

## REQUEST FOR PROPOSALS

For Public and Patient Engagement to Inform Action Plan for Elimination of Cervical Cancer in Canada

RFP No. RP410-2019-02

ISSUE DATE:	Thursday June 20, 2019
DEADLINE FOR PROPONENT ENQUIRIES	Monday July 8 <sup>th</sup> , 2019 no later than 5:00pm ET (Toronto Local Time)
DEADLINE FOR ISSUING ADDENDA & RESPONSES TO PROPONENT ENQUIRIES	Tuesday July 9 <sup>th</sup> , 2019
PROPOSAL SUBMISSION DEADLINE	Tuesday July 16 <sup>th</sup> , 2019 no later than 3:00pm ET (Toronto Local Time)
INTERVIEWS	Week of July 23 <sup>rd</sup> , 2019

PROPONENT ENQUIRIES only by e-mail to:  
[procurement@partnershipagainstcancer.ca](mailto:procurement@partnershipagainstcancer.ca)

**\*\*Proponents should reference this RFP number (RFP No. RP410-2019-02) in the subject line of their correspondence.\*\***

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### **About the Canadian Partnership Against Cancer**

As the steward of the [Canadian Strategy for Cancer Control](#), the Partnership works with partners to reduce the burden of cancer on Canadians. Our partner network - cancer agencies, health system leaders and experts, and people affected by cancer - brings a wide variety of expertise to every aspect of our work. After 10 years of collaboration, we are accelerating work that improves the effectiveness and efficiency of the cancer control system, aligning shared priorities and mobilizing positive change across the cancer continuum. From 2017-2022, our work is organized under five themes in our [Strategic Plan](#): quality, equity, seamless patient experience, maximize data impact, sustainable system. Recently, the Partnership has launched the refresh of the [Canadian Strategy for Cancer Control](#). The Partnership continues to support the work of the collective cancer community in achieving our shared 30-year goals: a future in which fewer people get cancer, fewer die from cancer and those living with the disease have a better quality of life. The Partnership was created by the federal government in 2006 to move the Strategy into action and receives ongoing funding from Health Canada to continue leading the Strategy with partners from across Canada. Visit [www.partnershipagainstcancer.ca](http://www.partnershipagainstcancer.ca).

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## Table of Contents

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<b>DISCLAIMER</b> .....	<b>2</b>
<b>1.0 INSTRUCTION TO PROPONENTS</b> .....	<b>5</b>
1.1 <i>Invitation to Proponents</i> .....	5
1.2 <i>Enquiries</i> .....	5
1.3 <i>Proposal Submission</i> .....	5
1.4 <i>Amendment and Withdrawal of Proposal</i> .....	6
1.5 <i>Agreement for Deliverables</i> .....	6
1.6 <i>No Guarantee of Volume of Work or Exclusivity of Agreement</i> .....	6
1.7 <i>RFP Timetable</i> .....	7
1.8 <i>Proposal Content</i> .....	7
1.9 <i>Pricing and Timing</i> .....	7
1.10 <i>Key Personnel</i> .....	8
1.11 <i>AODA Compliance Legislation</i> .....	8
1.12 <i>Evaluation Process and Criteria</i> .....	8
1.12.1. <i>Mandatory Criteria</i> .....	8
1.12.2. <i>Rating Criteria</i> .....	9
1.12.3. <i>Stages of the Proposal Evaluation</i> .....	9
1.13 <i>Negotiations and Finalization of Agreement</i> .....	10
<b>2.0 SUPPLEMENTARY TERMS AND CONDITIONS</b> .....	<b>11</b>
2.1 <i>All New Information to Proponents by way of Addenda</i> .....	11
2.2 <i>Retention and Disclosure of Proposals</i> .....	11
2.3 <i>Governing Law of RFP Process</i> .....	11
2.4 <i>Proponents to Follow Instructions</i> .....	11



<b>2.5</b>	<b><i>Proponents Shall Bear Their Own Costs</i></b> .....	<b>11</b>
<b>2.6</b>	<b><i>Communication after Issuance of RFP</i></b> .....	<b>11</b>
<b>2.7</b>	<b><i>Verify, Clarify and Supplement</i></b> .....	<b>12</b>
<b>2.8</b>	<b><i>Confidentiality</i></b> .....	<b>12</b>
<b>2.9</b>	<b><i>Disqualification</i></b> .....	<b>12</b>
<b>2.10</b>	<b><i>Procurement Process Non-Binding</i></b> .....	<b>13</b>
<b>SCHEDULE A - SERVICES AND DELIVERABLES</b> .....		<b>14</b>
<b>SCHEDULE B - SUBMISSION FORM</b> .....		<b>17</b>
<b>SCHEDULE C - PRICING SHEET</b> .....		<b>21</b>
<b>SCHEDULE D - REFERENCE FORM</b> .....		<b>23</b>
<b>SCHEDULE E - PROJECT DELIVERABLES AND MILESTONES</b> .....		<b>26</b>
<b>SCHEDULE F - ADDITIONAL TERMS AND CONDITIONS FOR AGREEMENTS</b> .....		<b>27</b>

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## 1.0 INSTRUCTION TO PROPONENTS

### 1.1 *Invitation to Proponents*

This Request for Proposals ("RFP") is an invitation to suppliers/vendors (the "Proponents") to submit proposals (the "Proposals") for the services and deliverables described in Schedule A (the "Deliverables"). This RFP is issued by the Canadian Partnership Against Cancer (the "Partnership"), a not-for-profit corporation funded by Health Canada.

### 1.2 *Enquiries*

Proponents should forward all enquiries and other communications, via e-mail only to:

[procurement@partnershipagainstcancer.ca](mailto:procurement@partnershipagainstcancer.ca)

All enquiries should be made via e-mail to the e-mail address above and enquiries submitted in any other way will not be accepted or answered. Proponents acknowledge that all enquiries received from Proponents and corresponding responses provided by the Partnership will be disclosed to all Proponents by way of an Addendum.

All enquiries and communications should be received prior to the Deadline for Proponent Enquiries set out in Section 1.7.

### 1.3 *Proposal Submission*

Proponents should submit their Proposals in two separate parts. The financial part will contain the price portion of the Proposal using the Pricing Sheet, in Schedule C. The technical part of will contain the rest of the Proposal. Each part should be submitted in separate sealed package or electronic file in accordance with the instructions in this section.

Proponents should submit four (4) printed hard copies of the Proposal and an electronic copy in Microsoft Word format or portable document format (PDF) packaged in a sealed envelope and labelled with the Proponent's name and address, delivered to the address below before the Proposal Submission Deadline:

Canadian Partnership Against Cancer Corporation  
145 King Street West, Suite 900  
Toronto, ON M5H 1J8  
Attention: Teresa DeFrenza

Proponents should also submit an electronic copy in Microsoft Word format or portable document format (PDF) sent to [procurement@partnershipagainstcancer.ca](mailto:procurement@partnershipagainstcancer.ca).



“If there is a conflict or inconsistency between the hard copy and the electronic copy of the proposal, the electronic copy of the proposal will prevail.” Proposals submitted in any other manner will not be accepted.

