

Supply Arrangement Agreement
For Project Monitor and Oversight Services
Relating to the Construction of A Human and Animal Health Biological Containment
Laboratory
Bishkek, Kyrgyz Republic

CCC Project 100928/ DFAIT Project 4015-05/LabPM

Between

Her Majesty the Queen in right of Canada (referred to as "Her Majesty") represented by the Department of Foreign Affairs (referred to herein as "DFAIT") and herein represented by the Canadian Commercial Corporation (referred to as "CCC")

(collectively referred to as the "Project Team")

and

[REDACTED]

(referred to as the "Project Monitor")

(Individually referred to as the "Party" or jointly referred to as the "Parties")

for

Performance of the Project Monitor and Oversight Services described in Appendix A –Contract Brief being Appendix "A" of Appendix "B" - Request for Proposals of this Agreement.

WHEREAS CCC and DFAIT executed a Memorandum of Understanding setting out a framework for Supply Arrangements, by which assistance, primarily in the form of in-kind contributions of goods, services, and equipment will be delivered to foreign states and government entities to support the objectives of the Global Partnership Against the Spread of Weapons and Materials of Mass Destruction ("Global Partnership") to enable those states and entities to prevent terrorists and those that harbour them from acquiring nuclear, chemical and biological weapons and other related materials;

AND WHEREAS pursuant to the Global Partnerships, on August 22, 2008, Canada and Kyrgyz entered into an agreement, with an effective date of April 8, 2009, concerning *Cooperation in the Field of Biological Security and Biological Safety* (the "Treaty"), pursuant to which Canada has agreed to provide assistance to the Kyrgyz Republic in the form of programming, design, construction, provision and installation of equipment, commissioning, certification and recertification of a Biosafety Level Three (World Health Organization designation) biological containment laboratory for human and animal health (the "Facility") that will also serve as the repository for the consolidation of dangerous pathogens from several existing facilities in the Kyrgyz Republic;

AND WHEREAS in response to a Request for Proposals initiated by Canada with respect to the monitoring and oversight of the Construction Contract, the Project Monitor was the successful bidder and was invited to conclude a Supply Arrangement Agreement for Project Monitor and Oversight Services (the “Supply Arrangement for Project Monitor and Oversight Services” or “Supply Arrangement” or “Supply Arrangement Agreement” or “Contract” or “Agreement”);

AND WHEREAS CCC is working in conjunction with DFAIT with respect to the entry into the Agreement for the acquisition of the Services described in Appendix A –Contract Brief being Appendix “A” of Appendix “B” - Request for Proposals of this Supply Arrangement Agreement and will act as the administrator of this Supply Arrangement;

AND WHEREAS the Parties have concluded discussions and now wish to execute this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

C1. General Provisions

The Project Monitor will be located in Bishkek, in the Kyrgyz Republic, and will be responsible for monitoring and overseeing, on a daily basis, the construction, commissioning and certification activities for the Facility (which will be undertaken by the Service Provider) (referred to as the “Services” and set out in Appendix A –Contract Brief being Appendix “A” of Appendix “B” - Request for Proposals of this Agreement) in order to ensure that the Facility is built in accordance with the Facility design, budget and schedule. The Project Monitor’s activities and deliverables will assist the Project Team to maintain a clear and auditable view of the use of Canadian funds, and to ensure that funds are appropriately spent and that value for money is obtained.

The Project Monitor will report directly to DFAIT’s Global Partnership’s Senior Program Manager for Biological Non-Proliferation (the “Project Authority”) and, as instructed by the Project Authority, will work closely with the Construction Contractor, commissioning authority and design consultant for the Facility. As instructed by the Project Authority, the Project Monitor will also collaborate closely with the Kyrgyz Government, the Canada-Kyrgyz Biological Laboratory Working Group (BLWG), and Canada’s Embassy to the Kyrgyz Republic, to develop and implement activities effectively.

The Project Monitor may also be required to perform optional services, as more particularly set out in SC9 as follows:

1. Identify, retain, coordinate and/or oversee the services to be delivered by a science coordinator.
2. Identify, retain, coordinate and/or oversee the services to be delivered by a procurement logistics coordinator.

The Project Monitor shall conduct a comprehensive review of the Construction Contract, including the contract documents, and familiarize itself with their contents in order to perform the Services.

The Project Monitor shall be deemed to be an authorized representative to assist the Project Team in the carrying out of its powers, duties or functions under the Construction Contract.

C2. Effective Date

This Supply Arrangement shall become effective upon the date on which each of the conditions below have been fulfilled to the satisfaction of, or waived by, the Party to whose benefit such condition accrues (such date hereinafter referred to as the “Effective Date”):

- (a) each of the Parties shall have duly executed and delivered the Supply Arrangement;
- (b) the Project Monitor has executed the Code of Conduct attached hereto as Appendix “D”;
- (c) the Effective Date of the Construction Contract; and
- (d) Treasury Board of Canada approval has been obtained by the Project Team for the contributions underlying the Project.

C3. Supply Arrangement Period

Start: Effective date, as determined pursuant to Section C2 above

End: Two years from the Effective Date

Option to Extend:

The Project Monitor grants to the Project Team the irrevocable option to extend the term of this Supply Agreement by up to an additional 18 months or any lesser period on the same terms and conditions. The Project Team may exercise this option at any time by sending a written notice to the Project Monitor no less than three (3) months before the end of the initial two (2) year period. The option may only be exercised by the Project Team, and will be evidenced for administrative purposes only, through a Supply Arrangement amendment.

