

## THEMIS SERVICES AGREEMENT

THIS AGREEMENT made the 19<sup>th</sup> day of March, 1997.

### BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA, represented by the Attorney General

(the "Province") OF THE FIRST PART

### AND:

THEMIS PROGRAM MANAGEMENT AND CONSULTING LIMITED  
409, 3960 Quadra Street, Victoria, in the Province of British Columbia, V8X 4A3

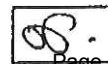
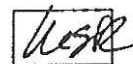
(the "Contractor") OF THE SECOND PART

### WHEREAS:

- A. The parties entered into an agreement titled the 1994-1997 Services Agreement dated the 16th day of June, 1994, as amended by the Themis 1994-1997 Services Agreement Contract Amendments No. 1 and 2 dated March 31, 1995, and March 22, 1996, respectively, whereby the parties agreed that the Contractor would provide all aspects of the Family Maintenance Enforcement Program in the Province of British Columbia from April 1, 1994 to July 31, 1997 (with a provision for an automatic one year extension) unless earlier terminated by the Province (collectively the "Previous Contract");
- B. The Contractor has been designated by Order In Council under the *Public Sector Employers Act* and is a member of the Community Social Services Employers' Association of British Columbia (CSSEA) and therefore qualifies to enter into a continuing services agreement with the Province at the time the protocols of that form of agreement are settled and approved;
- C. In view of the possibility of entering a continuing services agreement, and for other business reasons, the parties have renegotiated the terms of the Previous Contract and it is now agreed that the Contractor will continue to provide all aspects of the Family Maintenance Enforcement Program (the "Program") on the terms set out herein.

WITNESSETH that the parties agree as follows:

Initialled for identification purposes by  
Michael Redding, Director, Family Justice  
Programs Division



## APPOINTMENT

1. The Province retains the Contractor to provide the services (herein called the "Services") described in Schedule "A" and attached hereto and forming a part hereof.

## TERM

2. (1) The Contractor will provide the Services in accordance with the provisions of this Agreement and in compliance with all statutes, rules and regulations of any government or agency thereof during the period (herein called the "Term") commencing on September 1, 1996 and ending on March 31, 2000, unless extended under section 54(3) herein, notwithstanding the date of execution of this Agreement.
- (2) For the purpose of this Agreement, the period from September 1, 1996 to March 31, 1997 shall be referred to as the First Program Year and, thereafter, commencing on April 1, 1997, each twelve (12) month period starting on April 1 and ending on March 31 the following year shall be referred to as a Fiscal Year.
- (3) For every Fiscal Year during the Term the Services will be adjusted in consultation with the Province to match the Operational Expenses authorized by the Province under section 3 herein, provided further that if the parties do not agree on the adjustment to the Services by the beginning of the Fiscal Year to which the adjustment is to apply then either party may give written notice to the other to have the adjustment to the Services determined by an arbitrator in accordance with the provisions of section 56 and pending such determination the Services shall continue to be provided at the then current levels.
- (4) The parties confirm that the provision of the Services by the Contractor is predicated on the federal and provincial legislation that is relevant to the provision of the Services and in force as of the effective date of this Agreement except where such legislation has been amended by unproclaimed provisions of the *Family Maintenance Enforcement Act, 1994*, S.B.C. c. 36 (the "FMEA, 1994") in which case the services provided will be those that relate to the provisions of the FMEA, 1994 as it is brought into force from time to time.
- (5) All references in this Agreement and the Schedules to the *Family Maintenance Enforcement Act*, S.B.C. 1988, c.3, shall be deemed to be references to that Act as amended by the FMEA, 1994 as it is brought into force from time to time.
- (6) The Contractor acknowledges that changes to the nature and the scope of the Services may, from time to time, be required in order to accommodate changes in legislation. If such changes are required, the Province will give







written notice and particulars thereof to the Contractor. Upon the Province giving such notice, the parties will enter into negotiations with a view to amending the terms and conditions of this Agreement accordingly. If the parties are unable to agree on the new terms and conditions of the Agreement, either party may terminate this Agreement by 1 year written notice of termination given to the other and if such option is exercised by either party under this section, neither the Province nor the Attorney General will be under any further obligation to the Contractor except to pay to the Contractor the amounts contemplated in section 53 incurred to the Cessation Date and all other provisions of this Agreement shall apply as if the Province has given notice of termination pursuant to section 53.

- (7) For the purposes of this Agreement reference to the "Cessation Date" shall mean the day on which this Agreement expires unless:
- (a) a notice of termination is given, or is deemed to have been given, terminating this Agreement prior to the end of the Term in which case the Cessation Date shall be the day on which that notice expires; or
  - (b) where this Agreement is extended under Section 54, and a notice of termination is given or is deemed to have been given in which case the Cessation Date shall be the day on which that notice expires.

### **PAYMENT**

3. (1) For the First Program Year the Province will pay to the Contractor, in full payment and reimbursement for providing the Services and for expenses the amounts, in the manner and at the times set out in Schedules "B" and "C" to this Agreement, and the Contractor will accept the same as full payment and full reimbursement.
- (2) For the Fiscal Years commencing on April 1, 1997 and April 1, 1998, the Province will pay to the Contractor in full payment and reimbursement for providing the Services the management fee at the time and amounts as set out in Schedule "B";
- (3) For the Fiscal Year commencing April 1, 1999, the Province will pay to the Contractor in full payment and reimbursement for providing the Services the management fee at the time and amounts as will be agreed to by the parties taking into account only the following:
- (a) changes in the scale of the Family Maintenance Enforcement Program involving resourced services, including changes to the Program model, which changes result from decisions of government;
  - (b) adjustments to reflect the Contractor's performance in terms of the Performance Measures as provided for in section 31, recognizing

the extent to which the Contractor's performance is within the Contractor's control; and

- (c) external economic influences that increase or decrease the real cost and/or risk to the Contractor of providing the Services;
- (4) If, with respect to section 3(3), the parties have not agreed to the management fee on or before September 30, 1998, the matter will be referred to binding arbitration under section 56.
- (5) For each Fiscal Year the Province will pay to the Contractor, in full payment and reimbursement for operational expenses associated with providing the Services, the operational expenses referred to in Schedule "C" to this Agreement (the "Operational Expenses") which fees shall be calculated in accordance with section 3(6), in the manner and at the times as set out in Schedule "C" and the Contractor will accept the same as full payment and full reimbursement.
- (6) Except as provided for under section 54(5), the Operational Expenses for any Fiscal Year will be determined as follows:
  - (a) the Contractor shall submit to the Province a document detailing the anticipated requirements for delivering the Services in the next Fiscal Year together with a proposed budget of operational expenses for the next Fiscal Year, such material to be submitted by the Contractor on or before the execution of this Agreement for the first Fiscal Year and, for each Fiscal Year thereafter, on or before July 31 of the preceding Fiscal Year;
  - (b) subsequent to receiving the material referred to in section 3(6)(a) the Province may request, and the Contractor will provide, further material as may be reasonably necessary for the Province to consider the level of operational expenses that will be authorized for the next Fiscal Year; and
  - (c) the Province will review the material provided by the Contractor and advise the Contractor as soon as possible of the amount of the Operational Expenses authorized for the next Fiscal Year.

#### **GST CERTIFICATION**

4. This is to certify that the property and/or services ordered/purchased hereby are for the use of, and are being purchased by the Province with Crown funds, and are therefore not subject to the Goods and Services Tax.

#### **TERMINATION OF PREVIOUS CONTRACT**

5. It is agreed that the Previous Contract is terminated as of August 31, 1996 and, for greater certainty, where provisions within the Previous Contract were intended to



survive the termination of the Previous Contract (including, without limitation, section 62 of the Previous Contract) such provisions shall survive the termination.

## **RECORDS**

6. (1) In connection with the provision of the Services the Contractor will:
  - (a) establish and maintain books of account of all Operational Expenses incurred, refunds and remissions obtained;
  - (b) maintain invoices, receipts and vouchers for Operational Expenses, refunds and remissions referred to in subsection (a) of this section; and
  - (c) provide the Attorney General or his or her designate (herein called the "Minister") with free access at all reasonable times to all such records, bank account, invoices, receipts and vouchers relating to Operational Expenses for the purposes of audit and inspection (provided that such information will be disclosed by the Province only as a consequence of the administration of this Agreement or in accordance with law). For such purposes, the Minister may make copies thereof, take extracts therefrom and the Contractor will provide the Minister with all facilities and furnish him with all information as the Minister may from time to time require. The Contractor will not, without the consent of the Minister, dispose of any such accounts, records, invoices, receipts and vouchers, but will preserve and keep the same available for audit and inspection at any time.
- (2) For greater certainty, and without limiting section 37, where all or any of the Services are provided by sub-contractors, the Contractor shall perform the functions and duties provided for in subsections (a) and (b) as if those Services were performed by the Contractor and subsection (c) shall apply.

## **INDEPENDENT CONTRACTOR**

7. The Contractor is an independent contractor and not the servant, employee or agent of the Province or the Minister.
8. The Contractor will not in any manner whatsoever commit or purport to commit the Province or the Minister to the payment of any money to any person, firm or corporation unless such payment has been authorized in writing by the Director.
9. The Minister may, from time to time, give such instructions to the Contractor as the Minister considers necessary for the Contractor to provide the Services but the



Contractor will not be subject to the control of the Minister in respect of the manner in which such instructions are carried out.

10. No partnership, joint venture or agency will be created or will be deemed to be created by this Agreement or any action of the parties under this Agreement.
11. The Contractor will pay promptly, as the same become due and payable as a result or consequence of monies paid or payable by the Province to the Contractor pursuant to this Agreement, all taxes and contributions payable pursuant to any or all, as the case may be, of the Income Tax Act (Canada), the Income Tax Act (British Columbia), the Canada Pension Plan (Canada) and any other statutory assessment, premium or contribution and without limitation:
  - (a) excluding Provincial Sales Tax which shall be paid for as provided for in Schedule "C" hereto, all taxes, premiums and assessments related to operational expenditure items shall be paid for out of Operational Expenses; and
  - (b) any taxation assessments levied against the Contractor as a result of its business structure or its management fee revenue, including without limitation business license fees and corporate income taxes, shall be paid by the Contractor out of corporate funds.
12. Where any of the Services are specified in Schedule "A" to be provided by a duly qualified or licensed practitioner or professional, the Contractor will cause and permit only those persons to perform those services who are so qualified and licensed and without limiting the generality of the foregoing, the Contractor will cause Brian Pollick and/or Jocelyn Gifford or such other persons as may be acceptable to the Minister to act as senior management for the Contractor in providing the Services. The Province agrees that consent to a person other than Brian Pollick or Jocelyn Gifford to act as senior management will not be unreasonably withheld.
13. The Contractor will, upon request from the Minister, from time to time, provide evidence satisfactory to the Minister that the Contractor and all personnel or other parties performing any of the Services hold or have been issued all required licenses, certificates and memberships and that they are valid and subsisting and in good standing.

## REPORTS

14. The Contractor will upon request, from time to time, of the Minister:
  - (a) fully inform the Minister of the work done and to be done by the Contractor in connection with the provision of the Services; and

- (b) permit the Minister at all reasonable time to inspect, examine, review and copy any and all findings, data specifications, drawings, working papers, reports, documents, computer records and material whether complete or otherwise (herein collectively called the "Material") that have been produced, received or acquired by, or provided by the Province to, the Contractor as a result of this Agreement.

15. The Contractor will, on a timely basis, provide to the Minister:

- (1) monthly key indicator reports as described in Schedule "D",
  - (2) monthly financial statements identifying:
    - (a) all Operational Expenses, and
    - (b) in footnotes to the monthly statement:
      - (i) the Severance Amount as provided for in section 53 calculated as of the date of the monthly statement; and
      - (ii) the aggregate amount of all credits owing to the Province as a result of the Contractor performing services not contemplated by this Agreement;
  - (3) fiscal year end audited financial statements of Operational Expenses which shall:
    - (a) show as separate items all Operational Expenses which flow through GAEA Management Ltd., Gifford Consulting Ltd. or any other entity in which the principals of the Contractor have an interest; and
    - (b) include as footnotes to the year end statement:
      - (i) the Severance Amount as provided for in section 53 calculated as of the date of the year end statement; and
      - (ii) the aggregate amount of all credits owing to the Province as a result of the Contractor performing services not contemplated by this Agreement and a summary of those services; and
  - (4) upon request, a fiscal year end annual report,
- all in a form satisfactory to the Minister.

#### **OWNERSHIP**

16. (1) All findings, data, reports, documents, records, memoranda of any ministry of the Province and all case data, case files and manuals related to the provision of the Services and any other material whether complete or otherwise that have been produced, received, compiled or acquired by, or



provided by or on behalf of the Province to the Contractor, as a result of this Agreement or previous agreements between the Province and the Contractor, including without limitation all policies and procedures developed in accordance with the Services (the "Policies"), and all of the Manuals, Software, and the IVR, as defined in section 18, (all of the foregoing being collectively referred to as the "Material") that are, from time to time, in the possession or control of the Contractor will at all times be the exclusive property of the Province and will be forthwith delivered by Contractor to the Attorney General, or to such other person and at such place as the Attorney General may at any time direct.

- (2) The Contractor shall deliver to the Province an inventory of the Material and shall update the inventory at the request of the Minister from time to time.
  - (3) The Contractor shall at the request of the Minister, from time to time, deliver to the Province an inventory of the Assets contemplated by Section 60.
  - (4) The Contractor shall at the request of the Minister, from time to time, deliver to the Province copies of the then current versions of the Software and the IVR together with all source codes, systems software, instructions in computer language, compilers, utilities, assemblers, card decks, tapes, listings, other programming documentation, applications, systems programs and all manuals, guides, documents and equipment necessary for the orderly and efficient operation of the Software.
17. All information described in Section 16 above, and all other information which the Contractor is provided access to by the Province for the purpose of providing the Services, shall be utilized by the Contractor solely for the purpose of providing the Services.
18. (1) All right, title and interest in and to any manuals developed by the Contractor for the Province (the "Manuals") the automated data system application developed by the Contractor for the delivery of the Services (the "Software") and the Interactive Voice Response Unit as described in Schedule "A" (the "IVR") including all rights in copyright that may subsist therein and all other intellectual property rights, shall belong to the Province as they come into existence.
- (2) The Contractor confirms that all copyright and all other intellectual property rights in the Manuals, Software, and the IVR as at the date of this Agreement are vested in the Province as contemplated by the Previous Contract and any other previous agreements between the Province and the Contractor with respect to the Services. In order to assure the said ownership of the Province in the Manuals, the Software, the IVR, as they are enhanced, revised or updated, and all other portions of the Material produced by the Contractor, the Contractor agrees to execute any



documents of assignment of registration of copyright or waiver of moral rights requested by the Province with respect to any and all of the above.

- (3) In order to better assure the ownership by the Province in the copyright to all enhancements, revisions, and updated versions of the Manuals, the Software, and the IVR, the Contractor covenants and agrees that:
- (a) it will not assert any legal rights of copyright over any such enhancements, revisions, and updated versions of the Manuals, the Software, and the IVR that may arise in the future; and
  - (b) it will ensure that all employees, or other individuals, that make any such enhancements, revisions, or updated versions of the Manuals, the Software, or the IVR will provide, or will agree to provide, at the request of the Province to the Contractor, written waivers of moral rights in favour of the Province with respect to the copyright in such enhancements, revisions, and updated versions.
- (4) The Contractor shall ensure that all the Manuals, the Software, the IVR, and all other portions of the Material produced by the Contractor hereunder shall contain the following copyright notice:
- COPYRIGHT © HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF BRITISH COLUMBIA [DATE] REPRESENTED BY  
THE MINISTRY OF ATTORNEY GENERAL
- (5) The Contractor shall indemnify and hold the Province free and harmless from any costs, loss or damage assessed against or suffered by the Province in any suit, proceeding or otherwise so far as the same is based on any claim that the use of any material (original or otherwise), Software, systems, programs, equipment, or other material (original or otherwise), software, systems, programs, equipment, or other material developed or provided by the Contractor pursuant to this Agreement or any previous agreement between the Province and the Contractor with respect to the Services, or the performance of the Services infringes any trade secrets, copyright, patent or license.
- (6) For greater certainty, it is agreed that this section does not apply to the software known as the Teleflow Engine and Designer Software ("Teleflow"), save and except to the extent that the Software, the IVR, and any and all enhancements, revisions, and updates to the Software or the IVR, rely on or employ Teleflow in which case the Contractor hereby grants to the Province a non-exclusive, perpetual, royalty free, irrevocable license in Teleflow, and any and all enhancements, revisions, and updates thereto occurring on or before the expiration or termination of this Agreement, to use and modify Teleflow for the purposes of ensuring the proper functionality and performance of the Software, the IVR, and any and all enhancements, revisions, and updates to the Software or the IVR. The Contractor shall provide the Province with access to any and all



material concerning Teleflow necessary to ensure the proper functionality and performance as described herein.

- (7) The Contractor hereby represents that the development of Teleflow occurred at the Contractor's own expense and on its own time and that none of the Province's resources were used for such development.
19. The Province hereby grants to the Contractor an exclusive license (the "License") to market and sell the use of the Software, the Manuals and the IVR worldwide and to make copies for the purpose of marketing and selling as follows:
- (a) the parties agree that within 90 days of the execution of this Agreement they will commence negotiations to establish the terms of the License, including the amount and manner of the payment of the license fee; and
  - (b) if the parties do not agree on the terms of the License within the time period specified in subsection (a), the matter will be referred to binding arbitration under section 56.
20. Without limiting any other provision of this Agreement, the License shall include all intellectual and industrial property produced or generated during the performance of the Services and which is capable of protection by patents, trade marks, copyright, industrial design or design patents, mask works, or foreign equivalents of any of the foregoing, and trade secrets and know-how produced or generated during the performance of the Services which are capable of being licensed.

#### **CONTRACTS WITH ASSOCIATED PARTIES**

21. The Contractor is to advise the Director of Maintenance Enforcement (the "Director") in writing of all other contracts entered into by the Contractor, Brian Pollick, Jocelyn Gifford and is to further advise the Director in writing of any other entity in which the Contractor or the named parties have a material interest.

#### **PROGRAM ASSUMPTIONS AND ABSORPTION RATES**

22. (1) The program assumptions and absorption rates for the First Program Year are set forth in Schedule "E" hereto (the "Program Assumptions and Absorption Rates").
- (2) Except as provided for under section 54(5), for each Fiscal Year during the Term the Contractor shall provide to the Province a set of proposed program assumptions and absorption rates for the next Fiscal Year, substantially in the same form as Schedule "E", which set of program assumptions and absorption rates will be delivered at the same time as the



material referred to in section 3(6)(a), and upon approval of the proposed program assumptions and absorption rates and the authorization of the Operational Expenses for the next Fiscal Year, the proposed program assumptions and absorption rates shall be attached to this Agreement as part of Schedule "E" and shall be the Program Assumptions and Absorption Rates for the Fiscal Year to which they relate. If the Province does not approve the proposed program assumption and absorption rates, and the Contractor is not able to propose a further set of program assumption and absorption rates that is acceptable to the Province, the matter will be referred to binding arbitration under Section 56.

- (3) If any material deviation from the Program Assumptions or Absorption Rates occurs during the Term, the parties will, upon the receipt of 10 business days notice in writing from one party to the other, commence negotiations for an appropriate adjustment to the Services or, subject to section 24, the Operational Expenses set forth in Schedule "C" hereto, and, where appropriate, the Absorption Rate will be adjusted accordingly. If the parties do not agree on the amount of such adjustments within 30 business days from receipt of said notice, the matter will be referred to binding arbitration under Section 56.

23. If the actual operational expenses incurred by the Contractor to perform the Services during the First Program Year or any Fiscal Year are less than projected Operational Expenses for that Year, as set out in Schedule "C" for the First Program Year or as determined in accordance with this Agreement for the Fiscal Years, then the Contractor will refund to the Province such over projected amount of Operational Expenses on demand. If the parties do not agree on the amount of the refund within 30 business days from the day of the Province's demand, the matter will be referred to binding arbitration under Section 56.
24. The sums described in Schedules "B" and "C" constitute the maximum amounts payable to the Contractor for its performance of the Services herein and the Contractor will not be entitled to any additional compensation for its performance whether or not the work actually undertaken by the Contractor is described in this Agreement unless the parties agree, pursuant to section 22, that the fees and expenses should be increased.

### **APPROPRIATION**

25. Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Contractor under this Agreement is subject to:
- (a) there being sufficient monies available in an appropriation, as defined in the Financial Administration Act (the "FAA") to enable the Province, in any fiscal year or part thereof when any payment of



money by the Province to the Contractor falls due under this Agreement, to make that payment; and

- (b) Treasury Board, as defined in the FAA, not having controlled or limited, under the FAA, expenditure under any appropriation referred to in subsection (a) of this Section.

### **AUDITS AND REVIEWS**

- 26. The Province may, from time to time, conduct an audit of the Contractor, including the right to inspect and take copies of the books and records pertaining to the operation of the Family Maintenance Enforcement Program of the Contractor upon reasonable notice and at reasonable times.
- 27. Prior to performing an audit under section 26, the Province will consult with the Contractor to establish terms of reference for the audit and to identify relevant issues, provided always that the discretion to set terms of reference remains with the Province.
- 28. The Contractor will provide the Province with access to its work, offices and staff and be available to the Province or its designated agent or representative for the purposes of:
  - (a) administration of this Agreement;
  - (b) creditor or debtor complaint reviews and recommendations;
  - (c) monitoring and evaluation of the Services performed; and
  - (d) providing documents, information or explanations relevant to audits and evaluations contemplated herein.
- 29. Prior to completing an audit, the Province will provide the Contractor with a draft of the audit report and, upon receiving the draft report, the Contractor shall have ten (10) days to provide the Province with its comments. The Province shall provide the Contractor with a copy of the final audit report when it is complete.
- 30. During the First Program Year and prior to or during any Fiscal Year, the Director will negotiate with the Contractor from time to time to establish annual performance targets.
- 31. (1) The Province may, from time to time, conduct a performance evaluation of the Contractor with respect to:
  - (a) the performance measures as set out in Schedule "F"; and
  - (b) any other performance measure that the parties may agree to from time to time.

(collectively the "Performance Measures")

(2) For the purpose of facilitating performance evaluations, the Contractor will provide to the Province on a monthly basis:

- (a) information necessary for the calculation of the Performance Measures; and
- (b) an analysis explaining material changes in any of the Performance Measures,

and, at the request of the Province, the Contractor shall provide the information and analysis in the format prescribed by the Province.

32. The Contractor will consult with the Province in:

- (a) external forms development;
- (b) policies and procedures development;
- (c) training programs;
- (d) any relations with Court Services, the Ministry of Social Services, the federal government, and other reciprocating jurisdictions; and
- (e) communication strategies and programs.

33. The Contractor will fully cooperate with the Province in all matters referred to under Sections 26 to 32 inclusive.

#### **CONFIDENTIALITY**

34. The Contractor will treat as confidential and will not, without prior written consent of the Province, publish, release or disclose or permit to be published, released or disclosed, the case data, case files or any other information supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of this Agreement except in so far as such publication, release or disclosure is necessary to enable the Contractor to fulfill its obligations under this Agreement. The Contractor will ensure its facilities, systems and files are secure and that access to data and confidentiality of data and information gained while performing the Services, are strictly controlled, to the satisfaction of the Province.

### **PROBLEM ESCALATION PROCEDURES**

35. The Contractor will advise the Province of the existence of problems which may have a material impact upon the Contractor's ability to perform the Services, and will, forthwith upon recognizing their existence, recommend solutions to such problems.

### **ASSIGNMENT AND SUBCONTRACTING**

36. The Contractor will not without the prior written consent of the Minister:
- (a) assign, either directly or indirectly, this Agreement or any right of the Contractor under this Agreement; or
  - (b) sub-contract any obligation of the Contractor under this Agreement.
37. No sub-contract entered into by the Contractor will relieve the Contractor from any of its obligations under this Agreement or impose any obligation or liability upon the Province to any such sub-contractor.

### **CONFLICT**

38. The Contractor will not, at any time while this Agreement remains in effect, perform a service for or provide advice to any person, firm or corporation where the performance of the service or the provision of the advice may or does, in the reasonable opinion of the Minister, give rise to a conflict of interest between the obligations of the Contractor to the Province under this Agreement and the obligations of the Contractor to such other person, firm or corporation. If the Contractor does not agree with the opinion of the Minister, the matter will be referred to binding arbitration under section 56.

### **INSURANCE AND INDEMNITY**

39. The Contractor will, out of operational expenses, obtain and maintain in force at all times while this Agreement remains in effect:
- (a) a policy of comprehensive general liability insurance (including contractual liability on terms sufficient to cover the indemnity provided by Section 42) in form and content and with an insurer or insurers acceptable to the Minister providing coverage of not less than \$2,000,000 inclusive per occurrence for bodily injury, death and property damage (including damage to property of the Province), and including loss of use thereof, which may arise



directly or indirectly out of the acts or omissions of the Contractor, the sub-contractors servants or agents of the Contractor under this Agreement, such policy to include the Province as an additional insured and to contain:

- (i) a cross-liability clause acceptable to the Minister,
- (ii) protection for the Province, the Contractor, its sub-contractors and their respective servants, agents or employees, and
- (iii) coverage in respect of all liability arising out of all products where the material is supplied by the Contractor, non-owned vehicles, contingent employers liability, and liability assumed by the Contractor under and applicable to this Agreement; and

(b) errors and omissions insurance in a form acceptable to the Minister.

40. The Contractor shall provide the Province with evidence of all required insurance prior to commencement of work or service. Such evidence shall be in the form of a completed Province of British Columbia Certificate of Insurance as set out in Schedule "G" to this Agreement. When requested by the Province, the Contractor shall provide certified copies of required policies.

41. The Contractor will ensure that it is a term and condition of the contract of insurance described in Section 39 that the coverage provided therein may not be canceled or materially changed in any way whatsoever without the insurer or insurers giving not less than 30 days prior written notice to the Province.

42. The Contractor will indemnify and save harmless the Province and the Minister from and against all claims, demands, losses, damages, costs and expenses made against or incurred, suffered or sustained by the Province and the Minister or either of them at any time or times (whether before or after the expiration or termination of this Agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Contractor or by any agent, servant, employee, officer, director, shareholder or sub-contractor of the Contractor pursuant to this Agreement (collectively, the "Related Parties"), excepting always liability arising out of the independent negligent acts of the Province.

43. In the event that Section 40 of the Family Maintenance Enforcement Act is repealed (and not replaced with a provision providing relief from liability) or is ruled unenforceable by a court of competent jurisdiction:

- (a) the Province will indemnify and save harmless the Contractor from and against all claims, demands, losses, damages, costs and expenses made

against or incurred, suffered or sustained by the Contractor at any time or times (whether before or after the expiration or termination of this Agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Contractor or by any Related Party pursuant to this Agreement, excepting always:

- (i) any liability arising out of or from anything done or omitted to be done where the Contractor's or Related Party's act or omission was not in good faith; or
  - (ii) any liability arising out of or from anything done or omitted to be done by the Contractor or any Related Party where such act or omission is not directly related to the provision of the Services; and
- (b) section 42 shall not apply.
44. The Contractor will be responsible for compliance with all conditions and regulations under the Workers' Compensation Act. All assessments and levies under the Workers' Compensation Act which relate to Operational Expenses, shall be paid by the contractor as they occur.
45. The Contractor will obtain and maintain or cause to be obtained and maintained professional liability insurance for errors and omissions for its contracted professionals, in a form acceptable to the Minister.
46. If the Province is a payee under a policy of insurance provided pursuant to section 39, and a payment has been made under that policy with respect to a claim concerning a lost, stolen or damaged Asset, upon the Province being satisfied that the payment will be applied to replacing the lost or stolen Asset, or repairing or replacing the damaged Asset, as the case may be, and upon the Province being further satisfied that the security interest referred to in section 61 herein will attach to the replaced Asset, the Province shall pay to the Contractor the cost of the repair or replacement up to the amount of the insurance payment but no more.

#### **CONTINUING LEGAL OBLIGATIONS**

47. The parties agree that, except with respect to those continuing legal obligations specified in subsections 53(1)(b)(i) and (iii) herein and the indemnity contemplated by subsection 53(1)(c) herein, any indemnity provided by the Province under this Agreement does not apply to any legal obligation of the Contractor after March 31, 2000, unless the prior written consent of the Province is obtained.
48. Where, as a result of an event contemplated by section 3(3)(a) herein, the Contractor's requirements for office space is reduced resulting in a surplus of leased office space, the Contractor may, upon assigning the rights to use that surplus office space to the Province, pay for the proportionate rent attributed to that surplus office space out of operational funds.



## **BONDS**

49. The Contractor will, out of Operational Expenses, obtain and maintain a fidelity bond in full force and effect at all times while this Agreement remains in effect with respect to each of its servants, employees, officers and directors. The bond will be for the amount of \$100,000.00 per incident and be in a blanket form acceptable to the Minister.
50. The bond shall contain a janitorial endorsement extending coverage to the Province for all property entrusted to the Contractor and any property for which the Contractor may be legally liable. The Contractor will provide the Province with evidence of the bond.

## **PAYMENT OF ENFORCEMENT PROCEEDS**

51. In the event the Contractor, or any servant or employee, director, officer, agent or subcontractor of the Contractor, receives any cash, money orders or cheques (the "Proceeds") arising from the enforcement remedies provided for herein, or otherwise, then the Contractor shall forthwith pay such Proceeds to the party entitled to receive them in accordance with policy as established by the Director from time to time.

## **TERMINATION**

52. Notwithstanding any other provision of this Agreement if:
  - (a) the Contractor fails to comply with any provision of this Agreement or any other agreement relating or incidental to this Agreement (except an agreement entered into pursuant to section 19) and has not remedied the same to the satisfaction of the Province within 30 days of notice of such failure;
  - (b) an order is made or a resolution passed for the liquidation or winding-up of the Contractor or if a petition is filed for the liquidation or winding-up of the Contractor;
  - (c) the Contractor becomes insolvent or makes an assignment for the general benefit of its creditors or if a bankruptcy petition is filed or presented against the Contractor or the Contractor consents to the filing of the petition or a decree is entered by a court or competent jurisdiction and judging the Contractor bankrupt under any law relating to bankruptcy or insolvency;
  - (d) any execution, sequestration, extent or other process of any court becomes enforceable against the Contractor or if a distress or analogous process is levied on the Assets or any other assets or

property of the Contractor and the Contractor fails to defend any such aforementioned process in good faith;

- (e) except as may be contemplated by the Succession Plan, the beneficial ownership and effective control of the Contractor ceases to be held by Brian Pollick and Jocelyn Gifford or, without limiting generality of the foregoing, if anyone who has an interest, direct or indirect, in the Contractor sells, pledges, assigns, mortgages or otherwise disposes of their interest in the Contractor or this Agreement without the prior written consent of the Minister, such consent not to be unreasonably withheld; or
- (f) without the prior written consent of the Minister, the Contractor is amalgamated or combined with another company or is reorganized, such consent not to be unreasonably withheld,

then, and in addition to any other remedy or remedies available to the Province, the Province may, at its option, terminate this Agreement by the Minister giving 10 days written notice of termination to the Contractor and if such option is exercised then this Agreement will terminate 10 days after such written notice is received or deemed received, pursuant to section 84, by the Contractor and the Province will be under no further obligation to the Contractor except to pay to the Contractor, such amount as the Contractor may be entitled to receive, pursuant to Schedules "B" and "C", for Services provided and expenses incurred in connection therewith to the date of expiration of such notice, subject to the Province's right of set off, in which case the amount payable to the Contractor shall be reduced by the amount subject to set off.

