

FIRST NATIONS CAPITAL & INFRASTRUCTURE AGENCY OF SASKATCHEWAN INC.

- and -

[*]

MASTER SERVICES AGREEMENT

[*], 202[*]

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SCHEDULES:

Schedule "A" - Scope of Services

Schedule "B" – Pricing and Invoices

MASTER SERVICES AGREEMENT

BETWEEN:

First Nations Capital & Infrastructure Agency of Saskatchewan Inc.,

a corporation having an office in the City of Saskatoon, in the Province of Saskatchewan

(“FNCIAS”)

- and -

[■], a corporation having an office in the City of [■], in the Province of [■]

(“Contractor”)

(each a “Party” and collectively, the “Parties”)

WHEREAS the Parties wish to provide the general terms and conditions under which Contractor will provide Services to FNCIAS from time to time;

NOW THEREFORE the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 The terms below are defined as follows:

- (a) “**Affiliate**” means a corporation or partnership which is controlled by or under common control with an entity that also controls a Party to this Agreement and, for the purposes of this definition, “control” means the ability, directly or indirectly, to appoint or elect a majority of the board of directors or their equivalent or, in the case of a limited partnership, the person that controls the general partner, or in the case of a general partnership, is a partner who has authority to bind the partnership;
- (b) “**Agreement**” means this document and any attachments including schedules, specifications, drawings, exhibits and documents, as amended or supplemented from time to time, referenced therein;
- (c) “**Audit**” has the meaning attributed to it in Section 12.1;
- (d) “**Community Representative**” has the meaning attributed to it in Section 3.4.
- (e) “**Deliverables**” means the reports, tables, memorandum or such other documented results of the Services to be provided by the Contractor, as set out in a particular Work Order;
- (f) “**Equipment**” means computers, tools, equipment, supplies and materials used by Contractor while performing the Services;

- (g) **"FNCIAS Policies"** means all FNCIAS policies, the OCAP principles, and standards, guidelines, plans or procedures applicable to the Services that are provided to Contractor and/or accessible to Contractor on FNCIAS's Contractor Management webpage as such policy documents are modified, supplemented or amended by FNCIAS from time to time;
- (h) **"FNCIAS Workers"** has the meaning attributed to it in Section 13.4;
- (i) **"Includes" / "Including"** means includes/including without limitation;
- (j) **"Laws"** means all applicable Federal, Provincial, Territorial and Municipal laws, statutes, regulations, rules, orders, ordinances and directives;
- (k) **"Losses and Liabilities"** has the meaning attributed to it in Section 10.1;
- (l) **"Personnel"** means Contractor's employees, servants, Subcontractors, agents, representatives and invitees directed by Contractor in the performance of its obligations under this Agreement and any Work Order issued hereunder;
- (m) **"Records"** has the meaning attributed to it in Section 12.1;
- (n) **"Representative"** means with respect to a Party and its Affiliates, any member of the officers, directors, employees, agents, consultants, contractors, subcontractors of any tier and other representatives of each;
- (o) **"Services"** means all work, tasks and the corresponding obligations of the Contractor to be supplied or performed by Contractor in accordance with this Agreement and any Work Order issued hereunder;
- (p) **"Subcontractor"** means any third party hired or retained by Contractor to supply any part of the Services, excluding employees, officers and directors of Contractor;
- (q) **"Work Order"** means a written or verbal request in the form substantially set out in Schedule "A", which may be confirmed in writing, for the performance of Services, including any verbal or written modifications which may be made by FNCIAS from time to time; and
- (r) **"Worksite"** means the physical location where the Services are to be performed, as set out in a particular Work Order.

1.2 The following schedule is attached hereto and made part of this Agreement:

- (a) Schedule "A" - Scope of Services
- (b) Schedule "B" – Pricing and Invoices

If any term or condition of a schedule conflicts with a term or condition in the body of this Agreement, such term or condition in the body of this Agreement shall prevail.

**ARTICLE 2
REQUEST FOR SERVICES**

- 2.1 FNCIAS may, from time to time, request Contractor to perform Services by issuing a Work Order, which may include the Services generally described in Schedule "A", but nothing in this Agreement shall obligate FNCIAS to request any minimum quantity of Services from Contractor or enter into any Work Order.
- 2.2 Contractor's verbal or written acceptance of a Work Order or performance of any Services set out in a Work Order shall constitute acceptance of the applicable Work Order in its entirety, and upon acceptance Contractor shall comply with all of FNCIAS's specifications contained therein together with the terms and conditions of this Agreement. Upon acceptance of a Work Order both Parties shall advise one another of their respective Representatives for the purposes of that specific Work Order.
- 2.3 This Agreement together with a Work Order accepted by Contractor shall govern the provision of Services under such Work Order. Changes (including those pertaining to additional terms, quantity, quality, nature and timing of Services) to a Work Order are not permitted without the prior consent of both Parties. In the event of any conflict between a Work Order and the body of this Agreement, the body of this Agreement shall govern.
- 2.4 In the performance of the Services, Contractor shall furnish at its own expense and sole risk all skills, labour, Equipment, supervision, insurance, transportation, permits, licenses, approvals and whatever else is necessary to complete the Services, with the exception of items FNCIAS specifically agrees in writing to furnish.
- 2.5 Any Equipment or information provided by FNCIAS to Contractor for the benefit of Contractor or its Subcontractors is provided on an "as is/where is" basis with no warranty of performance and at the sole risk and liability of Contractor to ensure that the information is accurate or such Equipment is fit for the use intended and is in proper working order. FNCIAS hereby disclaims and does not make any representation or warranty of merchantability or fitness for any purpose with respect to such Equipment. Contractor agrees to inspect such Equipment and will notify FNCIAS of all defects prior to use. In the event Contractor notifies FNCIAS of any defects, FNCIAS shall use commercially reasonable efforts to fix all defects, other than latent defects, if any, in a timely manner.
- 2.6 FNCIAS shall have the right to review and inspect Contractor's operations and Records, during regular business hours and upon reasonable prior notice, for the purposes of monitoring Contractor's compliance with this Agreement and any Work Order issued hereunder and to determine the progress of the Services. Any failure on the part of FNCIAS to direct, review, inspect, discover and/or reject the Services shall not be construed as acceptance by FNCIAS of such Services, nor shall approval or payment by FNCIAS relieve Contractor of its responsibility for proper and timely performance or delivery of the Services. If a defect or deficiency becomes apparent during inspection, Contractor shall promptly repair or re-perform the Services at its own expense. If, after 3 days' notice to Contractor, Contractor has not started to diligently take steps to cure the deficiency or FNCIAS is of the opinion, in its sole discretion, that it cannot be corrected by Contractor within a time acceptable to FNCIAS, FNCIAS may correct the deficiency and the total cost of such correction, including all labour, materials, transportation, services, and