It is the sole responsibility of the Proponent to ensure that the Proposal is received by the Partnership before the Proposal Submission Deadline.

#### **1.4 *Amendment and Withdrawal of Proposal***

Proponents may amend their Proposals prior to the Proposal Submission Deadline by withdrawing a submitted Proposal and resubmitting the amended Proposal prior to the Proposal Submission Deadline.

At any time throughout the RFP process until the execution of a written agreement for provision of the Deliverables, the Proponent may withdraw its Proposal. To withdraw the Proposal, a notice of withdrawal signed by an authorized representative of the Proponent must be sent to:

[procurement@partnershipagainstcancer.ca](mailto:procurement@partnershipagainstcancer.ca)

The Partnership is under no obligation to return withdrawn Proposals.

#### **1.5 *Agreement for Deliverables***

The selected Proponent will be invited to enter into an agreement (the “Agreement”) with the Partnership for the provision of the Deliverables. The final terms of the Agreement may be negotiated with the selected Proponent. However, Proponents are advised that the Agreement is expected to include the terms and conditions set out in Schedule F to this RFP.

It is the Partnership’s intention to enter into an Agreement with only one (1) legal entity. The term of the Agreement is to be for a period of up to six (6) months, with an option in favour of the Partnership to renew or extend the Agreement on the same terms and conditions up to an additional term of up to three (3) months.

#### **1.6 *No Guarantee of Volume of Work or Exclusivity of Agreement***

The Partnership makes no guarantee of the value or volume of work to be assigned to any Proponent. Any Agreement executed with a selected Proponent will not be an exclusive contract for the provision of the described services and deliverables. The Partnership may contract with others for the same or similar services and deliverables to those described in this RFP or may obtain the same or similar services and deliverables internally.



## 1.7 RFP Timetable

The following is the schedule for this RFP:

ISSUE DATE:	Thursday June 20, 2019
DEADLINE FOR PROPONENT ENQUIRIES	Monday July 8 <sup>th</sup> , 2019 no later than 5:00pm ET (Toronto Local Time)
DEADLINE FOR ISSUING ADDENDA & RESPONSES TO PROPONENT ENQUIRIES	Tuesday July 9 <sup>th</sup> , 2019
PROPOSAL SUBMISSION DEADLINE	Tuesday July 16 <sup>th</sup> , 2019 no later than 3:00pm ET (Toronto Local Time)
INTERVIEWS	Week of July 23 <sup>rd</sup> , 2019

The Partnership may amend the schedule for this RFP in its sole discretion at any time prior to the Proposal Submission Deadline.

## 1.8 Proposal Content

The Proposal should include:

- a) an executive summary;
- b) a summary of the Proponent's understanding of the requirements and strengths of the proposed approach;
- c) a description of the relevant qualifications and experience of the Proponent organization and each candidate proposed for each key role;
- d) references for three similar projects (excluding the Partnership) successfully completed by the Proponent organization within the last three years (Schedule D Form 1);
- e) a description of the proposed approach and work plan to accompany the Project Deliverables and Milestones (Schedule E);
- f) a description of the proposed project team structure, key roles and reporting relationships;
- g) names and resumes of the candidates proposed for each key role;
- h) two references for each proposed candidate (excluding the Partnership) demonstrating relevant experience for the proposed role within the last three years (Schedule D Form 2).

## 1.9 Pricing and Timing

Please submit the price for completion of this project (both fees and expenses). The budget ceiling for this work is \$100,000 (exclusive of taxes). The Proponent should assume that it is required to supply all necessary professional staff to undertake the project. The Proponent shall provide **a firm maximum ceiling price** for the assignment and a proposed payment schedule, if applicable. The Proponent should submit pricing (Schedule C) in a separate



sealed package and/or separate electronic file from the rest of the Proposal (see Section 1.3).

### **1.10 Key Personnel**

The key personnel who are named in the Proposal will be expected to remain assigned for the duration of the project, unless otherwise agreed to in writing by the Partnership. In the event the Proponent wishes to substitute any of the key personnel, the individual(s) proposed would have to demonstrate similar qualifications and experience as required to successfully perform such duties. Under the Agreement, the Partnership will have the sole right to determine whether key personnel proposed as substitutes are qualified to work on the project.

### **1.11 AODA Compliance Legislation**

As part of its response to this RFP, a Proponent may describe all measures that the Proponent intends to implement or make available in order that the Deliverables provided in response to this RFP be in compliance with applicable standards under the Accessibility for Ontarians with Disabilities Act, 2005 (“AODA”) and its regulations, including but not limited to (i) any training that has been, or will be, provided to Proponent’s staff; and (ii) all policies implemented by the Proponent in respect of the AODA and its regulations. The Agreement will require that the successful Proponent provide all Deliverables in accordance with AODA and its regulations.

### **1.12 Evaluation Process and Criteria**

Proposals will be reviewed and evaluated by an evaluation committee which is comprised of representatives of the Partnership and may include external advisors (the “Evaluation Committee”).

#### **1.12.1. Mandatory Criteria**

First, the Partnership will evaluate Proposals for compliance with the following Mandatory Criteria:

<b>MANDATORY FORMS:</b>
Submission Form (Schedule B)
Pricing Sheet (Schedule C)
References (Schedule D)
Deliverables and Milestones (Schedule E)





### 1.12.2. Rating Criteria

Next, the Partnership will evaluate and score Proposals based on the following rating criteria:

Criteria	Weighting	Minimum Score
Qualifications and experience of the proponent organization and key members of the proposed team	25	
Quality of the proposed approach and work plan (adequacy of project team structure, work plan, client engagement, reporting, controls and likelihood of timely delivery).	25	
Interview	25	
Pricing	25	
Total	100	65

*In the event that no Proposals achieve one or more of the minimum required scores, the Partnership may elect to cancel the RFP process or may elect to waive the minimum required score(s) that were not met and proceed with the evaluation of the Proposals.*

### 1.12.3. Stages of the Proposal Evaluation

The Partnership will conduct the evaluation of Proposals in the following three (3) stages:

#### Stage I

Stage I will consist of a review to determine which Proposals comply with all of the Mandatory Criteria. If a Proposal fails to satisfy all of the Mandatory Criteria, the Partnership will issue the Proponent a rectification notice identifying the deficiencies and providing the Proponent an opportunity to rectify the deficiencies within a period of 2 business days from the date of the notice (the “Rectification Period”). If the Proponent fails to satisfy all of the Mandatory Criteria within the Rectification Period, the Proposal will be disqualified. If a Proposal is disqualified, it will not be further evaluated.

#### Stage II

Stage II will consist of a scoring by the Partnership of each qualified Proposal on the basis of the rating criteria. The Partnership may shortlist the top scoring Proposals and the Proponents may be invited to an interview at the Partnership offices. Interviews to be scheduled, at a time that is convenient for the Partnership.



### Stage III

Stage III will consist of a scoring of the pricing submitted. The evaluation of price may be undertaken after the evaluation of mandatory criteria (Stage I) and any rated criteria (Stage II) has been completed.