C4. Supply Arrangement Number

4015-05/LabPM, CCC Project Number

C5. Supply Arrangement Agreement

Supply Arrangement or Supply Arrangement Agreement means, collectively, the following:

- These Articles of Agreement
- Supplementary Conditions (Section “I”)
- General Conditions (Section “II”)
- Terms of Payment (Section “III”)
- Statement of Work (Appendix “A”)
- The Request for Proposals, dated the day of , 20 (Appendix “B”)
- The Project Monitor’s Proposal, dated the day of , 20 (Appendix “C”)
- Code of Conduct (“Appendix “D”)

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

C7. Supply Arrangement Amount

Subject to the terms and conditions of this Agreement and in consideration for the performance of the Services, CCC shall pay the Project Monitor a Price not to exceed (USD) (“Price”), payable in equal monthly instalments based upon Services rendered in accordance with Section “III” Terms of Payment.

The Project Team’s liability to the Project Monitor in relation to this Agreement shall not at any time exceed the total Price.

The Price is:

- Exclusive of all applicable duties, costs and taxes including the Goods and Services Tax (GST) and the Harmonized Sales Tax, as may be applicable.
- Exclusive of VAT
- In UNITED STATES CURRENCY
- Exclusive of Disbursements

Payments shall be made in accordance with Section “III” Terms of Payment.

C8. Governing Law

Law in force in the Province of Ontario, Canada

For (*Name of Project Monitor*)

Corporate Seal

By: _____
Name, Position

Date: _____

For the Project Team

By: _____
Name, Position

Date: _____

Section “I” – Supplementary Conditions

SC1 Industrial and Facility Security

- 1.1** If Her Majesty is of the opinion that the Services are of a class or kind that involves National or Departmental security, the Project Monitor may be required:
- 1.1.1** to provide any information concerning persons employed for purposes of this Supply Arrangement unless prohibited by law;
 - 1.1.2** to remove any person from performing the Services and from the site where the Services are performed if that person cannot meet the security requirements of the Project Team.
- 1.2** The Project Monitor shall protect the documents in its care and the information to which it has access in accordance with
- (a)** the most recent *Industrial Security Manual*, and its supplements, published by the Canadian and International Industrial Security Directorate (“CIISD”) of Public Works and Government Services Canada (“PWGSC”) and,
 - (b)** the classification of the documentation.
- 1.3** Without limiting the generality of subsections 1.1-1.2, inclusive, due to the classification of the work being performed and documentation being developed in the course of this Supply Arrangement, the Project Team shall be entitled to inspect the Project Monitor's premises at any time during the term of the Supply Arrangement, and the Project Monitor shall comply with all written instructions issued by the Project Team dealing with the material so identified, including any requirement that employees of the Project Monitor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.
- 1.4** Within thirty days of the Effective Date of this Agreement, the Project Monitor shall submit to the Project Team a security and backup procedures plan for all documentation related to the delivery of the Services.
- 1.5** Information distribution including correspondence and project documents shall be through channels as directed by the Project Team.
- 1.6** All Project documents or items containing project information shall be stored in a locked office and/or secure cabinets.
- 1.7** Failure to comply with the security requirements in this SC1 may result in the Project Team exercising the right to terminate this Agreement.

SC2 Disbursements

- 2.1** Subject to any provisions specifically to the contrary, travel costs reasonably incurred by the Project Monitor, that are related to the Services and approved by the Project Authority, shall be reimbursed to the Project Monitor at actual cost in accordance with current Treasury Board Travel Policy. Travel costs under this item include airfare, hotels, meals, and incidentals as identified in the Treasury Board (TB) Travel Directive in effect for the date of travel.
http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TBM_113/menu-travel-voyage_e.asp
- 2.2** Disbursements, other than those set out in SC2.1, shall be Project related and shall not include expenses that are related to the normal operation of the Project Monitor's business. The amounts payable shall not exceed the amount entered in the Price Component Form (Appendix “C” of Appendix “B” of this Supply Arrangement Agreement) without the prior authorization of the Project Team.

SC3 Conduct of the Services

- 3.1** The Project Monitor represents and warrants that:
- 3.1.1** it is competent to perform the Services; and
 - 3.1.2** it has the necessary qualifications, including knowledge, skill and experience to perform the Services, together with the ability to use those qualifications effectively for that purpose.

- 3.2 Except as specifically provided for in this Supply Arrangement, the Project Monitor shall supply everything necessary for the performance of the Services.
- 3.3 The Project Monitor shall:
- 3.3.1 carry out the Services in a diligent and efficient manner;
 - 3.3.2 perform the Services in accordance with standards of quality acceptable to the Project Team and in full conformity with the Contract Brief and all the requirements of the Supply Arrangement;
 - 3.3.3 Deliver the Services (including the Optional Services) utilizing best practices respecting the approved budget, schedule, programming requirements, and required quality standards; and
 - 3.3.4 Maintain open communication with all members of the Project Team and stakeholders throughout all phases of the Project.
- 3.4 The Services shall not be performed by any person who, in the opinion of the Project Team is incompetent or has been conducting himself/herself improperly.
- 3.5 The Project Monitor warrants that all Services performed under this Supply Arrangement will, at the time of acceptance, be free from error and conform to the requirements of this Supply Arrangement. If the Project Monitor is required to correct or replace the Services or any portion thereof, it shall be at no cost to the Project Team, and any work corrected or replaced by the Project Monitor pursuant to this subsection shall be subject to all provisions of this Supply Arrangement to the same extent as Services initially performed.
- 3.6 The Project Monitor shall adhere to the Project Authority's interpretation of any technical requirements set out in the Supply Arrangement insofar as such an interpretation is not inconsistent with any part of the Supply Arrangement.
- 3.7 Unless the Services or part thereof are ordered to be suspended, the Project Monitor shall not stop or suspend any part of the Services pending the settlement of resolution of any difference between the Parties arising out of the Supply Arrangement in accordance with GC18 of Section "II" – General Conditions.
- 3.8 The Project Monitor shall provide such reports on the performance of the Services as are required by the Supply Arrangement.
- 3.9 The Project Monitor shall be fully responsible for performing the Services and the Project Team shall not be liable for any costs arising out of the Project Monitor's following any advice given by the Project Team, whether given without or upon invitation by the Project Monitor, unless the advice was provided to the Project Monitor in writing by the Project Team and was accompanied by a statement specifically relieving the Project Monitor of any responsibility for costs that might arise from following the advice.

