

CCC Project 100928 – Project Monitor and Oversight Questions and Answers for August 16, 2010

Question #1: Is it a requirement that the RFP documents must be received only from the MERX web site and registered with MERX? It is also possible to download documents from the CCC web site. If the latter is allowed, in that case the names/contact information of all potential proponents may not be available. ("To ensure equality of information provided to Proponents, answers to significant enquiries will be forwarded simultaneously to each Proponent by e-mail.")

Answer #1: Any and all related proposal documents are mirrored on CCC's website and MERX. Registrants to MERX will get updates automatically, and an email to identified and interested proponents may be sent indicating the presence of new documentation.

Question #2: Are all members of the Project Monitoring team required to be Canadian citizens? In any case, would the Project Authority assist in obtaining the appropriate documentation from Kyrgyz/Canadian authorities including i.d. cards, work visas, company registration, drivers license etc.?

Answer #2: Canadian citizenship is not required. The Project Authority will provide necessary supporting documentation, but it will be the responsibility of the PM to obtain the necessary visas, registrations, licenses, etc. as indicated in the Agreement documents attached to the RFP and Article 8 of the Canada-Kyrgyz Treaty (attached to this Q&A document as Appendix "A").

Question #3: In the interest of evaluating project risk, would it be possible to review the final set of complete construction contract documents including the contract with the construction contractor before the RFP closing date?

Answer #3: As project risk is ultimately borne by the construction contractor, and given the sensitivity of the project documentation as this is an international security project, DFAIT/CCC do not see the need to release the contents of the construction contract documents to proponents at this stage of the process. However, the successful proponent will ultimately have access to the information contained in these documents.

Question #4: Who will serve as the project's Commissioning Authority? Would the Commissioning Authority remain on-site on a full time basis from the start?

Answer #4: The Commissioning Authority will be a third-party independent entity, reporting to the Project Authority, and will be engaged from the start through to commissioning.



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Question #5: Will there be a on-site representative from the office of the Design Consultant on a full-time basis from the start of construction to project completion? If so, does the mandate of the Design Consultant include the provision of full site services, including on-site construction (quality) approvals as well as generating documentation related to change management such as change orders, site instructions etc. during construction as defined by the OAA?

Answer #5: There will be an on-site representative from the Design Consultant. Their mandate includes the provision of site services, and they will coordinate closely with the Project Monitor. Specifically, the on-site Design Consultant will monitor daily construction progress, participate in QA/QC process, participate in coordination/progress meetings, review RFIs, and, upon approvals from either the Project Monitor or Project Authority (depending on scope and impact) will issue field notices and change notices.

Question #6: Will the Project Monitor (with the Project Authority) be an integral part of the change (of scope) management process, however minor? Or is there some leeway for the Design Consultant to initiate and approve relatively minor changes, including when there is no time-cost impact?

Answer #6: The Project Monitor may be given authority to approve (on behalf of the Project Authority) certain changes when there is limited time-cost impact. As per 2.5.1 of the Contact Brief, DFAIT will establish parameters in discussions with the successful proponent. Additionally, as outlined in 3.1.1.2 in the Contract Brief, the Project Monitor will be authorized to “take decisions as necessary and appropriate concerning the construction and commissioning of the facility, the precise nature and extent to be clarified in the project charter.” The Design Consultant’s role is to review requests for changes and make recommendations for approval/rejection to the Project Authority. The Design Consultant cannot approve changes without authorization from the Project Authority.

Question #7: Who will certify (and re-certify) the completed lab and according to which compliance standards (PHAC, WHO)?

Answer #7: The facility will be certified in accordance with the WHO Laboratory Biosafety Manual and Kyrgyz National Standards (note that the Kyrgyz Republic’s national standards are currently undergoing a revision to fall in line with the WHO guidelines). The certification will be carried out by an independent international panel of experts.

Question #8: How many days comprise a full work week for the on-site teams? What about working during national public holidays in KR?

Answer #8: Business days are defined as: “any day except Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions are authorized or required by law to close in Bishkek, Kyrgyz Republic or, with respect to any day on which payments are required to be made under the Contract, Ottawa, Ontario, Canada.” However, on occasion and as required, the Project Monitor will need to demonstrate sufficient flexibility to work flexible hours to ensure proper monitoring of onsite activities undertaken by the Construction Contractor.



