

INDEPENDENT CONTRACTOR AGREEMENT

AGREEMENT made as of the most recent date set out on page 5 hereof.

BETWEEN:

THE UNIVERSITY OF MANITOBA

(the “University”)

- and -

(the “Contractor”)

WHEREAS the University requires certain services;

AND WHEREAS the Contractor has represented that the Contractor is skilled in providing these services;

NOW THEREFORE in consideration of the mutual terms and covenants herein provided, the parties hereto agree as follows:

ARTICLE 1 - SERVICES

- 1.1 The Contractor shall provide the services as set out in Schedule “A” attached hereto on the terms and conditions set out in this Agreement (the “Services”).
- 1.2 The Contractor shall comply with all reasonable directions and requests of the University. Liaison with the University respecting the Services shall be with the person identified in Schedule “A” (the “University Liaison”).
- 1.3 All reports and other documents to be prepared by the Contractor pursuant to Schedule “A” shall be submitted to the University in writing, unless otherwise specified in Schedule “A”, and in form and content satisfactory to the University.
- 1.4 The Contractor shall be required to provide space, facilities, equipment and/or materials at the Contractor’s sole expense. Any exceptions must be noted by the University on Schedule “A”.

ARTICLE 2 - PAYMENT

- 2.1 The University shall pay the Contractor for the Services provided to the reasonable satisfaction of the University, according to the terms and conditions set out in Schedule “B” attached hereto.
- 2.2 The Contractor shall complete and initial the appropriate declarations set out in Schedule “B”.
- 2.3 The Contractor shall provide satisfactory invoices and supporting documentation to the University as set out in Schedule “B”.
- 2.4 The Contractor is solely responsible for making any arrangements and for paying any and all expenses incurred in connection with providing the Services (including telephone, office supplies, document copying, facsimile transmission and postage). Any exceptions must be noted by the University on Schedule “C”.

ARTICLE 3 - TERM, TERMINATION AND AMENDMENT

- 3.1 Subject to section 3.2, the term of this Agreement shall be as set out in Schedule “A”.
- 3.2 This Agreement may be terminated as follows:
 - (a) by the University where:
 - (i) in the reasonable opinion of the University, the Services provided by the Contractor are unsatisfactory, inadequate, or are improperly provided;

- (ii) in the reasonable opinion of the University, the Contractor has failed to comply with any substantive term or condition of this Agreement;
 - (iii) the Contractor is dissolved or becomes bankrupt or insolvent;
 - (iv) the Services are provided in connection with a project for which the University has been awarded funding from an external source or for which the University receives payment for the provision of services to a third party, and that project or contract has been terminated or funding or payment reduced;
- (b) by mutual agreement of the parties, expressed in writing.
- 3.3 Upon termination of this Agreement, the Contractor shall cease to provide any further Services. The University shall be under no obligation to the Contractor other than to pay, upon receipt of an invoice and satisfactory supporting documentation, such compensation as, in the reasonable opinion of the University, the Contractor may be entitled to receive under this Agreement for work completed to the satisfaction of the University up to the date of termination.
- 3.4 Any amendment to this Agreement after the execution of this Agreement shall be in writing in the form attached hereto as Schedule "D".

ARTICLE 4 - CONFIDENTIALITY

- 4.1 The Contractor agrees that any information, data, research, documents, photographs, negatives, computer programs (and related object and source codes) and any other materials or products disclosed to the Contractor by the University or otherwise produced or developed by the Contractor in providing the Services (the "Materials") will not be:
- (a) published or disclosed to any third party except to:
 - (i) those of the Contractor's officers and employees who are directly concerned with the use, development or application of the Materials in the provision of the Services subject to section 4.3; and
 - (ii) third parties to the extent necessary to provide the Services; nor
 - (b) used, sold or otherwise disposed of for value by the Contractor other than in the provision of the Services under this Agreement.
- 4.2 The Contractor shall:
- (a) comply with any rules or directions made or given by the University with respect to safeguarding or ensuring the confidentiality of the Materials;
 - (b) advise the Contractor's officers and employees, to whom the Contractor may disclose the Materials, of the confidentiality and ownership provisions of this Agreement; and
 - (c) do that which is necessary and reasonable to prevent unauthorized disclosures, use, or sale (or other disposition for value) of the Materials.
- 4.3 Any additional obligations respecting confidentiality and any obligations respecting non-competition must be noted by the University on Schedule "A".

