



**TERMS AND CONDITIONS OF THE
SERVICE AGREEMENT**

EFFECTIVE NOVEMBER 1, 2014

BETWEEN

**MINISTRY OF CHILDREN AND FAMILY
DEVELOPMENT**

AND

CONTRACTORS

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TERMS AND CONDITIONS OF THE SERVICE AGREEMENT

DEFINITIONS

1. In the Agreement,

(a) “Agreement” as defined on the signatory page of the Service Agreement.

(b) “Contractor’s Records” means

- i. all accounting and administrative records, books of account, invoices, receipts or vouchers produced or received by the Contractor or any Subcontractor pertaining to the Services as a result of this Agreement;

(c) “Equipment” means any physical or digital resources, including interconnected systems or subsystems of resources, software and networks, used or to be used by the Contractor to provide the Services.

(d) “Facilities” means any physical structure or building at which the Contractor provides or is to provide the Services.

(e) “Insolvency Event” means any of the following events, as applicable:

- i. an order is made, a resolution is passed or a petition is filed, for the Contractor's liquidation or winding up,
- ii. the Contractor commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledge its insolvency,
- iii. a bankruptcy petition is filed or presented against the Contractor or a proposal under the Bankruptcy and Insolvency Act (Canada) is made by the Contractor,
- iv. a compromise or arrangement is proposed in respect of the Contractor under the Companies' Creditors Arrangement Act (Canada),
- v. a receiver or receiver-manager of any of the Contractor's property is appointed, or
- vi. the Contractor ceases, in the Province's reasonable opinion, to carry on business as a going concern.

(f) “Province’s Records” means

- i. client records containing Personal Information created or produced by the Contractor as a result of this Agreement unless otherwise specified in Schedule H; and
- ii. all records other than Contractor Records, received from the Province by the Contractor or any Subcontractor as a result of this Agreement including findings, software, data, specifications, drawings, reports and documents.

(g) “Record” as defined in the *Interpretation Act* “includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which

information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise”,

- (h) The “Services” means the Services as described in Schedule A
- (i) The “Term” of the agreement is identified on the signatory page of the Service Agreement,
- (j) "we", "us", and "our" refer to the Province alone and not to the combination of the Contractor “you”, “your” and the Province which is referred to as "the Parties",
- (k) the words "includes" and "including" are not intended to be limiting,
- (l) unless the context otherwise requires, references to sections by number are to sections of the Terms and Conditions of the Service Agreement,

CONTRACTOR'S OBLIGATIONS

2. Unless the Parties otherwise agree in writing, you must supply and pay for all labour, materials, Facilities, Equipment, storage, approvals, licenses and permits necessary to perform your obligations under the Agreement.
3. Unless otherwise specified in the Agreement, you must perform the Services to a standard of care, skill, and diligence maintained by persons providing, on a commercial basis, services similar to the Services. You must comply with any program standards applicable to the Services, as amended from time to time. Upon request of the contractor, we will provide you access to the applicable ministry program standards.
4. You must ensure that all persons you employ or retain to perform the Services are competent to perform them and are properly trained, instructed, and supervised.
5. We may from time to time give you reasonable instructions (in writing or otherwise) as to the performance of the Services. You must comply with those instructions but, unless otherwise specified in the Agreement, you may determine the manner in which the instructions are carried out. If the instruction is given verbally, we will subsequently provide written confirmation of the verbal instruction.
6. You must, upon our request, fully inform us of all work done by you or a subcontractor in connection with providing the Services.
7. You must maintain and pay for insurance on the terms, including form, amounts, and deductibles, outlined in Schedule D in the Agreement, if any, as modified from time to time in accordance with our directions. You must provide evidence of all required insurance in the form of a completed Province of British Columbia Certificate of Insurance.
8. You must comply with all applicable laws.