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Question #9: In the interest of ensuring continuity post construction completion, commissioning and certification, has a KR-based Operating and Maintenance team been identified at this stage? If so, who are its members and would members of this team also be closely involved on a day-to-day basis with the on-site teams?

Answer #9: A number of individuals have been identified and have been receiving applicable training over the past two years. They will be an integral part of the laboratory construction and eventual operation.

Question #10: In view of heightened risks due to the recent political unrest in the Kyrgyz Republic, will there be special protection and/or official documentation provided by the Canadian Project Authority to the Project Monitoring team in case of any future disturbances?

Answer #10: The Vienna Conventions on diplomatic and consular relations do not apply to the Project Monitor, its subcontractors (if any) and representatives. The Project Authority would endeavor to assist the Project Monitor to the extent possible and appropriate as conditions merit.

Question #11: In the interest of further clarity, please re-confirm that all non project-related costs such as relocation expenses, local transportation and periodic home travel, local accommodation in Bishkek etc. are to be included in the cost of (Project Monitoring) services.

Answer #11: All direct and indirect costs associated with delivery of the services must be included in the firm fixed price amount with the exception of disbursements allowable under Article SC2.

Question #12: Is the Project Monitor expected to cover the cost of all interpretation/translation services in Kyrgyz/Russian (for meetings, site tours etc.) on-going basis until the completion of the project?

Answer #12: The Construction Contractor will have translation and interpretation services available on-site for its work, including that which necessarily involves the PM. However, the PM will need to cover the cost of such services for its own work (e.g. meetings that it arranges).

Question #13: Can the proposal be submitted in the name of an individual?

Answer #13: Proponents may be individuals.

Question #14: Please provide address / location of the site in Bishkek.

Answer #14: National Academy of Sciences (NAS) Botanical Garden, Akhunbaeva Street, No.1a., Bishkek, Kyrgyz Republic



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Question #15: The Project Monitor's site office is to be provided by others, please confirm that the services of electricity, heating, water, drainage, telephone and internet connections / server would also be provided without cost to the Project Monitor.

Answer #15: The Construction Contractor shall provide (at their expense) a separate office for the Project Monitor which will include electricity, water and sanitary services and local telephone services (with voice, fax and modem capability). Costs specific to additional utilities (such as servers and an internet connection) necessary to complete the Services shall be borne entirely by the Project Monitor.

Question #16: It is understood that the Project Monitor is required to fully furnish and equip the site office provided for its use, including office consumables and pay own telephone and internet charges, please reconfirm.

Answer #16: In accordance with Section 3.2.2 of the Contract Brief, the Project Monitor shall provide and pay for all costs relating to the use of all necessary equipment to complete the Services.

Question #17: The Proposal is required to be submitted excluding any taxes, duties etc, please confirm that the Employer will indemnify / reimburse any taxes that the Project Monitor may be required / requested to pay in the Kyrgyz Republic.

Answer #17: The Canada-Kyrgyz Treaty provides for tax exemption and contractor indemnification as described in Article 10. Moreover, Article 10.2 stipulates that "imposition of taxation or similar charges shall be regarded as a valid reason for suspension or termination of the [Project]". The Project Monitor should be aware, however, that we will not reimburse any taxes paid and will escalate any issue with appropriate Kyrgyz government officials.

Question #18: On page 8 of 17 of the RFP document Clause G112 – Insurance Requirements the successful Proponent is required to provide insurance cover for general liability and automobile insurance totaling US\$4,000,000. Is this correct? Such insurances / level / type of cover are normally provided / under the responsibility of the Main Contractor and would cover all parties employed on the project site, please clarify.

Answer #18: As the Project Monitor is considered an independent entity to the Construction Contractor (and not a subcontractor or associated personnel), the Project Monitor is required to obtain comprehensive/3rd party insurance and automobile liability insurance.

Upon further consideration, the amounts listed in the RFP shall be changed to US \$1,000,000 and US \$250,000 for comprehensive general liability insurance and automotive liability insurance respectively.

Question #19: In Appendix A page 8 of 14 Clause 3.1.17 it states "Liaise and engage relevant Kyrgyz Government stakeholders", please clarify 'engage', does this mean to appoint and pay for, for example the local authority providing statutory inspection of the project works?

Answer #19: The terms "liaise and engage" have no monetary or financial implications to the PM.