ARTICLE 5 - OWNERSHIP, COPYRIGHT AND FITNESS FOR USE OF MATERIALS

- 5.1 Any Materials provided by the University to the Contractor for use in the provision of the Services shall remain the property of the University and shall be returned without cost to the University upon request.
- 5.2 Any Materials produced or developed by the Contractor and any of the Contractor's officers, employees, or agents in the provision of the Services, and all copyright and other intellectual property rights therein, shall be hereby exclusively assigned to the University by the Contractor and shall be delivered without cost to the University at the times set out in this Agreement or upon request. The Contractor further:
- (a) waives any moral rights the Contractor may have in connection with such Materials, and expressly disclaims any royalty rights in connection with the use, distribution or sale by the University of such Materials; and
 - (b) warrants the fitness for use of such Materials as contemplated under this Agreement.

- 5.3 If the Materials produced or developed by the Contractor and any of the Contractor's officers, employees, or agents in the provision of the Services include:
- (a) the development of computer programs, the Contractor must deliver to the University the related object and source codes at the time(s) set out in Schedule "A" or immediately upon termination of this Agreement, whichever is earlier;
 - (b) copies of work(s) to which a third party holds copyright, the Contractor must identify and provide appropriate credit to the author(s) and obtain copyright permission for inclusion of the work(s) in such Materials.
- 5.4 Any exceptions to sections 5.2 or 5.3 must be noted by the University in Schedule "A".

ARTICLE 6 - NOTICES

- 6.1 Any notice or other communication required to be given under this Agreement shall be given in writing and delivered by hand, courier (prepaid), registered mail (prepaid), or by facsimile transmission, to the addresses set out in Schedule "B" (or such other address as one party may subsequently notify the other in writing).
- 6.2 The failure of either party to give notice to the other of the breach or non-fulfilment of any provision of this Agreement shall not constitute acceptance of the said breach or non-fulfilment or any future breach or non-fulfilment.

ARTICLE 7 - MISCELLANEOUS

- 7.1 It is understood that this Agreement does not constitute an employment agreement and that the status of the Contractor and the Contractor's officers, employees and agents is that of an independent contractor and not that of an employee or agent of the University. The Contractor shall not commit the University to any expenditures or obligations to third parties.
- 7.2 The Contractor:
- (a) acknowledges that the Contractor is solely responsible for ensuring that the Contractor has appropriate disability, malpractice and comprehensive general liability insurance coverage; and
 - (b) releases the University from any obligation of responsibility to provide such coverage.
- Additional requirements respecting insurance coverage must be set out in Schedule "A".
- 7.3 The Contractor indemnifies and saves harmless the University, the University's officers, employees and agents against any and all liability, loss, damage, cost or expense which the University may hereafter sustain, incur, suffer or be required to pay by reason of:
- (a) the wilful or negligent act or omission of the Contractor; or
 - (b) any assessment, re-assessment or any other act of an official of the federal, provincial and/or territorial governments relating to the Contractor; and
 - (c) the Contractor's failure to secure the appropriate or any insurance coverage as specified under this Agreement.
- 7.4 The Contractor represents that:
- (a) the Contractor has the necessary authority and capacity to enter into this Agreement;
 - (b) the Contractor has no conflict of interest in providing the Services, and that the University will not be thereby compromised nor suffer loss;
 - (c) it is the Contractor's own responsibility to declare to Revenue Canada payments received from the University under this Agreement based on the Contractor's invoices and the University's general cheques;
 - (d) in the event that the Contractor, or any of the Contractor's principals and employees providing the Services, is otherwise an employee of the University:
 - (i) the obligations hereunder shall not be undertaken on the University's time or using the University's resources or facilities;