9. You must apply for and, immediately on receipt, remit to us any available refund, rebate or remission of federal or provincial tax or duty available we have paid you for, or agreed to pay you for, under the Agreement.
10. You must indemnify and save harmless the Province and the Province's employees and agents from any loss, claim (including any claim of infringement of third-party intellectual property rights), damage award, action, cause of action, cost or expense that the Province or any of the Province's employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, (each a "Loss") to the extent the Loss is directly or indirectly caused or contributed to by:
 - (a) any act or omission by you or by any of your agents, employees, officers, directors or Subcontractors in connection with this Agreement; or
 - (b) any representation or warranty of the Contractor being or becoming untrue or incorrect.
11. You must not assign any of the Contractor's rights or obligations under this Agreement without the Province's prior written consent. Upon providing written notice to you, the Province may assign to any person any of the Province's rights under this Agreement and may assign to any "government corporation", as defined in the Financial Administration Act, any of the Province's obligations under this Agreement.
12. You must not subcontract any of your obligations to perform Services under the Agreement other than to persons listed in Schedule C, without our prior written consent. No subcontract, whether consented to or not, relieves you from any obligations under the Agreement. You must ensure that any subcontractor you retain fully complies with the Agreement in performing the subcontracted obligations.
13. You must not provide any Services to any person in circumstances which, in our reasonable opinion, could give rise to a conflict of interest between your duties to that person and your duties to us under the Agreement.
14. You must not do anything that would result in personnel hired by you, or a subcontractor, being considered our employees.
15. You must not commit or purport to commit us to pay any money unless specifically authorized by the Agreement.
16. Without limiting the generality of section 8 you must comply with, and must ensure that any Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under this Agreement, including the Workers Compensation Act in British Columbia or similar laws in other jurisdictions.
17. The Contractor must apply for and maintain personal optional protection insurance (consisting of income replacement and medical care coverage) during the Term at the Contractor's expense if:

- (a) the Contractor is an individual or a partnership of individuals and does not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act* or similar laws in other jurisdictions; and
 - (b) such personal optional protection insurance is available for the Contractor from WorkSafeBC or other sources.
18. In accordance with the *Criminal Records Review Act*, you must ensure that you, your employees and subcontractors undergo a criminal record check or a criminal record check verification when required in circumstances where that employee or subcontractor works with children as defined in the *Criminal Records Review Act*.
19. In addition to any criminal record checks or criminal records check verifications required under the *Criminal Records Review Act*, you must ensure that you and all employees or subcontractors who have, or potentially have, unsupervised access to the records of children and are not subject to checks under the *Criminal Records Review Act* undergo a criminal record check [that is satisfactory to us] and you must ensure that all of your volunteers who have, or potentially have, unsupervised access to children or their records undergo a criminal record check [that is satisfactory to us].
20. Upon our written request the Contractor must provide us written confirmation that:
- (a) criminal record checks have been initiated;
 - (b) you have acted on instructions from us or under the *Criminal Records Review Act*; and
 - (c) all other related procedures have been followed.

INFORMATION MANAGEMENT & PRIVACY PROTECTION

21. You must comply with Schedule F – Information Management (Records, Privacy and Security) of the Agreement.

SERVICE DELIVERY PRINCIPLES

22. You must ensure that clients, whether their needs are simple or complex, short or long-term will receive timely, appropriate and effective assistance that respects and promotes their independence and self-determination, health and safety, within the limits of available resources.
23. Where appropriate you must develop client care plans appropriate to the circumstances of the client, that involve the client, whether an individual or family and other persons involved in the client's care.
24. You must ensure the client's views are heard and considered in decisions affecting them, and must ensure that no retribution occurs as a result of advocacy on behalf of a client.

25. You must ensure cultural competency principles and practices are incorporated in the delivery of Services to the client and Aboriginal cultural competencies are applied when providing services to Aboriginal children and families. You must work within the framework provided by the *Human Rights Code and the Multiculturalism Act* in the delivery of Services
26. You must ensure that clients have independence from your religious beliefs and affiliations.
27. You must refer clients to our client complaints process located on the Ministry of Children and Family Development website, comply with that process and if aware inform us when a client requests an administrative review under that process.
28. When providing Services to children, you must not require a parent or guardian, or a person acting for a parent or guardian, to waive your liability for negligence.
29. When providing Services to children in care, as defined in the *Child, Family and Community Services Act*, you must provide them in accordance with the rights of children in care, found at section 70 in the *Child Family and Community Services Act*.
30. When providing Services to Aboriginal children, youth and their families you will support the preservation of Aboriginal cultural identity and heritage and every effort should be made to involve Aboriginal people and Aboriginal communities served in the design and delivery of Services to ensure services are culturally appropriate and responsive.
31. The Parties support the spirit and intent of the Aboriginal Procurement Guidelines.

AUDIT AND SERVICE EVALUATION

32. You must maintain records and books of account, invoices, receipts, and vouchers of all expenses incurred in relation to the Agreement, in a form and with content that enables us to verify expenditures, and must provide upon request by the Province or as outlined in Schedule I.
33. Subject to section 34 you must deliver to us, as determined in accordance with the criteria set out below, your annual financial statements not later than 6 months after the end of your fiscal year. Without limiting our ability to waive any other right under the Agreement, we may waive this requirement for Services funded through standard rates of payment set by us. Your annual financial statements must be completed in accordance with generally accepted accounting principles on a fund accounting basis. Criteria for financial statement reporting requirements under this section are based on the total revenue you receive from us within a fiscal year and are as follows:
 - (a) under \$50,000, financial statements signed by your authorized representative may be required, at our discretion;
 - (b) \$50,000 through \$99,999, you are required to submit financial statements signed by your authorized representative (no requirement for audit or review of the statements

as defined in the Standards for Review found in the Canadian Institute of Chartered Accountant's Handbook) for that fiscal year;

- (c) \$100,000 through \$999,999, you are required to submit financial statements reviewed in accordance with Standards for Review Engagements found in the Chartered Professional Accountants Canada Handbook for that fiscal year; and
- (d) \$1,000,000 and above, you are required to submit audited annual financial statements for that fiscal year.