SC4 Subcontracting

- 4.1 Unless otherwise provided in this Supply Arrangement, the Project Monitor shall obtain the consent of the Project Team in writing prior to subcontracting or permitting the subcontracting of any portion of the Services at any tier.
- 4.2 In any subcontract, the Project Monitor shall, ensure that the subcontractor is bound by terms and conditions compatible with and preserve and protect the rights of the Project Team hereunder to the Services. Deviations in any subcontract from the terms of this Supply Arrangement, including any right of termination of this Supply Arrangement, shall be entirely at the risk of the Project Monitor.
- 4.3 Any consent to a subcontract shall not relieve the Project Monitor from its obligations under this Supply Arrangement or be construed as authorizing any liability on the part of the Project Team to a subcontractor.

SC5 Confidentiality

This Section shall be read with in conjunction with SC1 and SC6.

- 5.1** The Project Monitor shall keep confidential all information provided to the Project Monitor by or on behalf of the Project Team in connection with the Services, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Project Monitor as part of the Services where copyright or any other intellectual property rights in such information (except a licence) vests in the Project Team under the Supply Arrangement. The Project Monitor shall not disclose any such information to any person without the written permission of the Project Team, except that the Project Monitor may disclose to a subcontractor authorized in accordance with SC4 information necessary for the performance of the subcontract. Information provided to the Project Monitor by or on behalf of the Project Team shall be used solely for the purpose of the Supply Arrangement and shall remain the property of the Project Team or the third party, as the case may be. Within thirty days of the completion or termination of the Supply Arrangement or at such earlier time as the Project Team may require, the Project Monitor shall deliver to the Project Team all such information provided to the Project Monitor in connection with the Services, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Project Team as part of the Services or certify the destruction of such information.
- 5.2** Subject to the *Access to Information Act*, R.S.C. 1985, c. A-1 and any right of the Project Team under the Supply Arrangement, the Project Team shall not release or disclose outside the Government of Canada any information delivered to the Project Team under the terms of this Supply Arrangement that is proprietary or confidential unless the same information:
- 5.2.1** is or becomes in the public domain, or to the extent that the Project Monitor does not benefit from or ceases to benefit from any intellectual property rights protection for such information under legislation or at law (other than under the terms of this Supply Arrangement), for any reason including as a result of the Project Team's use or disclosure of deliverables under this Supply Arrangement for any purpose whatever that is not expressly excluded under this Supply Arrangement;
 - 5.2.2** is or becomes known to the Project Team from a source other than the Project Monitor, except from any source that is known to the Project Team to be under an obligation to the Project Monitor not to disclose the information;
 - 5.2.3** is independently developed by or for the Project Team; or
 - 5.2.4** is disclosed under compulsion of a legislative requirement or any order of a court or other tribunal having jurisdiction.

SC6 Intellectual Property

- 6.1** The Department of Foreign Affairs and International Trade ("DFAIT") has determined that any intellectual property arising from the performance of the Services under the Agreement will vest with the Project Monitor on the following conditions:
- 6.2** "Intellectual Property Right" means any intellectual property right recognized by the law, including any intellectual property right protected through legislation;
- 6.3** The Project Monitor agrees that, where performance of the Services involves the preparation of a database or other compilation using information or data supplied by DFAIT, the Project Monitor shall not use or disclose any such information or data for any purpose other than completing the performance of the Services, and shall not dispose of it except by returning it to DFAIT. The Project Monitor shall comply with the General Conditions in regard to maintaining the confidentiality of such information or data. Unless this Agreement otherwise expressly provides, the Project Monitor shall deliver to DFAIT all such information or data together with every copy, draft, working paper and note thereof that contains such information or data upon the completion or termination of the Agreement, or at the time the Project Team takes the Services out of the hands of the Project Monitor, or at such earlier time as the Project Team may require.

- 6.4** The Project Monitor shall execute such conveyances or other documents relating to the above as DFAIT for whose department or agency the Services are being or were performed may require, and the Project Monitor does hereby appoint DFAIT to be its attorney in its name to execute all documents and to do all things necessary as the attorney sees fit, in order to carry out the above purposes.
- 6.5** The Project Monitor agrees not to enforce any Intellectual Property Rights (IPR) it has as a result of this Agreement against the Project Team or to any third party to whom the IPR has been delivered pursuant to Section 6.4.
- 6.6** The Project Monitor represents and warrants that the Project Monitor has, or the Project Monitor undertakes to obtain, the right to exercise the Intellectual Property Rights in the Background as required by this Agreement.

SC7 Optional Services

- 7.1** The Project Team hereby reserves to itself the option to require the Project Monitor to perform any or all of the following services (“Optional Services”):
- Identify, retain, co-ordinate and/or oversee the services to be delivered by a science coordinator; and
 - Identify, retain, co-ordinate and/or oversee the services to be delivered by a procurement logistics coordinator Construction Contract award support.
- and the Project Monitor agrees to provide such Optional Services.
- 7.2** All Optional Services are to be performed within the term of the Supply Arrangement, including any extensions. The option set out in Section 7.1 shall be exercised by the Project Team no later than three (3) months prior to the end of the extended Supply Arrangement period as set out in C3.
- 7.3** In the event the option is exercised in relation to any of the Optional Services, the price for the Optional Services shall be an all inclusive hourly rate of **US\$** . The hourly rate shall be fixed for the duration of the Agreement. Payment will be based upon actual hours expended at the request of CCC or DFAIT and shall not be adjusted for overtime.

Section "II" – General Conditions

GC 1 Interpretations

1.1 Words importing the singular only also include the plural, and vice versa, where the context requires;

1.2 Headings or notes in this Supply Arrangement shall not be deemed to be part thereof, or be taken into consideration in its interpretation;

1.3 "Herein", "hereby", "hereof", "hereunder" and similar expressions refer to this Supply Arrangement as a whole and not to any particular subdivision or part thereof.

