

# INFORMATION TECHNOLOGY & MANAGEMENT CONSULTING PROFESSIONAL SERVICES AGREEMENT



<i>For Administrative Purposes Only</i>	
<p><i>Ministry Contract No.:</i> _____</p> <p><i>Requisition No.:</i> _____</p> <p><i>Solicitation No.(if applicable):</i> _____</p> <p><i>Commodity Code:</i> _____</p> <p><b><i>Contractor Information</i></b></p> <p><i>Supplier Name:</i> <u>BC Biomedical Laboratories LP</u></p> <p><i>Supplier No.:</i> _____</p> <p><i>Telephone No.:</i> <u>604-507-5168</u></p> <p><i>E-mail Address:</i> <u>jcuples@bcbio.com</u></p> <p><i>Website:</i> _____</p>	<p><b><i>Financial Information</i></b></p> <p><i>Client:</i> <u>026</u></p> <p><i>Responsibility Centre</i> <u>66202</u></p> <p><i>Service Line:</i> <u>44005</u></p> <p><i>STOB:</i> <u>6309</u></p> <p><i>Project:</i> <u>66K429C</u></p> <p><i>Template version:</i> June 14, 2011</p>

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**SCHEDULE A – SERVICES**

- Part 1 - Term
- Part 2 - Services
- Part 3 - Related Documentation
- Part 4 - Key Personnel

**SCHEDULE B – FEES AND EXPENSES**

- Part 1 - Maximum Amount Payable
- Part 2 - Fees
- Part 3 - Expenses
- Part 4 - Statements of Account
- Part 5 - Payments Due

**SCHEDULE C – APPROVED SUBCONTRACTOR(S)**

**SCHEDULE D – INSURANCE**

**SCHEDULE E – PRIVACY PROTECTION SCHEDULE**

**SCHEDULE F – ADDITIONAL TERMS**

**SCHEDULE G – SECURITY SCHEDULE**

THIS AGREEMENT is dated for reference the 5<sup>th</sup> day of March, 2012.

BETWEEN:

BC Biomedical Laboratories LP (the "Contractor") with the following specified address and fax number:  
7455 – 130<sup>th</sup> Street  
Surrey, BC V3W 1H8  
Fax: (604) 507-5200

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by Minister of Health (the "Province") with the following specified address and fax number:  
2<sup>nd</sup> Floor, 1515 Blanshard St  
Victoria BC V8W 3C8  
Fax Number: 250-952-1186

The Province wishes to retain the Contractor to provide the services specified in Schedule A and, in consideration for the remuneration set out in Schedule B, the Contractor has agreed to provide those services, on the terms and conditions set out in this Agreement.

As a result, the Province and the Contractor agree as follows:

## 1 DEFINITIONS

### General

1.1 In this Agreement, unless the context otherwise requires:

- (a) "Business Day" means a day, other than a Saturday or Sunday, on which Provincial government offices are open for normal business in British Columbia;
- (b) "Incorporated Material" means any material in existence prior to the start of the Term or developed independently of this Agreement, and that is incorporated or embedded in the Produced Material by the Contractor or a Subcontractor;
- (c) "Material" means the Produced Material and the Received Material;
- (d) "Produced Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are produced by the Contractor or a Subcontractor and includes the Incorporated Material;
- (e) "Received Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are received by the Contractor or a Subcontractor from the Province or any other person;
- (f) "Services" means the services described in Part 2 of Schedule A;
- (g) "Subcontractor" means a person described in paragraph (a) or (b) of section 13.4; and
- (h) "Term" means the term of the Agreement described in Part 1 of Schedule A subject to that term ending earlier in accordance with this Agreement.

### Meaning of "record"

1.2 The definition of "record" in the *Interpretation Act* is incorporated into this Agreement and "records" will bear a corresponding meaning.

## 2 SERVICES

### Provision of services

2.1 The Contractor must provide the Services in accordance with this Agreement.

### Term

2.2 Regardless of the date of execution or delivery of this Agreement, the Contractor must provide the Services during the Term.

### Supply of various items

2.3 Unless the parties otherwise agree in writing, the Contractor must supply and pay for all labour, materials, equipment, tools, facilities, approvals and licenses necessary or advisable to perform the Contractor's obligations under this Agreement, including the license under section 6.4.

### Standard of care

2.4 Unless otherwise specified in this Agreement, the Contractor must perform the Services to a standard of care, skill, and diligence maintained by persons providing, on a commercial basis, services similar to the Services.

### Standards in relation to persons performing Services

2.5 The Contractor must ensure that all persons employed or retained to perform the Services are qualified and competent to perform them and are properly trained, instructed and supervised.

### Instructions by Province

2.6 The Province may from time to time give the Contractor reasonable instructions (in writing or otherwise) as to the performance of the Services. The Contractor must comply with those instructions but, unless otherwise specified in this Agreement, the Contractor may determine the manner in which the instructions are carried out.

### Confirmation of non-written instructions

2.7 If the Province provides an instruction under section 2.6 other than in writing, the Contractor may request that the instruction be confirmed by the Province in writing, which request the Province must comply with as soon as it is reasonably practicable to do so.

### Effectiveness of non-written instructions

2.8 Requesting written confirmation of an instruction under section 2.7 does not relieve the Contractor from complying with the instruction at the time the instruction was given.

### Applicable laws

2.9 In the performance of the Contractor's obligations under this Agreement, the Contractor must comply with all applicable laws.

### 3 PAYMENT

#### Fees and expenses

- 3.1 If the Contractor complies with this Agreement, then the Province must pay to the Contractor at the times and on the conditions set out in Schedule B:
- (a) the fees described in that Schedule;
  - (b) the expenses, if any, described in that Schedule if they are supported, where applicable, by proper receipts and, in the Province's opinion, are necessarily incurred by the Contractor in providing the Services; and
  - (c) any applicable taxes payable by the Province under law or agreement with the relevant taxation authorities on the fees and expenses described in paragraphs (a) and (b).

The Province is not obliged to pay to the Contractor more than the "Maximum Amount" specified in Schedule B on account of fees and expenses.

#### Statements of accounts

- 3.2 In order to obtain payment of any fees and expenses under this Agreement, the Contractor must submit to the Province a written statement of account in a form satisfactory to the Province upon completion of the Services or at other times described in Schedule B.

#### Withholding of amounts

- 3.3 Without limiting section 9.1, the Province may withhold from any payment due to the Contractor an amount sufficient to indemnify in whole or in part the Province and its employees and agents against any liens or other third-party claims that have arisen or could arise in connection with the provision of the Services. An amount withheld under this section must be promptly paid by the Province to the Contractor upon the basis for withholding the amount having been fully resolved to the satisfaction of the Province.

#### Appropriation

- 3.4 The Province's obligation to pay money to the Contractor is subject to the *Financial Administration Act*, which makes that obligation subject to an appropriation being available in the fiscal year of the Province during which payment becomes due.

#### Currency

- 3.5 Unless otherwise specified in this Agreement, all references to money are to Canadian dollars.

#### Non-resident income tax

- 3.6 If the Contractor is not a resident in Canada, the Contractor acknowledges that the Province may be required by law to withhold income tax from the fees described in Schedule B and then to remit that tax to the Receiver General of Canada on the Contractor's behalf.

#### Prohibition against committing money

- 3.7 Without limiting section 13.10(a), the Contractor must not in relation to performing the Contractor's obligations under this Agreement commit or purport to commit the Province to pay any money except as may be expressly provided for in this Agreement.

## Refunds of taxes

### 3.8 The Contractor must:

- (a) apply for, and use reasonable efforts to obtain, any available refund, credit, rebate or remission of federal, provincial or other tax or duty imposed on the Contractor as a result of this Agreement that the Province has paid or reimbursed to the Contractor or agreed to pay or reimburse to the Contractor under this Agreement; and
- (b) immediately on receiving, or being credited with, any amount applied for under paragraph (a), remit that amount to the Province.

## 4 REPRESENTATIONS AND WARRANTIES

### 4.1 As at the date this Agreement is executed and delivered by, or on behalf of, the parties, the Contractor represents and warrants to the Province as follows:

- (a) except to the extent the Contractor has previously disclosed otherwise in writing to the Province,
  - (i) all information, statements, documents and reports furnished or submitted by the Contractor to the Province in connection with this Agreement (including as part of any competitive process resulting in this Agreement being entered into) are in all material respects true and correct,
  - (ii) the Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable the Contractor to fully perform the Services, and
  - (iii) the Contractor holds all permits, licenses, approvals and statutory authorities issued by any government or government agency that are necessary for the performance of the Contractor's obligations under this Agreement; and
- (b) if the Contractor is not an individual,
  - (i) the Contractor has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on behalf of, the Contractor, and
  - (ii) this Agreement has been legally and properly executed by, or on behalf of, the Contractor and is legally binding upon and enforceable against the Contractor in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency or other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

## 5 PRIVACY, SECURITY AND CONFIDENTIALITY

### Privacy

#### 5.1 The Contractor must comply with the Privacy Protection Schedule attached as Schedule E.

### Security

#### 5.2 The Contractor must:

- (a) make reasonable security arrangements to protect the Material from unauthorized access, collection, use, disclosure, alteration or disposal; and
- (b) comply with the Security Schedule attached as Schedule G.



## Confidentiality

- 5.3 The Contractor must treat as confidential all information in the Material and all other information accessed or obtained by the Contractor or a Subcontractor (whether verbally, electronically or otherwise) as a result of this Agreement, and not permit its disclosure or use without the Province's prior written consent except:
- (a) as required to perform the Contractor's obligations under this Agreement or to comply with applicable laws;
  - (b) if it is information that is generally known to the public other than as result of a breach of this Agreement; or
  - (c) if it is information in any Incorporated Material.

## Public announcements

- 5.4 Any public announcement relating to this Agreement will be arranged by the Province and, if such consultation is reasonably practicable, after consultation with the Contractor.

## Restrictions on promotion

- 5.5 The Contractor, must not, without the prior written approval of the Province, refer for promotional purposes to the Province being a customer of the Contractor or the Province having entered into this Agreement.

## 6 MATERIAL AND INTELLECTUAL PROPERTY

### Access to Material

- 6.1 If the Contractor receives a request for access to any of the Material from a person other than the Province, and this Agreement does not require or authorize the Contractor to provide that access, the Contractor must promptly advise the person to make the request to the Province.

### Ownership and delivery of Material

- 6.2 The Province exclusively owns all property rights in the Material which are not intellectual property rights. The Contractor must deliver any Material to the Province immediately upon the Province's request.

### Matters respecting intellectual property

- 6.3 The Province exclusively owns all intellectual property rights, including copyright, in:
- (a) Received Material that the Contractor receives from the Province; and
  - (b) Produced Material, other than any Incorporated Material.

Upon the Province's request, the Contractor must deliver to the Province documents satisfactory to the Province that irrevocably waive in the Province's favour any moral rights which the Contractor (or employees of the Contractor) or a Subcontractor (or employees of a Subcontractor) may have in the Produced Material and that confirm the vesting in the Province of the copyright in the Produced Material, other than any Incorporated Material.

## Rights in relation to Incorporated Material

- 6.4 Upon any Incorporated Material being embedded or incorporated in the Produced Material and to the extent that it remains so embedded or incorporated, the Contractor grants to the Province:
- (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, modify and distribute that Incorporated Material; and
  - (b) the right to sublicense to third-parties the right to use, reproduce, modify and distribute that Incorporated Material.

## Right of Province to negotiate license of Produced Material

- 6.5 After the end of the Term, the Province in its sole discretion, may negotiate with the Contractor to provide the Contractor a license (which may be exclusive or non-exclusive) for the Contractor to use, reproduce, modify or distribute some or all of the Produced Material.

## 7 RECORDS AND REPORTS

### Work reporting

- 7.1 Upon the Province's request, the Contractor must fully inform the Province of all work done by the Contractor or a Subcontractor in connection with providing the Services.

### Time and expense records

- 7.2 If Schedule B provides for the Contractor to be paid fees at a daily or hourly rate or for the Contractor to be paid or reimbursed for expenses, the Contractor must maintain time records and books of account, invoices, receipts and vouchers of expenses in support of those payments, in form and content satisfactory to the Province. Unless otherwise specified in this Agreement, the Contractor must retain such documents for a period of not less than seven years after this Agreement ends.

## 8 AUDIT

- 8.1 In addition to any other rights of inspection the Province may have under statute or otherwise, the Province may at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect and, at the Province's discretion, copy any of the Material and the Contractor must permit, and provide reasonable assistance to, the exercise by the Province of the Province's rights under this section.

## 9 INDEMNITY AND INSURANCE

### Indemnity

- 9.1 The Contractor must indemnify and save harmless the Province and the Province's employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that the Province or any of the Province's employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, including any claim of infringement of third-party intellectual property rights, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission by the Contractor or by any of the Contractor's agents, employees, officers, directors or Subcontractors in connection with this Agreement (each a "Loss"), excepting always liability arising out of the independent acts or omissions of the Province and the Province's employees and agents.

### Monetary limitations of indemnity

- 9.2 The indemnification by the Contractor pursuant to section 9.1 is limited to:
- (a) S. 17, S. 21 per Loss; and

- (b) S. 17, S. 21 in the aggregate for all Losses.

#### Exceptions to monetary limitations

- 9.3 The limitations set out in section 9.2 do not apply to a Loss resulting from any of the following:
  - (a) bodily injury or damage to real property or tangible personal property;
  - (b) a claim of infringement of third-party intellectual property rights; or
  - (c) a breach of section 5.1, 5.2, 5.3 or 6.1 of this Agreement.

#### Province to notify Contractor of Loss

- 9.4 To claim indemnification for a Loss pursuant to section 9.1, the Province must notify the Contractor in writing of the Loss as soon as reasonably practicable after the Province becomes aware of the Loss provided that a failure by the Province to provide such notification will not invalidate the claim unless the Contractor is materially prejudiced by that failure.

#### Third-party intellectual property infringement claims

- 9.5 If the Loss is on the basis of a third-party claim that any element of the Material infringes the intellectual property rights of any person,
  - (a) then the Contractor must defend the Province against that claim at the Contractor's expense and the Contractor must pay all associated costs, damages and legal fees that a court or arbitrator finally awards or are included in a settlement agreed to by the Contractor; and
  - (b) the Province must cooperate with the Contractor in the defence of the claim and, where appropriate in the discretion of the Province, will allow the Contractor to appoint and instruct counsel and otherwise control the defence and any related settlement negotiations.

#### Insurance

- 9.6 The Contractor must comply with the Insurance Schedule attached as Schedule D.

#### Workers compensation

- 9.7 Without limiting the generality of section 2.9, the Contractor must comply with, and must ensure that any Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under this Agreement, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions.

#### Personal optional protection

- 9.8 The Contractor must apply for and maintain personal optional protection insurance (consisting of income replacement and medical care coverage) during the Term at the Contractor's expense if:
  - (a) the Contractor is an individual or a partnership of individuals and does not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act* or similar laws in other jurisdictions; and
  - (b) such personal optional protection insurance is available for the Contractor from WorkSafeBC or other sources.

#### Evidence of coverage

- 9.9 Within 10 Business Days of being requested to do so by the Province, the Contractor must provide the Province with evidence of the Contractor's compliance with sections 9.7 and 9.8.

## 10 FORCE MAJEURE

### Definitions relating to force majeure

10.1 In this section and sections 10.2 and 10.3:

(a) "Event of Force Majeure" means one of the following events:

- (i) a natural disaster, fire, flood, storm, epidemic or power failure,
- (ii) a war (declared and undeclared), insurrection or act of terrorism or piracy,
- (iii) a strike (including illegal work stoppage or slowdown) or lockout, or
- (iv) a freight embargo

if the event prevents a party from performing the party's obligations in accordance with this Agreement and is beyond the reasonable control of that party; and

(b) "Affected Party" means a party prevented from performing the party's obligations in accordance with this Agreement by an Event of Force Majeure.

### Consequence of Event of Force Majeure

10.2 An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party's obligations under this Agreement resulting from an Event of Force Majeure and any time periods for the performance of such obligations are automatically extended for the duration of the Event of Force Majeure provided that the Affected Party complies with the requirements of section 10.3.

### Duties of Affected Party

10.3 An Affected Party must promptly notify the other party in writing upon the occurrence of the Event of Force Majeure and make all reasonable efforts to prevent, control or limit the effect of the Event of Force Majeure so as to resume compliance with the Affected Party's obligations under this Agreement as soon as possible.

## 11 DEFAULT AND TERMINATION

### Definitions relating to default and termination

11.1 In this section and sections 11.2 to 11.4:

(a) "Event of Default" means any of the following:

- (i) an Insolvency Event,
- (ii) the Contractor fails to perform any of the Contractor's obligations under this Agreement, or
- (iii) any representation or warranty made by the Contractor in this Agreement is untrue or incorrect; and

(b) "Insolvency Event" means any of the following:

- (i) an order is made, a resolution is passed or a petition is filed, for the Contractor's liquidation or winding up,
- (ii) the Contractor commits an act of bankruptcy, makes an assignment for the benefit of the Contractor's creditors or otherwise acknowledges the Contractor's insolvency,
- (iii) a bankruptcy petition is filed or presented against the Contractor or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Contractor,
- (iv) a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act* (Canada),

- (v) a receiver or receiver-manager is appointed for any of the Contractor's property, or
- (vi) the Contractor ceases, in the Province's reasonable opinion, to carry on business as a going concern.

#### Province's options on default

- 11.2 On the happening of an Event of Default, or at any time thereafter, the Province may, at its option, elect to do any one or more of the following:
- (a) by written notice to the Contractor, require that the Event of Default be remedied within a time period specified in the notice;
  - (b) pursue any remedy or take any other action available to it at law or in equity; or
  - (c) by written notice to the Contractor, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under section 11.2(a).

#### Delay not a waiver

- 11.3 No failure or delay on the part of the Province to exercise its rights in relation to an Event of Default will constitute a waiver by the Province of such rights.

#### Province's right to terminate other than for default

- 11.4 In addition to the Province's right to terminate this Agreement under section 11.2(c) on the happening of an Event of Default, the Province may terminate this Agreement for any reason by giving at least 10 days' written notice of termination to the Contractor.

#### Payment consequences of termination

- 11.5 Unless Schedule B otherwise provides, if the Province terminates this Agreement under section 11.4:
- (a) the Province must, within 30 days of such termination, pay to the Contractor any unpaid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that was completed to the Province's satisfaction before termination of this Agreement; and
  - (b) the Contractor must, within 30 days of such termination, repay to the Province any paid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that the Province has notified the Contractor in writing was not completed to the Province's satisfaction before termination of this Agreement.

#### Discharge of liability

- 11.6 The payment by the Province of the amount described in section 11.5(a) discharges the Province from all liability to make payments to the Contractor under this Agreement.

#### Notice in relation to Events of Default

- 11.7 If the Contractor becomes aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, the Contractor must promptly notify the Province of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps the Contractor proposes to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps the Contractor proposes to take to prevent the occurrence of the anticipated Event of Default.

## 12 DISPUTE RESOLUTION

### Dispute resolution process

- 12.1 In the event of any dispute between the parties arising out of or in connection with this Agreement, the following dispute resolution process will apply unless the parties otherwise agree in writing:
- (a) the parties must initially attempt to resolve the dispute through collaborative negotiation;
  - (b) if the dispute is not resolved through collaborative negotiation within 15 Business Days of the dispute arising, the parties must then attempt to resolve the dispute through mediation under the rules of the British Columbia Mediator Roster Society; and
  - (c) if the dispute is not resolved through mediation within 30 Business Days of the commencement of mediation, the dispute must be referred to and finally resolved by arbitration under the *Commercial Arbitration Act*.

### Location of arbitration or mediation

- 12.2 Unless the parties otherwise agree in writing, an arbitration or mediation under section 12.1 will be held in Victoria, British Columbia.

### Costs of arbitration or mediation

- 12.3 Unless the parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the parties must share equally the costs of a arbitration or mediation under section 12.1 other than those costs relating to the production of expert evidence or representation by counsel.

## 13 MISCELLANEOUS

### Delivery of notices

- 13.1 Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows:
- (a) by fax to the addressee's fax number specified on the first page of this Agreement, in which case it will be deemed to be received on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a Business Day, in which cases it will be deemed to be received on the next following Business Day;
  - (b) by hand to the addressee's address specified on the first page of this Agreement, in which case it will be deemed to be received on the day of its delivery; or
  - (c) by prepaid post to the addressee's address specified on the first page of this Agreement, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing.

### Change of address or fax number

- 13.2 Either party may from time to time give notice to the other party of a substitute address or fax number, which from the date such notice is given will supersede for purposes of section 13.1 any previous address or fax number specified for the party giving the notice.

### Assignment

- 13.3 The Contractor must not assign any of the Contractor's rights under this Agreement without the Province's prior written consent.

## Subcontracting

- 13.4. The Contractor must not subcontract any of the Contractor's obligations under this Agreement to any person without the Province's prior written consent, excepting persons listed in the attached Schedule C. No subcontract, whether consented to or not, relieves the Contractor from any obligations under this Agreement. The Contractor must ensure that:
- (a) any person retained by the Contractor to perform obligations under this Agreement; and
  - (b) any person retained by a person described in paragraph (a) to perform those obligations fully complies with this Agreement in performing the subcontracted obligations.

## Waiver

- 13.5 A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving party and is not a waiver of any other term or breach.

## Modifications

- 13.6 No modification of this Agreement is effective unless it is in writing and signed by, or on behalf of, the parties.

## Entire agreement

- 13.7 This Agreement (including any modification of it) constitutes the entire agreement between the parties as to performance of the Services.

## Survival of certain provisions

- 13.8 Sections 2.9, 3.1 to 3.4, 3.7, 3.8, 5.1 to 5.5, 6.1 to 6.5, 7.1, 7.2, 8.1, 9.1 to 9.6, 9.9, 10.1 to 10.3, 11.2, 11.3, 11.5, 11.6, 12.1 to 12.3, 13.1, 13.2, 13.8, and 13.10, any accrued but unpaid payment obligations, and any other sections of this Agreement (including schedules) which, by their terms or nature, are intended to survive the completion of the Services or termination of this Agreement, will continue in force indefinitely, even after this Agreement ends.

## Schedules

- 13.9 The schedules to this Agreement (including any appendices or other documents attached to, or incorporated by reference into, those schedules) are part of this Agreement.

## Independent contractor

- 13.10 In relation to the performance of the Contractor's obligations under this Agreement, the Contractor is an independent contractor and not:
- (a) an employee or partner of the Province; or
  - (b) an agent of the Province except as may be expressly provided for in this Agreement.

The Contractor must not act or purport to act contrary to this section.

## Personnel not to be employees of Province

- 13.11 The Contractor must not do anything that would result in personnel hired or used by the Contractor or a Subcontractor in relation to providing the Services being considered employees of the Province.

#### Key Personnel

- 13.12 If one or more individuals are specified as "Key Personnel" of the Contractor in Part 4 of Schedule A, the Contractor must cause those individuals to perform the Services on the Contractor's behalf, unless the Province otherwise approves in writing, which approval must not be unreasonably withheld.

#### Pertinent information

- 13.13 The Province must make available to the Contractor all information in the Province's possession which the Province considers pertinent to the performance of the Services.

#### Conflict of interest

- 13.14 The Contractor must not provide any services to any person in circumstances which, in the Province's reasonable opinion, could give rise to a conflict of interest between the Contractor's duties to that person and the Contractor's duties to the Province under this Agreement.

#### Time

- 13.15 Time is of the essence in this Agreement and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.

#### Conflicts among provisions

- 13.16 Conflicts among provisions of this Agreement will be resolved as follows:
- (a) a provision in the body of this Agreement will prevail over any conflicting provision in, attached to or incorporated by reference into a schedule, unless that conflicting provision expressly states otherwise; and
  - (b) a provision in a schedule will prevail over any conflicting provision in a document attached to, or incorporated by reference into a schedule, unless the schedule expressly states otherwise.

#### Agreement not permit nor fetter

- 13.17 This Agreement does not operate as a permit, license, approval or other statutory authority which the Contractor may be required to obtain from the Province or any of its agencies in order to provide the Services. Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province or its agencies of any statutory, prerogative, executive or legislative power or duty.

#### Remainder not affected by invalidity

- 13.18 If any provision of this Agreement or the application of it 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 and will be valid and enforceable to the extent permitted by law.

#### Further assurances

- 13.19 Each party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.

#### Additional terms

- 13.20 Any additional terms set out in the attached Schedule F apply to this Agreement.



Governing law

13.21 This Agreement is governed by, and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.

**14 INTERPRETATION**

14.1 In this Agreement:

- (a) "includes" and "including" are not intended to be limiting;
- (b) unless the context otherwise requires, references to sections by number are to sections of this Agreement;
- (c) the Contractor and the Province are referred to as "the parties" and each of them as a "party";
- (d) "attached" means attached to this Agreement when used in relation to a schedule;
- (e) unless otherwise specified, a reference to a statute by name means the statute of British Columbia by that name, as amended or replaced from time to time;
- (f) the headings have been inserted for convenience of reference only and are not intended to describe, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (g) "person" includes an individual, partnership, corporation or legal entity of any nature; and
- (h) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*.

**15 EXECUTION AND DELIVERY OF AGREEMENT**

15.1 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of, each party and that executed copy being delivered to the other party by a method provided for in section 13.1 or any other method agreed to by the parties.

The parties have executed this Agreement as follows:

<p>SIGNED on the ____ day of _____, 2012 by the Contractor (or, if not an individual, on its behalf by its authorized signatory or signatories):</p>  <p>_____ Signature(s)</p> <p>_____ Print Name(s)</p> <p>_____ Print Title(s)</p>	<p>SIGNED on the ____ day of _____, 2012 on behalf of the Province by its duly authorized representative:</p>  <p>_____ Signature</p> <p>_____ Print Name</p> <p>_____ Print Title</p>
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**Schedule A – Services**

**PART 1. TERM:**

The term of this Agreement commences on 5 March 2012 and ends on 31 March 2013.

**PART 2. SERVICES:**

The Province has established the Provincial Laboratory Information Solution (PLIS) as a central repository, or database, of laboratory test results ordered by health care providers in British Columbia. Under Section 3 of the British Columbia E-Health Act, PLIS has been designated a health information bank.