Despite the financial statement reporting requirements listed immediately above, for total revenue \$500,000 to \$999,999, we may require you to submit audited financial statements for that fiscal year if you have provided Services for fewer than two fiscal years, or you have failed to provide financial statements or performance measure reports as required under the Agreement.

If undischarged during the Term, your obligations under this section will continue in force after the Agreement ends.

- 34. If agreed that you are providing the Services on a variable payment basis (invoice driven basis), you are not required to comply with section 33 and are instead required to provide the statements of account and non-financial reporting identified in the Schedules.
- 35. If a material change to the Services has occurred, you may be required, at our request, to prepare financial reports for the Services that have changed.
- 36. We acknowledge that all financial statements and reports delivered to us under section 33 and 34 are supplied on a confidential basis. We will not permit their disclosure without your prior written consent except as permitted or required by applicable law, including the *Freedom of Information and Protection of Privacy Act*. Our internal use of this information will be limited to appropriate staff on a "need to know" basis.
- 37. In addition to any other rights we have to obtain information under the Agreement, we may at our own expense, conduct audits of you upon reasonable notice to you and at reasonable times. You must fully cooperate with us in the conduct of audits under this section.
- 38. You must permit an official we designate, at all reasonable times and upon reasonable notice, to enter any Facilities you use to provide Services or to keep any Records, other than Contractor Records, in order for us to inspect the Facilities and any Equipment located there and in order to inspect and copy Province's Records. Records are delivered to us in accordance with the provisions of the Agreement, or by separate Agreement of the Parties.
- 39. If required to be accredited you must comply with the Ministry of Children and Family Development's accreditation policies, located on the Ministry of Children and Family Development's website, as amended and replaced from time to time.

PAYMENT

40. We must pay you, for the provision of the Services, those fees and any expenses described in Schedule B of the Agreement. We are not obliged to pay you more than the "Maximum Amount" specified in Schedule B of the Agreement.
41. The Parties must comply with the payment provisions set out in the Agreement.
42. Our obligation to pay money to you is subject to the *Financial Administration Act*, which makes that obligation subject to an appropriation being available in the fiscal year of the Province during which payment becomes due.
43. Unless otherwise specified in the Agreement, all references to money are to Canadian dollars.
44. If you are not a resident in Canada, we may be required by law to withhold income tax from the fees described in the Agreement and then to remit that tax to the Receiver General of Canada on your behalf.

UNEARNED AND SURPLUS REVENUE

45. If you do not deliver the Services as required under the Agreement, the cost of the undelivered Services is unearned revenue and is a debt owing to us and we may, after consultation with you and, at our option, do any of the following:
 - (a) recover the amount owed as a debt due to us in accordance with the *Financial Administration Act*, or
 - (b) reduce future payments to you under the Agreement until the amount owed is recovered, or
 - (c) propose a modification to the applicable Services or payments, provided the effect of any such modifications occur within the current fiscal year.
46. If, after delivering all Services as required under this Agreement, you have surplus revenue in excess of 5% of the total revenue provided to you under this Agreement, this surplus revenue is a debt owing to us and we may, after consultation with you and, at our option, take any of the steps provided for in section 45 (a), (b) or (c).

TERMINATION

47. The Agreement will end upon any one of the following events:
 - (a) the contractor has failed to comply with the Agreement in any material respect and has not, to the satisfaction of the Province, remedied the failure within 30 days, or such other time period the Parties have agreed to, after the delivery of a written notice

which specifies the nature of the failure to comply, and the period of notice has elapsed;