re-performance of the Services and any performance tests, as applicable, shall be charged to Contractor.

- 2.7 If at any time Contractor's progress is determined by FNCIAS to be inadequate to meet milestone dates or achieve completion in accordance with the work schedule in a Work Order, or otherwise comply with this Agreement, Contractor shall immediately take steps as requested by FNCIAS to improve the progress of the Services. If, after seven (7) days' notice to Contractor, Contractor has not started to diligently take steps to improve the progress of the Services or if FNCIAS is of the opinion Contractor will be unable to meet milestone dates or achieve completion in accordance with the work schedule in a Work Order or this Agreement, FNCIAS shall have the right to terminate the Work Order in accordance with Section 4.3(d).

ARTICLE 3 WORK LOCATION AND ACCESS

- 3.1 Contractor shall, prior to commencing any Services or accepting any Work Order, examine and become familiar with the Worksite, its location and conditions relating to its use, including, accessibility, surface conditions, utilities and weather, location of structures, travel and lodging, the labour and Equipment required to complete the Services, the difficulties and potential hazards attending to the execution of the Services, applicable Laws and FNCIAS Policies, and all other matters which could in any way affect the execution or safety of the Services. Contractor upon acceptance of any Work Order issued hereunder shall be deemed to have accepted the Worksite and satisfied itself as to all such matters which may affect the Services. Any failure by Contractor to discover matters which affect or could affect the Services shall not relieve Contractor from its obligations under any Work Order issued hereunder, or under Schedule "A" and Contractor assumes responsibility for any impact of such matters on the Services.
- 3.2 Contractor shall provide to FNCIAS all information reasonably required by FNCIAS regarding the identity and qualifications of all Contractor Representatives prior to such Contractor Representatives commencing performance of the Services at a Worksite and shall have available such information at all times during performance of the Services.
- 3.3 FNCIAS may, acting reasonably, deny access to any Worksite to any individual or require Contractor to remove or replace any of the Contractor's Personnel performing the Services, if the individual is unsuitable for the Services or the Worksite.
- 3.4 Contractor shall work with and remunerate any person or representative of the community where the Worksite is located who is designated by the community to accompany and supervise Contractor's presence in the community (a "Community Representative"). Contractor will follow all reasonable requests and direction of a Community Representative regarding access to individual units, recognizing that each community and each Community Representative may have different rules and expectations of visitors in their community. FNCIAS will reimburse Contractor for all expenses associated with a Community Representative, as set out in a Work Order.

ARTICLE 4 TERM AND TERMINATION

- 4.1 The term of this Agreement begins on [] and will continue until terminated in accordance with this Agreement.

- 4.2 Either Party may terminate this Agreement or a Work Order upon providing the other Party with thirty (30) days prior written notice. If this Agreement is terminated pursuant to this section while any Services are in progress then this Agreement shall continue until such Services are completed.
- 4.3 At any time FNCIAS may terminate a Work Order or this Agreement upon providing written notice to Contractor upon the occurrence of any of the following, any of which shall be deemed to be an event of default:
- (a) Contractor ceases to carry on business at any time;
 - (b) Contractor is adjudicated guilty of fraud, bribery or bid-fixing by a court of competent jurisdiction;
 - (c) Contractor becomes insolvent or makes an assignment for the benefit of creditors, is adjudicated bankrupt, admits in writing its inability to pay its debts generally as they become due, institutes any proceedings under any law for relief of debtors or for the appointment of a receiver, trustee or liquidator, files a voluntary petition in bankruptcy for a reorganization or for an adjudication of Contractor as an insolvent or a bankrupt, or any of its equipment becomes subject to an attachment; or
 - (d) the failure by Contractor to cure or take reasonable actions to cure a default of its obligations under this Agreement within fourteen (14) days following the date that notice of such default is received from FNCIAS.
- 4.4 At any time FNCIAS may suspend all or any part of a Work Order and any Services being performed thereunder upon providing written notice to Contractor. If Contractor is not in default of any of its obligations hereunder then FNCIAS shall reimburse Contractor for all reasonable costs incurred by Contractor directly resulting from a suspended Work Order up to the time of suspension plus reasonable de-mobilization costs, less any monies already paid to Contractor.
- 4.5 After receipt of notice of termination or suspension from FNCIAS, except as otherwise directed by FNCIAS, Contractor shall take all commercially reasonable steps to ensure the efficient and proper close-out of the terminated Services or suspension of the suspended Services, including, the protection of FNCIAS's property in Contractor's care and control. Among other things, Contractor shall, except as otherwise directed or approved by FNCIAS:
- (a) safely stop the performance of the terminated/ suspended Services on the date and to the extent specified in the notice and, after properly securing the Worksite, promptly leave the Worksite, provided that Contractor shall continue the performance of the Services not terminated or suspended;
 - (b) incur no further costs or commitment nor enter into any further subcontracts except as may be necessary for the completion of any portion of the Services which is not terminated or suspended;
 - (c) terminate/suspend all orders and subcontracts to the extent that they relate to the performance of any terminated/suspended portion of the Services and, with the approval of FNCIAS, settle all outstanding liabilities and claims arising out of termination or suspension of such orders and subcontracts; and