The Contractor operates medical laboratories in British Columbia, which produce diagnostic laboratory test results for patients resident in British Columbia. Test results are usually produced in response to a requisition from a physician. Order in Council number 341, approved July 21, 2011, prescribed the Contractor as a person for the purpose of section 6 of the E-Health Act. As per Section 6 of the Act, a prescribed person to whom a request is made (by a person authorized under a designation order) to provide information or records that contain personal health information must comply with the request in the manner and at the times requested if the information or records are in the custody or under the control of the prescribed person.

The purpose of this General Services Agreement is to compensate the Contractor for providing the services necessary to enable the Contractor to comply with a request to provide information via an electronic interface between the Contractor’s systems and PLIS. The services the Contractor will provide under this General Services Agreement do not include ongoing provision of the requested information but simply the establishment of the means to electronically provide the information.

The Contractor will not contribute to the development of any system owned by the Province.

The Services comprise of the following:

- The development of a Technical Solution enabling the automated, ongoing delivery of in-scope laboratory test results to PLIS from the Contractor’s medical laboratories in British Columbia.
- The Contractor’s development of the deliverables described in this Schedule (the “**Deliverables**”). The Contractor will use its best commercial efforts to deliver each Deliverable to the Province on or before the target completion date specified for that deliverable.

**Outputs**

The Contractor must deliver the Deliverables listed below.

<b>Deliverable</b>	<b>Target Completion Date</b>
Project Charter Sign-Off (attached for reference)	March 5, 2012
Gate 1 Deliverables	July 8, 2012
<ul style="list-style-type: none"> <li>▪ Nomenclature Mapping Table, to be developing used Nomenclature Automated Mapping Assistant (NAMA) Tool</li> <li>▪ Logical Observation Identifiers Names and Codes (LOINC) Encoding</li> <li>▪ Lab HL7 2.3.1 Standard Message Map (ORM/ORU)</li> </ul>	
Gate 2 Deliverables	September 9, 2012

- Technical Solution to deliver HL7 2.3.1 messages to PLIS

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Gate 3 Deliverables

October 28, 2012

- Network and Systems Connectivity
- Point of Service Integration Appliance (POSIA) Integration, Test Data Development

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Gate 4 Deliverables

January 18, 2013

- Test Plan Development, Execution and Results
  - Clinical Data Validation Sign-Off
  - Privacy and Security Compliance Gap Analyses
  - Production Turn-Over Documentation
- 

The Contractor will make reasonable efforts to determine the mutual requirements of the Province and the Contractor regarding the purpose, format, length and content of each Deliverable through preliminary review with the Province of the Deliverable's table of contents and outlines of the main sections prior to commencing work on the Deliverable.

The Province commits to receive, review in a timely manner (i.e. ten (10) business days), and approve and/or accept each deliverable as furnished by the Contractor. If a deliverable reasonably requires remediation following review, the Province commits to providing specific instruction regarding the nature of the required remediation and to allowing a period of ten (10) business days for such remediation to be performed by the Contractor. Once remediation is complete, the deliverable will once again be submitted to the Province for review and approval, such approval not to be unreasonably withheld. Deliverables that are not reviewed in a timely manner, and for which no request for extension of the review period is made, will be deemed accepted at the end of the review period.

### **Inputs**

The Contractor must:

1. Provide the necessary qualified personnel to provide the services as well as any associated work space, tools and supplies as necessary to complete the specified Deliverables.

The Province will:

1. Provide direction as required and clarification on relevant issues.
2. Ensure the timely completion of any Province deliverables upon which the Contractor may be dependent for the completion of the Contractor's Deliverables.
3. Provide background material and other documentation as required in support of services.
4. Review, comment and sign-off on all Deliverables.

### **Outcomes**

Through the delivery of the Services the Province wishes to realize the following outcomes and, without limiting the obligation of the Contractor to comply with other provisions of this Part, the Contractor must use commercially reasonable efforts to achieve them:

- The establishment of an interface between the Contractor and lab systems and PLIS that, once implemented, will enable the electronic provision of lab results from the Contractor to PLIS.

The parties acknowledge that the Contractor does not warrant that these outcomes will be achieved.

**Reporting requirements**

The Contractor will report to the Contractor Administrator, or to individuals designated by the Contract Administrator, on the status of all Deliverables on a monthly basis using a mutually agreed to template.

**PART 3. RELATED DOCUMENTATION:**

Not applicable

**PART 4 KEY PERSONNEL:**

Krystyna Hommen

## Schedule B – Fees and Expenses

### 1. MAXIMUM AMOUNT PAYABLE:

**Maximum Amount:** Despite sections 2 and 3 of this Schedule, \$ 378,220 is the maximum amount which the Province is obliged to pay to the Contractor for fees and expenses under this Agreement (exclusive of any applicable taxes described in section 3.1(c) of this Agreement).

### 2. FEES:

#### Rate per Deliverable

The Province will pay the Contractor one-time fee payments upon the completion and acceptance of each deliverable, payable as follows:

Deliverable	Percent of Total Fees	Payment
Project Charter Sign-Off	25.00%	94,555.00
Gate 1 Deliverables	25.00%	94,555.00
Gate 2 Deliverables	15.00%	56,733.00
Gate 3 Deliverables	15.00%	56,733.00
Gate 4 Deliverables	20.00%	75,644.00

### 3. EXPENSES:

#### Expenses:

None.

### 4. STATEMENTS OF ACCOUNT:

**Statements of Account:** In order to obtain payment of any fees and expenses under this Agreement for a period described in section 2 of this Schedule (each a "Billing Period"), the Contractor must deliver to the Province on a date after the Billing Period (each a "Billing Date"), a written statement of account in a form satisfactory to the Province containing:

- (a) the Contractor's legal name and address;
- (b) the date of the statement, and the Billing Period to which the statement pertains;  
the Contractor's calculation of all fees claimed for that Billing Period, including a declaration by the Contractor of all deliverables provided during the Billing Period for which the Contractor claims fees and a description of the applicable fee rates;
- (c) a chronological listing, in reasonable detail, of any expenses claimed by the Contractor for the Billing Period with receipts attached, if applicable, and, if the Contractor is claiming reimbursement of any HST or other applicable taxes paid or payable by the Contractor in relation to those expenses, a description of any credits, rebates, refunds or remissions the Contractor is entitled to from the relevant taxation authorities in relation to those taxes;
- (d) the Contractor's calculation of any applicable taxes payable by the Province in relation to the Services for the Billing Period;
- (e) a description of this Agreement;

- (f) a statement number for identification; and
- (g) any other billing information reasonably requested by the Province.

**5. PAYMENTS DUE:**

**Payments Due:** Within 30 days of the Province's receipt of the Contractor's written statement of account delivered in accordance with this Schedule, the Province must pay the Contractor the fees and expenses (plus all applicable taxes), claimed in the statement if they are in accordance with this Schedule. Statements of account or contract invoices offering an early payment discount may be paid by the Province as required to obtain the discount.

**Schedule C – Approved Subcontractor(s)**

Excelleris Technologies Limited Partnership.  
201-4445 Lougheed Highway,  
Burnaby BC V5C 0E4  
Key personnel: Krystyna Hommen  
Phone: 604 658 2103  
email: khommen@excelleris.com

## Schedule D – Insurance

1. The Contractor must, without limiting the Contractor's obligation or liabilities and at the Contractor's own expense, purchase and maintain throughout the Term the following insurances with insurers licensed in Canada in forms and amounts acceptable to the Province:
  - (a) Commercial General Liability in an amount not less than \$2,000,000 inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this Agreement and this insurance must:
    - (i) include the Province as an additional insured,
    - (ii) be endorsed to provide the Province with 30 days advance written notice of cancellation or material change, and
    - (iii) include a cross liability clause; and
  - (b) Professional Errors and Omissions Liability insuring the Contractor's liability resulting from errors or omissions in the performance of the Services in an amount per occurrence, and in the aggregate, calculated as follows:
    - (i) not less than \$1,000,000, if the "Maximum Amount" set out in Schedule B is less than \$500,000; and
    - (ii) not less than \$2,000,000, if the "Maximum Amount" set out in Schedule B is \$500,000 or greater.
2. All insurance described in section 1 of this Schedule must:
  - (a) be primary; and
  - (b) not require the sharing of any loss by any insurer of the Province.
3. The Contractor must provide the Province with evidence of all required insurance as follows:
  - (a) within 10 Business Days of commencement of the Services, the Contractor must provide to the Province evidence of all required insurance in the form of a completed Province of British Columbia Certificate of Insurance;
  - (b) if any required insurance policy expires before the end of the Term, the Contractor must provide, within 10 Business Days of the policy's expiration, evidence of a new or renewal policy meeting the requirements of the expired insurance in the form of a completed Province of British Columbia Certificate of Insurance; and
  - (c) despite paragraph (a) or (b) above, if requested by the Province at any time, the Contractor must provide to the Province certified copies of the required insurance policies.
4. Despite section 1(b) of this Schedule, if in the Province's sole discretion, the Province has approved in writing either a fronted self-insurance program or a duly licensed captive insurer as an alternative to the Professional Liability Insurance requirement set out in section 1(b), then the Contractor must maintain throughout the Term that alternative in accordance with the terms of the approval.



## Schedule E – Privacy Protection Schedule

### Definitions

1. In this Schedule,
  - (a) “access” means disclosure by the provision of access;
  - (b) “Act” means the *Freedom of Information and Protection of Privacy Act*;
  - (c) “contact information” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
  - (d) “personal information” means recorded information about an identifiable individual, other than contact information, collected or created by the Contractor as a result of the Agreement or any previous agreement between the Province and the Contractor dealing with the same subject matter as the Agreement but excluding any such information that, if this Schedule did not apply to it, would not be under the “control of a public body” within the meaning of the Act.

### Purpose

2. The purpose of this Schedule is to:
  - (a) enable the Province to comply with the Province's statutory obligations under the Act with respect to personal information; and
  - (b) ensure that, as a service provider, the Contractor is aware of and complies with the Contractor's statutory obligations under the Act with respect to personal information.

### Collection of personal information

3. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor may only collect or create personal information that is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
4. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor must collect personal information directly from the individual the information is about.
5. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor must tell an individual from whom the Contractor collects personal information:
  - (a) the purpose for collecting it;
  - (b) the legal authority for collecting it; and
  - (c) the title, business address and business telephone number of the person designated by the Province to answer questions about the Contractor's collection of personal information.

### Accuracy of personal information

6. The Contractor must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Contractor or the Province to make a decision that directly affects the individual the information is about.

### **Requests for access to personal information**

7. If the Contractor receives a request for access to personal information from a person other than the Province, the Contractor must promptly advise the person to make the request to the Province unless the Agreement expressly requires the Contractor to provide such access and, if the Province has advised the Contractor of the name or title and contact information of an official of the Province to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

### **Correction of personal information**

8. Within 5 Business Days of receiving a written direction from the Province to correct or annotate any personal information, the Contractor must annotate or correct the information in accordance with the direction.
9. When issuing a written direction under section 8, the Province must advise the Contractor of the date the correction request to which the direction relates was received by the Province in order that the Contractor may comply with section 10.
10. Within 5 Business Days of correcting or annotating any personal information under section 8, the Contractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Province, the Contractor disclosed the information being corrected or annotated.
11. If the Contractor receives a request for correction of personal information from a person other than the Province, the Contractor must promptly advise the person to make the request to the Province and, if the Province has advised the Contractor of the name or title and contact information of an official of the Province to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

### **Protection of personal information**

12. The Contractor must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

### **Storage and access to personal information**

13. Unless the Province otherwise directs in writing, the Contractor must not store personal information outside Canada or permit access to personal information from outside Canada.

### **Retention of personal information**

14. Unless the Agreement otherwise specifies, the Contractor must retain personal information until directed by the Province in writing to dispose of it or deliver it as specified in the direction.

### **Use of personal information**

15. Unless the Province otherwise directs in writing, the Contractor may only use personal information if that use is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.

### **Disclosure of personal information**

16. Unless the Province otherwise directs in writing, the Contractor may only disclose personal information inside Canada to any person other than the Province if the disclosure is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
17. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor must not disclose personal information outside Canada.

### **Notice of foreign demands for disclosure**

18. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.2 of the Act, if in relation to personal information in the custody or under the control of the Contractor, the Contractor:
  - (a) receives a foreign demand for disclosure;
  - (b) receives a request to disclose, produce or provide access that the Contractor knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
  - (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure

the Contractor must immediately notify the Province and, in so doing, provide the information described in section 30.2(3) of the Act. In this section, the phrases "foreign demand for disclosure" and "unauthorized disclosure of personal information" will bear the same meanings as in section 30.2 of the Act.

### **Notice of unauthorized disclosure**

19. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.5 of the Act, if the Contractor knows that there has been an unauthorized disclosure of personal information in the custody or under the control of the Contractor, the Contractor must immediately notify the Province. In this section, the phrase "unauthorized disclosure of personal information" will bear the same meaning as in section 30.5 of the Act.

### **Inspection of personal information**

20. In addition to any other rights of inspection the Province may have under the Agreement or under statute, the Province may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect any personal information in the possession of the Contractor or any of the Contractor's information management policies or practices relevant to the Contractor's management of personal information or the Contractor's compliance with this Schedule and the Contractor must permit, and provide reasonable assistance to, any such inspection.

### **Compliance with the Act and directions**

21. The Contractor must in relation to personal information comply with:
  - (a) the requirements of the Act applicable to the Contractor as a service provider, including any applicable order of the commissioner under the Act; and
  - (b) any direction given by the Province under this Schedule.

22. The Contractor acknowledges that it is familiar with the requirements of the Act governing personal information that are applicable to it as a service provider.

#### **Notice of non-compliance**

23. If for any reason the Contractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Contractor must promptly notify the Province of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

#### **Termination of Agreement**

24. In addition to any other rights of termination which the Province may have under the Agreement or otherwise at law, the Province may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Contractor, terminate the Agreement by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

#### **Interpretation**

25. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
26. Any reference to the "Contractor" in this Schedule includes any subcontractor or agent retained by the Contractor to perform obligations under the Agreement and the Contractor must ensure that any such subcontractors and agents comply with this Schedule.
27. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.
28. If a provision of the Agreement (including any direction given by the Province under this Schedule) conflicts with a requirement of the Act or an applicable order of the commissioner under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
29. The Contractor must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to section 30, the law of any jurisdiction outside Canada.
30. Nothing in this Schedule requires the Contractor to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the Act.

## Schedule F – Additional Terms

### 1 Definitions (Article 1 of the Main Body of this Agreement)

1.1 For greater certainty, and notwithstanding section 1.1 of the main body of this Agreement, in this Agreement:

- (a) "Incorporated Material", "Material" and "Produced Material" do not include any laboratory test results.
- (b) "Produced Material" does not include any part of the Technical Solution.

1.2 In this Schedule F and in Schedule A,

- (a) "Clinical Data Validation" means verification of data accuracy and completeness of laboratory data presented through the eHealth Viewer when compared by the Contractor to the same data on the hard copy of the laboratory data, and on the Excelleris Technologies viewer;
- (b) "Excelleris Technologies" means Excelleris Technologies Limited Partnership, a Subcontractor;
- (c) "Information Sharing Agreement" means the information sharing agreement to be entered into between the Province and the Contractor, on terms acceptable to the Province and the Contractor, relating to the provision of laboratory test results by the Contractor to PLIS;
- (d) "Project Charter" means the iEHR-PLIS Community Laboratories Onboarding Project Charter, Version 1.0, dated February 21, 2012 (attached for reference purposes);
- (e) "PLIS" means the Provincial Laboratory Information Solution, a computer system of the Province that has been established as a central repository of laboratory test results ordered by health care practitioners in British Columbia; and
- (f) "Technical Solution" means the software applications and computer programs owned or licensed by the Contractor or Excelleris Technologies which are to be used by the Contractor or Excelleris Technologies for the automated, ongoing submission of laboratory test results to PLIS, including without limitation:
  - (i) any new software or systems produced by the Contractor or Excelleris Technologies, whether or not produced as a result of this Agreement, for use on or with the systems of the Contractor or Excelleris Technologies; and
  - (ii) any internal policies, procedures or similar documents relating to the Technical Solution or its use or operation, whether or not produced by the Contractor or Excelleris Technologies as a result of this Agreement.

### 2 Services (Article 2 of the Main Body of this Agreement)

2.1 Due to the collaborative nature of the project undertaken under this Agreement, the Province waives the right to give the Contractor directions under section 2.6 of the main body of this Agreement.

**3 Representations and Warranties (Article 4 of the Main Body of this Agreement)**

3.1 The Province and the Contractor agree that section 4.1(a)(i) of the main body of this Agreement is deleted.

**4 Privacy and Security (Sections 5.1 and 5.2 of the Main Body of this Agreement)**

4.1 For greater certainty, and notwithstanding sections 5.1 and 5.2 of the main body of this Agreement and Schedules E and G and Appendix G.1, the Province and the Contractor agree that:

- (a) As background, the Technical Solution will enable the delivery of laboratory test results from the Contractor to the Province using a secure connection from Excelleris Technologies to the PLIS Point of Service Integration Appliance ("POSIA").
- (b) Laboratory test results and other personal information collected or generated by the Contractor are in the custody and control of the Contractor and/or Excelleris Technologies, under the *Personal Information Protection Act* ("PIPA"), and are not in the custody or under the control of the Province. Schedules E and G and Appendix G.1 do not apply to any such laboratory test results and other personal information.
- (c) When a copy of a laboratory test result or other personal information passes through the secure connection from Excelleris Technologies to the POSIA, that copy is then in the custody or under the control of the Province, under the *Freedom of Information and Protection of Privacy Act* ("FOIPPA") and the *E-Health (Personal Health Information Access and Protection of Privacy) Act* ("e-Health Act"), and that copy is not in the custody or under the control of the Contractor.
- (d) Clinical Data Validation activities (and possibly certain other activities) require that the Contractor and Excelleris Technologies be given limited eHealth Viewer access to certain personal information on PLIS, in addition to the laboratory test results and other personal information provided to the Province by the Contractor and/or Excelleris Technologies. Schedules E and G and Appendix G.1 apply only in relation to personal information on PLIS which is accessed by the Contractor or Excelleris Technologies.
- (e) The Information Sharing Agreement will reflect the principles described in this section 4.1. The Deliverables and other project documents which are to be developed under the Project Charter will also reflect the principles described in this section 4.1.

4.2 Section 5.2(a) does not apply to any Incorporated Material or any other item or portion of the Material which is owned by the Contractor or Excelleris Technologies.

**5 Confidentiality (Section 5.3 of the Main Body of this Agreement)**

5.1 In this Agreement,

- (a) "**Confidential Information**" of the Province shall mean any technical, business, financial, personal, employee, operational, scientific or other information or data of the Province or of any person that has disclosed such information to the Province or its agents that, at the time of disclosure (i) is designated as confidential (or like designation) (ii) is disclosed in circumstances of confidence, or (iii) would be understood by a person exercising reasonable business judgment to be confidential. Without limiting the foregoing, Province Confidential Information shall include, without limitation,

- (i) the Produced Materials,
- (ii) the Received Materials that the Contractor receives from the Province,
- (iii) any personal information obtained from the Province in any way, including from PLIS or any other data repository of the Province, and
- (iv) any information regarding the Province's business, plans, operations, facilities and markets,

but for greater certainty does not include the Technical Solution.

(b) **"Confidential Information"** of the Contractor shall mean any technical, business, financial, personal, employee, operational, scientific or other information or data of the Contractor or Excelleris Technologies, or of any person that has disclosed such information to the Contractor or Excelleris Technologies, that is supplied to, obtained by, or that comes to the knowledge of the Province as a result of this Agreement and that, at the time of disclosure (i) is designated as confidential (or like designation) (ii) is disclosed in circumstances of confidence, or (iii) would be understood by a person exercising reasonable business judgment to be confidential. Without limiting the foregoing, Contractor Confidential Information shall include, without limitation,

- (i) any personal information obtained from the Contractor or Excelleris, except to the extent provided under the Information Sharing Agreement, and
- (ii) any information regarding the Contractor's or Excelleris Technologies' business, plans, operations, facilities and markets,

Notwithstanding the foregoing, the "Contractor Confidential Information" will exclude all Province Confidential Information, whether or not expressly indicated for exclusion.

5.2 Each of the Parties agrees that all Confidential Information of the other Party, will be received in the strictest of confidence and held in accordance with and subject to the terms of this Agreement and with a degree of care no less than the degree of care that the receiving Party employs for the protection of its own Confidential Information of a similar nature provided that in any event the receiving Party shall use a reasonable degree of care to protect such Confidential Information appropriate to the nature of the information and in accordance with prudent industry practice.

5.3 Subject to section 5.1 of the main body of this Agreement and all other obligations set forth in this Agreement, a Party may use or disclose relevant aspects of another party's Confidential Information to:

- (a) the extent reasonable necessary to perform its obligations and exercise its rights under this Agreement; and
- (b) to its employees, contractors, professional advisors and agents to the extent such disclosure and use thereof is reasonably necessary for the performance of the receiving Party's rights or obligations under this Agreement and provided that such persons and their employees have an actual need to know such information.

5.4 Subject to section 5.1 of the main body of this Agreement, the obligations of confidentiality contained in this section 5 of Schedule F shall not apply to any information to the extent a Party can reasonably demonstrate that such information:

- (a) was, at the time of disclosure to the receiving Party, in the public domain;
- (b) after disclosure to the receiving Party, is published or otherwise becomes part of the public domain through no fault of the receiving Party;
- (c) was in the possession of the receiving Party at the time of disclosure to it and was not subject of a pre-existing confidentiality obligation;
- (d) was disclosed independently to the receiving Party by a third party without any confidentiality obligations, provided such third party, or any other party from whom such third party receives such information, is not in breach of any confidentiality obligations in respect of such information;
- (e) was independently developed by the receiving Party without use of any Confidential Information of the other Party;
- (f) is disclosed with the prior written approval of the other Party, but only to the extent approved by the other Party; or
- (g) is Contractor Confidential Information and such information is required to be disclosed by the Province under the *Freedom of Information and Protection of Privacy Act* (British Columbia).

5.5 Subject to section 5.1 of the main body of this Agreement, a Party shall not be considered to have breached its confidentiality obligations under this section 5 of Schedule F for disclosing any Confidential Information of the other Party to the extent such disclosure is required by applicable law provided that the Party requested to make such disclosure (the “**Compelled Party**”):

- (a) Promptly upon receiving any such request and within a reasonable time prior to disclosure notifies the other Party of the terms and circumstances of the requested disclosure;
- (b) Consults with the other Party regarding the nature and scope of such request and the response or other position the Compelled Party intends to take with respect to such request;
- (c) Does not obstruct or interfere and to the extent practical permits the other Party to obtain a protective order or other remedy to prevent, object to, enjoin, narrow the scope of or otherwise contest the requested disclosure;
- (d) If the other Party is unable to obtain a protective order or other remedy, the Compelled Party shall only disclose such of the Confidential Information that it is legally required to disclose; and
- (e) Make and reasonably pursues a request, that is reasonable and customary in the circumstances, to the applicable governmental authority for confidential treatment of the information to be disclosed to such governmental authority.

5.6 Nothing in this section 5 of Schedule F shall be construed as obligating a Party to disclose its Confidential Information to the other Party or as granting or conferring on a Party, expressly or impliedly, any right, title or interest or any license to the Confidential Information of the other Party.



5.7 Each Party shall:

- (a) Notify the other Party of any material unauthorized possession, use or knowledge, or attempt to effect the same, of the other Party's Confidential Information by any person that may be become known to such Party;
- (b) Promptly furnish to the other Party details of the unauthorized possession, use or knowledge, or attempt to effect the same, and use reasonable efforts to assist the other Party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt to effect the same, of the other Party's Confidential Information;
- (c) Use reasonable efforts to cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its proprietary rights and Confidential Information; and
- (d) Promptly use reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of the other Party's Confidential Information.

The party whose Confidential Information is the subject of such activity will reimburse any out-of-pocket expenses reasonably incurred by the other Party as a result of compliance with this section 5.7 of Schedule F.

5.8 Subject to applicable laws including the *Crown Proceeding Act* (British Columbia), in the event of any breach or anticipated breach of this section 5 of Schedule F, the non-defaulting Party shall be entitled to preliminary and permanent injunctive relief as well as an equitable accounting of all profits and benefits arising out of such violation, which remedy shall be in addition to any other rights or remedies to which such Party may be entitled under this Agreement or otherwise under applicable laws.

5.9 Section 5.3 of the main body of this Agreement is hereby deleted and replaced with Article 5 of this Schedule F.

## **6 Material and Intellectual Property (Article 6 of the Main Body of this Agreement)**

6.1 Section 6.1 of the main body of this Agreement does not apply to any Incorporated Material or any other item or portion of the Material which is owned by the Contractor or Excelleris Technologies.

6.2 Notwithstanding any other provision of this Agreement, the Contractor and/or Excelleris Technologies exclusively own all property rights, including all intellectual property rights, in the Technical Solution.

6.3 Notwithstanding sections 6.2, 6.3 and 6.5 of the main body of this Agreement, the Province grants to the Contractor and to Excelleris Technologies:

- (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, modify and distribute the Produced Material and the Received Material,
- (b) the right to sublicense to third-parties the right to use, reproduce, modify and distribute the Produced Material and the Received Material,

for the following purposes:

- (c) for the purpose of operating and maintaining the Technology Solution,

- (d) for the purpose of delivering laboratory test results under the Information Sharing Agreement, and
- (e) for purposes incidental to those described in subsections (d) and (e).

**7 Audit (Article 8 of the Main Body of this Agreement)**

7.1 The Province agrees that it will only exercise its rights under section 8.1 of the main body of this Agreement if it has reasonable cause for doing so.

**8 Indemnity and Insurance (Article 9 of the Main Body of this Agreement)**

8.1 Notwithstanding sections 9.1 and 9.5 of the main body of this Agreement, the obligations of the Contractor under those sections are limited to:

- (a) claims which arise directly from any breach of any of the terms of this Agreement by Contractor or any Subcontractor; or
- (b) any claim that the Produced Material infringes the third-party intellectual property rights of a third party (except if the third party claim results from an element of the Produced Material which was included at the request of the Province).

