Indian and Northern Affairs Canada / Affaires indiennes et du Nord Canada

ARTICLES OF AGREEMENT

Contract Number 20-09-8010 **File Number 1632-11/20-09-8010**

These Articles of Agreement are made as of **December 7, 2009, between Her Majesty The Queen** in right of Canada (referred to in the Contract as "Her Majesty") represented by the Minister of Indian Affairs and Northern Development (referred to in the Contract as the "Minister")

and

KPMG Forensic
160 Elgin Street, Suite 200
Ottawa, ON K2P 2P8

(referred to in the Contract as the "Contractor").

Her Majesty and the Contractor agree as follows:

A1 CONTRACT

1.1 The following documents and any amendments relating thereto form the Contract between Her Majesty and the Contractor:

1.1.1 these Articles of Agreement;

1.1.2 the document attached hereto as Appendix "A" and titled "General Conditions", referred to herein as the General Conditions;

1.1.3 the document attached hereto as Appendix "B" and titled "Supplementary Conditions", referred to herein as the Supplementary Conditions;

1.1.4 the document attached hereto as Appendix "C" and titled "Terms of Payment", referred to herein as the Terms of Payment;

1.1.5 the document attached hereto as Appendix "D" and titled "Statement of Work", referred to herein as the Statement of Work;

1.1.6 the document attached hereto as Appendix "E" and titled "Intellectual Property", referred to herein as the Intellectual Property;

1.1.7 The document attached hereto as Appendix "F" and titles "Security Requirements Check List (SRCL) referred to here in as the Security Requirements Check List.

1.2 In the event of discrepancies, inconsistencies or ambiguities of the wording of these documents, the wording of the document that first appears on the above list shall prevail over the wording of a document subsequently appearing on the list.

A2 DATE OF COMPLETION OF WORK AND DESCRIPTION OF WORK

2.1 The Contractor shall, between the date of these Articles of Agreement and **September 30, 2010**, perform and complete with care, skill, diligence and efficiency the work that is described in the Statement of Work.

Canada

ARTICLES OF AGREEMENT

A3 CONTRACT AMOUNT

3.1 Subject to the terms and conditions of this Contract and in consideration for the performance of the work, Her Majesty shall pay to the Contractor

3.1.1 the sum of N/A

3.1.2 a sum not to exceed $365,003.50

A4 APPROPRIATE LAW

4.1 This Contract shall be governed by and construed in accordance with laws in force in the Province of Ontario and the laws of Canada as applicable

A5 DEPARTMENTAL REPRESENTATIVE

5.1 For the purpose of the Contract, the Minister hereby designates Natalie Neville, as the Departmental Representative.

This Contract has been executed on behalf of the Contractor and on behalf of Her Majesty the Queen in right of Canada by their duly authorized officers.

SIGNED, SEALED AND DELIVERED

by _____ Mario Beraline, Director Material and Assets Management

in the presence of _____

Date _____

SIGNED, SEALED AND DELIVERED

by _____ the Contractor

in the presence of _____

Date _____

APPENDIX "A"
GENERAL CONDITIONS

GC1 INTERPRETATION

1.1 In the Contract,

1.1.1 "Contract" means the Contract documents referred to in the Articles of Agreement;

1.1.2 "invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement thereof;

1.1.3 "Minister" includes a person acting for, or if the office is vacant, in place of the Minister and the Minister's successors in the office, and the Minister's or their lawful deputy and any of the Minister's or their representatives appointed for the purpose of the Contract;

1.1.4 "work", unless otherwise expressed in the Contract, means everything that is necessary to be done, furnished or delivered by the Contractor to perform the Contractor's obligations under the Contract;

1.1.5 "Departmental Representative" means the officer or employee of Her Majesty who is designated by the Articles of Agreement and includes a person authorized by the Departmental Representative to perform any of the Departmental Representative's functions under the Contract;

1.1.6 "prototypes" includes models, patterns and samples;

1.1.7 "technical documentation" means designs, reports, photographs, drawings, plans, specifications, computer software, surveys, calculations and other data, information and material collected, computed, drawn or produced, including computer print-outs.

GC2 SUCCESSORS AND ASSIGNS

2.1 The Contract shall inure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.

GC3 ASSIGNMENT

3.1 The Contract shall not be assigned in whole or in part by the Contractor without the prior written consent of the Minister and any assignment made without that consent is void and of no effect.

3.2 No assignment of the Contract shall relieve the Contractor from any obligation under the Contract or impose any liability upon Her Majesty or the Minister.

GC4 TIME OF THE ESSENCE

4.1 Time is of the essence of the Contract

4.2 Any delay by the Contractor in performing the Contractor's obligations under the Contract which is caused by an event beyond the control of the Contractor, and which could not have been avoided by the Contractor without incurring unreasonable cost through the use of work-around plans including alternative sources or other means, 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.

APPENDIX "A"
GENERAL CONDITIONS

4.3 The Contractor shall give notice to the Minister immediately after the occurrence of the event that causes the excusable delay. The notice shall state the cause and circumstances of the delay and indicate the portion of the work affected by the delay. When requested to do so by the Departmental Representative, the Contractor shall deliver a description, in a form satisfactory to the Minister, 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 Minister 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.

4.4 Unless the Contractor complies with the notice requirements set forth in the Contract, any delay that would constitute an excusable delay shall be deemed not to be an excusable delay.

4.5 Notwithstanding that the Contractor has complied with the requirements of GC4.3, Her Majesty may exercise any right of termination contained in GC8.

GC5 INDEMNIFICATION

5.1 The Contractor shall indemnify and save harmless Her Majesty and the Minister from and against all claims, losses, damages, costs, expenses, actions and other proceedings, made, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner based upon, occasioned by or attributable to any injury to or death of a person or damage to or loss of property arising from any wilful or negligent act, error, omission or delay on the part of the Contractor, the Contractor's servants or agents in performing the work or as a result of the work.

