

# **CONSULTING SERVICES AGREEMENT**

*[Project Name/Nature of Services]*

*[Community]*

and

*[CONSULTANT]*

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

**BETWEEN:**

**[COMMUNITY]**  
(hereinafter called the "Community")

**AND:**

**[CONSULTANT]**  
(hereinafter called the "Consultant")

## **CONSULTING SERVICES AGREEMENT**

**WHEREAS:**

- A.** The Community requires the performance of the Services;
- B.** Consultant has agreed to provide to the Community the Services, and the Community has agreed to pay to the Consultant 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 Consultant 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 date designated as such in Schedule "C";
- (d) "Completion Date" means the date designated as such in Schedule "C", 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) "Service Results" has the meaning ascribed to it in Section 5.4;
- (g) "Services" means those Services to be provided and performed by the Consultant hereunder, as more particularly described in Schedule "A" hereto, and all other services to be provided or performed as directed by the Community;
- (h) "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 Consultant shall provide the Services upon the terms and conditions contained herein.

## 2.2 Commencement and Completion of Services

The Consultant 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 Consultant 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; and
- (d) be documented according to the Community's requirements.

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 Consultant. No such review by the Community shall relieve the Consultant from the performance of its obligations hereunder.

## 2.4 Warranty of Consultant

The Consultant 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 Consultant to be in breach of any obligation of confidentiality which the Consultant may owe to any third party, or otherwise

cause the Consultant to be in breach of any agreement or undertaking with any third party.

2.5 Progress Reports

If required by the Community, the Consultant 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 Consultant 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's policies, procedures and regulations as are made known to the Consultant 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. In particular, the Consultant shall at all times observe and cause its personnel, agents and subcontractors to observe the provisions of all applicable environmental, health, safety and labour legislation including, and including any successor legislation, as well as rules and regulations pursuant thereto. Evidence of compliance with such laws shall be furnished by the Consultant to the Community at such times as the Community may reasonably request. In the event the Consultant, 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 Consultant 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 Consultant 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 Consultant 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 Consultant shall not engage or retain any agent, subcontractor 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, subcontractor or any other third parties by the Consultant shall in no way relieve the Consultant from its responsibility and obligation to provide the Services in accordance with the provisions of this Agreement.

### 3.3 Removal of Personnel

The Consultant 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 Consultant, 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 Consultant, 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 Consultant 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 Consultant, including any necessary training costs or expenses associated with replacement persons, as determined by the Community.



#### 3.4 Compliance with Policies

The Consultant 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 Consultant shall be responsible for the safety of its personnel and any agents or subcontractors, and all property of the Consultant 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 Consultant 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 Consultant shall not, directly or indirectly, solicit for employment any 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 Consultant 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 Consultant 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 Consultant after the Completion Date unless prior written authorization has been obtained by the Consultant from the Community. All customs duties, excise taxes (including G.S.T.), federal, territorial and municipal taxes and other duties, taxes or charges of a similar nature, and all travel and living expenses of the Consultant 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 Consultant 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 Consultant 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 Consultant is responsible.

#### 4.4 Performance upon Failure of Consultant

Upon failure of the Consultant (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 Consultant, 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 Consultant, 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 Consultant.

#### 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 Consultant. If the Consultant is a non-Canadian resident the Community shall, as required by federal legislation, deduct all applicable federal withholding taxes. For this purpose, the Consultant shall separately identify in each invoice all work performed in Canada and that performed elsewhere. The Consultant will be provided with evidence of withholdings as required, upon written request. If the Consultant 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 Consultant in reliance on such certificate of exemption.

The Consultant is responsible for all deductions and remittances required by law in relation to its employees including those required for Canada or Quebec Pension Plans, 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 Consultant or any other person. The Consultant 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 Consultant 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' Safety and Compensation Commission, due to a failure by the Consultant, in which event the provisions of Section 4.4 of this Agreement shall apply.

#### 4.6 Records

The Consultant shall keep and maintain, at its principal place of business within the Northwest Territories, 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 Consultant may be readily and accurately determined and verified for each calendar month during the Term of this Agreement. The Consultant 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 Consultant's regular business hours. The Consultant 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 Consultant, be entitled to review all or any of the security, quality assurance procedures, accounting or other records and procedures of the Consultant regarding the Services or business relationship between the Community and the Consultant 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 Consultant 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 Consultant 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 Consultant or any payment of such amounts based thereon shall not be deemed to be a waiver by the Community of any of the Consultant's obligations or the Community's rights under this Agreement. However, if the Community has not caused an audit or inspection of the Consultant'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 Consultant 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 Consultant agrees that:

- (a) all data, information and material of a confidential nature provided or disclosed to the Consultant 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, products, services, marketing or other strategic plans, suppliers or customers which is obtained by the Consultant in the performance of its obligations under this Agreement;
- (c) the Service Results; and
- (d) any and all information or material provided to the Consultant 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 Consultant 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 Consultant 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 Consultant 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 No Obligation to Disclose

The Community shall have no obligation to disclose to the Consultant any particular data, information or material which is considered by the Community to be sensitive or confidential. All data, information or material which is provided to the Consultant by the Community shall be and remain the sole property of the Community, and shall be returned to the Community immediately upon termination or expiration of this Agreement or at any earlier time upon the Community's request.