8.2 The parties agree that section 9.2 is deleted and replaced by the following. The indemnification by the Contractor pursuant to section 9.1 of the main body is limited to an amount equal to the fees paid or payable by the Province under this Agreement.

8.3 Notwithstanding any other provision of this Agreement, the entire liability of the Contractor and the other members of the Contractor Team, and the Province's exclusive remedies, arising under or in connection with this Agreement or the Services shall be strictly limited as set out in this Article 8. The limitations of liability set out in this Article 8 shall apply regardless of the form of claim or action and whether the liability is based on breach or rescission of contract (including fundamental breach or breach of a fundamental term), restitution, tort (including negligence), breach of trust or fiduciary duty or otherwise, and if based in contract, regardless of whether the alleged breach is a breach of a condition or a fundamental term or constitutes a fundamental breach of this Agreement. The Province acknowledges that the Contractor has agreed to the pricing and other terms of this Agreement in reliance on the limitations of liability set out in this Article 8, which are an essential basis of the bargain between the parties.

8.4 The members of the Contractor Team (other than Contractor) are intended third party beneficiaries of this Article 8. For the purpose of this Article 8, "Contractor Team" means the Contractor and Excelleris Technologies and its partners, and their directors, officers, employees, subcontractors and suppliers.

**9 [Intentionally Deleted]**

9.1 [Intentionally deleted.]

**10 Insurance (Schedule D)**

10.1 For greater certainty, the Professional Errors and Omissions Liability insurance required under Section 1(d) of Schedule D is for errors and omissions in the development of the Produced Material, and not for (a) errors and omissions in or relating to laboratory test results, or (b) the delivery of laboratory test results to the Province.

## **11 Security (Schedule G)**

11.1 Notwithstanding section 4 of Schedule G or section 5 of Appendix G1, the Contractor is not required to conduct criminal history checks on Services Workers as defined in Schedule G.

## **12 Additional Terms**

12.1 The Province and the Contractor acknowledge and agree that the Contractor will not supply any laboratory test results, including laboratory test results for Clinical Data Validation, to the Province under this Agreement until the Information Sharing Agreement has been executed.

12.2 The Province and the Contractor acknowledge and agree that the services the Contractor will provide under this Agreement do not include ongoing provision of laboratory test results but simply the establishment of the means to electronically provide the information.

## **13 General**

13.1 In addition to section 13.1 of the main body of this Agreement, the General Services Agreement may be entered into by each party signing and delivering it to the other party by email.

13.2 The Project Charter is not a part of this Agreement, and is simply attached for reference.

13.3 In addition to section 13.8 of the main body of this Agreement, Articles 4 to 12 of this Schedule F will survive the expiration or earlier termination of this Agreement and will continue in force indefinitely.

13.4 Contractor Identification – During the term of this agreement and at the request of the Province, contractors shall identify themselves as contractors to the ministry. This may be in the form of email signature blocks, business cards, correspondence, verbal business dealings and any other identification required by the Province.

## Schedule G – Security Schedule

### Definitions

1. In this Schedule,
  - (a) "Equipment" means any equipment, including interconnected systems or subsystems of equipment, software and networks, used or to be used by the Contractor to provide the Services;
  - (b) "Facilities" means any facilities at which the Contractor provides or is to provide the Services;
  - (c) "Information" means information
    - (i) in the Material, or
    - (ii) accessed, produced or obtained by the Contractor (whether verbally, electronically or otherwise) as a result of the Agreement;
  - (d) "Record" means a "record" as defined in the *Interpretation Act*;
  - (e) "Sensitive Information" means
    - (i) Information that is "personal information" as defined in the *Freedom of Information and Protection of Privacy Act*, or
    - (ii) any other Information specified as "Sensitive Information" in Appendix G6, if attached;
  - (f) "Services Worker" means an individual involved in providing the Services for or on behalf of the Contractor and, for greater certainty, may include
    - (i) the Contractor or a subcontractor if an individual, or
    - (ii) an employee or volunteer of the Contractor or of a subcontractor.

### Schedule contains additional obligations

2. The obligations of the Contractor in this Schedule are in addition to any other obligation in the Agreement or the schedules attached to it relating to security including, without limitation, the obligations of the Contractor in the Privacy Protection Schedule, if attached.

### Services Worker confidentiality agreements

3. The Contractor must not permit a Services Worker who is an employee or volunteer of the Contractor to have access to Sensitive Information unless the Services Worker has first entered into a confidentiality agreement with the Contractor to keep Sensitive Information confidential on substantially similar terms as those that apply to the Contractor under the Agreement.

### Services Worker security screening

4. The Contractor may only permit a Services Worker who is an employee or a volunteer of the Contractor to have access to Sensitive Information or otherwise be involved in providing the Services if, after having subjected the Services Worker to the personnel security screening requirements set out in Appendix G1 and any additional requirements the Contractor may consider appropriate, the Contractor is satisfied that the Services Worker does not constitute an unreasonable security risk. The Contractor must create, obtain and

retain Records documenting the Contractor's compliance with the security screening requirements set out in Appendix G1 in accordance with the provisions of that appendix.

### **Services Worker activity logging**

5. Subject to section 6, the Contractor must create and maintain detailed Records logging the activities of all Service Workers in relation to:
  - (a) their access to Sensitive Information; and
  - (b) other matters specified by the Province in writing for the purposes of this section.
6. The Records described in section 5 must be made and maintained in a manner, and contain information, specified in Appendix G2, if attached.

### **Facilities and Equipment protection and access control**

7. The Contractor must create, maintain and follow a documented process to:
  - (a) protect Facilities and Equipment of the Contractor required by the Contractor to provide the Services from loss, damage or any other occurrence that may result in any of those Facilities and Equipment being unavailable when required to provide the Services; and
  - (b) limit access to Facilities and Equipment of the Contractor
    - (i) being used by the Contractor to provide the Services, or
    - (ii) that may be used by someone to access Information

to those persons who are authorized to have that access and for the purposes for which they are authorized, which process must include measures to verify the identity of those persons.
8. If the Province makes available to the Contractor any Facilities or Equipment of the Province for the use of the Contractor in providing the Services, the Contractor must comply with any policies and procedures provided to it by the Province on acceptable use, protection of, and access to, such Facilities or Equipment.

### **Sensitive Information access control**

9. The Contractor must:
  - (a) create, maintain and follow a documented process for limiting access to Sensitive Information to those persons who are authorized to have that access and for the purposes for which they are authorized, which process must include measures to verify the identity of those persons; and
  - (b) comply with the information access control requirements set out in Appendix G3, if attached.

### **Integrity of Information**

10. The Contractor must:
  - (a) create, maintain and follow a documented process for maintaining the integrity of Information while possessed or accessed by the Contractor; and
  - (b) comply with the information integrity requirements set out in Appendix G4, if attached.
11. For the purposes of section 10, maintaining the integrity of Information means that, except to the extent expressly authorized by the Agreement or approved in writing by the Province, the Information has:
  - (a) remained as complete as when it was acquired or accessed by the Contractor; and

- (b) not been altered in any material respect.

#### **Documentation of changes to processes**

- 12. The Contractor must create and maintain detailed Records logging any changes it makes to the processes described in sections 7, 9 and 10.

#### **Notice of security breaches**

- 13. If Contractor becomes aware that:
  - (a) unauthorized access, collection, use, disclosure, alteration or disposal of Information or Records containing Information; or
  - (b) unauthorized access to Facilities or Equipment

has occurred or is likely to occur (whether or not related to a failure by the Contractor to comply with this Schedule or the Agreement), the Contractor must immediately notify the Province of the particulars of that occurrence or likely occurrence. If the Contractor provides a notification under this section other than in writing, that notification must be confirmed in writing to the Province as soon as it is reasonably practicable for the Contractor to do so.

#### **Review of security breaches**

- 14. If the Province decides to conduct a review of a matter described in section 13 (whether or not the matter came to the attention of the Province as a result of a notification under section 13), the Contractor must, on the request of the Province, participate in the review to the extent that it is reasonably practicable for the Contractor to do so.

#### **Retention of Records**

- 15. Unless the Agreement otherwise specifies, the Contractor must retain all Records in the Contractor's possession that contain Information until directed by the Province in writing to dispose of them or deliver them as specified in the direction.

#### **Storage of Records**

- 16. Until disposed of or delivered in accordance with section 15, the Contractor must store any Records in the Contractor's possession that contain Information in accordance with the provisions of Appendix G5, if attached.

#### **Audit**

- 17. In addition to any other rights of inspection the Province may have under the Agreement or under statute, the Province may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect and, at the Province's discretion, copy:
  - (a) any Records in the possession of the Contractor containing Information; or
  - (b) any of the Contractor's Information management policies or processes (including the processes described in sections 7, 9 and 10 and the logs described in sections 5 and 12) relevant to the Contractor's compliance with this Schedule

and the Contractor must permit, and provide reasonable assistance to, the exercise by the Province of the Province's rights under this section.

## Termination of Agreement

18. In addition to any other rights of termination which the Province may have under the Agreement or otherwise at law, the Province may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Contractor, terminate the Agreement by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

## Interpretation

19. In this Schedule, unless otherwise specified:
  - (a) references to sections are to sections of this Schedule; and
  - (b) references to appendices are to the appendices attached to this Schedule.
20. Any reference to the "Contractor" in this Schedule includes any subcontractor retained by the Contractor to perform obligations under the Agreement and the Contractor must ensure that any such subcontractors comply with this Schedule.
21. The appendices attached to this Schedule are part of this Schedule.
22. If there is a conflict between a provision in an appendix attached to this Schedule and any other provision of this Schedule, the provision in the appendix is inoperative to the extent of the conflict unless the appendix states that it operates despite a conflicting provision of this Schedule.
23. If there is a conflict between:
  - (a) a provision of the Agreement, this Schedule or an appendix attached to this Schedule; and
  - (b) a documented process required by this Schedule to be created or maintained by the Contractorthe provision of the Agreement, Schedule or appendix will prevail to the extent of the conflict.
24. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.

**SCHEDULE G – Appendix G1 – Security screening requirements**

The personnel security screening requirements set out in this Appendix G1 are for the purpose of assisting the Contractor determine whether or not a Services Worker constitutes an unreasonable security risk.

**Verification of name, date of birth and address**

- The Contractor must verify the name, date of birth and current address of a Services Worker by viewing at least one piece of “primary identification” of the Services Worker and at least one piece of “secondary identification” of the Services Worker,\* as described in the table following this section. The Contractor must obtain or create, as applicable, Records of all such verifications and retain a copy of those Records. For a Services Worker from another province or jurisdiction, reasonably equivalent identification documents are acceptable.

Primary Identification	Secondary Identification
<p><b>Issued by ICBC:</b></p> <ul style="list-style-type: none"> <li>• B.C. driver’s licence or learner’s licence (must have photo)</li> <li>• B.C. Identification (BCID) card</li> </ul> <p><b>Issued by provincial or territorial government:</b></p> <ul style="list-style-type: none"> <li>• Canadian birth certificate</li> </ul> <p><b>Issued by Government of Canada:</b></p> <ul style="list-style-type: none"> <li>• Canadian Citizenship Card</li> <li>• Permanent Resident Card</li> <li>• Canadian Record of Landing/Canadian Immigration Identification Record</li> </ul>	<ul style="list-style-type: none"> <li>• School ID card (student card)</li> <li>• Bank card (only if holder’s name is on card)</li> <li>• Credit card (only if holder’s name is on card)</li> <li>• Passport</li> <li>• Foreign birth certificate (a baptismal certificate is not acceptable)</li> <li>• Canadian or U.S. driver’s licence</li> <li>• Naturalization certificate</li> <li>• Canadian Forces identification</li> <li>• Police identification</li> <li>• Foreign Affairs Canada or consular identification</li> <li>• Vehicle registration (only if owner’s signature is shown)</li> <li>• Picture employee ID card</li> <li>• Firearms Acquisition Certificate</li> <li>• Social Insurance Card (only if has signature strip)</li> <li>• B.C. CareCard</li> <li>• Native Status Card</li> <li>• Parole Certificate ID</li> <li>• Correctional Service Conditional Release Card</li> </ul>

\*It is not necessary that each piece of identification viewed by the Contractor contains the name, date of birth and current address of the Services Worker. It is sufficient that, in combination, the identification viewed contains that information.

**Verification of education and professional qualifications**

- The Contractor must verify, by reasonable means, any relevant education and professional qualifications of a Services Worker, obtain or create, as applicable, Records of all such verifications, and retain a copy of those Records.



### **Verification of employment history and reference checks**

3. The Contractor must verify, by reasonable means, any relevant employment history of a Services Worker, which will generally consist of the Contractor requesting that a Services Worker provide employment references and the Contractor contacting those references. If a Services Worker has no relevant employment history, the Contractor must seek to verify the character or other relevant personal characteristics of the Services Worker by requesting the Services Worker to provide one or more personal references and contacting those references. The Contractor must obtain or create, as applicable, Records of all such verifications and retain a copy of those Records.

### **Security interview**

4. The Contractor must allow the Province to conduct a security-focused interview with a Services Worker if the Province identifies a reasonable security concern and notifies the Contractor it wishes to do so.

### **Criminal history check**

5. The Contractor must arrange for and retain documented results of a criminal history check on a Services Worker obtained through the Services Worker's local policing agency. Criminal history checks must be repeated as necessary to ensure that at all times the most recent criminal history check on a Services Worker was completed within the previous five years.



Governing law

13.21 This Agreement is governed by, and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.

14 INTERPRETATION

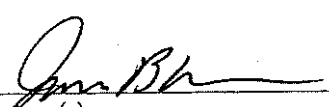
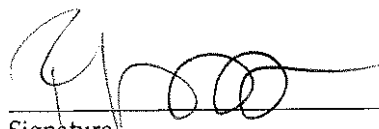
14.1 In this Agreement:

- (a) "includes" and "including" are not intended to be limiting;
- (b) unless the context otherwise requires, references to sections by number are to sections of this Agreement;
- (c) the Contractor and the Province are referred to as "the parties" and each of them as a "party";
- (d) "attached" means attached to this Agreement when used in relation to a schedule;
- (e) unless otherwise specified, a reference to a statute by name means the statute of British Columbia by that name, as amended or replaced from time to time;
- (f) the headings have been inserted for convenience of reference only and are not intended to describe, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (g) "person" includes an individual, partnership, corporation or legal entity of any nature; and
- (h) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*.

15 EXECUTION AND DELIVERY OF AGREEMENT

15.1 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of, each party and that executed copy being delivered to the other party by a method provided for in section 13.1 or any other method agreed to by the parties.

The parties have executed this Agreement as follows:

<p>SIGNED on the ____ day of <u>February</u>, 2012 by the Contractor (or, if not an individual, on its behalf by its authorized signatory or signatories):</p> <p> _____ Signature(s)</p> <p><u>James B Cupples</u> _____ Print Name(s)</p> <p><u>President BC Biomedical Laboratories</u> _____ Print Title(s)</p>	<p>SIGNED on the <u>29</u> day of <u>February</u>, 2012 on behalf of the Province by its duly authorized representative:</p> <p> _____ Signature</p> <p><u>Paul Shrimpton</u> _____ Print Name</p> <p><u>Executive Director</u> _____ Print Title</p> <p><u>Ministry of Health</u></p>
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# INFORMATION TECHNOLOGY & MANAGEMENT CONSULTING PROFESSIONAL SERVICES AGREEMENT



<i>For Administrative Purposes Only</i>	
<p>Ministry Contract No.: _____</p> <p>Requisition No.: _____</p> <p>Solicitation No. (if applicable): _____</p> <p>Commodity Code: _____</p> <p><b>Contractor Information</b></p> <p>Supplier Name: <u>Valley Medical Laboratories</u> <u>Partnership</u></p> <p>Supplier No.: _____</p> <p>Telephone No.: <u>250-763-4813</u></p> <p>E-mail Address: _____ S. 22 _____</p> <p>Website: _____</p>	<p><b>Financial Information</b></p> <p>Client: _____ 026</p> <p>Responsibility Centre _____ 66202</p> <p>Service Line: _____ 44005</p> <p>STOB: _____ 6309</p> <p>Project: _____ 66K429C</p> <p><i>Template version: June 14, 2011</i></p>

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**SCHEDULE G – SECURITY SCHEDULE**



THIS AGREEMENT is dated for reference the 20<sup>th</sup> day of February, 2012.

BETWEEN:

Valley Medical Laboratories Partnership (the "Contractor") with the following specified address and fax number:  
105 – 537 Leon Ave.  
Kelowna, BC V1Y 6J5  
Fax: (250) 862-2843

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by Minister of Health (the "Province") with the following specified address and fax number:  
2<sup>nd</sup> Floor, 1515 Blanshard St  
Victoria BC V8W 3C8  
Fax Number: 250-952-1186

The Province wishes to retain the Contractor to provide the services specified in Schedule A and, in consideration for the remuneration set out in Schedule B, the Contractor has agreed to provide those services, on the terms and conditions set out in this Agreement.

As a result, the Province and the Contractor agree as follows:

## 1 DEFINITIONS

### General

1.1 In this Agreement, unless the context otherwise requires:

- (a) "Business Day" means a day, other than a Saturday or Sunday, on which Provincial government offices are open for normal business in British Columbia;
- (b) "Incorporated Material" means any material in existence prior to the start of the Term or developed independently of this Agreement, and that is incorporated or embedded in the Produced Material by the Contractor or a Subcontractor;
- (c) "Material" means the Produced Material and the Received Material;
- (d) "Produced Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are produced by the Contractor or a Subcontractor and includes the Incorporated Material;
- (e) "Received Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are received by the Contractor or a Subcontractor from the Province or any other person;
- (f) "Services" means the services described in Part 2 of Schedule A;
- (g) "Subcontractor" means a person described in paragraph (a) or (b) of section 13.4; and
- (h) "Term" means the term of the Agreement described in Part 1 of Schedule A subject to that term ending earlier in accordance with this Agreement.

### Meaning of "record"

1.2 The definition of "record" in the *Interpretation Act* is incorporated into this Agreement and "records" will bear a corresponding meaning.

## 2 SERVICES

### Provision of services

2.1 The Contractor must provide the Services in accordance with this Agreement.

### Term

2.2 Regardless of the date of execution or delivery of this Agreement, the Contractor must provide the Services during the Term.

### Supply of various items

2.3 Unless the parties otherwise agree in writing, the Contractor must supply and pay for all labour, materials, equipment, tools, facilities, approvals and licenses necessary or advisable to perform the Contractor's obligations under this Agreement, including the license under section 6.4.

### Standard of care

2.4 Unless otherwise specified in this Agreement, the Contractor must perform the Services to a standard of care, skill, and diligence maintained by persons providing, on a commercial basis, services similar to the Services.

### Standards in relation to persons performing Services

2.5 The Contractor must ensure that all persons employed or retained to perform the Services are qualified and competent to perform them and are properly trained, instructed and supervised.

### Instructions by Province

2.6 The Province may from time to time give the Contractor reasonable instructions (in writing or otherwise) as to the performance of the Services. The Contractor must comply with those instructions but, unless otherwise specified in this Agreement, the Contractor may determine the manner in which the instructions are carried out.

### Confirmation of non-written instructions

2.7 If the Province provides an instruction under section 2.6 other than in writing, the Contractor may request that the instruction be confirmed by the Province in writing, which request the Province must comply with as soon as it is reasonably practicable to do so.

### Effectiveness of non-written instructions

2.8 Requesting written confirmation of an instruction under section 2.7 does not relieve the Contractor from complying with the instruction at the time the instruction was given.

### Applicable laws

2.9 In the performance of the Contractor's obligations under this Agreement, the Contractor must comply with all applicable laws.

### 3 PAYMENT.

#### Fees and expenses

3.1 If the Contractor complies with this Agreement, then the Province must pay to the Contractor at the times and on the conditions set out in Schedule B:

- (a) the fees described in that Schedule;
- (b) the expenses, if any, described in that Schedule if they are supported, where applicable, by proper receipts and, in the Province's opinion, are necessarily incurred by the Contractor in providing the Services; and
- (c) any applicable taxes payable by the Province under law or agreement with the relevant taxation authorities on the fees and expenses described in paragraphs (a) and (b).

The Province is not obliged to pay to the Contractor more than the "Maximum Amount" specified in Schedule B on account of fees and expenses.

#### Statements of accounts

3.2 In order to obtain payment of any fees and expenses under this Agreement, the Contractor must submit to the Province a written statement of account in a form satisfactory to the Province upon completion of the Services or at other times described in Schedule B.

#### Withholding of amounts

3.3 Without limiting section 9.1, the Province may withhold from any payment due to the Contractor an amount sufficient to indemnify in whole or in part the Province and its employees and agents against any liens or other third-party claims that have arisen or could arise in connection with the provision of the Services. An amount withheld under this section must be promptly paid by the Province to the Contractor upon the basis for withholding the amount having been fully resolved to the satisfaction of the Province.

#### Appropriation

3.4 The Province's obligation to pay money to the Contractor is subject to the *Financial Administration Act*, which makes that obligation subject to an appropriation being available in the fiscal year of the Province during which payment becomes due.

#### Currency

3.5 Unless otherwise specified in this Agreement, all references to money are to Canadian dollars.

#### Non-resident income tax

3.6 If the Contractor is not a resident in Canada, the Contractor acknowledges that the Province may be required by law to withhold income tax from the fees described in Schedule B and then to remit that tax to the Receiver General of Canada on the Contractor's behalf.

#### Prohibition against committing money

3.7 Without limiting section 13.10(a), the Contractor must not in relation to performing the Contractor's obligations under this Agreement commit or purport to commit the Province to pay any money except as may be expressly provided for in this Agreement.

## Refunds of taxes

3.8 The Contractor must:

- (a) apply for, and use reasonable efforts to obtain, any available refund, credit, rebate or remission of federal, provincial or other tax or duty imposed on the Contractor as a result of this Agreement that the Province has paid or reimbursed to the Contractor or agreed to pay or reimburse to the Contractor under this Agreement; and
- (b) immediately on receiving, or being credited with, any amount applied for under paragraph (a), remit that amount to the Province.

## 4 REPRESENTATIONS AND WARRANTIES

4.1 As at the date this Agreement is executed and delivered by, or on behalf of, the parties, the Contractor represents and warrants to the Province as follows:

- (a) except to the extent the Contractor has previously disclosed otherwise in writing to the Province,
  - (i) all information, statements, documents and reports furnished or submitted by the Contractor to the Province in connection with this Agreement (including as part of any competitive process resulting in this Agreement being entered into) are in all material respects true and correct,
  - (ii) the Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable the Contractor to fully perform the Services, and
  - (iii) the Contractor holds all permits, licenses, approvals and statutory authorities issued by any government or government agency that are necessary for the performance of the Contractor's obligations under this Agreement; and
- (b) if the Contractor is not an individual,
  - (i) the Contractor has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on behalf of, the Contractor, and
  - (ii) this Agreement has been legally and properly executed by, or on behalf of, the Contractor and is legally binding upon and enforceable against the Contractor in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency or other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

## 5 PRIVACY, SECURITY AND CONFIDENTIALITY

### Privacy

5.1 The Contractor must comply with the Privacy Protection Schedule attached as Schedule E.

### Security

5.2 The Contractor must:

- (a) make reasonable security arrangements to protect the Material from unauthorized access, collection, use, disclosure, alteration or disposal; and
- (b) comply with the Security Schedule attached as Schedule G.

## Confidentiality

- 5.3 The Contractor must treat as confidential all information in the Material and all other information accessed or obtained by the Contractor or a Subcontractor (whether verbally, electronically or otherwise) as a result of this Agreement, and not permit its disclosure or use without the Province's prior written consent except:
- (a) as required to perform the Contractor's obligations under this Agreement or to comply with applicable laws;
  - (b) if it is information that is generally known to the public other than as result of a breach of this Agreement; or
  - (c) if it is information in any Incorporated Material.

## Public announcements

- 5.4 Any public announcement relating to this Agreement will be arranged by the Province and, if such consultation is reasonably practicable, after consultation with the Contractor.

## Restrictions on promotion

- 5.5 The Contractor, must not, without the prior written approval of the Province, refer for promotional purposes to the Province being a customer of the Contractor or the Province having entered into this Agreement.

## 6 MATERIAL AND INTELLECTUAL PROPERTY

### Access to Material

- 6.1 If the Contractor receives a request for access to any of the Material from a person other than the Province, and this Agreement does not require or authorize the Contractor to provide that access, the Contractor must promptly advise the person to make the request to the Province.

### Ownership and delivery of Material

- 6.2 The Province exclusively owns all property rights in the Material which are not intellectual property rights. The Contractor must deliver any Material to the Province immediately upon the Province's request.

### Matters respecting intellectual property

- 6.3 The Province exclusively owns all intellectual property rights, including copyright, in:
- (a) Received Material that the Contractor receives from the Province; and
  - (b) Produced Material, other than any Incorporated Material.

Upon the Province's request, the Contractor must deliver to the Province documents satisfactory to the Province that irrevocably waive in the Province's favour any moral rights which the Contractor (or employees of the Contractor) or a Subcontractor (or employees of a Subcontractor) may have in the Produced Material and that confirm the vesting in the Province of the copyright in the Produced Material, other than any Incorporated Material.

#### Rights in relation to Incorporated Material

- 6.4 Upon any Incorporated Material being embedded or incorporated in the Produced Material and to the extent that it remains so embedded or incorporated, the Contractor grants to the Province:
- (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, modify and distribute that Incorporated Material; and
  - (b) the right to sublicense to third-parties the right to use, reproduce, modify and distribute that Incorporated Material.

#### Right of Province to negotiate license of Produced Material

- 6.5 After the end of the Term, the Province in its sole discretion, may negotiate with the Contractor to provide the Contractor a license (which may be exclusive or non-exclusive) for the Contractor to use, reproduce, modify or distribute some or all of the Produced Material.

### 7 RECORDS AND REPORTS

#### Work reporting

- 7.1 Upon the Province's request, the Contractor must fully inform the Province of all work done by the Contractor or a Subcontractor in connection with providing the Services.