5.2 The Contractor shall indemnify Her Majesty and the Minister from all costs, charges and expenses whatsoever that Her Majesty sustains or incurs in or about all claims, actions, suits and proceedings for the use of the invention claimed in a patent, or infringement or alleged infringement of any patent or any registered industrial design or any copyright resulting from the performance of the Contractor's obligations under the Contract, and in respect of the use of or disposal by Her Majesty of anything furnished pursuant to the Contract.

5.3 The Contractor's liability to indemnify or reimburse Her Majesty under the Contract shall not affect or prejudice Her Majesty from exercising any other rights under law.

GC6 NOTICES

6.1 Where in the Contract any notice, request, direction, or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person, sent by registered mail, by facsimile, electronic mail or other means of electronic transmission, addressed to the party for whom it is intended at the address mentioned in the Contract, and any notice, request, direction or other communication shall be deemed to have been given if by registered mail, when the postal receipt is acknowledged by the other party; by facsimile, electronic mail or other means of electronic transmission, when transmitted. The address of either party may be changed by notice in the manner set out in this provision.

GC7 CANADIAN LABOUR AND MATERIALS

7.1 The Contractor shall use Canadian labour and material in the performance of the work to the full extent to which they are procurable, consistent with proper economy and the expeditious carrying out of the work.

APPENDIX "A"
GENERAL CONDITIONS

GC8 TERMINATION OR SUSPENSION

8.1 The Minister 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.

8.2 All work completed by the Contractor to the satisfaction of Her Majesty before the giving of such notice shall be paid for by Her Majesty in accordance with the provisions of the Contract and, for all work not completed before the giving of such notice, Her Majesty shall pay the Contractor's costs as determined under the provisions of the Contract and, in addition, an amount representing a fair and reasonable fee in respect of such work.

8.3 In addition to the amount which the Contractor shall be paid under GC8.2, the Contractor shall be reimbursed for the Contractor's cost of and incidental to the cancellation of obligations incurred by the Contractor pursuant to such notice and obligations incurred by or to which the Contractor is subject with respect to the work.

8.4 Payment and reimbursement under the provisions of GC8 shall be made only to the extent that it is established to the satisfaction of the Minister 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.

8.5 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 the Contract, exceeds the Contract price applicable to the work or the particular part thereof.

8.6 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 Minister under the provisions of GC8 except as expressly provided therein.

GC9 TERMINATION DUE TO DEFAULT OF CONTRACTOR

9.1 Her Majesty may, by notice to the Contractor, terminate the whole or any part of the work if:

9.1.1 the Contractor becomes bankrupt or insolvent, or a receiving order is made against the Contractor, or an assignment is made for the benefit of creditors, or if an order is made or resolution passed for the winding up of the Contractor, or if the Contractor takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors, or

9.1.2 the Contractor fails to perform any of the Contractor's obligations under the Contract, or, in the Minister's view, so fails to make progress as to endanger performance of the Contract in accordance with its terms.

9.2 In the event that Her Majesty terminates the work in whole or in part under GC9.1, Her Majesty may arrange, upon such terms and conditions and in such manner as Her Majesty deems appropriate, for the work to be completed that was so terminated, and the Contractor shall be liable to Her Majesty for any excess costs relating to the completion of the work.

APPENDIX "A"
GENERAL CONDITIONS

9.3 Upon termination of the work under GC9.1, the Minister may require the Contractor to deliver and transfer title to Her Majesty, in the manner and to the extent directed by the Minister, any finished work which has not been delivered and accepted prior to such termination and any materials or work-in-process which the Contractor has specifically acquired or produced for the fulfillment of the Contract. Her Majesty shall pay the Contractor for all such finished work delivered pursuant to such direction and accepted by Her Majesty, the cost to the Contractor of such finished work plus the proportionate part of any fee fixed by the said Contract and shall pay or reimburse the Contractor the fair and reasonable cost to the Contractor of all materials or work-in-process delivered to Her Majesty pursuant to such direction. Her Majesty may withhold from the amounts due to the Contractor such sums as the Minister determines to be necessary to protect Her Majesty against excess costs for the completion of the work.

9.4 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 the Contract, exceeds the Contract price applicable to the work or the particular part thereof.

9.5 If, after the Minister issues a notice of termination under GC9.1, it is determined by the Minister 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 GC8.1 and the rights and obligations of the parties hereto shall be governed by GC8.

GC10 ACCOUNTS AND AUDITS

10.1 The Contractor shall keep proper accounts and records of the cost of the work and of all expenditures or commitments made by the Contractor including the invoices, receipts and vouchers, which shall at reasonable times be open to audit and inspection by the authorized representatives of the Minister who may make copies and take extracts therefrom.

10.2 The Contractor shall afford facilities for audit and inspection and shall furnish the authorized representatives of the Minister with such information as the Minister or they may from time to time require with reference to the documents referred to herein.

10.3 The Contractor shall not dispose of the documents referred to herein without the written consent of the Minister, but shall preserve and keep them available for audit and inspection for such period of time as may be specified elsewhere in the Contract or, in the absence of such specification, for a period of two years following completion of the work.

GC11 CONFLICT OF INTEREST

11.1 The Contractor declares that the Contractor has no pecuniary 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 life of the Contract, the Contractor shall declare it immediately to the Departmental Representative.

GC12 CONTRACTOR STATUS

12.1 This is a Contract for the performance of a service and the Contractor is engaged under the Contract as an independent Contractor for the sole purpose of providing a service. Neither the Contractor nor any of the Contractor's personnel are engaged by the Contract as an employee, servant or agent of Her Majesty. The Contractor agrees to be solely responsible for any and all payments and/or deductions required to be made including those required for Canada or Quebec Pension Plans, Employment Insurance, Workmen's Compensation, or Income Tax.