The formula to be used for scoring price is as follows:

$$\text{Proponent's price score} = \text{lowest proposal price} \div \text{Proponent's price} \times \text{weighting}$$

### Cumulative Score

At the conclusion of Stage III, the scores from Stage II and Stage III will be added and, subject to satisfactory reference checks, the highest scoring Proposal will be selected, and the Proponent of that Proposal will be invited to finalize and enter into the Agreement.

## **1.13 Negotiations and Finalization of Agreement**

The final terms of the Agreement may be negotiated with the selected Proponent.

Any negotiations will not constitute a legally binding offer to enter into a contract on the part of the Partnership or the Proponent and there will be no legally binding relationship created with any Proponent prior to the execution of a written agreement. Negotiations may include requests by the Partnership for supplementary information from the Proponent to verify, clarify or supplement the information provided in its Proposal or to confirm the conclusions reached in the evaluation, and may include requests by the Partnership for improved pricing or performance terms from the Proponent.

The Partnership intends to conclude negotiations and finalize the agreement with the selected Proponent within 30 days from the date the Partnership invites the selected Proponent to enter negotiations.

If the parties cannot conclude negotiations and finalize the agreement for the Deliverables within the that time period, the Partnership may discontinue negotiations with the selected Proponent and may cancel the RFP process or invite the next-highest-scoring Proponent to enter into negotiations. This process will continue until an Agreement is finalized or until the Partnership elects to cancel the RFP process.



## **2.0 SUPPLEMENTARY TERMS AND CONDITIONS**

### **2.1 *All New Information to Proponents by way of Addenda***

This RFP may be amended only by a written addendum (an “**Addendum**”) in accordance with this section. If the Partnership, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all Proponents by Addenda made available to all Proponents in the same way as the original RFP. Each Addendum shall form an integral part of this RFP. Any amendments or supplements to this RFP made in any other manner shall not be binding. **It is the sole responsibility of the Proponent to ensure that it has received all Addenda pertaining to this RFP.** The Partnership will not take any responsibility for losses, misunderstandings, errors or omissions from the Proponent not having received or reviewed any and all Addenda.

### **2.2 *Retention and Disclosure of Proposals***

All information obtained by the Partnership from Proponents in connection with this RFP will be retained by the Partnership for internal purposes. Information provided by Proponents in response to this RFP may be disclosed by the Partnership if permitted or required by law.

### **2.3 *Governing Law of RFP Process***

The RFP process shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

### **2.4 *Proponents to Follow Instructions***

Proponents should structure their Proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a Proposal should reference the applicable section numbers of this RFP where that request was made. Proponents responding to the RFP should provide additional information related to contacts and their corporate identity and status.

### **2.5 *Proponents Shall Bear Their Own Costs***

The Proponent shall bear all of its own costs associated with or incurred in the preparation, presentation and submission of its Proposal including, if applicable, costs incurred for interviews, site visits or demonstrations.

### **2.6 *Communication after Issuance of RFP***

Proponents should promptly examine all of the documents comprising this RFP and report any errors, omissions or ambiguities. Proponents may direct questions or seek additional information by e-mail to the e-mail address set out in Section 1.2, before the Deadline for



Proponent Enquiries set out in Section 1.7. No such communications are to be directed to the Partnership in any other manner. It is the responsibility of the Proponent to seek clarification from the Partnership on any matter it considers to be unclear. The Partnership is under no obligation to provide additional information; but, may do so at its sole discretion.

## **2.7 Verify, Clarify and Supplement**

In the evaluation process, the Partnership may:

- request further information from the Proponent or third parties in order to verify, clarify or supplement the information provided in the Proposal;
- interview any or all Proponents to obtain information about or clarification of their Proposals;
- check references other than those provided by any Proponent; and
- consider the Proponent's past performance or conduct on previous contracts with the Partnership or other institutions.

The Partnership may revisit, re-evaluate, rescore or reject the Proponent's Proposal on the basis of any such information.

## **2.8 Confidentiality**

All information received by the Proponent provided by or obtained from the Partnership in any form in connection with this RFP either before or after the issuance of this RFP:

- is the sole property of the Partnership and must be treated as confidential;
- is not to be used for any purpose other than replying to this RFP and the performance of any subsequent Agreement; and
- shall be returned by the Proponent to the Partnership immediately upon the request of the Partnership.

## **2.9 Disqualification**

The Partnership may disqualify a Proposal on grounds of faulty submission, conflict of interest, improper conduct or provision of inaccurate or misleading information by the Proponent.



## **2.10 Procurement Process Non-Binding**

This procurement process is not intended to create and will not create a formal, legally binding bidding process and will instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation:

- (a) this RFP will not give rise to any Contract A-based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and
- (b) neither the Proponent nor the Partnership will have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the award of a contract, failure to award a contract or failure to honour a Proposal submitted in response to this RFP.

No legal relationship or obligation regarding the procurement of any good or service will be created between the Proponent and the Partnership by this RFP process until the successful negotiation and execution of a written agreement for the acquisition of such goods and/or services.

While the pricing information provided in Proposals will be non-binding prior to the execution of a written agreement, such information will be assessed during the evaluation of the Proposals and the ranking of the Proponents. Any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact any such evaluation or ranking or the decision of the Partnership to enter into an agreement for the Deliverables.

The Partnership may cancel or amend the RFP process without liability at any time.



## **SCHEDULE A - Services and Deliverables**

### **Background**

In 2018, the World Health Organization (WHO) issued a global call for action to eliminate cervical cancer. The elimination language gives cervical cancer a similar international focus as smallpox or polio and will require efforts to optimize both prevention and screening. Over the last few decades, cervical cancer incidence and mortality rates have declined in many countries, including Canada. The improvements have been attributed, in part, to higher rates of cervical cancer screening and the implementation of population-level human papillomavirus (HPV) vaccine strategies. However, gaps remain in uptake and coverage of HPV vaccination and cervical cancer screening across Canada. In October 2018, the Partnership signed on to the Union for International Cancer Control's (UICC) call to action to eliminate cervical cancer.

In May 2019, the Partnership engaged a vendor to develop a pan-Canadian Action Plan to Eliminate Cervical Cancer in Canada (referred to herein as "Action Plan") to guide implementation of system change across Canada and achieve goals related to preventing cervical cancer and improving access to quality cervical cancer screening and treatment. The Action Plan will set out components of an evidence-based and comprehensive model for system change in Canada to guide changes needed across various areas of cervical cancer prevention, screening and treatment, while allowing for flexibility in meeting individual jurisdictions where they are at with their implementation efforts. The Action Plan will complement and enhance current national and provincial/territorial and regional/municipal efforts on HPV vaccination and cervical cancer screening. The voice of patients, survivors, caregivers and citizens is key to ground the Action Plan in the values, experiences, and expectations of Canadians.

Guiding principles for the Action Plan include: both prevention and screening are required to eliminate cervical cancer in Canada; focus on equity-based approaches to reach underserved populations; include First nations, Inuit and Métis self-determined priorities; include public and patient voices; implement sustainable system changes. Action Plan will be launched at a pan-Canadian Summit planned for early February 2020 in Toronto.