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Question #20: Please provide preliminary programme of the project and anticipated start date for the Project Monitor.

Answer #20: We are currently forecasting a notional construction schedule of 28 months, with a start date of 1 November 2010. The Project Monitor's programme will likely align with these dates.

Question #21: Who is responsible for the day to day inspection at site, for example for checking of reinforcement, quality of work, concrete testing etc, and the approval of such works allowing the contractor to proceed?

Answer #21: The Construction Contractor is responsible for the day to day inspection at site, for example for checking of reinforcement, quality of work, concrete testing, etc.

Question #22: Who is responsible for the review and approval of materials and equipment proposed/submitted by the contractor?

Answer #22: The Project Authority is responsible for the review and approval of materials and equipment proposed/submitted by the contractor and may delegate responsibility to the Project Monitor as stipulated as 3.1.1.2 (Project Charter).

Question #23: Who is responsible for the response to the contractor's requests for further information?

Answer #23: The Project Authority is responsible for the response to the contractor's requests for further information and may delegate responsibility to the Project Monitor as stipulated as 3.1.1.2 (Project Charter).

Question #24: Who is responsible for issuing instructions to the contractor?

Answer #24: The Project Authority is responsible for issuing instructions to the contractor and may delegate responsibility to the Project Monitor as stipulated as 3.1.1.2 (Project Charter).

Question #25: Who is responsible for certifying the value of work completed each month and the issue of payment certificates?

Answer #25: The Project Authority is responsible for certifying the value of work completed each month and the issue of payment certificates and may delegate responsibility to the Project Monitor as stipulated as 3.1.1.2 (Project Charter).

Question #26: Who is responsible for the review / approval / certification of variations / changes to the Works?

Answer #26: The Project Authority is responsible for the review / approval / certification of variations / changes to the Works and may delegate responsibility to the Project Monitor as stipulated as 3.1.1.2 (Project Charter).

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Question #27: Who pays the fees / charges of the local authority responsible for statutory inspection of the Works?

Answer #27: The Construction Contractor pays the fees / charges of the local authority responsible for statutory inspection of the Works

Question #28: Article G19 of the RFP advises that the Proponent shall be licensed, certified or otherwise authorized, to provide the Services at the time of submission of the Proposal and during the term of the Agreement. We are not current registered in the Kyrgyz Republic – please confirm that we will have to be registered in order to undertake your commission or can we work as an off-shore consultant? If we have to register our enquiries indicate that we should anticipate this could take up to 3 months – would this period invalidate our tender offer?

Answer #28: The provisions of G19 are now modified as follows: Proponents shall be, or be eligible at time of agreement entry, to be licensed, certified or otherwise authorized to provide the Services pursuant to the Agreement.

Question #29: We are unsure whether *Article G19* applies to *licensing* in Canada or Kyrgyzstan. We would wish to bid for this project through a European based entity and has no registration in Canada – would this invalidate our tender offer and would we subsequently be required to register also in Canada?

Answer #29: Article G19 applies to licensing in the Kyrgyz Republic.

Question #30: The RFP indicates that the *Project Monitor*, the position for which our offer is to be structured, shall be responsible on a daily basis for *monitoring and overseeing the construction, commissioning and certification activities for the Facility*, and that these activities are required *in order to ensure that the Facility is built in accordance with the Facility design, budget and schedule*. It appears the requirement is one of construction supervision, commissioning and certification rather than *monitoring and oversight*. Please confirm that we have correctly understood the scope of work that you require?

Answer #30: This is an monitoring and oversight requirement as clearly outlined in the Project Brief.

Question #31: It is our understanding that we will have no design responsibility, only that of ensuring that the works are built in accordance with the contract, and that the equipment is provided and installed as detailed – please confirm?

Answer #31: The above understanding is correct.

Question #32: It is our expectation also that all necessary approvals and construction permits, from the authorities in Kyrgyzstan, will have been obtained, prior to the award of the construction contract, by the Designer and the Employer and that they will also be responsible for processing the Occupation / Use Permit – please confirm?

Answer #32: It is the responsibility of the Construction Contractor to obtain all necessary permits.



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Question #33: Please clarify the Designer's role and responsibility in the commissioning, of their nominated equipment, and in the certification process.

Answer #33: A commissioning agent will be in place to be the primary responsible group to commission the facility. The Design consultant will assist in reviewing test plans to ensure they comply with the criteria in the specifications.