- (b) a Party has given the other Party at least 60 days written notice, or other notice period as identified in Schedule H, that the Agreement is to end and the period of notice has elapsed;
 - (c) an Insolvency Event has occurred and the Province has given the Contractor notice that, for that reason, this agreement has ended or will end on a specified date and that date has arrived;
 - (d) the Agreement has been terminated under section 50; or
 - (e) the term has expired.
48. If the Agreement ends under section 47, or an ending of the Agreement under section 47 is foreseeable by the Parties, the Parties may develop a negotiated withdrawal of Services plan which may include adjustments to the Services, during the notice period and where such adjustments constitute a material change, the Parties may negotiate the applicable Agreement or Schedules. The negotiated withdrawal of Services may include the disposition of property, other than real property, purchased solely with funds from the Province and your obligations to us and others and will be informed by, but not limited to, the following considerations:
- (a) whether you are going to continue to provide contracted services for the Province;
 - (b) whether the property can be used by another contractor for the benefit of a client;
 - (c) the value of the property;
 - (d) whether or not you are intending to continue to remain in business;
 - (e) your rental or lease obligations;
 - (f) your obligations to union and non union employees;
 - (g) the impact on clients;
 - (h) records retention and/or disposition.
49. If either Party terminates the Agreement under sections 47, or we terminate it under section 50, we must pay you that portion of the fees and expenses described in Schedule B of the Agreement which equals the portion of the Services that was completed to our satisfaction before termination. That payment discharges us from all liability to you under the Agreement.

50. Despite any other provision, we may terminate the Agreement immediately if we determine that your failure to comply with the Agreement places the health or safety of any person receiving Services at risk, as determined by us.

OWNERSHIP

51. The Contractor acknowledges and agrees that the Province exclusively owns:
- (a) the Province's Records, including copyright therein;
 - (b) any property provided by the Province to the Contractor or a Subcontractor for the purposes of this Agreement unless the Province has indicated in writing that the property provided is to be owned by the Contractor or Subcontractor, as applicable; and
 - (c) any property acquired by the Contractor solely with funds obtained from the Province under this Agreement if it has been specified in Schedule G that the property is to be owned by the Province.
52. The Province acknowledges and agrees that the Contractor exclusively owns the Contractor's Records including copyright therein.

GENERAL

53. You are an independent contractor and not our employee, agent, or partner.
54. If you are a corporation, you represent and warrant to us that you have authorized the signatory or signatories who have signed the Agreement on your behalf to enter into and execute the Agreement on your behalf without affixing your common seal.
55. We must make available to you all information in our possession which we consider pertinent to your performance of the Services.
56. The Agreement is governed by and is to be construed in accordance with the laws of British Columbia.
57. Time is of the essence in the Agreement.
58. Any notice contemplated by the Agreement, to be effective, must be in writing and either
- (a) sent by fax to the addressee's fax number specified in the Agreement,
 - (b) delivered by hand to the addressee's address specified in the Agreement,
 - (c) delivered by email to the addressee's email address as specified in the Agreement,
 - (d) mailed by prepaid registered mail to the addressee's address specified in the Agreement

- (e) delivered by courier to the addressee's address as specified in the Agreement, or
- (f) sent by any other method as agreed upon in advance.

Either of the Parties may give notice to the other of a substitute address, email or fax number from time to time.

- 59. A waiver of any term of the Agreement or of any breach by you of the Agreement is effective only if it is in writing and signed by us and is not a waiver of any other term or any other breach.
- 60. No modification of the Agreement is effective unless it is in writing and signed by the Parties.
- 61. Except where the contract has ended under section 47 or notice has been given to terminate under sections 47 or 50, all disputes arising out of or in connection with the Agreement or in respect of any defined legal relationship associated with it or derived from it must, unless the Parties otherwise agree, be dealt with in accordance to the Conflict Resolution Protocol, located on the Ministry for Children and Family Development's website. If the Parties are unable to resolve the dispute by using the Conflict Resolution Protocol, all disputes arising out of or in connection with the Agreement or in respect of any defined legal relationship associated with it or derived from it must, unless the Parties otherwise agree, be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Center, under its rules.
- 62. If there is a conflict between a provision in a schedule of the Service Agreement and any other provision of the Terms and Conditions, the provision in the schedule is inoperative to the extent of the conflict unless it states that it operates despite a conflicting provision of the Terms and Conditions.
- 63. The Agreement does not operate as a permit, license, approval or other statutory authority which you may be required to obtain from the Province or any of its agencies in order to provide the Services. Nothing in the Agreement is to be construed as interfering with the exercise by the Province or its agencies of any statutory power or duty.
- 64. If the Province makes available to the Contractor any Facilities or Equipment of the Province for the use of the Contractor in providing the Services, the Contractor must comply with any policies and procedures provided to them by the Province on acceptable use, protection of, and access to, such Facilities or Equipment.
- 65. Sections 37, 38, 51 and 52, any accrued by unpaid payment obligations, and any other sections of this Agreement which, by their terms or nature, are intended to survive the completion of the Services or termination of this Agreement, will continue in force indefinitely, even after this Agreement ends..
- 66. The headings in this Agreement are included for convenience only and do not form part of the Agreement.