#### Time and expense records

- 7.2 If Schedule B provides for the Contractor to be paid fees at a daily or hourly rate or for the Contractor to be paid or reimbursed for expenses, the Contractor must maintain time records and books of account, invoices, receipts and vouchers of expenses in support of those payments, in form and content satisfactory to the Province. Unless otherwise specified in this Agreement, the Contractor must retain such documents for a period of not less than seven years after this Agreement ends.

### 8 AUDIT

- 8.1 In addition to any other rights of inspection the Province may have under statute or otherwise, the Province may at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect and, at the Province's discretion, copy any of the Material and the Contractor must permit, and provide reasonable assistance to, the exercise by the Province of the Province's rights under this section.

### 9 INDEMNITY AND INSURANCE

#### Indemnity

- 9.1 The Contractor must indemnify and save harmless the Province and the Province's employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that the Province or any of the Province's employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, including any claim of infringement of third-party intellectual property rights, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission by the Contractor or by any of the Contractor's agents, employees, officers, directors or Subcontractors in connection with this Agreement (each a "Loss"), excepting always liability arising out of the independent acts or omissions of the Province and the Province's employees and agents.

#### Monetary limitations of indemnity

- 9.2 The indemnification by the Contractor pursuant to section 9.1 is limited to:
- (a) S. 17, S. 21 per Loss; and

- (b) S. 17, S. 21 in the aggregate for all Losses.

#### Exceptions to monetary limitations

- 9.3 The limitations set out in section 9.2 do not apply to a Loss resulting from any of the following:
- (a) bodily injury or damage to real property or tangible personal property;
  - (b) a claim of infringement of third-party intellectual property rights; or
  - (c) a breach of section 5.1, 5.2, 5.3 or 6.1 of this Agreement.

#### Province to notify Contractor of Loss

- 9.4 To claim indemnification for a Loss pursuant to section 9.1, the Province must notify the Contractor in writing of the Loss as soon as reasonably practicable after the Province becomes aware of the Loss provided that a failure by the Province to provide such notification will not invalidate the claim unless the Contractor is materially prejudiced by that failure.

#### Third-party intellectual property infringement claims

- 9.5 If the Loss is on the basis of a third-party claim that any element of the Material infringes the intellectual property rights of any person,
- (a) then the Contractor must defend the Province against that claim at the Contractor's expense and the Contractor must pay all associated costs, damages and legal fees that a court or arbitrator finally awards or are included in a settlement agreed to by the Contractor; and
  - (b) the Province must cooperate with the Contractor in the defence of the claim and, where appropriate in the discretion of the Province, will allow the Contractor to appoint and instruct counsel and otherwise control the defence and any related settlement negotiations.

#### Insurance

- 9.6 The Contractor must comply with the Insurance Schedule attached as Schedule D.

#### Workers compensation

- 9.7 Without limiting the generality of section 2.9, the Contractor must comply with, and must ensure that any Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under this Agreement, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions.

#### Personal optional protection

- 9.8 The Contractor must apply for and maintain personal optional protection insurance (consisting of income replacement and medical care coverage) during the Term at the Contractor's expense if:
- (a) the Contractor is an individual or a partnership of individuals and does not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act* or similar laws in other jurisdictions; and
  - (b) such personal optional protection insurance is available for the Contractor from WorkSafeBC or other sources.

#### Evidence of coverage

- 9.9 Within 10 Business Days of being requested to do so by the Province, the Contractor must provide the Province with evidence of the Contractor's compliance with sections 9.7 and 9.8.

## 10 FORCE MAJEURE

### Definitions relating to force majeure

10.1 In this section and sections 10.2 and 10.3:

(a) "Event of Force Majeure" means one of the following events:

- (i) a natural disaster, fire, flood, storm, epidemic or power failure,
- (ii) a war (declared and undeclared), insurrection or act of terrorism or piracy,
- (iii) a strike (including illegal work stoppage or slowdown) or lockout, or
- (iv) a freight embargo

if the event prevents a party from performing the party's obligations in accordance with this Agreement and is beyond the reasonable control of that party; and

(b) "Affected Party" means a party prevented from performing the party's obligations in accordance with this Agreement by an Event of Force Majeure.

### Consequence of Event of Force Majeure

10.2 An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party's obligations under this Agreement resulting from an Event of Force Majeure and any time periods for the performance of such obligations are automatically extended for the duration of the Event of Force Majeure provided that the Affected Party complies with the requirements of section 10.3.

### Duties of Affected Party

10.3 An Affected Party must promptly notify the other party in writing upon the occurrence of the Event of Force Majeure and make all reasonable efforts to prevent, control or limit the effect of the Event of Force Majeure so as to resume compliance with the Affected Party's obligations under this Agreement as soon as possible.

## 11 DEFAULT AND TERMINATION

### Definitions relating to default and termination

11.1 In this section and sections 11.2 to 11.4:

(a) "Event of Default" means any of the following:

- (i) an Insolvency Event,
- (ii) the Contractor fails to perform any of the Contractor's obligations under this Agreement, or
- (iii) any representation or warranty made by the Contractor in this Agreement is untrue or incorrect; and

(b) "Insolvency Event" means any of the following:

- (i) an order is made, a resolution is passed or a petition is filed, for the Contractor's liquidation or winding up,
- (ii) the Contractor commits an act of bankruptcy, makes an assignment for the benefit of the Contractor's creditors or otherwise acknowledges the Contractor's insolvency,
- (iii) a bankruptcy petition is filed or presented against the Contractor or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Contractor,
- (iv) a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act* (Canada),



- (v) a receiver or receiver-manager is appointed for any of the Contractor's property, or
- (vi) the Contractor ceases, in the Province's reasonable opinion, to carry on business as a going concern.

#### Province's options on default

- 11.2 On the happening of an Event of Default, or at any time thereafter, the Province may, at its option, elect to do any one or more of the following:
- (a) by written notice to the Contractor, require that the Event of Default be remedied within a time period specified in the notice;
  - (b) pursue any remedy or take any other action available to it at law or in equity; or
  - (c) by written notice to the Contractor, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under section 11.2(a).

#### Delay not a waiver

- 11.3 No failure or delay on the part of the Province to exercise its rights in relation to an Event of Default will constitute a waiver by the Province of such rights.

#### Province's right to terminate other than for default

- 11.4 In addition to the Province's right to terminate this Agreement under section 11.2(c) on the happening of an Event of Default, the Province may terminate this Agreement for any reason by giving at least 10 days' written notice of termination to the Contractor.

#### Payment consequences of termination

- 11.5 Unless Schedule B otherwise provides, if the Province terminates this Agreement under section 11.4:
- (a) the Province must, within 30 days of such termination, pay to the Contractor any unpaid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that was completed to the Province's satisfaction before termination of this Agreement; and
  - (b) the Contractor must, within 30 days of such termination, repay to the Province any paid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that the Province has notified the Contractor in writing was not completed to the Province's satisfaction before termination of this Agreement.

#### Discharge of liability

- 11.6 The payment by the Province of the amount described in section 11.5(a) discharges the Province from all liability to make payments to the Contractor under this Agreement.

#### Notice in relation to Events of Default

- 11.7 If the Contractor becomes aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, the Contractor must promptly notify the Province of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps the Contractor proposes to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps the Contractor proposes to take to prevent the occurrence of the anticipated Event of Default.

## 12 DISPUTE RESOLUTION

### Dispute resolution process

- 12.1 In the event of any dispute between the parties arising out of or in connection with this Agreement, the following dispute resolution process will apply unless the parties otherwise agree in writing:
- (a) the parties must initially attempt to resolve the dispute through collaborative negotiation;
  - (b) if the dispute is not resolved through collaborative negotiation within 15 Business Days of the dispute arising, the parties must then attempt to resolve the dispute through mediation under the rules of the British Columbia Mediator Roster Society; and
  - (c) if the dispute is not resolved through mediation within 30 Business Days of the commencement of mediation, the dispute must be referred to and finally resolved by arbitration under the *Commercial Arbitration Act*.

### Location of arbitration or mediation

- 12.2 Unless the parties otherwise agree in writing, an arbitration or mediation under section 12.1 will be held in Victoria, British Columbia.

### Costs of arbitration or mediation

- 12.3 Unless the parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the parties must share equally the costs of a arbitration or mediation under section 12.1 other than those costs relating to the production of expert evidence or representation by counsel.

## 13 MISCELLANEOUS

### Delivery of notices

- 13.1 Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows:
- (a) by fax to the addressee's fax number specified on the first page of this Agreement, in which case it will be deemed to be received on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a Business Day, in which cases it will be deemed to be received on the next following Business Day;
  - (b) by hand to the addressee's address specified on the first page of this Agreement, in which case it will be deemed to be received on the day of its delivery; or
  - (c) by prepaid post to the addressee's address specified on the first page of this Agreement, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing.

### Change of address or fax number

- 13.2 Either party may from time to time give notice to the other party of a substitute address or fax number, which from the date such notice is given will supersede for purposes of section 13.1 any previous address or fax number specified for the party giving the notice.

### Assignment

- 13.3 The Contractor must not assign any of the Contractor's rights under this Agreement without the Province's prior written consent.

### Subcontracting

- 13.4. The Contractor must not subcontract any of the Contractor's obligations under this Agreement to any person without the Province's prior written consent, excepting persons listed in the attached Schedule C. No subcontract, whether consented to or not, relieves the Contractor from any obligations under this Agreement. The Contractor must ensure that:
- (a) any person retained by the Contractor to perform obligations under this Agreement; and
  - (b) any person retained by a person described in paragraph (a) to perform those obligations fully complies with this Agreement in performing the subcontracted obligations.

### Waiver

- 13.5 A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving party and is not a waiver of any other term or breach.

### Modifications

- 13.6 No modification of this Agreement is effective unless it is in writing and signed by, or on behalf of, the parties.

### Entire agreement

- 13.7 This Agreement (including any modification of it) constitutes the entire agreement between the parties as to performance of the Services.

### Survival of certain provisions

- 13.8 Sections 2.9, 3.1 to 3.4, 3.7, 3.8, 5.1 to 5.5, 6.1 to 6.5, 7.1, 7.2, 8.1, 9.1 to 9.6, 9.9, 10.1 to 10.3, 11.2, 11.3, 11.5, 11.6, 12.1 to 12.3, 13.1, 13.2, 13.8, and 13.10, any accrued but unpaid payment obligations, and any other sections of this Agreement (including schedules) which, by their terms or nature, are intended to survive the completion of the Services or termination of this Agreement, will continue in force indefinitely, even after this Agreement ends.

### Schedules

- 13.9 The schedules to this Agreement (including any appendices or other documents attached to, or incorporated by reference into, those schedules) are part of this Agreement.

### Independent contractor

- 13.10 In relation to the performance of the Contractor's obligations under this Agreement, the Contractor is an independent contractor and not:
- (a) an employee or partner of the Province; or
  - (b) an agent of the Province except as may be expressly provided for in this Agreement.

The Contractor must not act or purport to act contrary to this section.

### Personnel not to be employees of Province

- 13.11 The Contractor must not do anything that would result in personnel hired or used by the Contractor or a Subcontractor in relation to providing the Services being considered employees of the Province.

#### Key Personnel

- 13.12 If one or more individuals are specified as "Key Personnel" of the Contractor in Part 4 of Schedule A, the Contractor must cause those individuals to perform the Services on the Contractor's behalf, unless the Province otherwise approves in writing, which approval must not be unreasonably withheld.

#### Pertinent information

- 13.13 The Province must make available to the Contractor all information in the Province's possession which the Province considers pertinent to the performance of the Services.

#### Conflict of interest

- 13.14 The Contractor must not provide any services to any person in circumstances which, in the Province's reasonable opinion, could give rise to a conflict of interest between the Contractor's duties to that person and the Contractor's duties to the Province under this Agreement.

#### Time

- 13.15 Time is of the essence in this Agreement and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.

#### Conflicts among provisions

- 13.16 Conflicts among provisions of this Agreement will be resolved as follows:
- (a) a provision in the body of this Agreement will prevail over any conflicting provision in, attached to or incorporated by reference into a schedule, unless that conflicting provision expressly states otherwise; and
  - (b) a provision in a schedule will prevail over any conflicting provision in a document attached to, or incorporated by reference into a schedule, unless the schedule expressly states otherwise.

#### Agreement not permit nor fetter

- 13.17 This Agreement does not operate as a permit, license, approval or other statutory authority which the Contractor may be required to obtain from the Province or any of its agencies in order to provide the Services. Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province or its agencies of any statutory, prerogative, executive or legislative power or duty.

#### Remainder not affected by invalidity

- 13.18 If any provision of this Agreement or the application of it 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 and will be valid and enforceable to the extent permitted by law.

#### Further assurances

- 13.19 Each party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.

#### Additional terms

- 13.20 Any additional terms set out in the attached Schedule F apply to this Agreement.

Governing law

13.21 This Agreement is governed by, and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.

14 INTERPRETATION

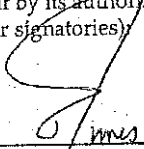
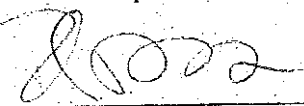
14.1 In this Agreement:

- (a) "includes" and "including" are not intended to be limiting;
- (b) unless the context otherwise requires, references to sections by number are to sections of this Agreement;
- (c) the Contractor and the Province are referred to as "the parties" and each of them as a "party";
- (d) "attached" means attached to this Agreement when used in relation to a schedule;
- (e) unless otherwise specified, a reference to a statute by name means the statute of British Columbia by that name, as amended or replaced from time to time;
- (f) the headings have been inserted for convenience of reference only and are not intended to describe, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (g) "person" includes an individual, partnership, corporation or legal entity of any nature; and
- (h) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*.

15 EXECUTION AND DELIVERY OF AGREEMENT

15.1 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of, each party and that executed copy being delivered to the other party by a method provided for in section 13.1 or any other method agreed to by the parties.

The parties have executed this Agreement as follows:

<p>SIGNED on the <u>28</u> day of <u>FEB</u>, 2012 by the Contractor (or, if not an individual, on its behalf by its authorized signatory or signatories)</p> <p></p> <p>Signature(s)</p> <p><u>Dr. DUNCAN INNES</u></p> <p>Print Name(s)</p> <p><u>DIRECTOR</u></p> <p>Print Title(s)</p> <p><u>VALLEY MEDICAL LABORATORIES</u></p>	<p>SIGNED on the <u>25</u> day of <u>Feb</u>, 2012 on behalf of the Province by its duly authorized representative:</p> <p></p> <p>Signature</p> <p><u>Paul Shrimpton</u></p> <p>Print Name</p> <p><u>Executive Director</u></p> <p>Print Title</p> <p><u>Ministry of Health</u></p>
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**Schedule A – Services**

**PART 1. TERM:**

The term of this Agreement commences on 5 March 2012 and ends on 31 March 2013.

**PART 2. SERVICES:**

The Province has established the Provincial Laboratory Information Solution (PLIS) as a central repository, or database, of laboratory test results ordered by health care providers in British Columbia. Under Section 3 of the British Columbia E-Health Act, PLIS has been designated a health information bank.

The Contractor operates medical laboratories in British Columbia, which produce diagnostic laboratory test results for patients resident in British Columbia. Test results are usually produced in response to a requisition from a physician. Order in Council number 341, approved July 21, 2011, prescribed the Contractor as a person for the purpose of section 6 of the E-Health Act. As per Section 6 of the Act, a prescribed person to whom a request is made (by a person authorized under a designation order) to provide information or records that contain personal health information must comply with the request in the manner and at the times requested if the information or records are in the custody or under the control of the prescribed person.

The purpose of this General Services Agreement is to compensate the Contractor for providing the services necessary to enable the Contractor to comply with a request to provide information via an electronic interface between the Contractor's systems and PLIS. The services the Contractor will provide under this General Services Agreement do not include ongoing provision of the requested information but simply the establishment of the means to electronically provide the information.

The Contractor will not contribute to the development of any system owned by the Province.

The Services comprise of the following:

- The development of a Technical Solution enabling the automated, ongoing delivery of in-scope laboratory test results to PLIS from the Contractor's medical laboratories in British Columbia.
- The Contractor's development of the deliverables described in this Schedule (the "Deliverables"). The Contractor will use its best commercial efforts to deliver each Deliverable to the Province on or before the target completion date specified for that deliverable.

**Outputs**

The Contractor must deliver the Deliverables listed below.

Deliverable	Target Completion Date
Project Charter Sign-Off (attached for reference)	March 5, 2012
Gate 1 Deliverables	July 8, 2012
<ul style="list-style-type: none"> <li>• Nomenclature Mapping Table, to be developing used Nomenclature Automated Mapping Assistant (NAMA) Tool</li> <li>• Logical Observation Identifiers Names and Codes (LOINC) Encoding</li> <li>• Lab HL7 2.3.1 Standard Message Map (ORM/ORU)</li> </ul>	
Gate 2 Deliverables	September 9, 2012

<ul style="list-style-type: none"> <li>• Technical Solution to deliver HL7 2.3.1 messages to PLIS</li> </ul>	October 28, 2012
<p>Gate 3 Deliverables</p> <ul style="list-style-type: none"> <li>• Network and Systems Connectivity</li> <li>• Point of Service Integration Appliance (POSIA) Integration, Test Data Development</li> </ul>	
<p>Gate 4 Deliverables</p> <ul style="list-style-type: none"> <li>• Test Plan Development, Execution and Results</li> <li>• Clinical Data Validation Sign-Off</li> <li>• Privacy and Security Compliance Gap Analyses</li> <li>• Production Turn-Over Documentation</li> </ul>	January 18, 2013

The Contractor will make reasonable efforts to determine the mutual requirements of the Province and the Contractor regarding the purpose, format, length and content of each Deliverable through preliminary review with the Province of the Deliverable's table of contents and outlines of the main sections prior to commencing work on the Deliverable.

The Province commits to receive, review in a timely manner (i.e. ten (10) business days), and approve and/or accept each deliverable as furnished by the Contractor. If a deliverable reasonably requires remediation following review, the Province commits to providing specific instruction regarding the nature of the required remediation and to allowing a period of ten (10) business days for such remediation to be performed by the Contractor. Once remediation is complete, the deliverable will once again be submitted to the Province for review and approval, such approval not to be unreasonably withheld. Deliverables that are not reviewed in a timely manner, and for which no request for extension of the review period is made, will be deemed accepted at the end of the review period.

### Inputs

The Contractor must:

1. Provide the necessary qualified personnel to provide the services as well as any associated work space, tools and supplies as necessary to complete the specified Deliverables.

The Province will:

1. Provide direction as required and clarification on relevant issues.
2. Ensure the timely completion of any Province deliverables upon which the Contractor may be dependent for the completion of the Contractor's Deliverables.
3. Provide background material and other documentation as required in support of services.
4. Review, comment and sign-off on all Deliverables.

### Outcomes

Through the delivery of the Services the Province wishes to realize the following outcomes and, without limiting the obligation of the Contractor to comply with other provisions of this Part, the Contractor must use commercially reasonable efforts to achieve them:

- The establishment of an interface between the Contractor and lab systems and PLIS that, once implemented, will enable the electronic provision of lab results from the Contractor to PLIS.

The parties acknowledge that the Contractor does not warrant that these outcomes will be achieved.

**Reporting requirements**

The Contractor will report to the Contractor Administrator, or to individuals designated by the Contract Administrator, on the status of all Deliverables on a monthly basis using a mutually agreed to template.

**PART 3. RELATED DOCUMENTATION:**

Not applicable

**PART 4 KEY PERSONNEL:**

Krystyna Hommen



**Schedule B – Fees and Expenses**

**1. MAXIMUM AMOUNT PAYABLE:**

**Maximum Amount:** Despite sections 2 and 3 of this Schedule, \$ 106,543 is the maximum amount which the Province is obliged to pay to the Contractor for fees and expenses under this Agreement (exclusive of any applicable taxes described in section 3.1(c) of this Agreement).

**2. FEES:**

**Rate per Deliverable**

The Province will pay the Contractor one-time fee payments upon the completion and acceptance of each deliverable, payable as follows:

Deliverable	Percent of Total Fees	Payment
Project Charter Sign-Off	25.00%	26,636.00
Gate 1 Deliverables	25.00%	26,636.00
Gate 2 Deliverables	15.00%	15,981.00
Gate 3 Deliverables	15.00%	15,981.00
Gate 4 Deliverables	20.00%	21,309.00

**3. EXPENSES:**

**Expenses:**

None.

**4. STATEMENTS OF ACCOUNT:**

**Statements of Account:** In order to obtain payment of any fees and expenses under this Agreement for a period described in section 2 of this Schedule (each a "Billing Period"), the Contractor must deliver to the Province on a date after the Billing Period (each a "Billing Date"), a written statement of account in a form satisfactory to the Province containing:

- (a) the Contractor's legal name and address;
- (b) the date of the statement, and the Billing Period to which the statement pertains;  
the Contractor's calculation of all fees claimed for that Billing Period, including a declaration by the Contractor of all deliverables provided during the Billing Period for which the Contractor claims fees and a description of the applicable fee rates;
- (c) a chronological listing, in reasonable detail, of any expenses claimed by the Contractor for the Billing Period with receipts attached, if applicable, and, if the Contractor is claiming reimbursement of any HST or other applicable taxes paid or payable by the Contractor in relation to those expenses, a description of any credits, rebates, refunds or remissions the Contractor is entitled to from the relevant taxation authorities in relation to those taxes;
- (d) the Contractor's calculation of any applicable taxes payable by the Province in relation to the Services for the Billing Period;
- (e) a description of this Agreement;

- (f) a statement number for identification; and
- (g) any other billing information reasonably requested by the Province.

**5. PAYMENTS DUE:**

**Payments Due:** Within 30 days of the Province's receipt of the Contractor's written statement of account delivered in accordance with this Schedule, the Province must pay the Contractor the fees and expenses (plus all applicable taxes), claimed in the statement if they are in accordance with this Schedule. Statements of account or contract invoices offering an early payment discount may be paid by the Province as required to obtain the discount.

**Schedule C – Approved Subcontractor(s)**

Excelleris Technologies Limited Partnership, and its subcontractor BC Biomedical Laboratories Ltd.  
201-4445 Lougheed Highway,  
Burnaby BC V5C 0E4  
Key personnel: Krystyna Hommen  
Phone: 604 658 2103  
email: khommen@excelleris.com

#### Schedule D – Insurance

1. The Contractor must, without limiting the Contractor's obligation or liabilities and at the Contractor's own expense, purchase and maintain throughout the Term the following insurances with insurers licensed in Canada in forms and amounts acceptable to the Province:
  - (a) Commercial General Liability in an amount not less than \$2,000,000 inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this Agreement and this insurance must:
    - (i) include the Province as an additional insured,
    - (ii) be endorsed to provide the Province with 30 days advance written notice of cancellation or material change, and
    - (iii) include a cross liability clause; and
  - (b) Professional Errors and Omissions Liability insuring the Contractor's liability resulting from errors or omissions in the performance of the Services in an amount per occurrence, and in the aggregate, calculated as follows:
    - (i) not less than \$1,000,000, if the "Maximum Amount" set out in Schedule B is less than \$500,000; and
    - (ii) not less than \$2,000,000, if the "Maximum Amount" set out in Schedule B is \$500,000 or greater.
2. All insurance described in section 1 of this Schedule must:
  - (a) be primary; and
  - (b) not require the sharing of any loss by any insurer of the Province.
3. The Contractor must provide the Province with evidence of all required insurance as follows:
  - (a) within 10 Business Days of commencement of the Services, the Contractor must provide to the Province evidence of all required insurance in the form of a completed Province of British Columbia Certificate of Insurance;
  - (b) if any required insurance policy expires before the end of the Term, the Contractor must provide, within 10 Business Days of the policy's expiration, evidence of a new or renewal policy meeting the requirements of the expired insurance in the form of a completed Province of British Columbia Certificate of Insurance; and
  - (c) despite paragraph (a) or (b) above, if requested by the Province at any time, the Contractor must provide to the Province certified copies of the required insurance policies.
4. Despite section 1(b) of this Schedule, if in the Province's sole discretion, the Province has approved in writing either a fronted self-insurance program or a duly licensed captive insurer as an alternative to the Professional Liability Insurance requirement set out in section 1(b), then the Contractor must maintain throughout the Term that alternative in accordance with the terms of the approval.

## Schedule E – Privacy Protection Schedule

### Definitions

1. In this Schedule,
  - (a) “access” means disclosure by the provision of access;
  - (b) “Act” means the *Freedom of Information and Protection of Privacy Act*;
  - (c) “contact information” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
  - (d) “personal information” means recorded information about an identifiable individual, other than contact information, collected or created by the Contractor as a result of the Agreement or any previous agreement between the Province and the Contractor dealing with the same subject matter as the Agreement but excluding any such information that, if this Schedule did not apply to it, would not be under the “control of a public body” within the meaning of the Act.

### Purpose

2. The purpose of this Schedule is to:
  - (a) enable the Province to comply with the Province's statutory obligations under the Act with respect to personal information; and
  - (b) ensure that, as a service provider, the Contractor is aware of and complies with the Contractor's statutory obligations under the Act with respect to personal information.

### Collection of personal information

3. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor may only collect or create personal information that is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
4. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor must collect personal information directly from the individual the information is about.
5. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor must tell an individual from whom the Contractor collects personal information:
  - (a) the purpose for collecting it;
  - (b) the legal authority for collecting it; and
  - (c) the title, business address and business telephone number of the person designated by the Province to answer questions about the Contractor's collection of personal information.

### Accuracy of personal information

6. The Contractor must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Contractor or the Province to make a decision that directly affects the individual the information is about.