Question #34: *Article GI6 of the RFP* states that our offer price should be submitted *free of all taxes, customs duties and similar charges*, in both Canada and the Kyrgyz Republic. Please confirm that this exemption will apply to all salaries paid in Bishkek and to all purchases to be made, including vehicles / office equipment etc, and how such exemption will be assured?

Answer #34: Please refer to Article 10 of the attached Canada-Kyrgyz Treaty



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Appendix A – Text of the Canada-Kyrgyz Republic Treaty

*AGREEMENT BETWEEN THE GOVERNMENT OF CANADA
AND THE GOVERNMENT OF THE KYRGYZ REPUBLIC
CONCERNING COOPERATION IN THE FIELD OF BIOLOGICAL SECURITY
AND BIOLOGICAL SAFETY*

THE GOVERNMENT OF CANADA [hereinafter referred to as the "**CANADIAN PARTY**"] and the **GOVERNMENT OF THE KYRGYZ REPUBLIC** [hereinafter referred to as the "**KYRGYZ PARTY**"] [hereinafter referred to together as the "Parties"],

WISHING to cooperate in the implementation of the Global Partnership Against the Spread of Weapons and Materials of Mass Destruction [hereinafter referred to as the "Global Partnership"] launched in Kananaskis, Canada, on 27 June 2002;

RECOGNIZING the important significance of the *Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare*, done at Geneva on 17 June 1925;

DESIRING to contribute to the strengthening of the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction* done at London, Moscow and Washington on 10 April 1972;

AFFIRMING their support for multilateral institutions and resolutions whose aim is to prevent the proliferation of biological weapons and/or promote biological security and biological safety, including World Health Assembly Resolution 58.29, "Enhancement of laboratory biosafety", and United Nations Security Council Resolution 1540 (2004);

COMMITTED to preventing terrorists and those who harbour them from acquiring or developing biological weapons or related materials, equipments, technology and expertise;

DESIRING to cooperate in the promotion of international peace and security;

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HAVE AGREED as follows:

ARTICLE I

Definitions

For the purpose of this Agreement, the following terms shall have the following meaning:

- "Assistance": Any grant or contribution of gratuitous aid provided under this Agreement or as otherwise agreed to between the Canadian Party and the Kyrgyz Party.
- "Contributor": The Canadian Party or any entity authorized by it to provide Assistance under this Agreement.
- "Cooperation Project": A project undertaken pursuant to this Agreement and pursuant to an Implementing Arrangement or any other mechanism agreed to between the Parties and for which Assistance is provided.
- "Facility": Biosafety Level Three (World Health Organization designation) biological containment laboratory for human and animal health that will also serve as the repository for the consolidation of dangerous pathogens from several existing facilities in the Kyrgyz Republic.
- "Implementing Arrangement": An arrangement in written form between one or more Contributors and one or more Recipients pursuant to which a Cooperation Project is undertaken.
- "Recipient": The Kyrgyz Party or any entity authorized by it to serve as beneficiary of Assistance or as a partner for the realization of a Cooperation Project under this Agreement.

ARTICLE II

Scope

This Agreement establishes the terms and conditions governing cooperation between the Parties in the field of biological security (biosecurity) and biological safety (biosafety). Without limiting the foregoing, this cooperation may include, *inter alia*, the programming, design, construction, provision and installation of equipment, commissioning, certification and recertification of the Facility. This cooperation may also include the provision of Assistance to incorporate international standards and guidelines on biological security and biological safety into the national legislation of the Kyrgyz Party, interim biosecurity and biosafety enhancements at existing biological facilities, and training associated with each of the aforementioned activities as appropriate.

ARTICLE III

Modes of Cooperation

Cooperation under this Agreement may be effected through Implementing Arrangements or any other mechanism agreed to between the Parties.

ARTICLE IV

Funding

1. Assistance for any Cooperation Project carried out under this Agreement, including Cooperation Projects covered by Implementing Arrangements, shall be provided by the Canadian Party subject to the availability of funds from the Parliament of Canada.
2. Funding may be received by the Canadian Party from a third party for the implementation of a Cooperation Project undertaken pursuant to this Agreement.