### **Purpose/Objectives**

The Partnership wishes to retain a vendor with wide expertise in public and patient engagement, to engage both public and patient voices in the development, validation, and communication/awareness in sharing of this Action Plan. The vendor will present a detailed workplan geared to surfacing the values, priorities, and expectations of public and patients involved in HPV vaccination, cervical cancer prevention, screening and treatment that will be shared with the Partnership's Action Plan Advisory Committee, Working Groups and writing team to help inform the creation of the Action Plan.



The successful Proponent is required to:

- Develop an integrated work plan including one complementary Pan-Canadian online survey and one face-to-face engagement session to engage/capture a representative number of citizens and patients across Canada in the development and sharing of the plan. This workplan should align with key timelines in the development of the action plan. The process should include a representative mix of Canadians from the east, west, central regions and the territories.
- Advise on best, feasible methods to expand the reach and effectiveness of this engagement under the constrained timeframe.
- More specifically participants should include:
  - members of the public who have experience with cervical cancer prevention/HPV vaccination (e.g., male and female teenagers, young adults, parents etc.) and cervical cancer screening (e.g., women with or without access to primary care for pap smears, specialists for colposcopy, etc.) and treatment
  - female patients who have or have had a diagnosis of cervical cancer and have lived experiences with cervical cancer screening and treatment (also may have experience with cervical cancer prevention/HPV vaccination)
  - groups may include some of the Partnership's existing patient and family advisors with an interest in cervical cancer
- Plan, execute and facilitate an effective engagement process, including one Pan-Canadian online survey and at least one face-to-face engagement session in Toronto, Ontario to gather the direct experiences, values and priorities of public and patients from August 1, 2019 to September 30, 2019. A second face-to-face engagement session may be required for French speaking participants.
- Summarize approach, methods and findings from the overall effort, and engagement elements to identify themes on what is of importance to public and patients involved in HPV vaccination and cervical cancer prevention, screening and treatment, into a short report to be shared with the Partnership's Action Plan Advisory Committee, Working Groups and writing team to help inform the development of the Action Plan.
- Identify members of public and patients from engagement sessions that may wish to be further involved in the pan-Canadian Summit in February 2020.
- Identify members of public and patients that wish to share quotations from the engagement sessions to be included in the Action Plan.
- Submit final deliverables (as per the table below) to the Partnership

### Deliverables

Deliverables noted below must be completed by **mid-October 2019** to provide sufficient time for findings to be incorporated into the draft Action Plan that will be shared with Advisory Committee and Working Groups in November, and later launched at a pan-Canadian Summit planned for **early February 2020**. Please submit a high-level approach to completing this work and meeting the key dates identified below.



Major Deliverables	Date Due
Bi-weekly project status update calls with the Partnership	Ongoing
Submission of a workplan and methodology	Early August 2019
Submission of discussion guides or related collateral to execute the engagement approach	Mid-August 2019
Execute Pan-Canadian online survey	Late August 2019
Hold 1 to 2 face-to-face engagement sessions in Toronto, ON	Mid-September 2019
Submission of draft report to Partnership for feedback	Late September - Early October 2019
Final report summarizing the process and learnings from the engagement to be delivered to the Partnership	By October 14, 2019

### Out-of-Scope

Graphic design, French translation and printing of final product will be responsibility of the Partnership. Travel and related expenses for engagement sessions should be factored into the proposed budget by the Proponent.





## SCHEDULE B - Submission Form

The Proponent must not amend this Form in any way other than by providing the requested information. This form must be completed, signed and submitted as part of the Proponent's Proposal.

To the Canadian Partnership Against Cancer:

### 1. Proponent Information

(a) The full legal name of the Proponent is:

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(b) Any other relevant name under which the Proponent carries on business is:

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(c) The jurisdiction under which the Proponent is governed is:

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(d) The name, address, telephone, facsimile number and e-mail address of the contact person for the Proponent is:

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(e) The Proponent is:

**Proponents must select one of the following choices.**

- an individual {Provide HST/GST #}
- a sole proprietorship {Provide HST/GST #}
- a corporation {Provide HST/GST #}
- a partnership {Provide HST/GST #}
- a joint venture {Provide HST/GST #}
- an incorporated consortium {Provide HST/GST #}
- a consortium that is a partnership {Provide HST/GST #}
- other legally recognized entity: {Specify type, provide HST/GST # or state "N/A".}

### 2. Acknowledgment of Non-Binding Procurement Process

The Proponent acknowledges that the RFP process will be governed by the terms and conditions of the RFP, and that, among other things, such terms and conditions confirm that this procurement process does not constitute a formal, legally binding bidding process (and



for greater certainty, does not give rise to a Contract A bidding process contract), and that no legal relationship or obligation regarding the procurement of any good or service will be created between the Partnership and the Proponent unless and until the Partnership and the Proponent execute a written agreement for the Deliverables.

**3. Ability to Provide Deliverables**

The Proponent has carefully examined the RFP documents and has a clear and comprehensive knowledge of the Deliverables required. The Proponent represents and warrants its ability to provide the Deliverables in accordance with the requirements of the RFP for the rates set out in its Proposal.

**4. Price**

The Proponent has submitted its price in accordance with the instructions in the RFP and in the form set out at Schedule C.

**5. Addenda**

The Proponent is deemed to have read and accepted all Addenda issued by the Partnership prior to the Deadline for Issuing Addenda. The onus remains on the Proponent to make any necessary amendments to the Proposal based on the Addenda. The Proponent confirms that it has received the following Addenda:

{List Addenda numbers or, if no Addenda were issued, state “None”.}  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6. Conflict of Interest**

The Proponent, by submitting the Proposal, confirms that to its best knowledge and belief no actual or potential Conflict of Interest exists with respect to the submission of the Proposal or performance of the contemplated Agreement other than those disclosed in this Submission Form. Where the Partnership discovers a Proponent’s failure to disclose all actual or potential Conflicts of Interest, the Partnership may disqualify the Proponent or terminate any Agreement awarded to that Proponent as a result of this procurement process.

Conflict of Interest includes, but is not limited to, any situation or circumstance where:

- a) in relation to the RFP process, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to
  - i. having or having access to information in the preparation of its Proposal that is confidential to the Partnership and not available to other Proponents;



- ii. communicating with any person with a view to influencing preferred treatment in the RFP process; or
  - iii. engaging in conduct that compromises or could be seen to compromise the integrity of the RFP process and render that process non-competitive and unfair; or
- b) in relation to the performance of its contractual obligations under the Agreement, the supplier's other commitments, relationships or financial interests
- i. could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or
  - ii. could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

***Proponents must choose one of the following two options.***

The Proponent declares that: (1) there was no Conflict of Interest in preparing its Proposal; and (2) there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the RFP.