#### 5.3 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.

#### 5.4 Ownership of Service Results

The Consultant 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 Consultant 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 Consultant hereby assigns, transfers and conveys to the Community all of its right, title and interest in and to the Service Results and the Consultant 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 Consultant to 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 Consultant other than in connection with the performance of the Services hereunder. The Consultant 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 Consultant or such other persons have or may at any time hereafter have in the Service Results.

#### 5.5 Protection of Rights

The Consultant 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 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.

#### 5.6 Records of Consultant

The Consultant 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.

5.7 Warranty of Original Work

The Consultant warrants that all Service Results will be original development by the Consultant, 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 fulfillment of this Agreement.

5.8 No Challenge

The Consultant 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 Consultant 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 Consultant, without prejudice to any other right or remedy the Community may have, if the Consultant 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 Consultant, or if the Consultant 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 Consultant all amounts for completed work due to the Consultant in accordance with this Agreement, less any amounts which may be owing by the Consultant to the Community as provided for hereunder. The Community shall have no further liability of any nature whatsoever to the Consultant for any losses or damages suffered or sustained, either directly or indirectly, by the Consultant 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 Consultant 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 Consultant 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 4, Article 5, Section 6.3, Section 6.4, Section 6.5, Article 7 and Section 8.8.

**ARTICLE 7 - INDEMNITY AND INSURANCE**

7.1 Indemnity

Notwithstanding any other provision of this Agreement to the contrary, the Consultant 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) 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 Consultant to be fulfilled, kept, observed or performed; or
- (e) any breach of confidentiality on the part of the Consultant or any agent or subcontractor, or employee of the Consultant 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 Consultant 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

The Consultant shall maintain, in full force and effect with insurers licensed in the Northwest Territories, the following insurance:

- (a) Comprehensive General Liability insurance in respect to the Services and operations of the Consultant for bodily injury and property damage with policy limits of not less than Two Million (\$2,000,000.00) Dollars per occurrence, with the Community named as an additional insured but only with respect to the operations of the Named Insured. Such policy shall include blanket contractual coverage and a cross liability clause, and shall provide for a minimum of thirty (30) days prior written notice to the Community upon any cancellation or material change in coverage;
- (b) standard automobile insurance providing coverage of at least Two Million (\$2,000,000.00) Dollars inclusive for bodily injury and property damage (if the Consultant is required to use a vehicle in the performance of the Services); and
- (c) any other insurance of such type and amount as may reasonably be required by the Community.

7.3 Placement of Insurance

A certificate of insurance shall be provided by the consultant's insurance broker of the aforementioned insurance in a form and with insurers acceptable to the Community. Certified copies of the policies shall be provided to the Community by the Consultant upon request and evidence of renewal shall be provided to the Community prior to the expiry dates of the policies.

7.4 Deductibles and Duration

The Consultant shall be responsible for the payment of all premium and deductible amounts relating to the said insurance policies and the Consultant shall maintain the aforementioned insurance until the Services are completed or the Agreement is terminated, whichever is last to occur (or, in the case of Section 7.2(d), for so long as may reasonably be required by the Community).

**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

Any notice provided for or permitted to be given pursuant to this Agreement shall be in writing and shall, except in the event of an interruption in postal service during which time all notices must be personally delivered, be sufficiently given if personally delivered or sent by prepaid registered mail addressed to the party for whom the same is intended to the address for notice for such party as set out in Schedule "C".

Any notice delivered personally shall be deemed to be received when left during normal business hours at the office set forth above and any notice sent by prepaid registered mail shall be deemed to have been received on the third normal delivery day following the posting thereof. Either party shall be entitled to change its address for notice to another existing address by notice in writing to the other. The word "notice" in this Section 8.2 includes any request, statement, report, demand, order or other writing in this Agreement provided or permitted to be given by the Community to the Consultant or by the Consultant to the Community.

8.3 Assignment

The Consultant 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 Consultant.

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 Enurement

This Agreement shall enure 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 in this Agreement, nor in any acts of the Community and the Consultant pursuant to this Agreement, shall be construed, implied or deemed to create an agency, partnership, joint venture or employer and employee relationship between the Community and the Consultant, and neither party has the authority to bind the other to any obligation of any kind.

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 Governing Law

This Agreement shall be governed by the laws in force in the Northwest Territories and the courts of the 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.

**[COMMUNITY]**

Per:

\_\_\_\_\_

Signature of Authorized Signing Officer

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_  
**(NAME OF CONSULTANT)**

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

## **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 Consultant 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 Consultant 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 Consultant is required to do under the Agreement.

In many cases the Consultant 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 Consultant to the Purchaser are those services described in the Consultant's letter of proposal to the Purchaser dated \_\_\_\_\_, 199\_\_\_\_, 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 Consultant 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 Consultant 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 Consultant 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 Consultant the amount of each invoice within thirty (30) days of receipt of same.

**SCHEDULE "C"**

**SPECIAL CONDITIONS**

[Instructions for Completion are bolded and do not form part of the Agreement]

**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 Consultant (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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Northwest Territories  
\_\_\_\_\_

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

**Attention:** \_\_\_\_\_

5. The Consultant's address for notice is:

***[INSERT ADDRESS AND "ATTENTION"]***



6. The following personnel of the Consultant 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 Consultant or appropriate taxing authorities, as may be applicable, in addition to the Agreement Amount.**

**DESCRIPTION OF TAX, DUTY OR OTHER CHARGE**

**AMOUNT**



**INSTRUCTIONS FOR COMPLETION OF FEE FOR SERVICE 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. 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 Consultant on Pages 1 and 17, 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.)