APPENDIX "A"
GENERAL CONDITIONS

GC13 WARRANTY BY CONTRACTOR

13.1 The Contractor warrants that the Contractor is competent to perform the work required under the Contract in that the Contractor has the necessary qualifications including the knowledge, skill and ability to perform the work.

13.2 The Contractor warrants that the Contractor shall provide a quality of service at least equal to that which Contractors generally would expect of a competent Contractor in a like situation.

GC14 MEMBER OF HOUSE OF COMMONS

14.1 No member of the House of Commons shall be admitted to any share or part of this Contract or to any benefit to arise therefrom.

GC15 AMENDMENTS

15.1 No amendment of the Contract nor waiver of any of the terms and provisions shall be deemed valid unless effected by a written amendment.

GC16 ENTIRE AGREEMENT

16.1 The Contract constitutes the entire agreement between the parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements relating to it unless they are incorporated by reference in the Contract.

APPENDIX "B"
SUPPLEMENTARY CONDITIONS

SC1 RELEASE AND DISCLOSURE OF PROPRIETARY, PERSONAL AND THIRD PARTY INFORMATION

1.1 The Contractor shall keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work, including any information that is proprietary to third parties, and all information conceived, developed or produced by the Contractor as part of the Work where copyright or any other intellectual property rights in such information (except a licence) vests in Canada under the Contract.

1.2 The Contractor shall not disclose any such information to any person without the written permission of the Minister, except that the Contractor may disclose to an authorized subcontractor information necessary for the performance of the Subcontract, on the condition that the subcontractor agrees that it will be used solely for the purposes of such Subcontract.

1.3 Information provided to the Contractor by or on behalf of Canada shall be used solely for the purpose of the Contract and shall remain the property of Canada or the third party, as the case may be. Unless the Contract otherwise expressly provides, the Contractor shall deliver to Canada all such information, together with every copy, draft, working paper and note thereof that contains such information, upon completion or termination of the Contract or at such earlier time as the Minister may require.

1.4 Subject to the *Access to Information Act*, R.S.C. 1985, and, to any right of Canada under this Contract to release or disclose, Canada shall not release or disclose any information delivered to Canada under the Contract that is proprietary to the Contractor or a Subcontractor including personal and third party information.

SC2 SALES TAX

2.1 These services are being purchased with public (Canada) funds for the use of a federal government department and as such are not subject to the payment of any provincial ad valorem sales and consumption taxes levied by the province or territory in which the taxable services are delivered.

SC3 IDENTIFICATION/ACCESS CARD

3.1 A Contractor who has been issued a departmental Identification/Access Card must return it to the appropriate Security Section upon termination or completion of the Contract services and/or on the date that the card expires.

SC4 OFFICIAL LANGUAGES

4.1 Any Contractor who carries out work on behalf of DIAND or Indian, Oil and Gas Canada (IOGC) in a location where the Department or Agency is required to provide services or communications to the public in both official languages, must also do so in both official languages. In DIAND, those locations are its regional offices located in Amherst, Quebec, the National Capital Region (NCR), Toronto, Winnipeg, Regina, Edmonton, Vancouver, Iqaluit, Yellowknife and Whitehorse and in IOGC, the Calgary regional office.

4.2 Contractors must also respect the right of employees to work in the language of their choice and respect the language(s) of work in each region. To that end, Contractors must be able to provide their services in the working language of each region and in the two official languages of the National Capital Region (NCR). In DIAND, the languages of work in the NCR are English and French; in the Quebec regional office, French; and English in all other departmental regional offices and in the IOGC regional office.

APPENDIX "B"
SUPPLEMENTARY CONDITIONS

SC5 NON-RESIDENTS WHO PERFORM SERVICES IN CANADA

5.1 The Contractor agrees that, pursuant to the provisions of the Income Tax Act, Canada is empowered to withhold an amount of 15 percent of the price to be paid to the Contractor, if the Contractor is a non-resident Contractor identified in said Act and will perform services in Canada. This amount will be held on account with respect to any liability for taxes which may be owed to Canada. In addition, an amount of 9 percent may be withheld for provincial income tax purposes from non-residents providing services in the Province of Quebec.

SC6 CRIMINAL CODE OF CANADA

6.1 The Contractor certifies that it has not lost capacity to Contract with Her Majesty pursuant to Section 750 of the Criminal Code of the Canada.

SC7 GENDER-BASED ANALYSIS

7.1 The Contractor shall, where applicable, consult and adhere to, the DIAND Gender-Based Analysis Policy and the DIAND Gender-Based Analysis Guide.

Contractors can access the DIAND Gender-Based Analysis Policy via the Internet at: http://www.ainc-inac.gc.ca/pr/pub/ed/ed_e.html. A copy of the DIAND Gender-Based Analysis Guide can be obtained by sending an Email request to: gbanlo@ainc-inac.gc.ca.

7.2 Contractors who carry out work on behalf of DIAND shall observe the DIAND Gender-Based Analysis Policy requiring that a gender-based analysis be integrated in all of DIAND's work carried out by its employees and for services performed by Contractors on its behalf. This requirement includes the development and implementation of departmental policies, programs, communication plans, regulations, and legislation; consultations and negotiations (including but not limited to self-government and land claims, treaty land entitlement and devolution) and instructions and strategies on research, dispute-resolution, and litigation.

7.3 Where gender-based issues arise as a direct result of the Contract Work, solutions shall be developed and implemented by the Contractor to prevent and remedy the issue. Where gender-based issues cannot be fully addressed by the Contractor, the Contractor shall inform the Departmental Representative in a timely fashion via written documentation.

SC8 CERTIFICATION - CONTINGENCY FEES

8.1 The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this Contract to any person other than an employee acting in the normal course of the employee's duties.

8.2 All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the Contract shall be subject to the Accounts and Audit provisions of the Contract.