- (d) deliver to FNCIAS, when and as directed by FNCIAS, all reports, notes and data collected in the performance of the Services, as well as all FNCIAS confidential information including without limit, documents during or as a result of the performance of the Services and all property which, if the Services had been completed, Contractor would be required to account for or deliver to FNCIAS.
- 4.6 If FNCIAS terminates this Agreement or any Work Order pursuant to Section 4.3, FNCIAS shall have the right to finish any outstanding Services, with or without the assistance of third parties. Contractor, subject to its right to be compensated for that portion of the Services performed, shall pay FNCIAS for all actual direct costs reasonably necessitated by the default or termination that would not otherwise have been incurred, including without limitation, as applicable, any additional mobilizing or demobilizing costs incurred by other contractors and their subcontractors, excess costs incurred in obtaining performance of the remaining Services by other contractors and their subcontractors or by FNCIAS, and any costs incurred in performing or re-performing any portions of the Services that are incomplete or defective.
- 4.7 Any termination of this Agreement by FNCIAS pursuant to Section 4.3 shall be without prejudice to any other legal remedies FNCIAS may have, pursuant to this Agreement or otherwise in law or equity.
- 4.8 Upon termination of this Agreement neither Party shall be relieved of its respective obligations and liabilities arising hereunder prior to termination and Article 9 (Representations and Warranties), Article 10 (Liability and Indemnity), Article 12 (Records and Audit), Article 13 (Confidentiality) and Article 14 (Intellectual Property) shall survive termination or suspension of this Agreement.

ARTICLE 5 RESPONSIBILITIES OF CONTRACTOR AND FNCIAS

- 5.1 In performance of the Services, Contractor shall:
- (a) perform and complete all Services diligently and carefully in a good and workmanlike manner in accordance with generally accepted industry standards and/or best practices and the Service warranties provided under Section 9.2;
 - (b) obtain and maintain all permits and licenses required to perform the Services, including permission related to Worksite access where required to be present on the Worksite;
 - (c) comply with all Laws, including without limitation, all Laws relating to the permits, licences and/or approvals required for the performance of the Services and, if applicable, all Laws relating to any placarding and manifesting requirements relating to the Services;
 - (d) at all times while Contractor's Personnel are on FNCIAS's Worksite comply with all FNCIAS Policies, as such FNCIAS Policies are updated, amended or replaced from time to time or employ its own policies and standards that shall be no less stringent than the FNCIAS Policies. In the event of any conflict between any Laws, FNCIAS Policies and industry standards the most stringent shall apply, notwithstanding anything to the contrary contained herein;

- (e) ensure that all of Contractor's Personnel who enter the Worksite have reviewed and are familiar with relevant FNCIAS Policies and participate in any required general and site specific orientation or Worksite meetings;
- (f) in addition to the liability and indemnity obligations set out in Article 10:
 - (i) FNCIAS shall accept no responsibility for the failure of Contractor to carry out any or all of its responsibilities noted in Section (e) and shall not be liable for any increase in consideration to Contractor for Contractor's failure to carry out any or all of its responsibilities as noted above regarding identification and mitigation of difficulties and hazards relating to the Services;
 - (ii) Contractor shall pay promptly all indebtedness for labour, materials, tools and equipment used in the performance of the Services and shall not permit any charge relating to non-payment by Contractor to Subcontractors for subcontracted Services to attach to the Services or to any units or Worksite upon which the Services are being performed, but if any shall so attach, Contractor shall promptly procure its release and hold FNCIAS harmless from all loss, costs, damage or expense incidental thereto; and
 - (iii) Contractor shall adequately protect all persons and property of FNCIAS and others from injury or loss arising out of the provision of the Services;
- (g) fully participate in and cooperate with FNCIAS in the investigation of or any government, First Nation, or appropriate regulatory body's inquiries or requests about any health or safety incident, and comply with FNCIAS's Policies relating to any such incident without further compensation and provide FNCIAS with copies of any inspection reports and photocopies relating to an incident as soon as they are available;
- (h) immediately report to FNCIAS on all written or verbal communications from government, or regulatory bodies, including inspections, infractions, violations, orders, notifications and advice and all incidents, injuries, damage and losses pertaining to the provision of the Services;
- (i) immediately advise FNCIAS of any actual, potential or perceived conflict of interest situation that it becomes aware of in respect of this Agreement. Contractor shall avoid situations where any of its interests conflict, could potentially conflict, or could appear to conflict with its obligations and duties to FNCIAS;
- (j) furnish all skills, labour, supervision, transportation, equipment, tools, machinery, materials, supplies and whatever else is required to provide the Services at its own cost and expense, unless otherwise expressly agreed to in writing by FNCIAS; and
- (k) Contractor shall submit its Deliverables in accordance with the schedule set out in each Work Order.

ARTICLE 6 TAXES

- 6.1 Prices set forth in Schedule B or in an applicable Work Order shall be before the Goods and Services/Harmonized Sales Tax as provided for in the *Excise Tax Act* (Canada), as amended, or any other successor or parallel provincial or federal legislation that imposes tax on the recipient of services under this Agreement (“**GST/HST**”) or any other sales or similar taxes (“**PST**”). GST/HST, PST if applicable, and customs duties and other like charges shall be shown as separate items on Contractor’s invoice and the invoice shall bear Contractor’s GST/HST registration number and PST registration number, if applicable.
- 6.2 Contractor represents and warrants that it is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada) (the “**Act**”), and further warrants that it is a registrant for GST/HST and PST purposes, if so required by applicable Laws.
- 6.3 If Contractor or the Services is exempt from GST/HST or PST, then the Contractor must provide such exemption to FNCIAS prior to providing its first invoice, and Contractor is exclusively liable for and shall pay before delinquency all taxes, (other than GST/HST, PST or taxes on income of FNCIAS) assessments, lienable claims, charges or other impositions imposed or levied on Contractor or FNCIAS in respect of Services furnished hereunder, and Contractor shall indemnify FNCIAS against all liability or expense incurred due to Contractor’s failure to do so.