**OR**

The Proponent declares that there is an actual or potential Conflict of Interest relating to the preparation of its Proposal, and/or the Proponent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP. The details of the actual or potential Conflict of Interest are as follows:

## 7. Disclosure of Information

The Proponent hereby agrees that any information provided in this Proposal, even if it is identified as being supplied in confidence, may be disclosed where required by law or if required by order of a court or tribunal. The Proponent hereby consents to the disclosure, on a confidential basis, of this Proposal by the Partnership to its advisers retained for the purpose of evaluating or participating in the evaluation of this Proposal. The Proponent acknowledges that the Partnership may make public the name of any and all Proponents.



I confirm that this Submission Form has been completed with no changes to the text provided in the RFP.

Signature of Witness:	Signature of Proponent representative:
Name of Witness:	Name and Title of Proponent representative:
	Date:  I have authority to bind the Proponent.



## SCHEDULE C - Pricing Sheet

**Table 1: Budget by Deliverable.**

Enter the budget against each milestone specified in Schedule E: Project Deliverables and Milestones

Deliverable	Work Effort (# hours)	Hourly Rate	Total Cost
1.			
2.			
3.			
4.			
1.			
2.			
3.			
4.			



<b>Subtotal</b>			
<b>HST</b>			
<b>Total Budget</b>			

**Additional Expenses**

Please provide a list of all additional expenses including but not limited to: administrative costs, out of pocket expenses, transportation, food etc.

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**Total Proposed Price (Agreement Ceiling Price for fees)**

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## SCHEDULE D - Reference Form

### Form D1

*Each Proponent should provide references from three (3) different clients (excluding the Partnership) who have obtained services similar to those required in this RFP from the Proponent within the last three (3) years.*

*The Partnership is not required to contact all references provided by the Proponent. In addition, references other than those provided by the Proponent (including but not limited to Partnership staff) may be contacted to obtain additional information that will be used in evaluating the Proponent’s past performance.*

*Past performance will be evaluated on a pass/fail basis. Items to be evaluated include but is not limited to:*

- 1. Conformance to contract requirements*
- 2. Adherence to contract schedules*
- 3. Cost Performance*
- 4. Risk Management*
- 5. Reasonable and Cooperative behavior (Business relations)*
- 6. Commitment to Customer Service*
- 7. Concern for the interest of the Customer*

Proponent: \_\_\_\_\_

### Reference #1

Company Name:	
Company Address:	
Contact Name:	
Contact Title:	
Contact Telephone Number & Email Address:	
Date Work Undertaken:	
Nature of Assignment:	

### Reference #2

Company Name:	
Company Address:	
Contact Name:	
Contact Title:	



Contact Telephone Number & Email Address:	
Date Work Undertaken:	
Nature of Assignment:	

**Reference #3**

Company Name:	
Company Address:	
Contact Name:	
Contact Title:	
Contact Telephone Number & Email Address:	
Date Work Undertaken:	
Nature of Assignment:	



**Form D2**

*Each Proponent should provide references from two (2) different clients (excluding the Partnership) to whom each candidate proposed for a key role has provided services within the last three (3) years in a role similar to that set out for the candidate in the Proposal.*

*Please include in the Proposal a separate copy of this part of the reference form for each candidate proposed for each key role set out in the Proposal.*

Name of Candidate: \_\_\_\_\_  
Proposed Role: \_\_\_\_\_

**Reference #1**

Company Name:	
Company Address:	
Contact Name:	
Contact Title:	
Contact Telephone Number & Email Address:	
Date Work Undertaken:	
Nature of Assignment:	

**Reference #2**

Company Name:	
Company Address:	
Contact Name:	
Contact Title:	
Contact Telephone Number & Email Address:	
Date Work Undertaken:	
Nature of Assignment:	

## SCHEDULE E - Project Deliverables and Milestones

The Proponent should provide a detailed work plan, including the deliverables, timelines and project team responsibilities for the performance of the Agreement.

Deliverable/Milestone	Timeline	Responsibility

## SCHEDULE F - Additional Terms and Conditions For Agreements

### Background:

The funding for this Agreement provided by the Partnership is, in whole or in part, obtained pursuant to a funding agreement ("Health Canada Funding Agreement") between the Partnership and Her Majesty the Queen in Right of Canada as represented by the Minister of Health ("Minister");

The Health Canada Funding Agreement requires the Partnership to require certain minimum terms and conditions in agreements.

The Contractor acknowledges the source of the funding and recognizes the need to ensure that there is a high level of accountability and transparency in the receipt and expenditure of the funding.

The Parties agree that the following terms and conditions are included in addition to any other terms of the Agreement:

### 1. Definitions:

In this Agreement:

- a) "Agreement" means this agreement and all schedules and any amendments made to this agreement in accordance with its terms;
- b) "Amount" means the amount expressed in the Agreement to be payable to the Contractor for the Work;
- c) "Party" means the Partnership or the Contractor or any other signatory to the Agreement and "Parties" means all of them.

### 2. Accounts and Audit

- a) The Contractor shall keep proper and accurate Work-related accounts and records of the cost to the Contractor of the Work and of all expenditures or commitments made by the Contractor in connection therewith, and shall keep all invoices, receipts and vouchers relating thereto. The Contractor shall not, without the prior written consent of the Partnership, dispose of any such accounts and records, including invoices, receipts or vouchers, until the expiration of six (6) years after final payment under this Agreement, or until the settlement of all outstanding claims and disputes, whichever is later.
- b) All such accounts and records shall at all times during the retention period referred to in subsection a) be open to audit, inspection and examination by the authorized representatives of the Partnership, the Minister or the Auditor General of Canada to confirm compliance with this Agreement and the appropriate use of funds, who may make extracts from and/or make copies thereof. The Contractor shall provide access to its premises and

reasonable facilities for such audits, inspections and examinations and shall furnish all such information as the representatives may from time to time require with respect to such accounts and records. The Partnership shall be entitled to monitor and review the Work through site visits or other means.

### 3. Appropriation

Each payment to be made under the Agreement at any given time is subject to the Partnership having been provided sufficient funding from the Minister for the fiscal year in which the payment is due.

### 4. Assignment

- a) The Contractor shall not assign this Agreement or any payment, right or obligation hereunder without the prior written consent of the Partnership. Any assignment made without that prior written consent is void and of no effect.
- b) No assignment of this Agreement shall relieve the Contractor from any obligation under this Agreement or impose any liability upon the Partnership unless otherwise agreed to in writing by the Partnership. This Agreement binds the Parties and their respective successors and permitted assigns.

### 5. Changes

- a) If, on the basis of progress reports provided to the Partnership or for any other reason, the Parties decide that modifications to the Work or to line items within the budget are needed, the appropriate changes may be made by the administrative contact for the Parties, provided that no increase shall be made to the maximum Amount payable hereunder and further provided that no other term of this Agreement may be altered in this fashion.
- b) If the change is greater than 15% or \$50,000 of the maximum Amount payable, whichever is lesser, or if the maximum Amount payable changes, the formal amendment process, signed by the approved delegated authority, shall apply.
- c) If the Partnership, acting reasonably, determines that modifications to the Work are needed (including substituting deliverables), the Contractor shall use commercially reasonable efforts to accommodate the Partnership's request for modifications in a manner that avoids changing the maximum Amount payable.

