive jurisdiction with respect to any dispute, matter or thing arising herefrom.

**IN WITNESS WHEREOF** the parties hereto have affixed their corporate seals by the hands of their proper officers.

**[NAME OF COMMUNITY]**

Per:

\_\_\_\_\_  
Signature of Authorized Signing Officer

\_\_\_\_\_  
Printed Name of Authorized Signing Officer

\_\_\_\_\_  
Position of Authorized Signing Officer

\_\_\_\_\_  
**[NAME OF CONTRACTOR]**

Per:

\_\_\_\_\_  
Signature of Authorized Signing Officer

\_\_\_\_\_  
Printed Name of Authorized Signing Officer

\_\_\_\_\_  
Position of Authorized Signing Officer

Per:

\_\_\_\_\_  
Signature of Authorized Signing Officer

\_\_\_\_\_  
Printed Name of Authorized Signing Officer

\_\_\_\_\_  
Position of Authorized Signing Officer

**[NOTE: USE IF CONTRACTOR IS AN INDIVIDUAL]**

SIGNED, SEALED and DELIVERED by )

NAME OF SIGNATORY, in the presence of: )

)

\_\_\_\_\_) )

Signature )

)

\_\_\_\_\_) )

Printed Name )

)

\_\_\_\_\_) )

Address )

)

\_\_\_\_\_) )

Occupation )

\_\_\_\_\_) (s)  
NAME OF SIGNATORY

## **SCHEDULE "A"**

### **SERVICES**

#### **INSTRUCTIONS:**

This Schedule should contain a *complete* and *detailed* description of the nature and scope of the Services to be provided by the Contractor to the Community under this Agreement. The Agreement will not be legally enforceable unless it is readily ascertainable, by reference to Schedule "A", what precisely the Contractor will be required to do. It should be drafted so that a third party who knows nothing at all about the project in question would understand what exactly the Contractor is required to do under the Agreement.

In many cases the Contractor has provided the Community with a letter of proposal which details the work which will be performed. In such a case, a copy of the letter of proposal could simply be attached to Schedule "A" and incorporated therein by reference - for example:

"The services to be provided by the Contractor to the Community are those services described in the Contractor's letter of proposal to the Community dated \_\_\_\_\_, 20\_\_\_\_, a copy of which is attached hereto and incorporated in this Schedule "A" by reference."

To the extent the parties have agreed on any changes to the scope of the work as outlined in the letter of proposal, a description of the agreed changes must be included.

## **SCHEDULE "B"**

### **TERMS OF PAYMENT**

Subject to all other terms and conditions of this Agreement, the Purchaser shall pay to the Contractor amounts not to exceed in the aggregate the Agreement Amount, in the following manner:

1. At the beginning of each calendar month an invoice shall be submitted to the Community by the Contractor in respect of Services provided during the immediately preceding month. Each invoice shall, in respect of such month:
  - (a) refer to the purchase order number,
  - (b) where applicable, separately identify work performed in Canada and elsewhere and the proportionate allocation of the invoice amount in that regard;
  - (c) identify as separate items any travel and living expenses, and/or any tax, duty or charge separately chargeable to the Community (in addition to the Agreement Amount) but only as specified and provided for in Schedule "C"; and
  - (d) identify the number of man-days or hours expended in providing the Services, the applicable rates and charges for the time expended, and a description of the Services performed in that regard.

The Contractor may elect, at its option, to provide the Community with one invoice for the whole of the Services to be provided hereunder in place of monthly invoices, provided that all the required information is included in such invoice.

2. Subject to the verification of each invoice by the Community and all other terms and conditions of the Agreement (including, without limitation, the Services being satisfactory to the Community, the Community shall pay the Contractor the amount of each invoice within thirty (30) days of receipt of same.

**SCHEDULE "C"**

**SPECIAL CONDITIONS**

**A. REQUIRED INFORMATION**

Schedule "C" must contain, as a minimum, the definitions for Agreement Amount (Section 1.1(b)), Commencement Date (Section 1.1(c)) and Completion Date (Section 1.1(d)), as well as the addresses for notice for the Community and the contractor (Section 8.2). It should also include the name of the particular Consultant(s) designated to perform the Services, as well as their hourly/daily rate(s).

The Agreement Amount should be defined in words and figures (e.g. Five Thousand (\$5,000.00) Dollars) and, when dealing with a U.S. company, should also state whether the amount is in Canadian or US funds.

The "Attention" portions of the addresses for notice should refer to titles or positions instead of to particular individuals.

The form the clauses should take is as follows:

1. "Agreement Amount" means the sum of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars in Canadian funds.
2. "Commencement Date" means \_\_\_\_\_, 20\_\_.
3. "Completion Date" means \_\_\_\_\_, 20\_\_.
4. The Community's address for notice is:

**[BLLP NOTE: Insert contact person's details for the Community]**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attention: \_\_\_\_\_ **[BLLP NOTE: Insert  
 position/title]**  
 E-mail: \_\_\_\_\_  
 Fax: (\_\_\_\_)\_\_\_\_-\_\_\_\_\_

5. The Contractor's address for notice is:

**[BLLP NOTE: Insert contact details for Contractor]**

(i) \_\_\_\_\_:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_ **[BLLP NOTE: Insert  
position/title]**

E-mail: \_\_\_\_\_

Fax: (\_\_\_\_)\_\_\_\_-\_\_\_\_

6. The following personnel of the Contractor shall perform the Services hereunder:

NAME

TITLE

and shall not be replaced or substituted for except in accordance with the provisions of Section 3.1 of the Agreement.