### **Requests for access to personal information**

7. If the Contractor receives a request for access to personal information from a person other than the Province, the Contractor must promptly advise the person to make the request to the Province unless the Agreement expressly requires the Contractor to provide such access and, if the Province has advised the Contractor of the name or title and contact information of an official of the Province to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

### **Correction of personal information**

8. Within 5 Business Days of receiving a written direction from the Province to correct or annotate any personal information, the Contractor must annotate or correct the information in accordance with the direction.
9. When issuing a written direction under section 8, the Province must advise the Contractor of the date the correction request to which the direction relates was received by the Province in order that the Contractor may comply with section 10.
10. Within 5 Business Days of correcting or annotating any personal information under section 8, the Contractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Province, the Contractor disclosed the information being corrected or annotated.
11. If the Contractor receives a request for correction of personal information from a person other than the Province, the Contractor must promptly advise the person to make the request to the Province and, if the Province has advised the Contractor of the name or title and contact information of an official of the Province to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

### **Protection of personal information**

12. The Contractor must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

### **Storage and access to personal information**

13. Unless the Province otherwise directs in writing, the Contractor must not store personal information outside Canada or permit access to personal information from outside Canada.

### **Retention of personal information**

14. Unless the Agreement otherwise specifies, the Contractor must retain personal information until directed by the Province in writing to dispose of it or deliver it as specified in the direction.

### **Use of personal information**

15. Unless the Province otherwise directs in writing, the Contractor may only use personal information if that use is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.

### **Disclosure of personal information**

16. Unless the Province otherwise directs in writing, the Contractor may only disclose personal information inside Canada to any person other than the Province if the disclosure is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
17. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor must not disclose personal information outside Canada.

### **Notice of foreign demands for disclosure**

18. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.2 of the Act, if in relation to personal information in the custody or under the control of the Contractor, the Contractor:
  - (a) receives a foreign demand for disclosure;
  - (b) receives a request to disclose, produce or provide access that the Contractor knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
  - (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure

the Contractor must immediately notify the Province and, in so doing, provide the information described in section 30.2(3) of the Act. In this section, the phrases "foreign demand for disclosure" and "unauthorized disclosure of personal information" will bear the same meanings as in section 30.2 of the Act.

### **Notice of unauthorized disclosure**

19. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.5 of the Act, if the Contractor knows that there has been an unauthorized disclosure of personal information in the custody or under the control of the Contractor, the Contractor must immediately notify the Province. In this section, the phrase "unauthorized disclosure of personal information" will bear the same meaning as in section 30.5 of the Act.

### **Inspection of personal information**

20. In addition to any other rights of inspection the Province may have under the Agreement or under statute, the Province may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect any personal information in the possession of the Contractor or any of the Contractor's information management policies or practices relevant to the Contractor's management of personal information or the Contractor's compliance with this Schedule and the Contractor must permit, and provide reasonable assistance to, any such inspection.

### **Compliance with the Act and directions**

21. The Contractor must in relation to personal information comply with:
  - (a) the requirements of the Act applicable to the Contractor as a service provider, including any applicable order of the commissioner under the Act; and
  - (b) any direction given by the Province under this Schedule.

22. The Contractor acknowledges that it is familiar with the requirements of the Act governing personal information that are applicable to it as a service provider.

#### **Notice of non-compliance**

23. If for any reason the Contractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Contractor must promptly notify the Province of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

#### **Termination of Agreement**

24. In addition to any other rights of termination which the Province may have under the Agreement or otherwise at law, the Province may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Contractor, terminate the Agreement by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

#### **Interpretation**

25. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
26. Any reference to the "Contractor" in this Schedule includes any subcontractor or agent retained by the Contractor to perform obligations under the Agreement and the Contractor must ensure that any such subcontractors and agents comply with this Schedule.
27. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.
28. If a provision of the Agreement (including any direction given by the Province under this Schedule) conflicts with a requirement of the Act or an applicable order of the commissioner under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
29. The Contractor must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to section 30, the law of any jurisdiction outside Canada.
30. Nothing in this Schedule requires the Contractor to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the Act.



## Schedule F – Additional Terms

### 1 Definitions (Article 1 of the Main Body of this Agreement)

1.1 For greater certainty, and notwithstanding section 1.1 of the main body of this Agreement, in this Agreement:

- (a) “Incorporated Material”, “Material” and “Produced Material” do not include any laboratory test results.
- (b) “Produced Material” does not include any part of the Technical Solution.

1.2 In this Schedule F and in Schedule A,

- (a) “Clinical Data Validation” means verification of data accuracy and completeness of laboratory data presented through the eHealth Viewer when compared by the Contractor to the same data on the hard copy of the laboratory data, and on the Excelleris Technologies viewer;
- (b) “Excelleris Technologies” means Excelleris Technologies Limited Partnership, a Subcontractor;
- (c) “Information Sharing Agreement” means the information sharing agreement to be entered into between the Province and the Contractor, on terms acceptable to the Province and the Contractor, relating to the provision of laboratory test results by the Contractor to PLIS;
- (d) “Project Charter” means the iEHR-PLIS Community Laboratories Onboarding Project Charter, Version 1.0, dated February 21, 2012 (attached for reference purposes);
- (e) “PLIS” means the Provincial Laboratory Information Solution, a computer system of the Province that has been established as a central repository of laboratory test results ordered by health care practitioners in British Columbia; and
- (f) “Technical Solution” means the software applications and computer programs owned or licensed by the Contractor or Excelleris Technologies which are to be used by the Contractor or Excelleris Technologies for the automated, ongoing submission of laboratory test results to PLIS, including without limitation:
  - (i) any new software or systems produced by the Contractor or Excelleris Technologies, whether or not produced as a result of this Agreement, for use on or with the systems of the Contractor or Excelleris Technologies; and
  - (ii) any internal policies, procedures or similar documents relating to the Technical Solution or its use or operation, whether or not produced by the Contractor or Excelleris Technologies as a result of this Agreement.

### 2 Services (Article 2 of the Main Body of this Agreement)

2.1 Due to the collaborative nature of the project undertaken under this Agreement, the Province waives the right to give the Contractor directions under section 2.6 of the main body of this Agreement.

3 **Representations and Warranties (Article 4 of the Main Body of this Agreement)**

3.1 The Province and the Contractor agree that section 4.1(a)(i) of the main body of this Agreement is deleted.

4 **Privacy and Security (Sections 5.1 and 5.2 of the Main Body of this Agreement)**

4.1 For greater certainty, and notwithstanding sections 5.1 and 5.2 of the main body of this Agreement and Schedules E and G and Appendix G.1, the Province and the Contractor agree that:

- (a) As background, the Technical Solution will enable the delivery of laboratory test results from the Contractor to the Province using a secure connection from Excelleris Technologies to the PLIS Point of Service Integration Appliance ("POSIA").
- (b) Laboratory test results and other personal information collected or generated by the Contractor are in the custody and control of the Contractor and/or Excelleris Technologies, under the *Personal Information Protection Act* ("PIPA"), and are not in the custody or under the control of the Province. Schedules E and G and Appendix G.1 do not apply to any such laboratory test results and other personal information.
- (c) When a copy of a laboratory test result or other personal information passes through the secure connection from Excelleris Technologies to the POSIA, that copy is then in the custody or under the control of the Province, under the *Freedom of Information and Protection of Privacy Act* ("FOIPPA") and the *E-Health (Personal Health Information Access and Protection of Privacy) Act* ("e-Health Act"), and that copy is not in the custody or under the control of the Contractor.
- (d) Clinical Data Validation activities (and possibly certain other activities) require that the Contractor and Excelleris Technologies be given limited eHealth Viewer access to certain personal information on PLIS, in addition to the laboratory test results and other personal information provided to the Province by the Contractor and/or Excelleris Technologies. Schedules E and G and Appendix G.1 apply only in relation to personal information on PLIS which is accessed by the Contractor or Excelleris Technologies.
- (e) The Information Sharing Agreement will reflect the principles described in this section 4.1. The Deliverables and other project documents which are to be developed under the Project Charter will also reflect the principles described in this section 4.1.

4.2 Section 5.2(a) does not apply to any Incorporated Material or any other item or portion of the Material which is owned by the Contractor or Excelleris Technologies.

5 **Confidentiality (Section 5.3 of the Main Body of this Agreement)**

5.1 In this Agreement,

- (a) "Confidential Information" of the Province shall mean any technical, business, financial, personal, employee, operational, scientific or other information or data of the Province or of any person that has disclosed such information to the Province or its agents that, at the time of disclosure (i) is designated as confidential (or like designation) (ii) is disclosed in circumstances of confidence, or (iii) would be understood by a person exercising reasonable business judgment to be confidential. Without limiting the foregoing, Province Confidential Information shall include, without limitation,

- (i) the Produced Materials,
- (ii) the Received Materials that the Contractor receives from the Province,
- (iii) any personal information obtained from the Province in any way, including from PLIS or any other data repository of the Province, and
- (iv) any information regarding the Province's business, plans, operations, facilities and markets,

but for greater certainty does not include the Technical Solution.

- (b) "Confidential Information" of the Contractor shall mean any technical, business, financial, personal, employee, operational, scientific or other information or data of the Contractor or Excelleris Technologies, or of any person that has disclosed such information to the Contractor or Excelleris Technologies, that is supplied to, obtained by, or that comes to the knowledge of the Province as a result of this Agreement and that, at the time of disclosure (i) is designated as confidential (or like designation) (ii) is disclosed in circumstances of confidence, or (iii) would be understood by a person exercising reasonable business judgment to be confidential. Without limiting the foregoing, Contractor Confidential Information shall include, without limitation,
  - (i) any personal information obtained from the Contractor or Excelleris, except to the extent provided under the Information Sharing Agreement, and
  - (ii) any information regarding the Contractor's or Excelleris Technologies' business, plans, operations, facilities and markets,

Notwithstanding the foregoing, the "Contractor Confidential Information" will exclude all Province Confidential Information, whether or not expressly indicated for exclusion.

5.2 Each of the Parties agrees that all Confidential Information of the other Party, will be received in the strictest of confidence and held in accordance with and subject to the terms of this Agreement and with a degree of care no less than the degree of care that the receiving Party employs for the protection of its own Confidential Information of a similar nature provided that in any event the receiving Party shall use a reasonable degree of care to protect such Confidential Information appropriate to the nature of the information and in accordance with prudent industry practice.

5.3 Subject to section 5.1 of the main body of this Agreement and all other obligations set forth in this Agreement, a Party may use or disclose relevant aspects of another party's Confidential Information to:

- (a) the extent reasonable necessary to perform its obligations and exercise its rights under this Agreement; and
- (b) to its employees, contractors, professional advisors and agents to the extent such disclosure and use thereof is reasonably necessary for the performance of the receiving Party's rights or obligations under this Agreement and provided that such persons and their employees have an actual need to know such information.

5.4 Subject to section 5.1 of the main body of this Agreement, the obligations of confidentiality contained in this section 5 of Schedule F shall not apply to any information to the extent a Party can reasonably demonstrate that such information:

- (a) was, at the time of disclosure to the receiving Party, in the public domain;
- (b) after disclosure to the receiving Party, is published or otherwise becomes part of the public domain through no fault of the receiving Party;
- (c) was in the possession of the receiving Party at the time of disclosure to it and was not subject of a pre-existing confidentiality obligation;
- (d) was disclosed independently to the receiving Party by a third party without any confidentiality obligations, provided such third party, or any other party from whom such third party receives such information, is not in breach of any confidentiality obligations in respect of such information;
- (e) was independently developed by the receiving Party without use of any Confidential Information of the other Party;
- (f) is disclosed with the prior written approval of the other Party, but only to the extent approved by the other Party; or
- (g) is Contractor Confidential Information and such information is required to be disclosed by the Province under the *Freedom of Information and Protection of Privacy Act* (British Columbia).

5.5 Subject to section 5.1 of the main body of this Agreement, a Party shall not be considered to have breached its confidentiality obligations under this section 5 of Schedule F for disclosing any Confidential Information of the other Party to the extent such disclosure is required by applicable law provided that the Party requested to make such disclosure (the "**Compelled Party**"):

- (a) Promptly upon receiving any such request and within a reasonable time prior to disclosure notifies the other Party of the terms and circumstances of the requested disclosure;
- (b) Consults with the other Party regarding the nature and scope of such request and the response or other position the Compelled Party intends to take with respect to such request;
- (c) Does not obstruct or interfere and to the extent practical permits the other Party to obtain a protective order or other remedy to prevent, object to, enjoin, narrow the scope of or otherwise contest the requested disclosure;
- (d) If the other Party is unable to obtain a protective order or other remedy, the Compelled Party shall only disclose such of the Confidential Information that it is legally required to disclose; and
- (e) Make and reasonably pursues a request, that is reasonable and customary in the circumstances, to the applicable governmental authority for confidential treatment of the information to be disclosed to such governmental authority.

5.6 Nothing in this section 5 of Schedule F shall be construed as obligating a Party to disclose its Confidential Information to the other Party or as granting or conferring on a Party, expressly or impliedly, any right, title or interest or any license to the Confidential Information of the other Party.

5.7 Each Party shall:

- (a) Notify the other Party of any material unauthorized possession, use or knowledge, or attempt to effect the same, of the other Party's Confidential Information by any person that may become known to such Party;
- (b) Promptly furnish to the other Party details of the unauthorized possession, use or knowledge, or attempt to effect the same, and use reasonable efforts to assist the other Party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt to effect the same, of the other Party's Confidential Information;
- (c) Use reasonable efforts to cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its proprietary rights and Confidential Information; and
- (d) Promptly use reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of the other Party's Confidential Information.

The party whose Confidential Information is the subject of such activity will reimburse any out-of-pocket expenses reasonably incurred by the other Party as a result of compliance with this section 5.7 of Schedule F.

5.8 Subject to applicable laws including the *Crown Proceeding Act* (British Columbia), in the event of any breach or anticipated breach of this section 5 of Schedule F, the non-defaulting Party shall be entitled to preliminary and permanent injunctive relief as well as an equitable accounting of all profits and benefits arising out of such violation, which remedy shall be in addition to any other rights or remedies to which such Party may be entitled under this Agreement or otherwise under applicable laws.

5.9 Section 5.3 of the main body of this Agreement is hereby deleted and replaced with Article 5 of this Schedule F.

## **6 Material and Intellectual Property (Article 6 of the Main Body of this Agreement)**

6.1 Section 6.1 of the main body of this Agreement does not apply to any Incorporated Material or any other item or portion of the Material which is owned by the Contractor or Excelleris Technologies.

6.2 Notwithstanding any other provision of this Agreement, the Contractor and/or Excelleris Technologies exclusively own all property rights, including all intellectual property rights, in the Technical Solution.

6.3 Notwithstanding sections 6.2, 6.3 and 6.5 of the main body of this Agreement, the Province grants to the Contractor and to Excelleris Technologies:

- (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, modify and distribute the Produced Material and the Received Material,
- (b) the right to sublicense to third-parties the right to use, reproduce, modify and distribute the Produced Material and the Received Material,

for the following purposes:

- (c) for the purpose of operating and maintaining the Technology Solution,

- (d) for the purpose of delivering laboratory test results under the Information Sharing Agreement, and
- (e) for purposes incidental to those described in subsections (d) and (e).

**7 Audit (Article 8 of the Main Body of this Agreement)**

7.1 The Province agrees that it will only exercise its rights under section 8.1 of the main body of this Agreement if it has reasonable cause for doing so.

**8 Indemnity and Insurance (Article 9 of the Main Body of this Agreement)**

8.1 Notwithstanding sections 9.1 and 9.5 of the main body of this Agreement, the obligations of the Contractor under those sections are limited to:

- (a) claims which arise directly from any breach of any of the terms of this Agreement by Contractor or any Subcontractor; or
- (b) any claim that the Produced Material infringes the third-party intellectual property rights of a third party (except if the third party claim results from an element of the Produced Material which was included at the request of the Province).

8.2 The parties agree that section 9.2 is deleted and replaced by the following. The indemnification by the Contractor pursuant to section 9.1 of the main body is limited to an amount equal to the fees paid or payable by the Province under this Agreement.

8.3 Notwithstanding any other provision of this Agreement, the entire liability of the Contractor and the other members of the Contractor Team, and the Province's exclusive remedies, arising under or in connection with this Agreement or the Services shall be strictly limited as set out in this Article 8. The limitations of liability set out in this Article 8 shall apply regardless of the form of claim or action and whether the liability is based on breach or rescission of contract (including fundamental breach or breach of a fundamental term), restitution, tort (including negligence), breach of trust or fiduciary duty or otherwise, and if based in contract, regardless of whether the alleged breach is a breach of a condition or a fundamental term or constitutes a fundamental breach of this Agreement. The Province acknowledges that the Contractor has agreed to the pricing and other terms of this Agreement in reliance on the limitations of liability set out in this Article 8, which are an essential basis of the bargain between the parties.

8.4 The members of the Contractor Team (other than Contractor) are intended third party beneficiaries of this Article 8. For the purpose of this Article 8, "Contractor Team" means the Contractor and Excelleris Technologies and its partners, and their directors, officers, employees, subcontractors and suppliers.

**9 [Intentionally Deleted]**

9.1 [Intentionally deleted.]

**10 Insurance (Schedule D)**

10.1 For greater certainty, the Professional Errors and Omissions Liability insurance required under Section I(d) of Schedule D is for errors and omissions in the development of the Produced Material, and not for (a) errors and omissions in or relating to laboratory test results, or (b) the delivery of laboratory test results to the Province.

## **11 Security (Schedule G)**

11.1 Notwithstanding section 4 of Schedule G or section 5 of Appendix G1, the Contractor is not required to conduct criminal history checks on Services Workers as defined in Schedule G.

## **12 Additional Terms**

12.1 The Province and the Contractor acknowledge and agree that the Contractor will not supply any laboratory test results, including laboratory test results for Clinical Data Validation, to the Province under this Agreement until the Information Sharing Agreement has been executed.

12.2 The Province and the Contractor acknowledge and agree that the services the Contractor will provide under this Agreement do not include ongoing provision of laboratory test results but simply the establishment of the means to electronically provide the information.

## **13 General**

13.1 In addition to section 13.1 of the main body of this Agreement, the General Services Agreement may be entered into by each party signing and delivering it to the other party by email.

13.2 The Project Charter is not a part of this Agreement, and is simply attached for reference.

13.3 In addition to section 13.8 of the main body of this Agreement, Articles 4 to 12 of this Schedule F will survive the expiration or earlier termination of this Agreement and will continue in force indefinitely.

13.4 Contractor Identification – During the term of this agreement and at the request of the Province, contractors shall identify themselves as contractors to the ministry. This may be in the form of email signature blocks, business cards, correspondence, verbal business dealings and any other identification required by the Province.

## Schedule G – Security Schedule

### Definitions

1. In this Schedule,
  - (a) "Equipment" means any equipment, including interconnected systems or subsystems of equipment, software and networks, used or to be used by the Contractor to provide the Services;
  - (b) "Facilities" means any facilities at which the Contractor provides or is to provide the Services;
  - (c) "Information" means information
    - (i) in the Material, or
    - (ii) accessed, produced or obtained by the Contractor (whether verbally, electronically or otherwise) as a result of the Agreement;
  - (d) "Record" means a "record" as defined in the *Interpretation Act*;
  - (e) "Sensitive Information" means
    - (i) Information that is "personal information" as defined in the *Freedom of Information and Protection of Privacy Act*, or
    - (ii) any other Information specified as "Sensitive Information" in Appendix G6, if attached; and
  - (f) "Services Worker" means an individual involved in providing the Services for or on behalf of the Contractor and, for greater certainty, may include
    - (i) the Contractor or a subcontractor if an individual, or
    - (ii) an employee or volunteer of the Contractor or of a subcontractor.

### Schedule contains additional obligations

2. The obligations of the Contractor in this Schedule are in addition to any other obligation in the Agreement or the schedules attached to it relating to security including, without limitation, the obligations of the Contractor in the Privacy Protection Schedule, if attached.

### Services Worker confidentiality agreements

3. The Contractor must not permit a Services Worker who is an employee or volunteer of the Contractor to have access to Sensitive Information unless the Services Worker has first entered into a confidentiality agreement with the Contractor to keep Sensitive Information confidential on substantially similar terms as those that apply to the Contractor under the Agreement.

### Services Worker security screening

4. The Contractor may only permit a Services Worker who is an employee or a volunteer of the Contractor to have access to Sensitive Information or otherwise be involved in providing the Services if, after having subjected the Services Worker to the personnel security screening requirements set out in Appendix G1 and any additional requirements the Contractor may consider appropriate, the Contractor is satisfied that the Services Worker does not constitute an unreasonable security risk. The Contractor must create, obtain and



retain Records documenting the Contractor's compliance with the security screening requirements set out in Appendix G1 in accordance with the provisions of that appendix.

#### **Services Worker activity logging**

5. Subject to section 6, the Contractor must create and maintain detailed Records logging the activities of all Service Workers in relation to:
  - (a) their access to Sensitive Information; and
  - (b) other matters specified by the Province in writing for the purposes of this section.
6. The Records described in section 5 must be made and maintained in a manner, and contain information, specified in Appendix G2, if attached.

#### **Facilities and Equipment protection and access control**

7. The Contractor must create, maintain and follow a documented process to:
  - (a) protect Facilities and Equipment of the Contractor required by the Contractor to provide the Services from loss, damage or any other occurrence that may result in any of those Facilities and Equipment being unavailable when required to provide the Services; and
  - (b) limit access to Facilities and Equipment of the Contractor
    - (i) being used by the Contractor to provide the Services, or
    - (ii) that may be used by someone to access Information

to those persons who are authorized to have that access and for the purposes for which they are authorized, which process must include measures to verify the identity of those persons.
8. If the Province makes available to the Contractor any Facilities or Equipment of the Province for the use of the Contractor in providing the Services, the Contractor must comply with any policies and procedures provided to it by the Province on acceptable use, protection of, and access to, such Facilities or Equipment.

#### **Sensitive Information access control**

9. The Contractor must:
  - (a) create, maintain and follow a documented process for limiting access to Sensitive Information to those persons who are authorized to have that access and for the purposes for which they are authorized, which process must include measures to verify the identity of those persons; and
  - (b) comply with the information access control requirements set out in Appendix G3, if attached.

#### **Integrity of Information**

10. The Contractor must:
  - (a) create, maintain and follow a documented process for maintaining the integrity of Information while possessed or accessed by the Contractor; and
  - (b) comply with the information integrity requirements set out in Appendix G4, if attached.
11. For the purposes of section 10, maintaining the integrity of Information means that, except to the extent expressly authorized by the Agreement or approved in writing by the Province, the Information has:
  - (a) remained as complete as when it was acquired or accessed by the Contractor; and

- (b) not been altered in any material respect.

#### **Documentation of changes to processes**

- 12. The Contractor must create and maintain detailed Records logging any changes it makes to the processes described in sections 7, 9 and 10.

#### **Notice of security breaches**

- 13. If Contractor becomes aware that:

- (a) unauthorized access, collection, use, disclosure, alteration or disposal of Information or Records containing Information; or

- (b) unauthorized access to Facilities or Equipment

has occurred or is likely to occur (whether or not related to a failure by the Contractor to comply with this Schedule or the Agreement), the Contractor must immediately notify the Province of the particulars of that occurrence or likely occurrence. If the Contractor provides a notification under this section other than in writing, that notification must be confirmed in writing to the Province as soon as it is reasonably practicable for the Contractor to do so.

#### **Review of security breaches**

- 14. If the Province decides to conduct a review of a matter described in section 13 (whether or not the matter came to the attention of the Province as a result of a notification under section 13), the Contractor must, on the request of the Province, participate in the review to the extent that it is reasonably practicable for the Contractor to do so.

#### **Retention of Records**

- 15. Unless the Agreement otherwise specifies, the Contractor must retain all Records in the Contractor's possession that contain Information until directed by the Province in writing to dispose of them or deliver them as specified in the direction.

#### **Storage of Records**

- 16. Until disposed of or delivered in accordance with section 15, the Contractor must store any Records in the Contractor's possession that contain Information in accordance with the provisions of Appendix G5, if attached.

#### **Audit**

- 17. In addition to any other rights of inspection the Province may have under the Agreement or under statute, the Province may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect and, at the Province's discretion, copy:

- (a) any Records in the possession of the Contractor containing Information; or

- (b) any of the Contractor's Information management policies or processes (including the processes described in sections 7, 9 and 10 and the logs described in sections 5 and 12) relevant to the Contractor's compliance with this Schedule

and the Contractor must permit, and provide reasonable assistance to, the exercise by the Province of the Province's rights under this section.

## Termination of Agreement

18. In addition to any other rights of termination which the Province may have under the Agreement or otherwise at law, the Province may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Contractor, terminate the Agreement by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

## Interpretation

19. In this Schedule, unless otherwise specified:
  - (a) references to sections are to sections of this Schedule; and
  - (b) references to appendices are to the appendices attached to this Schedule.
20. Any reference to the "Contractor" in this Schedule includes any subcontractor retained by the Contractor to perform obligations under the Agreement and the Contractor must ensure that any such subcontractors comply with this Schedule.
21. The appendices attached to this Schedule are part of this Schedule.
22. If there is a conflict between a provision in an appendix attached to this Schedule and any other provision of this Schedule, the provision in the appendix is inoperative to the extent of the conflict unless the appendix states that it operates despite a conflicting provision of this Schedule.
23. If there is a conflict between:
  - (a) a provision of the Agreement, this Schedule or an appendix attached to this Schedule; and
  - (b) a documented process required by this Schedule to be created or maintained by the Contractorthe provision of the Agreement, Schedule or appendix will prevail to the extent of the conflict.
24. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.

**SCHEDULE G – Appendix G1 – Security screening requirements**

The personnel security screening requirements set out in this Appendix G1 are for the purpose of assisting the Contractor determine whether or not a Services Worker constitutes an unreasonable security risk.

**Verification of name, date of birth and address**

1. The Contractor must verify the name, date of birth and current address of a Services Worker by viewing at least one piece of “primary identification” of the Services Worker and at least one piece of “secondary identification” of the Services Worker,\* as described in the table following this section. The Contractor must obtain or create, as applicable, Records of all such verifications and retain a copy of those Records. For a Services Worker from another province or jurisdiction, reasonably equivalent identification documents are acceptable.