GC2 Successors and Assigns

2.1 This Supply Arrangement shall inure to the benefit of, and be binding upon, the Parties hereto and their lawful heirs, executors, administrators, successors and assigns.

GC3 Assignment

3.1 This Supply Arrangement shall not be assigned, in whole or in part, by the Project Monitor without the prior written consent of the Project Team.

3.2 An assignment of this Supply Arrangement without such consent shall not relieve the Project Monitor from any obligation under this Supply Arrangement, or impose any liability upon the Project Team.

GC4 Indemnification

4.1 The Project Monitor shall indemnify and save harmless the Project Team from and against all claims, losses, damages, costs, actions and other proceedings, made, sustained, brought or prosecuted in any manner based upon, occasioned by, or attributable to, any injury, infringement of any patent of invention or any other type of intellectual property, or damage arising from any negligent act or omission of the Project Monitor, the Project Monitor's servants or agents, or persons for whom the Project Monitor had assumed responsibility in the performance, or purported performance, of the Services under this Supply Arrangement.

4.2 The Project Monitor's liability to indemnify or reimburse the Project Team under this Supply Arrangement shall not limit or

prejudice the Project Team from relying on the provisions of applicable provincial legislation.

4.3 The Project Monitor's liability to indemnify or reimburse the Project Team under the Supply Arrangement shall not affect or prejudice Her Majesty from exercising any other rights under law.

GC5 Notices

5.1 Any notice, request, direction, consent, decision, or other communication that is required to be given or made by either party pursuant to this Supply Arrangement, shall be in writing, and shall be deemed to have been effectively given when:

5.1.1 served personally to either the Project Authority or the Project Team or the Project Monitor's Representative (as the case may be), on the day it is delivered; or

5.1.2 forwarded by registered mail, on the day the postal receipt is acknowledged by the other Party;

5.1.3 forwarded by facsimile by means of transmission, one (1) day after it was transmitted or

5.1.4 forwarded by electronic mail with return receipt on the day it is opened by the recipient.

5.2 The address of either Party, or the person authorized to receive notices, may be changed by notice in writing to the authorized representative of the other Party at the address in the Articles of Agreement.

GC6 Suspension

6.1 The Project Team may require the Project Monitor to suspend the Services being provided, or any part thereof, for a specified or unspecified period.

6.2 If a period of suspension does not exceed sixty (60) days and when taken together with other periods of suspension does not exceed ninety (90) days, the Project Monitor shall, upon the expiration of that period, resume the performance of the Services in accordance with the terms of this Supply Arrangement, subject to any agreed adjustment of the time schedule.

6.3 If a period of suspension exceeds sixty (60) days or when taken together with other

periods of suspension, the total exceeds ninety (90) days, and the Project Team and the Project Monitor agree that the performance of the Services shall be continued, then the Project Monitor shall resume performance of the Services, subject to any terms and conditions agreed upon by the Project Team and the Project Monitor, or the Project Team and the Project Monitor do not agree that the performance of the Services shall be continued, then this Supply Arrangement shall be terminated by notice given by the Project Team to the Project Monitor, in accordance with the terms of Clause GC7.

6.4 Suspension Costs related to this clause are as outlined in Clause TP5.

GC7 Termination for Convenience

7.1 The Project Team may terminate this Supply Arrangement at any time, and the fees paid to the Project Monitor shall be in accordance with the relevant provisions in Clause TP6.

GC8 Termination for Default

8.1 The Project Team may terminate the Services in whole or in part and may employ reasonable means necessary to complete such Services in the event that:

8.1.1 the Project Monitor becomes bankrupt or insolvent, or a receiving order is made against the Project Monitor, or an assignment is made for the benefit of the creditors, or if an order is made, or resolution passed, for the winding up of the Project Monitor's affairs or business, or if the Project Monitor takes the benefit of any statute relating to bankrupt or insolvent debtors, or

8.1.2 the Project Monitor fails to perform any of the Project Monitor's obligations under this Supply Arrangement or, in accordance with its terms.

8.2 Before the Services or any part thereof are terminated under Clause GC8.1.2, the Project Team shall provide notice to the Project Monitor, and may require such failure of performance or progress to be corrected. If within fourteen (14) days after receipt of such notice such default shall not have been corrected or corrective action initiated to correct such fault, the Project Team may, by notice, without

limiting any other right or remedy, terminate all or any part of the Services.

8.3 If the Services or any part thereof have been taken out of the Project Monitor's hands, the Project Monitor shall be liable for, and upon demand pay to the Project Team, an amount equal to all loss and damage suffered by Her Majesty by reason of the non-completion of the Services by the Project Monitor.

8.4 If the Project Monitor fails to pay on demand for the loss or damage as a result of Clause GC8.3, the Project Team shall be entitled to deduct and withhold the same from any payments due and payable to the Project Monitor.

8.5 If the Services or any part thereof are taken out of the Project Monitor's hands as a result of Clauses GC8.1.2, and GC8.2, the amount referred to in Clause GC8.4 shall remain with the Project Team until an agreement is reached or a decision of a court or tribunal is rendered.

8.6 The taking of the Services, or any part thereof, out of the Project Monitor's hands does not relieve or discharge the Project Monitor from any obligation under this Supply Arrangement, or imposed upon the Project Monitor by law, in respect to the Services or any part thereof that the Project Monitor has performed.

GC9 Records to be Kept by the Project Monitor

9.1 The Project Monitor shall keep accurate time sheets and cost records and, if required for the purposes of this Supply Arrangement, shall make these documents available at reasonable times to the Project Team or its authorized representative who may make copies and take extracts therefrom.