The fees for the personnel designated to perform the Services hereunder shall be as follows:

NAME

RATE

A regular working day will be a minimum of \_\_\_\_\_ hours, and shall include all regular business days of the Community.

**B. SPECIAL TERMS AND CONDITIONS**

Schedule "C" should also contain a detailed description of any special terms and conditions which are to apply. As much detail as possible should be included. Where specific sections of the Agreement are being amended, these should be referred to.

The following are examples of special terms and conditions only and may not apply to your particular situation - you must prepare your own Schedule "C" to meet the requirements of your particular arrangement.

**EXAMPLES:**

1. Notwithstanding the provisions of Section 4.2 of the Agreement, the following amounts shall be payable by the Community to the Contractor or appropriate taxing authorities, as may be applicable, in addition to the Agreement Amount.



DESCRIPTION OF TAX, DUTY OR OTHER CHARGE

AMOUNT

GST

5% of Agreement Amount

2. Notwithstanding the provisions of Section 4.2 of the Agreement, the Contractor shall be reimbursed for all reasonable travel and living expenses of the Contractor necessarily incurred in providing and performing the Services in addition to the Agreement Amount, provided that:

- (a) all such expenses are pre-authorized by the Community in writing;
- (b) receipts in respect of all such expenses are provided to the Community; and
- (c) any such expenses to be reimbursed by the Community hereunder shall not exceed, in the aggregate \_\_\_\_\_-(\$\_\_\_\_\_) Dollars.

Reimbursement of such travel and living expenses is subject to the verification by the Community of all amounts claimed by the Contractor and shall be in accordance with the Community policies;

**INSTRUCTIONS FOR COMPLETION OF PROJECT MANAGEMENT AGREEMENT**  
(CORPORATE)

1. The date of the Agreement must not be later than the Commencement Date. Therefore, if the Agreement is being signed *after* the Commencement Date, the date of the Agreement should be the same as the Commencement Date, the date of the Agreement should be the same as the Commencement Date. Where the Agreement is being signed *prior* to the Commencement Date (which should be what happens), the date to be inserted is the date of the Agreement is signed by the party signing it last.
2. Insert full name of Contractor on Pages 1 and 19, being careful to include appropriate punctuation, and to indicate legal portion of name correctly (e.g. Limited or Ltd., Company or Co., Incorporated or Inc., etc.).
3. Complete Schedules "A" and "C" (see applicable schedules for instructions in this regard). Note in particular that if GST is payable in addition to the Agreement Amount this must be specifically addressed in Schedule "C" (see example I).
4. Where specific amendments are required to the terms and conditions contained in the body of the Agreement, these should be done by describing the amendments in Schedule "C". Brownlee LLP can be contacted for assistance in this regard where necessary.
5. This Agreement must not be used for software development or customization without review by Brownlee LLP. (Note: consideration must be given to additional warranty clauses, infringement indemnity and acceptance testing procedures.)

AFFIDAVIT VERIFYING  
CORPORATE SIGNING AUTHORITY

CANADA ) I, **<FULL NAME>**  
 ) of the **<Community>** of **<NAME>**, in  
NORTHWEST TERRITORIES ) the Northwest Territories  
 ) MAKE OATH AND SAY THAT:  
TO WIT: )

1. That I am an officer, director or agent of **<NAME OF CORPORATION>** named  
in the within or annexed instrument.

2. That I am authorized by **<NAME OF CORPORATION>** to execute the instrument  
without affixing a corporate seal.

SWORN BEFORE ME at the )  
**<Community>** of **<NAME>**, in the )  
Northwest Territories this **<DATE>** day of )  
**<MONTH>**, **<YEAR>** )

\_\_\_\_\_) )  
A COMMISSIONER FOR OATHS IN AND FOR )  
THE NORTHWEST TERRITORIES )

\_\_\_\_\_

AFFIDAVIT OF EXECUTION

CANADA ) I, <FULL NAME>  
 ) of the <Community> of <NAME>, in  
NORTHWEST TERRITORIES ) the Northwest Territories,  
 ) MAKE OATH AND SAY THAT:  
TO WIT: )

1. I was personally present and did see <NAME> named in the within (or annexed) instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.

2. The same was executed at the <Community> of <NAME> in the Northwest Territories, and that I am the subscribing witness thereto.

3. I know the said <NAME> and he/she is, in my belief, of the full age of eighteen (18) years.

SWORN BEFORE ME at the )  
<Community> of <NAME>, in the )  
Northwest Territories this <DATE> day of )  
<MONTH>, <YEAR> )  
)  
)  
)  
)  
A COMMISSIONER FOR OATHS IN AND FOR )  
THE NORTHWEST TERRITORIES )

\_\_\_\_\_