

CAR Form No. I _____

ICA Contract No. _____

INDEPENDENT CONTRACTOR AGREEMENT

AGREEMENT made as of the most recent date set out on page 6 hereof.

BETWEEN:

THE UNIVERSITY OF MANITOBA

(the "University")

- and -

(the "Contractor")

WHEREAS the University wishes to engage the services of the Contractor and the Contractor agrees to provide services to the University on the terms set out herein;

NOW THEREFORE in consideration of the mutual terms and covenants herein provided, the parties hereto agree as follows:

Services

1. The Contractor shall provide the services as set out in Schedule "A" attached hereto on the terms and conditions set out in this Agreement (the "Services").

Term

2. The Contractor shall provide the Services to the University during the term set out in Schedule "A", unless this Agreement is renewed by the University or terminated earlier in accordance with the terms of this Agreement.

Reporting

3. Liaison with the University respecting the Services shall be with the person identified in Schedule "A" (the "University Liaison").
4. All reports and other documents to be prepared by the Contractor pursuant to Schedule "A" shall be submitted to the University Liaison in writing, unless otherwise specified in Schedule "A", and in form and content satisfactory to the University.
5. The Contractor shall keep the University Liaison informed about the progress of services provided under this Agreement at reasonable intervals or as may be specifically requested by the University Liaison.

Payment

6. The University shall pay the Contractor for the Services provided to the reasonable satisfaction of the University, according to the terms and conditions set out in Schedule "B" attached hereto.
7. The Contractor shall complete and initial the appropriate declarations set out in Schedule "B", and shall provide satisfactory invoices and supporting documentation to the University as set out in Schedule "B".

Expenses

8. The Contractor is required to provide space, facilities, equipment and/or materials at the Contractor's sole expense and the Contractor is solely responsible for making any arrangements and for paying any and all expenses incurred in connection with providing the Services (including telephone, office supplies, document copying, facsimile transmission and postage). Any exceptions must be noted on Schedule "C".

Termination

9. This Agreement may be terminated as follows:
 - (a) by the University where:
 - (i) in the reasonable opinion of the University, the Services provided by the Contractor are unsatisfactory, inadequate, or are improperly provided;
 - (ii) in the reasonable opinion of the University, the Contractor has failed to comply with any substantive term or condition of this Agreement;
 - (iii) the Contractor is dissolved or becomes bankrupt or insolvent;
 - (iv) the Services are provided in connection with a project for which the University has been awarded funding from an external source or for which the University receives payment for the provision of services to a third party, and that project or contract has been terminated or funding or payment reduced;
 - (b) by mutual agreement of the parties, expressed in writing.
10. Upon termination of this Agreement, the Contractor shall cease to provide any further Services. The University shall be under no obligation to the Contractor other than to pay, upon receipt of an invoice and satisfactory supporting documentation, such compensation as, in the reasonable opinion of the University, the Contractor may be entitled to receive under this Agreement for work completed to the satisfaction of the University up to the date of termination.

Confidentiality

11. The Contractor agrees that any information, data, research, documents, photographs, negatives, computer programs (and related object and source codes and electronic files) and any other materials or products disclosed to the Contractor by the University or otherwise produced or developed by the Contractor in providing the Services, whether digitally or non-digitally (the "Materials"), will not be:
 - (a) published or disclosed to any third party except to:
 - (i) those of the Contractor's officers and employees who are directly concerned with the use, development or application of the Materials in the provision of the Services subject to Section 13; and
 - (ii) third parties to the extent necessary to provide the Services; nor
 - (b) used, sold or otherwise disposed of by the Contractor other than in the provision of the Services under this Agreement.
12. The Contractor shall:
 - (a) comply with any rules or directions made or given by the University with respect to safeguarding or ensuring the confidentiality of the Materials;
 - (b) advise the Contractor's officers and employees, to whom the Contractor may disclose the Materials, of the confidentiality and ownership provisions of this Agreement; and
 - (c) do that which is necessary and reasonable to prevent unauthorized disclosures, use, or sale (or other disposition for value) of the Materials.

13. Any additional obligations respecting confidentiality and any obligations respecting non-competition must be noted on Schedule "A".