3. The Kyrgyz Party shall provide a suitable, mutually agreed site for construction of the Facility, and may provide in-kind or other support for the realization of a Cooperation Project. The Kyrgyz Party shall ensure the proper operation of the Facility, and shall bear all costs associated with the operation and maintenance of the Facility following its commissioning.

ARTICLE V

Schedules, Completion Criteria and Milestones

1. The Parties shall ensure that, prior to the advancement or payment of any funds under a Cooperation Project, schedules, milestones and completion criteria are established.
2. The Parties shall ensure that such schedules, milestones and completion criteria are met. The Canadian Party shall provide timely funding as the milestones and completion criteria are met.

ARTICLE VI

Selection of Contractors and Sub-contractors

1. The Canadian Party shall have the right, in consultation with the Kyrgyz Party, to select the contractors and sub-contractors to be engaged to perform activities in relation to Cooperation Projects undertaken pursuant to this Agreement. The contractor(s) will be responsible for, *inter alia*, the organization and supervision of the Cooperation Projects on behalf of the Canadian Party.
2. With respect to the Facility, construction works and other activities on the site may be performed by technically competent contractors and subcontractors, who will enter into contracts with the contractor(s). The selection process for contractors and subcontractors will be consistent with relevant international practice, and will provide the opportunity for participation for qualified Kyrgyz entities.

ARTICLE VII

Commencement of Biological Activities at the Facility

The Kyrgyz Party shall not commence activities with pathogens at the Facility until the Parties agree that it is secure and safe to do so.

ARTICLE VIII

Facilitation Measures

1. The Parties shall promote activities necessary for the implementation of Cooperation Projects undertaken pursuant to this Agreement.
2. The Kyrgyz Party shall ensure the prompt issuance of, *inter alia*, licenses, permits, approvals (including zoning), customs clearances, and any other documentation necessary for the effective implementation of Cooperation Projects undertaken pursuant to this Agreement, in accordance with the national legislation of the Kyrgyz Party. The Kyrgyz Party shall advise the Canadian Party in advance of any requirements that impact the implementation of this Article
3. The Kyrgyz Party shall grant access to the Contributor, its personnel and its contractors and sub-contractors, consultants, suppliers and sub-suppliers to the Facility and other biological facilities and sites necessary for the effective implementation of Cooperation Projects undertaken pursuant to this Agreement.
4. The Kyrgyz Party shall grant access to the Contributor, its personnel and its contractors and sub-contractors, consultants, suppliers and sub-suppliers to biological facilities and sites and to the Facility for the recertification and monitoring of biological activities.
5. The Kyrgyz Party shall grant access to the Contributor and its personnel to the Facility and its pathogen collection for the purpose of on-site scientific collaboration and investigation, and access to other biological facilities (and their pathogen collections) where Cooperation Projects are undertaken.



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6. (a) The Kyrgyz Party shall ensure the provision of data and information necessary for the implementation of Cooperation Projects undertaken pursuant to this Agreement.
 - (b) Information that constitutes state secrets of the Kyrgyz Republic shall not be subject to transfer under this Agreement.
 - (c) Information that is transmitted under this Agreement or created as a result of its implementation and is considered by either Party to be confidential shall be clearly defined and identified as such. In particular, documents containing confidential information shall be marked accordingly.
 - (d) The Parties shall minimize the number of individuals having access to information identified as confidential.
 - (e) Without prejudice to Paragraph 10, Article XIII, confidential information shall be handled in accordance with the legislation of the State of the Party receiving the information, and this information shall not be divulged or transmitted to a third party not taking part in the implementation of this Agreement without the written permission of the Party that provided such information. Such information shall also be given the appropriate physical protection.
6. The Implementing Arrangements shall define the procedures for, and the scope of, the information to be transferred as well as for access described under this Article.

ARTICLE IX

Movement and Status of Personnel

1. The Kyrgyz Party shall facilitate the entry and exit of Contributors' personnel, and their contractors, subcontractors, consultants, suppliers and sub-suppliers, into and out of the territory of the Kyrgyz Republic for the purpose of carrying out activities undertaken pursuant to this Agreement.

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2. Government Officials of the Canadian Party, who are in the territory of the Kyrgyz Republic in order to carry out activities related to cooperation undertaken pursuant to this Agreement, shall be accredited as administrative and technical personnel of the Canadian Embassy to the Kyrgyz Republic, as per Article 37(2) of the *Vienna Convention on Diplomatic Relations* done at Vienna on 18 April 1961.