- (ii) it is the Contractor's own responsibility to obtain independent legal and tax advice confirming the Contractor's status (or that of its principals and employees) as being an independent contractor at law and not an employee of the University;
 - (iii) the Contractor will indemnify the University for any financial consequences should it or any of its principals or employees be deemed an employee of the University in providing the Services;
 - (iv) the University reserves the right to prohibit principals and employees of the Contractor, who are otherwise employees of the University, from providing Services under this Agreement;
- (e) it is the Contractor's own responsibility to obtain independent legal and tax advice confirming the Contractor's status as being an independent contractor at law and not an employee of the University.
- 7.5 This Agreement shall be construed in accordance with the laws of Manitoba as applied to transactions taking place entirely within Manitoba between Manitoba residents. Any action taken relating to this Agreement shall be commenced in the Court of Queen's Bench (Winnipeg Centre) of Manitoba.
- 7.6 This Agreement or any of the rights or obligations thereunder shall not be assigned in whole or in part by the Contractor without the prior written consent of the University.
- 7.7 This Agreement shall be binding upon the executors, administrators, heirs, successors and any permitted assignees of the Contractor.
- 7.8 Articles 4 and 5 and sections 7.3 and 7.5 survive termination or expiration of this Agreement.
- 7.9 Schedules "A" and "B" (and Schedule "C", if applicable) form part of this Agreement. To the extent that there is a conflict between the contents of these Articles and the contents of Schedules "A" or "B" (or Schedule "C", if applicable) the contents of these Articles shall govern; provided that where the Agreement allows for exceptions to the Articles to be set out in Schedule "A" (and Schedule "C", if applicable); such exceptions shall not be deemed to create a conflict. Nothing prevents additional obligations, terms or conditions respecting the Contractor's provision of the Services being incorporated in the attached Schedules. To the extent there is a conflict between the terms and conditions of these Articles and the Schedules, the contents of these Articles shall govern.
- 7.10 This Agreement and the attached Schedules and Appendices contain the entire agreement between the parties. There are no undertakings, representations, or promises, express or implied, other than those contained in this Agreement.
- 7.11 If any of the provisions of this Agreement are found by a court of competent jurisdiction to be null or void, the remainder of this Agreement shall continue in full force and effect provided that the substantive intent of this Agreement is not thereby compromised.
- 7.12 This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery by *facsimile* or by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.
- 7.13 Any conditions precedent to this Agreement must be noted by the University in Schedule "A".
- 7.14
- (a) The Contractor agrees that the Materials described in section 4.1 include records and information (created and stored both digitally and non-digitally) that are in the care and custody of the University;
 - (b) The Contractor agrees that records and information that are in the care and custody of the University are subject to *The Freedom of Information and Protection of Privacy Act* (Manitoba);
 - (c) Therefore, the Contractor agrees to comply with the following rules and directions which are additional to those stated in Article 4, "Confidentiality":
 - (i) the Contractor's access to records and information shall be limited to the minimum amount necessary to accomplish the purpose for which access is given;
 - (ii) the Contractor's use of records and information shall be limited to those uses which are necessary for the Contractor to perform the Services;
 - (iii) disclosure of the records and information shall be limited to those employees and agents of the Contractor who need to know to perform the Services;

- (iv) the Contractor shall make reasonable arrangements for the security of the records and information. The Contractor shall provide reasonable protection against such risks as unauthorized access, use, disclosure, or destruction. This protection shall apply to records and information that are created and stored both digitally and non-digitally;
- (v) upon completion of the Services, the Contractor shall confidentially destroy, or return the records and information to the University, at the University's option.

IN WITNESS WHEREOF this Independent Contractor Agreement has been duly executed by the parties.

THE UNIVERSITY OF MANITOBA

Per: _____

Date: _____

Name:

Title:

CONTRACTOR

Contractor's full name

Per: _____

Date: _____

Name:

Title:

****REMINDER TO CONTRACTOR - PLEASE COMPLETE AND INITIAL THE APPROPRIATE DECLARATIONS SET OUT IN SCHEDULE "B".****