8.3 If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Minister may either terminate this Contract or recover from the Contractor by way of reduction to the Contract price or otherwise the full amount of the contingency fee.

8.4 In this section:

8.4.1 "contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a Government Contract or negotiating the whole or any part of its terms.

8.4.2 "employee" means a person with whom the Contractor has an employer/employee relationship.

APPENDIX "B"
SUPPLEMENTARY CONDITIONS

8.4.3 "person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the Lobbyist Registration Act R.S. 1985 c.44 (4th Supplement) as the same may be amended from time to time

SC9 FORMER PUBLIC SERVANTS

9.1 It is a term of the Contract:

9.1.1 that the Contractor has declared to the Departmental Representative whether the Contractor has received a lump sum payment made pursuant to any work force reduction program, including but not limited to the Work Force Adjustment Directive, the Early Departure Incentive Program, the Early Retirement Incentive Program or the Executive Employment Transition Program, which has been implemented to reduce the public service;

9.1.2 that the Contractor has informed the Departmental Representative of the terms and conditions of that work force reduction program, pursuant to which the Contractor was made a lump sum payment, including the termination date, the amount of the lump sum payment and the rate of pay on which the lump sum payment was based, and

9.1.3 that the Contractor has informed the Departmental Representative of any exemption in respect of the abatement of a Contract fee received by the Contractor under the Early Departure Incentive Program Order.

SC10 INTELLECTUAL PROPERTY

10.1 The Department of Indian Affairs and Northern Development has determined that any Intellectual Property arising from the performance of the Work under the Contract will vest in Canada for the following reason: statutes, regulations or prior obligations of Canada to a third party or parties preclude Contractor ownership of the Intellectual Property Rights in Foreground Information.

SC11 FEDERAL GOODS AND SERVICES TAX (GST)/HARMONIZED SALES TAX (HST) PROGRAM

11.1 The Contractor's GST/HST number is 123236315 3RT0001

SC12 SPECIFIC INDIVIDUALS

12.1 It is understood and agreed that the work under this Contract shall be performed by Vic Duret, Paul Rose, Glenn Smith, Pamela Johnson, Christopher Stead, Julie Desjardins.

APPENDIX "B"
SUPPLEMENTARY CONDITIONS

SC13 CONFLICT OF INTEREST AND POST-EMPLOYMENT CODE

13.1 **For the services of an Individual:** No individual for whom the post-employment provisions of the *Conflict of Interest Act*, the *Conflict of Interest and Post-Employment Code for Public Office Holders*, the *Values and Ethics Code for the Public Service*, or the *Conflict of Interest and Post-Employment Code for the Public Service* apply shall derive any direct benefit from this Contract unless that individual is in compliance with the applicable post-employment provisions; and

that during the terms of the Contract any persons engaged in the course of carrying out this Contract shall conduct themselves in compliance with the principles of the *Conflict of Interest Act*, the *Values and Ethics Code for the Public Service*, the *Conflict of Interest and Post-Employment Code for Public Office Holders* which are the same as those in the *Conflict of Interest and Post-Employment Code for the Public Service*, with the addition that decisions shall be made in the public interest and with regard to the merits of each case. Should an interest be acquired during the life of the Contract that would cause a conflict of interest or seem to cause a conflict of interest or seem to cause a departure from the principles, the Contractor shall declare it immediately to the Departmental Representative.

13.2 **For the services of a Firm:** It is a term of this Contract that no individual for whom the post-employment provisions of the *Conflict of Interest Act*, the *Conflict of Interest and Post-Employment Code for Public Office Holders*, the *Values and Ethics Code for the Public Service*, or the *Conflict of Interest and Post-Employment Code for the Public Service* apply, shall derive any direct benefit from this Contract unless that individual is in compliance with the applicable post-employment provisions.

APPENDIX "C"
TERMS OF PAYMENT

TP1 Payment for the satisfactory performance of the work under this agreement shall be based on:

Fixed Fees (Partner Vic Duret 31.3 days at $2,250.00/day	$70,425.00
Fixed Fees (Partner Paul Rose 30.9 days at $2,250.00/day	$69,525.00
Fixed Fees (Team Leader Glenn Smith 45 days at $1,500.00/day	$67,500.00
Fixed Fees (Team Leader Pamela Johnson 45 days at $1,500.00/day	$67,500.00
Fixed Fees (Auditor Christopher Stead 33 days at $950.00/day)	$31,350.00
Fixed Fees (Auditor Julie Desjardins 33 days at $950.00/day)	$31,350.00
Actual and reasonable travel expenses for transportation, accommodation, meals and incidentals incurred by the Contractor as may be authorized by the Departmental Representative to a maximum amount of	$10,000.00
Maximum Authorized Amount for Fees and Expenses	$347,650.00
Maximum GST Payable (5%)	$17,382.50
Total Maximum Authorized Contract Value	**$365,032.50**

TP2 Administration fees are not reimbursable under this agreement as the time/unit rate(s) and/or fixed fee(s) specified in TP1 are inclusive of all payroll, overhead and administration costs and profits required to complete the Work.

TP3 This Contract value shall not be exceeded without the approval of the Contract signing authority.

TP4 **For Contracts with travel expense provisions in TP1 of the Terms of Payment:** The travel and accommodation expenses shall not exceed the charges allowed in the current issue of the Treasury Board Travel Directive as set out in the attached "Travel Expenses Information". These expenses shall be substantiated to the satisfaction of the Departmental Representative with the supporting documents required by the said Directive.

TP5 Payments in accordance with the Terms of Payment herein will be made to the Contractor upon receipt of invoices therefore approved by the Departmental Representative for satisfactory performance of this agreement. It is understood and agreed that the Departmental Representative shall be the final judge concerning the quality and acceptability of the work.