ARTICLE 7 PAYMENT

- 7.1 As full and complete consideration for Contractor’s performance of the Services, FNCIAS shall pay Contractor at the rates or prices set forth in Schedule “B” hereto or on the relevant written Work Order, if applicable. Subject to Section 6.1, rates or prices are inclusive of all the Contractor’s costs incurred in the performance of the Services, including wages, benefits, payroll burdens, Equipment, materials, travel, lodging and meals. The unit rates and expense allowances described in Schedule “B” shall remain in effect for one year from the anniversary date of this Agreement. FNCIAS shall provide Contractor at least thirty (30) days notice prior to each anniversary date of any proposed revisions to the unit rate applicable to the Services. If the proposed revisions to the unit rates are accepted by FNCIAS, then the rates shall be deemed to be applicable to the Services for the subsequent year(s). Unless otherwise stated in a Work Order, the rates in effect on the effective date of a Work Order shall be in effect for the duration of the Work Order, notwithstanding any revision to unit rates during the performance of the Work Order.
- 7.2 Except as the Parties may otherwise agree in writing, for routine operations the mobilization or demobilization fees to be paid with respect to a Service shall be the fixed fee set out in Schedule “B” or the applicable Work Order, regardless of the costs actually incurred by Contractor. Day rates for Services performed under any Work Order shall not commence until the date when all of Contractor’s Equipment, Personnel and materials pertaining to the Services have arrived at the Worksite, having been fully inspected and tested by Contractor, and are ready to begin the Services. For greater clarity, “ready to begin” in this context is related to the provision of Contractor’s Equipment, Personnel and other material necessary for the Services and is not subject to the readiness of Contractor or its Subcontractors.
- 7.3 All prices are in Canadian currency.

- 7.4 Unless otherwise stated in Schedule "B" or in any written Work Order, if applicable, and subject to its rights in Article 8, FNCIAS shall pay for the Services within thirty (30) days following receipt by FNCIAS of an invoice (including all supporting documentation as set forth in this Article 7) in respect of such Services from Contractor. Any payment by FNCIAS to Contractor in respect of amounts invoiced under this Agreement shall not prejudice FNCIAS's right to subsequently protest or question the accuracy thereof, nor shall the payment by FNCIAS of any invoice calculated using rates, prices, fees or other amounts which are greater than those set out under this Agreement be construed as agreement by FNCIAS to pay Contractor the higher rates, prices, fees or other amounts, or as acceptance by FNCIAS of such change. Payment prior to acceptance of Services shall not be construed as acceptance of non-conforming Services or as relieving Contractor from its obligations hereunder.
- 7.5 Unless otherwise specified by FNCIAS, upon completion of Services, Contractor shall promptly submit to FNCIAS its invoice for Services. Each invoice shall be legible and include at a minimum the following information:
- (a) Contractor's legal name and all trade names under which the Services was performed;
 - (b) the applicable GST/HST and PST and sales tax registration numbers, if applicable, of the entity issuing the invoice;
 - (c) the department and name of the FNCIAS representative who will be approving the invoice;
 - (d) the number of units actually performed and included in the invoice;
 - (e) the applicable unit rate(s) to the Services;
 - (f) the Worksite at which the Services were performed;
 - (g) copies of or identification of the associated written Work Order(s);
 - (h) date and description of Services performed;
 - (i) reimbursable expenses as described in Schedule "B";
 - (j) the total of all rates and reimbursable expenses included in the invoice; and
 - (k) other reasonable supporting documentation as requested by FNCIAS to confirm the accuracy of the invoice, including, for hourly/rate services, daily time sheets, authorized by FNCIAS as applicable.

In the event FNCIAS's requirements are not met, the invoice will be returned to Contractor for correction and payment may be delayed.

**ARTICLE 8
WITHHOLDING PAYMENT, DEDUCTIONS, LIENS AND SET OFF**

- 8.1 FNCIAS may, acting reasonably, withhold payments or deduct amounts due to Contractor under any Work Order as against any Work Order, without liability for interest in accordance with any Law respecting liens for labour or materials. Any amount withheld or deducted shall correspond to the amount in issue, as determined by FNCIAS acting reasonably, and any payments or adjustments in respect of such amount shall be made in accordance with the resolution of the matter in issue.
- 8.2 In connection with the Services performed by Contractor for FNCIAS, Contractor shall indemnify and hold FNCIAS harmless from and against all claims for labour which were incurred by Contractor or its Subcontractors and which arise out of or in connection with this Agreement, and from costs and expenses incurred by FNCIAS (including court costs and legal fees on a solicitor and his own client basis), to discharge or obtain the release of such claims. All expenses of FNCIAS incurred on account of such claims shall be paid to FNCIAS by Contractor on demand or, at FNCIAS's option, deducted from any payments due Contractor in accordance with Section 8.1.
- 8.3 FNCIAS shall be entitled to set off against any amount owing to Contractor hereunder any amount owed by Contractor to FNCIAS under this Agreement or any Work Order.
- 8.4 FNCIAS's failure to deduct, withhold or set off payments shall not affect Contractor's obligations to FNCIAS or prejudice any of FNCIAS's rights and remedies.