9.2 The Project Monitor shall afford facilities for audit and inspection at mutually agreeable times and at places where the relevant documents are located, and shall provide the Project Team or its authorized representative with such information as may, from time to time, be required with reference to the documents referred to in Clause GC9.

9.3 The Project Monitor shall, unless otherwise specified, keep the time sheets and cost records available for audit and inspection

for a period of at least two (2) years following completion of the Services.

GC10 Conflict of Interest

10.1 The Project Monitor declares that the Project Monitor has no pecuniary interest in the business of any third party that would cause, or seem to cause, a conflict of interest in carrying out the Services, and should such an interest be acquired during the life of this Supply Arrangement, the Project Monitor shall declare it immediately to the Project Authority.

10.2 No former public office holder of Canada who is not in compliance with the post-employment provisions of the *Conflict of Interest Act* shall derive a direct benefit from this Supply Arrangement.

GC11 Status of Project Monitor

11.1 The Project Monitor is engaged under this Supply Arrangement as an independent Project Monitor for the sole purpose of providing Services.

11.2 Neither the Project Monitor nor any of the Project Monitor's employees shall be regarded as employees or agents of Her Majesty.

11.3 The Project Monitor, as employer, agrees to be solely responsible for any and all payments and deductions required to be made by law in the jurisdiction where the Services are performed, including those required for Canada or Québec Pension Plans, Employment Insurance, Worker's Compensation, and Income Tax or any other applicable tax.

GC12 Declaration by Project Monitor

12.1 The Project Monitor declares that:

12.1.1 based on the information provided pertaining to the Services required under this Supply Arrangement, the Project Monitor has been provided sufficient information by the Project Authority and the Project Team to enable the Services required under this Supply Arrangement to proceed and is competent to perform the Services and has the necessary licences and qualifications including the knowledge, skill and ability to perform the Services;

12.1.2 the quality of Services to be provided by the Project Monitor shall be

consistent with generally accepted professional standards and principles.

GC13 Insurance

13.1 The Project Monitor shall obtain and maintain comprehensive general (or third party) liability (US\$2,000,000 per occurrence/aggregate); and automobile liability (US\$2,000,000 per occurrence/aggregate).

13.2 The insurance shall be in place on the Effective Date, as determined in accordance with C2 above until the completion of the delivery of the Services.

13.3 The insurance shall indemnify Her Majesty and the Project Team for any loss that they are legally obligated to pay as a result of claims first made against them for actual or alleged errors or omissions arising out of professional services rendered by or on behalf of the Project Monitor.

13.4 The policy shall be issued with a reasonable deductible amount as agreed upon between the Project Team and the Project Monitor.

13.5 The Project Monitor shall furnish either a copy of such insurance policy and renewals or a letter of confirmation and undertaking from a reputable insurer to the the Project Team within fourteen (14) days of execution of this Supply Arrangement and shall provide a copy of such policy within seven (7) days of receipt of same.

13.6 The costs associated with any insurance coverage required under this Supply Arrangement shall be part of the quoted Fixed Price.

GC14 Resolution of Disagreements

14.1 In the event of a disagreement regarding any aspect of the Services or any instructions given under this Supply Arrangement:

14.1.1 the Project Monitor may give a notice of disagreement to the Project Team. Such notice shall be given as soon as possible and in any event within twenty (20) days of the start of the event giving rise to the disagreement and shall contain the particulars of the disagreement, any changes in time or amounts claimed, and reference to the relevant clauses of the Supply Arrangement;

14.1.2 the Project Monitor shall continue to perform the Services in accordance with the instructions of the Project Team; and

14.1.3 the Project Monitor and the Project Team shall attempt to resolve the disagreement by negotiations conducted in good faith. The negotiations shall be conducted, first, at the level of the Project Monitor's representative and the Project Authority and the Project Team and, secondly and if necessary, at the level of a principal of the Project Monitor and a senior manager of the Project Team.

14.2 The Project Monitor's continued performance of the Services in accordance with the instructions of the Project Team shall be without prejudice to the Project Monitor in any disagreement.

14.3 If it was subsequently agreed or determined that the instructions given were in error or contrary to the Supply Arrangement, the Project Team shall pay the Project Monitor those fees the Project Monitor shall have earned as a result of the change(s) in the Services provided and which has been authorized by the Project Team .

14.4 The fees mentioned in Clause GC14.3 shall be calculated in accordance with the Terms of Payment set out in this Supply Arrangement.

14.5 If the disagreement is not settled by negotiation within 30 days of the notice from the Project Monitor described in 14.1.1, either Party must initiate mediation conducted with the assistance of a skilled and experienced mediator chosen by the Project Monitor from a list provided by DFAIT, and DFAIT's mediation procedures shall be used unless the Parties agree otherwise.

14.6 If the disagreement is not settled by mediation, the disagreement shall be referred to final and binding arbitration pursuant to the Canadian *Commercial Arbitration Act* in Ottawa, Canada in the English language.

14.7 Negotiations conducted under this Supply Arrangement, including those conducted during mediation, shall be without prejudice to either Party.

GC15 Members of Canadian House of Commons

15.1 No Member of the Canadian House of Commons shall be admitted to any share or part of this Supply Arrangement, or to any benefit that may arise therefrom.

GC16 Amendments

16.1 This Supply Arrangement may not be amended, or modified, nor shall any of its terms and conditions be waived, except by agreement in writing executed by both Parties.

GC17 Entire Agreement

17.1 This Supply Arrangement constitutes the entire arrangement between the Parties with respect to the subject matter of the Supply Arrangement, and supersedes all previous negotiations, communications and other arrangements relating to it, unless incorporated by reference herein.

GC18 Supplementary Conditions

18.1 Supplementary conditions, if required, shall be as described in Section "I" of this Supply Arrangement.

GC19 Lobbyist Certification - Contingency Fees

19.1 The Project Monitor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a Contingency Fee for the solicitation, negotiation or obtaining of this Supply Arrangement to any Person other than an Employee acting in the normal course of the Employee's duties.