Privacy

14. The Contractor is aware and acknowledges that the University is a public body under *The Freedom of Information and Protection of Privacy Act* (Manitoba) ("FIPPA") and *The Personal Health Information Act* (Manitoba) ("PHIA") and that records and information that are in the care and custody of the University and are subject to the provisions of FIPPA and PHIA.
15. The Contractor agrees to comply with the provisions of FIPPA and PHIA with respect to the collection, use and disclosure of records and information obtained by the Contractor in connection with this Agreement.
16. Upon completion of the Services, the Contractor shall confidentially destroy, or return the records and information to the University, at the University's option.

Ownership and Intellectual Property

17. Any Materials provided by the University to the Contractor for use in the provision of the Services shall remain the property of the University and shall be returned without cost to the University upon request.
18. Any Materials produced or developed by the Contractor and any of the Contractor's officers, employees, or agents in the provision of the Services, and all copyright and other intellectual property rights therein, are hereby or shall be exclusively assigned to the University by the Contractor and shall be delivered without cost to the University at the times set out in this Agreement or upon request.
19. The Contractor waives any moral rights the Contractor may have in connection with such Materials, and expressly disclaims any royalty rights in connection with the use, distribution or sale by the University of such Materials.
20. If the Materials produced or developed by the Contractor and any of the Contractor's officers, employees, or agents in the provision of the Services include:
 - (a) the development of computer programs, the Contractor must deliver to the University the related object and source codes at the time(s) set out in Schedule "A" or immediately upon termination of this Agreement, whichever is earlier;
 - (b) copies of work(s) to which a third party holds copyright, the Contractor must identify and provide appropriate credit to the author(s) and obtain copyright permission for inclusion of the work(s) in such Materials.
21. For the purposes of sections 18, 19 and 20, the term "Materials" shall not include third party computer programs or any products made available through its own separate license agreement. The Contractor will provide or assign to the University any such licenses.
22. Any additional exceptions to sections 18, 19 or 20 must be noted in Schedule "A".

Warranty

23. The Contractor agrees to carry out all contractual obligations required under this Agreement in a professional, competent and diligent manner.
24. The Contractor expressly warrants that the Services provided and the Materials produced or developed by the Contractor in providing the Services under this Agreement will conform to any specifications or other description furnished or adopted by the University and will be fit and sufficient for their intended purpose, of good workmanship and to the reasonable satisfaction of the University.

Insurance

25. The Contractor:
 - (a) acknowledges that the Contractor is solely responsible for ensuring that the Contractor and any of the Contractor's officers, employees, or agents in the provision of the Services has appropriate workers'

compensation (WCB) coverage, disability, malpractice and comprehensive general liability insurance coverage, and agrees to provide proof of such coverage to the University upon request; and

- (b) releases the University from any obligation of responsibility to provide such coverage.

Additional requirements respecting insurance coverage must be set out in Schedule "A".

Indemnity

- 26. The Contractor indemnifies and saves harmless the University, the University's officers, employees and agents against any and all liability, loss, damage, cost or expense which the University may hereafter sustain, incur, suffer or be required to pay by reason of:
 - (a) the wilful or negligent act or omission of the Contractor;
 - (b) any assessment, re-assessment or any other act of an official of the federal, provincial and/or territorial governments relating to the Contractor;
 - (c) the Contractor's failure to secure the appropriate or any insurance coverage as specified under this Agreement; or
 - (d) a determination by an official of the federal, provincial and/or territorial governments or by a court of competent jurisdiction that the Contractor or any of its principals or employees is an employee of the University in providing the Services.

Notices

- 27. Any notice or other communication required to be given under this Agreement shall be given in writing and delivered by hand, courier (prepaid), registered mail (prepaid), or by facsimile transmission, to the addresses set out in Schedule "B" (or such other address as one party may subsequently notify the other in writing).
- 28. The failure of either party to give notice to the other of the breach or non-fulfilment of any provision of this Agreement shall not constitute acceptance of the said breach or non-fulfilment or any future breach or non-fulfilment.

Nature of Relationship

- 29. It is understood that this Agreement does not constitute an employment agreement and that the status of the Contractor and the Contractor's officers, employees and agents is that of an independent contractor and not that of an employee or agent of the University. The Contractor shall not commit the University to any expenditures or obligations to third parties.
- 30. It is the Contractor's own responsibility to declare to Revenue Canada payments received from the University under this Agreement based on the Contractor's invoices and the University's general cheques.