**ARTICLE 9
REPRESENTATIONS AND WARRANTIES**

- 9.1 Contractor expressly represents and warrants to FNCIAS the following as of the effective date of this Agreement and throughout its term:
- (a) if Contractor purports to be incorporated, Contractor is an entity duly constituted and validly subsisting under the laws of its jurisdiction of incorporation and has all requisite power, legal capacity and authority to enter into this Agreement and to perform its obligations in accordance with its terms and in the jurisdiction where the Services is to be performed and has duly authorized, executed and delivered this Agreement;
 - (b) there are no claims pending, anticipated or proceeding that may have a material adverse effect on the ability of Contractor to perform the Services;
 - (c) there is no breach by Contractor of any applicable Law, order, approval or mandatory requirement or directive of any court or regulatory authority having jurisdiction that may have a material adverse effect upon any of FNCIAS's rights or Contractor's obligations under this Agreement;
 - (d) Contractor has adequate procedures in place concerning confidentiality, privacy and security to ensure that there will be no conflicts of interest between Contractor's work for other clients; and

- (e) Contractor has all of the licenses, permits or approvals required to undertake the Services in a given Work Order, including, where applicable, a community's access requirements and contact information for a Community Representative.

9.2 Contractor expressly warrants that all Services provided hereunder shall:

- (a) be free of any encumbrances or claims;
- (b) conform exactly to the specifications in this Agreement or Work Order and FNCIAS Policies, be of acceptable industry standards, be performed in a good and workmanlike manner, and be free from defects;
- (c) comply with all Laws, and
- (d) shall not infringe any patent, copyright, trade mark, trade secret or other intellectual property rights.

9.3 Contractor shall, at its sole cost and expense and within a timely manner of receiving notice of any non-conformity or deficiency in the Service or a Deliverable from FNCIAS, re-perform any Services (or portion thereof) not conforming to the Work Order or this Agreement, or if FNCIAS determines in its sole discretion that Contractor's re-performance cannot or will not provide a commercially viable remedy, Contractor shall, at FNCIAS's option, either refund or credit in full to FNCIAS that portion of the compensation payable under the Work Order that is attributable to the non-conforming Service. If Contractor re-performs the Service, such reperformance must commence- no later than seven (7) days after receiving notice of the nonconforming Service-, and must be diligently pursued by Contractor thereafter.

9.4 Notwithstanding anything contained herein, if remediation of a deficiency is required on an urgent basis, FNCIAS may notify Contractor to remediate it on an urgent basis. If FNCIAS is of the reasonable opinion that Contractor will be unable to remedy the deficiency within the time required by FNCIAS, FNCIAS may correct the deficiency and the total cost of such correction, including all labour, transportation, Services, including re-performance of the Services, shall be charged to Contractor.

No payment or acceptance of the Services shall relieve Contractor from any obligations pertaining to Services not in compliance with this Agreement.

ARTICLE 10 LIABILITY AND INDEMNITY

10.1 Contractor shall be liable to FNCIAS, its employees, contractors, agents, representatives, directors, officers and Affiliates (in the remainder of this Article called "**FNCIAS Indemnified Parties**") for all losses, damages, costs and legal and other expenses of whatever nature which the FNCIAS Indemnified Parties may suffer, sustain, pay or incur and indemnify and hold harmless the FNCIAS Indemnified Parties against all actions, proceedings, claims, demands, losses, costs, damages, penalties and interest, legal and other expenses whatsoever ("**Losses and Liabilities**") which may be brought by third parties against or suffered by FNCIAS or which they may suffer, sustain, pay or incur, by reason of any matter or thing arising out of or in any way attributable to:

- (a) the acts or omissions of Contractor or any of its Personnel in connection with, related to or arising out of the performance, purported performance, or non-performance of this Agreement and Services hereunder;
- (b) resulting from infringement of any patent, copyright, trademark, trade secret or other intellectual property right related to or arising out of the performance of this Agreement and Services hereunder;
- (c) any alleged claim, lien or encumbrance attaching to Services or property to which it was delivered;
- (d) arising through failure to pay when due and payable taxes and duties for which Contractor is responsible;
- (e) loss or damage to the property or Equipment of Contractor or Contractor's Representatives or Equipment provided by FNCIAS and used by Contractor in the performance of the Services; or
- (f) arising from pollution or contamination originating from the surface and associated with the Services,

except, in each instance, to the extent caused by the gross negligence of FNCIAS and to the extent any act or omission was done or omitted pursuant to the specific instructions of FNCIAS.

- 10.2 FNCIAS shall be liable to Contractor, its Personnel and Affiliates (in the remainder of this Article called "**Contractor Indemnified Parties**") for all Losses and Liabilities which Contractor Indemnified Parties may suffer, sustain, pay or incur and shall indemnify and hold harmless Contractor Indemnified Parties against all Losses and Liabilities which may be brought against or suffered by Contractor Indemnified Parties or which they may suffer, sustain, pay or incur by reason of any matter or thing arising out of or in any way attributable to the gross negligence or wilful misconduct of FNCIAS or any of its employees, contractors, agents, representatives, directors, officers or Affiliates, in connection with, related to or arising out of the performance, purported performance or non-performance by FNCIAS, of this Agreement, except to the extent caused by a breach by Contractor of any of its duties under this Agreement.
- 10.3 Neither Party shall be liable to the other for indirect, incidental, special, punitive or consequential damages of any nature or for loss of profit, revenue, business, whether liability for same arises in contract, negligence, statute or otherwise.

ARTICLE 11 INSURANCE

- 11.1 Without limiting its obligations or liabilities herein, Contractor shall, at its sole cost and expense, obtain and continuously carry during the term of this Agreement the following insurance coverage:

(a) Employees

(i) Workers' Compensation

Workers' Compensation covering Contractor and all its Personnel engaged in performing the Services in accordance with the statutory requirements of the province or territory having jurisdiction over such Personnel.