19.2 All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiating of the Supply Arrangement shall be subject to the accounts and audit provisions of the Supply Arrangement.

19.3 If the Project Monitor certifies falsely under this section or is in default of the obligations contained therein, the Project Team may either take the Services out of the Project Monitor's hands in accordance with the provisions of the Supply Arrangement or recover from the Project Monitor by way of reduction to the Fixed Price or otherwise the full amount of the Contingency Fee.

19.4 In this clause:

19.4.1 "Contingency Fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a Government Supply Arrangement or negotiating the whole or any part of its term.

20.4.2 "Employee" means a person with whom the Project Monitor has an employer/employee relationship.

20.4.3 "Person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Canadian Lobbying Act* as the same may be amended from time to time.

GC21 Appropriation

21.1 In accordance with Section 40 of the *Financial Administration Act*, payment under the Supply Arrangement is subject to there being an appropriation for the particular service for the fiscal year in which any commitment hereunder would come in course of payment.

GC22 Confidential Information

22.1 Any information of a character confidential to the affairs of the Project Team to which the Project Monitor, or any officer, servant or agent of the Project Monitor becomes privy as a result of the Services to be performed under this Supply Arrangement, shall be treated as confidential, during as well as after the performance of the said services.

GC23 Incapacity to Contract with Canadian Government

23.1 The Project Monitor certifies that the Project Monitor, including the Project Monitor's officers, agents and employees, has not been convicted of an offence under the following provisions of the *Criminal Code of Canada* or any equivalent legislation of another government:

23.1.1 Section 121, Frauds upon the Government;

23.1.2 Section 124, Selling or Purchasing Office;

23.1.3 Section 418, Selling Defective Stores to Her Majesty;

(Subsection 750(3) of the *Criminal Code* prohibits anyone who has been so convicted from holding public office, contracting with the government or benefiting from a government contract.)

GC24 International Sanctions

24.1 From time to time, in compliance with United Nations obligations or other international agreements, Canada imposes restrictions on trade, financial transactions or other dealings with a foreign country or its nationals. These sanctions may be implemented by regulation under the *United Nations Act* (UNA), R.S.C. 1985, c. U-2, the *Special Economic Measures Act* (SEMA), S.C. 1992, c. 17, or the *Export and Import Permits Act* (EIPA), R.S.C. 1985, c. E-19. The Project Monitor agrees that it will, in the performance of the Supply Arrangement, comply with any such regulations that are in force on the effective date of the Supply Arrangement, and will require such compliance by its first-tier subcontractors.

24.2 The Project Monitor agrees that the Project Team relies on the Project Monitor's undertaking in subsection (1) to enter into the Supply Arrangement, and that any breach of the undertaking shall entitle Her Majesty to terminate the Supply Arrangement under the provisions of the Supply Arrangement relating to default by the Project Monitor, and therefore to recover damages from the Project Monitor, including procurement costs arising out of such a termination.

24.3 The countries or groups currently subject to Canadian Economic Sanctions are listed on the Foreign Affairs and International Trade Canada site:

www.dfait.gc.ca/trade/sanctions-e.asp

24.4 The Project Team will use reasonable efforts to make the text of any such regulations available on its electronic bulletin board on a reasonably current basis by way of assistance to the Project Monitor, but the Project Monitor agrees that only the text as published in the *Canada Gazette, Part II*, is authoritative, and the Project Monitor waives any claim against the Project Team, DFAIT, CCC or their employees or agents for any costs, loss, or damage

whatever that results from the Project Monitor's reliance on the text of a regulation as reproduced on the electronic bulletin board.

24.5 If the Supply Arrangement is concluded prior to the imposition of a sanction as described in GC24.1, the Project Team reserves the right to terminate the Supply Arrangement in accordance with GC7.

GC25 Status and Replacement of Personnel

25.1 If at any time during the period of the Supply Arrangement the Project Monitor is unable to provide the Services of any person who must perform the Services in the Supply Arrangement, it shall immediately provide a replacement person with similar qualifications and experience. The Project Monitor shall, as soon as possible, give notice to the Project Team of:

25.1.1 the reason for the removal of the person from the Services;

25.1.2 the name, qualifications and experience of the proposed replacement person; and

25.1.3 proof that the person has the required security clearance.

25.2 The Project Team may order the removal from working on the Services any such replacement person and the Project Monitor shall immediately remove the person from the Services and shall, in accordance with subsection (1), secure a further replacement.

25.3 The fact that the Project Team does not order the removal of a replacement person from the Services shall not relieve the Project Monitor from its responsibility to meet the requirements of the Supply Arrangement.

25.4 If the Project Monitor intends to use any person in fulfillment of this Supply Arrangement who is or who is not an employee of the Project Monitor, the Project Monitor hereby warrants that such a person is under no restrictive covenants in relation to a constraint of trade that would prevent the person from fulfilling his or her work in relation to the Services and, the Project Monitor has written permission from the person or (the employer of such a person) to propose the services of the person in relation to the Services to be performed in fulfillment of this Supply Arrangement.

GC26 No Bribe

26.1 The Project Monitor represents and covenants that no bribe, gift, benefit, or other inducement has been or will be paid, given, promised or offered directly or indirectly to any official or employee of Canada or to a member of the family of such a person, with a view to influencing the entry into the Supply Arrangement or the administration of the Supply Arrangement.

GC27 Sovereign Immunity

27.1 Notwithstanding any provision in this Supply Arrangement, Her Majesty the Queen in Right of Canada, does not waive any immunity to which she is or may be entitled to by virtue of domestic or international law.

GC28 Health and Safety

28.1 The Project Monitor shall ensure, in fulfilling its contractual obligations under this Supply Arrangement, that its employees and agents are appropriately equipped with all safety clothing and equipment required to perform the Services.