TP6 Payment will be issued to the Contractor 30 days after the work (or part thereof, where provided for under TP1) is satisfactorily completed and an invoice received therefore. Where payment is not made within the 30 day payment period, and where the government is responsible for the delay, interest will be paid on the invoice amount at the Bank of Canada rate in effect on the date on which the amount is paid, plus 3%.

TP7 Interest is payable on acceptable invoices that are not paid within the 30 day payment period. Interest will not be paid on invoices paid within the 30 day payment period. Interest will not be paid on an interim basis; nor will interest be paid on interest charges.

TP8 The period for which interest will be paid will be from the day after the end of the 30 day payment period to the date that payment is issued. In respect of interest amounts which are less than ten dollars ($10.00) in value, said interest shall not be paid unless the Contractor so demands by means of written communication to the Departmental Representative. Interest payments in excess of ten dollars ($10.00) will be paid automatically.

APPENDIX "C"
TERMS OF PAYMENT

TP9 FEDERAL GOODS AND SERVICES TAX (GST/HARMONIZED SALES TAX (HST) REGISTRANTS AND NON-REGISTRANTS

9.1 **GST or HST Registrants:** Any amount levied against Her Majesty in respect of the federal Goods and Services Tax (GST) or Harmonized Sales Tax (HST) shall be shown separately on all invoices and claims for progress payments submitted by the Contractor. The appropriate GST or HST levy shall be paid from the Government of Canada Refundable Advance Account to the Contractor in addition to the amounts paid from the departmental appropriation for the work done. The Contractor agrees to remit the GST or HST to the Canada Customs and Revenue Agency.

or,

9.2 **Non GST or HST Registrants:** Any amount to be levied by a non-GST or HST Registrant against Her Majesty in respect of the federal Goods and Services Tax (GST) or the Harmonized Sales Tax (HST) shall be shown separately on all invoices and claims for progress payments submitted by the Contractor. The appropriate GST or HST levy and the amounts for the work done shall be paid directly for the departmental appropriation to the Contractor.

TP10 METHOD OF PAYMENT AND INVOICING INSTRUCTIONS

10.1 **Progress Payments**

Unless otherwise agreed upon by the Departmental Representative, Progress Payments will be made to the Contractor on a monthly basis upon compliance with the following terms and conditions and in accordance with the Invoicing Instructions specified herein.

10.2 **Progress Claims and Invoicing**

10.2.1 **Progress Claims:** Progress Claims, which must include, at a minimum, the following information/documentation, shall be prepared by the Contractor and submitted to the Departmental Representative in accordance with the Invoicing Instructions detailed herein on a monthly basis:

a) Contractor's Name and Address;
b) Progress Claim Number;
c) Contract Number;
d) Contractor's Report of Progress/Activities;
e) Period of Work covered by the Progress Claim; and
f) Description of Expenditures (expenditures shall be claimed in accordance with the Contract Basis and Method of Payment).

10.2.2 **Certificate of Contractor**

It is understood and agreed, that in submitting a Progress Claim, the Contractor is certifying that:

a) All authorizations required under the Contract have been obtained. The Progress Claim is consistent with the progress of the Work and is in accordance with the terms of the Contract.
b) Indirect costs have been paid for, or accrued, in the Contractor's accounts.
c) Direct materials and Work under subcontract have been received, accepted and either paid for, or accrued, in the Contractor's accounts following receipt of invoice from vendors/subcontractors, and have been, or will be, used exclusively for the purpose of the Contract.

APPENDIX "C"
TERMS OF PAYMENT

d) All direct labour costs have been paid for, or accrued, in the Contractor's accounts and all such costs were incurred exclusively for the purpose of the Contract.

e) All other direct costs have been paid for, or accrued, in the Contractor's accounts following receipt of applicable invoice or expense voucher and all such costs were incurred exclusively for the purpose of the Contract.

f) The Contractor has not been given notice of, nor is he/she aware of, any liens, encumbrances, charges or other claims against the Work.

10.3 **Invoicing Instructions**

10.3.1 On a pre-determined monthly date which has been mutually agreed upon by the parties to the Contract, the Contractor shall submit two (2) copies of their invoice to the Departmental Representative as named in the Contract.

10.3.2 **All invoices for Progress Claims shall be submitted to:**

Natalie Neville
Litigation Sask. East LMRB
Department of Indian Affairs and Northern Development
Room - 10 Wellington Street
Gatineau, Quebec K1A 0H4

and must be accompanied by:

a) a "Progress Claim" (in accordance with the requirements of 10.2.1 above); and

b) all receipts (for invoices including hospitality, miscellaneous and/or travel expense claims).

10.3.3 Pursuant to paragraph 221 (1) (d) of the *Income Tax Act*, payments made by departments and agencies under applicable service Contracts must be reported on a T1204 supplementary slip. To comply with this requirement, Contractors are required to provide the following information on each invoice:

a) the legal name of the entity or individual, as applicable, i.e. the name associated with the Social Insurance Number or Business Number (BN), as well as the address and the postal code;

b) the status of the Contractor, i.e. individual, unincorporated business, or corporation;

c) for individuals and unincorporated businesses, the Contractor's SIN and, if applicable, the BN or if applicable, the Goods and Services Tax (GST) Harmonized Sales Tax (HST) number;

d) for corporations, the BN, or if this is not available, the GST/HST number. If there is no BN or GST/HST number, the T2 Corporation Tax number must be shown; and

e) the following certification signed by the Contractor or an authorized officer:
"I certify that I have examined the information provided above, including the legal name, address, and Canada Customs and Revenue Agency identifier, c) or d) as applicable, and that it is correct and complete, and fully discloses the identification of this Contractor."

Progress Claim payments will only be made upon receipt and acceptance of the above noted documentation.