(b) Commercial General Liability

Commercial General Liability Insurance containing the following:

(i) Provision for a combined single limit of not less than five million dollars (\$5,000,000.00) on an occurrence basis;

(ii) Provision in respect of coverage for bodily injury (including death at any time resulting therefrom) and personal injury sustained by any person or persons and for injury to or destruction of property (including loss of use or occupancy) arising out of the performance of any of the Services;

(iii) Provision in respect of coverage for contractual liability, personal injury, cross liability, Contractor's liability, sudden and accidental pollution liability, products liability, completed operations liability, forest fire legal liability, non-owned automobile liability and broad form property damage; and

(iv) Provision to be made to name FNCIAS as an additional insured.

(c) Automobile

If Contractor operates an automobile in the course of performing the Services and where not otherwise covered by Contractor's commercial general liability policy, Contractor shall obtain and maintain Automobile Liability Insurance covering all motor vehicles, owned or non-owned, operated, used and/or hired in connection with the Services with an inclusive bodily injury, death and property damage limit per occurrence of not less than five million dollars (\$5,000,000.00).

(d) Professional Liability

If the Services includes the provision of professional services by Contractor, Contractor shall maintain professional liability or errors and omissions liability insurance of at least one million dollars (\$1,000,000.00) and providing insurance for financial loss including resulting bodily injury and/or property damage arising out of Contractor or its Personnel's acts, errors or omissions.

(e) Other

Such other insurance and insurance limits as may be required in a particular Work Order.

- (f) General
- (i) Contractor's Insurance policies shall include FNCIAS, its directors, officers, employees, Contractors, agents and Affiliates as additional insureds to the extent of Contractor's liabilities and indemnities hereunder.
 - (ii) Prior to the commencement of Services, Contractor shall provide FNCIAS with certificates of insurance confirming the existence of the insurance described above, and shall provide on an annual basis proof of continuation of these policies. Contractor shall make all reasonable modifications and additions to its insurance coverage as may be requested by FNCIAS from time to time.
 - (iii) The insurance maintained by Contractor in accordance with this Agreement shall be primary and non-contributory to any other insurance available.
 - (iv) The insurance maintained by Contractor shall be written in forms and amounts in accordance with applicable insurance legislation and be placed with insurers of a minimum financial rating of AM Best A- and/or S&P A.
 - (v) Contractor's Insurance policies shall provide that no material change or cancellation shall be made without thirty (30) days written notice to FNCIAS. Upon request by FNCIAS, Contractor shall, within ten (10) days of any such request and prior to the expiry of any such insurance policies required to be carried, provide FNCIAS with insurance certificates confirming the existence of the above insurance or the renewal thereof, as the case may be.
 - (vi) All deductibles or self-insured retentions in Contractor's Insurance policies are the responsibility of Contractor.
 - (vii) The limits of insurance may be achieved by any combination of primary, umbrella or excess liability.
 - (viii) Contractor shall ensure that any of its Personnel, including Subcontractors, performing any part of the Services obtains and maintains insurance coverage comparable to the insurance coverage Contractor is required to maintain pursuant to this Agreement.
 - (ix) Contractor waives all rights against FNCIAS and the FNCIAS Representatives for recovery of damages to the extent these damages are covered by insurance maintained in accordance with the requirements stated above and shall ensure that all Contractor's Insurance policies contain provisions that the insurers shall have no rights of subrogation against FNCIAS or any FNCIAS Representative.

ARTICLE 12 RECORDS AND AUDIT

- 12.1 To support all charges invoiced to FNCIAS with respect to the Services performed hereunder, Contractor, for a period of five (5) years after the performance of such Services, shall maintain, in accordance with generally accepted accounting principles, a true and correct set of books and

records pertaining to such Services, including original payroll records, invoices issued to Contractor by its Personnel, and all other relevant records, whether in writing or in electronic form or reproduced by any other means ("**Records**") and shall allow FNCIAS, or its authorized representatives, to inspect, examine, audit and copy ("**Audit**") such Records upon reasonable request during this five (5) year period at no cost to FNCIAS.

- 12.2 If any Records require special equipment or specialized knowledge to convert the data into readily readable form, Contractor shall provide all assistance and facilities reasonably required for that purpose in connection with any Audit.
- 12.3 Contractor shall respond to any claims or discrepancies disclosed by an Audit in writing within thirty (30) working days after the receipt of a claim from FNCIAS. Items established to be inaccurate as a result of any Audit shall be rectified forthwith and either credited or reimbursed appropriately, with interest at the rate of prime plus two percent (2%) per annum. Such interest shall accrue from the date FNCIAS first paid the excess amounts to the date of credit or reimbursement, as the case may be. Contractor shall retain records pertaining to any unresolved claim or discrepancy until such claim or discrepancy is resolved, notwithstanding the aforesaid five (5) year retention period.
- 12.4 Contractor shall maintain, during the Term of this Agreement, and for a period of five (5) years thereafter, true and correct records pertaining to any and all gifts or entertainment provided by Contractor or Contractor's Representatives to FNCIAS or FNCIAS's Representatives and shall allow FNCIAS, or its authorized representatives, to inspect, examine, audit and copy such records upon reasonable request during this five (5) year period at no cost to FNCIAS.