ARTICLE X

Exemption from Taxes or Similar Charges

1. The Kyrgyz Party shall exempt Assistance provided under this Agreement from all duties, taxes and similar charges, with the exception of profit taxes, road taxes and deductions to the emergency fund. More particularly:

- (a) The Kyrgyz Party shall exempt remuneration to foreign natural persons and foreign legal persons, for work undertaken and services performed by such persons for the implementation of Cooperation Projects undertaken pursuant to this Agreement from income tax, social security tax contributions and similar charges within the territory of the Kyrgyz Republic. With regard to remuneration exempted by this Paragraph, the Kyrgyz Party shall not have any obligations in terms of any charges and payments to the persons, indicated in this Paragraph, at the expense of the social security system or any other government funds.
- (b) The Kyrgyz Party shall ensure that the Contributor, its personnel, principal contractors and suppliers of goods, works or services may import into, and export out of, the territory of the Kyrgyz Republic goods (equipment, supplies, materials) or services required to implement this Agreement or Cooperation Projects undertaken pursuant to this Agreement without customs or any other type of duties, taxes or similar charges.
- (c) The Kyrgyz Party shall exempt the supplies (sale or transfer of goods, works, services) that are provided by the economic entities (organizations, general contractors) to supply goods, perform works or provide services under the Cooperation Arrangements that are implemented within the framework of this Agreement, from any duties, taxes or similar charges.



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2. Imposition of taxation or similar charges shall be regarded by the Canadian Party as a valid reason for suspension or termination of a Cooperation Project, or to not initiate a Cooperation Project.

3. The Kyrgyz Party shall be responsible for procedures ensuring the implementation of this Article. Necessary documents and certificates shall be issued by the relevant competent authority in accordance with the legislation of the Kyrgyz Republic.

ARTICLE XI

Peaceful Uses

1. The Kyrgyz Party shall ensure that all goods (equipment, supplies, materials), services, technology and expertise provided to the Recipient in connection with the implementation of this Agreement, including the subsequent operations of biological activities undertaken at the Facility and at other biological facilities where Cooperation Projects are undertaken, shall be used solely for peaceful purposes and in a manner consistent with this Agreement and with the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction* done at London, Moscow and Washington on 10 April 1972.

2. The obligations under this Article apply in perpetuity and particular care will be taken by the Kyrgyz Party to ensure their effective application upon any (partial or whole) decommissioning of the Facility.

3. Pathogens from other countries or other regions of the world may only be imported to, exported from or stored at the Facility for peaceful uses related to research and scientific purposes and upon consent of the Kyrgyz Party, in accordance with applicable legislation and guidelines. The Kyrgyz Party shall notify the Canadian Party of such imports, exports and storage as determined by the Parties.

4. The Kyrgyz Party shall suspend or terminate immediately any activity that the Canadian Party deems is not in compliance with this Agreement.

ARTICLE XII

Use and Retransfer of Assistance

1. Unless the written consent of the Contributor has been obtained first, the Recipient shall not transfer title to, possession of, or control of any Assistance provided pursuant to this Agreement to any entity, other than an officer of the Contributor or the Recipient and shall not permit the use of such Assistance for purposes other than those for which it has been furnished.
2. The Kyrgyz Party shall take all reasonable measures within its power to ensure the security of, ensure the appropriate use of, and prevent the unauthorized transfer of Assistance provided pursuant to this Agreement.

ARTICLE XIII

Intellectual Property

1. This Article addresses the protection and allocation of intellectual property rights and takes into consideration the interests of the Parties.
2. The term "intellectual property" shall have the meaning found in Article 2 of the *Convention Establishing the World Intellectual Property Organization* done at Stockholm on 14 July 1967.
3. The term "background intellectual property" shall mean intellectual property resulting from work carried out independently, whether created inside or outside this Agreement, belonging to the Parties or to rightsholders involved in activities undertaken pursuant to this Agreement, the use of which is necessary for the implementation of activities under this Agreement.
4. This Article is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise agreed by the Parties.
5. Nothing under this Article in any way alters or prejudices the allocation of intellectual property rights between a Party and its rightsholders.

6. The carrying out of joint work shall not otherwise affect the rights of the Parties or rightsholders involved in activities undertaken pursuant this Agreement to background intellectual property.