APPENDIX "D"
STATEMENT OF WORK

SW1 BACKGROUND

Indian and Northern Affairs Canada (INAC) is responsible for providing assistance to the Department of Justice (DOJ) in defending court actions where INAC is the lead department and possesses information necessary for the conduct of the litigation. The Litigation Management and Resolution Branch is responsible for conducting the research and preparing the analysis of court actions by or against the federal Crown.

In February 2007, the Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society of Canada (FNCFCS) (hereafter jointly referred to as the Complainants) filed a complaint with the Canadian Human Rights Commission alleging that under-funding of on-reserve child and family services constitutes systemic and ongoing discrimination on the basis of race, national or ethnic origin under the *Canadian Human Rights Act*.

On October 14, 2008, the Commission gave notice that it had referred the Complaint to the Canadian Human Rights Tribunal for a hearing. The hearing commenced on September 14, 2009 to address outstanding motions before the Tribunal, including motions for adjournment and additions of new parties. The hearing has been adjourned until January 19, 2010.

If the Canadian Human Rights Tribunal were to rule that Canada has discriminated in the way it funds child and family services on-reserve, Canada would be increasingly pressured to change its funding mechanism in this area. In addition, this could create a precedent for First Nations groups to pursue human rights complaints in order to drive federal funding policy.

Expert services in forensic accounting are essential to the Crown's defence of the Complaint in order to address the technical aspects of the Complainants' claims regarding under-funding of on-reserve child and family services. In addition, these services will assist in the development of legal strategy between INAC and DOJ and allow INAC to more effectively provide advice to the Minister and instructions to DOJ.

SW2 OBJECTIVE(S)

The objective of this contract is for KPMG to provide an expert report and expert witness services for the Crown. KPMG will be required to produce an expert report regarding the comparability of provincial and federal funding for child and family services. More specifically, this expert report will address the Complainants' allegation that when compared to provincial standards, INAC under-funds child and family services on-reserve by a level of 22%. The comparability of funding is contested by the federal Crown.

In order to meet this objective, KPMG will assess the validity of the methodology and conclusions cited by the Complainants in the May 6, 2000 Blue Hills Management and Consulting report, the 2005 *Wenjde, The Journey Continues* and other relevant materials, review relevant reports produced by the Complainants' expert witnesses, and undertake an analysis of provincial and federal funding for child and family services

SW3 SCOPE OF WORK

The Contractor shall perform the following to the satisfaction of the Departmental Representative:

Phase 1: Blue Hills Report

a) Review and critique the chart contained in the Blue Hills report that alleges that when compared to provincial funding there is a 22% shortfall in the federal government's funding for the annual cost of child in care;

APPENDIX "D"
STATEMENT OF WORK

b) review the methodology used by Blue Hills to create the chart, evaluate the methodology used to arrive at the report's conclusions, document issues with the above noted methodology, and provide an analysis of validity, reliability and potential limitations of the original findings;
c) document the resulting analysis in an expert report.

Phase 2: *Wendle Report*

d) Review and critique the economic analysis used to develop recommendations for a new funding formula, quantify the resulting cost implications and highlight comments made by the report's authors concerning the validity and reliability of the funding analysis and as set out in *Wendle, The Journey Continues*;
e) document findings in an expert report.

Phase 3

f) after completing the Phase 1 review of the methodology used to create the "22% underfunding chart", and if concerns are raised with the methodology used, propose an alternative methodology/methodologies that could be employed to most effectively compare federal and provincial funding levels of child and family services broken down by province/territory;
g) by using the most effective methodology to compare the funding, create a chart for 2005-2006 to compare the federal government funding, broken down by province/territory, with the provincial government and Yukon funding (based on available provincial/territorial funding data);
h) draw conclusions, where possible, as to how the federal government funding, broken down by province/territory, compares to the provincial/territorial funding;
i) further, compare the numbers from the original Blue Hills chart and the updated Blue Hills chart to that of the 2005-2006, and determine if funding has increased or decreased in comparison to provincial counterparts in that timeframe.

The Contractor shall carry out the following general services:

a) acquire familiarity with background information and material through the process of reading, researching and attending meetings with departmental officials or others by establishing contacts with other informed sources;
b) obtain relevant information from provincial and federal government departments;
c) correspond with the departmental representative, Crown litigation counsel and other officials to assist in gathering necessary information;
d) consult with, and provide advice to, Crown litigation counsel to address the needs of the litigation as required;
e) provide progress reports, as described under output below;
f) review the required Complaint documents;
g) produce a draft and final written expert report detailing the work undertaken and conclusions, as well as a critique of the relevant reports produced by the Complainants' expert witnesses ;
h) attend and testify at the Tribunal proceedings as required; and
i) provide work reports summarizing professional time expended with all invoices submitted to INAC.

SW4 OUTPUT/DELIVERABLES

The Contractor shall: provide the following services and deliverables output:

- an expert report addressing the issues outlined in the Statement of Work and project proposal. KPMG will provide a draft of the report by February 1, 2010. The final expert report to be submitted on February 15, 2010;

APPENDIX "D"
STATEMENT OF WORK

- attend and testify before the Tribunal as required;
- question and answer meetings with DOJ and INAC representatives as needed (first scheduled January 11, 2010);
- progress updates on work as requested by the Departmental Representative; and,
- monthly summaries of work completed and professional time expended with all invoices submitted to INAC.

SW5 DEPARTMENTAL SUPPORT

INAC has provided KPMG with the necessary reports, documents and data to undertake the expert analysis.

SW6 CONTRACTOR'S PROPOSAL

SW7 The Contractor's proposal, dated August 21, 2009, insofar as it is not at variance with anything contained in the Contract document, shall apply to and form part of the Contract.