28.2 The Project Monitor shall further ensure that its employees and agents adhere to and follow all applicable health and safety regulations, standards and procedures in force in the jurisdiction where the Services will be performed and have been trained and will use all mandatory safety equipment imposed by local law when completing the Services under this Supply Arrangement.

Section “III” – Terms of Payment of the Fixed Price and Disbursements

TP1 Payments

- 1.1 The Project Monitor shall be entitled to receive monthly payments for the Services and Optional Services if applicable and reimbursement for Disbursements as set out in Clause SC2. Such payments shall be made not later than the due date, which shall be the thirty (30) days following receipt of a properly submitted invoice, including documentation substantiating the satisfactory provision of the Services for the preceding month and approval by the Project Authority.
- 1.2 CCC shall notify the Project Monitor within five (5) days after the receipt of an invoice of any error or missing information therein. Payment shall be made not later than thirty (30) days after receipt of the corrected invoice or the required information.
- 1.3 Invoices shall be forwarded by e-mail to the following address:

Canadian Commercial Corporation
50 O’Connor Street, Suite 1100
Ottawa, Ontario, Canada
K1A 0S6
e-mail:
Attention:

With a copy to:

- 1.4 Payments shall be made to the Project Monitor at the following address:

TP2 Claims Against, and Obligations of the Project Monitor

- 2.1 The Project Monitor shall discharge all lawful obligations, and shall satisfy all lawful claims against the Project Monitor, for services rendered to, or on behalf of, the Project Monitor in respect of the Supply Arrangement, at least as often as the Supply Arrangement requires the Project Team to pay the Project Monitor.
- 2.2 Her Majesty may, in order to discharge lawful obligations of, and satisfy lawful claims against, the Project Monitor for services rendered to, or on behalf of, the Project Monitor in respect of the Supply Arrangement, pay any amount that is due and payable to the Project Monitor pursuant to the Supply Arrangement directly to the claimants against the Project Monitor.
- 2.3 A payment made pursuant to Clause TP2.2 is, to the extent of the payment, a discharge of the Project Team’s liability to the Project Monitor under the Supply Arrangement, and will be deducted from an amount payable to the Project Monitor under the Supply Arrangement.
- 2.4 For the purposes of this clause a claim shall be considered lawful when it is so determined:
 - 2.4.1 by a court of legal jurisdiction, or
 - 2.4.2 by an arbitrator duly appointed to arbitrate the said claim, or
 - 2.4.3 by a written notice delivered to the Project Team and signed by the Project Monitor authorizing payment of the said claim or claims.

TP3 No Payment for Errors and Omissions

- 3.1 The Project Monitor shall not be entitled to payment in respect of costs incurred by the Project Monitor in remedying errors and omissions in the Services that are attributable to the Project Monitor.

TP4 Payment for Changes and Revisions

- 4.1** Payment for any additional or reduced Services provided by the Project Monitor and authorized by the Project Team shall be made in accordance with the terms of such authorization and these Terms of Payment.
- 4.2** Notwithstanding clause TP4.1, the Project Team accepts no liability for any additional Services done by the Project Monitor over and above that required to be done by this Supply Arrangement, unless a specific amendment is issued authorizing the Project Monitor to do such additional Services. Payment for any additional or reduced Services provided by the Project Monitor and authorized by CCC shall be made in accordance with the terms of such authorization and these Terms of Payment.

TP5 Suspension Costs

- 5.1** During a period of suspension of the Services, the Project Monitor shall minimize all costs and expenses relating to the Services that may occur during the suspension period.
- 5.2** Within fourteen (14) days of notice of such suspension, the Project Monitor shall submit to the Project Authority a schedule of costs and expenses, if any, that the Project Monitor expects to incur during the period of suspension, and for which the Project Monitor will request reimbursement.
- 5.3** Payment shall be made to the Project Monitor for those costs and expenses that have been approved by CCC pursuant to GC6.

TP6 Termination for Convenience Costs

- 6.1** In the event of termination of this Supply Arrangement, Her Majesty shall pay, and the Project Monitor shall accept in full settlement, an amount based on these Terms of Payment, for Services satisfactorily performed, plus an amount to compensate the Project Monitor for those costs and expenses, if any, that are related to the Services not performed and incurred after the date of termination and which, in the opinion of the Project Team are reasonable.
- 6.2** Within fourteen (14) days of notice of such termination, the Project Monitor shall submit to the Project Team, for its review and approval, a schedule of costs and expenses incurred plus any additional costs that the Project Monitor expects to incur after the date of termination, and for which the Project Monitor will request reimbursement.
- 6.3** Payment shall be made to the Project Monitor for those costs and expenses that are substantiated as having been incurred after the date of termination and which, in the opinion of the Project Team, are reasonable.

TP7 Invoices

7.1 Price Invoices

One (1) copy is to be sent to CCC showing:

- 7.1.1** the amount of the monthly payment being claimed for Services satisfactorily performed;
- 7.1.2** the amount for any tax (such as VAT) calculated in accordance with the applicable legislation;
- 7.1.3** the date;
- 7.1.4** the name and address of the Project Monitor/Payee;
- 7.1.5** description of the Services performed;
- 7.1.6** evidence of the required approval of the Services described in the invoice
- 7.1.7** the Project name; and
- 7.1.8** the Supply Arrangement number.

8.1 Disbursements

One (1) Copy is to be sent to CCC showing:

- 8.2.1 an invoice indicating a description and amount of the disbursements being claimed;
- 8.2.2 supporting documentation of actual costs;
- 8.2.3 approvals or pre-approvals pursuant to **Section SC2 Disbursements-** of **Section “T” – Supplementary Conditions;**
- 8.2.4 the date;
- 8.2.5 the name and address of the Project Monitor/Payee;
the project name; and
- 8.2.6 the Supply Arrangement number

APPENDIX “D”

CODE OF CONDUCT

Code of Conduct for the Project Monitor

(“*CODE OF CONDUCT*”)

Introduction

This *Code of Conduct* is to provide guidance on the Project Team's expectations of its Project Monitor and its employees, representatives, consultants and subcontractors during the term of the Project. The Project Monitor and its subcontractors and representatives shall be guided in their work and their professional conduct by a balanced framework of democratic, professional, ethical and people values. For further clarification of these principles, reference should be had to the *Values and Ethics Code for the Public Service*.