53. (1) Notwithstanding any other provision of this Agreement, the Province may, at its option, terminate this Agreement effective on or before March 31, 2000, without any failure on the Contractor's part to comply with any provision of this Agreement, by the Minister giving not less than 1 year written notice of termination to the Contractor. If such option is exercised, the Province will be under no further obligation to the Contractor except to pay the Contractor:
- (a) such fees and expenses as the Contractor may be entitled to receive pursuant to Schedules "B" and "C" attached hereto, for services provided and expenses incurred to the Cessation Date;
  - (b) an amount representing any payments the Contractor must make with respect to any continuing legal obligations to pay subsequent to the Cessation Date pursuant to a valid contract:
    - (i) listed in Schedule "H";
    - (ii) approved under section 47 hereof; or
    - (iii) entered into prior to the execution of this Agreement where the contract is for the acquisition, use or servicing of office



equipment, computer equipment, or data services, and is directly related to the provision of the Services,

and in the event of such a payment, the Contractor will, at the request of the Minister, apply such proceeds directly to the contracts concerned;

- (c) an amount equal to the lesser of:
- (i) the Contractor's aggregate liability to pay severance pay to Employees employed by the Contractor on the Cessation Date calculated in accordance with section 53(2) (the "Severance Amount"); and
  - (ii) the applicable amount set opposite the period in which the Cessation Date falls (the "Severance Cap"):

September 1, 1997 to March 31, 1998	\$ 702,570
April 1, 1998 to March 31, 1999	\$ 821,371
on or after April 1, 1999	\$ 937,075,

and

- (d) \$120,500 payable in full on the Cessation Date unless the option contained in section 73 is exercised in which case payment shall be made in six equal payments one payment due on the last day of each month of the term of the Consulting Period provided for under that option.
- (1.1) (a) if, during the Term, an amendment to the *Employment Standards Act*, a change in the policy of the Community Social Services Employers' Association of British Columbia (CSSEA), or a change in the Program as provided for under section 3(3), affects the calculation of the Severance Amount, the Severance Cap may be adjusted by mutual written agreement of the parties to reflect that change;
- (b) if the parties are not able to agree to a change contemplated by subsection (a) herein, the matter shall be referred to binding arbitration under section 56;
- (c) the Contractor will, at the request of the Province from time to time, provide the Province with a statement of the then current amount of the Severance Amount including the means of calculating the amounts set out in the statement;
- (2) the Severance Amount referred to in section 53(1)(c) shall be calculated as of the Cessation Date in the following manner:

- (a) the Severance Amount will be limited to the severance payable to:
- (i) the employees of the Contractor that are employed under:
    - (A) the collective agreement between the Contractor and the B.C. Government Employees' Union; and
    - (B) the collective agreement between the Contractor and the Professional Employees Association,(together, the "Collective Agreements"); and
  - (ii) the excluded employees for the purpose of the Collective Agreements,
- (collectively the "Employees")
- (b) The Severance Amount shall be the aggregate amount of severance benefits as recognized herein owing to Employees as of the Cessation Date. For those Employees subject to the Collective Agreements the severance benefits will be calculated in accordance with the respective Collective Agreements and for those Employees not subject to the Collective Agreements the severance benefits shall be reasonable severance pay, provided always that the Severance Amount will in any event be reduced by the following amounts in the following circumstances:
- (i) if following the Cessation Date the Services or any part of the Services are continued and one or more employees is offered comparable employment with an entity which is providing any part of the Services, then the amount calculated pursuant to subsection (b) herein will be reduced by an amount equal to the severance pay the employee or employees would have been paid;
  - (ii) if the provisions of section 13.10 of Article 13 of the B.C. Government Employees' Union collective agreement are deleted or amended or the provisions of Article 14 of that collective agreement are amended, the net effect of which increases the severance payable under that collective agreement, then the amount calculated pursuant to subsection (b) herein will be reduced by an amount equal to the difference between the severance payable under the collective agreement then in effect and the severance payable under the collective agreement in effect as of the effective date of this Agreement, unless the said deletion or amendment is a consequence of a mandatory legislative or regulatory provision;



- (iii) if section 15.8 of Article 15 of the Professional Employees' Association collective agreement is deleted or amended, the net effect of which increases the severance payable under that collective agreement, then the amount calculated pursuant to subsection (b) herein will be reduced by an amount equal to the difference between the severance payable under the collective agreement then in effect and the severance payable under the collective agreement in effect as of the effective date of this Agreement, unless the said deletion or amendment is a consequence of a mandatory legislative or regulatory provision; and
  - (iv) if, notice of termination is given under this section, and the Contractor fails to give any notice required by law or otherwise with respect to the termination of any employee such that the employee is, or becomes entitled to more severance pay on or after the Cessation Date than the employee would otherwise be entitled to, the amount calculated pursuant to subsection (b) herein shall be reduced by an amount equal to the additional severance pay owed to the employee or employees due to the failure by the Contractor to give the required notice or notices with respect to such employee or employees.
- (c) the parties agree that:
- (i) the Severance Cap referred to in section 53(1)(c)(ii), and the method used to calculate the Severance Cap under that subsection, is not relevant to the determination of what is reasonable severance pay under section 53(2)(b);
  - (ii) the report referred to in subsection 53(1.1)(c) is for reporting purposes only and the Province's acceptance, express or implied, of any report provided under that subsection or any information contained in a report is not relevant to the determination of what is reasonable severance pay under section 53(2)(b);
  - (iii) for greater certainty, reasonable severance pay as contemplated by section 53(2)(b) may include termination benefits predetermined by agreement between the Contractor and its Employee or Employees.
- (3) If the parties do not agree upon the amounts specified in subsections (1)(a) (b), or (c) hereof within 30 business days of expiration of the subject notice the matter will be referred to binding arbitration under Section 56.
- (4) Forthwith upon the Contractor receiving a notice of termination under section 53(1) or 54(4) the Contractor shall give notice to all of its

employees of the date on which this Agreement will terminate and thereafter give all relevant employees all termination notices as may be required by law or otherwise, and provide all others entitled, including without limitation all Ministers of the Crown, government officials and offices, and trade unions, notice of all such termination.

- (5) In the event the Province gives a written notice to terminate the Agreement under Section 53(1) the Contractor shall use its best efforts to have any obligations referred to in Section 53(1)(b) terminate on the same date this Agreement terminates and the Contractor shall use its best efforts to reduce and otherwise mitigate the amounts that would be paid under Section 53(1)(b).

#### **EXPIRATION AND RENEWAL**

54. (1) The Province agrees to notify the Contractor on or before March 31, 1999, whether or not this Agreement is to be renewed.
- (2) If, pursuant to section 54(1), the Province gives the Contractor notice that this Agreement will not be renewed, this Agreement will expire on the last day of the Term and the Province will upon and after the expiration of this Agreement be under no further obligation to the Contractor except to pay the Contractor those amounts provided for under subsections 53(1)(a), (b), (c) and (d).
- (3) In the event that the Province does not provide the notice required in subsection 54(1), the Term of this Agreement will be automatically extended and will continue until ended under subsection (4).
- (4) If the Term is extended under subsection (3), the Province may, at its option, terminate this Agreement, without any failure on the Contractor's part to comply with any provision of this Agreement, by giving not less than one (1) year written notice of termination to the Contractor and upon and after such termination the Province will be under no further obligation to the Contractor except to pay the Contractor those amounts provided for under subsections 53(1)(a), (b), (c) and (d).
- (5) If the Term is extended under subsection (3), the amount payable for the provision of the Services shall be the rate payable during the third Fiscal Year as provided in Schedule "B" and "C", as may be amended from time to time; if this amount is not sufficient to maintain the Services at the same level as the third Fiscal Year, then the Contractor shall be allowed to decrease the Services correspondingly.
55. Notwithstanding any other provision of this Agreement, the Contractor may, at its option, terminate this Agreement effective on or after March 31, 2000, without any failure on the Province's part to comply with any provision of this Agreement,



by giving not less than one (1) year written notice of termination to the Province and upon and after such termination the Contractor is under no further obligation to the Province and the Province is under no further obligation to the Contractor except to pay the Contractor that amount provided for under subsection 53(1)(a).

### **ARBITRATION**

56. All disputes arising out of or in connection with Sections 2, 3, 19, 22, 23, 38, 53, 74 and 82 will be referred to and finally resolved by binding arbitration under the rules of the British Columbia International Arbitration Centre provided, however, that no decision of an arbitrator will in any manner be inconsistent with the provisions of the *Family Maintenance Enforcement Act*.
57. The place of arbitration will be Vancouver, British Columbia and the appointing authority will be the British Columbia International Arbitration Centre (the "Centre") unless:
- (a) the parties agree to another location; or
  - (b) the Centre is not available in which case the parties will agree to an alternate appointing authority and in the event that the parties cannot agree the Commercial Arbitration Act shall apply with respect to the appointment.
58. Without limiting section 100 herein, and unless the parties otherwise agree, when a matter is to be arbitrated the parties shall participate in the arbitration process in a manner that facilitates a timely resolution to the dispute.
59. Except for legal costs and disbursements incurred by each party, the costs of arbitration shall be shared equally by the parties.

### **ASSIGNMENT OF EQUIPMENT AND OFFICE SPACE**

60. Upon the expiration or termination of this Agreement, the Contractor will, at no cost to the Province, assign and transfer to the Province, any right, title or interest of the Contractor in and to any:
- (a) office space, office equipment, computer and telecommunication equipment, and any other assets purchased with operational funds under the Previous Contract or Operational Expenses under this Agreement, including assets purchased after the effective date of this Agreement; and
  - (b) data service agreements acquired by the Contractor with operational funds under the Previous Contract or Operational Expenses under this Agreement including such rights or interests acquired after the effective date of this Agreement,

(collectively the "Assets").

61. The Contractor hereby acknowledges the Province's purchase money security interests, other security interests, and floating charges, as the case may be, in the Assets and, for the purposes of allowing the Province to secure those interests, agrees to enter into a security agreement substantially in the form attached hereto as Schedule "I".

### **TRANSFER OF PROGRAM**

62. On the expiration or termination of this Agreement the Province may in addition to all the rights under this Agreement give notice to the Contractor that the Province will require the whole of the business, including all material contracts necessary to continue the uninterrupted provision of the Services and Assets of the Contractor related to the provision of the Services, except those assets not purchased with operational funds, to be transferred as a going concern to the Province, or its nominee or nominees.
63. The notice contemplated under section 62 will be deemed to have been given and delivered at the same time as a notice of termination given under section 52.
64. In the event that a notice of termination has been given under section 53 or 55, the notice contemplated under section 62 may be given at the same time as the notice of termination and in any event the notice under section 62 shall be given not less than:
- (a) 12 months prior to the Cessation Date if this Agreement is terminated pursuant to section 53 or expires; or
  - (b) 6 months prior to the Cessation Date if this Agreement is terminated pursuant to section 55.
65. If a notice is given, or deemed to have been given, to the Contractor under section 62 the Province may at any time prior to the expiration or termination of this Agreement nominate one or more transferee so that different parts of the business and the related assets may be transferred and assigned to one or more nominees and the various assets of the Contractor will be transferred to the nominees indicated in the nominations and in accordance with this Agreement.
66. The Province may direct the Contractor to assign and transfer any of the Assets to one or more transferee that it may nominate, and such transferee may be nominated at any time prior to the expiration or termination of this Agreement and such transfers shall be effective as at the dates set out in the nomination of the transferee.
67. The Contractor shall at the request of the Minister from time to time deliver to the Province an inventory of the Assets, and the material contracts contemplated by section 62.



68. If a notice has been given or deemed to have been given to the Contractor under section 62 then on the Cessation Date the Contractor shall deliver to the Province or the relevant nominees, as the case may be:

- (a) all deeds of conveyance, bills of sale, transfers and assignments, duly executed, in form and content satisfactory to the Province or the nominee or nominees, as the case may be, appropriate to effectively vest good and marketable title to the relevant assets in, and assign all contracts to, the Province, the nominee or the nominees as the case may be to the extent contemplated by this Agreement and immediately registrable in all places where registration of such instruments is necessary or desirable;
- (b) give the Province, or nominee, or nominees, as the case may be, possession of the Assets;
- (c) provide a certified copy of a resolution of the directors of the Contractor duly passed, with a certification that it has not been rescinded and continues to be in effect, authorizing the execution, delivery and implementation of the transfer of all the business, assets and material contracts and all other transactions contemplated with respect to the transfer and assignment of the business of the Contractor with respect to the provision of the Services to the Province, the nominee or the nominees as the case may be;
- (d) provide a certified copy of a special resolution of the Contractor duly passed, with a certification that it has not been rescinded and continues to be in effect, approving the transfer, as contemplated herein, of the business, assets and material contracts by the Contractor in accordance with section 150(1) of the Company Act of British Columbia;
- (e) provide a duly executed prescribed form pursuant to which an election is made to have section 167 of the Excise Tax Act of Canada apply to the transfer of the Assets, where any nominee so requires and also provides a duly executed prescribed form pursuant to section 167 of the Excise Tax Act of Canada to apply to the transferred Assets; and the Province, the nominee or the nominees as the case may be, shall with respect to those business, Assets and material contracts acquired; and
- (f) provide a duly executed covenant to assume the material contracts and release the Contractor from its obligations under the material contracts that arise after the date they are assigned.

69. On the expiration or termination of this Agreement following the delivery or deemed delivery of a notice contemplated by section 62, this Agreement shall without further act or formality, operate as a transfer to the Province, or nominee

or nominees as the case may be, of all of the Assets hereunder as the same shall be at the close of business on the Cessation Date and this Agreement shall operate as an assignment of all relevant material contracts as of the Cessation Date. The Contractor shall nevertheless, on the Cessation Date and from time to time after the Cessation Date execute and deliver to the Province, or such nominees as may be relevant, all such conveyances, transfers and assignments and other instruments in writing and further assurances as the Province, or any such nominee, shall reasonably require from the Contractor, and the Province and all nominees shall execute and deliver to the Contractor all such agreements of assumption and other instruments in writing and further assurances as the Contractor shall reasonably require in order to give effect to the provisions of this Agreement.

70. Should any of the Assets or material contracts intended to be transferred and assigned hereunder not be transferred to the Province, or any nominee, as contemplated by section 68 then the Contractor shall hold as bear trustee in trust for and at the sole cost of the Province, or relevant nominee, all such Assets and material contracts from the commencement of business on the Cessation Date or, if this Agreement is not terminated, the date on which this Agreement expires, until all such Assets and material contracts are effectively transferred and assigned.
71. The Province, nominee or nominees as may be applicable, will be liable for and pay all social service tax, sales tax, goods and services tax, registration charges and transfer fees properly payable upon and in connection with the sale and transfer of the Assets and the assignment of the material contracts by the Contractor as contemplated hereby, provided that in no event shall the Province or any nominee be liable for or pay but instead the Contractor shall be liable for and pay any social service tax, sales tax, goods and services tax, registration charges and transfer fees which the Contractor failed to pay or was exempted from paying prior to and including the Cessation Date.

## TRANSITION

72. (1) Within 60 days of a notice being provided pursuant to section 53 or 54(4) the Province may give notice to the Contractor to assist with the development of a transition plan to ensure that the Services are continued in an uninterrupted manner at the termination of this Agreement and without limitation the Contractor will assist the Province in developing a plan to satisfactorily deal with the following:
- (a) the provision of Services on an uninterrupted basis to the clients when the operations of the Contractor are transferred to the Province or to such transferee as may be nominated;
  - (b) the transfer of all files, documents, manuals and records as may be required;



- (c) the due delivery of all assets owned by the Province and used for the provision of the Services;
  - (d) the assignment of all leases and service agreements and other assets as contemplated this Agreement for the provision of the Services including all facilities, computers and office equipment being acquired by the Province or nominated transferee; and
  - (e) a staffing plan to ensure that all notices required to be given under this Agreement can be done so in a timely fashion.
- (2) Once the Province has finalized the transition plan contemplated by section 72(1) the Contractor covenants to cooperate fully with the Province and to make its best efforts to ensure that the transition plan is implemented in a manner to ensure that the clients to whom the Services are provided are not affected or inconvenienced by the transition from the Services being provided under this Agreement to the new provision of the Services.

### **CONSULTING SERVICES**

73. (1) If, following the expiration or termination of this Agreement, the Province or its appointed designate provides all or any part of the Services, at the Province's option and at no expense to the Province the Contractor shall, for a six (6) month period commencing on the day after the Cessation Date (the "Consulting Period"), provide consulting services to the Province or its appointed designate with respect to the provision of the Services by the Province or its appointed designate.
- (2) In addition to any other consultation concerning the Services that the Province may request, the consulting services shall include the provision of advice and services concerning:
- (a) the design and implementation of the Family Maintenance Enforcement Program or specific aspects thereof;
  - (b) human resources and management issues, including active participation in management;
  - (c) the operation of Services related software and computer systems; and
  - (d) practical aspects of maintenance enforcement.
- (3) If the Province exercises the option contained in subparagraph (1):
- (a) the Contractor will cause Brian Pollick and Jocelyn Gifford to direct, administer and provide the consulting services and will not cause or permit anyone other than the named parties to provide the

consulting services on its behalf without the prior written consent of the Province which consent will not be unreasonably withheld.;

- (b) the Contractor will cause Brian Pollick and Jocelyn Gifford to be available for the provision of the consulting services during regular business hours at the Province's request for a maximum of 37.5 hours per week per person;
  - (c) sections 7, 8, 10, 11, 16, 17, 18, 21, 34, 38, 42 and 100 shall apply to all matters arising or occurring within the Consulting Period and shall survive the expiration of that period.
- (4) For greater certainty, the parties agree that, should the option contained in this Section be exercised, all references in this Agreement to the termination or expiration of this Agreement shall be interpreted to exclude this Section from such termination or expiration so that all obligations created under this Section remain in full force and effect during the term of the Consulting Period.
  - (5) To exercise the option contained in this Section the Province must notify the Contractor in writing:
    - (a) at the time notice of termination is given if this Agreement is being terminated pursuant to Section 52; or
    - (b) nine (9) months prior to the Cessation Date in all other circumstances.

#### **SUCCESSION PLAN**

- 74. (1) The plan attached hereto as Schedule "J" (the "Succession Plan") shall be the succession plan.
- (2) With the written agreement of the other party, which agreement is not to be unreasonably withheld, the Succession Plan may be amended from time to time by the Contractor.
- (3) In the event that the parties cannot agree to an amendment of the Succession Plan under subsection (2) herein, the matter will be referred to binding arbitration under section 56.

#### **RECEIVER**

- 75 (1) The Province may, without limiting any other rights it may have at law or under this Agreement or any other agreement relating or incidental to this Agreement, appoint (under this instrument) a receiver, a receiver manager or receiver-manager (the person so appointed being hereinafter referred to as "the Receiver") if the Contractor commits an act of default contemplated by subsection 52(b) or (c) herein. In the event of such appointment, the following provisions shall apply:



- (a) The Receiver shall be the receiver, receiver manager, or receiver-manager, as the case may be, of the Service Assets (as hereinafter defined) and for the provision of the Services and the performance of any other obligation under this Agreement or any other agreement relating or incidental to this Agreement, with or without bond as the Province may determine;
- (b) In addition to any other power the Receiver may have, the Receiver may:
- (i) enter upon any premises of the Contractor and take possession of the Assets and any other assets necessary to provide the Services (collectively the "Service Assets") with power to exclude the Contractor, its agents and its servants therefrom, without being liable as a mortgagee in possession;
  - (ii) preserve, protect and maintain the Service Assets and make such replacements thereof and repairs and additions thereto as the Province may deem advisable.
- (c) The Receiver shall be the agent of the Contractor and not of the Province and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Province hereunder and under any other agreement relating or incidental to this Agreement, and in addition shall have power to carry on the business of the Contractor with respect to the provision of the Services.
- (d) The Receiver shall not be responsible for liable for any debts contracted by it for damages to persons or property or for salaries or non-fulfillment of contracts during any period when the Province shall manage the Service Assets upon entry, as herein provided, nor shall the Province be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable. The Province shall not be bound to do, observe or perform or to see to the observance or performance by the Contractor of any obligations or covenants imposed upon the Contractor nor shall the Province, in the case of securities, instruments or chattel paper, be obliged to preserve rights against other persons, nor shall the Province be obliged to keep any of the Service Assets identifiable.

- (e) The Province shall have all the rights, remedies and protections of a Receiver.
  - (f) The Province may, in its absolute discretion, remove a Receiver and appoint another.
- (2) The Province may, without limiting any other rights it may have at law or under this Agreement or any other agreement relating or incidental to this Agreement, appoint (by instrument) a Receiver if circumstances require that the Succession Plan be implemented and if it is the reasonable belief of the Director that:
- (a) the Succession Plan cannot be implemented in such a fashion so as to ensure the continued provision of the Services in an efficient manner; or
  - (b) the Succession Plan is inadequate for the purposes of ensuring the continued provision of the Services in an efficient manner;

(either or both of which are hereinafter referred to as "the Succession Problem")

and an appointment of a Receiver under this subsection (2) is hereinafter called a "Succession Receiver Appointment".

- (3) In the event of a Succession Receiver Appointment, the provisions of subsections 75(1)(a), (b), (c), (d), (e) and (f) shall apply with the following qualifications:

- (a) For a period of one year following the date of Succession Receiver Appointment ("the Succession Resolution Period") the Receiver shall be limited in the exercise of its powers to those actions which it believes are necessary, incidental or prudent to continuing the operations of the Contractor for the purposes of carrying on with the provision of the Services during the Succession Resolution Period; and the Receiver shall not act in any manner that is knowingly contrary to the aforementioned purposes. Without limiting the generality of the foregoing the Receiver shall not knowingly at any time during the Succession Resolution Period:



- (i) manage the operations of the Contractor outside of the ordinary course of providing the Services;
  - (ii) dispose of or otherwise deal with the Service Assets outside of the ordinary course providing the Services.
- (b) During the Succession Resolution Period the Province shall instruct the Receiver and apply its best efforts to cause the Receiver to cooperate in all reasonable respects with the Contractor in order to enable the Contractor to remedy the Succession Problem as contemplated in Subsection 75(4) hereof including (without limitation):
  - (i) providing reasonable access to the Contractor;
  - (ii) providing the Contractor with relevant information in a timely fashion;

and the Contractor shall indemnify the Province with respect to any costs incurred by the Province as a result of the Receiver performing such activities.

- (4) If the Contractor resolves the Succession Problem during the Succession Resolution Period the Province shall remove the Receiver as soon as practicable.

76. Upon the first to occur of:

- (1) the expiration of the Succession Resolution Period; and
- (2) the receipt or deemed receipt of a notice of termination under Section 52 hereof;

the qualifications referred to in Subsections 75(3)(a) and (b) shall be extinguished to the effect that such qualifications shall have no further force or effect.

77. No provision contained in Section 75 or 76 shall be construed so as to vitiate or otherwise impair or affect the Province's right to terminate this Agreement:

- (1) pursuant to Section 52 with respect to a notice of termination given:
  - (a) prior to the appointment of a Receiver;
  - (b) at any time where that notice of termination relates to a default under subsection 52 (a), provided the Contractor failed to remedy the default after being duly notified pursuant to that subsection and

further provided the Receiver or the appointment of the Receiver are not the cause of the default and did not interfere with the Contractor with respect to its efforts to remedy the default;

- (c) at any time where that notice of termination relates to a default under subsections 52 (b), (c) and (e), provided the Receiver is not the cause of the default; or
- (d) at any time where that notice of termination relates to a default under subsection 52 (d), provided the Receiver is not the cause of the default and further provided the Contractor, upon being notified, elects not to defend the process referred to in subsection 52 (d), or having elected, fails to defend such process in good faith; or

(2) pursuant to Section 53(1),

and, without limiting the generality of the foregoing, it is acknowledged and agreed by the Contractor that the Province shall be entitled to exercise such termination right at any time during the Succession Resolution Period.

78. In the event that the Province seeks a Court appointed receiver rather than a Receiver appointed pursuant to a Succession Receiver Appointment, then the Province covenants that any such application for a Court Order shall contain the same constraints upon the receiver during the Succession Resolution Period as are hereinbefore set forth and, in the event that the Province fails to comply with this provision with respect to its application, upon being requested to do so by the Contractor, the Province shall apply to Court to have the Court Order varied or amended to reflect the requirement contemplated herein.

#### **PROVNET**

79. The Province will provide the Contractor with access to the PROVNET system while this Agreement is in effect on the terms set out in Schedule "K".

80. (1) The Contractor shall reimburse the Province for all Extraordinary Telecommunication Expenses and the Contractor agrees that any amount due to the Province for any outstanding Extraordinary Telecommunication Expenses may be set off against any Operational Expenses payable to the Contractor under this Agreement.

- (2) "Extraordinary Telecommunication Expenses" means the actual costs incurred by the Province with respect to installation and service charges, other than operational charges, for telecommunication equipment used by the Contractor as part of the PROVNET system as contemplated by section 79 of this Agreement.



## DELEGATION

81. The obligations of the Contractor to provide those components of the Services set forth in the Family Maintenance Enforcement Act are subject to the Contractor being delegated the requisite powers, duties, and functions by the Director pursuant to subsection 2(2) of that Act and the Director hereby delegates to the Contractor the powers, duties, and functions as set out in Schedule "L", which Schedule may be amended from time to time by the Director.

## MISCELLANEOUS

82. (1) If an act of God or any other event over which the Contractor has no control, including without limitation, strikes or walkouts whether by the Contractor's employees or otherwise, occurs, which results in a delay, interruption or failure of the Contractor in carrying out its obligations under this Agreement, then, but subject to section 82(2), the Contractor will not be liable for such delay, interruption or failure but will use its best efforts to remove, curtail or contain the cause of the delay, interruption or failure and will resume compliance with its obligations under this Agreement with the least possible delay.
- (2) If the Contractor cannot carry out its obligations under this Agreement as contemplated by section 82(1), then the Contractor shall immediately notify the Province of the obligations that are effected and the reason for the Contractor being unable to carry out the obligations, and for the duration of the period during which the Contractor is unable to carry out any such obligations the Province may reduce any payments due under this Agreement by both:
- (a) the amount equal to the amount of Operational Expenses that are not expended by the Contractor during the event identified; and
  - (b) an amount equal to the pro-rata portion of the management fee less any fixed costs, or actual costs incurred to maintain the Services during such period, of the Contractor which the Contractor can demonstrate are unavoidable,
- provided further, that if the Contractor does not agree on an amount of a reduction under section 82(2)(b) the parties agree that the matter will be referred to binding arbitration pursuant to section 56 of this Agreement.
83. Any public announcement relating to this Agreement will be arranged by the Province in consultation with the Contractor.
84. Any notice, document, statement, report, demand or payment desired or required to be given or made under this Agreement will be in writing and may be given or

made by personal delivery to the party to whom it is to be given or made, or by mailing in Canada with postage prepaid addressed, if to the Province and the Minister or either of them:

The Attorney General  
Suite 210, 815 Hornby Street  
Vancouver, B.C., V6Z 2E6  
Attention: Director of Maintenance Enforcement  
and if to the Contractor:

Themis Program Management and Consulting Limited

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Attention: Brian Pollick, President

and any such notice, document, statement, report, demand or payment so mailed will be deemed given to and received by the addressee on the third business day after the mailing of the same except in the event of disruption of postal services in Canada in which case any such notice, document, statement, report, demand or payment will be deemed given to and received by the addressee when actually delivered to the particular address set out above.

85. Either party may, from time to time, advise the other by notice in writing of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified will, for the purposes of the preceding section, be deemed to be the address of the party giving such notice.
86. Any notice, report, direction, or document transmitted by facsimile transmission from either party or the Minister will be conclusively deemed validly given to and received by the intended recipient when so transmitted.
87. A reference to a statute in this Agreement, whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes every amendment to it, every regulation made under it and any enactment passed in substitution therefore or in replacement thereof.
88. Unless the context otherwise requires, any reference to "this Agreement" means this instrument and all of the Schedules attached to it and any reference to any section or subsection by number is a reference to the appropriate section or subsection in this Agreement.
89. The headings or captions in this Agreement are inserted for convenience only and do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.
90. In this Agreement, "person" includes a corporation, firm, association and any other legal entity and wherever the singular or masculine is used it will be construed as if





the plural or the feminine or the neuter, as the case may be, had been used where the context or the parties so require.

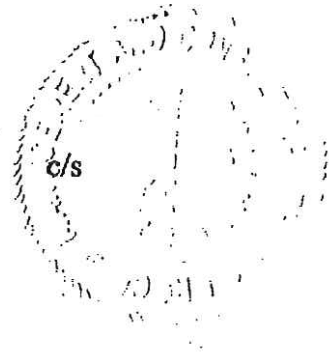
91. Each Schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
92. This Agreement constitutes the entire agreement between the parties and no understandings, representations, agreements, oral or otherwise, exist between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement.
93. Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.
94. If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.
95. The provisions of sections 6, 13, 14, 16, 18, 19, 23, 34, 42, 60 through 73 and 80 of this Agreement and all rights and remedies of the parties, either at law or in equity associated therewith, will survive the expiration or termination of this Agreement.
96. This Agreement will inure to the benefit of and be binding upon the Province and its assigns and Contractor and its successors and permitted assigns.
97. All dollar amounts expressed in this Agreement refer to lawful currency of Canada.
98. No waiver by either party of a breach or default by the other party in the observance, performance or compliance of any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default and failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such party of any of its rights against the other party.
99. Defined words in the Family Maintenance Enforcement Act will have a corresponding meaning under this Agreement, unless the context otherwise requires.
100. Time will be of the essence of this Agreement.

101. This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.
102. This Agreement may be amended in writing but no such amendment will have any force or effect unless and until it is signed by both parties.
103. Each of the parties covenants with the other that it will act in good faith in respect of all matters arising under this Agreement or any other agreement relating or incidental to this Agreement.