7. Disputes concerning intellectual property that may arise in relation to the implementation of this Agreement shall be resolved through discussions. If the dispute cannot be resolved within one year of the dispute arising, it may be referred to arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

8. All rights and interests in intellectual property created jointly under this Agreement shall be decided by the Parties upon mutual consent on a case by case basis.

9. Each Party shall ensure that the other Party receives a licence for background intellectual property in the scope sufficient for that other Party's proper implementation of a Cooperation Project undertaken pursuant to this Agreement, provided any such licence shall be in writing and shall contain a prohibition against adapting, modifying, reverse engineering or further licensing the licensed intellectual property.

10. Business confidential information must be properly identified as such. Responsibility for this identification is on the Party or rightsholders involved in activities under this Agreement, demanding such confidentiality. Where information is identified as "business confidential information" and is furnished under this Agreement, each Party shall handle and protect this information in accordance with the national legislation, rules and administrative practices of the Party receiving the information. Information may be identified as "business confidential" if: a person receiving the business confidential information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it; and if the information is not generally known or publicly available from other sources; and if the rightsholder has not previously made the information available without imposing in a timely manner an obligation to keep it confidential. Neither Party shall publish or transfer to third parties information identified as "business confidential" furnished or created under this Agreement without the prior written consent of the Party or rightsholder transferring the business confidential information.

11. The Parties shall take all necessary measures in regard to their personnel, contractors, subcontractors, consultants, suppliers and sub-suppliers of material, equipment, goods, services or technology at any tier and their personnel to observe the obligation to keep the confidentiality of business confidential information.

ARTICLE XIV

Environmental, Occupational Health, and Biological Security and Biological Safety Protections

1. The Parties shall ensure that Cooperation Projects undertaken pursuant to this Agreement are implemented in accordance with sound environmental practices, and that all appropriate measures are taken prior to and during the implementation of Cooperation Projects to prevent and mitigate any adverse environmental effects.
2. Environmental assessments shall be conducted by the Parties, including prior to the selection of Cooperation Projects, as necessary, in order to comply with the Parties' legal requirements. This may include, *inter alia*, the collection of samples and environmental data in the territory of the Kyrgyz Republic, which shall be done in accordance with the legislation of the Kyrgyz Republic. The Kyrgyz Party shall ensure that the Canadian Party shall have sufficient information, including, if necessary, documents and samples, in order that the Canadian Party may comply with its legal and policy requirements concerning environmental and occupational health.
3. Cooperation Projects will be undertaken in accordance with internationally accepted guidelines, standards and best practices for biological security, biological safety, and biological containment as updated periodically.
4. The Kyrgyz Party, in cooperation with the Canadian Party, shall ensure the application of occupational health and safety measures set out in the legislation of the Kyrgyz Republic. In order to ensure the safe implementation of Cooperation projects under this Agreement, the Kyrgyz Party shall take into consideration Canadian requirements.

ARTICLE XV

Evaluation, Monitoring and Verification

The Kyrgyz Party shall grant to the Canadian Party the right to conduct evaluation, monitoring and verification activities in order to ensure and confirm that the use of any Assistance provided by the Canadian Party is in full compliance with this Agreement. Mutually acceptable procedures for such activities shall be developed in the Implementing Arrangements.

ARTICLE XVI

Accounts, Audits and Examinations

1. The Kyrgyz Party shall ensure that proper records relating to funds, and anything supplied or acquired with Assistance provided under this Agreement are created and maintained by the Recipient and ensure that such records are furnished together with full supporting documentation, to the Canadian Party or anyone it designates, at regular intervals as specified in the Implementing Arrangements.
2. The Canadian Party or anyone it designates shall have the right to audit and examine any and all related records or documentation for a period of seven years after the completion or early termination of any Cooperation Project conducted under this Agreement, unless another period is specified in the Implementing Arrangements. The practical details of such audits and examinations shall be set out in the Implementing Arrangements.
3. All records created or transferred between the Parties pursuant to this Agreement, shall be held and maintained, and will be disclosed only in accordance with the provisions of Article VIII(6) of this Agreement.