1.0 Authorities

1.1 The *Code of Conduct* is not intended to prepare the Project Monitor and its suppliers and their subcontractors for every situation that may arise in the course of delivery of the Services, regardless of where such Services are being undertaken, which is why lines of communication must remain open and lines of responsibility and accountability must be respected. When unsure of how to manage a delicate situation, or aware of conduct which could compromise the integrity of the Project Team's reputation, the Project Monitor is responsible for raising the situation with the Project Team or Project Authority.

1.2 The Project Monitor should ensure that its employees, subcontractors, consultants and employees of such subcontractors and consultants have read, understood and agree to adhere to the *Code of Conduct*.

1.3 Where, in the absolute discretion of the Project Team, actions inconsistent with the *Code of Conduct* threaten the integrity or security of the reputation of the Project Team with respect to the Project, the Project Team can require the removal from the Project of the Project Monitor's (or its subcontractors') representative(s) or personnel.

2.0 Application

2.1 The *Code of Conduct* applies to the Project Monitor, its, suppliers, subcontractors, consultants and their employees and representatives for the duration of the term of the Supply Arrangement Agreement.

2.2 Questions pertaining to the *Code of Conduct* may be directed to the Project Authority. For further reading on related topics please consult the *Values and Ethics Code for the Public Service*, and related policies such as the Treasury Board's [Policy on the Prevention and Resolution of Harassment in the Workplace](#).

3.0 Legislative Framework

3.1 The *Financial Administration Act*

3.1 a) The Project Monitor should be aware that the Project Authority is bound by the relevant provisions of Chapter F-11 of the [Financial Administration Act](#) (FAA). These provisions apply not only to the expenditure of public funds and approval of payments in accordance with Sections 32, 33 and 34 of the FAA, but also to the collection or receipt of public funds.

3.2 Vienna Conventions

3.2 a) The Project Monitor should be aware that the Vienna Conventions on diplomatic and consular relations do not apply to the Project Team, its subcontractors and representatives.

3.2 b) It is the duty of the Project Monitor, its subcontractors and representatives to respect the laws and regulations of the Kyrgyz Republic.

3.2 c) The Project Monitor shall bring any incident involving local law enforcement authorities to the immediate attention of the Project Authority as soon as possible, whether this incident involves themselves or their subcontractors or representatives.

4.0 Security

4.1 The Project Monitor, its subcontractors and representatives must be alert to additional security challenges as they relate to the Project. It is essential for the Project Monitor, its subcontractors and representatives to understand their responsibility for the safeguarding of confidential and classified information, as provided for in the Supply Arrangement, for ensuring that they are familiar with any specific Project Team security instructions, and for obtaining a briefing prior to the Effective Date of the Supply Arrangement on any security threats specific to the Kyrgyz Republic. Any situation encountered by the Project Monitor, its subcontractors and representatives likely to have a negative impact on security is to be promptly brought to the attention of the Project Authority.

5.0 The Project Team's Reputation

5.1 Personal Behaviour

5.1 a) the Project Monitor's visibility and status as supplier for the Project Team requires it to be responsible to uphold the good reputation of the Project Team at all times.

5.1 b) The Project Monitor is entitled to its privacy. However, it is expected that the Project Monitor, its subcontractors and their representatives will, when in Kyrgyz, or in any other country in which any part of the Services are being undertaken, and during the term of the Supply Arrangement, display personal behaviour that reflects the highest standards.

5.1 c) Commentary to local media without consent by the Project Team is prohibited.

5.1 d) While ensuring that the personal behaviour of the Project Monitor, its subcontractors and representatives respects local laws and complies with this Code of Conduct, attention should be paid to questions of illicit use of cyberspace, substance abuse, financial matters and traffic infractions. The Project Team has a zero-tolerance policy toward [impaired driving](#) by its representatives abroad and expects the same of its Project Monitor.

5.2 Cross-Cultural Issues

5.2 a) The Project Monitor, its subcontractors and representatives should at all times communicate and behave in a manner that respects local culture and values, within the context of this Code of Conduct.

5.2 b) Every country has its distinct culture with its own values and customs. These particularities are subtle and at times complex, and include behaviours that go beyond customary dress codes or local rules of etiquette. The Project Monitor, its subcontractors and representatives are expected to make an effort to understand local culture, and before arriving in Kyrgyz, should familiarize themselves with the customs and practices of this country. Special attention should be paid to the implications of these customs and practices for relations with locally-engaged staff.

5.2 c) The Project Monitor, its subcontractors and representatives shall not make any payments, loans, or gifts, directly or indirectly, to or for the use or benefit of any official employee, agency or instrumentality of any government, political party or candidate thereof, or any other person or entity, the payment of which would violate the laws or policies applicable to the Project Team, the Kyrgyz Republic or any country in which any part of the Services are being undertaken. The Project Monitor, its subcontractors and representatives agree to pay any government assessed penalties, fines, and charges, and associated damages, costs, losses, and expenses (including, without limitation, court costs and attorneys' fees) of whatever kind which the Project Team or the Project Monitor, its subcontractors or representatives may incur, be required to pay or be liable for as a result of, in connection with, arising out of or related to any noncompliance of with any or all of said laws.

5.2 d) The Project Monitor, its subcontractors and representatives should refuse the acceptance of anything but small gifts which may be a normal expression of courtesy or hospitality and if they do not compromise or appear to compromise in any way the integrity of the Project Team, the Project Monitor, or their organization.

For (*Name of Project Monitor*)

Corporate Seal

By: _____
Name, Position

Date: _____