IN WITNESS WHEREOF the Attorney General, on behalf of Her Majesty the Queen in right of the Province of British Columbia, has hereunto set his hand and the common seal of Themis Program Management and Consulting Ltd. has been hereunto affixed in the presence of its duly authorized officer(s) in that behalf on the day first above written.

THE common seal of Themis  
Program Management and  
Consulting Limited was hereunto  
affixed in the presence of:

Brian A. Pollick )  
(Witness) )  
PRESIDENT )  
(Title) )



SIGNED on behalf of Her Majesty )  
the Queen in right of the Province )  
of British Columbia by the )  
Attorney General in the presence of: )

Atbell )  
(Witness) )  
8th fl., 1001 Douglas St. )  
(Address) Victoria BC V8W 2C3 )

[Signature]  
The Attorney General



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SCHEDULE "A"  
SERVICES

General

1. The Contractor will provide all labour, materials and facilities required to provide for all aspects of the Family Maintenance Enforcement Program (hereinafter called the "Program") described below and provided for in the Family Maintenance Enforcement Act (F.M.E.A.) and the Guaranteed Available Income for Need Amendment Act. The Contractor will monitor and enforce Maintenance Orders as defined in the F.M.E.A. on behalf of creditors defined in the legislation. The Contractor will monitor Maintenance Orders filed with the Program where the debtor resides in a reciprocating jurisdiction (such Orders are herein referred to as "REMO").
2. The Contractor will ensure the Program provides the following general services:
  - (a) information and advice to creditors and debtors interested in enrolling,
  - (b) obtaining certified copies of creditors' Orders,
  - (c) enrollment of eligible maintenance orders submitted by the court, a creditor, a debtor, or reciprocating jurisdictions,
  - (d) preparing and updating affidavits of arrears,
  - (e) preparing REMO document packages according to the requirements of the reciprocating jurisdiction to assist in the enforcement of Orders already



registered or to be registered,

- (f) monitoring the payment of Orders which includes receiving, tracking, recording, and forwarding payments,
  - (g) notification to debtors of non-payment in accordance with the Policy,
  - (h) initiating appropriate administrative and Court related enforcement action,
  - (i) initiating family search requests,
  - (j) reviewing and withdrawing Orders according to established criteria,
  - (k) communications with creditors, debtors, reciprocating jurisdictions, and other interested parties about the status of the Maintenance Order as per the Communications Policy approved by the Director of Maintenance Enforcement (hereinafter called the "Director").
  - (l) providing counsel to represent the interests of creditors at committal hearings, and
  - (m) to review all applications to vary existing Orders served on the Director and to defend those cases which meet the policy criteria approved by the Director.
3. The initial documentation (Orders, affidavits, filing forms) will be completed by the Ministry of Social Services for those creditors whose Orders are being filed by the Ministry of Social Services.
4. The Contractor is responsible for:





- (a) program planning, program delivery, cost estimating, cost reporting and cost control,
- (b) the development and implementation of policies and procedures to the satisfaction of the Director,
- (c) recruitment, hiring and supervision of Program staff, related professionals, the contracting of lawyers and contracted services
- (d) management and administration of staff training, the production of Program printed materials and forms to the satisfaction of the Director,
- (e) the implementation and management of all Program functions required to enroll, monitor and enforce Maintenance Orders,
- (f) the implementation and management of the Provincial Government Records Management Classification System for all material related to the operation of the Program, and
- (g) the establishment and maintenance of an inventory of assets subject to assignment under Section 45 of this Agreement,
- (h) participation with the Director in the development and implementation of communications objectives and activities.

## 5. Program Output

The following includes essential elements of the Program to be provided by the Contractor:

- (a) The Contractor will accept for



enrollment, monitor and enforce on behalf of all creditors as defined in the F.M.E.A., Maintenance Orders as defined in the F.M.E.A.

- (b) The Contractor will accept for enrollment, monitor and liaise with the appropriate reciprocating jurisdiction on behalf of creditors where the debtor resides out of B.C.
- (c) Enforcement remedies to be undertaken include issuing default letters, arranging voluntary repayment of arrears, and those remedies available under the Family Maintenance Enforcement Act and the Family Orders and Agreements Enforcement Assistance Act (Canada).
- (d) The Contractor will cause the Program to be accessible to the public by telephone between 9:00 a.m. - 4:30 p.m. Monday through Friday excluding statutory holidays (hereinafter called "Days of Business").
- (e) The Contractor will ensure Program Offices are in operation Monday through Friday excluding statutory holidays between 8:00 a.m. - 4:30 p.m. or 8:30 a.m. - 5:00 p.m.
- (f) The Contractor will operate out of three regional offices: one each being in Burnaby, Victoria and Kamloops. In addition, four centralized services will be provided: Province-wide coordination and planning, enrollment, payment processing, and the management of cases where the debtor is out-of-Province.
- (g) Barristers and solicitors who are members in good standing with the Law Society of British Columbia will be





available to provide legal opinions concerning enforcement actions, to attend Court on disputed enforcement actions, default hearings, applications to vary which the Director or lawful designate has undertaken to defend, committal hearings and other types of Court hearings deemed necessary to enforce the Order.

- (h) Payments received will be payable to a party authorized under the Act, recorded and forwarded to the party entitled to receive them.
- (i) The Contractor will endeavour to obtain payment by post-dated cheques or through standing Orders for electronic transfer of funds directly to the creditor's bank account whenever possible.
- (j) Court hearings will normally be held in the Provincial Court where the order is currently filed except where circumstances require or the Contractor considers it desirable to proceed in the Supreme Court.
- (k) The Contractor will be responsible for the production and distribution of brochures about the Program (except the general brochure) to the satisfaction of the Director.
- (l) The Contractor will not engage in publicity, press interviews or television shows related to the Program without the knowledge and consent of the Director, except as may be delegated by written agreement or the Communications Policy approved by the Director.
- (m) Liaison with the Ministries of Attorney General, Social Services and Federal and Provincial



Governments is the primary responsibility of the Director but the Contractor can deal directly with these agencies without providing notice to the Director on case related and local field matters. Unusual cases or policy or procedural matters will be brought to the attention of the Director.

- (n) The Contractor will prepare all Court applications and process.
- (o) A toll-free line for creditor and debtor inquiries will be available.
- (p) The Contractor will ensure that the Interactive Voice Response (IVR) Unit is operational and accessible to the public by telephone 24 hours a day, 7 days a week, except for clients who access the IVR using the 1-800 service which access is available 7 days a week from 7:00 am to 9:00 pm.
- (q) The Contractor will maintain security measures to the satisfaction of the Director to ensure that access to the IVR Unit is restricted to parties authorized by the Director. The Contractor will ensure the creditors and debtors, then only have access to information regarding their own file.
- (r) The Contractor will provide monthly statistics on the utilization of the IVR Unit by all users in a form satisfactory to the Director.
- (s) A complaint and dispute procedure is to be maintained to the satisfaction of the Director.
- (t) Referral mechanisms to the Legal Services Society, Ministry of Social Services, Family Court Counsellors and other community services must be





established.

- (u) The Contractor will ensure all staff and counsel are courteous and helpful and provide both creditors and debtors with timely and useful information and notification of the status of their case as per the Communications Policy approved by the Director. The Contractor will endeavour to maintain good public relations at all times. Work will be performed by competent workers supervised by competent managers. Complaints will be referred to the Contractor for prompt handling as per the Complaints Policy approved by the Director.
- (v) The Contractor will ensure that all its staff are apprised of the confidentiality section of the F.M.E.A. and swear an oath of confidentiality and are apprised of the consequences of breach of this section.
- (w) Cases which result in an appeal by the opposing party must be brought to the Director's attention for a decision on whether the Program should be involved in the appeal. Cases where the Program intends to appeal must be brought to the Director's attention.
- (x) To calculate and enforce payment of interest as required by the F.M.E.A.
- (y) To collect any payments owing to the Director pursuant to the regulations and policy, and deposit them in the Province of B.C. Trust Account, and distribute as directed and to provide a monthly report noting amounts due and paid (see Schedule "C").



6. Miscellaneous

The Contractor must ensure in cases where the enrolled creditor has withdrawn or deceased that no enforcement action occurs and registration against land is removed where in control of the Contractor.



**SCHEDULE "B"**  
**MANAGEMENT FEE**

- 1) Management fees payable to the Contractor for the First Program Year will be \$340,113.00, for Fiscal Year 1997/98 will be \$544,392.00, and for Fiscal Year 1998/99 will be \$544,392.00, as identified in the attached table.
- 2) The following expenses are to be paid out of the Management Fee in addition to any compensation for the Managing Directors and other corporate staff:
  - a) Financial Management
    - preparation of financial information and tax returns
    - financial and tax advice
    - bank service charges on the corporate account
    - cash flow management including interest, lines of credit, contingency reserves etc.
    - GST and corporate taxes.
  - b) Labour Relations
    - settlement of judgments over and above employee salary/benefit costs.
  - c) Employee Benefits/Incentives
    - severance benefits over and above the limits indemnified by the Province
    - profit sharing and incentive bonuses
    - gifts and awards.
  - d) Corporate Legal
    - legal opinions and document preparation/execution for all corporate matters
    - legal representation and advice and payment of any settlements or judgments not related to program files or labour relations as noted above.





- e) Insurance
    - shareholders' insurance to ensure Themis remains solvent in the event of the death of one or both Managing Directors.
  - f) Corporate Furniture and Equipment
    - this includes all office furniture, office equipment (e.g. photocopiers, fax machines etc.), computer equipment used for corporate affairs; this equipment is not located in FMEP offices.
  - g) Corporate Operations
    - this includes business licences, corporate stationery and business cards, home office telephone lines and non-FMEP toll charges, and other expenses connected solely with maintaining the corporate infrastructure.
    - management fee to GAEA to cover its administrative overhead costs related to the Information Services and Financial Services staff (e.g. severance).
  - h) Corporate Travel
    - any travel which is incurred primarily for non-FMEP operations (e.g. Managing Directors' business meetings or contract negotiations).
- 3) In the event the Management Fee for any Fiscal Year is not authorized by March 15 of the preceding Fiscal Year, then the monthly payments to the Contractor shall continue at the then current amount until such time as the Management Fee for the relevant Fiscal Year has been authorized. Once authorized the monthly payments commencing in the next month of the Fiscal Year will be the amount determined in accordance with this Agreement for the balance of the Fiscal Year.




# THEMIS PROGRAM MANAGEMENT AND CONSULTING LIMITED SERVICES AGREEMENT

	April 1-Aug 31	Sept 1-March 31	Fiscal Year 1996/97	Fiscal Year 1997/98	Fiscal Year 1998/99
Current Management Fee	\$ 244,330	\$ 342,062	\$ 586,392	\$ 619,392	\$ 544,392
Transfer to Operations	\$ 0	(\$ 49,583)	(\$ 49,583)		
Transfers from Operations	\$ 0	\$ 68,833	\$ 68,833		
Reductions	\$ 0	(\$ 21,199)	(\$ 21,199)	(\$ 75,000)	
Total	\$ 244,330	\$ 340,113	\$ 584,443	\$ 544,392	\$ 544,392
Operating Expenses	\$3,225,462	\$4,515,646	\$7,741,108		
Transfer from Mgmt Fee	\$ 0	\$ 49,583	\$ 49,583		
Transfers to Mgmt Fee	\$ 0	(\$ 68,833)	(\$ 68,833)		
Total	\$3,225,462	\$4,496,396	\$7,721,858		
TOTAL	\$3,469,792	\$4,836,509	\$8,306,301		





**SCHEDULE "C"**  
**OPERATIONAL EXPENSES**

1. Operational Expenses payable to the Contractor for the First Program Year will be \$4,496,396.00 as identified in the table attached to Schedule "B".
2. The Operational Expenses payable to the Contractor for each Fiscal Year will be the operational expenses determined in accordance with section 3(3) of this Agreement.
3. Subject to section 8 of this Schedule, commencing on December 1, 1996, the Operational Expenses payable pursuant to paragraph 1, less any amounts paid under the Previous Contract with respect to the period of time in which the Term applies, will be paid to the Contractor by the Province in four (4) equal monthly payments on the first day of each month of the First Program Year with the final payment for the First Program Year to be paid on March 1, 1997 and thereafter, the Operational Expenses payable pursuant to paragraph 2, will be paid in twelve (12) monthly payments on the first day of each succeeding month of each Fiscal Year.
4. The Contractor shall submit to the Province, 30 days after the end of each month in the First Program Year and 30 days after each month in any Fiscal Year thereafter, a written statement of account listing in reasonable detail all expenses processed, accrued and forecast for the previous month.
5. The Contractor will, within 30 days of being provided with the authorized Operational Expenses in each fiscal year, submit to the Province a detailed budget showing the allocation of Operational Expenses for approval by the Province. In a year when the Collective Agreements are being negotiated, the Contractor will, within 15 days of ratification, submit an amended budget, if necessary, to the Province.
6. In addition to all other monies paid to the Contractor, the Province shall reimburse the Contractor for Provincial Sales Tax on legal billings from the Family Maintenance Enforcement Program legal counsel upon receiving invoices



- 2 -

while the Agreement is in effect, the first invoice being due on September 30, 1996 and thereafter, every three months within ten days of the end of the three month period to which the invoice relates.

7. In the event the Operational Expenses for any Fiscal Year are not authorized by March 15 of the preceding Fiscal Year, then the monthly payments to the Contractor shall continue at the then current amount until such time as the Operational Expenses for the relevant Fiscal Year have been authorized. Once authorized the monthly payments commencing in the next month of the Fiscal Year will be the amount determined in accordance with this Agreement for the balance of the Fiscal Year.
8. Notwithstanding anything else to the contrary, in no event will the Operational Expenses payable to the Contractor under this Agreement exceed in the aggregate \$37,721,858.00.



**SCHEDULE "D"**  
**MONTHLY KEY INDICATORS**

**Information Requirements**

Whether system generated or manual, the Contractor will provide the following minimum information by month, year, regional office, and type of client (e.g., REMO Debtor In, REMO Debtor Out, and Income Assistance Status) as scheduled or upon request of the Director:

**Demand Indicators**

- cases enrolled (showing bench orders as a separate category)
- cases pending enrollment (showing bench orders as a separate category)
- cases withdrawn
- cases closed
- cases inactive
- 1-800 inquiries
- incoming payments handled
- notice of applications to vary
- IVR calls
- cases enrolled by debtors
- cases enrolled by creditors
- extra provincial garnishment orders

**Workload Indicators**

- caseload per enforcement team
- number of case files worked on





### Cost Indicators

- total average costs per case (operating costs only) as may be defined by the Director where the database permits the calculation

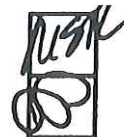
### Enforcement Indicators

- default letters issued
- voluntary payment arrangements
- notices of attachment (separating out federal interceptions of funds)
- garnishment Orders
- default hearings initiated
- reporting Orders
- Orders to pay with/without default provision with/without payment schedule
- warrants of execution
- appointments of receiver
- committal hearings
- disputes - garnishment/notices of attachment
- applications to vary defended
- applications to vary not defended
- Court appearances
- appeals defended
- appeals launched
- third party financial information applications
- attachment orders
- registrations against land
- Notice of Attachment from outside B.C.

*liens with holding*

### Performance Payment Indicators (Since Enrollment)

- total payments due (# and \$)
- total payments made (# and \$)
- total arrears (# and \$)
- payment index on dollars due
- number (%) of Maintenance Orders paid in full
- number (%) of Orders partially paid
- number (%) of Orders never paid
- average amount received per active Order



- number of active defaulted Orders with no enforcement action over 60 days, over 90 days
- total \$ value of interest accumulated by month and Y.T.D.
- total \$ value of interest collected (if possible to determine)
- total \$ value of costs and fees due to Crown by month and Y.T.D.
- total \$ value of costs and fees collected by month and Y.T.D.

#### Miscellaneous

The Contractor must ensure the size of award is recorded and the expiration date of the Order is monitored to ensure no enforcement action occurs on expired Orders.

The Contractor will provide monthly statistics on the number of complaints each office responds to as well as any public relations/media contacts.

The Contractor is required to submit the above data as requested in monthly reports in a format to be agreed upon by the Province and the Contractor within 30 days after the end of the prior month, except for the performance indicators due 60 days after the end of the prior month.

11/18/97

SCHEDULE "E"  
ASSUMPTIONS AND ABSORPTION RATES

A. Assumptions

The following are the estimated volume levels of cases requiring enrollment and service for fiscal year 1996/97. This does not include any changes in demand or service due to new legislation, or the enactment of existing provisions for Bench Orders.

CATEGORY	PAYOR IN B.C.				PAYOR OUTSIDE B.C.				TOTAL			
	Actual 94/95	Proj. 95/96	Actual 95/96	Proj. 96/97	Actual 94/95	Proj. 95/96	Actual 95/96	Proj. 96/97	Actual 94/95	Proj. 95/96	Actual 95/96	Proj. 96/97
1. New Applications	4,354	3,600	5,827	6,756	703	600	875	1,100	5,057	4,200	6,702	7,856
2. Re-enrollments	858	1,000	591	1,100	133	200	98	100	1,051	1,200	689	1,200
3. Cases pending at March 31	969	969	1,495	1,200	252	252	410	250	1,221	1,221	1,905	1,450
4. Enrolled caseload at March 31	22,195	24,000	24,486	28,800	2,083	2,400	2,471	3,200	24,278	26,400	26,367	32,000

B. ABSORPTION CAPACITY

The following is the estimate of the number of increased requests for enrollment and overall caseload which the FMEP can absorb and maintain time standards and service levels. The total caseload number that can be managed is less than in previous years because of the unexpectedly large increase in fiscal year 1995/96 and the reduction of the FMEP's resource base in fiscal year 1996/97.

CATEGORY	ABSORPTION CAPACITY FY96/97		
	Payor in B.C.	Payor out B.C.	Total
1. New applications	4,500	750	5,250
2. Re-enrollments	1,200	200	1,400
3. Enrolled caseload at March 31	27,100	2,900	30,000

new





SCHEDULE "F"  
GOALS AND PERFORMANCE STANDARDS

The following shall be the target outcomes for the Contractor until the new management information system and associated performance measures and standards have been identified and programmed.

1. Direct Goals

- (a) To increase the rate of compliance (i.e., payments when due) with Maintenance Orders registered with the Program.
- (b) To provide timely notification to debtors of default.
- (c) To increase the number of Orders paid in full.
- (d) To maximize administrative enforcement remedies and minimize the use of Court hearings.

2. Indirect Goals

- (a) To reduce demands on GAIN for full or partial ~~initial~~ assistance.
- (b) To assess, comment on and bring forward recommendations on the effectiveness of the enforcement legislation and procedures.
- (c) To increase awareness within the legal profession of the availability of the Program.
- (d) To increase awareness within the population of currently enrolled debtors and creditors as to their rights and responsibilities.



### 3. Process Standards

- (a) To enroll eligible cases where documentation is available:
  - (i) cases where both payor and recipient are in B.C.: 8 weeks;
  - (ii) cases where the payor is outside of B.C.: 12 weeks;
  - (iii) cases where the recipient is outside of B.C. but the payor is in B.C.: 9 weeks.
- (b) To send out a default letter to all debtors (active status only) within 15 days of the first default.
- (c) To take other forms of enforcement action on a timely basis as per the standards negotiated with the Director.
- (d) To record and re-mail all cheques payable to creditors within 1 business day from the time of receipt, where the creditor is identifiable and authorized for release under policy.
- (e) To record and disburse trust fund cheques to the appropriate parties for monies received, where such funds can be released under policy, within 3 working days.
- (f) To bring forward and review for possible action, all inactive files (criteria for defining as inactive and the review cycle are to be approved by the Director) every 4 to 6 months.
- (g) To attempt to respond to creditor or debtor inquiries within 2 business days of receipt of query as per Communications Policy approved by the Director.



#### 4. Interim Outcome Standards

The Contractor will use reasonable efforts to achieve the following outcome standards for all cases where the debtor is in British Columbia:

- (a) To achieve an annual payment rate of 68 cents on each dollar due on regular and enforcement Orders using the ratio of all monies scheduled as due and all monies received in a given month.
- (b) To achieve an aggregate number of 30% (active cases only) of Orders paid in full (or overpaid) since enrollment.







**SCHEDULE "G"**

**BRITISH COLUMBIA CERTIFICATE OF INSURANCE**

See attached.



AND STATING THAT POWERS OF APPOINTMENT AS HEREIN DESCRIBED HAVE BEEN ISSUED TO THE INSTANT NAMED BELOW AND ARE IN FULL FORCE AND EFFECT

INSURED						
OPERATIONS INSURED						
TYPE OF INSURANCE	COMPANY AND POLICY NO.	EXPIRY DATE YR   MO   DAY			LIMIT OF LIABILITY/AMOUNT	
COMPREHENSIVE GENERAL LIABILITY					INCLUSIVE LIMIT \$ _____	
					OR	
					BODILY INJURY EACH PERSON \$ _____	
					PROPERTY DAMAGE EACH OCCURRENCE \$ _____ EACH OCCURRENCE \$ _____	
AUTOMOBILE LIABILITY (OWNED OR LEASED VEHICLES)					INCLUSIVE LIMIT \$ _____	
					OR	
					BODILY INJURY EACH PERSON \$ _____	
					PROPERTY DAMAGE EACH ACCIDENT \$ _____ EACH ACCIDENT \$ _____	
AUTOMOBILE LIABILITY (NON-OWNED VEHICLES)					INCLUSIVE LIMIT \$ _____	
					OR	
					BODILY INJURY EACH PERSON \$ _____	
					PROPERTY DAMAGE EACH ACCIDENT \$ _____ EACH ACCIDENT \$ _____	
UMBRELLA LIABILITY					LIMITS \$ _____ EXCESS OF \$ _____	
CONTRACTOR'S EQUIPMENT					\$ _____	
BUILDER'S RISK OR INSTALLATION FLOATER					SITE \$ _____	
					OTHER LOCATION \$ _____	
					TRANSIT \$ _____	
EMPLOYER'S LIABILITY					EACH PERSON \$ _____	
					EACH ACCIDENT \$ _____	
OTHER					OFFICIALS \$ _____	

These services comply with the insurance requirements of the governing contract to perform work for the Province of British Columbia. It is understood that thirty (30) days' notice of any alteration, transfer, assignment or cancellation of any of the policies listed herein, either in part or in given to the insurers to the holder of this certificate.

45



**SCHEDULE "H"**  
**FACILITY LEASES**

Themis Program Management  
and Consulting Limited  
(Family Maintenance Enforcement Program)

	<u>Street Address</u>	<u>Date Entered</u> <u>Into</u>	<u>Expiry</u> <u>Date</u>
1.	226-1175 Cook Street, Victoria	March 31, 1994	March 31, 2000
2.	227-1175 Cook Street, Victoria	March 31, 1994	March 31, 2000
3.	327-1175 Cook Street, Victoria	March 31, 1994	March 31, 2000
4.	328-1175 Cook Street, Victoria	March 31, 1994	March 31, 2000
5.	2nd Flr, 3939 Quadra Street, Victoria	Feb. 1, 1995	March 31, 2000
6.	400-1627 Fort Street, Victoria	August 13, 1995	March 31, 2000
7.	2nd Flr, 1216 Broad Street, Victoria	April 1, 1994	March 31, 2000
8.		April 6, 1995	March 31, 2000
9.	s.15	March 28, 1994	March 31, 2000
10.		March 28, 1994	March 31, 2000
11.	410-175 2nd Avenue, Kamloops	March 1, 1994	March 31, 2000
12.	900-175 2nd Avenue, Kamloops	March 1, 1994	March 31, 2000



## SCHEDULE I

### GENERAL SECURITY AGREEMENT

THIS SECURITY AGREEMENT is made the 19<sup>th</sup> day of March 1997.

FROM:

**THEMIS PROGRAM MANAGEMENT AND CONSULTING LIMITED**, a body corporate incorporated under the laws of the Province of British Columbia, having a registered office at 409, 3960 Quadra Street, Victoria, British Columbia, V8X 4A3

(the "Obligor")

TO:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the Ministry of the Attorney General, Parliament Buildings, Victoria, British Columbia, V8V 1X4

(the "Secured Party")

- A. WHEREAS the parties entered into an agreement dated the 2nd day of June, 1988, and a subsequent agreement dated the 16th day of June, 1994, (which agreements, with amendments, are hereinafter referred to as the "Previous Contracts") whereby the Obligor provided all aspects of the Family Maintenance Enforcement Program on behalf of the Secured Party (the "Services");
- B. AND WHEREAS the parties entered into a further agreement titled the Themis Services Agreement dated the 19<sup>th</sup> day of March, 1997, whereby the Obligor is to continue to provide the Services on behalf of the Secured Party (the "Themis Services Agreement");
- C. AND WHEREAS, pursuant to the Previous Contracts and the Themis Services Agreement, the Secured Party has made, and will continue to make, payments to the Obligor; which payments have been, and will continue to be, made for, among other things, the acquisition of the Assets and Real Property necessary to provide the Services (the "Operational Funds");
- D. AND WHEREAS, the Assets and Real Property purchased or acquired for the provision of the Services under the Themis Services Agreement and the Previous Contracts are to be transferred to the Secured Party at the expiration or sooner termination of the Themis Services Agreement;



E. AND WHEREAS, in view of the Secured Party financing the acquisition of the Assets and Real Property, and the agreement to transfer said Assets and Real Property to the Secured Party upon the expiration or sooner termination of the Themis Services Agreement, the Secured Party wishes to secure its interest in the Assets and Real Property;

1. SECURITY INTEREST

1.01 For consideration the Obligor, subject to the exceptions set out in paragraph 2, hereby:

(a) grants to the Secured Party a continuing general security interest in, all the Obligor's right, title and interest in and to all presently owned or held and after acquired or held personal property, assets and undertakings of the Obligor (other than real property), of whatever nature or kind and wheresoever situate and all proceeds thereof and therefrom (the "Assets") including, without limiting the generality of the foregoing:

(i) Equipment

all equipment, including, without limiting the generality of the foregoing, fixtures, furniture, furnishings, chattels, motor vehicles, vessels and other tangible personal property that is not inventory, and all parts, components, attachments, accessories, accessions, replacements, substitutions, additions and improvements to any of the foregoing ;

(ii) Intangibles

all contractual rights (including, without limitation, leases), licenses, trade names, copyrights and other intellectual property of the Obligor;

(iii) without limiting the generality of the foregoing, all Assets listed in the Schedule of Assets contemplated by paragraph 1.02 herein (the "Schedule of Assets"); and

(b) mortgages and charges as and by way of a floating charge to and in favour of the Secured Party all of the real property of the Obligor and every interest therein (the "Real Property"), both present and future and wheresoever situate.

1.02 The Obligor shall:

(a) within 90 days of the execution of this Agreement, provide the Secured Party with a Schedule of Assets listing all significant Assets acquired using Operational Funds from June 2, 1988 to September 30, 1996; and

- (b) within 12 months of providing the Secured Party with a Schedule of Assets hereunder or under subparagraph (a), and at such times that the Secured Party may reasonably request, provide the Secured Party with an updated Schedule of Assets.

## **2. EXCEPTIONS**

- 2.1 The last 10 days of the term created by any lease or agreement therefor are hereby excepted out of any charge, security interest or floating charge created by this Security Agreement but the Obligor shall stand possessed of the reversion thereby remaining upon trust to assign and dispose thereof to any third party as the Secured Party shall direct.
- 2.2 The security interests hereby created exclude interests in any consumer goods of the Obligor.
- 2.3 The security interests hereby created exclude interests of the Obligor in any and all Assets or Real Property where those Assets or Real Property were acquired by the Obligor using funds other than Operational Funds as provided for in the Previous Contracts and the Themis Services Agreement. For greater certainty, where Operational Funds formed or form part of the acquisition cost of an Asset or Real Property, the Obligor's interest in that Asset or Real Property is not excluded from the security interest hereby created.

## **3. OBLIGATIONS SECURED**

This Security Agreement and the security interests hereby created are in addition to and not in substitution for any other security interest now or hereafter held by the Secured Party from the Obligor or from any other person whomsoever and shall be general and continuing security for the performance of all obligations of the Obligor to the Secured Party as contained in this Agreement and as contained in the Themis Services Agreement (the "Obligations").

## **4. PROHIBITIONS**

Without the prior written consent of the Secured Party the Obligor will not create or permit to exist any security interest in, charge, encumbrance or lien over, or claim against any of its property, assets, or undertakings which ranks or could in any event rank in priority to or pari passu with any security interest created by this Security Agreement except:

- a) existing security interests or other encumbrances, as listed in Schedule "A" hereto (the "Permitted Encumbrances"); and



- b) purchase money security interests in Assets hereafter acquired provided the purchase money security interest is perfected and notification thereof is given to the Secured Party pursuant to the Act,

(collectively the "Authorized Encumbrances").

## **5. ATTACHMENT**

The Obligor acknowledges that the purchase money security interests and other security interests hereby created attach upon the execution of this Security Agreement (or in the case of any after acquired property, upon the date of acquisition thereof), that value has been given, and that the Obligor has, or in the case of after acquired property will have, rights in the Assets.

## **6. REPRESENTATIONS AND WARRANTIES**

- 6.1 The Obligor represents and warrants that this Security Agreement is granted in accordance with resolutions of the directors (and of the shareholders as applicable) of the Obligor and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this Security Agreement, and the performance of the Obligor's obligations hereunder, legal, valid and binding.
- 6.2 The Obligor represents and warrants that the Obligor lawfully owns and possesses all presently held Assets and has good title thereto, free from all security interests, charges, encumbrances, liens and claims, save only Permitted Encumbrances, and the Obligor has good right and lawful authority to grant a security interest in the Assets as provided by this Security Agreement.