Conflict of Interest

- 31. The Contractor represents that:
 - (a) the Contractor has no conflict of interest in providing the Services or has disclosed a conflict of interest and presented a management plan satisfactory to the University, and that the University will not be thereby compromised nor suffer loss;
 - (b) in the event that the Contractor, or any of the Contractor's principals and employees providing the Services, is otherwise an employee of the University:
 - (i) the Contractor will act in compliance with the University's *Conflict of Interest* policy and procedures;
 - (ii) the obligations hereunder shall not be undertaken on the University's time or using the University's resources or facilities;

- (iii) it is the Contractor's own responsibility to obtain independent legal and tax advice confirming the Contractor's status (or that of its principals and employees) as being an independent contractor at law and not an employee of the University;
- (iv) the Contractor will indemnify the University for any financial consequences should it or any of its principals or employees be deemed an employee of the University in providing the Services, in accordance with Section 26(d) above; and
- (v) the University reserves the right to prohibit principals and employees of the Contractor, who are otherwise employees of the University, from providing Services under this Agreement.

Legal and Professional Advice

- 32. The Contractor hereby acknowledges and confirms that the Contractor has been given an opportunity to obtain independent legal and other professional advice in connection with this Agreement.
- 33. The Contractor hereby confirms that the Contractor fully appreciates and understands the terms of this Agreement.

Laws, Policies, Regulations, Directives and By-Laws.

- 34. The Contractor shall ensure that all laws, regulations, by-laws and University policies (as set out at www.umanitoba.ca) and any other terms and conditions communicated (verbally or in writing) by the University are adhered to at all times by the Contractor's employees, agents, officers and invitees.

Governing Law and Jurisdiction

- 35. This Agreement shall be construed in accordance with the laws of Manitoba as applied to transactions taking place entirely within Manitoba between Manitoba residents. Any action taken relating to this Agreement shall be commenced in the Court of Queen's Bench (Winnipeg Centre) of Manitoba.

Assignment

- 36. This Agreement or any of the rights or obligations thereunder shall not be assigned in whole or in part by the Contractor without the prior written consent of the University.

Successors and Assigns

- 37. This Agreement shall be binding upon the executors, administrators, heirs, successors and any permitted assignees of the Contractor.

Survival

- 38. Sections 11, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 31, 35 and 38 survive termination or expiration of this Agreement.

Conditions Precedent

- 39. Any conditions precedent to this Agreement must be noted by the University in Schedule "A".

Interpretation

- 40. The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 41. Schedules "A" and "B" (and Schedule "C", if applicable) form part of this Agreement. To the extent that there is a conflict between the contents of these sections and the contents of Schedules "A" or "B" (or Schedule "C", if applicable), the contents of these sections shall govern; provided that where the Agreement allows for exceptions to the sections to be set out in Schedule "A" (and Schedule "C", if applicable), such exceptions shall not be deemed to create a conflict. Nothing prevents additional obligations, terms or conditions respecting the Contractor's provision of the Services being incorporated in the attached Schedules. To the extent there is a conflict between the terms and conditions of these sections and the Schedules, the contents of these sections shall govern.

Entire Agreement

42. This Agreement and the attached Schedules and Appendices contain the entire agreement between the parties. There are no undertakings, representations, or promises, express or implied, other than those contained in this Agreement.

Severability

43. If any of the provisions of this Agreement are found by a court of competent jurisdiction to be null or void, the remainder of this Agreement shall continue in full force and effect provided that the substantive intent of this Agreement is not thereby compromised.

Execution

44. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery by *facsimile* or by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

IN WITNESS WHEREOF this Independent Contractor Agreement has been duly executed by the parties.

THE UNIVERSITY OF MANITOBA

Per: _____

Date: _____

Name:

Title:

CONTRACTOR

Contractor's full name

Per: _____

Date: _____

Name:

Title:

**** REMINDER TO CONTRACTOR - PLEASE COMPLETE
AND INITIAL THE APPROPRIATE DECLARATIONS SET OUT
IN SCHEDULE "B" ****