Indian and Northern Affairs Canada

20-09-0316

APPENDIX "E"
INTELLECTUAL PROPERTY

Canada to Own Intellectual Property Rights in Foreground Information

01 Interpretation
02 Disclosure of Foreground Information
03 Canada to Own Intellectual Property Rights in Foreground Information
04 License to Intellectual Property Rights in Background Information
05 Right to License
06 Access to Information; Exception to Contractor Rights
07 Waiver of Moral Rights
08 License to Intellectual Property Rights in Foreground Information
09 No Right for Contractor to Sub-license

01 INTERPRETATION

1 In the Contract,

"Background Information" means all Technical Information that is not Foreground Information and that is proprietary to or the confidential information of the Contractor, its Subcontractors or any other supplier of the Contractor;

"Firmware" means any computer program stored in integrated circuits, read-only memory or other similar devices;

"Foreground Information" means any Invention first conceived, developed or reduced to practice as part of the Work under the Contract and all other Technical Information conceived, developed or produced as part of the Work under the Contract;

"Intellectual Property Right" means any intellectual property right recognized by the law, including any intellectual property right protected through legislation (such as that governing patents, copyright, industrial design, integrated circuit topography, or plant breeders' rights) or arising from protection of information as a trade secret or as confidential information;

"Invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter, whether or not patentable;

"Software" means any computer program whether in source or object code (including Firmware), any computer program documentation recorded in any form or medium, and any computer database, and includes modifications to any of the foregoing;

"Technical Information" means all information of a scientific, technical or artistic nature relating to the Work, whether oral or recorded in any form or medium and whether or not subject to copyright, including but not limited to any Inventions, designs, methods, processes, techniques, know-how, models, prototypes, patterns, samples, schematics, experimental or test data, reports, drawings, plans, specifications, photographs, collections of information, manuals and any other documents, and Software. Technical Information does not include data concerned with the administration of the Contract by Canada or the Contractor, such as internal financial or management information, unless it is a deliverable under the Contract.

02 DISCLOSURE OF FOREGROUND INFORMATION

1 The Contractor shall promptly report and fully disclose to the Minister all Foreground Information that could be Inventions, and shall report and fully disclose to the Minister all other Foreground Information not later than the time of completion of the Work or such earlier time as the Minister or the Contract may require.

2 Before and after final payment to the Contractor, the Minister shall have the right to examine all records and supporting data of the Contractor which the Minister reasonably deems pertinent to the identification of Foreground Information.

A0432-002/02 (2001-04-18)

APPENDIX "E"
INTELLECTUAL PROPERTY

03 CANADA TO OWN INTELLECTUAL PROPERTY RIGHTS IN FOREGROUND INFORMATION

1. Without affecting any Intellectual Property Rights or interests therein that have come into being prior to the Contract, all Intellectual Property Rights in the Foreground Information shall immediately, as soon as they come into existence, vest in and remain the property of Canada. The Contractor shall have no right in or to any such Intellectual Property Rights in the Foreground Information except any right that may be granted in writing by Canada.

2. The Contractor shall incorporate the copyright symbol and either of the following copyright notices, as appropriate, into all Foreground Information that is subject to copyright, regardless of the form in or medium upon which it is recorded:

   © HER MAJESTY THE QUEEN IN RIGHT OF CANADA (year)
   or
   © SA MAJESTÉ LA REINE DU CHEF DU CANADA (année)

3. (i) For greater certainty, the Contractor agrees that where the Work under the Contract involves the preparation of a database or other compilation using information or data supplied by Canada or personal information referred to in paragraph (ii), then the Contractor shall not use or disclose any such information or data or personal information for any purpose other than completing the Work under the Contract. The Contractor shall not dispose of such information or data or personal information except by returning it to Canada. The Contractor shall comply with the General Conditions of the Contract in regard to maintaining the confidentiality of such information, data, or personal information. Unless the Contract otherwise expressly provides, the Contractor shall deliver to Canada all such information, data, or personal information, together with every copy, draft, working paper and note thereof that contains such information, data, or personal information upon completion or termination of the Contract or at such earlier time as the Minister may require.

   (ii) For greater certainty and without limiting sub-section 03(1), if the Work under the Contract involves the collection of personal information as that term is defined in the *Privacy Act* (R.S.C., c. P-21), then all Intellectual Property Rights in and title to that personal information shall, immediately upon the collection of it by the Contractor, vest in Canada, and the Contractor shall have no right or interest in it.

4. The Contractor shall execute such conveyances or other documents relating to the Intellectual Property Rights in the Foreground Information as the Minister may require, and the Contractor shall, at Canada's expense, afford the Minister all reasonable assistance in the preparation of applications and in the prosecution of any applications for registration of any Intellectual Property Right in any jurisdiction, including without limitation the assistance of the inventor in the case of inventions.

04 LICENSE TO INTELLECTUAL PROPERTY RIGHTS IN BACKGROUND INFORMATION

1. The Contractor hereby grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise such of the Intellectual Property Rights in any Background Information incorporated into the Work or necessary for the performance of the Work as may be required in order for Canada to exercise its license in the Intellectual Property Rights in the Foreground Information. The Contractor agrees to make any such Background Information (including, in the case of Software, source code) promptly available to Canada for any such purpose.

2. The Contractor acknowledges that Canada may wish to award contracts for any of the purposes contemplated in subsection 1 and that such contract awards may follow a competitive process. The Contractor agrees that Canada's license in relation to the Intellectual Property Rights in Background Information includes the right to disclose the Background Information to bidders for such contracts, and to sub-license or otherwise authorize the use of that information by any contractor engaged by Canada solely for the purpose of carrying out such a contract. Canada shall require bidders and the contractor not to use or disclose any Background Information except as may be necessary to bid for or to carry out that contract.

APPENDIX "E"
INTELLECTUAL PROPERTY

3. Where the Intellectual Property Rights in any Background Information are owned by a Subcontractor at any tier, the Contractor shall either obtain a license from the Subcontractor that permits compliance with subsections 1 and 2 or arrange for the Subcontractor to convey directly to Canada the same rights by execution of the form provided for that purpose by the Minister, in which case the Contractor shall deliver that form to the Minister, duly completed and executed by the Subcontractor, no later than the time of disclosure to Canada of that Background Information.