## **7. COVENANTS OF THE OBLIGOR**

- 7.1 The Obligor covenants that at all times while this Security Agreement remains in effect the Obligor will:
  - (a) defend the title to the Assets and Real Property for the benefit of the Secured Party against the claims and demands of all persons;
  - (b) fully and effectually maintain and keep maintained the security interests hereby created valid and effective;
  - (c) maintain insurance on the Assets and Real Property with an insurer, of kinds, for amounts and payable to such person or persons, all as the Secured Party may require;



- (d) maintain the Assets and Real Property in good order and repair except, with respect to any Asset, where such maintenance or repair is not reasonable:
  - (i) recognizing the age and expected useful life of the Asset;;
  - (ii) as a result of obsolescence; or
  - (iii) due to the extent of damage to the Asset, provided the damaged Asset is replaced by an asset of equal or superior functionality to which the security interest created hereby attaches and further provided the Obligor complies with subparagraph (h) and (i) herein with respect to the damage and the replacement Asset
- (e) forthwith pay:
  - (i) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Assets and Real Property when due, unless the Obligor shall in good faith contest its obligations so to pay and shall furnish such security as the Secured Party may require, and
  - (ii) all security interests, charges, encumbrances, liens and claims which rank or could in any event rank in priority to any security interest created by this Security Agreement, other than the Authorized Encumbrances,and where such payment is contemplated by the Themis Services Agreement to be paid out of Operational Funds, such payment shall be paid out of Operational Funds;
- (f) forthwith pay all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Secured Party in:
  - (i) taking, recovering and keeping possession of the Assets and Real Property other than a transfer of the Assets and Real Property to the Secured Party where such transfer is a result of:
    - (A) the expiration of the Themis Services Agreement, or
    - (B) the termination of the Themis Services Agreement pursuant to section 53 of that Agreement.
  - (ii) insuring the Assets, which payment shall be made from Operational Funds; and

- (iii) all other actions and proceedings taken in connection with the preservation of the Assets and the enforcement of this Security Agreement and of any other security interest held by the Secured Party as security for the Obligations;
- (g) comply with every term, condition, obligation or covenant contained in any agreement pursuant to which this Security Agreement is made or given;
- (h) at the Secured Party's request at any time and from time to time execute and deliver such further and other documents and instruments and do all acts and things as the Secured Party reasonably requires in order to confirm and perfect, and maintain perfection of, the security interests and charges hereby created in favour of the Secured Party upon any of the Assets;
- (i) notify the Secured Party promptly of:
  - (i) any change in the information contained herein relating to the Obligor, its name, its address, its business or the Assets,
  - (ii) the details of any sale or disposition of the Assets outside the scope contemplated by subparagraph 9(a) hereof,
  - (iii) any damage or loss, calculated on a replacement cost basis, to:
    - (A) any individual Asset which exceeds \$1000; and
    - (B) any number of Assets which exceeds in any 12 month period \$10000 in aggregate excluding damage or loss attributable to the normal course of operations; for greater certainty, the calculation of the aggregate damage or loss in any applicable period shall include those amounts reportable under subparagraph (A);
- (j) prevent the Assets from being or becoming an accession to other property not covered by this Security Agreement;
- (k) permit the Secured Party and its representatives, at all reasonable times, access to all the Assets for the purpose of inspection and render all assistance necessary for such inspection; and
- (l) deliver to the Secured Party from time to time promptly upon request:
  - (i) any documents of title, instruments, securities and chattel paper constituting, representing or relating to the Assets,

- (ii) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the expenditure of Operational Funds, as described in paragraph 2.3 herein, for the acquisition of the Assets, for the purpose of inspecting, auditing or copying the same,
- (iii) all policies and certificates of insurance relating to the Assets and Real Property, and
- (iv) such information concerning the Assets, the Obligor and the Obligor's business and affairs as the Secured Party may reasonably require.

## **8. PERFORMANCE OF OBLIGATIONS**

If the Obligor fails to perform its Obligations hereunder, the Secured Party may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Secured Party hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Obligor to the Secured Party forthwith with interest calculated at an annual simple interest rate that is equal to the prime lending rate of the banker of the Secured Party.

## **9. RESTRICTIONS ON SALE OR DISPOSAL OF ASSETS**

Without the prior written consent of the Secured Party the Obligor will not:

- (a) sell, lease or otherwise dispose of the Assets other than in the normal course of its operations;
- (b) release, surrender or abandon possession of the Assets other than in the normal course of its operations; or
- (c) move or transfer any Asset to a location:
  - (i) outside of the Province of British Columbia; or
  - (ii) within the Province of British Columbia except where such transfer is for operational purposes in the normal course.

## **10. DEFAULT**

The Obligor shall be in default under this Security Agreement, unless waived by the Secured Party, in any of the following events:



- (a) the Obligor is in breach of any term, condition, obligation or covenant to the Secured Party, or any representation or warranty to the Secured Party is untrue, whether or not contained in this Security Agreement. For greater certainty, where, under the Themis Services Agreement, the Secured Party has been provided a remedial period with respect to a breach contemplated herein, no default shall be deemed to have occurred if the breach is remedied within that period;
- (b) the Obligor makes an assignment for the benefit of its creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the Bankruptcy Act, the Companies Creditors' Arrangement Act or similar legislation in any jurisdiction, or makes an unauthorized assignment;
- (c) a receiver, receiver and manager or receiver-manager of all or any part of the Assets is appointed;
- (d) an order of execution against the Assets or any part thereof remains unsatisfied or undefended for a period of 10 days;
- (e) without the prior written consent of the Secured Party, the Obligor creates or permits to exist any charge, encumbrance or lien on or claim against or any security interest in, any of the Assets which ranks or could in any event rank in priority to or pari passu with any security interest or charge created by this Security Agreement except Authorized Encumbrances;
- (f) the holder of any other charge, encumbrance or lien on or claim against, or security interest in, any of the Assets does anything to enforce or realize on such charge, encumbrance, lien, claim or security interest and the Obligor fails to assiduously defend such action;
- (g) an order is made or an effective resolution is passed for winding up the Obligor; or
- (h) the Obligor enters into any reconstruction, reorganization, amalgamation, merger or other similar arrangement with any other person.

## **11. ENFORCEMENT**

- 11.1 Upon any default under this Security Agreement, the security hereby constituted will immediately become enforceable and, without limiting the foregoing, the floating charge referred to in Clause 1 will crystallize and thereupon become a fixed and specific mortgage of all the Obligor's Real Property which is the subject of this Security Agreement. To enforce and realize on the security constituted by this Security Agreement the Secured Party, or a receiver appointed under the Themis Services Agreement may take any action permitted by law or in equity, as it may deem expedient, and in particular without limiting

the generality of the foregoing, the Secured Party may exercise all of its rights under the Themis Services Agreement and all the rights and remedies of a secured party under the Act.

**12. RIGHTS CUMULATIVE**

All rights and remedies of the Secured Party set out in this Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future security agreement or now or hereafter existing at law, in equity or by statute, or pursuant to any other agreement between the Obligor and the Secured Party that may be in effect from time to time.

**13. LIABILITY OF SECURED PARTY**

The Secured Party shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfillment of contracts during any period when the Secured Party shall manage the Assets and Real Property upon entry, as herein provided, nor shall the Secured Party be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable. The Secured Party shall not be bound to do, observe or perform or to see to the observance or performance by the Obligor of any obligations or covenants imposed upon the Obligor nor shall the Secured Party, in the case of securities, instruments or chattel paper, be obliged to preserve rights against other persons, nor shall the Secured Party be obliged to keep any of the Assets identifiable.

**14. APPOINTMENT OF ATTORNEY**

The Obligor hereby irrevocably appoints the Secured Party or a receiver appointed under the Themis Services Agreement, with full power of substitution, to be the attorney of the Obligor for and in the name of the Obligor to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, instruments, assignments, assurances or consents that the Obligor is obliged to sign, endorse or execute and generally to use the name of the Obligor and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Secured Party pursuant to this Security Agreement.



**15. WAIVER**

The Secured Party may from time to time and at any time waive in whole or in part any right, benefit or default under any clause of this Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be.

**16. NOTICE**

Notice may be given to either party by sending it through the post in prepaid mail or delivered to the party for whom it is intended, at the principal address of such party provided herein or at such other address as may be given in writing by such party to the other, and any notice if posted shall be deemed to have been given at the expiration of three business days after posting and if delivered, on delivery.

**17. EXTENSIONS**

The Secured Party may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security interests, and otherwise deal with the Obligor, and with the Assets and other security interests as the Secured Party may see fit without prejudice to the liability of the Obligor or the Secured Party's right to hold and realize on the security constituted by this Security Agreement.

**18. NO MERGER**

This Security Agreement shall not operate so as to create any merger or discharge of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security interest of any form held or which may hereafter be held by the Secured Party from the Obligor or from any other person whomsoever. The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the covenants contained in this Security Agreement.

**19. ENFORCEMENT**

This Security Agreement shall enure to the benefit of the Secured Party and its successors and assigns, and shall be binding upon the respective heirs, executors, personal representatives, successors and permitted assigns of the Obligor.



## **20. INTERPRETATION**

### **20.1 In this Security Agreement:**

- (a) "Assets" and "Real Property" have the meaning set out in paragraph 1 hereof (as qualified by paragraph 2 hereof) and any reference to Assets and Real Property shall, unless the context otherwise requires, be deemed a reference to Assets and Real Property as a whole or any part thereof;
- (b) "Obligor" and the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used;
- (c) the "Act" means the Personal Property Security Act of British Columbia and all regulations thereunder as amended from time to time.

20.2 Words and expressions used herein that have been defined in the Act shall be interpreted in accordance with their respective meanings given in the Act unless otherwise defined herein or unless the context otherwise requires.

20.3 The invalidity or unenforceability of the whole or any part of any clause of this Security Agreement shall not affect the validity or enforceability of any other clause or the remainder of such clause.

20.4 The headings of the clauses of this Security Agreement have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Security Agreement.

20.5 This Security Agreement shall be governed by the laws of British Columbia.

## **21. COPY OF AGREEMENT AND FINANCING STATEMENT**

21.01 The Obligor hereby acknowledges receiving a copy of this Security Agreement.

21.02 For greater certainty, the Secured Party shall, in accordance with the Act, provide the Obligor with a copy of any financing statement, financing change statement or verification statement filed at any time in respect of this Security Agreement and shall ensure, to the

extent that is practicable, that such documents reflect the exceptions described in paragraph 2 herein.

IN WITNESS WHEREOF the Obligor has executed this Security Agreement this 19<sup>th</sup> day of MARCH, 1997.

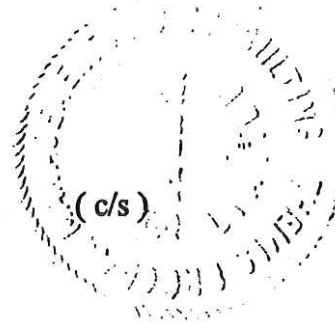
THE common seal of THEMIS PROGRAM  
MANAGEMENT AND CONSULTING  
LIMITED was hereunto affixed  
in the presence of:



(Signature)

PRESIDENT

(Title)





**SCHEDULE "J"**  
**SUCCESSION PLAN**

See attached.





# THEMIS PROGRAM MANAGEMENT & CONSULTING LIMITED

Specialists In Justice Related Issues and Programs

Brian A. Pollick  
Managing Director (President)

Jocelyn Gifford  
Managing Director (Secretary)

s.22

s.22

September 1st, 1993

Mr. Roy Dungey  
Director of Maintenance Enforcement  
210 - 815 Hornby Street  
VANCOUVER, B.C.  
V6Z 2E6

Dear Roy,

## SUCCESSION PLANNING

A few weeks ago, you mentioned to Brian that there was potential concern about what would happen to the Company and the Program if either one of us, or both of us, were killed, incapacitated or wanted to leave the Company and/or the Family Maintenance Enforcement Program.

These are legitimate concerns, so we are taking this opportunity to inform you of what we have done to:

- a) ensure that the FMEP will not be affected in the short term;
- b) to protect the financial interest of the Province.

**1. GENERAL SAFEGUARDS**

**a) Contract with B.C.**

*Clause 10 of the current agreement specifically requires both of us to act as senior management in the provision of the Services.*

*Neither of us could sell our interest in the Company or cease our involvement with the FMEP since Clause 40(e) & (f) prevent this and provide grounds for termination of the Contract. Without the FMEP Contract, it would be next to impossible to sell the Company.*

**b) Partnership Agreement**

*The Agreement Partnership, which governs our relationship with respect to Themis, makes it impossible for either of us to sell his/her share in the Company without the Agreement of the other. This Agreement also prohibits either of us from taking an action which might jeopardize the Contract with the Province. There is financial liability against an offending partner.*

**2. WHAT HAPPENS IF ONE OF US DIES OR IS INCAPACITATED?**

**a) Operational Safeguards**

*Under the terms of our Partnership Agreement, in the event of the death or incapacity of one Partner, the other Partner has complete authority to conduct*



*the affairs of the Company. This includes the authority to hire/contract such additional help as may be necessary.*

*We go to extraordinary lengths to make sure each of us knows everything which the other is working on which could affect the FMEP or the business affairs of the Company. The sudden absence of one Partner would have no substantial, long term impact.*

*If one of us is incapacitated for more than six months, that Partner must give up his/her interest to the other Partner at no cost, other than entitlement to previously earned but unpaid profits.*

**b) Financial Safeguards**

*We carry substantial shareholder's insurance to make sure that the death of a partner cannot result in any claim on the assets of the Company. Our shareholders agreement entitles the estate of the deceased Partner only to the insurance proceeds and previously earned but unpaid profits. No claim can be made against material assets or future earnings of the Company.*

*It would be prudent for the Province to insert a clause in the Agreement saying that, in the event of the death or incapacity of one of the Partners, the remaining partner will advise the Province within 120 days as to what plans have been made to replace the functions performed by the lost partner, and to lay out future development and succession plans. The Province should have the right to request additional reasonable safeguards if it is not satisfied.*

**3. WHAT HAPPENS IF BOTH OF US DIE OR ARE INCAPACITATED?**

*In the event of the death or incapacity of both of us, the immediate issue is the ongoing, day-to-day management of the FMEP. The longer term issue is what will be done to ensure an orderly transfer to a new structure and to protect the interests of the Province.*

*We have formalized the following plans for this eventuality (it is, hopefully, a remote prospect), and have issued instructions to our Corporate Counsel to amend our Partnership Agreement to this effect.*

**INTERIM MANAGEMENT**

**a) Operation of FMEP**

*The Regional Manager of each office is fully competent and empowered to ensure regular operations continue unimpeded, in accordance with policies and procedures. Jim Wingham shall become overall Senior Manager and will be trustee of Themis to exercise the management control with respect to the FMEP, its staff and its finances. Any decisions which involve changes to the Operational Budget shall also involve the Controller, Susan Rudosky.*

*Susan already has signing authority on the Themis account and will be empowered to maintain Program operations at their current level, providing the Province is still making its contract payments. Jim Wingham will also have signing authority.*

*Should either Jim Wingham or Susan Rudosky be unable to assume this responsibility, the Province shall have the right to appoint a senior administrator to run the day-to-day affairs of the FMEP within the limits of the Operational Budget provided for in the Contract.*

*This arrangement shall last for as long as is necessary for the Province to make arrangements to either bring the Program into Government, or to replace Themis with another Contractor.*

**b) Protection of Assets**

*Jim Wingham and Susan Rudosky shall have the power to expend money from Themis' corporate account providing such expenditures are budgeted and associated with the normal corporate operations of the Company, required to support management of the FMEP. Unusual expenditures may be approved with the consent of one representative of each of the Partners' estates.*

*No funds may be paid out to the partners' estates except for the insurance proceeds, until Themis is no longer operating the FMEP. Themis' insurance for liability, negligence, etc. shall be kept in place until all FMEP matters are fully transferred.*

*We will also provide that in the event of our simultaneous death or incapacity, that all furniture and office equipment in FMEP offices shall become the property of the Province upon the Province advising it wants these items and*



*agrees to pay fair market value for them, based on a valuation of a party mutually appointed by the Province and the wind-up administrator. The Province shall have the right to treat these items as its own even though the final price may not yet have been established.*

#### **FINAL WIND-UP**

*Clauses 62 and 63 of the Contract continue to protect the Province from any loss or financial liability. Our insurance will cover any losses due to liability, negligence, theft or fraud, etc. for the entire period Themis ran the FMEP.*

*Upon our joint death or incapacity, an administrator shall be appointed to look after the interests of our estates. Instructions to the administrator shall include a provision for completion of a financial audit of the Company (at the Company's expense) within 120 days of effective termination of the FMEP Contract.*

*The administrator shall be empowered to pay any corporate debts which become due, and to ensure that any unexpended Operational Funds are returned to the Province.*

*The administrator will also be required to hold all corporate funds, except insurance proceeds, for 180 days after the receipt of the audit for the settlement of future claims related to the FMEP. Only then may the Company be formally dissolved and the assets disposed of.*

**Mr. Roy Dungey**  
**Page 7**  
**September 1st, 1993**

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*Our Corporate Counsel has been involved in the structuring of this succession plan and we believe that it offers the Province the assurance it needs that both the operations of the FMEP and the legitimate interests of the Province are sufficiently protected in the most unlikely event of the simultaneous death or incapacity of both of the Managing Directors.*

*If you need clarification on any point, please do not hesitate to contact us.*

*Sincerely yours,*



**BRIAN A. POLLICK**  
**Managing Director**



**JOCELYN GIFFORD**  
**Managing Director**

*BAP/pf/39*



SCHEDULE "K"

PROVINCIAL GOVERNMENT TELECOMMUNICATIONS NETWORK (PROVNET)  
AND BCONLINE ACCESS

1. The Contractor will ensure that Provnet and BOnline are to be used only for the business of the Legislature or the government as this relates to the performance of Services as provided for in this Agreement.
2. Personal long-distance calls from a government telephone over Provnet and personal searches using BOnline access under any circumstances are prohibited.
3. Any unauthorized calls or searches will be traced and the cost recovered from the Contractor.
4. The Contractor will advise the Province of telecommunications and BOnline access requirements and plans for the duration of the Term upon the signing of the contract and throughout the Term any unanticipated changes required.





SCHEDULE "L"

LETTER OF DELEGATION OF THE POWERS, DUTIES OR FUNCTIONS  
OF THE DIRECTOR OF MAINTENANCE ENFORCEMENT

Pursuant to Section 2(2) of the Family Maintenance Enforcement Act (the "Act") all the powers, duties and functions conferred or imposed upon the Director of Maintenance Enforcement under the following sections of the Act are hereby delegated:

Sections 3, 4, 5(1.1), 6 [excluding 6(2)], 7, 10, 11, 12, 14, 15, 16, 16.1, 18, 20.01(1), 20.1(1), 21(3.1), 23, 24, 26, 27, 28, 32(2), 35.1, 37, 49.

THIS DELEGATION is subject to the powers, duties and functions hereby delegated being exercised by the Contractor only through its following designated officers, contract staff, and employees, namely:

- (a) its Managing Directors, Regional Managers, Enforcement Managers and Senior Legal Counsel in respect to all those sections of the Act referred to above;
- (b) its Legal Counsel and Enforcement Officers in respect to sections 3, 4, 6 [excluding 6(2)], 7, 10, 11, 12, 14, 15, 16, 16.1, 18, 20.01(1), 20.1(1), 21(3.1), 23, 24, 26, 27, 28, 32(2), 35.1, 37, 49.

AND the persons acting in the positions designated above are hereby authorized to exercise those powers, duties and functions.

Should the name of the position of any of the designated officers, contract staff or employees change, the persons occupying those positions either before or after any such change shall be, or continue to be, authorized to exercise the powers, duties and functions delegated to that position as if the name of the position had not changed.

THIS DELEGATION is further subject to the Director of Maintenance Enforcement's direction and shall continue until March 31, 1999 or the earlier termination of the Agreement or until revoked in writing by the Director of Maintenance Enforcement, whichever first occurs.

*MR*  
*OR*

## THEMIS SERVICES AGREEMENT

THIS AGREEMENT made the 31<sup>st</sup> of March, 2000.

### BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH  
COLUMBIA,

represented by the Attorney General

(the "Province") OF THE FIRST PART

### AND:

THEMIS PROGRAM MANAGEMENT AND CONSULTING LIMITED  
409, 3960 Quadra Street, Victoria, in the Province of British Columbia, V8X 4A3

(the "Contractor") OF THE SECOND PART

### WHEREAS:

- A. The parties entered into an agreement titled the 1997-2000 Services Agreement dated the 19th day of March, 1997, whereby the parties agreed that the Contractor would provide all aspects of the Family Maintenance Enforcement Program in the Province of British Columbia from March 19, 1997 to March 31, 2000 (with a provision for an automatic one year extension) unless earlier terminated by the Province (collectively the "Previous Agreement");
- B. The Contractor has been designated by Order In Council under the *Public Sector Employers Act* and is a member of the Community Social Services Employers' Association of British Columbia (CSSEA) and therefore qualifies to enter into a continuing services agreement with the Province at the time the protocols of that form of agreement are settled and approved;
- C. In view of the possibility of entering a continuing services agreement, and for other business reasons, the parties have renegotiated the terms of the Previous Agreement and it is now agreed that the Contractor will continue to provide all aspects of the Family Maintenance Enforcement Program (the "Program") on the terms set out herein.





WITNESSETH that the parties agree as follows:

### APPOINTMENT

1. The Province retains the Contractor to provide the services (herein called the "Services") described in Schedule "A" and attached hereto and forming a part hereof

### TERM

2. (1) The Contractor will provide the Services in accordance with the provisions of this Agreement and in compliance with all statutes, rules and regulations of any government or agency thereof during the period (herein called the "Term") commencing on April 1, 2000 and ending on March 31, 2002, unless extended under section 53(3) herein, notwithstanding the date of execution of this Agreement.
- (2) For every Program Year during the Term of the Agreement the Services will be adjusted in consultation with the Province to match the Operational Expenses authorized by the Province under section 3 herein, provided further that if the parties do not agree on the adjustment to the Services by the beginning of the Program Year to which the adjustment is to apply then either party may give written notice to the other to have the adjustment to the Services determined by an arbitrator in accordance with the provisions of section 55 and pending such determination the Services shall continue to be provided at the then current levels.
- (3) The parties confirm that the provision of the Services by the Contractor is predicated on the federal and provincial legislation that is relevant to the provision of the Services and in force as of the effective date of this Agreement.
- (4) All references in this Agreement and the Schedules to the Family Maintenance Enforcement Act shall be read to mean the Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127, as amended by the Family Maintenance Enforcement (Supplement) as it is brought into force from time to time.
- (5) The Contractor acknowledges that changes to the nature and the scope of the Services may, from time to time, be required in order to accommodate changes in legislation. If such changes are required, the Province will give written notice and particulars thereof to the Contractor. Upon the Province giving such notice, the parties will enter into negotiations with a view to amending the terms and conditions of this Agreement accordingly. If the parties are unable to agree on the new terms and conditions of the





Agreement, either party may terminate this Agreement by 1 year written notice of termination given to the other and if such option is exercised by either party under this section, neither the Province nor the Attorney General will be under any further obligation to the Contractor except to pay to the Contractor the amounts contemplated in section 52 incurred to the Cessation Date and all other provisions of this Agreement shall apply as if the Province has given notice of termination pursuant to section 52.

- (6) For the purposes of this Agreement reference to the "Cessation Date" shall mean the day on which this Agreement expires unless:
- (a) a notice of termination is given, or is deemed to have been given, terminating this Agreement prior to the end of the Term in which case the Cessation Date shall be the day on which that notice expires; or
  - (b) where this Agreement is extended under Section 53, and a notice of termination is given or is deemed to have been given in which case the Cessation Date shall be the day on which that notice expires.

### **PAYMENT**

3. (1) For the Program Year commencing April 1, 2000 and for every program year for the duration of the agreement the Province will pay to the Contractor in full payment and as reimbursement for providing the services and for expenses, the management fee, in the manner and at the times as set out in Schedule "B" to this Agreement, and the Contractor will accept the same as full payment and full reimbursement.
- (2) The Management fee referred to in section 3(1) will be renegotiated only as a result of changes in the scale of the Family Maintenance Enforcement Program involving resourced services, including changes to the program model, which changes result from decisions of government.
- (a) If changes occur as referenced in s. 3(2), either party may give notice to the other party for the purpose of re-negotiating the management fee, if no agreement can be reached within 60 days, the matter will be referred to binding arbitration under section 55.
- (3) For each Program Year the Province will pay to the Contractor, in full payment and reimbursement for operational expenses associated with providing the Services, the operational expenses referred to in Schedule "C" to this Agreement (the "Operational Expenses") which fees shall be calculated in accordance with section 3(4), in the manner and at the times

as set out in Schedule "C" and the Contractor will accept the same as full payment and full reimbursement.

- (4) Except as provided for under section 53(5), the Operational Expenses for any Program Year will be determined as follows:
- (a) the Contractor shall submit to the Province a document detailing the anticipated requirements for delivering the Services in the next Program Year together with a proposed budget of operational expenses for the next Program Year, including a separate item identifying the cost for administering the default fee, such material to be submitted by the Contractor on or before the execution of this Agreement on or before July 31 of the preceding Program Year;
  - (b) subsequent to receiving the material referred to in section 3(4)(a) the Province may request, and the Contractor will provide, further material as may be reasonably necessary for the Province to consider the level of operational expenses that will be authorized for the next Program Year; and
  - (c) the Province will review the material provided by the Contractor and advise the Contractor as soon as possible of the amount of the operational expenses authorized for each Program Year.

#### **GST CERTIFICATION**

4. This is to certify that the property and/or services ordered/purchased hereby are for the use of, and are being purchased by the Province with Crown funds, and are therefore not subject to the Goods and Services Tax.

#### **TERMINATION OF PREVIOUS AGREEMENT**

5. It is agreed that the Previous Agreement is terminated as of March 31, 2000 and, for greater certainty, where provisions within the Previous Agreement were intended to survive the termination of the Previous Agreement (including, without limitation, section 62 of the Previous Agreement) such provisions shall survive the termination.

#### **RECORDS**

6. (1) In connection with the provision of the Services the Contractor will:
- (a) establish and maintain books of account of all operational expenses incurred, refunds and remissions obtained;

- (b) maintain invoices, receipts and vouchers for operational expenses, refunds and remissions referred to in subsection (a) of this section; and
  - (c) provide the Attorney General or his or her designate (herein called the "Minister") with free access at all reasonable times to all such records, bank account, invoices, receipts and vouchers relating to operational expenses for the purposes of audit and inspection (provided that such information will be disclosed by the Province only as a consequence of the administration of this Agreement or in accordance with law). For such purposes, the Minister may make copies thereof, take extracts therefrom and the Contractor will provide the Minister with all facilities and furnish him with all information as the Minister may from time to time require. The Contractor will not, without the consent of the Minister, dispose of any such accounts, records, invoices, receipts and vouchers, but will preserve and keep the same available for audit and inspection at any time.
- (2) For greater certainty, and without limiting section 37, where all or any of the Services are provided by sub-contractors, the Contractor shall perform the functions and duties provided for in subsections (a) and (b) as if those Services were performed by the Contractor and subsection (c) shall apply.

#### **INDEPENDENT CONTRACTOR**

- 7. The Contractor is an independent contractor and not the servant, employee or agent of the Province or the Minister.
- 8. The Contractor will not in any manner whatsoever commit or purport to commit the Province or the Minister to the payment of any money to any person, firm or corporation unless such payment has been authorized in writing by the Director.
- 9. The Minister may, from time to time, give such instructions to the Contractor as the Minister considers necessary for the Contractor to provide the Services but the Contractor will not be subject to the control of the Minister in respect of the manner in which such instructions are carried out.
- 10. No partnership, joint venture or agency will be created or will be deemed to be created by this Agreement or any action of the parties under this Agreement.
- 11. The Contractor will pay promptly, as the same become due and payable as a result or consequence of monies paid or payable by the Province to the Contractor pursuant to this Agreement, all taxes and contributions payable pursuant to any or all, as the case may be, of the *Income Tax Act* (Canada), the *Income Tax Act*



(British Columbia), the Canada Pension Plan (Canada) and any other statutory assessment, premium or contribution and without limitation:

- (a) excluding Provincial Sales Tax which shall be paid for as provided for in Schedule "C" hereto, all taxes, premiums and assessments related to operational expenditure items shall be paid for out of operational expenses; and
  - (b) any taxation assessments levied against the Contractor as a result of its business structure or its management fee revenue, including without limitation business license fees and corporate income taxes, shall be paid by the Contractor out of corporate funds.
12. Where any of the Services are specified in Schedule "A" to be provided by a duly qualified or licensed practitioner or professional, the Contractor will cause and permit only those persons to perform those services who are so qualified and licensed and without limiting the generality of the foregoing, the Contractor will cause Brian Pollick, Mike Talbot, Hannah Roots, or such other persons as may be acceptable to the Minister to act as senior management for the Contractor in providing the Services. The Province agrees that consent to a person other than Brian Pollick, Mike Talbot or Hannah Roots to act as senior management will not be unreasonably withheld.
13. The Contractor will, upon request from the Minister, from time to time, provide evidence satisfactory to the Minister that the Contractor and all personnel or other parties performing any of the Services hold or have been issued all required licenses, certificates and memberships and that they are valid and subsisting and in good standing.

## REPORTS

14. The Contractor will upon request, from time to time, of the Minister:
- (a) fully inform the Minister of the work done and to be done by the Contractor in connection with the provision of the Services; and
  - (b) permit the Minister at all reasonable time to inspect, examine, review and copy any and all findings, data specifications, drawings, working papers, reports, documents, computer records and material whether complete or otherwise (herein collectively called the "Material") that have been produced, received or acquired by, or provided by the Province to, the Contractor as a result of this Agreement.
15. The Contractor will, on a timely basis, provide to the Minister:

- (1) monthly key indicator reports as described in Schedule "D",
  - (2) monthly financial statements identifying:
    - (a) all operational expenses, and
    - (b) in footnotes to the monthly statement:
      - (i) the Severance Amount as provided for in section 52 calculated as of the date of the monthly statement; and
      - (ii) the aggregate amount of all credits owing to the Province as a result of the Contractor performing services not contemplated by this Agreement using staff who are normally full time employees of the FMEP;
  - (3) Program Year end audited financial statements of operational expenses which shall:
    - (a) show as separate items all operational expenses which flow through GAEA Management Ltd., Mike Talbot Consulting Inc., Hannah Roots or any other entity in which the principals of the Contractor have an interest; and
    - (b) include as footnotes to the year end statement:
      - (i) the Severance Amount as provided for in section 52 calculated as of the date of the year end statement; and
      - (ii) the aggregate amount of all credits owing to the Province as a result of the Contractor performing services not contemplated by this Agreement and a summary of those services; and
  - (4) upon request, a Program Year end annual report,
- all in a form satisfactory to the Minister.

### **OWNERSHIP**

16. (1) All findings, data, reports, documents, records, memoranda of any ministry of the Province and all case data, case files and manuals related to the provision of the Services and any other material whether complete or otherwise that have been produced, received, compiled or acquired by, or provided by or on behalf of the Province to the Contractor, as a result of this Agreement or previous agreements between the Province and the Contractor, including without limitation all policies and procedures developed in accordance with the Services (the "Policies"), and all of the Manuals, Software, and the IVR, as defined in section 18, (all of the foregoing being collectively referred to as the "Material") that are, from time to time, in the possession or control of the Contractor will at all times be the exclusive property of the Province and will be forthwith delivered



by Contractor to the Attorney General, or to such other person and at such place as the Attorney General may at any time direct.