### 6. Communications

- a) If this Agreement requires work with members of the public, the Contractor shall take the necessary measures

to respect the spirit and intent of the *Official Languages Act* to communicate with the public in the official language (i.e., English or French) of their choice;

- b) Any person related to the Contractor shall, where appropriate, ensure that: (i) communication, announcements or documents for the general public concerning services, programs, projects or activities are provided in both official languages; (ii) any services, programs, projects or activities to be delivered by the Contractor to the general public are delivered in both official languages; (iii) any services provided to official language minority communities are provided in a manner that they may participate in these services on a basis comparable to the majority language community; and (iv) consultations with stakeholders on services, programs, projects or activities encourage participation in both official languages, as well as representatives from official language minority communities.

#### **7. Compliance with Applicable Laws**

The Contractor shall comply with all applicable laws, regulations and policies relating to the performance of the Work including, without limitation, those concerning privacy and confidentiality, health and labour conditions and the protection of the environment, and shall require compliance therewith by all of its subcontractors. Evidence of compliance with such laws shall be furnished by the Contractor to the Partnership at such times as the Partnership may reasonably request.

#### **8. Confidentiality**

- a) The Contractor shall keep confidential all information provided to the Contractor by or on behalf of the Partnership in connection with this Agreement, or acquired by the Contractor in the course of performing the Work. The Contractor shall not disclose the information to any person without the written permission of the Partnership, except that the Contractor may disclose to a subcontractor, authorized in accordance with this Agreement, information necessary for the performance of the subcontract. The Contractor shall treat as confidential and cause those with whom it shares such information, during as well as after the performance of any Work under this Agreement, any information to which the Contractor becomes privy as a result of acting under the Agreement.
- b) This section does not apply to any information that:
- i. is publicly available from a source other than the Contractor;
  - ii. is or becomes known to the Contractor from a source other than the Partnership, except any source that is known to the Contractor to be under an obligation to the Partnership not to disclose the information; or

iii. is required to be disclosed by law or by court or other lawful authority.

- c) If the Contractor is required, by law or by a court or other lawful authority, to disclose the Partnership's confidential information, the Contractor shall: promptly notify the Partnership before making any such disclosure, if such notification is not prohibited by law, the court or other lawful authority; cooperate with the Partnership on the proposed form and nature of the disclosure; and ensure that any disclosure is made in accordance with the requirements of applicable law and within the parameters of the specific requirements of the court or other lawful authority.
- d) Upon request, the Contractor shall return to the Partnership all information provided to the Contractor by or on behalf of the Partnership or acquired by the Contractor in connection with the Work and any copies of the information, in any form whatsoever.

#### **9. Conflict of Interest and Government Contracting**

- a) The Contractor represents and warrants that the Contractor has no interest in the business of any third party that would cause a conflict of interest or seem to cause a conflict of interest in carrying out the Work. Should such an interest be acquired during the Term, the Contractor shall declare it immediately to the Partnership.
- b) It is a term of this Agreement that no individual who is subject to the provisions of the *Conflict of Interest Act*, the *Conflict of Interest Code for Members of the House of Commons*, the *Conflict of Interest Code for Senators*, the *Conflict of Interest and Post-Employment Code for Public Office Holders*, the *Values and Ethics Code for Health Canada*, the *Values and Ethics Code for the Public Sector* or any other values and ethics codes applicable within provincial or territorial governments or specific organizations shall derive a direct benefit resulting from this Agreement unless the provision or receipt of such benefit is in compliance with such legislation and codes.
- c) The Contractor represents and warrants that the Contractor, and the Contractor's officers, agents and employees, are not prohibited under subsection 750(3) of the *Criminal Code* from benefiting from a government contract.
- d) The Contractor represents, warrants and covenants that no bribe, gift, benefit or other inducement has been or will be paid, given, promised or offered directly or indirectly to any official or employee of the Partnership or to a member of the family of such a person with a view to influencing the entry into this Agreement or the administration of this Agreement.
- e) The Contractor acknowledges and agrees that the Partnership will provide the Minister with access to this Agreement.

## 10. Relationship of the Parties

Nothing contained in this Agreement creates or shall be construed to create a relationship of principal-agent, employer-employee, partnership or joint venture between the Parties. The Contractor shall not represent itself (including in any agreement with any third party) as the agent, employee or partner of the Partnership or in a manner that could lead a member of the public to believe that the Contractor is an agent, employee or partner of the Partnership. The Contractor shall be solely responsible for any and all deductions and payments required to be made from or to employees, including those required for Canada or Quebec pension plans, employment insurance, worker's compensation and income tax.

## 11. Dispute Resolution

If the Parties have a dispute relating to any matter subject to this Agreement, the Parties shall deal with that dispute through court action.

## 12. Entire Agreement

The Agreement, including its schedules, constitutes the entire Agreement between the Parties with respect to its subject matter and supersedes all previous agreements, understandings, negotiations and discussions, both oral and written, between the Parties unless they are incorporated by reference in this Agreement. All amendments to this Agreement are to be made in writing and signed by the Parties.

## 13. Further Assurances

The Contractor shall do, execute and deliver, or cause to be done, executed and delivered, all such further assignments, documents, instruments, transfers, acts, deeds, matters, assurances and things as, from time to time, may be reasonably necessary or desirable to give effect to this Agreement.

## 14. Indemnification

a) The Contractor shall indemnify and save harmless the Partnership and its directors, officers, employees, agents, successors and assigns from and against all claims, losses, damages, costs, expenses, including solicitor/client fees, administrative fees and disbursements, causes of action, actions and other proceedings ("Claims"), made, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner based upon, occasioned by, or attributable to, any environmental effect, injury to or death of a person or damage to or loss of property, arising directly or indirectly from any act, omission or delay on the part of the Contractor or the Contractor's employees or agents in performing the Work or as a result of the

Work, and any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials, parts, work-in-process or finished work furnished to, or in respect of which any payment has been made by the Partnership and for the use of an invention claimed in a patent, or infringement or alleged infringement of any patent or any registered industrial design or any copyright or trade secret resulting from the performance of the Contractor's obligations under this Agreement, and in respect of the use of or disposal by the Partnership of anything furnished pursuant to this Agreement, except that the Partnership will not claim indemnification under this section to the extent that the injury, loss or damage has been caused by the Partnership or its employees or agents.

- b) The Contractor's obligation of indemnity or reimbursement of the Partnership under this Agreement shall not affect or prejudice the Partnership from exercising any other rights it has under law.
- c) To the extent that any third party, in reliance upon representations made by the Contractor, considers the Contractor to be an agent or employee of the Partnership, the Contractor shall indemnify and save harmless the Partnership for any Claims occasioned thereby by such third party.
- d) The Contractor shall protect itself, through an appropriate policy of insurance, against any liability resulting from anything done or omitted to be done by the Contractor in carrying out the Work under this Agreement, for such coverage limits as a reasonably prudent party carrying out the same or similar activities might obtain.