Primary Identification	Secondary Identification
<p><b>Issued by ICBC:</b></p> <ul style="list-style-type: none"> <li>• B.C. driver’s licence or learner’s licence (must have photo)</li> <li>• B.C. Identification (BCID) card</li> </ul> <p><b>Issued by provincial or territorial government:</b></p> <ul style="list-style-type: none"> <li>• Canadian birth certificate</li> </ul> <p><b>Issued by Government of Canada:</b></p> <ul style="list-style-type: none"> <li>• Canadian Citizenship Card</li> <li>• Permanent Resident Card</li> <li>• Canadian Record of Landing/Canadian Immigration Identification Record</li> </ul>	<ul style="list-style-type: none"> <li>• School ID card (student card)</li> <li>• Bank card (only if holder’s name is on card)</li> <li>• Credit card (only if holder’s name is on card)</li> <li>• Passport</li> <li>• Foreign birth certificate (a baptismal certificate is not acceptable)</li> <li>• Canadian or U.S. driver’s licence</li> <li>• Naturalization certificate</li> <li>• Canadian Forces identification</li> <li>• Police identification</li> <li>• Foreign Affairs Canada or consular identification</li> <li>• Vehicle registration (only if owner’s signature is shown)</li> <li>• Picture employee ID card</li> <li>• Firearms Acquisition Certificate</li> <li>• Social Insurance Card (only if has signature strip)</li> <li>• B.C. CareCard</li> <li>• Native Status Card</li> <li>• Parole Certificate ID</li> <li>• Correctional Service Conditional Release Card</li> </ul>

\*It is not necessary that each piece of identification viewed by the Contractor contains the name, date of birth and current address of the Services Worker. It is sufficient that, in combination, the identification viewed contains that information.

**Verification of education and professional qualifications**

2. The Contractor must verify, by reasonable means, any relevant education and professional qualifications of a Services Worker, obtain or create, as applicable, Records of all such verifications, and retain a copy of those Records.

### **Verification of employment history and reference checks**

3. The Contractor must verify, by reasonable means, any relevant employment history of a Services Worker, which will generally consist of the Contractor requesting that a Services Worker provide employment references and the Contractor contacting those references. If a Services Worker has no relevant employment history, the Contractor must seek to verify the character or other relevant personal characteristics of the Services Worker by requesting the Services Worker to provide one or more personal references and contacting those references. The Contractor must obtain or create, as applicable, Records of all such verifications and retain a copy of those Records.

### **Security interview**

4. The Contractor must allow the Province to conduct a security-focused interview with a Services Worker if the Province identifies a reasonable security concern and notifies the Contractor it wishes to do so.

### **Criminal history check**

5. The Contractor must arrange for and retain documented results of a criminal history check on a Services Worker obtained through the Services Worker's local policing agency. Criminal history checks must be repeated as necessary to ensure that at all times the most recent criminal history check on a Services Worker was completed within the previous five years.

# INFORMATION TECHNOLOGY & MANAGEMENT CONSULTING PROFESSIONAL SERVICES AGREEMENT



*For Administrative Purposes Only*

<p><i>Ministry Contract No.:</i> _____</p> <p><i>Requisition No.:</i> _____</p> <p><i>Solicitation No.(if applicable):</i> _____</p> <p><i>Commodity Code:</i> _____</p> <p><b><i>Contractor Information</i></b></p> <p><i>Supplier Name:</i> <u>LifeLabs BC LP</u></p> <p><i>Supplier No.:</i> _____</p> <p><i>Telephone No.:</i> _____</p> <p><i>E-mail Address:</i> _____</p> <p><i>Website:</i> _____</p>	<p><b><i>Financial Information</i></b></p> <p><i>Client:</i> <u>026</u></p> <p><i>Responsibility Centre</i> <u>66202</u></p> <p><i>Service Line:</i> <u>44005</u></p> <p><i>STOB:</i> <u>6309</u></p> <p><i>Project:</i> <u>66K429C</u></p> <p><i>Template version: June 14, 2011</i></p>
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- Part 3 - Related Documentation
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**SCHEDULE D – INSURANCE**

**SCHEDULE E – PRIVACY PROTECTION SCHEDULE**

**SCHEDULE F – ADDITIONAL TERMS**

**SCHEDULE G – SECURITY SCHEDULE**

THIS AGREEMENT is dated for reference the 20<sup>th</sup> day of February, 2012.

BETWEEN:

LifeLabs BC LP (the "Contractor") with the following specified address and fax number:  
3680 Gilmore Way  
Burnaby, BC V5G 4V8  
Fax: (604) 412-4443

With a copy of notices to:

100 International Blvd.  
Toronto, ON M9W 6J6  
Fax: (416) 213-4668

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by Minister of Health (the "Province") with the following specified address and fax number:  
2<sup>nd</sup> Floor, 1515 Blanshard St  
Victoria BC V8W 3C8  
Fax Number: 250-952-1186

The Province wishes to retain the Contractor to provide the services specified in Schedule A and, in consideration for the remuneration set out in Schedule B, the Contractor has agreed to provide those services, on the terms and conditions set out in this Agreement.

As a result, the Province and the Contractor agree as follows:

## 1 DEFINITIONS

### General

1.1 In this Agreement, unless the context otherwise requires:

- (a) "Business Day" means a day, other than a Saturday or Sunday, on which Provincial government offices are open for normal business in British Columbia;
- (b) "Incorporated Material" means any material in existence prior to the start of the Term or developed independently of this Agreement, and that is incorporated or embedded in the Produced Material by the Contractor or a Subcontractor;
- (c) "Material" means the Produced Material and the Received Material;
- (d) "Produced Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are produced by the Contractor or a Subcontractor and includes the Incorporated Material;
- (e) "Received Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are received by the Contractor or a Subcontractor from the Province or any other person;
- (f) "Services" means the services described in Part 2 of Schedule A;
- (g) "Subcontractor" means a person described in paragraph (a) or (b) of section 13.4; and
- (h) "Term" means the term of the Agreement described in Part 1 of Schedule A subject to that term ending earlier in accordance with this Agreement.

Meaning of "record"

- 1.2 The definition of "record" in the *Interpretation Act* is incorporated into this Agreement and "records" will bear a corresponding meaning.

## 2 SERVICES

### Provision of services

- 2.1 The Contractor must provide the Services in accordance with this Agreement.

### Term

- 2.2 Regardless of the date of execution or delivery of this Agreement, the Contractor must provide the Services during the Term.

### Supply of various items

- 2.3 Unless the parties otherwise agree in writing, the Contractor must supply and pay for all labour, materials, equipment, tools, facilities, approvals and licenses necessary or advisable to perform the Contractor's obligations under this Agreement, including the license under section 6.4.

### Standard of care

- 2.4 Unless otherwise specified in this Agreement, the Contractor must perform the Services to a standard of care, skill, and diligence maintained by persons providing, on a commercial basis, services similar to the Services.

### Standards in relation to persons performing Services

- 2.5 The Contractor must ensure that all persons employed or retained to perform the Services are qualified and competent to perform them and are properly trained, instructed and supervised.

### Instructions by Province

- 2.6 The Province may from time to time give the Contractor reasonable instructions (in writing or otherwise) as to the performance of the Services. The Contractor must comply with those instructions but, unless otherwise specified in this Agreement, the Contractor may determine the manner in which the instructions are carried out.

### Confirmation of non-written instructions

- 2.7 If the Province provides an instruction under section 2.6 other than in writing, the Contractor may request that the instruction be confirmed by the Province in writing, which request the Province must comply with as soon as it is reasonably practicable to do so.

### Effectiveness of non-written instructions

- 2.8 Requesting written confirmation of an instruction under section 2.7 does not relieve the Contractor from complying with the instruction at the time the instruction was given.

#### Applicable laws

- 2.9 In the performance of the Contractor's obligations under this Agreement, the Contractor must comply with all applicable laws.

### 3 PAYMENT

#### Fees and expenses

- 3.1 If the Contractor complies with this Agreement, then the Province must pay to the Contractor at the times and on the conditions set out in Schedule B:
- (a) the fees described in that Schedule;
  - (b) the expenses, if any, described in that Schedule if they are supported, where applicable, by proper receipts and, in the Province's opinion, are necessarily incurred by the Contractor in providing the Services; and
  - (c) any applicable taxes payable by the Province under law or agreement with the relevant taxation authorities on the fees and expenses described in paragraphs (a) and (b).

The Province is not obliged to pay to the Contractor more than the "Maximum Amount" specified in Schedule B on account of fees and expenses.

#### Statements of accounts

- 3.2 In order to obtain payment of any fees and expenses under this Agreement, the Contractor must submit to the Province a written statement of account in a form satisfactory to the Province upon completion of the Services or at other times described in Schedule B.

#### Withholding of amounts

- 3.3 Without limiting section 9.1, the Province may withhold from any payment due to the Contractor an amount sufficient to indemnify in whole or in part the Province and its employees and agents against any liens or other third-party claims that have arisen or could arise in connection with the provision of the Services. An amount withheld under this section must be promptly paid by the Province to the Contractor upon the basis for withholding the amount having been fully resolved to the satisfaction of the Province.

#### Appropriation

- 3.4 The Province's obligation to pay money to the Contractor is subject to the *Financial Administration Act*, which makes that obligation subject to an appropriation being available in the fiscal year of the Province during which payment becomes due.

#### Currency

- 3.5 Unless otherwise specified in this Agreement, all references to money are to Canadian dollars.

#### Non-resident income tax

- 3.6 If the Contractor is not a resident in Canada, the Contractor acknowledges that the Province may be required by law to withhold income tax from the fees described in Schedule B and then to remit that tax to the Receiver General of Canada on the Contractor's behalf.

### Prohibition against committing money

- 3.7 Without limiting section 13.10(a), the Contractor must not in relation to performing the Contractor's obligations under this Agreement commit or purport to commit the Province to pay any money except as may be expressly provided for in this Agreement.

### Refunds of taxes

- 3.8 The Contractor must:

- (a) apply for, and use reasonable efforts to obtain, any available refund, credit, rebate or remission of federal, provincial or other tax or duty imposed on the Contractor as a result of this Agreement that the Province has paid or reimbursed to the Contractor or agreed to pay or reimburse to the Contractor under this Agreement; and
- (b) immediately on receiving, or being credited with, any amount applied for under paragraph (a), remit that amount to the Province.

## 4 REPRESENTATIONS AND WARRANTIES

- 4.1 As at the date this Agreement is executed and delivered by, or on behalf of, the parties, the Contractor represents and warrants to the Province as follows:

- (a) except to the extent the Contractor has previously disclosed otherwise in writing to the Province,
  - (i) all information, statements, documents and reports furnished or submitted by the Contractor to the Province in connection with this Agreement (including as part of any competitive process resulting in this Agreement being entered into) are in all material respects true and correct,
  - (ii) the Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable the Contractor to fully perform the Services, and
  - (iii) the Contractor holds all permits, licenses, approvals and statutory authorities issued by any government or government agency that are necessary for the performance of the Contractor's obligations under this Agreement; and
- (b) if the Contractor is not an individual,
  - (i) the Contractor has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on behalf of, the Contractor, and
  - (ii) this Agreement has been legally and properly executed by, or on behalf of, the Contractor and is legally binding upon and enforceable against the Contractor in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency or other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

## 5 PRIVACY, SECURITY AND CONFIDENTIALITY

### Privacy

- 5.1 The Contractor must comply with the Privacy Protection Schedule attached as Schedule E.

### Security

- 5.2 The Contractor must:

- (a) make reasonable security arrangements to protect the Material from unauthorized access, collection, use, disclosure, alteration or disposal; and

- (b) comply with the Security Schedule attached as Schedule G.

#### Confidentiality

- 5.3 The Contractor must treat as confidential all information in the Material and all other information accessed or obtained by the Contractor or a Subcontractor (whether verbally, electronically or otherwise) as a result of this Agreement, and not permit its disclosure or use without the Province's prior written consent except:
- (a) as required to perform the Contractor's obligations under this Agreement or to comply with applicable laws;
  - (b) if it is information that is generally known to the public other than as result of a breach of this Agreement; or
  - (c) if it is information in any Incorporated Material.

#### Public announcements

- 5.4 Any public announcement relating to this Agreement will be arranged by the Province and, if such consultation is reasonably practicable, after consultation with the Contractor.

#### Restrictions on promotion

- 5.5 The Contractor, must not, without the prior written approval of the Province, refer for promotional purposes to the Province being a customer of the Contractor or the Province having entered into this Agreement.

## 6 MATERIAL AND INTELLECTUAL PROPERTY

#### Access to Material

- 6.1 If the Contractor receives a request for access to any of the Material from a person other than the Province, and this Agreement does not require or authorize the Contractor to provide that access, the Contractor must promptly advise the person to make the request to the Province.

#### Ownership and delivery of Material

- 6.2 The Province exclusively owns all property rights in the Material which are not intellectual property rights. The Contractor must deliver any Material to the Province immediately upon the Province's request.

#### Matters respecting intellectual property

- 6.3 The Province exclusively owns all intellectual property rights, including copyright, in:
- (a) Received Material that the Contractor receives from the Province; and
  - (b) Produced Material, other than any Incorporated Material.

Upon the Province's request, the Contractor must deliver to the Province documents satisfactory to the Province that irrevocably waive in the Province's favour any moral rights which the Contractor (or employees of the Contractor) or a Subcontractor (or employees of a Subcontractor) may have in the Produced Material and that confirm the vesting in the Province of the copyright in the Produced Material, other than any Incorporated Material.

#### Rights in relation to Incorporated Material

- 6.4 Upon any Incorporated Material being embedded or incorporated in the Produced Material and to the extent that it remains so embedded or incorporated, the Contractor grants to the Province:
- (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, modify and distribute that Incorporated Material; and
  - (b) the right to sublicense to third-parties the right to use, reproduce, modify and distribute that Incorporated Material.

#### Right of Province to negotiate license of Produced Material

- 6.5 After the end of the Term, the Province in its sole discretion, may negotiate with the Contractor to provide the Contractor a license (which may be exclusive or non-exclusive) for the Contractor to use, reproduce, modify or distribute some or all of the Produced Material.

### 7 RECORDS AND REPORTS

#### Work reporting

- 7.1 Upon the Province's request, the Contractor must fully inform the Province of all work done by the Contractor or a Subcontractor in connection with providing the Services.

#### Time and expense records

- 7.2 If Schedule B provides for the Contractor to be paid fees at a daily or hourly rate or for the Contractor to be paid or reimbursed for expenses, the Contractor must maintain time records and books of account, invoices, receipts and vouchers of expenses in support of those payments, in form and content satisfactory to the Province. Unless otherwise specified in this Agreement, the Contractor must retain such documents for a period of not less than seven years after this Agreement ends.

### 8 AUDIT

- 8.1 In addition to any other rights of inspection the Province may have under statute or otherwise, the Province may at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect and, at the Province's discretion, copy any of the Material and the Contractor must permit, and provide reasonable assistance to, the exercise by the Province of the Province's rights under this section.

### 9 INDEMNITY AND INSURANCE

#### Indemnity

- 9.1 The Contractor must indemnify and save harmless the Province and the Province's employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that the Province or any of the Province's employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, including any claim of infringement of third-party intellectual property rights, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission by the Contractor or by any of the Contractor's agents, employees, officers, directors or Subcontractors in connection with this Agreement (each a "Loss"), excepting always liability arising out of the independent acts or omissions of the Province and the Province's employees and agents.

#### Monetary limitations of indemnity

- 9.2 The indemnification by the Contractor pursuant to section 9.1 is limited to:
- (a) S. 17, S. 21 per Loss; and

- (b) S. 17, S. 21 in the aggregate for all Losses.

#### Exceptions to monetary limitations

- 9.3 The limitations set out in section 9.2 do not apply to a Loss resulting from any of the following:
- (a) bodily injury or damage to real property or tangible personal property;
  - (b) a claim of infringement of third-party intellectual property rights; or
  - (c) a breach of section 5.1, 5.2, 5.3 or 6.1 of this Agreement.

#### Province to notify Contractor of Loss

- 9.4 To claim indemnification for a Loss pursuant to section 9.1, the Province must notify the Contractor in writing of the Loss as soon as reasonably practicable after the Province becomes aware of the Loss provided that a failure by the Province to provide such notification will not invalidate the claim unless the Contractor is materially prejudiced by that failure.

#### Third-party intellectual property infringement claims

- 9.5 If the Loss is on the basis of a third-party claim that any element of the Material infringes the intellectual property rights of any person,
- (a) then the Contractor must defend the Province against that claim at the Contractor's expense and the Contractor must pay all associated costs, damages and legal fees that a court or arbitrator finally awards or are included in a settlement agreed to by the Contractor; and
  - (b) the Province must cooperate with the Contractor in the defence of the claim and, where appropriate in the discretion of the Province, will allow the Contractor to appoint and instruct counsel and otherwise control the defence and any related settlement negotiations.

#### Insurance

- 9.6 The Contractor must comply with the Insurance Schedule attached as Schedule D.

#### Workers compensation

- 9.7 Without limiting the generality of section 2.9, the Contractor must comply with, and must ensure that any Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under this Agreement, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions.

#### Personal optional protection

- 9.8 The Contractor must apply for and maintain personal optional protection insurance (consisting of income replacement and medical care coverage) during the Term at the Contractor's expense if:
- (a) the Contractor is an individual or a partnership of individuals and does not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act* or similar laws in other jurisdictions; and
  - (b) such personal optional protection insurance is available for the Contractor from WorkSafeBC or other sources.

#### Evidence of coverage

- 9.9 Within 10 Business Days of being requested to do so by the Province, the Contractor must provide the Province with evidence of the Contractor's compliance with sections 9.7 and 9.8.



## 10 FORCE MAJEURE

### Definitions relating to force majeure

10.1 In this section and sections 10.2 and 10.3:

- (a) "Event of Force Majeure" means one of the following events:
  - (i) a natural disaster, fire, flood, storm, epidemic or power failure,
  - (ii) a war (declared and undeclared), insurrection or act of terrorism or piracy,
  - (iii) a strike (including illegal work stoppage or slowdown) or lockout, or
  - (iv) a freight embargoif the event prevents a party from performing the party's obligations in accordance with this Agreement and is beyond the reasonable control of that party; and
- (b) "Affected Party" means a party prevented from performing the party's obligations in accordance with this Agreement by an Event of Force Majeure.

### Consequence of Event of Force Majeure

10.2 An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party's obligations under this Agreement resulting from an Event of Force Majeure and any time periods for the performance of such obligations are automatically extended for the duration of the Event of Force Majeure provided that the Affected Party complies with the requirements of section 10.3.

### Duties of Affected Party

10.3 An Affected Party must promptly notify the other party in writing upon the occurrence of the Event of Force Majeure and make all reasonable efforts to prevent, control or limit the effect of the Event of Force Majeure so as to resume compliance with the Affected Party's obligations under this Agreement as soon as possible.

## 11 DEFAULT AND TERMINATION

### Definitions relating to default and termination

11.1 In this section and sections 11.2 to 11.4:

- (a) "Event of Default" means any of the following:
  - (i) an Insolvency Event,
  - (ii) the Contractor fails to perform any of the Contractor's obligations under this Agreement, or
  - (iii) any representation or warranty made by the Contractor in this Agreement is untrue or incorrect; and
- (b) "Insolvency Event" means any of the following:
  - (i) an order is made, a resolution is passed or a petition is filed, for the Contractor's liquidation or winding up,
  - (ii) the Contractor commits an act of bankruptcy, makes an assignment for the benefit of the Contractor's creditors or otherwise acknowledges the Contractor's insolvency,
  - (iii) a bankruptcy petition is filed or presented against the Contractor or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Contractor,
  - (iv) a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act* (Canada),

- (v) a receiver or receiver-manager is appointed for any of the Contractor's property, or
- (vi) the Contractor ceases, in the Province's reasonable opinion, to carry on business as a going concern.

#### Province's options on default

- 11.2 On the happening of an Event of Default, or at any time thereafter, the Province may, at its option, elect to do any one or more of the following:
- (a) by written notice to the Contractor, require that the Event of Default be remedied within a time period specified in the notice;
  - (b) pursue any remedy or take any other action available to it at law or in equity; or
  - (c) by written notice to the Contractor, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under section 11.2(a).

#### Delay not a waiver

- 11.3 No failure or delay on the part of the Province to exercise its rights in relation to an Event of Default will constitute a waiver by the Province of such rights.

#### Province's right to terminate other than for default

- 11.4 In addition to the Province's right to terminate this Agreement under section 11.2(c) on the happening of an Event of Default, the Province may terminate this Agreement for any reason by giving at least 10 days' written notice of termination to the Contractor.

#### Payment consequences of termination

- 11.5 Unless Schedule B otherwise provides, if the Province terminates this Agreement under section 11.4:
- (a) the Province must, within 30 days of such termination, pay to the Contractor any unpaid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that was completed to the Province's satisfaction before termination of this Agreement; and
  - (b) the Contractor must, within 30 days of such termination, repay to the Province any paid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that the Province has notified the Contractor in writing was not completed to the Province's satisfaction before termination of this Agreement.

#### Discharge of liability

- 11.6 The payment by the Province of the amount described in section 11.5(a) discharges the Province from all liability to make payments to the Contractor under this Agreement.

#### Notice in relation to Events of Default

- 11.7 If the Contractor becomes aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, the Contractor must promptly notify the Province of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps the Contractor proposes to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps the Contractor proposes to take to prevent the occurrence of the anticipated Event of Default.

## 12 DISPUTE RESOLUTION

### Dispute resolution process

- 12.1 In the event of any dispute between the parties arising out of or in connection with this Agreement, the following dispute resolution process will apply unless the parties otherwise agree in writing:
- (a) the parties must initially attempt to resolve the dispute through collaborative negotiation;
  - (b) if the dispute is not resolved through collaborative negotiation within 15 Business Days of the dispute arising, the parties must then attempt to resolve the dispute through mediation under the rules of the British Columbia Mediator Roster Society; and
  - (c) if the dispute is not resolved through mediation within 30 Business Days of the commencement of mediation, the dispute must be referred to and finally resolved by arbitration under the *Commercial Arbitration Act*.

### Location of arbitration or mediation

- 12.2 Unless the parties otherwise agree in writing, an arbitration or mediation under section 12.1 will be held in Victoria, British Columbia.

### Costs of arbitration or mediation

- 12.3 Unless the parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the parties must share equally the costs of a arbitration or mediation under section 12.1 other than those costs relating to the production of expert evidence or representation by counsel.

## 13 MISCELLANEOUS

### Delivery of notices

- 13.1 Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows:
- (a) by fax to the addressee's fax number specified on the first page of this Agreement, in which case it will be deemed to be received on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a Business Day, in which cases it will be deemed to be received on the next following Business Day;
  - (b) by hand to the addressee's address specified on the first page of this Agreement, in which case it will be deemed to be received on the day of its delivery; or
  - (c) by prepaid post to the addressee's address specified on the first page of this Agreement, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing.

### Change of address or fax number

- 13.2 Either party may from time to time give notice to the other party of a substitute address or fax number, which from the date such notice is given will supersede for purposes of section 13.1 any previous address or fax number specified for the party giving the notice.

### Assignment

- 13.3 The Contractor must not assign any of the Contractor's rights under this Agreement without the Province's prior written consent.

### Subcontracting

- 13.4. The Contractor must not subcontract any of the Contractor's obligations under this Agreement to any person without the Province's prior written consent, excepting persons listed in the attached Schedule C. No subcontract, whether consented to or not, relieves the Contractor from any obligations under this Agreement. The Contractor must ensure that:
- (a) any person retained by the Contractor to perform obligations under this Agreement; and
  - (b) any person retained by a person described in paragraph (a) to perform those obligations fully complies with this Agreement in performing the subcontracted obligations.

### Waiver

- 13.5 A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving party and is not a waiver of any other term or breach.

### Modifications

- 13.6 No modification of this Agreement is effective unless it is in writing and signed by, or on behalf of, the parties.

### Entire agreement

- 13.7 This Agreement (including any modification of it) constitutes the entire agreement between the parties as to performance of the Services.

### Survival of certain provisions

- 13.8 Sections 2.9, 3.1 to 3.4, 3.7, 3.8, 5.1 to 5.5, 6.1 to 6.5, 7.1, 7.2, 8.1, 9.1 to 9.6, 9.9, 10.1 to 10.3, 11.2, 11.3, 11.5, 11.6, 12.1 to 12.3, 13.1, 13.2, 13.8, and 13.10, any accrued but unpaid payment obligations, and any other sections of this Agreement (including schedules) which, by their terms or nature, are intended to survive the completion of the Services or termination of this Agreement, will continue in force indefinitely, even after this Agreement ends.

### Schedules

- 13.9 The schedules to this Agreement (including any appendices or other documents attached to, or incorporated by reference into, those schedules) are part of this Agreement.

### Independent contractor

- 13.10 In relation to the performance of the Contractor's obligations under this Agreement, the Contractor is an independent contractor and not:
- (a) an employee or partner of the Province; or
  - (b) an agent of the Province except as may be expressly provided for in this Agreement.

The Contractor must not act or purport to act contrary to this section.

### Personnel not to be employees of Province

- 13.11 The Contractor must not do anything that would result in personnel hired or used by the Contractor or a Subcontractor in relation to providing the Services being considered employees of the Province.

#### Key Personnel

- 13.12 If one or more individuals are specified as "Key Personnel" of the Contractor in Part 4 of Schedule A, the Contractor must cause those individuals to perform the Services on the Contractor's behalf, unless the Province otherwise approves in writing, which approval must not be unreasonably withheld.

#### Pertinent information

- 13.13 The Province must make available to the Contractor all information in the Province's possession which the Province considers pertinent to the performance of the Services.

#### Conflict of interest

- 13.14 The Contractor must not provide any services to any person in circumstances which, in the Province's reasonable opinion, could give rise to a conflict of interest between the Contractor's duties to that person and the Contractor's duties to the Province under this Agreement.

#### Time

- 13.15 Time is of the essence in this Agreement and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.

#### Conflicts among provisions

- 13.16 Conflicts among provisions of this Agreement will be resolved as follows:
- (a) a provision in the body of this Agreement will prevail over any conflicting provision in, attached to or incorporated by reference into a schedule, unless that conflicting provision expressly states otherwise; and
  - (b) a provision in a schedule will prevail over any conflicting provision in a document attached to, or incorporated by reference into a schedule, unless the schedule expressly states otherwise.