- (2) The Contractor shall deliver to the Province an inventory of the Material and shall update the inventory at the request of the Minister from time to time.
  - (3) The Contractor shall at the request of the Minister, from time to time, deliver to the Province an inventory of the Assets contemplated by Section 59.
  - (4) The Contractor shall at the request of the Minister, from time to time, deliver to the Province copies of the then current versions of the Software and the IVR together with all source codes, systems software, instructions in computer language, compilers, utilities, assemblers, card decks, tapes, listings, other programming documentation, applications, systems programs and all manuals, guides, documents and equipment necessary for the orderly and efficient operation of the Software.
17. All information described in Section 16 above, and all other information which the Contractor is provided access to by the Province for the purpose of providing the Services, shall be utilized by the Contractor solely for the purpose of providing the Services.
18.
  - (1) All right, title and interest in and to any manuals developed by the Contractor for the Province (the "Manuals") the automated data system application developed by the Contractor for the delivery of the Services (the "Software") and the Interactive Voice Response Unit as described in Schedule "A" (the "IVR") including all rights in copyright that may subsist therein and all other intellectual property rights, shall belong to the Province as they come into existence.
  - (2) The Contractor confirms that all copyright and all other intellectual property rights in the Manuals, Software, and the IVR as at the date of this Agreement are vested in the Province as contemplated by the Previous Agreement and any other previous agreements between the Province and the Contractor with respect to the Services. In order to assure the said ownership of the Province in the Manuals, the Software, the IVR, as they are enhanced, revised or updated, and all other portions of the Material produced by the Contractor, the Contractor agrees to execute any documents of acknowledgment of assignment of registration of copyright or waiver of moral rights requested by the Province with respect to any and all of the above.





- (3) In order to better assure the ownership by the Province in the copyright to all enhancements, revisions, and updated versions of the Manuals, the Software, and the IVR, the Contractor covenants and agrees that:

- (a) it will not assert any legal rights of copyright over any such enhancements, revisions, and updated versions of the Manuals, the Software, and the IVR that may arise in the future; and
- (b) it will ensure that all employees, or other individuals, that make any such enhancements, revisions, or updated versions of the Manuals, the Software, or the IVR will provide, or will agree to provide, at the request of the Province to the Contractor, written waivers of moral rights in favour of the Province with respect to the copyright in such enhancements, revisions, and updated versions.

- (4) The Contractor shall ensure that all the Manuals, the Software, the IVR, and all other portions of the Material produced by the Contractor hereunder shall contain the following copyright notice:

COPYRIGHT © HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF BRITISH COLUMBIA [DATE] REPRESENTED BY  
THE MINISTRY OF ATTORNEY GENERAL

- (5) The Contractor shall indemnify and hold the Province free and harmless from any costs, loss or damage assessed against or suffered by the Province in any suit, proceeding or otherwise so far as the same is based on any claim that the use of any material (original or otherwise), Software, systems, programs, equipment, or other material (original or otherwise), software, systems, programs, equipment, or other material developed or provided by the Contractor pursuant to this Agreement or any previous agreement between the Province and the Contractor with respect to the Services, or the performance of the Services infringes any trade secrets, copyright, patent or license.
- (6) For greater certainty, it is agreed that this section does not apply to the software known as the Teleflow Engine and Designer Software ("Teleflow"), save and except to the extent that the Software, the IVR, and any and all enhancements, revisions, and updates to the Software or the IVR, rely on or employ Teleflow in which case the Contractor hereby grants to the Province a non-exclusive, perpetual, royalty free, irrevocable license in Teleflow, and any and all enhancements, revisions, and updates thereto occurring on or before the expiration or termination of this Agreement, to use and modify Teleflow for the purposes of ensuring the proper functionality and performance of the Software, the IVR, and any and all enhancements, revisions, and updates to the Software or the IVR.



The Contractor shall provide the Province with access to any and all material concerning Teleflow necessary to ensure the proper functionality and performance as described herein.

- (7) The Contractor hereby represents that the development of Teleflow occurred at the Contractor's own expense and on its own time and that none of the Province's resources were used for such development.

### **CONTRACTS WITH ASSOCIATED PARTIES**

19. The Contractor is to advise the Director of Maintenance Enforcement (the "Director") in writing of all other contracts entered into by the Contractor, Brian Pollick, Mike Talbot and Hannah Roots and is to further advise the Director in writing of any other entity in which the Contractor or the named parties have a material interest.

### **PROGRAM ASSUMPTIONS AND ABSORPTION RATES**

20. The program assumptions and absorption rates are set forth in Schedule "E" hereto (the "Program Assumptions and Absorption Rates").
21. Except as provided for under section 53(5), for each Program Year during the Term the Contractor shall provide to the Province a set of proposed program assumptions and absorption rates for the next Program Year, substantially in the same form as Schedule "E", which set of program assumptions and absorption rates will be delivered at the same time as the material referred to in section 3(4)(a), and upon approval of the proposed program assumptions and absorption rates and the authorization of the operational expenses for the next Program Year, the proposed program assumptions and absorption rates shall be attached to this Agreement as part of Schedule "E" and shall be the Program Assumptions and Absorption Rates for the Program Year to which they relate. If the Province does not approve the proposed program assumption and absorption rates, and the Contractor is not able to propose a further set of program assumption and absorption rates that is acceptable to the Province, the matter will be referred to binding arbitration under Section 55.
22. If any material deviation from the Program Assumptions or Absorption Rates occurs during the Term, the parties will, upon the receipt of 10 business days notice in writing from one party to the other, commence negotiations for an appropriate adjustment to the Services or, subject to section 24, the operational expenses set forth in Schedule "C" hereto, and, where appropriate, the Absorption Rate will be adjusted accordingly. If the parties do not agree on the amount of such adjustments within 30 business days from receipt of said notice, the matter will be referred to binding arbitration under Section 55.

23. If the actual operational expenses incurred by the Contractor to perform the Services during any Program Year are less than projected operational expenses for that Year, as set out in Schedule "C" or as determined in accordance with this Agreement for the Program Years, then the Contractor will refund to the Province such over projected amount of operational expenses on demand. If the parties do not agree on the amount of the refund within 30 business days from the day of the Province's demand, the matter will be referred to binding arbitration under Section 55.
24. The sums described in Schedules "B" and "C" constitute the maximum amounts payable to the Contractor for its performance of the Services herein and the Contractor will not be entitled to any additional compensation for its performance whether or not the work actually undertaken by the Contractor is described in this Agreement unless the parties agree, pursuant to section 21 and 22, that the fees and expenses should be increased.

#### APPROPRIATION

25. Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Contractor under this Agreement is subject to:
- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act* (the "FAA") to enable the Province, in any Program Year or part thereof when any payment of money by the Province to the Contractor falls due under this Agreement, to make that payment; and
  - (b) Treasury Board, as defined in the FAA, not having controlled or limited, under the FAA, expenditure under any appropriation referred to in subsection (a) of this Section.

#### AUDITS AND REVIEWS

26. The Province may, from time to time, conduct an audit of the Contractor, including the right to inspect and take copies of the books and records pertaining to the operation of the Family Maintenance Enforcement Program of the Contractor upon reasonable notice and at reasonable times.
27. Prior to performing an audit under section 26, the Province will consult with the Contractor to establish terms of reference for the audit and to identify relevant issues, provided always that the discretion to set terms of reference remains with the Province.
28. The Contractor will provide the Province with access to its work, offices and staff and be available to the Province or its designated agent or representative for the purposes of:



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- (a) administration of this Agreement;
  - (b) creditor or debtor complaint reviews and recommendations;
  - (c) monitoring and evaluation of the Services performed; and
  - (d) providing documents, information or explanations relevant to audits and evaluation's contemplated herein.
  
- 29. Prior to completing an audit, a performance review or an evaluation, the Province will provide the Contractor with a draft of the audit report and, upon receiving the draft report, the Contractor shall have ten (10) days to provide the Province with its comments. The Province shall provide the Contractor with a copy of the final audit report when it is complete.
  
- 30. During any Program Year, the Province will negotiate with the Contractor from time to time to establish annual performance targets.
  
- 31. (1) The Province may, from time to time, conduct a performance evaluation of the Contractor with respect to:
  - (a) the performance measures as set out in Schedule "F"; and
  - (b) any other performance measure that the parties may agree to from time to time.

(collectively the "Performance Measures")
- (2) For the purpose of facilitating performance evaluations, the Contractor will provide to the Province on a monthly basis:
  - (a) information necessary for the calculation of the Performance Measures; and
  - (b) an analysis explaining material changes in any of the Performance Measures,

and, at the request of the Province, the Contractor shall provide the information and analysis in the format prescribed by the Province.
  
- 32. The Contractor will consult with the Province in:
  - (a) external forms development;
  - (b) policies and procedures development;
  - (c) training programs;

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- (d) any relations with Court Services, the Ministry of Social Development and Economic Security or any other ministry of the Province of British Columbia having responsibility for the administration of any portion of the B.C. Benefits program, the federal government, and other reciprocating jurisdictions; and
  - (e) communication strategies and programs.
33. The Contractor will fully cooperate with the Province in all matters referred to under Sections 26 to 32 inclusive.

### **CONFIDENTIALITY**

34. The Contractor will treat as confidential and will not, without prior written consent of the Province, publish, release or disclose or permit to be published, released or disclosed, the case data, case files or any other information supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of this Agreement except in so far as such publication, release or disclosure is necessary to enable the Contractor to fulfill its obligations under this Agreement. The Contractor will ensure its facilities, systems and files are secure and that access to data and confidentiality of data and information gained while performing the Services, are strictly controlled, to the satisfaction of the Province.

### **PROBLEM ESCALATION PROCEDURES**

35. The Contractor will advise the Province of the existence of problems which may have a material impact upon the Contractor's ability to perform the Services, and will, forthwith upon recognizing their existence, recommend solutions to such problems.

### **ASSIGNMENT AND SUBCONTRACTING**

36. The Contractor will not without the prior written consent of the Minister:
- (a) assign, either directly or indirectly, this Agreement or any right of the Contractor under this Agreement; or
  - (b) sub-contract any obligation of the Contractor, under this Agreement.
37. No sub-contract entered into by the Contractor will relieve the Contractor from any of its obligations under this Agreement or impose any obligation or liability upon the Province to any such sub-contractor.

### CONFLICT

38. The Contractor will not, at any time while this Agreement remains in effect, perform a service for or provide advice to any person, firm or corporation where the performance of the service or the provision of the advice may or does, in the reasonable opinion of the Minister, give rise to a conflict of interest between the obligations of the Contractor to the Province under this Agreement and the obligations of the Contractor to such other person, firm or corporation. If the Contractor does not agree with the opinion of the Minister, the matter will be referred to binding arbitration under section 55.

### INSURANCE AND INDEMNITY

39. The Contractor will, out of operational expenses, obtain and maintain in force at all times while this Agreement remains in effect:
- (a) a policy of comprehensive general liability insurance (including contractual liability on terms sufficient to cover the indemnity provided by Section 42) in form and content and with an insurer or insurers acceptable to the Minister providing coverage of not less than \$2,000,000 inclusive per occurrence for bodily injury, death and property damage which may arise directly or indirectly out of the acts or omissions of the Contractor, the sub-contractors servants or agents of the Contractor under this Agreement, such policy to include the Province as an additional insured and to contain:
    - (i) a cross-liability clause acceptable to the Minister,
    - (ii) protection for the Province, the Contractor, its sub-contractors and their respective servants, agents or employees, and
    - (iii) coverage in respect of all liability arising out of all products where the material is supplied by the Contractor, non-owned vehicles, contingent employers liability, and liability assumed by the Contractor under and applicable to this Agreement; and
  - (b) a policy of professional liability insurance in an amount not less than \$1,000,000 inclusive per occurrence with an aggregate cap of \$2,000,000 resulting from errors or omissions in the performance of professional services under this agreement;
  - (c) property insurance which shall cover business contents, including electronic data processing equipment and media, against 'all risks'



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of physical loss or damage, including Earthquake and Flood, to full replacement cost value. Such policy of insurance shall contain a waiver of subrogation against the Province;

- (d) extra expense insurance which shall insure expenses necessarily incurred by the Contractor to continue normal office operations which are interrupted as a result of an insured property loss.
40. The Contractor shall provide the Province with evidence of all required insurance prior to commencement of work or service. Such evidence shall be in the form of a completed Province of British Columbia Certificate of Insurance as set out in Schedule "G" to this Agreement. When requested by the Province, the Contractor shall provide certified copies of required policies.
  41. The Contractor will ensure that it is a term and condition of the Agreement of insurance described in Section 39 that the coverage provided therein may not be canceled or materially changed in any way whatsoever without the insurer or insurers giving not less than 30 days prior written notice to the Province.
  42. The Contractor will indemnify and save harmless the Province and the Minister from and against all claims, demands, losses, damages, costs and expenses made against or incurred, suffered or sustained by the Province and the Minister or either of them at any time or times (whether before or after the expiration or termination of this Agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Contractor or by any agent, servant, employee, officer, director, shareholder or sub-contractor of the Contractor pursuant to this Agreement (collectively, the "Related Parties"), excepting always liability arising out of the independent negligent acts of the Province.
  43. In the event that Section 44 of the *Family Maintenance Enforcement Act* is repealed (and not replaced with a provision providing relief from liability) or is ruled unenforceable by a court of competent jurisdiction:
    - (a) the Province will indemnify and save harmless the Contractor from and against all claims, demands, losses, damages, costs and expenses made against or incurred, suffered or sustained by the Contractor at any time or times (whether before or after the expiration or termination of this Agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Contractor or by any Related Party pursuant to this Agreement, excepting always:
      - (i) any liability arising out of or from anything done or omitted to be done where the Contractor's or Related Party's act or omission was not in good faith; or

- (ii) any liability arising out of or from anything done or omitted to be done by the Contractor or any Related Party where such act or omission is not directly related to the provision of the Services.

(b) section 42 shall not apply.

- 44. The Contractor will be responsible for compliance with all conditions and regulations under the *Workers' Compensation Act*. All assessments and levies under the *Workers' Compensation Act* which relate to operational expenses, shall be paid by the contractor as they occur from operational expenses.
- 45. If the Province is a payee under a policy of insurance provided pursuant to section 39, and a payment has been made under that policy with respect to a claim concerning a lost, stolen or damaged Asset, upon the Province being satisfied that the payment will be applied to replacing the lost or stolen Asset, or repairing or replacing the damaged Asset, as the case may be, and upon the Province being further satisfied that the security interest referred to in section 60 herein will attach to the replaced Asset, the Province shall pay to the Contractor the cost of the repair or replacement up to the amount of the insurance payment but no more.

#### **CONTINUING LEGAL OBLIGATIONS**

- 46. The parties agree that, except with respect to those continuing legal obligations specified in subsections 52(l)(b)(i) and (iii) herein and the indemnity contemplated by subsection 52(l)(c) herein, any indemnity provided by the Province under this Agreement does not apply to any legal obligation of the Contractor after March 31, 2002, unless the prior written consent of the Province is obtained.
- 47. Where, as a result of an event contemplated by section 3(2) herein, the Contractor's requirements for office space is reduced resulting in a surplus of leased office space, the Contractor may, upon assigning the rights to use that surplus office space to the Province, pay for the proportionate rent attributed to that surplus office space out of operational funds.

#### **BONDS**

- 48. The Contractor will, out of operational expenses, obtain and maintain a commercial blanket bond in full force and effect at all times while this Agreement remains in effect with respect to each of its servants, employees, officers and directors. The bond will be for the amount of \$ 100,000.00 per incident and be in a blanket form acceptable to the Minister.

49. The bond shall contain a janitorial endorsement extending coverage to the Province for all property entrusted to the Contractor and any property for which the Contractor may be legally liable.

#### PAYMENT OF ENFORCEMENT PROCEEDS

50. In the event the Contractor, or any servant or employee, director, officer, agent or subcontractor of the Contractor, receives any cash, money orders or cheques (the "Proceeds") arising from the enforcement remedies provided for herein, or otherwise, then the Contractor shall forthwith pay such Proceeds to the party entitled to receive them in accordance with policy as established by the Director from time to time.

#### TERMINATION

51. Notwithstanding any other provision of this Agreement if:
- (a) the Contractor fails to comply with any provision of this Agreement or any other agreement relating or incidental to this Agreement (except a license agreement entered into by the parties ) and has not remedied the same to the satisfaction of the Province within 30 days of notice of such failure;
  - (b) an order is made or a resolution passed for the liquidation or winding-up of the Contractor or if a petition is filed for the liquidation or winding-up of the Contractor;
  - (c) the Contractor becomes insolvent or makes an assignment for the general benefit of its creditors or if a bankruptcy petition is filed or presented against the Contractor or the Contractor consents to the filing of the petition a decree is entered by a court or competent jurisdiction and judging the Contractor bankrupt under any law relating to bankruptcy or insolvency;
  - (d) any execution, sequestration, extent or other process of any court becomes enforceable against the Contractor or if a distress or analogous process is levied on the Assets or any other assets or property of the Contractor and the Contractor fails to defend any such aforementioned process in good faith,
  - (e) except as may be contemplated by the Succession Plan, pursuant to Schedule "J", the beneficial ownership and effective control of the Contractor ceases to be held by Brian Pollick and Mike Talbot or, without limiting generality of the foregoing, if anyone who has an interest, direct or indirect, in the Contractor sells, pledges, assigns, mortgages or otherwise disposes of their interest in the Contractor



or this Agreement without the prior written consent of the Minister, such consent not to be unreasonably withheld; or

- (f) without the prior written consent of the Minister, the Contractor is amalgamated or combined with another company or is reorganized, such consent not to be unreasonably withheld,

then, and in addition to any other remedy or remedies available to the Province, the Province may, at its option, terminate this Agreement by the Minister giving 10 days written notice of termination to the Contractor and if such option is exercised then this Agreement will terminate 10 days after such written notice is received or deemed received, pursuant to section 83, by the Contractor and the Province will be under no further obligation to the Contractor except to pay to the Contractor, such amount as the Contractor may be entitled to receive, pursuant to Schedules "B" and "C", for Services provided and expenses incurred in connection therewith to the date of expiration of such notice, subject to the Province's right of set off, in which case the amount payable to the Contractor shall be reduced by the amount subject to set off.

52. (1) Notwithstanding any other provision of this Agreement, the Province may, at its option, during the term terminate this Agreement effective on or before March 31, 2002, without any failure on the Contractor's part to comply with any provision of this Agreement, by the Minister giving not less than 1 year written notice of termination to the Contractor. If such opinion is exercised, the Province will be under no further obligation to the Contractor except to pay the Contractor:
- (a) such fees and expenses as the Contractor may be entitled to receive pursuant to Schedules "B" and "C" attached hereto, for services provided and expenses incurred to the Cessation Date;
  - (b) an amount representing any payments the Contractor must make with respect to any continuing legal obligations to pay subsequent to the Cessation Date pursuant to a valid Contract:
    - (i) listed in Schedule "H";
    - (ii) approved under section 46 hereof, or
    - (iii) entered into prior to the execution of this Agreement where the Contract is for the acquisition, use or servicing of office equipment, computer equipment, or data services, and is directly related to the provision of the Services,

and in the event of such a payment, the Contractor will, at the request of the Minister, apply such proceeds directly to the contracts concerned;

*Handwritten initials/signature*  
*Handwritten circled letter 'B'*

- (c) The Contractor's aggregate liability to pay severance pay to employees shall be calculated in accordance with section 52(2) but shall in any event not exceed the total amount of \$1,700,000. ("the severance cap").

and

- (d) \$120,500 payable in full on the Cessation Date unless the option contained in section 72 is exercised in which case payment shall be made in six equal payments one payment due on the last day of each month of the term of the Consulting Period provided for under that option.

- (1.1) (a) if, during the Term, an amendment to the *Employment Standards Act*, a change in the policy of the Community Social Services Employers' Association of British Columbia (CSSEA), or a change in the Program as provided for under section 3(2), affects the calculation of the Severance Amount, the Severance Cap may be adjusted by mutual written agreement of the parties to reflect that change;

- (b) if the parties are not able to agree to a change contemplated by subsection (a) herein, the matter shall be referred to binding arbitration under section 55;

- (c) the Contractor will, at the request of the Province from time to time, provide the Province with a statement of the then current amount of the Severance Amount including the means of calculating the amounts set out in the statement;

- (2) the Severance Amount referred to in section 52(1)(c) shall be calculated as of the Cessation Date in the following manner:

- (a) the Severance Amount will be limited to the severance payable to:

- (i) the employees of the Contractor that are employed under:

- (a) the collective agreement between the Contractor and the B.C. Government Employees' Union; and

- (b) the collective agreement between the Contractor and the Professional Employees Association,

(together, the "Collective Agreements"); and

- (ii) the excluded employees for the purpose of the Collective

Agreements,

(collectively the "Employees")

- (b) The Severance Amount shall be the aggregate amount of severance benefits as recognized herein owing to Employees as of the Cessation Date. For those Employees subject to the Collective Agreements the severance benefits will be calculated in accordance with the respective Collective Agreements and for those Employees not subject to the Collective Agreements the severance benefits shall be reasonable severance pay, provided always that the Severance Amount will in any event be reduced by the following amounts in the following circumstances:
- (i) if following the Cessation Date the Services or any part of the Services are continued and one or more employees is offered comparable employment with an entity which is providing any part of the Services, then the amount calculated pursuant to subsection (b) herein will be reduced by an amount equal to the severance pay the employee or employees would have been paid;
  - (ii) if the provisions of sections 13.2 and 13.10 of Article 13 of the B.C. Government Employees' Union collective agreement are deleted or amended or the provisions of Article 14 of that collective agreement are amended, the net effect of which increases the severance payable under that collective agreement, then the amount calculated pursuant to subsection (b) herein will be reduced by an amount equal to the difference between the severance payable under the collective agreement then in effect and the severance payable under the collective agreement in effect as of the effective date of this Agreement, unless the said deletion or amendment is a consequence of a mandatory legislative or regulatory provision;
  - (iii) if section 15.8 of Article 15 of the Professional Employees' Association collective agreement is deleted or amended, the net effect of which increases the severance payable under that collective agreement, then the amount calculated pursuant to subsection (b) herein will be reduced by an amount equal to the difference between the severance payable under the collective agreement then in effect and the severance payable under the collective agreement in effect as of the effective date of this Agreement, unless the said deletion or amendment is a consequence of a mandatory legislative or regulatory provision; and



- (iv) if, notice of termination is given under this section, and the Contractor fails to give any notice required by law or otherwise with respect to the termination of any employee such that the employee is, or becomes entitled to more severance pay on or after the Cessation Date than the employee would otherwise be entitled to, the amount calculated pursuant to subsection (b) herein shall be reduced by an amount equal to the additional severance pay owed to the employee or employees due to the failure by the Contractor to give the required notice or notices with respect to such employee or employees.
- (c) the parties agree that:
  - (i) the Severance Cap referred to in section 52(1)(c), and the method used to calculate the Severance Cap under that subsection, is not relevant to the determination of what is reasonable severance pay under section 52(2)(b);
  - (ii) the report referred to in subsection 52(1.1)(c) is for reporting purposes only and the Province's acceptance, express or implied, of any report provided under that subsection or any information contained in a report is not relevant to the determination of what severance pay under section 52(2)(b);
  - (iii) for greater certainty, reasonable severance pay as contemplated by section 52(2)(b) may include termination benefits predetermined by agreement between the Contractor and its Employee or Employees.
- (3) If the parties do not agree upon the amounts specified in subsections (1)(a)(b), or (c) hereof within 30 business days of expiration of the subject notice the matter will be referred to binding arbitration under Section 55.
- (4) Forthwith upon the Contractor receiving a notice of termination under section 52(1) or 53(4) the Contractor shall give notice to all of its employees of the date on which this Agreement will terminate and thereafter give all relevant employees all termination notices as may be required by law or otherwise, and provide all others entitled, including without limitation all Ministers of the Crown, government officials and offices, and trade unions, notice of all such termination.
- (5) In the event the Province gives a written notice to terminate the Agreement under Section 52(1) the Contractor shall use its best efforts to have any obligations referred to in Section 52(1)(b) terminate on the same date this Agreement terminates and the Contractor shall use its best efforts

to reduce and otherwise mitigate the amounts that would be paid under Section 52(l)(b).

#### EXPIRATION AND RENEWAL

53. (1) The Province agrees to notify the Contractor on or before March 31, 2001, whether or not this Agreement is to be renewed.
- (2) If, pursuant to section 53(l), the Province gives the Contractor notice that this Agreement will not be renewed, this Agreement will expire on the last day of the Term and the Province will upon and after the expiration of this Agreement be under no further obligation to the Contractor except to pay the Contractor those amounts provided for under subsections 52(l)(a), (b), (c) and (d).
- (3) In the event that the Province does not provide the notice required in subsection 53(l), the Terms of this Agreement will be automatically extended and will continue until ended under subsection (4).
- (4) If the Term is extended under subsection (3), the Province may, at its option, terminate this Agreement, without any failure on the Contractor's part to comply with any provision of this Agreement, by giving not less than one (1) year written notice of termination to the Contractor and upon and after such termination the Province will be under no further obligation to the Contractor except to pay the Contractor those amounts provided for under subsections 52(l)(a), (b), (c) and (d).
- (5) If the Term is extended under subsection (3), the amount payable for the provision of the Services shall be the rate payable during the third Program Year as provided in Schedule "B" and "C", as may be amended from time to time; if this amount is not sufficient to maintain the Services at the same level as the third Program Year, then the Contractor shall be allowed to decrease the Services correspondingly.
54. Notwithstanding any other provision of this Agreement, the Contractor may, at its option, terminate this Agreement effective on or after March 31, 2002, without any failure on the Province's part to comply with any provision of this Agreement, by giving not less than one (1) year written notice of termination to the Province and upon and after such termination the Contractor, is under no further obligation to the Province and the Province is under no further obligation to the Contractor except to pay the Contractor that amount provided for under subsection 52(l)(a).



### ARBITRATION

55. All disputes arising out of or in connection with Sections 2, 3, 20, 23, 38, 52, 73 and 81 will be referred to and finally resolved by binding arbitration under the rules of the British Columbia International Commercial Arbitration Centre provided, however, that no decision of an arbitrator will in any manner be inconsistent with the provisions of the *Family Maintenance Enforcement Act*.
56. The place of arbitration will be Vancouver, British Columbia and the appointing authority will be the British Columbia International Commercial Arbitration Centre (the "Centre") unless:
  - (a) the parties agree to another location; or
  - (b) the Centre is not available in which case the parties will agree to an alternate appointing authority and in the event that the parties cannot agree the *Commercial Arbitration Act* shall apply with respect to the appointment.
57. Without limiting section 99 herein, and unless the parties otherwise agree, when a matter is to be arbitrated the parties shall participate in the arbitration process in a manner that facilitates a timely resolution to the dispute.
58. Except for legal costs and disbursements incurred by each party, the costs of arbitration shall be shared equally by the parties.

### ASSIGNMENT OF EQUIPMENT AND OFFICE SPACE

59. Upon the expiration or termination of this Agreement, the Contractor will, at no cost to the Province, assign and transfer to the Province, any right, title or interest of the Contractor in and to any:
  - (a) office space, office equipment, computer and telecommunication equipment, and any other assets purchased with operational funds under the Previous Contract or Operational Expenses under this Agreement, including assets purchased after the effective date of this Agreement; and
  - (b) data service agreements acquired by the Contractor with operational funds under the Previous Contract or Operational Expenses under this Agreement including such rights or interests acquired after the effective date of this Agreement,

(collectively the "Assets").



60. The Contractor hereby acknowledges the Province's purchase money security interests, other security interests, and floating charges, as the case may be, in the Assets and, for the purposes of allowing the Province to secure those interests, agrees to enter into a security agreement substantially in the form attached hereto as Schedule "I".

### **TRANSFER OF PROGRAM**

61. On the expiration or termination of this Agreement the Province may in addition to all the rights under this Agreement give notice to the Contractor that the Province will require the whole of the business, including all material contracts, including but not limited to, contracts with GAEA Management and Consulting Ltd. and Mike Talbot Consulting Inc., necessary to continue the uninterrupted provision of the Services and Assets of the Contractor related to the provision of the Services, except those assets not purchased with operational funds, to be transferred as a going concern to the Province, or its nominee or nominees.
62. The notice contemplated under section 61 will be deemed to have been given and delivered at the same time as a notice of termination given under section 51.
63. In the event that a notice of termination has been given under section 52 or 54, the notice contemplated under section 61 may be given at the same time as the notice of termination and in any event the notice under section 61 shall be given not less than:
- (a) 12 months prior to the Cessation Date if this Agreement is terminated pursuant to section 52 or expires; or
  - (b) 6 months prior to the Cessation Date if this Agreement is terminated pursuant to section 54.
64. If a notice is given, or deemed to have been given, to the Contractor under section 61 the Province may at any time prior to the expiration or termination of this Agreement nominate one or more transferee so that different parts of the business and the related assets may be transferred and assigned to one or more nominees and the various assets of the Contractor will be transferred to the nominees indicated in the nominations and in accordance with this Agreement.
65. The Province may direct the Contractor to assign and transfer any of the Assets to one or more transferee that it may nominate, and such transferee may be nominated at any time prior to the expiration or termination of this Agreement and such transfers shall be effective as at the dates set out in the nomination of the transferee.