ARTICLE XVII

Indemnification

1. The Canadian Party or a non-Kyrgyz legal person, including a non-Kyrgyz company with a branch registered in the Kyrgyz Republic, responsible for the organization and supervision of the work of contractors will not incur civil liability for any loss or damage of whatsoever nature incurred within the territory of the Kyrgyz Republic, including but not limited to personal injury, loss of life, direct, indirect and consequential damage to property owned by the Kyrgyz Republic arising from activities undertaken pursuant to this Agreement. The Kyrgyz Party shall settle any third party claims brought in connection with such losses or damages in a Kyrgyz Republic court within 3 years of the time at which the losses or damages were or should have been discovered.
2. The Kyrgyz Party shall bring no claims nor initiate any legal proceedings of any kind against the Canadian Party or a non-Kyrgyz legal person, including a non-Kyrgyz company with a branch registered in the Kyrgyz Republic, responsible for the organization and supervision of the work of contractors, for any losses or damages of whatsoever nature incurred within the territory of the Kyrgyz Republic, including but not limited to personal injury, loss of life, direct, indirect and consequential damage to property owned by the Kyrgyz Republic, arising from activities undertaken pursuant to this Agreement.

3. The provisions of this Article are not applicable to damages arising from:
 - (a) wilful misconduct or gross negligence; or
 - (b) a road accident caused by a vehicle owned or operated by the Canadian Party or a natural or legal person responsible for the organization and supervision of the work of contractors, where damages are not recoverable from civil liability insurance.
4. Either Party may refer any dispute concerning the implementation of obligations under paragraphs 1 and 2 of this Article to arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), if such dispute has not been resolved amicably within ninety days of its submission. Any arbitration award shall be final and binding on the parties to the dispute.
5. Any payments related to indemnification shall be made promptly and shall be freely transferable to the beneficiary in its national currency.
6. Nothing in this Article shall be construed as waiving the sovereign, jurisdictional, diplomatic, consular or other immunities of the Parties with respect to potential third party claims that may be brought against either one of them.
7. In the event of termination or expiration of this Agreement, the provisions of this Article will be applied to all losses or damages of any nature which arose as a result of activities performed pursuant to this agreement while it was in force.

ARTICLE XVIII

Consultations

1. The Parties shall consult annually, and at any other time upon the request of either Party, on the implementation of this Agreement and any other issue that may arise in relation to this Agreement.
2. Each Party agrees to designate a responsible authority for all consultations and coordination matters including the reception of any notices required under this Agreement and shall notify each other through diplomatic channels of the designation of its responsible authority.

ARTICLE XIX

Dispute Settlement

1. The Parties shall strive, in good faith, to resolve any disputes between them arising from the interpretation or implementation of this Agreement amicably, through consultations. Consultations shall take place as soon as reasonably possible under the circumstances but in any case, no later than two months after one Party submits a request in writing to the other Party.
2. The Canadian Party may, without incurring liability, suspend, in whole or in part, any Cooperation Project, pending the outcome of the dispute settlement process, provided that work, deliveries and services that are properly performed and are in accordance with relevant specifications, are paid for.

ARTICLE XX

Entry into Force, Duration, Amendment and Termination

1. This Agreement shall enter into force upon the date of the last note of an exchange of notes between the Parties indicating that the domestic procedures necessary for its entry into force have been completed by the Parties.
2. This Agreement shall remain in force for seven years.
3. This Agreement may be amended by mutual written agreement of the Parties. Any amendment shall enter into force in accordance with the provisions of Article XX(1).
4. Either Party may terminate this Agreement at any time upon ninety days written notification to the other Party.
5. Obligations under Articles VIII(4-7), XI, XII, XIII, XIV, XV and XVI of this Agreement shall remain in effect, regardless of the termination or expiration of this Agreement, unless otherwise agreed to by the Parties.
6. Notwithstanding any termination of this Agreement, the obligations hereunder shall continue to apply to any Implementing Arrangement for its duration, unless the Parties decide to terminate such Implementing Arrangement.



CCC

Canadian Commercial Corporation
Corporation Commerciale Canadienne

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE in duplicate, at _____, this ____ day of _____ 2008 and at _____, this ____ day of _____ 2008, in the English, French, Kyrgyz and Russian languages, all versions being equally authentic.

**FOR THE
GOVERNMENT OF CANADA**

**FOR THE
GOVERNMENT OF THE KYRGYZ REPUBLIC**

Credibility ~ Confidence ~ Contracts • Cr dibilit  ~ Confiance ~ Contrats