#### Agreement not permit nor fetter

- 13.17 This Agreement does not operate as a permit, license, approval or other statutory authority which the Contractor may be required to obtain from the Province or any of its agencies in order to provide the Services. Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province or its agencies of any statutory, prerogative, executive or legislative power or duty.

#### Remainder not affected by invalidity

- 13.18 If any provision of this Agreement or the application of it 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 and will be valid and enforceable to the extent permitted by law.

#### Further assurances

- 13.19 Each party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.

#### Additional terms

- 13.20 Any additional terms set out in the attached Schedule F apply to this Agreement.

Governing law

13.21 This Agreement is governed by, and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.

14 INTERPRETATION

14.1 In this Agreement:

- (a) "includes" and "including" are not intended to be limiting;
- (b) unless the context otherwise requires, references to sections by number are to sections of this Agreement;
- (c) the Contractor and the Province are referred to as "the parties" and each of them as a "party";
- (d) "attached" means attached to this Agreement when used in relation to a schedule;
- (e) unless otherwise specified, a reference to a statute by name means the statute of British Columbia by that name, as amended or replaced from time to time;
- (f) the headings have been inserted for convenience of reference only and are not intended to describe, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (g) "person" includes an individual, partnership, corporation or legal entity of any nature; and
- (h) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*.

15 EXECUTION AND DELIVERY OF AGREEMENT

15.1 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of, each party and that executed copy being delivered to the other party by a method provided for in section 13.1 or any other method agreed to by the parties.

The parties have executed this Agreement as follows:

<p>SIGNED on the 20th day of February, 2012 by the Contractor (or, if not an individual, on its behalf by its authorized signatory or signatories): LifeLabs BC LP, by its general partner, LifeLabs BC Inc.</p> <p>Per: <u>Francis B. Amodeo</u> Francis B. Amodeo - VP, Finance</p> <p>Per: <u>Andy Neale</u> Andy Neale - CIO</p>	<p>SIGNED on the 29 day of February, 2012 on behalf of the Province by its duly authorized representative:</p> <p><u>Paul Shrimpton</u> Signature</p> <p><u>Paul Shrimpton</u> Print Name</p> <p><u>Executive Director</u> Print Title</p>
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**Schedule A – Services**

**PART 1. TERM:**

The term of this Agreement commences on 5 March 2012 and ends on 31 March 2013.

**PART 2. SERVICES:**

The Province has established the Provincial Laboratory Information Solution (PLIS) as a central repository, or database, of laboratory test results ordered by health care providers in British Columbia. Under Section 3 of the British Columbia E-Health Act, PLIS has been designated a health information bank.

The Contractor operates medical laboratories in British Columbia, which produce diagnostic laboratory test results for patients resident in British Columbia. Test results are usually produced in response to a requisition from a physician. Order in Council number 341, approved July 21, 2011, prescribed the Contractor as a person for the purpose of section 6 of the E-Health Act. As per Section 6 of the Act, a prescribed person to whom a request is made (by a person authorized under a designation order) to provide information or records that contain personal health information must comply with the request in the manner and at the times requested if the information or records are in the custody or under the control of the prescribed person.

The purpose of this General Services Agreement is to compensate the Contractor for providing the services necessary to enable the Contractor to comply with a request to provide information via an electronic interface between the Contractor's systems and PLIS. The services the Contractor will provide under this General Services Agreement do not include ongoing provision of the requested information but simply the establishment of the means to electronically provide the information.

The Contractor will not contribute to the development of any system owned by the Province.

The Services comprise of the following:

- The development of a Technical Solution enabling the automated, ongoing delivery of in-scope laboratory test results to PLIS from the Contractor's medical laboratories in British Columbia.
- The Contractor's development of the deliverables described in this Schedule (the "Deliverables"). The Contractor will use its best commercial efforts to deliver each Deliverable to the Province on or before the target completion date specified for that deliverable.

**Outputs**

The Contractor must deliver the Deliverables listed below.

<b>Deliverable</b>	<b>Target Completion Date</b>
Project Charter Sign-Off (attached for reference)	March 5, 2012
Gate 1 Deliverables	July 8, 2012
<ul style="list-style-type: none"> <li>• Nomenclature Mapping Table, to be developing used Nomenclature Automated Mapping Assistant (NAMA) Tool</li> <li>• Logical Observation Identifiers Names and Codes (LOINC) Encoding</li> <li>• Lab HL7 2.3.1 Standard Message Map (ORM/ORU)</li> </ul>	
Gate 2 Deliverables	September 9, 2012

<ul style="list-style-type: none"> <li>▪ Technical Solution to deliver HL7 2.3.1 messages to PLIS</li> </ul>	October 28, 2012
<b>Gate 3 Deliverables</b> <ul style="list-style-type: none"> <li>▪ Network and Systems Connectivity</li> <li>▪ Point of Service Integration Appliance (POSIA) Integration, Test Data Development</li> </ul>	
<b>Gate 4 Deliverables</b> <ul style="list-style-type: none"> <li>▪ Test Plan Development, Execution and Results</li> <li>▪ Clinical Data Validation Sign-Off</li> <li>▪ Privacy and Security Compliance Gap Analyses</li> <li>▪ Production Turn-Over Documentation</li> </ul>	January 18, 2013

The Contractor will make reasonable efforts to determine the mutual requirements of the Province and the Contractor regarding the purpose, format, length and content of each Deliverable through preliminary review with the Province of the Deliverable's table of contents and outlines of the main sections prior to commencing work on the Deliverable.

The Province commits to receive, review in a timely manner (i.e. ten (10) business days), and approve and/or accept each deliverable as furnished by the Contractor. If a deliverable reasonably requires remediation following review, the Province commits to providing specific instruction regarding the nature of the required remediation and to allowing a period of ten (10) business days for such remediation to be performed by the Contractor. Once remediation is complete, the deliverable will once again be submitted to the Province for review and approval, such approval not to be unreasonably withheld. Deliverables that are not reviewed in a timely manner, and for which no request for extension of the review period is made, will be deemed accepted at the end of the review period.

**Inputs**

The Contractor must:

1. Provide the necessary qualified personnel to provide the services as well as any associated work space, tools and supplies as necessary to complete the specified Deliverables.

The Province will:

1. Provide direction as required and clarification on relevant issues.
2. Ensure the timely completion of any Province deliverables upon which the Contractor may be dependent for the completion of the Contractor's Deliverables.
3. Provide background material and other documentation as required in support of services.
4. Review, comment and sign-off on all Deliverables.

**Outcomes**

Through the delivery of the Services the Province wishes to realize the following outcomes and, without limiting the obligation of the Contractor to comply with other provisions of this Part, the Contractor must use commercially reasonable efforts to achieve them:

- The establishment of an interface between the Contractor and lab systems and PLIS that, once implemented, will enable the electronic provision of lab results from the Contractor to PLIS.



The parties acknowledge that the Contractor does not warrant that these outcomes will be achieved.

**Reporting requirements**

The Contractor will report to the Contractor Administrator, or to individuals designated by the Contract Administrator, on the status of all Deliverables on a monthly basis using a mutually agreed to template.

**PART 3. RELATED DOCUMENTATION:**

Not applicable

**PART 4 KEY PERSONNEL:**

Krystyna Hommen

**Schedule B – Fees and Expenses**

**1. MAXIMUM AMOUNT PAYABLE:**

**Maximum Amount:** Despite sections 2 and 3 of this Schedule, \$ 378,220 is the maximum amount which the Province is obliged to pay to the Contractor for fees and expenses under this Agreement (exclusive of any applicable taxes described in section 3.1(c) of this Agreement).

**2. FEES:**

**Rate per Deliverable**

The Province will pay the Contractor one-time fee payments upon the completion and acceptance of each deliverable, payable as follows:

Deliverable	Percent of Total Fees	Payment
Project Charter Sign-Off	25.00%	94,555.00
Gate 1 Deliverables	25.00%	94,555.00
Gate 2 Deliverables	15.00%	56,733.00
Gate 3 Deliverables	15.00%	56,733.00
Gate 4 Deliverables	20.00%	75,644.00

**3. EXPENSES:**

**Expenses:**

None.

**4. STATEMENTS OF ACCOUNT:**

**Statements of Account:** In order to obtain payment of any fees and expenses under this Agreement for a period described in section 2 of this Schedule (each a "Billing Period"), the Contractor must deliver to the Province on a date after the Billing Period (each a "Billing Date"), a written statement of account in a form satisfactory to the Province containing:

- (a) the Contractor's legal name and address;
- (b) the date of the statement, and the Billing Period to which the statement pertains;  
the Contractor's calculation of all fees claimed for that Billing Period, including a declaration by the Contractor of all deliverables provided during the Billing Period for which the Contractor claims fees and a description of the applicable fee rates;
- (c) a chronological listing, in reasonable detail, of any expenses claimed by the Contractor for the Billing Period with receipts attached, if applicable, and, if the Contractor is claiming reimbursement of any HST or other applicable taxes paid or payable by the Contractor in relation to those expenses, a description of any credits, rebates, refunds or remissions the Contractor is entitled to from the relevant taxation authorities in relation to those taxes;
- (d) the Contractor's calculation of any applicable taxes payable by the Province in relation to the Services for the Billing Period;
- (e) a description of this Agreement;

- (f) a statement number for identification; and
- (g) any other billing information reasonably requested by the Province.

**5. PAYMENTS DUE:**

**Payments Due:** Within 30 days of the Province's receipt of the Contractor's written statement of account delivered in accordance with this Schedule, the Province must pay the Contractor the fees and expenses (plus all applicable taxes), claimed in the statement if they are in accordance with this Schedule. Statements of account or contract invoices offering an early payment discount may be paid by the Province as required to obtain the discount.

**Schedule C – Approved Subcontractor(s)**

Excelleris Technologies Limited Partnership, and its subcontractor BC Biomedical Laboratories Ltd.  
201-4445 Lougheed Highway,  
Burnaby BC V5C 0E4  
Key personnel: Krystyna Hommen  
Phone: 604 658 2103  
email: khommen@excelleris.com

#### Schedule D – Insurance

1. The Contractor must, without limiting the Contractor's obligation or liabilities and at the Contractor's own expense, purchase and maintain throughout the Term the following insurances with insurers licensed in Canada in forms and amounts acceptable to the Province:
  - (a) Commercial General Liability in an amount not less than \$2,000,000 inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this Agreement and this insurance must:
    - (i) include the Province as an additional insured,
    - (ii) be endorsed to provide the Province with 30 days advance written notice of cancellation or material change, and
    - (iii) include a cross liability clause; and
  - (b) Professional Errors and Omissions Liability insuring the Contractor's liability resulting from errors or omissions in the performance of the Services in an amount per occurrence, and in the aggregate, calculated as follows:
    - (i) not less than \$1,000,000, if the "Maximum Amount" set out in Schedule B is less than \$500,000; and
    - (ii) not less than \$2,000,000, if the "Maximum Amount" set out in Schedule B is \$500,000 or greater.
2. All insurance described in section 1 of this Schedule must:
  - (a) be primary; and
  - (b) not require the sharing of any loss by any insurer of the Province.
3. The Contractor must provide the Province with evidence of all required insurance as follows:
  - (a) within 10 Business Days of commencement of the Services, the Contractor must provide to the Province evidence of all required insurance in the form of a completed Province of British Columbia Certificate of Insurance;
  - (b) if any required insurance policy expires before the end of the Term, the Contractor must provide, within 10 Business Days of the policy's expiration, evidence of a new or renewal policy meeting the requirements of the expired insurance in the form of a completed Province of British Columbia Certificate of Insurance; and
  - (c) despite paragraph (a) or (b) above, if requested by the Province at any time, the Contractor must provide to the Province certified copies of the required insurance policies.
4. Despite section 1(b) of this Schedule, if in the Province's sole discretion, the Province has approved in writing either a fronted self-insurance program or a duly licensed captive insurer as an alternative to the Professional Liability Insurance requirement set out in section 1(b), then the Contractor must maintain throughout the Term that alternative in accordance with the terms of the approval.

## Schedule E – Privacy Protection Schedule

### Definitions

1. In this Schedule,
  - (a) “**access**” means disclosure by the provision of access;
  - (b) “**Act**” means the *Freedom of Information and Protection of Privacy Act*;
  - (c) “**contact information**” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
  - (d) “**personal information**” means recorded information about an identifiable individual, other than contact information, collected or created by the Contractor as a result of the Agreement or any previous agreement between the Province and the Contractor dealing with the same subject matter as the Agreement but excluding any such information that, if this Schedule did not apply to it, would not be under the “control of a public body” within the meaning of the Act.

### Purpose

2. The purpose of this Schedule is to:
  - (a) enable the Province to comply with the Province's statutory obligations under the Act with respect to personal information; and
  - (b) ensure that, as a service provider, the Contractor is aware of and complies with the Contractor's statutory obligations under the Act with respect to personal information.

### Collection of personal information

3. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor may only collect or create personal information that is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
4. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor must collect personal information directly from the individual the information is about.
5. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor must tell an individual from whom the Contractor collects personal information:
  - (a) the purpose for collecting it;
  - (b) the legal authority for collecting it; and
  - (c) the title, business address and business telephone number of the person designated by the Province to answer questions about the Contractor's collection of personal information.

### Accuracy of personal information

6. The Contractor must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Contractor or the Province to make a decision that directly affects the individual the information is about.

### **Requests for access to personal information**

7. If the Contractor receives a request for access to personal information from a person other than the Province, the Contractor must promptly advise the person to make the request to the Province unless the Agreement expressly requires the Contractor to provide such access and, if the Province has advised the Contractor of the name or title and contact information of an official of the Province to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

### **Correction of personal information**

8. Within 5 Business Days of receiving a written direction from the Province to correct or annotate any personal information, the Contractor must annotate or correct the information in accordance with the direction.
9. When issuing a written direction under section 8, the Province must advise the Contractor of the date the correction request to which the direction relates was received by the Province in order that the Contractor may comply with section 10.
10. Within 5 Business Days of correcting or annotating any personal information under section 8, the Contractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Province, the Contractor disclosed the information being corrected or annotated.
11. If the Contractor receives a request for correction of personal information from a person other than the Province, the Contractor must promptly advise the person to make the request to the Province and, if the Province has advised the Contractor of the name or title and contact information of an official of the Province to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

### **Protection of personal information**

12. The Contractor must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

### **Storage and access to personal information**

13. Unless the Province otherwise directs in writing, the Contractor must not store personal information outside Canada or permit access to personal information from outside Canada.

### **Retention of personal information**

14. Unless the Agreement otherwise specifies, the Contractor must retain personal information until directed by the Province in writing to dispose of it or deliver it as specified in the direction.

### **Use of personal information**

15. Unless the Province otherwise directs in writing, the Contractor may only use personal information if that use is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.

### **Disclosure of personal information**

16. Unless the Province otherwise directs in writing, the Contractor may only disclose personal information inside Canada to any person other than the Province if the disclosure is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
17. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor must not disclose personal information outside Canada.

### **Notice of foreign demands for disclosure**

18. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.2 of the Act, if in relation to personal information in the custody or under the control of the Contractor, the Contractor:
  - (a) receives a foreign demand for disclosure;
  - (b) receives a request to disclose, produce or provide access that the Contractor knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
  - (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure

the Contractor must immediately notify the Province and, in so doing, provide the information described in section 30.2(3) of the Act. In this section, the phrases "foreign demand for disclosure" and "unauthorized disclosure of personal information" will bear the same meanings as in section 30.2 of the Act.

### **Notice of unauthorized disclosure**

19. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.5 of the Act, if the Contractor knows that there has been an unauthorized disclosure of personal information in the custody or under the control of the Contractor, the Contractor must immediately notify the Province. In this section, the phrase "unauthorized disclosure of personal information" will bear the same meaning as in section 30.5 of the Act.

### **Inspection of personal information**

20. In addition to any other rights of inspection the Province may have under the Agreement or under statute, the Province may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect any personal information in the possession of the Contractor or any of the Contractor's information management policies or practices relevant to the Contractor's management of personal information or the Contractor's compliance with this Schedule and the Contractor must permit, and provide reasonable assistance to, any such inspection.

### **Compliance with the Act and directions**

21. The Contractor must in relation to personal information comply with:
  - (a) the requirements of the Act applicable to the Contractor as a service provider, including any applicable order of the commissioner under the Act; and
  - (b) any direction given by the Province under this Schedule.



22. The Contractor acknowledges that it is familiar with the requirements of the Act governing personal information that are applicable to it as a service provider.

#### **Notice of non-compliance**

23. If for any reason the Contractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Contractor must promptly notify the Province of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

#### **Termination of Agreement**

24. In addition to any other rights of termination which the Province may have under the Agreement or otherwise at law, the Province may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Contractor, terminate the Agreement by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

#### **Interpretation**

25. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
26. Any reference to the "Contractor" in this Schedule includes any subcontractor or agent retained by the Contractor to perform obligations under the Agreement and the Contractor must ensure that any such subcontractors and agents comply with this Schedule.
27. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.
28. If a provision of the Agreement (including any direction given by the Province under this Schedule) conflicts with a requirement of the Act or an applicable order of the commissioner under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
29. The Contractor must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to section 30, the law of any jurisdiction outside Canada.
30. Nothing in this Schedule requires the Contractor to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the Act.

## Schedule F – Additional Terms

### 1 Definitions (Article 1 of the Main Body of this Agreement)

1.1 For greater certainty, and notwithstanding section 1.1 of the main body of this Agreement, in this Agreement:

- (a) “Incorporated Material”, “Material” and “Produced Material” do not include any laboratory test results.
- (b) “Produced Material” does not include any part of the Technical Solution.

1.2 In this Schedule F and in Schedule A,

- (a) “Clinical Data Validation” means verification of data accuracy and completeness of laboratory data presented through the eHealth Viewer when compared by the Contractor to the same data on the hard copy of the laboratory data, and on the Excelleris Technologies viewer;
- (b) “Excelleris Technologies” means Excelleris Technologies Limited Partnership, a Subcontractor;
- (c) “Information Sharing Agreement” means the information sharing agreement to be entered into between the Province and the Contractor, on terms acceptable to the Province and the Contractor, relating to the provision of laboratory test results by the Contractor to PLIS;
- (d) “Project Charter” means the iEHR-PLIS Community Laboratories Onboarding Project Charter, Version 1.0, dated February 21, 2012 (attached for reference purposes);
- (e) “PLIS” means the Provincial Laboratory Information Solution, a computer system of the Province that has been established as a central repository of laboratory test results ordered by health care practitioners in British Columbia; and
- (f) “Technical Solution” means the software applications and computer programs owned or licensed by the Contractor or Excelleris Technologies which are to be used by the Contractor or Excelleris Technologies for the automated, ongoing submission of laboratory test results to PLIS, including without limitation:
  - (i) any new software or systems produced by the Contractor or Excelleris Technologies, whether or not produced as a result of this Agreement, for use on or with the systems of the Contractor or Excelleris Technologies; and
  - (ii) any internal policies, procedures or similar documents relating to the Technical Solution or its use or operation, whether or not produced by the Contractor or Excelleris Technologies as a result of this Agreement.

### 2 Services (Article 2 of the Main Body of this Agreement)

2.1 Due to the collaborative nature of the project undertaken under this Agreement, the Province waives the right to give the Contractor directions under section 2.6 of the main body of this Agreement.

### 3 Representations and Warranties (Article 4 of the Main Body of this Agreement)

3.1 The Province and the Contractor agree that section 4.1(a)(i) of the main body of this Agreement is deleted.

### 4 Privacy and Security (Sections 5.1 and 5.2 of the Main Body of this Agreement)

4.1 For greater certainty, and notwithstanding sections 5.1 and 5.2 of the main body of this Agreement and Schedules E and G and Appendix G.1, the Province and the Contractor agree that:

- (a) As background, the Technical Solution will enable the delivery of laboratory test results from the Contractor to the Province using a secure connection from Excelleris Technologies to the PLIS Point of Service Integration Appliance ("POSIA").
- (b) Laboratory test results and other personal information collected or generated by the Contractor are in the custody and control of the Contractor and/or Excelleris Technologies, under the *Personal Information Protection Act* ("PIPA"), and are not in the custody or under the control of the Province. Schedules E and G and Appendix G.1 do not apply to any such laboratory test results and other personal information.
- (c) When a copy of a laboratory test result or other personal information passes through the secure connection from Excelleris Technologies to the POSIA, that copy is then in the custody or under the control of the Province, under the *Freedom of Information and Protection of Privacy Act* ("FOIPPA") and the *E-Health (Personal Health Information Access and Protection of Privacy) Act* ("e-Health Act"), and that copy is not in the custody or under the control of the Contractor.
- (d) Clinical Data Validation activities (and possibly certain other activities) require that the Contractor and Excelleris Technologies be given limited eHealth Viewer access to certain personal information on PLIS, in addition to the laboratory test results and other personal information provided to the Province by the Contractor and/or Excelleris Technologies. Schedules E and G and Appendix G.1 apply only in relation to personal information on PLIS which is accessed by the Contractor or Excelleris Technologies.
- (e) The Information Sharing Agreement will reflect the principles described in this section 4.1. The Deliverables and other project documents which are to be developed under the Project Charter will also reflect the principles described in this section 4.1.

4.2 Section 5.2(a) does not apply to any Incorporated Material or any other item or portion of the Material which is owned by the Contractor or Excelleris Technologies.

### 5 Confidentiality (Section 5.3 of the Main Body of this Agreement)

5.1 In this Agreement,

- (a) "**Confidential Information**" of the Province shall mean any technical, business, financial, personal, employee, operational, scientific or other information or data of the Province or of any person that has disclosed such information to the Province or its agents that, at the time of disclosure (i) is designated as confidential (or like designation) (ii) is disclosed in circumstances of confidence, or (iii) would be understood by a person exercising reasonable business judgment to be confidential. Without limiting the foregoing, Province Confidential Information shall include, without limitation,

- (i) the Produced Materials,
- (ii) the Received Materials that the Contractor receives from the Province,
- (iii) any personal information obtained from the Province in any way, including from PLIS or any other data repository of the Province, and
- (iv) any information regarding the Province's business, plans, operations, facilities and markets,

but for greater certainty does not include the Technical Solution.

- (b) "**Confidential Information**" of the Contractor shall mean any technical, business, financial, personal, employee, operational, scientific or other information or data of the Contractor or Excelleris Technologies, or of any person that has disclosed such information to the Contractor or Excelleris Technologies, that is supplied to, obtained by, or that comes to the knowledge of the Province as a result of this Agreement and that, at the time of disclosure (i) is designated as confidential (or like designation) (ii) is disclosed in circumstances of confidence, or (iii) would be understood by a person exercising reasonable business judgment to be confidential. Without limiting the foregoing, Contractor Confidential Information shall include, without limitation,
  - (i) any personal information obtained from the Contractor or Excelleris, except to the extent provided under the Information Sharing Agreement, and
  - (ii) any information regarding the Contractor's or Excelleris Technologies' business, plans, operations, facilities and markets,

Notwithstanding the foregoing, the "Contractor Confidential Information" will exclude all Province Confidential Information, whether or not expressly indicated for exclusion.

5.2 Each of the Parties agrees that all Confidential Information of the other Party, will be received in the strictest of confidence and held in accordance with and subject to the terms of this Agreement and with a degree of care no less than the degree of care that the receiving Party employs for the protection of its own Confidential Information of a similar nature provided that in any event the receiving Party shall use a reasonable degree of care to protect such Confidential Information appropriate to the nature of the information and in accordance with prudent industry practice.

5.3 Subject to section 5.1 of the main body of this Agreement and all other obligations set forth in this Agreement, a Party may use or disclose relevant aspects of another party's Confidential Information to:

- (a) the extent reasonable necessary to perform its obligations and exercise its rights under this Agreement; and
- (b) to its employees, contractors, professional advisors and agents to the extent such disclosure and use thereof is reasonably necessary for the performance of the receiving Party's rights or obligations under this Agreement and provided that such persons and their employees have an actual need to know such information.

5.4 Subject to section 5.1 of the main body of this Agreement, the obligations of confidentiality contained in this section 5 of Schedule F shall not apply to any information to the extent a Party can reasonably demonstrate that such information:

- (a) was, at the time of disclosure to the receiving Party, in the public domain;
- (b) after disclosure to the receiving Party, is published or otherwise becomes part of the public domain through no fault of the receiving Party;
- (c) was in the possession of the receiving Party at the time of disclosure to it and was not subject of a pre-existing confidentiality obligation;
- (d) was disclosed independently to the receiving Party by a third party without any confidentiality obligations, provided such third party, or any other party from whom such third party receives such information, is not in breach of any confidentiality obligations in respect of such information;
- (e) was independently developed by the receiving Party without use of any Confidential Information of the other Party;
- (f) is disclosed with the prior written approval of the other Party, but only to the extent approved by the other Party; or
- (g) is Contractor Confidential Information and such information is required to be disclosed by the Province under the *Freedom of Information and Protection of Privacy Act* (British Columbia).

5.5 Subject to section 5.1 of the main body of this Agreement, a Party shall not be considered to have breached its confidentiality obligations under this section 5 of Schedule F for disclosing any Confidential Information of the other Party to the extent such disclosure is required by applicable law provided that the Party requested to make such disclosure (the "Compelled Party"):

- (a) Promptly upon receiving any such request and within a reasonable time prior to disclosure notifies the other Party of the terms and circumstances of the requested disclosure;
- (b) Consults with the other Party regarding the nature and scope of such request and the response or other position the Compelled Party intends to take with respect to such request;
- (c) Does not obstruct or interfere and to the extent practical permits the other Party to obtain a protective order or other remedy to prevent, object to, enjoin, narrow the scope of or otherwise contest the requested disclosure;
- (d) If the other Party is unable to obtain a protective order or other remedy, the Compelled Party shall only disclose such of the Confidential Information that it is legally required to disclose; and
- (e) Make and reasonably pursues a request, that is reasonable and customary in the circumstances, to the applicable governmental authority for confidential treatment of the information to be disclosed to such governmental authority.