## 15. Injury on Duty

The Partnership shall assume no liability for injury on duty while the Contractor is performing tasks related to this Agreement except to the extent caused by or due to the Partnership. It is the Contractor's responsibility to ensure that proper insurance coverage is in place prior to the commencement of the Work.

## 16. Inspection of the Work

a) The Work and any and all parts thereof shall be subject to such inspection as the Partnership determines to be appropriate, consistent with the relevant provisions of this Agreement, if any, prior to acceptance. The Partnership or its representatives, shall have access to the Work at any time during working hours at any site where any part of the Work is being carried out and may make examinations and such tests of the Work as they may think fit. Should the Work or any part thereof not be in accordance with the requirements of the Agreement, the Partnership shall have the right to reject the Work and require its correction or replacement at the Contractor's

expense. The Partnership shall inform the Contractor of the reasons for any such rejection.

- b) The Contractor shall provide all assistance and facilities, test pieces, samples and documentation that the Partnership may reasonably require for the carrying out of any such inspection, and the Contractor shall forward such test pieces and samples to such person or location as the Partnership may direct. Inspection by the Partnership shall not relieve the Contractor from responsibility to meet the requirements of this Agreement.
- c) No part of the Work shall be submitted for acceptance or delivery until it has been inspected and approved by the Contractor and, wherever practicable, marked with an approval stamp satisfactory to the Partnership. The Contractor shall keep accurate and complete inspection records which shall, upon request, be made available to the Partnership, which may make copies thereof and take extracts therefrom during the performance of this Agreement and for any period of time thereafter provided for in this Agreement.

#### **17. Intellectual Property**

- a) Intellectual property developed for this Agreement shall vest in and be owned by the Partnership.
- b) The Partnership shall have a nonexclusive royalty-free sub-licensable right to use any other intellectual property of the Contractor required to use the intellectual property developed for this Agreement.

#### **18. Invoicing**

- a) The Contractor shall submit invoice(s) on its own forms to the Partnership, which shall include the following information:
  - i. Contractor name and address;
  - ii. Number assigned by the Partnership, if any, to this Agreement;
  - iii. Contractor's Invoice Number and Date;
  - iv. Name of the individual at the Partnership supervising this Agreement;
  - v. Period in which services were rendered;
  - vi. Deliverables and/or milestones completed and attached (when applicable); and
  - vii. Total amount for services rendered, HST shown separately.
- b) The invoice submitted by the Contractor should include a description of the Work performed, and the time worked. The Contractor will submit invoices on a monthly basis or any other basis as indicated in this Agreement.

#### **19. Language**

The parties confirm it is their wish that this Agreement be drawn up in the English Language. Les parties confirment

qu'ils souhaitent que le présent accord soit rédigé en anglais.

#### **20. Governing Laws**

The Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties shall submit to the jurisdiction of the courts sitting in Toronto, Ontario.

#### **21. Minimum Information in this Agreement**

This Agreement shall include the following minimum information:

- a) a description of the Work, a budget, the Amount to be paid and clear expectations as to the results expected through carrying out the Work;
- b) the effective date, the date of signing and the term of this Agreement;
- c) conditions that must be met before payment is made and the schedule and basis of payment; and
- d) the maximum amount payable.

If at any time it is discovered that this Agreement does not contain all or any part of the minimum information required, the Parties shall use their best efforts in good faith to amend this Agreement to include the information that is missing.

#### **22. Notices**

Where in this Agreement any notice, demand, request, direction or other communication is required to be given or made by a Party, it shall be in writing and is effective if sent by any means, including electronic means, addressed to the Party for whom it is intended at the address mentioned in this Agreement, and any such communication shall be deemed to have been received if by registered mail, when the postal receipt is acknowledged by the Party, if by electronic means, one business day after having been sent and if by mail, five business days after being mailed. The address of a Party may be changed by notice in the manner set out in this provision.

#### **23. Payment**

- a) Payments under this Agreement, except advance payments, shall be conditional upon performance, completion and delivery of the Work, or any part of the Work, to the satisfaction of the Partnership, and upon submission of an invoice satisfactory to the Partnership.
- b) Subject to the section "Invoicing", payment by the Partnership for the Work shall be made within sixty (60) days of receipt of an invoice requesting payment.

- c) If the Partnership has any reasonable objection whatsoever to an invoice, the supporting documentation or the performance of this Agreement by the Contractor, then the Partnership shall, within fifteen (15) days of receipt of the invoice or as quickly as reasonably possible, notify the Contractor of the nature of the objection.
- d) Notwithstanding any other provision of this Agreement, no payment shall be made to the Contractor unless and until, with respect to all parts of the Work in respect of which payment is claimed, the Contractor, where required to do so, establishes to the satisfaction of the Partnership that such parts of the Work will be free from all claims, liens, attachments, charges or encumbrances.

#### **24. Powers of the Partnership**

Every right, remedy, power and discretion vested in or acquired by the Partnership under this Agreement or by law shall be cumulative and non-exclusive.

#### **25. Proactive Disclosure**

- a) Information contained in this Agreement in relation to the following data elements: Contractor name, reference number, Agreement date, description of Work, Agreement period or delivery date, and Agreement value, may be posted on the Partnership's website. Information that would normally be withheld under the *Access to Information Act* and *Privacy Act* will not appear on the website.
- b) This "public disclosure" is intended to ensure that Agreement information is collected and presented consistently in a manner that promotes transparency and facilitates public access.

#### **26. Reporting**

- a) The Contractor shall provide the Partnership with such progress reports, including financial matters, as are called for on the Work under this Agreement and, in any event, no less frequently than annually for the period ending March 31 of each year. Unless otherwise provided in this Agreement, the form and substance of the progress report shall be acceptable to the Partnership.
- b) The Partnership may, in its sole discretion, require the Contractor to provide an interim progress report on the Work for a specified period of time (no more than a 12 month period).
- c) The Partnership may withhold or reduce any payments to be made to the Contractor under this Agreement if any report has not been submitted by the Contractor in accordance with the requirements of this Agreement.

#### **27. Severability**

If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, by a court of

competent jurisdiction, such invalidity or unenforceability shall not affect the remaining terms or provisions of this Agreement.

#### **28. Status and Replacement of Personnel**

- a) If at any time during the Term the Contractor is unable to provide the services of any person who was to perform the Work, it shall immediately advise the Partnership and provide a replacement person with similar qualifications and experience.
- b) The Partnership may reject any such replacement person and the Contractor shall immediately remove the person from the Work and shall secure a further replacement.
- c) The fact that the Partnership does not order the removal of a replacement person from the Work shall not relieve the Contractor from its responsibility to meet the requirements of the Agreement.

#### **29. Subcontracting**

- a) Unless otherwise provided in this Agreement, the Contractor shall obtain the consent of the Partnership in writing prior to subcontracting or permitting the subcontracting of any portion of the Work at any time. The Partnership shall not unreasonably withhold consent.
- b) The Contractor is not obliged to seek consent to subcontracts specifically authorized in this Agreement.
- c) Any consent to a subcontract shall not relieve the Contractor from its obligations under this Agreement or be construed as authorizing any liability on the part of the Partnership to a subcontractor.