66. The Contractor shall at the request of the Minister from time to time deliver to the Province an inventory of the Assets, and the material contracts contemplated by section 61.
67. If a notice has been given or deemed to have been given to the Contractor under section 61 then on the Cessation Date the Contractor shall deliver to the Province or the relevant nominees, as the case may be:
- (a) all deeds of conveyance, bills of sale, transfers and assignments, duly executed, in form and content satisfactory to the Province or the nominee or nominees, as the case may be, appropriate to effectively vest good and marketable title to the relevant assets in, and assign all contracts to, the Province, the nominee or the nominees as the case may be to the extent contemplated by this Agreement and immediately registerable in all places where registration of such instruments is necessary or desirable;
  - (b) give the Province, or nominee, or nominees, as the case may be, possession of the Assets;
  - (c) provide a certified copy of a resolution of the directors of the Contractor duly passed, with a certification that it has not been rescinded and continues to be in effect, authorizing the execution, delivery and implementation of the transfer of all the business, assets and material contracts and all other transactions contemplated with respect to the transfer and assignment of the business of the Contractor with respect to the provision of the Services to the Province, the nominee or the nominees as the case may be;
  - (d) provide a certified copy of a special resolution of the Contractor duly passed, with a certification that it has not been rescinded and continues to be in effect, approving the transfer, as contemplated herein, of the business, assets and material contracts by the Contractor in accordance with section 126(l) of the *Company Act* of British Columbia;
  - (e) provide a duly executed prescribed form pursuant to which an election is made to have section 167 of the *Excise Tax Act* of Canada apply to the transfer of the Assets, where any nominee so requires and also provides a duly executed prescribed form pursuant to section 167 of the *Excise Tax Act* of Canada to apply to the transferred Assets; and the Province, the nominee or the nominees as the case may be, shall with respect to those business, Assets and material contracts acquired; and

- (f) provide a duly executed covenant to assume the material contracts and release the Contractor from its obligations under the material contracts that arise after the date they are assigned.
68. On the expiration or termination of this Agreement following the delivery or deemed delivery of a notice contemplated by section 61, this Agreement shall without further act or formality, operate as a transfer to the Province, or nominee or nominees as the case may be, of all of the Assets hereunder as the same shall be at the close of business on the Cessation Date and this Agreement shall operate as an assignment of all relevant material contracts as of the Cessation Date. The Contractor shall nevertheless, on the Cessation Date and from time to time after the Cessation Date execute and deliver to the Province, or such nominees as may be relevant, all such conveyances, transfers and assignments and other instruments in writing and further assurances as the Province, or any such nominee, shall reasonably require from the Contractor, and the Province and all nominees shall execute and deliver to the Contractor all such agreements of assumption and other instruments in writing and further assurances as the Contractor shall reasonably require in order to give effect to the provisions of this Agreement.
69. Should any of the Assets or material contracts intended to be transferred and assigned hereunder not be transferred to, the Province, or any nominee, as contemplated by section 67 then the Contractor shall hold as bear trustee in trust for and at the sole cost of the Province, or relevant nominee, all such Assets and material contracts from the commencement of business on the Cessation Date or, if this Agreement is not terminated, the date on which this Agreement expires, until all such Assets and material contracts are effectively transferred and assigned.
70. The Province, nominee or nominees as may be applicable, will be liable for and pay all social service tax, sales tax, goods and services tax, registration charges and transfer fees properly payable upon and in connection with the sale and transfer of the Assets and the assignment of the material contracts by the Contractor as contemplated hereby, provided that in no event shall the Province or any nominee be liable for or pay but instead the Contractor shall be liable for and pay any social service tax, sales tax, goods and services tax, registration charges and transfer fees which the Contractor failed to pay or was exempted from paying prior to and including the Cessation Date.

### TRANSITION

71. (1) Within 60 days of a notice being provided pursuant to section 52 or 53(4) the Province may give notice to the Contractor to assist with the development of a transition plan to ensure that the Services are continued in an uninterrupted manner at the termination of this Agreement and



without limitation the Contractor will assist the Province in developing a plan to satisfactorily deal with the following:

- (a) the provision of Services on an uninterrupted basis to the clients when the operations of the Contractor are transferred to the Province or to such transferee as may be nominated;
  - (b) the transfer of all files, documents, manuals and records as may be required;
  - (c) the due delivery of all assets owned by the Province and used for the provision of the Services;
  - (d) the assignment of all leases and service agreements and other assets as contemplated this Agreement for the provision of the Services including all facilities, computers and office equipment being acquired by the Province or nominated transferee; and
  - (e) a staffing plan to ensure that all notices required to be given under this Agreement can be done so in a timely fashion.
- (2) Once the Province has finalized the transition plan contemplated by section 71(1) the Contractor covenants to cooperate fully with the Province and to make its best efforts to ensure that the transition plan is implemented in a manner to ensure that the clients to whom the Services are provided are not affected or inconvenienced by the transition from the Services being provided under this Agreement to the new provision of the Services.

### CONSULTING SERVICES

72. (1) If, following the expiration or termination of this Agreement, the Province or its appointed designate provides all or any part of the Services, at the Province's option the Contractor shall, for a six (6) month period commencing on the day after the Cessation Date (the "Consulting Period"), provide consulting services to the Province or its appointed designate with respect to the provision of the Services by the Province or its appointed designate. Consulting services will be provided by Brian Pollick and senior legal counsel at a cost to the Province of \$70.78 per hour per person to a maximum of \$138,000.
- (2) In addition to any other consultation concerning the Services that the Province may request, the consulting services shall include the provision of advice and services concerning:



- (a) the design and implementation of the Family Maintenance Enforcement Program or specific aspects thereof,
  - (b) human resources and management issues, including active participation in management;
  - (c) the operation of Services related software and computer systems; and
  - (d) practical aspects of maintenance enforcement.
- (3) If the Province exercises the option contained in subparagraph (1):
- (a) the Contractor will cause Brian Pollick, and senior legal counsel to direct, administer and provide the consulting services and will not cause or permit anyone other than the named parties to provide the consulting services on its behalf without the prior written consent of the Province which consent will not be unreasonably withheld;
  - (b) the Contractor will cause Brian Pollick and senior legal counsel to be available for the provision of the consulting services during regular business hours at the Province's request for a maximum of 37.5 hours per week per person;
  - (c) sections 7, 8, 10, 11, 16, 17, 18, 19, 34, 38, 42 and 99 shall apply to all matters arising or occurring within the Consulting Period and shall survive the expiration of that period.
- (4) For greater certainty, the parties agree that, should the option contained in this Section be exercised, all references in this Agreement to the termination or expiration of this Agreement shall be interpreted to exclude this Section from such termination or expiration so that all obligations created under this Section remain in full force and effect during the term of the Consulting Period.
- (5) To exercise the option contained in this Section the Province must notify the Contractor in writing:
- (a) at the time notice of termination is given if this Agreement is being terminated pursuant to Section 51; or
  - (b) nine (9) months prior to the Cessation Date in all other circumstances.

### SUCCESSION PLAN

73. (1) The plan attached hereto as Schedule "J" (the "Succession Plan") shall be the succession plan.
- (2) With the written agreement of the Province, which agreement is not to be unreasonably withheld, the Succession Plan may be amended from time to time by the Contractor.
- (3) In the event that the parties cannot agree to an amendment of the Succession Plan under subsection (2) herein, the matter will be referred to binding arbitration under section 55.

### RECEIVER

74. (1) The Province may, without limiting any other rights it may have at law or under this Agreement or any other agreement relating or incidental to this Agreement, appoint (under this instrument) a receiver, a receiver manager or receiver-manager (the person so appointed being hereinafter referred to as "the Receiver") if the Contractor commits an act of default contemplated by subsection 51(b) or (c) herein. In the event of such appointment, the following provisions shall apply:
- (a) The Receiver shall be the receiver, receiver manager, or receiver-manager, as the case may be, of the Service Assets (as hereinafter defined) and for the provision of the Services and the performance of any other obligation under this Agreement or any other agreement relating or incidental to this Agreement, with or without bond as the Province may determine;
- (b) In addition to any other power the Receiver may have, the Receiver may:
- (i) enter upon any premises of the Contractor and take possession of the Assets and any other assets necessary to provide the Services (collectively the "Service Assets") with power to exclude the Contractor, its agents and its servants therefrom, without being liable as a mortgagee in possession;
- (ii) preserve, protect and maintain the Service Assets and make such replacements thereof and repairs and additions thereto as the Province may deem advisable.
- (c) The Receiver shall be the agent of the Contractor and not of the Province and, to the extent permitted by law or to such lesser



extent permitted by its appointment, shall have all the powers of the Province hereunder and under any other agreement relating or incidental to this Agreement, and in addition shall have power to carry on the business of the Contractor with respect to the provision of the Services.

- (d) The Receiver shall not be responsible for liable for any debts contracted by it for damages to persons or property or for salaries, or non-fulfillment of contracts during any period when the Province shall manage the Service Assets upon entry, as herein provided, nor shall the Province be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable. The Province shall not be bound to do, observe or perform or to see to the observance or performance by the Contractor of any obligations or covenants imposed upon the Contractor nor shall the Province, in the case of securities, instruments or chattel paper, be obliged to preserve rights against other persons, nor shall the Province be obliged to keep any of the Service Assets identifiable.
  - (e) The Province shall have all the rights, remedies and protections of a Receiver.
  - (f) The Province may, in its absolute discretion, remove a Receiver and appoint another.
- (2) The Province may, without limiting any other rights it may have at law or under this Agreement or any other agreement relating or incidental to this Agreement, appoint (by instrument) a Receiver if circumstances require that the Succession Plan be implemented and if it is the reasonable belief of the Director that:
- (a) the Succession Plan cannot be implemented in such a fashion so as to ensure the continued provision of the Services in an efficient manner; or
  - (b) the Succession Plan is inadequate for the purposes of ensuring the continued provision of the Services in an efficient manner;
- (either or both of which are hereinafter referred to as "the Succession Problem")

and an appointment of a Receiver under this subsection (2) is hereinafter called a "Succession Receiver Appointment".

- (3) In the event of a Succession Receiver Appointment, the provisions of subsections 74(1)(a), (b), (c), (d), (e) and (f) shall apply with the following qualifications:

(a) For a period of one year following the date of Succession Receiver Appointment ("the Succession Resolution Period") the Receiver shall be limited in the exercise of its powers to those actions which it believes are necessary, incidental or prudent to continuing the operations of the Contractor for the purposes of carrying on with the provision of the Services during the Succession Resolution Period; and the Receiver shall not act in any manner that is knowingly contrary to the aforementioned purposes. Without limiting the generality of the foregoing the Receiver shall not knowingly at any time during the Succession Resolution Period:

- (i) manage the operations of the Contractor outside of the ordinary course of providing the Services;
- (ii) dispose of or otherwise deal with the Service Assets outside of the ordinary course providing the Services.

(b) During the Succession Resolution Period the Province shall instruct the Receiver and apply its best efforts to cause the Receiver to cooperate in all reasonable respects with the Contractor in order to enable the Contractor to remedy the Succession Problem as contemplated in Subsection 74(4) hereof including (without limitation):

- (i) providing reasonable access to the Contractor;
- (ii) providing the Contractor with relevant information in a timely fashion;

and the Contractor shall indemnify the Province with respect to any costs incurred by the Province as a result of the Receiver performing such activities.

- (4) If the Contractor resolves the Succession Problem during the Succession Resolution Period the Province shall remove the Receiver as soon as practicable.

75. Upon the first to occur of:

- (1) the expiration of the Succession Resolution Period; and
- (2) the receipt or deemed receipt of a notice of termination under Section 51 hereof,

the qualifications referred to in Subsections 74(3)(a) and (b) shall be extinguished to the effect that such qualifications shall have no further force or effect.

76. No provision contained in Section 74 or 75 shall be construed so as to vitiate or otherwise impair or affect the Province's right to terminate this Agreement:

- (1) pursuant to Section 51 with respect to a notice of termination given:
  - (a) prior to the appointment of a Receiver;
  - (b) at any time where that notice of termination relates to a default under subsection 51 (a), provided the Contractor failed to remedy the default after being duly notified pursuant to that subsection and further provided the Receiver or the appointment of the Receiver are not the cause of the default and did not interfere with the Contractor with respect to its efforts to remedy the default;
  - (c) at any time where that notice of termination relates to a default under subsections 51 (b), (c) and (e), provided the Receiver is not the cause of the default; or
  - (d) at any time where that notice of termination relates to a default under subsection 51 (d), provided the Receiver is not the cause of the default and further provided the Contractor, upon being notified, elects not to defend the process referred to in subsection 51 (d), or having elected, fails to defend such process in good faith; or
- (2) pursuant to Section 52(l),

and, without limiting the generality of the foregoing, it is acknowledged and agreed by the Contractor that the Province shall be entitled to exercise such termination right at any time during the Succession Resolution Period.

77. In the event that the Province seeks a Court appointed receiver rather than a Receiver appointed pursuant to a Succession Receiver Appointment, then the Province covenants that any such application for a Court Order shall contain the same constraints upon the receiver during the Succession Resolution Period as are hereinbefore set forth and, in the event that the Province fails to comply with this provision with respect to its application, upon being requested to do so by the Contractor, the Province shall apply to Court to have the Court Order varied or amended to reflect the requirement contemplated herein.



### PROVNET

78. The Province will provide the Contractor with access to the PROVNET system while this Agreement is in effect on the terms set out in Schedule "K" .
79. (1) The Contractor shall reimburse the Province for all Extraordinary Telecommunication Expenses and the Contractor agrees that any amount due to the Province for any outstanding Extraordinary Telecommunication Expenses may be set off against any operational expenses payable to the Contractor under this Agreement.
- (2) "Extraordinary Telecommunication Expenses" means the actual costs incurred by the Province with respect to installation and service charges, other than operational charges, for telecommunication equipment used by the Contractor as part of the PROVNET system as contemplated by section 78 of this Agreement.

### DELEGATION

80. The obligations of the Contractor to provide those components of the Services set forth in the *Family Maintenance Enforcement Act* are subject to the Contractor being delegated the requisite powers, duties, and functions by the Director pursuant to subsection 2(2) of that Act and the Director hereby delegates to the Contractor the powers, duties, and functions as set out in Schedule "L", which Schedule may be amended from time to time by the Director.

### MISCELLANEOUS

81. (1) If an act of God or any other event over which the Contractor has no control, including without limitation, strikes or walkouts whether by the Contractor's employees or otherwise, occurs, which results in a delay, interruption or failure of the Contractor in carrying out its obligations under this Agreement, then, but subject to section 81(2), the Contractor will not be liable for such delay, interruption or failure but will use its best efforts to remove, curtail or contain the cause of the delay, interruption or failure and will resume compliance with its obligations under this Agreement with the least possible delay.
- (2) If the Contractor cannot carry out its obligations under this Agreement as contemplated by section 81(1), then the Contractor shall immediately notify the Province of the obligations that are effected and the reason for the Contractor being unable to carry out the obligations, and for the duration of the period during which the Contractor is unable to carry out any such obligations the Province may reduce any payments due under this Agreement by both:

- (a) the amount equal to the amount of operational expenses that are not expended by the Contractor during the event identified; and
- (b) an amount equal to the pro-rata portion of the management fee less any fixed costs, or actual costs incurred to maintain the Services during such period, of the Contractor which the Contractor can demonstrate are unavoidable,

provided further, that if the Contractor does not agree on an amount of a reduction under section 81(2)(b) the parties agree that the matter will be referred to binding arbitration pursuant to section 55 of this Agreement.

- 82. Any public announcement relating to this Agreement will be arranged by the Province in consultation with the Contractor.
- 83. Any notice, document, statement, report, demand or payment desired or required to be given or made under this Agreement will be in writing and may be given or made by personal delivery to the party to whom it is to be given or made, or by mailing in Canada with postage prepaid addressed, if to the Province and the Minister or either of them:

The Attorney General  
Suite 210, 815 Hornby Street  
Vancouver, B.C., V6Z 2E6  
Attention: Director of Maintenance Enforcement

and if to the Contractor:

Themis Program Management and Consulting Limited

s.15

Attention: Brian Pollick, President

and any such notice, document, statement, report, demand or payment so mailed will be deemed given to and received by the addressee on the third business day after the mailing of the same except in the event of disruption of postal services in Canada in which case any such notice, document, statement, report, demand or payment will be deemed given to and received by the addressee when actually delivered to the particular address set out above.

- 84. Either party may, from time to time, advise the other by notice in writing of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified will, for the purposes of the preceding section, be deemed to be the address of the party giving such notice.



85. Any notice, report, direction, or document transmitted by facsimile transmission from either party or the Minister will be conclusively deemed validly given to and received by the intended recipient when so transmitted.
86. A reference to a statute in this Agreement, whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes every amendment to it, every regulation made under it and any enactment passed in substitution therefore or in replacement thereof.
87. Unless the context otherwise requires, any reference to "this Agreement" means this instrument and all of the Schedules attached to it and any reference to any section or subsection by number is a reference to the appropriate section or subsection in this Agreement.
88. The headings or captions in this Agreement are inserted for convenience only and do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.
89. In this Agreement, "person" includes a corporation, firm, association and any other legal entity and wherever the singular or masculine is used it will be construed as if the plural or the feminine or the neuter, as the case may be, had been used where the context or the parties so require.
90. Each Schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
91. This Agreement constitutes the entire agreement between the parties and no understandings, representations, agreements, oral or otherwise, exist between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement.
92. Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.
93. If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.
94. The provisions of sections 6, 13, 14, 16, 18, 23, 34, 42, 60 through 72 and 79 of this Agreement and all rights and remedies of the parties, either at law or in equity associated therewith, will survive the expiration or termination of this Agreement.



95. This Agreement will enure to the benefit of and be binding upon the Province and its assigns and Contractor and its successors and permitted assigns.
96. All dollar amounts expressed in this Agreement refer to lawful currency of Canada.
97. No waiver by either party of a breach or default by the other party in the observance, performance or compliance of any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default and failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such party of any of its rights against the other party.
98. Defined words in the *Family Maintenance Enforcement Act* will have a corresponding meaning under this Agreement, unless the context otherwise requires.
99. Time will be of the essence of this Agreement.
100. This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.
101. This Agreement may be amended in writing but no such amendment will have any force or effect unless and until it is signed by both parties.

102. Each of the parties covenants with the other that it will act in good faith in respect of all matters arising under this Agreement or any other agreement relating or incidental to this Agreement.

IN WITNESS WHEREOF the Attorney General, on behalf of Her Majesty the Queen in right of the Province of British Columbia, has hereunto set his hand and the common seal of Themis Program Management and Consulting Ltd. has been hereunto affixed in the presence of its duly authorized officer(s) in that behalf on the day first above written.

THE common seal of Themis  
Program Management and  
Consulting Limited was hereunto  
affixed in the presence of:

Brian A. Pollack  
(Witness)

Managing Director  
(Title)

SIGNED on behalf of Her Majesty  
the Queen in right of the Province  
of British Columbia by the  
Attorney General in the presence of:

Cyndi Iname  
(Witness)

8-1001 Douglas, Victoria  
(Address)

[Signature]  
The Attorney General

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## SCHEDULE "A" SERVICES

### General

1. The Contractor will provide all labour, materials and facilities required to provide for all aspects of the Family Maintenance Enforcement Program (hereinafter called the "Program") described below and provided for in the *Family Maintenance Enforcement Act* (F.M.E.A.) and the *B.C. Benefits (Income Assistance) Act*, the *B.C. Benefits (Youth Works) Act* and the *Disability Benefits Program Act*. The Contractor will monitor and enforce Maintenance Orders as defined in the F.M.E.A. on behalf of creditors defined in the legislation. The Contractor will monitor Maintenance Orders filed with the Program where the debtor resides in a reciprocating jurisdiction (such Orders are herein referred to as "REMO").
2. The Contractor will ensure the Program provides the following general services:
  - (a) information and advice to creditors and debtors interested in enrolling,
  - (b) obtaining certified copies of creditors' Orders,
  - (c) enrollment of eligible maintenance orders submitted by the Ministry of Social Development and Economic Security, the court, a creditor, a debtor, or reciprocating jurisdictions,
  - (d) calculating arrears based on recipient's information,
  - (e) preparing REMO document packages according to the requirements of the reciprocating jurisdiction to assist in the enforcement of Orders already registered or to be registered,
  - (f) monitoring the payment of Orders which includes receiving, tracking, recording, and forwarding payments,
  - (g) notification to debtors of non-payment in accordance with the Policy,
  - (h) initiating appropriate administrative and Court related enforcement action,
  - (i) initiating family search requests,
  - (j) reviewing and withdrawing Orders according to established criteria,



- (k) communications with creditors, debtors, Ministry of Social Development and Economic Security, courts, reciprocating jurisdictions, and other interested parties about the status of the Maintenance Order as per the Communications Policy approved by the Director of Maintenance Enforcement (hereinafter called the "Director").
  - (l) providing counsel to represent the interests of creditors at committal hearings, and
  - (m) to review all applications to vary existing Orders served on the Director and to defend those cases which meet the policy criteria approved by the Director.
3. The initial documentation (Orders, list of payments, filing forms) will be completed by the Ministry of Social Development and Economic Security for those creditors whose Orders are being filed by the Ministry of Social Development and Economic Security.
4. The Contractor is responsible for:
- (a) program planning, program delivery, cost estimating, cost reporting and cost control,
  - (b) the development and implementation of policies and procedures to the satisfaction of the Director,
  - (c) recruitment, hiring and supervision of Program staff, related professionals, the contracting of lawyers and contracted services
  - (d) management and administration of staff training, the production of Program printed materials and forms to the satisfaction of the Director,
  - (e) the implementation and management of all Program functions required to enroll, monitor and enforce Maintenance Orders,
  - (f) the implementation and management of the Provincial Government Records Management Classification System for all material related to the operation of the Program, and
  - (g) the establishment and maintenance of an inventory of assets subject to assignment under Section 59 of this Agreement,



- (h) participation with the Director in the development and implementation of communications objectives and activities.

## 5. Program Outputs

The following Program Outputs include essential elements of the Program to be provided by the Contractor:

- (a) The Contractor will accept for enrollment, monitor and enforce on behalf of all creditors as defined in the F.M.E.A., Maintenance Orders as defined in the F.M.E.A.
- (b) The Contractor will accept for enrollment, monitor and liaise with the appropriate reciprocating jurisdiction on behalf of creditors where the debtor resides out of B.C.
- (c) Enforcement remedies to be undertaken include issuing default letters, arranging voluntary repayment of arrears, and those remedies available under the Family Maintenance Enforcement Act, the Family Orders and Agreements Enforcement Assistance Act (Canada) and the Garnishment, Attachment and Pension Diversion Act (Canada)
- (d) The Contractor will cause the Program to be accessible to the public by telephone between 9:00 a.m. - 4:30 p.m. Monday through Friday excluding statutory holidays (hereinafter called "Days of Business").
- (e) The Contractor will ensure Program Offices are in operation Monday through Friday excluding statutory holidays between 8:00 a.m. - 4:30 p.m. or 8:30 a.m. - 5:00 p.m.
- (f) The Contractor will operate out of four client offices: one each being in Burnaby, Surrey, Victoria and Kamloops. In addition, four centralized services will be provided: Province-wide coordination and planning, enrollment, payment processing, and the management of cases where the debtor is out-of-Province.
- (g) Barristers and solicitors who are members in good standing with the Law Society of British Columbia will be available to provide legal opinions concerning enforcement actions, to attend Court on disputed enforcement actions, default hearings, applications to vary which the Director or lawful designate has undertaken to defend, committal hearings and other types of Court hearings deemed necessary to enforce the Order.





- (h) Payments received will be payable to a party authorized under the Act, recorded and forwarded to the party entitled to receive them.
- (i) The Contractor will endeavour to obtain payment by post-dated cheques or by electronic transfer of funds directly to the creditor's bank account whenever possible.
- (j) Court hearings will normally be held in the Provincial Court where the order is currently filed except where circumstances require or the Contractor considers it desirable to proceed in the Supreme Court.
- (k) The Contractor will be responsible for the production and distribution of brochures about the Program (except the general brochure) to the satisfaction of the Director.
- (l) The Contractor will not engage in publicity, press interviews or television shows related to the Program without the knowledge and consent of the Director, except as may be delegated by written agreement or the Communications Policy approved by the Director.
- (m) Liaison with the Ministries of Attorney General, Human Resources and Federal and Provincial Governments is the primary responsibility of the Director but the Contractor can deal directly with these agencies without providing notice to the Director on case related and local field matters. Unusual cases or policy or procedural matters will be brought to the attention of the Director.
- (n) The Contractor will prepare all Court applications and process.
- (o) A toll-free line for creditor and debtor inquiries and attachees will be available.
- (p) The Contractor will ensure that the Interactive Voice Response (IVR) Unit is except for clients who access the IVR using the 1-800 service which access is available 7 operational and accessible to the public by telephone 24 hours a day, 7 days a week, days a week from 7:00 am to 9:00 pm.
- (q) The Contractor will maintain security measures to the satisfaction of the Director to ensure that access to the IVR Unit is restricted to parties authorized by the Director. The Contractor will ensure that the parties who are authorized to use InfoLine will only receive information to which they are entitled. The Contractor will ensure the creditors and debtors only have access to information regarding their own file or persons acting on their behalf.



- (r) A complaint and dispute procedure is to be maintained to the satisfaction of the Director.
- (s) Referral mechanisms to the Legal Services Society, Ministry of Social Development and Economic Security, Family Justice Counsellors and other relevant agencies and services must be available.
- (t) The Contractor will ensure all staff and counsel are courteous and helpful and status of their case as per the Communications Policy approved by the Director. The provide both creditors and debtors with timely and useful information and notification of the Contractor will endeavour to maintain good public relations at all times. Work will be performed by competent workers supervised by competent managers. Complaints will be referred to the Contractor for prompt handling as per the Complaints Policy approved by the Director.
- (u) The Contractor will ensure that all its staff are apprised of the confidentiality section of the F.M.E.A. and swear an oath of confidentiality and are apprised of the consequences of breach of this section.
- (v) Cases which result in an appeal by the opposing party must be brought to the Director's attention for a decision on whether the Program should be involved in the appeal. Cases where the Program intends to appeal must be brought to the Director's attention.
- (w) To calculate and enforce payment of interest as required by the F.M.E.A.
- (x) To collect any payments owing to the Director pursuant to the regulations and policy, and deposit them in the Province of B.C. Trust Account, and distribute as directed and to provide a monthly report noting amounts due and paid (see Schedule "D").

#### 6. Default Fee

The Contractor will:

- (a) assess the default fee in accordance with legislation, regulations and policies as approved by the Director
- (b) make adjustments for reasons authorized in legislation, regulations and policies approved by the Director



- (c) collect the default fee in a way that does not interfere with the payment of maintenance to the recipient
- (d) provide a complete record of all financial transactions related to the default fee including but not limited to the following:
  - (i) number of notices of intention
  - (ii) number and \$ value of default fees charged
  - (iii) number and \$ value of adjustments
  - (iv) number and \$ value of fee waiver and the reasons for waiver by category
  - (v) number and \$ value of authorized write offs
  - (vi) number of cases and \$ value of default fees collected
  - (vii) reconciled receivable balance due to Province for all owing but unpaid default fees.

7. Miscellaneous

The Contractor must ensure in cases where the enrolled creditor has withdrawn or deceased that no enforcement action occurs and registration against land is removed where in control of the Contractor.



*[Handwritten signature]*  
18.

## SCHEDULE "B" MANAGEMENT FEE

- 1) Management fees payable to the Contractor for the First Program Year 2000/01 will be \$912,280.00 and for the Second Program Year 2001/02 will be \$930,526.00, as identified in the attached table.
- 2) The following expenses are to be paid out of the Management Fee in addition to any compensation for the Managing Directors and other corporate staff:
  - a) Financial Management
    - preparation of financial information and tax returns
    - financial and tax advice
    - bank service charges on the corporate account
    - cash flow management including interest, lines of credit, contingency reserves etc.
    - GST and corporate taxes.
  - b) Labour Relations
    - settlement of judgments over and above employee salary/benefit costs.
  - c) Employee Benefits/Incentives
    - severance benefits over and above the limits indemnified by the Province
    - profit sharing and incentive bonuses
    - gifts and awards.
  - d) Corporate Legal
    - legal opinions and document preparation/execution for all corporate matters
    - legal representation and advice and payment of any settlements or judgments not related to program files or labour relations as noted above.
  - e) Insurance
    - shareholders' insurance to ensure Themis remains solvent in the event of the death of one or both Managing Directors.



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f) Corporate Furniture and Equipment

-this includes all office furniture, office equipment (e.g. photocopiers, fax machines etc.), computer equipment used for corporate affairs; this equipment is not located in FMEP offices.

g) Corporate Operations

-this includes business licences, corporate stationery and business cards, home office telephone lines and non-FMEP toll charges, and other expenses connected solely with maintaining the corporate infrastructure.

-management fee to GAFA to cover its administrative overhead costs related to the Information Services and Financial Services staff (e.g. severance).

h) Corporate Travel

-any travel which is incurred primarily for non-FMEP operations (e.g. Managing Directors' business meetings or contract negotiations).

- 3) In the event the Management Fee for any Program Year is not authorized by March 15 of the preceding Program Year, then the monthly payments to the Contractor shall continue at the then current amount until such time as the Management Fee for the relevant Program Year has been authorized. Once authorized the monthly payments commencing in the next month of the Program Year will be the amount determined in accordance with this Agreement for the balance of the Program Year.



**THEMIS PROGRAM MANAGEMENT AND CONSULTING LIMITED  
SERVICES AGREEMENT**

	<b>First Program Year Fiscal Year 2000/01</b>	<b>Second Program Year Fiscal Year 2001/02</b>
<b>Management Fee</b>	<b>\$ 912,280</b>	<b>\$ 930,526</b>





## SCHEDULE "C" OPERATIONAL EXPENSES

1. The Operational Expenses payable to the Contractor for each Program Year will be the operational expenses determined in accordance with section 3(4) and 3(5) of this Agreement.
2. The Operational Expenses payable to the Contractor for the First Program Year will reflect the estimated budget for operational expenses determined during the last Program Year of the previous agreement.
3. The funds to administer the default fee services as noted in Schedule "A" will be identified as a discrete item in the budget up to a maximum of \$330,000.00.
4. The Province may direct surplus operational funds provided under paragraph 1 of the Schedule to be used to offset the costs of administering the default fee services and monies identified in paragraph 2 will be reduced accordingly.
5. Subject to section 8 of this Schedule, commencing on April 1, 2000, the Operational Expenses payable pursuant to paragraph 1 and paragraph 2, will be paid in twelve (12) monthly payments on the first day of each succeeding month of each Program Year.
6. The Contractor shall submit to the Province, 30 days after the end of each month in the First Program Year and 30 days after each month in any Program Year thereafter, a written statement of account listing in reasonable detail all expenses processed, accrued and forecast for the previous month.
7. The Contractor will, within 30 days of being provided with the authorized Operational Expenses in each Program Year, submit to the Province a detailed budget showing the allocation of Operational Expenses for approval by the Province. In a year when the Collective Agreements are being negotiated, the Contractor will, within 15 days of ratification, submit an amended budget, if necessary, to the Province.
8. In addition to all other monies paid to the Contractor, the Province shall reimburse the Contractor for Provincial Sales Tax on legal billings from the Family Maintenance Enforcement Program legal counsel upon receiving invoices while the Agreement is in effect, the first invoice being due on June 30, 2000 and thereafter, every three months within ten days of the end of the three month period to which the invoice relates.
9. In the event the Operational Expenses for any Program Year are not authorized by March 15 of the preceding Program Year, then the monthly payments to the Contractor shall continue at one-twelfth of the current annual amount until such time as the Operational Expenses for the relevant Program Year have been authorized.



10. Subject to the authorization of the Director, monthly payments may be increased to meet demonstrated operational needs. Once authorized, the monthly payments commencing in the next month of the Program Year will be the amount determined in accordance with this Agreement for the balance of the Program Year.
11. Notwithstanding anything else to the contrary, in no event will the Operational Expenses payable to the Contractor under this Agreement exceed in the aggregate \$35,000,000.00.