5.6 Nothing in this section 5 of Schedule F shall be construed as obligating a Party to disclose its Confidential Information to the other Party or as granting or conferring on a Party, expressly or impliedly, any right, title or interest or any license to the Confidential Information of the other Party.

5.7 Each Party shall:

- (a) Notify the other Party of any material unauthorized possession, use or knowledge, or attempt to effect the same, of the other Party's Confidential Information by any person that may become known to such Party;
- (b) Promptly furnish to the other Party details of the unauthorized possession, use or knowledge, or attempt to effect the same, and use reasonable efforts to assist the other Party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt to effect the same, of the other Party's Confidential Information;
- (c) Use reasonable efforts to cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its proprietary rights and Confidential Information; and
- (d) Promptly use reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of the other Party's Confidential Information.

The party whose Confidential Information is the subject of such activity will reimburse any out-of-pocket expenses reasonably incurred by the other Party as a result of compliance with this section 5.7 of Schedule F.

5.8 Subject to applicable laws including the *Crown Proceeding Act* (British Columbia), in the event of any breach or anticipated breach of this section 5 of Schedule F, the non-defaulting Party shall be entitled to preliminary and permanent injunctive relief as well as an equitable accounting of all profits and benefits arising out of such violation, which remedy shall be in addition to any other rights or remedies to which such Party may be entitled under this Agreement or otherwise under applicable laws.

5.9 Section 5.3 of the main body of this Agreement is hereby deleted and replaced with Article 5 of this Schedule F.

## **6 Material and Intellectual Property (Article 6 of the Main Body of this Agreement)**

6.1 Section 6.1 of the main body of this Agreement does not apply to any Incorporated Material or any other item or portion of the Material which is owned by the Contractor or Excelleris Technologies.

6.2 Notwithstanding any other provision of this Agreement, the Contractor and/or Excelleris Technologies exclusively own all property rights, including all intellectual property rights, in the Technical Solution.

6.3 Notwithstanding sections 6.2, 6.3 and 6.5 of the main body of this Agreement, the Province grants to the Contractor and to Excelleris Technologies:

- (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, modify and distribute the Produced Material and the Received Material,
- (b) the right to sublicense to third-parties the right to use, reproduce, modify and distribute the Produced Material and the Received Material,

for the following purposes:

- (c) for the purpose of operating and maintaining the Technology Solution,

(d) for the purpose of delivering laboratory test results under the Information Sharing Agreement, and

(e) for purposes incidental to those described in subsections (d) and (e).

## **7 Audit (Article 8 of the Main Body of this Agreement)**

7.1 The Province agrees that it will only exercise its rights under section 8.1 of the main body of this Agreement if it has reasonable cause for doing so.

## **8 Indemnity and Insurance (Article 9 of the Main Body of this Agreement)**

8.1 Notwithstanding sections 9.1 and 9.5 of the main body of this Agreement, the obligations of the Contractor under those sections are limited to:

- (a) claims which arise directly from any breach of any of the terms of this Agreement by Contractor or any Subcontractor; or
- (b) any claim that the Produced Material infringes the third-party intellectual property rights of a third party (except if the third party claim results from an element of the Produced Material which was included at the request of the Province).

8.2 The parties agree that section 9.2 is deleted and replaced by the following. The indemnification by the Contractor pursuant to section 9.1 of the main body is limited to an amount equal to the fees paid or payable by the Province under this Agreement.

8.3 Notwithstanding any other provision of this Agreement, the entire liability of the Contractor and the other members of the Contractor Team, and the Province's exclusive remedies, arising under or in connection with this Agreement or the Services shall be strictly limited as set out in this Article 8. The limitations of liability set out in this Article 8 shall apply regardless of the form of claim or action and whether the liability is based on breach or rescission of contract (including fundamental breach or breach of a fundamental term), restitution, tort (including negligence), breach of trust or fiduciary duty or otherwise, and if based in contract, regardless of whether the alleged breach is a breach of a condition or a fundamental term or constitutes a fundamental breach of this Agreement. The Province acknowledges that the Contractor has agreed to the pricing and other terms of this Agreement in reliance on the limitations of liability set out in this Article 8, which are an essential basis of the bargain between the parties.

8.4 The members of the Contractor Team (other than Contractor) are intended third party beneficiaries of this Article 8. For the purpose of this Article 8, "Contractor Team" means the Contractor and Excelleris Technologies and its partners, and their directors, officers, employees, subcontractors and suppliers.

## **9 [Intentionally Deleted]**

9.1 [Intentionally deleted.]

## **10 Insurance (Schedule D)**

10.1 For greater certainty, the Professional Errors and Omissions Liability insurance required under Section 1(d) of Schedule D is for errors and omissions in the development of the Produced Material, and not for (a) errors and omissions in or relating to laboratory test results, or (b) the delivery of laboratory test results to the Province.

## **11 Security (Schedule G)**

11.1 Notwithstanding section 4 of Schedule G or section 5 of Appendix G1, the Contractor is not required to conduct criminal history checks on Services Workers as defined in Schedule G.

## **12 Additional Terms**

12.1 The Province and the Contractor acknowledge and agree that the Contractor will not supply any laboratory test results, including laboratory test results for Clinical Data Validation, to the Province under this Agreement until the Information Sharing Agreement has been executed.

12.2 The Province and the Contractor acknowledge and agree that the services the Contractor will provide under this Agreement do not include ongoing provision of laboratory test results but simply the establishment of the means to electronically provide the information.

## **13 General**

13.1 In addition to section 13.1 of the main body of this Agreement, the General Services Agreement may be entered into by each party signing and delivering it to the other party by email.

13.2 The Project Charter is not a part of this Agreement, and is simply attached for reference.

13.3 In addition to section 13.8 of the main body of this Agreement, Articles 4 to 12 of this Schedule F will survive the expiration or earlier termination of this Agreement and will continue in force indefinitely.

13.4 Contractor Identification – During the term of this agreement and at the request of the Province, contractors shall identify themselves as contractors to the ministry. This may be in the form of email signature blocks, business cards, correspondence, verbal business dealings and any other identification required by the Province.



## Schedule G – Security Schedule

### Definitions

1. In this Schedule,
  - (a) "Equipment" means any equipment, including interconnected systems or subsystems of equipment, software and networks, used or to be used by the Contractor to provide the Services;
  - (b) "Facilities" means any facilities at which the Contractor provides or is to provide the Services;
  - (c) "Information" means information
    - (i) in the Material, or
    - (ii) accessed, produced or obtained by the Contractor (whether verbally, electronically or otherwise) as a result of the Agreement;
  - (d) "Record" means a "record" as defined in the *Interpretation Act*;
  - (e) "Sensitive Information" means
    - (i) Information that is "personal information" as defined in the *Freedom of Information and Protection of Privacy Act*, or
    - (ii) any other Information specified as "Sensitive Information" in Appendix G6, if attached; and
  - (f) "Services Worker" means an individual involved in providing the Services for or on behalf of the Contractor and, for greater certainty, may include
    - (i) the Contractor or a subcontractor if an individual, or
    - (ii) an employee or volunteer of the Contractor or of a subcontractor.

### Schedule contains additional obligations

2. The obligations of the Contractor in this Schedule are in addition to any other obligation in the Agreement or the schedules attached to it relating to security including, without limitation, the obligations of the Contractor in the Privacy Protection Schedule, if attached.

### Services Worker confidentiality agreements

3. The Contractor must not permit a Services Worker who is an employee or volunteer of the Contractor to have access to Sensitive Information unless the Services Worker has first entered into a confidentiality agreement with the Contractor to keep Sensitive Information confidential on substantially similar terms as those that apply to the Contractor under the Agreement.

### Services Worker security screening

4. The Contractor may only permit a Services Worker who is an employee or a volunteer of the Contractor to have access to Sensitive Information or otherwise be involved in providing the Services if, after having subjected the Services Worker to the personnel security screening requirements set out in Appendix G1 and any additional requirements the Contractor may consider appropriate, the Contractor is satisfied that the Services Worker does not constitute an unreasonable security risk. The Contractor must create, obtain and

retain Records documenting the Contractor's compliance with the security screening requirements set out in Appendix G1 in accordance with the provisions of that appendix.

#### **Services Worker activity logging**

5. Subject to section 6, the Contractor must create and maintain detailed Records logging the activities of all Service Workers in relation to:
  - (a) their access to Sensitive Information; and
  - (b) other matters specified by the Province in writing for the purposes of this section.
6. The Records described in section 5 must be made and maintained in a manner, and contain information, specified in Appendix G2, if attached.

#### **Facilities and Equipment protection and access control**

7. The Contractor must create, maintain and follow a documented process to:
  - (a) protect Facilities and Equipment of the Contractor required by the Contractor to provide the Services from loss, damage or any other occurrence that may result in any of those Facilities and Equipment being unavailable when required to provide the Services; and
  - (b) limit access to Facilities and Equipment of the Contractor
    - (i) being used by the Contractor to provide the Services, or
    - (ii) that may be used by someone to access Information

to those persons who are authorized to have that access and for the purposes for which they are authorized, which process must include measures to verify the identity of those persons.

8. If the Province makes available to the Contractor any Facilities or Equipment of the Province for the use of the Contractor in providing the Services, the Contractor must comply with any policies and procedures provided to it by the Province on acceptable use, protection of, and access to, such Facilities or Equipment.

#### **Sensitive Information access control**

9. The Contractor must:
  - (a) create, maintain and follow a documented process for limiting access to Sensitive Information to those persons who are authorized to have that access and for the purposes for which they are authorized, which process must include measures to verify the identity of those persons; and
  - (b) comply with the information access control requirements set out in Appendix G3, if attached.

#### **Integrity of Information**

10. The Contractor must:
  - (a) create, maintain and follow a documented process for maintaining the integrity of Information while possessed or accessed by the Contractor; and
  - (b) comply with the information integrity requirements set out in Appendix G4, if attached.
11. For the purposes of section 10, maintaining the integrity of Information means that, except to the extent expressly authorized by the Agreement or approved in writing by the Province, the Information has:
  - (a) remained as complete as when it was acquired or accessed by the Contractor; and

- (b) not been altered in any material respect.

#### **Documentation of changes to processes**

- 12. The Contractor must create and maintain detailed Records logging any changes it makes to the processes described in sections 7, 9 and 10.

#### **Notice of security breaches**

- 13. If Contractor becomes aware that:
  - (a) unauthorized access, collection, use, disclosure, alteration or disposal of Information or Records containing Information; or
  - (b) unauthorized access to Facilities or Equipment

has occurred or is likely to occur (whether or not related to a failure by the Contractor to comply with this Schedule or the Agreement), the Contractor must immediately notify the Province of the particulars of that occurrence or likely occurrence. If the Contractor provides a notification under this section other than in writing, that notification must be confirmed in writing to the Province as soon as it is reasonably practicable for the Contractor to do so.

#### **Review of security breaches**

- 14. If the Province decides to conduct a review of a matter described in section 13 (whether or not the matter came to the attention of the Province as a result of a notification under section 13), the Contractor must, on the request of the Province, participate in the review to the extent that it is reasonably practicable for the Contractor to do so.

#### **Retention of Records**

- 15. Unless the Agreement otherwise specifies, the Contractor must retain all Records in the Contractor's possession that contain Information until directed by the Province in writing to dispose of them or deliver them as specified in the direction.

#### **Storage of Records**

- 16. Until disposed of or delivered in accordance with section 15, the Contractor must store any Records in the Contractor's possession that contain Information in accordance with the provisions of Appendix G5, if attached.

#### **Audit**

- 17. In addition to any other rights of inspection the Province may have under the Agreement or under statute, the Province may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect and, at the Province's discretion, copy:
  - (a) any Records in the possession of the Contractor containing Information; or
  - (b) any of the Contractor's Information management policies or processes (including the processes described in sections 7, 9 and 10 and the logs described in sections 5 and 12) relevant to the Contractor's compliance with this Schedule

and the Contractor must permit, and provide reasonable assistance to, the exercise by the Province of the Province's rights under this section.

### Termination of Agreement

18. In addition to any other rights of termination which the Province may have under the Agreement or otherwise at law, the Province may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Contractor, terminate the Agreement by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

### Interpretation

19. In this Schedule, unless otherwise specified:
  - (a) references to sections are to sections of this Schedule; and
  - (b) references to appendices are to the appendices attached to this Schedule.
20. Any reference to the "Contractor" in this Schedule includes any subcontractor retained by the Contractor to perform obligations under the Agreement and the Contractor must ensure that any such subcontractors comply with this Schedule.
21. The appendices attached to this Schedule are part of this Schedule.
22. If there is a conflict between a provision in an appendix attached to this Schedule and any other provision of this Schedule, the provision in the appendix is inoperative to the extent of the conflict unless the appendix states that it operates despite a conflicting provision of this Schedule.
23. If there is a conflict between:
  - (a) a provision of the Agreement, this Schedule or an appendix attached to this Schedule; and
  - (b) a documented process required by this Schedule to be created or maintained by the Contractorthe provision of the Agreement, Schedule or appendix will prevail to the extent of the conflict.
24. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.

**SCHEDULE G – Appendix G1 – Security screening requirements**

The personnel security screening requirements set out in this Appendix G1 are for the purpose of assisting the Contractor determine whether or not a Services Worker constitutes an unreasonable security risk.

**Verification of name, date of birth and address**

- The Contractor must verify the name, date of birth and current address of a Services Worker by viewing at least one piece of "primary identification" of the Services Worker and at least one piece of "secondary identification" of the Services Worker,\* as described in the table following this section. The Contractor must obtain or create, as applicable, Records of all such verifications and retain a copy of those Records. For a Services Worker from another province or jurisdiction, reasonably equivalent identification documents are acceptable.

Primary Identification	Secondary Identification
<p><b>Issued by ICBC:</b></p> <ul style="list-style-type: none"> <li>• B.C. driver's licence or learner's licence (must have photo)</li> <li>• B.C. Identification (BCID) card</li> </ul> <p><b>Issued by provincial or territorial government:</b></p> <ul style="list-style-type: none"> <li>• Canadian birth certificate</li> </ul> <p><b>Issued by Government of Canada:</b></p> <ul style="list-style-type: none"> <li>• Canadian Citizenship Card</li> <li>• Permanent Resident Card</li> <li>• Canadian Record of Landing/Canadian Immigration Identification Record</li> </ul>	<ul style="list-style-type: none"> <li>• School ID card (student card)</li> <li>• Bank card (only if holder's name is on card)</li> <li>• Credit card (only if holder's name is on card)</li> <li>• Passport</li> <li>• Foreign birth certificate (a baptismal certificate is not acceptable)</li> <li>• Canadian or U.S. driver's licence</li> <li>• Naturalization certificate</li> <li>• Canadian Forces identification</li> <li>• Police identification</li> <li>• Foreign Affairs Canada or consular identification</li> <li>• Vehicle registration (only if owner's signature is shown)</li> <li>• Picture employee ID card</li> <li>• Firearms Acquisition Certificate</li> <li>• Social Insurance Card (only if has signature strip)</li> <li>• B.C. CareCard</li> <li>• Native Status Card</li> <li>• Parole Certificate ID</li> <li>• Correctional Service Conditional Release Card</li> </ul>

\*It is not necessary that each piece of identification viewed by the Contractor contains the name, date of birth and current address of the Services Worker. It is sufficient that, in combination, the identification viewed contains that information.

**Verification of education and professional qualifications**

- The Contractor must verify, by reasonable means, any relevant education and professional qualifications of a Services Worker, obtain or create, as applicable, Records of all such verifications, and retain a copy of those Records.

### **Verification of employment history and reference checks**

3. The Contractor must verify, by reasonable means, any relevant employment history of a Services Worker, which will generally consist of the Contractor requesting that a Services Worker provide employment references and the Contractor contacting those references. If a Services Worker has no relevant employment history, the Contractor must seek to verify the character or other relevant personal characteristics of the Services Worker by requesting the Services Worker to provide one or more personal references and contacting those references. The Contractor must obtain or create, as applicable, Records of all such verifications and retain a copy of those Records.

### **Security interview**

4. The Contractor must allow the Province to conduct a security-focused interview with a Services Worker if the Province identifies a reasonable security concern and notifies the Contractor it wishes to do so.

### **Criminal history check**

5. The Contractor must arrange for and retain documented results of a criminal history check on a Services Worker obtained through the Services Worker's local policing agency. Criminal history checks must be repeated as necessary to ensure that at all times the most recent criminal history check on a Services Worker was completed within the previous five years.

## **Crickmore, Jane HLTH:EX**

---

**From:** Crickmore, Jane HLTH:EX  
**Sent:** Wednesday, January 23, 2013 8:59 PM  
**To:** Isaacs, Susan HLTH:EX; Deering, Angela HLTH:EX; Philley, Joanne HLTH:EX  
**Subject:** news article

Fyi – you may have seen already

-----  
Jane Crickmore  
Executive Director  
Laboratory, Diagnostic and Blood Services Branch  
Medical Services and Health Human Resources Division  
Ministry of Health  
Email: jane.crickmore@gov.bc.ca

**Please note new location and contact information:**

6<sup>th</sup> Floor, 1483 Douglas Street  
Victoria, BC V8W 3K4  
Tel: (250) 356-1713 Fax: (250) 356-1679

---

**From:** Manning, Nichola HLTH:EX  
**Sent:** Wed, January 23, 2013 8:38 AM  
**To:** Crickmore, Jane HLTH:EX; Higgs, Jeremy HLTH:EX  
**Subject:**

**Assume you both saw this, interesting...**

**Public medical labs could save \$250 million a year: Study**

The Hook  
Tuesday, January 22, 2013

By Crawford Kilian

The Canadian health care system could save a quarter of its billion-dollar annual spending on lab tests if for-profit labs no longer did them, a new study suggests.

In an article published in Open Medicine, a peer-reviewed open-access journal, Ross Sutherland -- a registered nurse and the Chair of the Ontario Health Coalition -- says public health care systems pay for-profit corporations to deliver medical laboratory services. The transparency of those services is unclear, Sutherland says, because the corporations can invoke "confidential business information" to avoid disclosing just what they do and how much it costs.

Nevertheless, Sutherland says available data point to excessive private-lab costs:

In 2012, Canadian governments will pay private corporations over a billion dollars (a conservative extrapolation from recent spending in Ontario, Manitoba, Alberta, British Columbia, and Saskatchewan) for medical laboratory services, making them among the most privatized of Canada's essential medical services. This estimate does not include payments to private laboratories from the federal government.

governments, public health departments, and public hospitals. Three multinational companies -- LifeLabs, Gamma-Dynacare and CML HealthCare -- will receive over 80% of this money. Canada's 40-year history of using the private sector to deliver this core medical service in 5 provinces provides a useful window on the effects of using for-profit corporations to provide publicly funded medical laboratory services.

Citing studies going back to the 1970s, Sutherland notes that quality-control management programs can't tell if their standards are being met by private labs. "Private labs in Manitoba, as in Ontario, are paid primarily from the public purse to deliver an essential medical service, but the public is not allowed to know whether they are producing high-quality results," he writes.

Integration of medical services is another problem:

In British Columbia, Manitoba, and Ontario separate administrative structures, payment mechanisms and data networks are maintained for the private sector's work in the community and the public hospitals' inpatient services. For example, the electronic integration of Ontario's laboratory records with other patient records, a provincial need identified as early as 1981, is made more complex by the existence of 3 competing for-profit laboratory record systems operating alongside multiple hospital systems. Bayne, in a 2003 review of British Columbia's laboratory system, notes a similar problem. One of the more successful attempts to integrate laboratory records has been in Nova Scotia, which has only public laboratories.

Comparing costs of private and public medical labs, Sutherland says, is difficult. Some research shows higher test costs in public hospital labs; others show the reverse. Still, most studies show private lab tests are more expensive:

More recently, the 2008 Ontario study found that in 12 small Ontario hospitals that were still processing their community's laboratory work the cost was \$22 per community patient per year while the for-profit laboratories cost \$33 per community patient. The Globe and Mail, investigating the rapidly rising costs of vitamin D testing, reported that the private laboratories in British Columbia charged \$94 per test, Ontario private labs \$52, and Ontario hospitals \$32, while the Saskatchewan government lab did the test for \$17.

Another indication of the excess money spent on for-profit laboratories is that, through the 1970s, 1980s, and 1990s, the expense of relatively uncontrolled fee-for-service provision resulted in costs rising faster in the private sector than in hospitals. To control costs, in 1993 Ontario cut payments to private labs by 10%, Alberta in 1994 by 53%, Manitoba in 1995 by "over 20%," and B.C. in 2004 by 20%.

Sutherland concludes:

Most provinces in Canada only use non-profit labs to perform publicly financed laboratory work. Alberta and Saskatchewan have shown that it is possible to restore contracted laboratory work to the public sector, and the fact that all private laboratories operate under fixed-term contracts makes it possible, in theory at least, to shift work back to the public sector when the contracts end. Two useful steps toward ending for-profit provision would be to stop fee-for-service funding and to integrate all laboratory work under the same public administrative structures.

...it is reasonable to assume that the Canadian health care system could save a minimum of \$250 million per year by moving all publicly funded medical laboratory work into an integrated public non-profit medical laboratory system. Such a move would have the added benefits of facilitating the integration of medical records, staff, and administration, and of improving public accountability of the health care system. Both of these outcomes should lead to better cost control. [hlth, fin, jtst]



## **Crickmore, Jane HLTH:EX**

---

**From:** Crickmore, Jane HLTH:EX  
**Sent:** Wednesday, January 23, 2013 8:47 AM  
**To:** Higgs, Jeremy HLTH:EX; Manning, Nichola HLTH:EX  
**Subject:** RE:

I believe we have a book written by this person, who is an RN, addressing the same ideas.

-----  
Jane Crickmore  
Executive Director

Laboratory, Diagnostic and Blood Services Branch  
Medical Services and Health Human Resources Division  
Ministry of Health  
Email: jane.crickmore@gov.bc.ca

**Please note new address and contact information:**

**6th Floor, 1483 Douglas Street  
Victoria, BC V8W 3K4  
Tel: (250) 356-1713 Fax: (250) 356-1679**

---

**From:** Higgs, Jeremy HLTH:EX  
**Sent:** Wednesday, January 23, 2013 8:43 AM  
**To:** Manning, Nichola HLTH:EX; Crickmore, Jane HLTH:EX  
**Subject:** RE:

Why, yes I did. Some good points...a fairly well written perspective from a lay person / journalist that suggests (perhaps unintentionally) that the *status quo* should not remain as such in BC.

J.

Jeremy Higgs  
Director, Medical Services Economic Analysis  
Medical Services & Health Human Resources Division  
Ministry of Health  
250-952-3145

---

**From:** Manning, Nichola HLTH:EX  
**Sent:** Wednesday, January 23, 2013 8:38 AM  
**To:** Crickmore, Jane HLTH:EX; Higgs, Jeremy HLTH:EX  
**Subject:**

**Assume you both saw this, interesting...**

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The Hook

Tuesday, January 22, 2013

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**Crickmore, Jane HLTH:EX**

---

**From:** Crickmore, Jane HLTH:EX  
**Sent:** Wednesday, January 23, 2013 5:26 AM  
**To:** Emerson, Brian P HLTH:EX  
**Subject:** RE: [OM] What's new on Open Medicine

Thanks for the article Brian, and I still have lab reform in my portfolio (and we are still actively working on it).

-----  
Jane Crickmore  
Executive Director  
Laboratory, Diagnostic and Blood Services Branch Medical Services and Health Human Resources Division Ministry of Health  
Email: [jane.crickmore@gov.bc.ca](mailto:jane.crickmore@gov.bc.ca)

Please note new location and contact information:  
6th Floor, 1483 Douglas Street  
Victoria, BC V8W 3K4  
Tel: (250) 356-1713 Fax: (250) 356-1679

-----Original Message-----  
From: Emerson, Brian P HLTH:EX  
Sent: Tue, January 22, 2013 5:23 PM  
To: Crickmore, Jane HLTH:EX  
Subject: Fw: [OM] What's new on Open Medicine

Hi Jane.

I am not sure who is overseeing the lab reform initiatives but I thought the lab costs article might be of interest to you.

Brian

Dr. Brian P. Emerson, Medical Consultant, Population and Public Health Division BC Ministry of Health 4-2 1515 Blanshard St. Victoria, BC, V8W 3C8

----- Original Message ---  
From: Ann Elisabeth Samson S.22  
Sent: Tuesday, January 22, 2013 11:40 AM  
To: Emerson, Brian P HLTH:EX  
Subject: [OM] What's new on Open Medicine

e-Bulletin  
Open Medicine  
A peer-reviewed, independent, open-access journal.

[Openmedicine.ca](http://Openmedicine.ca)

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e-Bulletin: January 22, 2013  
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**RECENTLY PUBLISHED:**

Building access to specialist care through e-consultation Clare Liddy, Margo S Rowan, Amir Afkham, Julie Maranger, Erin Keely

Can e-consultations reduce wait times and improve patient access to specialist care?

In Ontario alone, 54,000 patients are referred to specialists daily. The authors developed and implemented a low-cost electronic referral system, which "has potential for broader implementation, once payment models for physicians are adapted to cover e-consultation." An effective e-consultation system could be a very powerful tool to improve patient care.

Read more here: <http://www.openmedicine.ca/article/view/551/492>

The effect of for-profit laboratories on the accountability, integration, and cost of Canadian health care services Ross Sutherland

The real costs of for-profit laboratory services

There is a potential huge savings in health care by having the public system deliver lab services. The author identifies the capacity of hospital labs, which the public system is already paying for, and cites several examples of considerable cost savings.

Read more here: <http://www.openmedicine.ca/article/view/537/489>

Association of enrolment in primary care networks with diabetes care and outcomes among First Nations and low-income Albertans David John Thomas Campbell, Paul E Ronksley, Brenda Hemmelgarn, Jianguo Zhang, Cheryl Barnabe, Marcello Tonelli, Braden Manns

What's the best model for treating First Nations and low-income people with diabetes?

In this study, the authors found "important disparities in quality of care and outcomes persisted for the highest-risk groups (those receiving Income Support and First Nations individuals, compared with the general population)" in the treatment of diabetes using primary care networks (PCNs).

Read more here: <http://www.openmedicine.ca/article/view/558/487>

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