#### **30. Survival**

All obligations of the Contractor shall expressly, or by their nature, survive expiry or termination of this Agreement until, and unless, they are fulfilled, or by their nature expire.

#### **31. Termination Due to Default**

- a) The Partnership may, by notice to the Contractor, terminate this Agreement if:
  - i. the Contractor becomes insolvent or commits an act of bankruptcy, makes an assignment for the benefit of creditors or takes the benefit of any statute relating to bankrupt or insolvent debtors, goes into receivership or bankruptcy, ceases to carry on business, or is wound up or dissolved;
  - ii. the Contractor has made materially false or misleading representations or statements, or provided materially false or misleading information to the Partnership on any matter related to this Agreement, other than in good faith (the Contractor shall demonstrate good faith);
  - iii. the Contractor fails to perform or comply with any term, condition or obligation under this Agreement; or

- iv. in the opinion of the Partnership, the Contractor fails to proceed diligently with the Work so as to jeopardize performance of this Agreement in accordance with its terms.
- b) If the Partnership terminates this Agreement under sub-section a), the Partnership may arrange, upon such terms and conditions and in such manner as the Partnership deems appropriate, for the Work to be completed that was so terminated, and the Contractor shall be liable to the Partnership for any excess costs relating to the completion of the Work.
- c) Upon termination of this Agreement under sub-section a), the Partnership may require the Contractor to deliver and transfer title to the Partnership, in the manner and to the extent directed by the Partnership, any finished work that has not been delivered and accepted prior to such termination and any materials or work-in-process that the Contractor has specifically acquired or produced for the fulfillment of the Agreement. The Partnership shall pay the Contractor for all finished work delivered pursuant to such direction and accepted by the Partnership, the cost to the Contractor of such finished work plus the proportionate part of any fee fixed by this Agreement and shall pay or reimburse the Contractor the fair and reasonable cost to the Contractor of all materials or work-in-process delivered to the Partnership pursuant to such direction. The Partnership may withhold from the amounts due to the Contractor such sums as the Partnership determines to be necessary to protect the Partnership against excess costs for the completion of the Work. Such termination shall not impact the intellectual property rights available from Contractor under section 18 as in existence to the date of termination.
- d) The Contractor shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to the Contractor under this Agreement, exceeds the Amount applicable to the Work or the particular part thereof.
- e) If, after the Partnership issues a notice of termination under subsection a), it is determined by the Partnership that the default of the Contractor is due to causes beyond the control of the Contractor, such notice of termination shall be deemed to have been issued pursuant to the section entitled "termination or Suspension Without Cause" and the rights and obligations of the Parties shall be governed by that section.

### **32. Termination or Suspension Without Cause**

- a) The Partnership may, by giving notice to the Contractor, terminate or suspend the Work with respect to all or any part or parts of the Work not completed. The Contractor shall proceed to complete parts of the Work not affected

by the termination notice. Additional notices for different parts of the Agreement may be given subsequently.

- b) All Work completed by the Contractor to the satisfaction of the Partnership based on the provisions of this Agreement before the giving of such notice shall be paid for by the Partnership in accordance with the provisions of this Agreement.
- c) All Work not completed by the Contractor to the satisfaction of the Partnership based on the provisions of this Agreement before the giving of such notice shall be paid for by the Partnership to the Contractor on the following terms:
  - i. the amount of any capital expenditures actually incurred only if they were specifically authorized under the Agreement or approved in writing by the Partnership for the purpose of the Agreement, less any depreciation in respect thereof already taken into account in determining cost, to the extent that the capital expenditures are properly apportionable to the performance of this Agreement;
  - ii. all costs of and incidental to the termination of this Agreement, including the cost of cancellation of obligations incurred by the Contractor with respect to the terminated Work or part thereof; but not including the cost of severance payments or damages to employees whose services are no longer required by reason of the termination.
- d) Payment and reimbursement under the provisions of this section shall be made only to the extent that it is established to the satisfaction of the Partnership that the costs and expenses were actually incurred by the Contractor and that the same are fair and reasonable and are properly attributable to the termination or suspension of the Work or the part thereof so terminated.
- e) The Contractor shall not be entitled to be reimbursed any amount which, taken together with any Amounts paid or becoming due to the Contractor under this Agreement, exceeds the Amount applicable to the Work or the particular part thereof.
- f) The Contractor shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by the Partnership under the provisions of this section except as expressly provided therein.

### **33. Time of the Essence**

- a) Time is of the essence of this Agreement.
- b) Any delay by the Contractor in performing the Contractor's obligations under this Agreement which is caused by an event beyond the control of the Contractor, and which could not have been foreseen and could not



have been avoided by the Contractor by means reasonably available to the Contractor, constitutes an excusable delay. Events may include, but are not restricted to: acts of God, acts of Her Majesty, acts of local or provincial governments, fires, floods, epidemics, quarantine restrictions, strikes or labour unrest, freight embargoes and unusually severe weather.

- c) The Contractor shall give notice to the Partnership immediately after the occurrence of the event that causes the excusable delay. When requested to do so by the Partnership, the Contractor shall deliver a description in a form satisfactory to the Partnership, of work-around plans including alternative sources and any other means that the Contractor will utilize to overcome the delay and endeavour to prevent any further delay. Upon approval in writing by the Partnership of the work-around plans, the Contractor shall implement the work-around plans and use all reasonable means to recover any time lost as a result of the excusable delay. Any additional costs caused by the delay shall be supported by the Contractor.
- d) Notwithstanding that the Contractor has complied with the requirements of this section, the Partnership may exercise any right of termination contained in the section entitled "Termination or Suspension Without Cause".

#### **34. Waivers**

The fact that the Partnership refrains from exercising a remedy or right that it is entitled to exercise under this Agreement shall not be considered to be a waiver of such remedy or right and, furthermore, partial or limited exercise of a remedy or right conferred on the Partnership shall not prevent it in any way from later exercising any other remedy or right under this Agreement or applicable law, unless the Partnership waives such remedy or right in writing.

#### **35. Warranty**

- a) Notwithstanding inspection and acceptance of the Work by or on behalf of the Partnership and without restricting any other provision of this Agreement or any condition, warranty or provision implied or imposed by law, the Contractor warrants that, for a period of 12 months from the date of delivery, or if acceptance takes place on a later date, the date of acceptance, the Work shall be free from all defects in design, materials or workmanship, and shall conform with the requirements of this Agreement, provided that with respect to property provided by the Partnership, the Contractor's warranty shall extend only to its proper incorporation into the Work. In addition, the Contractor has the obligation to respect any other warranty provided for by law.
- b) In the event of a defect or non-conformance in any part of the Work during the warranty period defined in

subsection a) the Contractor, at the request of the Partnership to do so, shall as soon as possible repair, replace or otherwise make good at its own option and expense the part of the Work found to be defective or not in conformance with the requirements of this Agreement.

#### **36. Counterparts**

This Agreement may be signed in counterparts and each counterpart shall constitute an original document and all counterparts taken together shall constitute one and the same Agreement.