ARTICLE 13 CONFIDENTIALITY

- 13.1 Contractor will keep secret and confidential, during the term of this Agreement (including any renewals or extensions thereof) and for a period of five (5) years thereafter, all information disclosed to Contractor by FNCIAS, all information of a confidential nature disclosed by a third party to Contractor in its capacity as a Contractor to FNCIAS (which, in addition to the confidentiality requirements hereunder will be kept confidential by Contractor in accordance with the terms of their disclosure by such third party), and all information developed by Contractor in the course of providing and performing the Services, except:
- (a) Information which at the time of disclosure is in the public domain;
 - (b) Information which after disclosure is published or otherwise becomes part of the public domain through no fault of Contractor (but only after it is published or otherwise becomes part of the public domain);
 - (c) Information, not subject to any confidentiality obligations, which Contractor can show was in its possession prior to disclosure hereunder;
 - (d) Information which Contractor can show was received after the time of disclosure hereunder from a third party who did not require that it be held in confidence and who did not, to Contractor's knowledge, acquire it, directly or indirectly, from FNCIAS or a third party under an obligation of confidence; or

- (e) Information which Contractor is legally compelled to disclose under a subpoena or order of a court, regulatory body or other authority of competent jurisdiction, or information which Contractor is otherwise obliged to disclose by law (provided that Contractor shall give written notice to FNCIAS prior to such disclosure).
- 13.2 Contractor shall comply with any other reasonable confidentiality requirements specified by FNCIAS which may include execution of a confidentiality letter or agreement.
- 13.3 Contractor shall cause each Contractor Representative to observe the foregoing obligations with respect to confidential information in the possession of such Contractor Representative and shall be responsible for any unauthorized disclosure of confidential information by its employees or other Contractor Representatives and shall be liable to and indemnify FNCIAS for all losses whatsoever that may be asserted or brought against, or suffered or incurred by FNCIAS as a result of the breach of any of the terms or conditions hereof by Contractor or its Representatives.
- 13.4 FNCIAS and its Affiliates reserve the right to disclose any information contained within this Agreement or any Work Order to their employees, servants, agents, advisors, contractors, consultants, joint venture members and partners (collectively, the “**FNCIAS Workers**”) as well as relevant First Nation communities and partners for any purpose that FNCIAS or its Affiliates may require. FNCIAS’s Workers shall not be liable for any damages resulting from any disclosure before, during or after Contractor’s acceptance of this Agreement or any Work Order.

ARTICLE 14 INTELLECTUAL PROPERTY

- 14.1 All documentation, data, reports and other information prepared, developed, or collected by Contractor in providing Services shall be the property of FNCIAS. Contractor shall turn over all such documentation, data, reports and other information to FNCIAS immediately upon completion of any Services.
- 14.2 Contractor represents and warrants that the use of any procedure, process, or method used in the performance of the Services does not infringe on any license, patent, or trade secret. Contractor agrees to release, protect, defend, indemnify and hold FNCIAS harmless from any and all claims, demands and causes of action of every kind and character which may result from or arise out of the terms of this Agreement.
- 14.3 The Contractor shall retain any intellectual property rights that it has in its processes, procedures and methods prior to performing the Services. If any of the Contractor’s intellectual property is imbedded in its Deliverables or necessary for FNCIAS to use the product of the Services, then Contractor gives FNCIAS a perpetual, irrevocable, non-exclusive, transferable, and worldwide license to any intellectual property used in connection with or submitted to FNCIAS in performance of the Services.
- 14.4 Contractor shall not use the names, logos or trademarks of FNCIAS or any of its Affiliates, nor of any of the communities or First Nations visited in performance of the Services, in any advertising, promotional material or publicity releases (in any media whatsoever, including electronic or web-based) without FNCIAS’s prior written consent).

**ARTICLE 15
INDEPENDENT CONTRACTOR**

15.1 Contractor shall be an independent contractor with respect to Services performed hereunder. Nothing herein shall render Contractor or any of its Personnel as a partner, agent, representative or employee of FNCIAS and none shall hold itself out as such. FNCIAS shall have no direction or control of Contractor or its Personnel, except in the results to be obtained. Neither Party shall be liable for the actions nor omissions of the other Party except as stated in this Agreement. Neither Contractor nor any of its Personnel shall pledge the credit of FNCIAS, sign any document, enter into any agreement or make any promise on behalf of FNCIAS without FNCIAS's prior written consent.

**ARTICLE 16
SUBCONTRACTING**

16.1 Contractor may not engage a Subcontractor to perform all or a portion of the Services without the prior written consent of FNCIAS, which consent shall not be unreasonably withheld provided that:

- (a) except where a Subcontractor is identified in a FNCIAS approved Work Order, Contractor must provide at least 48 hours prior written notice to FNCIAS of its proposed use of a Subcontractor, which notice shall include details regarding the Subcontractor, its personnel or anticipated performance of the Services, as FNCIAS may request;
- (b) prior to granting such consent, FNCIAS may require Contractor to meet such conditions as it deems necessary regarding any such Subcontractor, such as providing copies of the Subcontractor's certifications and qualifications;
- (c) Notwithstanding anything in this Article 16, Subcontractor must ensure that its subcontractors and their personnel are suitable for the Services to be performed, and will promote indigenous and local personnel and subcontractors to the greatest extent possible and, at a minimum, in accordance with such commitments in each respective Work Order;
- (d) Contractor shall remain responsible for and liable for the performance of the Services and the fulfillment of the terms of this Agreement notwithstanding the provisions of any subcontract between Contractor and its Subcontractor;
- (e) any acts or omissions of the Subcontractor shall be deemed to be acts or omissions of Contractor;
- (f) Contractor shall ensure that the Services is performed by qualified Subcontractors in accordance with the terms hereof, who have agreed to abide by the applicable provisions of this Agreement, including Article 5;
- (g) Contractor shall ensure Subcontractor's compliance with the FNCIAS Policies, standards, procedures and guidelines and health, safety and environmental requirements including provision and maintenance of training certification, and, to the extent practicable, are currently designated as "Qualified Contractors" by FNCIAS;

- (h) Contractor shall ensure that its Subcontractors carry and maintain and provide proof of insurance equivalent to Contractor's Insurance required herein, and shall provide such to FNCIAS upon request;
- (i) Contractor shall ensure that, where practicable, its relationship with all Subcontractors is governed by a written agreement in respect of the provision of the Services in accordance with the provisions hereof, and agrees to provide to FNCIAS a copy of such agreement upon request;
- (j) Contractor shall ensure that Subcontractors do not further subcontract any portion of the Services without FNCIAS's prior written consent; and
- (k) FNCIAS, at its sole discretion, at any time prior to or during the performance of the Services, may refuse to allow Contractor to use or continue to use any Subcontractor to perform the Services.