4. Notwithstanding subsection 1, the license set out therein shall not apply to any Software that is subject to detailed license conditions that are set out elsewhere in the Contract.

05 RIGHT TO LICENSE

1. The Contractor represents and warrants that the Contractor has, or the Contractor undertakes to obtain, the right to grant to Canada the license to exercise the Intellectual Property Rights in the Background Information as required by the Contract.

06 ACCESS TO INFORMATION; EXCEPTION TO CONTRACTOR RIGHTS

1. Subject to the *Access to Information Act*, R.S.C., c. A-1 and to any right of Canada under the Contract, Canada shall not release or disclose outside the Government of Canada any Background Information delivered to Canada under the Contract that is confidential information or a trade secret of the Contractor or a Subcontractor.

2. Nothing in these terms and conditions shall be construed as limiting Canada's right to exercise the Intellectual Property Rights in any Background Information, or to disclose any Background Information, to the extent that such information:

   (a) is or becomes in the public domain, or to the extent that the Contractor does not benefit from or ceases to benefit from any intellectual property rights protection for such information under legislation or at law (other than under the terms of the Contract), for any reason including as a result of Canada's use or disclosure of deliverables under the Contract for any purpose whatever that is not expressly excluded under the Contract;

   (b) is or becomes known to Canada from a source other than the Contractor, except from any source that is known to Canada to be under an obligation to the Contractor not to disclose the information;

   (c) is independently developed by or for Canada; or

   (d) is disclosed under compulsion of a legislative requirement or any order of a court or other tribunal having jurisdiction.

07 WAIVER OF MORAL RIGHTS

1. The Contractor shall provide to Canada, at the completion of the Work or at such other time as the Minister may require, a written permanent waiver of moral rights (as that term is defined in the *Copyright Act*, R.S.C., c. C-42), in a form acceptable to the Minister, from every author that contributed to any Foreground Information which is subject to copyright protection and which is deliverable to Canada under the terms of the Contract.

2. If the Contractor is an author of the Foreground Information referred to in subsection 1, the Contractor hereby permanently waives the Contractor's moral rights in that Foreground Information.

APPENDIX "E"
INTELLECTUAL PROPERTY

08 **LICENSE TO INTELLECTUAL PROPERTY RIGHTS IN FOREGROUND INFORMATION**

1. Subject to subsection 2, if the Contractor wishes to make use of the Foreground Information for purposes of its commercial exploitation or further development, then the Contractor may make a written request for a license to the Minister. Such a request should be made within thirty (30) working days following completion of the Work. The Contractor shall give the Minister an explanation as to why such a license is required. The Minister shall respond in writing to any request for such a license within a reasonable period of time. If the request is refused the response shall provide an explanation for the refusal. Should the Minister agree to grant such a license, it shall be on terms and conditions to be negotiated between the Contractor and the Minister. It is understood that those terms may include payment of compensation to Canada.

2. Where the Work under the Contract involves the preparation of a database or other compilation using information or data supplied by Canada, or personal information (as this term is defined in the *Privacy Act* (R.S.C., c. P-21)) collected by the Contractor as part of the Work, then the license referred to in subsection 1 shall be restricted to the Intellectual Property Rights in Foreground Information that are capable of being exploited without the use of such information or data or such personal information.

09 **NO RIGHT FOR CONTRACTOR TO SUB-LICENSE**

1. The Contractor shall not have the right to sub-license or otherwise authorize any party to exercise any of the Intellectual Property Rights in the Foreground Information.

APPENDIX "F"
SECURITY REQUIREMENT CHECKLIST

SECURITY CLAUSES:

1. Pursuant to the Government of Canada Security Policy, the nature of the services to be provided under this contract requires a Government of Canada (GoC) Security Screening action at the **Reliability Status** level of the Contractor, their employees and sub-contractors to be assigned to conduct project work.

2. Prior to the commencement of the work under the contract, the Contractor and each of its personnel involved in the performance of the work under the contract must each hold a valid Government of Canada (GoC) Security Screening at the level of **Reliability Status.**

3. The Contractor and their personnel requiring access to **PROTECTED B** information, assets or sensitive work site(s) must each hold a valid Security Screening at the level of **Reliability Status.**

4. The Contractor **MUST NOT** remove any **PROTECTED** information from the identified work site(s), and the Contractor must ensure that its personnel are made aware of and comply with this restriction.

5. The Contractor **MUST NOT** possess or safeguard **PROTECTED** information/assets at their organization's premises until appropriate document safeguarding capability is granted by the Canadian Industrial Security Directorate of Public Works and Government Services Canada.

6. Subcontracts which contain security requirements are not to be awarded without the prior written permission of the Department of Indian Affairs and Northern Development (DIAND), Security in Contracting Section.

7. Any substitute or alternate personnel proposed for the contract work:
   a) must be approved by the Departmental Representative; and,
   b) must hold a valid Government of Canada (GoC) Security Screening at the level of **Reliability Status**, before gaining access to designated information or **assets.**

8. Under the contract, if a Contractor submits a resource who is subsequently found to not meet the Security requirements, the Department may immediately terminate the contract with no obligation to replace the resource with a resource from the same Contractor or to pay any invoice for work undertaken by this resource.

9. This contract only has force or effect for as long as the security screening at the level of **Reliability Status** is in effect. Should the security screening issued prior to the commencement of the work under contract be revoked during the lifetime of the contract, the contract shall be terminated immediately and the Contractor shall have no claim against Her Majesty or the Minister as a result of the termination. The Contractor shall be paid for satisfactory Work performed up to the time of termination pursuant to the terms of the Contract.

10. The Contractor must comply with the provisions of the Government Security Policy (Latest Edition).