## **SCHEDULE "D"**

### **MONTHLY KEY INDICATORS**

#### Information Requirements

Whether system generated or manual, the Contractor will provide the following minimum information by month, year, regional office, and type of client (e.g., REMO Debtor In, REMO Debtor Out, and assigned case status) as scheduled or upon request of the Director:

#### Demand Indicators

- cases enrolled (showing bench orders as a separate category)
- cases pending enrollment (showing bench orders as a separate category)
- cases withdrawn
- cases closed
- cases inactive
- 1-800 inquiries
- incoming payments handled
- notice of applications to vary
- IVR calls
- cases enrolled by debtors
- cases enrolled by creditors
- extra provincial garnishment orders

#### Workload Indicators

- caseload per enforcement team
- number of case files worked on

#### Cost Indicators

- total average costs per case (operating costs only) as may be defined by the Director where the database permits the calculation

#### Enforcement Indicators

- default letters issued
- voluntary payment arrangements
- notices of attachment (separating out federal interceptions of funds and pensions)





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- garnishment Orders
- default hearings initiated
- reporting Orders
- Orders to pay with/without default provision with/without payment schedule
- warrants of execution
- appointments of receiver
- committal hearings
- disputes - garnishment/notices of attachment
- applications to vary defended
- applications to vary not defended
- Court appearances
- appeals defended
- appeals launched
- third party financial information applications
- attachment orders
- registrations against land
- Notice of Attachment from outside B.C.
- licence withholding
- Credit Bureau reporting
- payment conferences
- Personal Property registrations
- attachments/Court order for corporate liability

Performance Payment Indicators (Since Enrollment)

- total payments due (# and \$)
- total payments made (# and \$)
- total arrears (# and \$)
- payment index on dollars due
- number (%) of Maintenance Orders paid in full
- number (%) of Orders partially paid
- number (%) of Orders never paid
- average amount received per active Order
- number of active defaulted Orders with no enforcement action over 60 days, over 90 days
- total \$ value of interest accumulated by month and Y.T.D.
- total \$ value of interest collected (if possible to determine)
- total \$ value of costs and fees due to Crown by month and Y.T.D.
- total \$ value of costs and fees collected by month and Y.T.D.



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Miscellaneous

The Contractor must ensure the size of award is recorded and the expiration date of the Order is monitored to ensure no enforcement action occurs on expired Orders.

The Contractor will provide monthly statistics on the number of complaints each office responds to as well as any public relations/media contacts.

The Contractor is required to submit the above data as requested in monthly reports in a format to be agreed upon by the Province and the Contractor within 30 days after the end of the prior month, except for the performance indicators due 60 days after the end of the prior month.

**Schedule "E"**  
**Assumptions and Absorption Rates**

**A. Assumptions**

The following are the estimated volume levels of cases requiring enrollment and service for fiscal year 2000/2001. This does not include any changes in demand for service due to new legislation. It also assumes that the number of new assigned cases received from MSDES will remain constant (450 per month).

Category	Payor in BC			Payor Outside BC			Total		
	Actual 97/98	Actual 98/99	Proj. 99/00	Proj. 00/01	Actual 97/98	Actual 98/99	Actual 97/98	Actual 98/99	Proj. 00/01
1. New Applications	6,622	7,010	6,546	6,000	1,019	1,293	7,641	8,303	7,818
2. Re-enrollments	1,079	1,763	2,032	2,500	260	216	1,339	1,979	2,252
3. Cases pending at March 31	954	1,229	1,200	1,200	272	337	1,226	1,566	1,600
4. Enrolled caseload at March 31	32,170	35,497	39,000	42,700	3,673	4,409	35,843	39,906	44,104
5. Cases enrolled during FY	34,619	38,514	41,520	46,200	3,984	4,836	38,603	43,350	46,996
									52,638

**B. Absorption Capacity**

The following is the estimate of the number of increased requests for enrollment and overall caseload which the FMEP can absorb and maintain time standards and service levels with no increase in resources over the FY 99/00 budget base (i.e., before the \$250,000. reduction). The large absorption is only possible because the closing of the Fraser Valley Client Office will enable a reallocation of those resources to deal with cost and staff increases. Unless there are additional resources in FY01/02, the absorption rate will be dramatically reduced.

Category	Absorption Capacity FY00/01		
	Payor in BC	Payor out BC	Total
1. New applications	6,500	1,600	8,100
2. Re-enrollments	2,500	225	2,725
3. Enrolled caseload at March 31	43,000	6,000	49,000
4. Cases enrolled during FY	46,500	6,500	53,000





## **SCHEDULE "F"**

### **GOALS AND PERFORMANCE STANDARDS**

The following shall be the target outcomes for the Contractor until the new management information system and associated performance measures and standards have been identified and programmed.

#### **1. Direct Goals**

- (a) To increase the rate of compliance (i.e., payments when due) with Maintenance Orders registered with the Program.
- (b) To provide timely notification to debtors of default.
- (c) To increase the number of Orders paid in full.
- (d) To maximize administrative enforcement remedies and minimize the use of Court hearings.
- (e) To maximize the amount of money collected for assigned cases.

#### **2. Indirect Goals**

- (a) To reduce demands on public funds for full or partial income assistance.
- (b) To assess, comment on and bring forward recommendations on the effectiveness of the enforcement legislation and procedures.
- (c) To increase awareness within the legal profession of the availability of the Program.
- (d) To increase awareness within the population of currently enrolled debtors and creditors as to their rights and responsibilities.

#### **3. Process Standards**

- (a) To enroll eligible cases where documentation is available:
  - (i) cases where both payor and recipient are in B.C.: 8 weeks;

- (ii) cases where the payor is outside of B.C.: 12 weeks;
  - (iii) cases where the recipient is outside of B.C. but the payor is in B.C.: 9 weeks.
  - (iv) cases received from Ministry of Human Resources recipient in B.C.: 2 weeks.
- (b) Issue default notifications as per policy.
  - (c) To take other forms of enforcement action on a timely basis as per the standards negotiated with the Director.
  - (d) To record and re-mail all cheques payable to creditors within 1 business day from the time of receipt, where the creditor is identifiable and authorized for release under policy.
  - (e) To record and disburse trust fund cheques to the appropriate parties for monies received, where such funds can be released under policy, within 3 working days.
  - (f) To bring forward and review for possible action, all inactive files (criteria for defining as inactive and the review cycle are to be approved by the Director) every 4 to 6 months.
  - (g) To attempt to respond to creditor or debtor inquiries within 2 business days of receipt of query as per Communications Policy approved by the Director.

#### 4. Interim Outcome Standards

The Contractor will use reasonable efforts to achieve the following outcome standards for all cases where the debtor is in British Columbia:

- (a) To achieve an annual average payment rate of 70 cents on each dollar due on regular and enforcement Orders using the ratio of all monies scheduled as due and all monies received in a given month.
  - (b) To achieve an aggregate number of 33% (active cases only) of Orders paid in full (or overpaid) since enrollment.
5. The Contractor shall provide an explanation for any change to the above standards in the quarterly key indicator reports.



## **SCHEDULE "G"**

### **BRITISH COLUMBIA CERTIFICATE OF INSURANCE**

See attached.





**BRITISH  
COLUMBIA**

**CERTIFICATE  
OF INSURANCE**

**Freedom of Information and Protection of Privacy Act**

The personal information requested on this form is collected under the authority of and used for the purpose of administering the *Financial Administration Act*. Questions about the collection and use of this information can be directed to the Manager, Insurance Operations, at (250) 387-0519, PO Box 9405 Stn Prov Govt, Victoria BC V8W 9V1.

**To be completed by Agent or Broker**

THIS CERTIFICATE IS ISSUED TO

CONTRACTOR NAME	CONTRACT/PERMIT/LICENCE/ IDENTIFICATION NO.
CONTRACTOR ADDRESS	POSTAL CODE

*And certifies that policies of insurance as herein described have been issued to the insured(s) named below and are in full force and effect as of the effective date of the agreement.*

INSURED	NAME		
	ADDRESS		POSTAL CODE
OPERATIONS INSURED	PROVIDE DETAILS		
TYPE OF INSURANCE	COMPANY NAME AND POLICY NO.	EXPIRY DATE YYYY / MM / DD	LIMIT OF LIABILITY/AMOUNT
COMPREHENSIVE/ COMMERCIAL GENERAL LIABILITY			INCLUSIVE LIMITS \$
AUTOMOBILE LIABILITY (OWNED OR LEASED VEHICLES)			PRIMARY \$ EXCESS \$
UMBRELLA LIABILITY			LIMITS \$ EXCESS OF \$
PROFESSIONAL LIABILITY			LIMITS \$
PROPERTY			DETAILS \$ \$
OTHER			DETAILS \$ \$

These policies comply with the insurance requirements of the governing contract, permit or licence with the Province of British Columbia. It is understood and agreed that where required by the governing contract/permit or license, the Province of British Columbia has been added as an additional insured and that thirty (30) days' notice of any material change or cancellation of any of the policies listed herein, either in part or in whole will be given by the insurers to the holder of this certificate.

SIGNED BY THE CONTRACTOR/PERMITTEE/LICENSEE

DATE SIGNED  
YYYY MM DD

SIGNED ON BEHALF OF THE CONTRACTOR'S/PERMITTEE'S/LICENSEE'S INSURERS

DATE SIGNED  
YYYY MM DD



**SCHEDULE "H"**  
**FACILITY LEASES**

**Themis Program Management  
and Consulting Limited  
(Family Maintenance Enforcement Program)**

City	Street Address	Term End Date	Next Early Cancellation Date Under Lease Agreement	Payout Required for Exercising Early Cancellation
Surrey	s.15 360-10362 King George Hwy	March 31, 2009	March 31, 2003	None
		May 31, 2000	N/A	N/A
	s.15	March 31, 2006	March 31, 2003	\$13,750.00
Victoria	2 <sup>nd</sup> , 3 <sup>rd</sup> , 4 <sup>th</sup> floors, 609 Broughton St	May 14, 2003	N/A	N/A

## SCHEDULE "I" GENERAL SECURITY AGREEMENT

THIS SECURITY AGREEMENT is made the 31<sup>st</sup> day of March, 2000.

**FROM:**

**THEMIS PROGRAM MANAGEMENT AND CONSULTING LIMITED** a body corporate incorporated under the laws of the Province of British Columbia, having a registered office at 409, 3960 Quadra Street, Victoria, British Columbia, V8X 4A3

(the "Obligor")

**TO:**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the Ministry of the Attorney General, Parliament Buildings, Victoria, British Columbia, V8V IX4

(the "Secured Party")

- A. **WHEREAS** the parties entered into an agreement dated the 2nd day of June, 1988, and a subsequent agreement dated the 16th day of June, 1994, (which agreements, with amendments, are hereinafter referred to as the "Previous Contracts") whereby the Obligor provided all aspects of the Family Maintenance Enforcement Program on behalf of the Secured Party (the "Services");
- B. **AND WHEREAS** the parties entered into a further agreement titled the Themis Services Agreement dated the 31<sup>st</sup> day of March, 2000, whereby the Obligor is to continue to provide the Services on behalf of the Secured Party (the "Themis Services Agreement");
- C. **AND WHEREAS**, pursuant to the Previous Contracts and the Themis Services Agreement, the Secured Party has made, and will continue to make, payments to the Obligor, which payments have been, and will continue to be, made for, among other things, the acquisition of the Assets and Real Property necessary to provide the Services (the "Operational Funds"),
- D. **AND WHEREAS**, the Assets and Real Property purchased or acquired for the provision of the Services under the Themis Services Agreement and the Previous Contracts are to be transferred to the Secured Party at the expiration or sooner termination of the Themis Services Agreement;





E. **AND WHEREAS**, in view of the Secured Party financing the acquisition of the Assets and Real Property, and the agreement to transfer said Assets and Real Property to the Secured Party upon the expiration or sooner termination of the Themis Services Agreement the Secured Party wishes to secure its interest in the Assets and Real Property;

**1. SECURITY INTEREST**

1.01 For consideration the Obligor, subject to the exceptions set out in paragraph 2, hereby:

(a) grants to the Secured Party a continuing general security interest in, all the Obligor's right, title and interest in and to all presently owned or held and after acquired or held personal property, assets and undertakings of the Obligor (other than real property), of whatever nature or kind and wheresoever situate and all proceeds thereof and therefrom (the "Assets") including, without limiting the generality of the foregoing:

(i) Equipment

all equipment, including without limiting the generality of the foregoing, fixtures, furniture, furnishings, chattels, motor vehicles, vessels and other tangible personal property that is not inventory, and all parts, components, attachment accessories, accessions, replacements, substitutions, additions and improvements to any of the foregoing;

(ii) Intangibles

all contractual rights (including, without limitation, leases), licenses, trade names, copyrights and other intellectual property of the Obligor,

(iii) without limiting the generality of the foregoing, all Assets listed in the Schedule of Assets contemplated by paragraph 1.02 herein (the "Schedule of Assets"); and

(b) mortgages and charges as and by way of a floating charge to and in favour of the Secured Party all of the real property of the Obligor and every interest therein (the "Real Property"), both present and future and wheresoever situate.

1.02 The Obligor shall;



- (a) within 90 days of the execution of this Agreement, provide the Secured Party with a Schedule of Assets listing all significant Assets acquired using Operational Funds from June 2, 1988 to September 30, 1996; and
- (b) within 12 months of providing the Secured Party with a Schedule of Assets hereunder or under subparagraph (a), and at such times that the Secured Party may reasonably request, provide the Secured Party with an updated Schedule of Assets.

## **2. EXCEPTIONS**

- 2.1 The last 10 days of the term created by any lease or agreement therefor are hereby excepted out of any charge, security interest or floating charge created by this Security Agreement but the Obligor shall stand possessed of the reversion thereby remaining upon trust to assign and dispose thereof to any third party as the Secured Party shall direct.
- 2.2 The security interests hereby created exclude interests in any consumer goods of the Obligor.
- 2.3 The security interests hereby created exclude interests of the Obligor in any and all Assets or Real Property where those Assets or Real Property were acquired by the Obligor using funds other than Operational Funds as provided for in the Previous Contracts and the Themis Services Agreement. For greater certainty, where Operational Funds formed or form part of the acquisition cost of an Asset or Real Property, the Obligor's interest in that Asset or Real Property is not excluded from the security interest hereby created.

## **3. OBLIGATIONS SECURED**

This Security Agreement and the security interests hereby created are in addition to and not in substitution for any other security interest now or hereafter held by the Secured Party from the Obligor or from any other person whomsoever and shall be general and continuing security for the performance of all obligations of the Obligor to the Secured Party as contained in this Agreement and as contained in the Themis Services Agreement (the "Obligations").

## **4. PROHIBITIONS**

Without the prior written consent of the Secured Party the Obligor will not create or permit to exist any security interest in, charge, encumbrance or lien over, or claim against any of its property, assets, or undertakings which ranks or could in any event rank in priority to or pari passu with any security interest created by this Security Agreement except:





- a) existing security interests or other encumbrances, as listed in Schedule "A" hereto (the "Permitted Encumbrances"); and
- b) purchase money security interests in Assets hereafter acquired provided the purchase money security interest is perfected and notification thereof is given to the Secured Party pursuant to the Act,

(collectively the "Authorized Encumbrances"),

## **5. ATTACHMENT**

The Obligor acknowledges that the purchase money security interests and other security interests hereby created attach upon the execution of this Security Agreement (or case of any after acquired property, upon the date of acquisition thereof), that value has been given, and that the Obligor has, or in the case of after acquired property will have, rights in the Assets.

## **6. REPRESENTATIONS AND WARRANTIES**

- 6.1 The Obligor represents and warrants that this Security Agreement is granted in accordance with resolutions of the directors (and of the shareholders as applicable) of the Obligor and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this Security Agreement, and the performance of the Obligor's obligations hereunder, legal, valid and binding.
- 6.2 The Obligor represents and warrants that the Obligor lawfully owns and possesses all presently held Assets and has good title thereto, free from all security interests, charges, encumbrances, liens and claims, save only Permitted Encumbrances, and the Obligor has good right and lawful authority to grant a security interest in the Assets as provided by this Security Agreement.

## **7. COVENANTS OF THE OBLIGOR**

- 7.1 The Obligor covenants that at all times while this Security Agreement remains in effect the Obligor will:
  - (a) defend the title to the Assets and Real Property for the benefit of the Secured Party against the claims and demands of all persons;
  - (b) fully and effectually maintain and keep maintained the security interests hereby created valid and effective;





- (c) maintain insurance on the Assets and Real Property with an insurer, of kinds, for amounts and payable to such person or persons, all as the Secured Party may require;
- (d) maintain the Assets and Real Property in good order and repair except, with respect to any Asset, where such maintenance or repair is not reasonable:
  - (i) recognizing the age and expected useful life of the Asset;
  - (ii) as a result of obsolescence, or
  - (iii) due to the extent of damage to the Asset, provided the damaged Asset is replaced by an asset of equal or superior functionality to which the security interest created hereby attaches and further provided the Obligor complies with subparagraph (h) and (i) herein with respect to the damage and the replacement Asset;
- (e) forthwith pay:
  - (i) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Assets and Real Property when due, unless the Obligor shall in good faith contest its obligations so to pay and shall furnish such security as the Secured Party may require, and
  - (ii) all security interests, charges, encumbrances, liens and claims which rank or could in any event rank in priority to any security interest created by this Security Agreement, other than the Authorized Encumbrances,and where such payment is contemplated by the Themis Services Agreement to be paid out of Operational Funds, such payment shall be paid out of Operational Funds;
- (f) forthwith pay all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Secured Party in:
  - (i) taking, recovering and keeping possession of the Assets and Real Property other than a transfer of the Assets and Real Property to the Secured Party where such transfer is a result of
    - (A) the expiration of the Themis Services Agreement, or



- (B) the termination of the Themis Services Agreement pursuant to section 53 of that Agreement.
- (ii) insuring the Assets, which payment shall be made from Operational Funds; and
- (iii) all other actions and proceedings taken in connection with the preservation of the Assets and the enforcement of this Security Agreement and of any other security interest held by the Secured Party as security for the Obligations;
- (g) comply with every term, condition, obligation or covenant contained in any agreement pursuant to which this Security Agreement is made or given;
- (h) at the Secured Parties request at any time and from time to time execute and deliver such further and other documents and instruments and do all acts and things as the Secured Party reasonably requires in order to confirm and perfect, and maintain perfection of the security interests and charges hereby created in favour of the Secured Party upon any of the Assets;
- (i) notify the Secured Party promptly of:
  - (i) any change in the information contained herein relating to the Obligor, its name, its address, its business or the Assets,
  - (ii) the details of any sale or disposition of the Assets outside the scope contemplated by subparagraph 9(a) hereof,
  - (iii) any damage or loss calculated on a replacement cost basis, to:
    - (A) any individual Asset which exceeds \$1,000; and
    - (B) any number of Assets which exceeds in any 12 month period \$1,000,000 in aggregate excluding damage or loss attributable to the normal course of operations; for greater certainty, the calculation of the aggregate damage or loss in any applicable period shall include those amounts reportable under subparagraph (A);
- (j) prevent the Assets from being or becoming an accession to other property not covered by this Security Agreement,
- (k) permit the Secured Party and its representatives, at all reasonable times, access to all the Assets for the purpose of inspection and render all assistance necessary for such inspection; and



- (l) deliver to the Secured Party from time to time promptly upon request:
  - (i) any documents of title, instruments, securities and chattel paper constituting, representing or relating to the Assets,
  - (ii) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the expenditure of Operational Funds, as described in paragraph 2.3 herein, for the acquisition of the Assets, for the purpose of inspecting, auditing or copying the same,
  - (iii) all policies and certificates of insurance relating to the Assets and Real Property, and
  - (iv) such information concerning the Assets, the Obligor and the Obligor's business and affairs as the Secured Party may reasonably require.

#### **8. PERFORMANCE OF OBLIGATIONS**

If the Obligor fails to perform its Obligations hereunder, the Secured Party may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Secured Party hereunder and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Obligor to the Secured Party forthwith with interest calculated at an annual simple interest rate that is equal to the prime lending rate of the banker of the Secured Party.

#### **9. RESTRICTIONS ON SALE OR DISPOSAL OF ASSETS**

Without the prior written consent of the Secured Party the Obligor will not:

- (a) sell, lease or otherwise dispose of the Assets other than in the normal course of its operations;
- (b) release, surrender or abandon possession of the Assets other than in the normal course of its operations; or
- (c) move or transfer any Asset to a location:
  - (i) outside of the Province of British Columbia, or





- (ii) within the Province of British Columbia except where such transfer is for operational purposes in the normal course.

## 10. DEFAULT

The Obligor shall be in default under this Security Agreement unless waived by the Secured Party, in any of the following events:

- (a) the Obligor is in breach of any term, condition, obligation or covenant to the Secured Party, or any representation or warranty to the Secured Party is untrue, whether or not contained in this Security Agreement. For greater certainty, where, under the Themis Services Agreement, the Secured Party has been provided a remedial period with respect to a breach contemplated herein, no default shall be deemed to have occurred if the breach is remedied within that period;
- (b) the Obligor makes an assignment for the benefit of its creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the Bankruptcy Act, the Companies Creditors' Arrangement Act or similar legislation in any jurisdiction, or makes an unauthorized assignment;
- (c) a receiver, receiver and manager or receiver-manager of all or any part of the Assets is appointed;
- (d) an order of execution against the Assets or any part thereof remains unsatisfied or undefended for a period of 10 days;
- (e) without the prior written consent of the Secured Party, the Obligor creates or permits to exist any charge, encumbrance or lien on or claim against or any security interest in, any of the Assets which ranks or could in any event rank in priority to or pari passu with any security interest or charge created by this Security Agreement except Authorized Encumbrances;
- (f) the holder of any other charge, encumbrance or lien on or claim against, or security interest in, any of the Assets does anything to enforce or realize on such charge, encumbrance, lien, claim or security interest and the Obligor fails to assiduously defend such action;
- (g) an order is made or an effective resolution is passed for winding up the Obligor; or
- (h) the Obligor enters into any reconstruction, reorganization, amalgamation, merger or other similar arrangement with any other person.



## **11. ENFORCEMENT**

- 11.1 Upon any default under this Security Agreement, the security hereby constituted will immediately become enforceable and without limiting the foregoing, the floating charge referred to in Clause 1 will crystallize and thereupon become a fixed and specific mortgage of all the Obligor's Real Property which is the subject of this Security Agreement. To enforce and realize on the security constituted by this Security Agreement the Secured Party, or a receiver appointed under the Themis Services Agreement may take any action permitted by law or in equity, as it may deem expedient, and in particular without limiting the generality of the foregoing, the Secured Party may exercise all of its rights under the Themis Services Agreement and all the rights and remedies of a secured party under the Act.

## **12. RIGHTS CUMULATIVE**

All rights and remedies of the Secured Party set out in this Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future security agreement or now or hereafter existing at law, in equity or by statute, or pursuant to any other agreement between the Obligor and the Secured Party that may be in effect from time to time.

## **13. LIABILITY OF SECURED PARTY**

The Secured Party shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfillment of contracts during any period when the Secured Party shall manage the Assets and Real Property upon entry, as herein provided, nor shall the Secured Party be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable. The Secured Party shall not be bound to do, observe or perform or to see to the observance or performance by the Obligor of any obligations or covenants imposed upon the Obligor nor shall the Secured Party, in the case of securities, instruments or chattel paper, be obliged to preserve rights against other persons, nor shall the Secured Party be obliged to keep any of the Assets identifiable.

## **14. APPOINTMENT OF ATTORNEY**

The Obligor hereby irrevocably appoints the Secured Party or a receiver appointed under the Themis Services Agreement, with full power of substitution, to be the attorney of the Obligor for and in the name of the Obligor to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, instruments, assignments, assurances or consents that the Obligor is obliged to





sign, endorse or execute and generally to use the name of the Obligor and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Secured Party pursuant to this Security Agreement.

**15. WAIVER**

The Secured Party may from time to time and at any time waive in whole or in part any right, benefit or default under any clause of this Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be.

**16. NOTICE**

Notice may be given to either party by sending it through the post in prepaid mail or delivered to the party for whom it is intended, at the principal address of such party provided herein or at such other address as may be given in writing by such party to the other, and any notice if posted shall be deemed to have been given at the expiration of three business days after posting and if delivered, on delivery.

**17. EXTENSIONS**

The Secured Party may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security interests, and otherwise deal with the Obligor, and with the Assets and other security interests as the Secured Party may see fit without prejudice to the liability of the Obligor or the Secured Party's right to hold and realize on the security constituted by this Security Agreement.

**18. NO MERGER**

This Security Agreement shall not operate so as to create any merger or discharge of the Obligations, any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security interest of any form held or which may hereafter be held by the Secured Party from the Obligor or from any other person whomsoever. The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the covenants contained in this Security Agreement.

**19. ENFORCEMENT**

This Security Agreement shall enure to the benefit of the Secured Party and its successors and assigns, and shall be binding upon the respective heirs, executors, personal representatives, successors and permitted assigns of the Obligor.





## **20. INTERPRETATION**

### **20.1 In this Security Agreement:**

- (a) "Assets" and "Real Property" have the meaning set out in Paragraph 1 hereof (as qualified by paragraph 2 hereof) and any reference to Assets and Real Property shall, unless the context otherwise requires, be deemed a reference to Assets and Real Property as a whole or any part thereof;
- (b) "Obligor" and the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used;
- (c) the "Act" means the Personal Property Security Act of British Columbia and all regulations thereunder as amended from time to time.

20.2 Words and expressions used herein that have been defined in the Act shall be interpreted in accordance with their respective meanings given in the Act unless otherwise defined herein or unless the context otherwise requires.

20.3 The invalidity or unenforceability of the whole or any part of any clause of this Security Agreement shall not affect the validity or enforceability of any other clause or the remainder of such claim.

20.4 The headings of the clauses of this Security Agreement have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Security Agreement.

20.5 This Security Agreement shall be governed by the laws of British Columbia.

## **21. COPY OF AGREEMENT AND FINANCING STATEMENT**

21.01 The Obligor hereby acknowledges receiving a copy of this Security Agreement.

21.02 For greater certainty, the Secured Party shall, in accordance with the Act, provide the Obligor with a copy of any financing statement, financing change statement or verification statement filed at any time in respect of this Security Agreement and shall ensure, to the extent that is practicable, that such documents reflect the exceptions described in paragraph 2 herein.

*Wsf* IN WITNESS WHEREOF the Obligor has executed this Security Agreement this  
31<sup>st</sup> day of March, 2000

THE common seal of THEMIS PROGRAM  
MANAGEMENT AND CONSULTING  
LIMITED was hereunto affixed  
in the presence of

  
\_\_\_\_\_  
(Signature)

*President*  
\_\_\_\_\_  
(Title)



## **Themis Program Management & Consulting Limited**

### **Succession Plan**

Updated February, 2000

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#### **Introduction**

This Succession Plan is a description as to how Themis, its related holding companies and Managing Directors will ensure that the operations of the FMEP and the obligation of Themis to the Province will not be affected by the loss of one of the shareholders/ Managing Directors due to death, prolonged disability or planned departure.

This Succession Plan is a legally binding document and by signature of Brian A. Pollick, Michael Talbot and Hannah Roots binds them, their holding companies and their heirs to its intent and terms.

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#### **The Corporate Structure**

Themis is a BC Registered Company which is owned 60% by GAEA Management Limited and 40% by Mike Talbot Consulting Limited. Brian A. Pollick is the majority shareholder and sole director of GAEA. Mike Talbot is the sole owner and director of Mike Talbot Consulting.

Themis has three Managing Directors – Brian A. Pollick, Mike Talbot and Hannah Roots. Themis has a contract with GAEA and Mike Talbot Consulting for Brian Pollick's and Mike Talbot's services as full-time Managing Directors, and with Hannah Roots for her services.

In addition, Themis has a contract with GAEA for the provision of Information Systems and Financial Services for the FMEP.





There is also an agreement between the Managing Directors which sets out the terms of the partnership. All these agreements are designed to achieve the following:

- a) Ensure the personal services of Brian Pollick, Hannah Roots and Michael Talbot as senior managers of the FMEP;
- b) Define the obligations of the Managing Directors to Themis and remedies if they are not met;
- c) Ensure that the terms of the contract between Themis and the Province are adhered to;
- d) Ensure the corporate integrity of Themis and the uninterrupted operation of the FMEP so that the death, disability or departure of a Managing Director will not result in the break-up or insolvency of Themis and provide for litigation-free succession;
- e) Define how a shareholder can dispose of his/her shares; and
- f) Set up a process for resolving disputes between the Managing Directors.

This Succession Plan is legally binding on the Managing Directors personally and on their holding companies.

### **Death or Disability of a Managing Director**

#### **1. Death**

- a) If one or two of the Managing Directors dies, the remaining Managing Director(s) assumes full operational control of Themis immediately.

In order to ensure quick, litigation-free redemption of Themis' shares, Themis funds life insurance contracts whose proceeds can only be used to purchase the shares or holding company of the deceased partner. The estate of the deceased Managing Director is legally



required to sell the shares to Themis and the amount of the insurance policy is the fixed purchase price.

If the two shareholding Managing Directors die, then Hannah Roots becomes sole shareholder and must arrange for at least one additional Managing Director, agreeable to the Province, to be added within 180 days.

Upon the death of any Managing Director, the Province will be consulted with as to how best to replace the deceased Managing Director(s) and to advise how the duties of the deceased Managing Director will be performed.

- b) In the event of the death of all three Managing Directors, the immediate issue is the ongoing, day-to-day management of the FMEP. The longer term issue is what will be done to ensure an orderly transfer to a new structure and to protect the interests of the Province.

- i) *Operation of FMEP*

The Regional Manager of each office is fully competent and empowered to ensure regular operations continue unimpeded, in accordance with policies and procedures. Kelly Green, Regional Manager and Susan Rudosky, Controller have agreed to become overall Senior Managers and will be Managing Directors of Themis to exercise the management control with respect to the FMEP, its staff and its finances. Their compensation shall be \$138,000 per year paid out of the Management Fee. Joseph Wong and Susan Rudosky shall play that same role for GAEA Management.

Susan Rudosky already has signing authority on the Themis and GAEA accounts and will be empowered to maintain Program operations at their current level, providing the Province is still making its contract payments. Kelly Green will also have signing authority for Themis and Joseph Wong for GAEA.



Should Kelly Green and Susan Rudosky be unable or unwilling to assume this responsibility, the Province shall have the right to appoint a senior administrator to run the day-to-day affairs of the FMEP within the limits of the Operational Budget provided for in the Contract. This individual's salary shall be deducted from the Management Fee.

This arrangement shall last for as long as is necessary for either new owners of Themis to be put into place, or for the Province to make arrangements to either bring the Program into government, or to replace Themis with another contractor.

Kelly Green and Susan Rudosky shall have the power to expend money from Themis' corporate account providing such expenditures are budgeted and associated with the normal corporate operations of the company, required to support management of the FMEP. Unusual expenditures may be approved with the consent of one representative of each of the partners' estates.

No funds may be paid out to the partners' estates except for the insurance proceeds, until Themis is no longer operating the FMEP. Themis' insurance for liability, negligence, etc. shall be kept in place until all FMEP matters are fully transferred.

If all three Managing Directors die within 30 days of one another, the estates of the shareholders shall sell back Themis' shares in exchange for the insurance proceeds, plus the proportionate share of retained earnings and any shareholder loans outstanding. Kelly Green and Susan Rudosky may, with the agreement of the Province, take over as equal partners in Themis so that Themis can continue to run the FMEP for at least the duration of the contract term.





ii) *Wind Up*

If Kelly Green and Susan Rudosky (or other persons acceptable to the Province) do not take over the ownership of Themis and management of the FMEP, then Themis shall be wound up, at a time to be negotiated with the Province.

In this situation, an administrator shall be appointed by the estates of the deceased shareholders, who is acceptable to the Province, to look after the interests of our estates. Instructions to the administrator shall include a provision for completion of a financial audit of the company (at the company's expense) within 60 days of effective termination of the FMEP contract.

The administrator shall be empowered to pay any corporate debts which become due, and to ensure that any unexpended Operational Funds are returned to the Province, plus all assets belonging to the Province.

The administrator will also be required to hold all corporate funds, except insurance proceeds, for 180 days after the receipt of the audit for the settlement of future claims related to the FMEP. Only then may the company be formally dissolved and the assets disposed of.

**2. Disability**

If one or more Managing Directors becomes disabled and unable to fulfill his/her normal duties for less than six months, the other Managing Director(s) will arrange to cover the absent Managing Director's work, including replacement if necessary, at Themis' expense. If the disability and inability to perform exceeds six months in an eighteen-month period; the other Managing Directors can take whatever action is required to temporarily or permanently replace the disabled partner, including forcing the redemption of Themis' shares. All



Managing Directors carry sizeable disability policies and their fees from Themis during the first six months are reduced by the amount collected under these policies. After six months, the only entitlement is to retained earnings paid as dividends or bonuses.

If all three Managing Directors become disabled simultaneously, the organization would be managed by Kelly Green and Susan Rudosky as Acting Managing Directors (on the same terms as above) until at least one Managing Director is able to resume his or her duties.

#### Departure of a Managing Director

The agreement between the Managing Directors allows a Managing Director to be terminated for cause or to leave voluntarily. If a Managing Director leaves, the remaining Managing Directors will decide, in consultation with the Province, how best to fill the vacancy (if at all).

If the departing Managing Director is a shareholder, Hannah Roots has first option to buy the departing shareholder's shares immediately or at any future time.

Because of Law Society regulations, Hannah cannot be both an owner of Themis and its Senior Legal Counsel, although as Managing Director, she has the same rights and obligations as other Managing Directors who are shareholders. Hannah is the CEO designate when Brian Pollick is no longer performing that role due to retirement, death or long term disability, and will become majority shareholder at that time.

If there were organizational or financial reasons which necessitated going from three Managing Directors to two, it has already been agreed that it will be Mike Talbot who leaves. If this were to occur, Brian Pollick would buy Mike Talbot's shares, giving GAEA Management Limited 100% ownership. However, Hannah Roots has the right to buy Mike Talbot's 40% at any time.

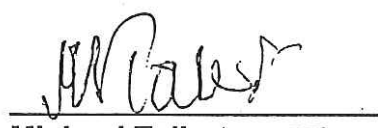


February 2000

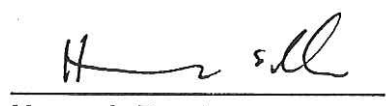
If then Brian Pollick were to die or be disabled, Hannah Roots has committed that she will buy at least 51% of Themis' shares. This purchase is fully funded by an insurance policy. Similarly, if Brian were to be disabled, Hannah immediately assumes full control of Themis. If Brian were to be disabled and unable to perform his duties for more than six months in any eighteen-month period, his shares would be purchased by Hannah alone or by another individual, acceptable to the Province, who would become a Managing Director.



Brian A. Pollick



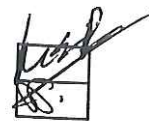
Michael Talbot



Hannah Roots

February 25, 2000  
BAP:vjm





## **SCHEDULE "K"**

### **PROVINCIAL GOVERNMENT** **TELECOMMUNICATIONS NETWORK (PROVNET),** **INTERNET AND BCONLINE ACCESS**

1. The Contractor will ensure that Provnet, Internet and BConLine are to be used only for the business of the Legislature or the government as this relates to the performance of Services as provided for in this Agreement.
2. Personal long-distance calls from a government telephone over Provnet and personal searches using BConline access under any circumstances are prohibited.
3. Any unauthorized calls or searches will be traced and the cost recovered from the Contractor.
4. The Contractor will advise the Province of telecommunications and BConline access requirements and plans for the duration of the Term upon the signing of the contract and throughout the Term any unanticipated changes required.
5. The Contractor will ensure its employees and contractors adhere to the Government's policy on Internet usage.

12/18/00

## SCHEDULE "L"

# LETTER OF DELEGATION OF THE POWERS, DUTIES OR FUNCTIONS OF THE DIRECTOR OF MAINTENANCE ENFORCEMENT

Pursuant to Section 2(2) of the *Family Maintenance Enforcement Act* (the "Act") all the powers, duties and functions conferred or imposed upon the Director of Maintenance Enforcement under the following sections of the Act are hereby delegated:

Sections 3, 4, 5, 6, 7, 10, 11, 12, 12.1, 14, 14.2, 14.4, 15, 16, 17, 18, 19, 22, 23, 24, 26, 26.1, 27, 29, 29.1, 29.2, 30, 31, 35, 39, 41, 43.

THIS DELEGATION is subject to the powers, duties and functions hereby delegated being exercised by the Contractor only through its following designated officers, contract staff, and employees, namely:

- a) its Managing Directors, Regional Managers, Controller, Manager of Information Systems, Enforcement Managers and Senior Legal Counsel in respect to all those sections of the Act referred to above;
- b) its Legal Counsel, Enforcement Officers and its Default Fee Officer in respect to sections 3, 4, 5, 6, 7, 10, 11, 12, 12.1, 14, 14.2, 14.4, 15, 16, 17, 18, 19, 22.1, 23, 24, 26 [except 26(1)(b)], 26.1, 27, 29, 29.1, 29.2, 30, 31, 35, 39, 41, 43;
- c) its Legal Counsel in respect to section 26(1)(b);
- d) its Manager of Payment Services, Manager of Financial Services and Payment Processing Clerks in respect to sections 10 and 11.

AND the persons acting in the position designated above are hereby authorized to exercise those powers, duties and functions.

Should the name of the position of any of the designated officers, contract staff or employees change, the persons occupying those positions either before or after any such change shall be, or continue to be, authorized to exercise the powers, duties and functions delegated to that position as if the name of the position had not changed.

THIS DELEGATION is further subject to the Director of Maintenance Enforcement's direction and shall continue until March 31, 2003 or the earlier termination of the Agreement or until revoked in writing by the Director of Maintenance Enforcement, whichever first occurs.

Signature: Michael Redding Date: March 31, 2000  
MICHAEL REDDING  
DIRECTOR OF MAINTENANCE ENFORCEMENT

*Handwritten:* 12/6

**LICENSE AGREEMENT**

THIS AGREEMENT made the 27 day of March, 1998.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the Purchasing Commission

(the "Province")

OF THE FIRST PART

AND:

THEMIS PROGRAM MANAGEMENT AND CONSULTING LIMITED, a body corporate, incorporated under the laws of the Province of British Columbia (Certificate of Incorporation No. 339727) and having its registered office at #409 - 3960 Quadra Street, Victoria, British Columbia, V8X 4A3

("Themis")

OF THE SECOND PART

WHEREAS:

- A. The parties entered into a services agreement dated the 2nd day of June, 1988 (the "Original Agreement"), providing for Themis to provide all labour, materials and facilities required to provide all aspects of the Family Maintenance Enforcement Program in the Province of British Columbia;
- B. The Original Agreement was amended and the parties entered into further agreements (the Original Agreement and subsequent agreements, being herein together called the "Services Agreements");
- C. Pursuant to the Services Agreements, Themis developed software known as the FMEP Software for and on behalf of the Province;
- D. The Province is the exclusive owner of the FMEP Software; and
- E. Themis wishes to obtain a license from the Province to market and sell sublicenses of the FMEP Software, on the terms and conditions contained in this Agreement.



NOW THEREFORE the parties agree as follows:

## DEFINITIONS

1.01 In this Agreement and the Recital hereto:

- (a) "Accrued Royalties" means \$37,719.00;
- (b) "Effective Date" means November 1, 1996;
- (c) "Expiry Date" means the end date of the Term as set out in paragraph 2.01;
- (d) "Federal Government Sale" means the Sale between Themis and Public Works and Government Services Canada pursuant to a contract numbered "19200-6-6397/001/ET" entitled "Generator Engine", and dated March 20, 1997;
- (e) "FMEP Software" means the software known as the "Family Maintenance Enforcement Program Software" and includes, without limitation, the Complaints System, the Reciprocal Case Management System, Client Record System, Payment Processing and Accounting System, Enforcement and Case Management System, Management Information System, all systems software, instructions in computer language, source codes (including the Source Code), compilers, utilities, assemblers, card decks, tapes, listings, other programming documentation, applications, systems programs and all Manuals, guides and documents necessary for the orderly and efficient operation of the software;
- (f) "IVR" means the computerized interactive voice response system that answers the telephone, receives and acts upon information received from callers about maintenance enforcement and includes any and all features designed to enable maintenance enforcement program clients and staff to obtain and give information and conduct business transactions over the telephone but does not include Teleflow;
- (g) "Minimum Royalty Payment" means the sum of \$1,250.00;
- (h) "Manuals" means the documentation associated with the FMEP Software and includes user guides, operating manuals and documents describing the major functions, procedures and structures for use by both users and future developers;
- (i) "Proposal" means a proposal as described in paragraph 7.01 of this Agreement;
- (j) "Purchasing Commission" means the Purchasing Commission continued pursuant to the *Purchasing Commission Act*, R.S.B.C. 1996, c.392 and includes

the Chairperson and anyone authorized to act on behalf of the Chairperson with respect to any matter under this Agreement;

- (k) "Revenues" means the total of all gross revenues of Themis from Sales and any revenues from consulting, maintenance, and any other services performed in relation to the FMEP Software or IVR whether for cash or credit, whether received or not, exclusive of hardware costs (except the costs of voiceboards), travel costs necessarily incurred to achieve a Sale, discounts, refunds, duties, shipping changes, insurance, government tax and revenues from the Federal Government Sale;
- (l) "Royalties" means
  - (i) 60% of Revenues from Sales of the FMEP Software,
  - (ii) 10% of Revenues from Sales of FMEP Software related maintenance and consulting,
  - (iii) 5% of Revenues from Sales of maintenance enforcement consulting services that are not related to FMEP Software (excluding costs of travel and materials), and
  - (iv) 10% of Revenues from Sales of IVR voiceboards, IVR systems applications, and IVR related maintenance and consulting (but excluding travel costs);
- (m) "Royalty Period" means
  - (i) that period that commences on the Effective Date and ends on June 30, 1998,
  - (ii) each period of 6 calendar months thereafter commencing on July 1, 1998, and
  - (iii) that period of less than 6 calendar months that immediately follows the last period as set out in subparagraph (ii) and ends on the Expiry Date or the date of sooner termination of this Agreement;
- (n) "Sale" means
  - (i) a sale of a sublicense or disposition of the FMEP Software, IVR for maintenance enforcement purposes, non-IVR products, and any Successor Systems, in whole or in part, and

- (ii) an agreement to provide a third party with consulting, maintenance or any other services connected with the FMEP Software, IVR and any Successor Systems;
- (o) "Sale in Progress" means the process of active, continuing negotiation, following response by Themis to a request for proposal or an invitation to quote or an agreement in principle, toward the sale to a specific customer of a sublicense to use the FMEP Software;
- (p) "Source Code" means collectively the source codes for the FMEP Software, together with related communication software and all supporting documentation and material necessary to operate, recreate, modify and maintain the object versions of the FMEP Software;
- (q) "Successor System" means a computer program the same as or similar to the FMEP Software or IVR, which may include the name of the computer program, the function of the software, the IVR voiceboards, the computer program in Source Code, or work undertaken to substantially modify or update it, a version of which may be in object code or source code;
- (r) "Events of Default" means the events described in paragraph 11.01; and
- (s) "Term" means the period set out in paragraph 2.01.

## TERM

- 2.01 The term of this Agreement, notwithstanding the date of execution and delivery of this Agreement, will commence on the Effective Date and will end on the fifth anniversary of that date unless terminated pursuant to paragraph 11.01.

## LICENSE

- 3.01 Subject to paragraph 3.02, the Province grants to Themis for the Term:
- (a) an exclusive license to market and sell sublicenses of the FMEP Software and IVR worldwide, on the terms and subject to the conditions contained in this Agreement; and
  - (b) a non-exclusive license to make modifications to the FMEP Software and IVR including improvements, re-engineering, re-designing, updating and upgrading.
- 3.02 The Province retains full rights to use, print, distribute, license, modify or merge, make copies and distribute copies of the FMEP Software and IVR including



modifications thereto for use by the Province, other provincial governmental bodies and agencies and contractors of the Province and such other public institutions within the Province of British Columbia as the Province in its sole discretion may decide.

- 3.03 Themis will be responsible for and will pay all applicable taxes associated with the grant of the license pursuant to this Agreement.

## ROYALTIES AND RECORDS

- 4.01 On the date of execution, Themis will pay to the Province a sum equal to the Accrued Royalties.
- 4.02 Themis will pay Royalties to the Province, in arrears, for each Royalty Period within 30 days following the end of each Royalty Period.
- 4.03 Themis will ensure that:
- (a) the Royalties paid to the Province each Royalty Period will equal or exceed the Minimum Royalty Payment; or
  - (b) will forthwith pay to the Province an amount equivalent to the difference between the Royalties paid to the Province in the Royalty Period and the Minimum Royalty Payment.
- 4.04 For the purposes of the computations of Royalties, payments received by Themis for Sales in currencies other than Canadian Dollars will be converted by Themis to Canadian Dollars at exchange rates available to Themis at the time of its receipt of such payments.
- 4.05 Within seven (7) days after the Province so directs, and on or before the 30th day following the end of each Royalty Period, Themis will deliver to the Province:
- (a) a record of Sales for the previous Royalty Period, or such other period as the Province may direct, including the amount of Revenues from those Sales and the amount of Royalties due to the Province; and
  - (b) list of all current customers.
- 4.06 Themis will submit to the Province an annual financial statement for all marketing and Sales activities within 60 days of the end date of every calendar year of the Term.
- 4.07 Themis will, in accordance with generally accepted principles, keep records and books of account concerning Sales and other dispositions, including Revenues, of the FMEP

Software and IVR and the Province will, on 48 hours notice, have access at all times to those records and books of account for the purposes of reviewing or copying them.

- 4.08 Where, after an audit has been conducted pursuant to paragraph 4.07, the Province determines that Themis has failed to pay an amount payable under this Agreement, Themis will, immediately upon demand, pay that amount to the Province.

## REPRESENTATIONS AND WARRANTIES

5.01 Themis represents and warrants to the Province that:

- (a) Themis is a corporation duly organized and validly existing under the laws of British Columbia;
- (b) Themis has the power and capacity to accept, execute and deliver this Agreement;
- (c) this Agreement is binding upon and enforceable against Themis in accordance with its terms;
- (d) all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by Themis;
- (e) all information, statements, documents and reports furnished or submitted by or on behalf of Themis to the Province in connection with this Agreement are true and correct;
- (f) it has no knowledge of any fact that materially adversely affects or, so far as it can foresee, might materially adversely affect its properties, assets, condition (financial or otherwise), business or operations or the ability to fulfill its obligations under this Agreement;
- (g) the observance and performance of the terms and conditions of this Agreement will not constitute a breach by it of, or a default by it under
  - (i) any statute, bylaw, or regulation of Canada, the Province of British Columbia or any foreign jurisdiction applicable to or binding on it,
  - (ii) its constating documents, or
  - (iii) any contract or agreement to which it is a party;

- (h) it has no knowledge of any untrue or inaccurate representation or assurance, whether verbal or written, given by Themis, its directors or officers to the Province in connection with this Agreement;
  - (i) it has sufficient trained staff, facilities, materials and appropriate equipment in place and available to enable it to fully perform its obligations under this Agreement;
  - (j) any modifications or enhancements to the FMEP Software that Themis is authorized to make under this Agreement will not infringe any copyright, patent, trade secret or other proprietary right of a third person; and
  - (k) Themis has not made any Sales prior to the Effective Date except to the provinces of Nova Scotia, Saskatchewan and Manitoba.
- 5.02 All representations, warranties, covenants and agreements made in this Agreement and all correspondence, information and documents delivered by or on behalf of Themis in connection with this Agreement are material and will conclusively be deemed to have been relied upon by the Province, notwithstanding any prior or subsequent investigation by the Province.

## MARKETING AND MODIFICATIONS

- 6.01 Themis will use its best efforts to market and sell sublicenses for the FMEP Software and IVR.
- 6.02 Themis will submit to the Province status reports, in a format satisfactory to the Province, of all marketing activities for each Royalty Period within 30 days following the end of each Royalty Period.
- 6.03 Themis will be solely responsible for all costs of:
- (a) copying, marketing, packaging, and selling sublicenses for the FMEP Software and IVR; and
  - (b) any alterations, improvements, modifications, editing, changes, updates or upgrades except those requested by the Province pursuant to a separate contract.
- 6.04 Themis will ensure any sublicense agreement between Themis and a third party will:
- (a) subject to paragraph 7.02, contain a non-assignment clause whereby the third party cannot assign or sublicense the FMEP Software or IVR;



- (b) contain a provision indicating that the sublicense agreement is made pursuant to the terms of this Agreement;
  - (c) contain a provision whereby the sublicensee will covenant that upon receiving notice from the Province of termination of this Agreement, the sublicensee will continue to be bound by all provisions of the sublicense agreement as if it were made directly with the Province; and
  - (d) obtain the prior written approval of the Province, which will not be unreasonably withheld, as to the terms of the sublicense agreement.
- 6.05 Where any of the provisions of this Agreement will be provided by a duly qualified or licensed practitioner, or professional, Themis will cause and permit only those persons to perform those provisions who are so qualified and licensed and without limiting the generality of the foregoing, Themis will cause Brian Pollick or such other persons as may be acceptable to the Purchasing Commission to act for Themis in providing the provisions.
- 6.06 Themis will not use the name of the Province in any manner in connection with the FMEP Software or IVR, except as provided in this Agreement or with the prior consent of the Province.
- 6.07 Themis will inform all potential customers in any verbal or written communications that the Province is the copyright owner of the FMEP Software and IVR.
- 6.08 Themis will complete the Reciprocal Case Management System and Complaints System to the satisfaction of the Province prior to the Sale of any copies of the Reciprocal Case Management System and Complaints System.

## PROPOSAL

- 7.01 Themis may give a written Proposal to the Province that:
- (a) Themis wishes to sell or assign any right of Themis under this Agreement; or
  - (b) Themis wishes to grant a sublicense to market, or distribute the FMEP Software or IVR, to a third party, in which case Themis will provide particulars of the proposed sublicensing arrangements to the Province.
- 7.02 If a Proposal is given by Themis to the Province, then the Province will give written notice to Themis within 30 days that the Province either:
- (a) approves of the Proposal, in which case Themis may grant the sublicense described in the Proposal; or

- (b) rejects the Proposal.

## **THEMIS' COVENANTS**

- 8.01 Where Themis acquires, creates or develops directly or indirectly, in whole or in part, a Successor System, Themis covenants that it will deliver forthwith to the Province a copy of the Successor System in Source Code and in object code, and that it will not in any way use, license, sell or otherwise dispose of the Successor System unless the Province first approves in writing of the use, licensing, sale or disposal, which approval may be arbitrarily withheld.
- 8.02 Themis will not, during the Term, perform a service for or provide advice to any person where the performance of the service or the provision of the advice might in the reasonable opinion of the Province create or be perceived to create a conflict of interest between the obligations of Themis to the Province under this Agreement and the obligations of Themis to such other person.
- 8.03 Themis will pay all taxes, fees, licenses or other charges which may arise with respect to the FMEP Software and IVR, marketing, upgrading the FMEP Software and IVR, updating the Source Code, creation, acquisition or development of Manuals, or a sublicensing agreement, and Themis hereby indemnifies and saves harmless at all times the Province against all claims which may be made in respect thereto.

## **OWNERSHIP**

- 9.01 Notwithstanding any other provision of this Agreement, copyright in the FMEP Software and proprietary rights in IVR will belong exclusively to the Province.
- 9.02 Themis acknowledges that the Province has full proprietary right and title to the FMEP Software and IVR (including any modifications made by Themis either prior to the Effective Date or made pursuant to paragraph 3.01(b)), the name of the FMEP Software, all copies of the FMEP Software and IVR (whether in Source Code or not) all of which constitute valuable trade secrets of the Province.
- 9.03 Nothing in this Agreement constitutes an assignment of any of the Province's interest in the FMEP Software and IVR.
- 9.04 Themis acknowledges that any Successor System acquired, created or developed directly or indirectly, in whole or in part, by Themis will belong to the Province and the Province will have copyright in such Successor Systems.

- 9.05 Themis will ensure that its employees and contractors execute waivers of their moral rights in any modifications to the FMEP Software or IVR and any Successor Systems, in a form satisfactory to the Province.

## INFRINGEMENT

- 10.01 In the event of any complaint alleging infringement or violation of any copyright or other proprietary rights being made against Themis in respect of the use or sale of the FMEP Software or IVR in any country, the following procedure will be adopted:
- (a) Themis will promptly upon receipt of any such complaint notify the Province, and will throughout the pendency of such complaint keep the Province fully informed of the actions and positions taken by the complainant and taken or proposed to be taken by Themis;
  - (b) subject to this paragraph, all costs and expenses properly incurred by Themis in investigating, resisting, litigating and settling such complaint, including the payment of any award of damages and costs to any third party, will be borne entirely by Themis;
  - (c) no decision or action concerning or governing any final disposition of the complaint will be taken without full consultation with and approval by the Province;
  - (d) the Province may elect to participate formally in any litigation involving the complaint to the extent that the court may permit, but any additional expenses generated by such formal participation will be borne entirely by the Province (subject to the possibility of recovery of some or all of such additional expenses from the complainant); and
  - (e) if the complainant is willing to accept an offer of settlement and one of the parties to this Agreement is willing to accept an offer of settlement and the other party is not, then the unwilling party will conduct all further proceedings at its own expense, and will be responsible for the full amount of any damages, costs, accounting or profits and settlement costs in excess of those provided in such offer, but will be entitled to retain unto itself the benefit of any litigated or settled result entailing a lower payment of costs, damages, accounting of profits and settlement costs than that provided in such offer.
- 10.02 Notwithstanding any other provisions in this Agreement, nothing in this Agreement will serve to obligate the Province to commence or maintain any legal proceedings against a third party for infringement of any proprietary rights of the Province or rights of Themis under this Agreement.



- 10.03 Themis may, at its expense, commence legal proceedings in its own name for the infringement of the rights of the Province in and to the FMEP Software or IVR and Source Code, or any of the rights of Themis under this Agreement.

## TERMINATION

11.01 If any of the following events of default occurs, namely:

- (a) Themis fails materially to comply with any provision of this Agreement or of any contract or agreement that is directly or indirectly related to the subject matter of this Agreement including the Services Agreements;
- (b) any representation or warranty made by Themis in accepting this Agreement is materially untrue or incorrect;
- (c) any correspondence, information, statement, document, report or proposal furnished or submitted by or on behalf of Themis pursuant to or as a result of this Agreement is untrue or incorrect;
- (d) an order is made or a resolution is passed or a petition is filed for the liquidation or winding up of Themis;
- (e) Themis becomes insolvent or commits an act of bankruptcy or makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (f) a bankruptcy petition is filed or presented against, or a proposal under the *Bankruptcy Act* (Canada) is made by, Themis;
- (g) a receiver or receiver-manager of any property of Themis is appointed;
- (h) Themis ceases, in the opinion of the Province, to operate;
- (i) the beneficial ownership and effective control of Themis ceases to be held by Brian Pollick or without limiting the generality of the foregoing, if anyone who has an interest, direct or indirect, in Themis sells, pledges, assigns, mortgages or otherwise disposes of their interest in Themis or this Agreement without the prior written consent of the Purchasing Commission, whose consent will not be unreasonably withheld; or
- (j) without the prior written consent of the Purchasing Commission, whose consent will not be unreasonably withheld, Themis is amalgamated or combined with another company or is reorganized;

then, at the option of the Province, exercisable by written notice from the Province to Themis, this Agreement will be terminated on the date specified in such notice and if this Agreement is so terminated the Province will be under no further obligation to Themis.

11.02 Within 30 days after expiration or the sooner termination of this Agreement, Themis will:

- (a) deliver to the Province the Source Code;
- (b) deliver to the Province all copies, specifications, and other materials relating to the FMEP Software, IVR, non-IVR products and Successor Systems except those required by Themis to provide maintenance services to the Province for the FMEP Software pursuant to a separate contract;
- (c) pay to the Province all outstanding Royalties and Accrued Royalties; and
- (d) cease using the Source Code.

11.03 Where this Agreement is terminated before the end of the Term, Themis may complete any Sale in Progress, provided it does so within 120 days after the date of termination.

11.04 Themis will pay all outstanding Royalties to the Province within 30 days of the completion of a Sale in Progress.

## NON-WAIVER

12.01 No provision of this Agreement and no breach by Themis of any such provision will be considered to have been waived unless such waiver is in writing by the Province.

12.02 The written waiver by the Province of any breach by Themis of any provision of this Agreement will not be deemed a waiver of such provision or of any subsequent breach by Themis of the same or any other provision of this Agreement.

## NOTICES

13.01 Any notice, approval, consent, waiver, statement, other document or payment and any Proposal or any of the materials that either party may desire or be required to give or deliver to the other will be conclusively deemed validly given or delivered to and received by the addressee, if delivered personally on the date of delivery or, if mailed, on the fifth business day after the mailing of the same in Canada by prepaid post addressed,

if to the Province:

Intangible Property Program  
541 Superior Street  
P.O. Box 9459 Stn Prov Govt  
Victoria, B.C.  
V8W 9V7

Attention: Frank Hudson

and if to Themis:

Themis Production Management and Consulting Limited

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Attention: Brian Pollick, President.

- 13.02 Either party may, from time to time, advise the other by notice in writing of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified will, for purposes of this Agreement, be deemed to be the address of the party giving such notice.
- 13.03 In addition to paragraphs 13.01 and 13.02, any notice, approval, consent, waiver, statement or other document or Proposal may be delivered by facsimile transmission from a party and will be conclusively deemed to have been given to and received by the intended recipient when so transmitted if transmitted by facsimile numbers that the parties may, from time to time advise.

## **LEGAL RELATIONSHIP/INDEPENDENT CONTRACTOR**

- 14.01 Themis is an independent contractor and not the servant, employee, partner or agent of the Province.
- 14.02 Themis will not without the prior written consent of the Purchasing Commission assign, either directly or indirectly, this Agreement or any right of Themis under this Agreement including without limitation the granting of sub-licenses to third parties to market or sell the FMEP Software and IVR.
- 14.03 Subject to subparagraph 6.04(c), nothing in this Agreement will create any contractual relationship between the Province and a permitted sublicensee of Themis.
- 14.04 Themis will not commit the Province to pay money to any person, firm or corporation.



## INDEMNITY

- 15.01 Themis will indemnify and hold the Province and the Purchasing Commission and their respective ministers, servants, employees and agents harmless from any loss, damage, costs, expense or liability suffered or sustained by the Province and the Attorney General (or either of them) at any time (either before or after the expiration or earlier termination of this Agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by Themis or by any servant, employee, officer, director, or permitted sublicensee of Themis in connection with the use, marketing, testing, copying or selling of the FMEP Software and IVR pursuant to this Agreement.
- 15.02 Themis will indemnify and hold the Province and the Purchasing Commission and their respective servants, employees and agents harmless from any loss, damage, costs, expense or liability for infringements of any patent, trademark, copyright or other proprietary right to the extent that the infringements arise from modifications or enhancements made by or on behalf of Themis if the loss, damage, cost, expense or liability arise from the normal use of the FMEP Software or IVR.

## CONFIDENTIALITY

- 16.01 Themis will treat as confidential and will not, without the prior written consent of the Province disclose or permit to be disclosed in any way any information which comes to the knowledge of Themis as a result of this Agreement except if such disclosure is necessary to enable Themis to fulfill its obligations under this Agreement or as required by law.

## ARBITRATION

- 17.01 All disputes arising out of or in connection with this Agreement will be referred to and finally resolved by arbitration administered under the *Commercial Arbitration Act*.
- 17.02 The place of arbitration will be Victoria, British Columbia.

## GENERAL

- 18.01 A reference to a statute in this Agreement, whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes every amendment to it, every regulation made under it and any enactment passed in substitution therefor or in replacement thereof.


- 18.02 In this Agreement, "person" includes a corporation, firm, association and any other legal entity and wherever the singular is used it will be construed as if the plural had been used or *vice versa* where the context or the parties so require.
- 18.03 This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- 18.04 All provisions of this Agreement in favour of the Province and all rights and remedies of the Province, either at law or in equity, will survive the expiration or sooner termination of this Agreement.
- 18.05 If any provision of this Agreement is found to be invalid, illegal or unenforceable it will be severable from this Agreement and the remaining provisions will not be affected thereby and will be valid, legal and enforceable.
- 18.06 Any alteration or amendment to the terms and conditions of this Agreement must be in writing and duly executed by both parties.
- 18.07 Time will be of the essence of this Agreement.
- 18.08 The headings appearing in this Agreement are inserted for ease of reference only and have no effect on the construction or interpretation of this Agreement.
- 18.09 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes and replaces any agreements or undertakings regarding the subject matter of this Agreement entered into, made or given by the parties prior to the date this Agreement is deemed to come into force.
- 18.10 Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.

18.11 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

SIGNED on behalf of Her Majesty the )  
Queen in right of the Province of British )  
Columbia by a duly authorized )  
representative of the Chairperson of the )  
Purchasing Commission in the presence of: )

  
(Witness)

  
Chairperson of the  
Purchasing Commission

THE common seal of Themis )  
Program Management and Consulting )  
Limited was hereunto affixed in the )  
presence of: )

  
(Signature) )

(c/s)

  
(Title)