ARTICLE 17 FORCE MAJEURE

- 17.1 Either Party shall be excused from performance of this Agreement when and to the extent that performance is delayed or prevented by any cause that was not reasonably anticipated at the commencement of this Agreement, which is beyond its reasonable control, including severe weather, road closures, criminal acts, acts of war or terrorism, pandemics or government orders that materially impact the performance of the Services ("**Force Majeure**"). The Party wishing to invoke this Article shall promptly notify the other in writing of the cause upon which it relies, including reasonably full particulars in respect thereof.
- 17.2 Contractor shall give FNCIAS written notice if the provision of any Services is, or will likely be, delayed for more than seven (7) days due to Force Majeure, in which case FNCIAS may either cancel all or a portion of the Work Order or authorize any necessary delays and adjustments without incurring any liability for any direct or indirect resulting costs.
- 17.3 Notwithstanding the foregoing, in no event shall the following be events of Force Majeure: (i) lack of finances; (ii) increased expense of completing the Services; (iii) shortage of labour or Equipment unless caused by events or circumstances that are themselves Force Majeure; (iv) late performance by Contractor and/or a Subcontractor caused by unavailability of machinery, Equipment, materials, supplies, labour inefficiencies or similar occurrences; (v) mechanical breakdown of any item of Contractor's Equipment or any machinery, materials or supplies of Contractor or its Subcontractor's machinery, Equipment, [Rental Equipment] materials or supplies; (vi) inclement weather; (vii) non-performance by Subcontractors; (viii) any event caused by the negligence of the Party invoking Force Majeure; or (ix) any event caused by the failure of Contractor to perform Services in accordance with generally acceptable industry standards.

ARTICLE 18 NOTICES

- 18.1 All communications and notices required or permitted to be given hereunder, unless otherwise specifically provided for, must be given in writing and mailed (postage prepaid) or delivered to that Party at its address as follows:

**First Nations Capital & Infrastructure Agency [Name of the Contractor]
of Saskatchewan Inc.**

#104, 336 Packham Ave
Saskatoon, Saskatchewan
S7N 2T1

[■]
[City, Province]
[Postal Code]

Telephone: 306-500-7990
Email: info@fncias.ca

Telephone: [■]
Fax: [■] (if no number is provided,
say "None Provided")

Attention: [■]

Attention: [■]

Any notice or other communication given by delivery will be deemed to have been given as at the commencement of the next following business day, and any notice or other communication given by prepaid mail shall be deemed to have been received on the fifth (5th) business day following deposit in the mail. In times of labour strikes or slow-downs affecting the mail delivery, notice shall be effective only if delivered. Any Party may change its address for service by notice served as set out above.

**ARTICLE 19
AFFILIATES**

- 19.1 Contractor shall provide Services, as applicable, to any Affiliates of FNCIAS upon request by FNCIAS. The terms and conditions of this Agreement shall govern the provision of such Services to an Affiliate and shall constitute a separate contract between the Affiliate and Seller and any reference to FNCIAS in this Agreement shall be deemed to include the Affiliate for whom Contractor is providing such Services.

**ARTICLE 20
GENERAL PROVISIONS**

- 20.1 This Agreement and any applicable Work Order constitutes the entire agreement between Contractor and FNCIAS respecting the subject matter and supersedes and replaces all other prior written or oral agreements between the parties (or any of their predecessors) respecting the subject matter and shall only be amended with the written consent of both parties.
- 20.2 Although FNCIAS may from time to time sign Contractor's receipts, acknowledgements, terms of service or similar forms, the terms and conditions associated with such forms or similar forms (by whatever title) shall not amend, modify, waive or release any aspect of this Agreement or any Work Order.
- 20.3 The legal interpretation of this Agreement shall be governed by the laws of the Province of Saskatchewan and the parties hereto each attorn to the jurisdiction of the courts of the Province of Saskatchewan and the federal laws of Canada.
- 20.4 If any provision of this Agreement is or becomes illegal, invalid or unenforceable, such provision shall be deemed to be separate and severable from this Agreement and in all other respects this Agreement shall continue in full force and effect.

- 20.5 FNCIAS shall be entitled to strict performance of Contractor's obligations hereunder, and such right shall not be affected by any prior waiver, forbearance or course of dealing. Any waiver by FNCIAS of its rights hereunder shall not be binding unless in writing and signed by FNCIAS.
- 20.6 All rights, powers and remedies of FNCIAS under this Agreement are cumulative and are in addition to (not in substitution for) any rights, powers and remedies it has at law, statute, equity or otherwise and any may be exercised concurrently or partially exercised or abandoned without prejudice to any other rights, powers or remedies of FNCIAS.
- 20.7 The Parties agree that each Work Order will be an independent and separate contract from all other Work Orders, for all purposes.
- 20.8 Time shall be of the essence.
- 20.9 Whenever in this Agreement the singular or masculine is used the same shall be construed as meaning plural or feminine or body politic or corporate or vice versa, as the context so requires.
- 20.10 Any reference to a written notice or communication shall include those in an electronic format.
- 20.11 All headings herein are for convenience of reference and shall not be used in interpreting this Agreement.
- 20.12 This Agreement shall be binding upon and enure to the benefit of the Parties and their successors, heirs and assigns.
- 20.13 This Agreement may be executed in any number of counterparts with the same effect as if all signatories to the counterparts had signed one document, all such counterparts shall together constitute, and be construed as, one instrument and each of such counterparts shall, notwithstanding the date of its execution, be deemed to bear the date first written above. A signed counterpart provided by way of facsimile transmission, .pdf or other electronic format, shall be as binding upon the parties as an originally signed counterpart.

[Counterpart execution page follows]

THE PARTIES, INTENDING TO BE LEGALLY BOUND, executed this Agreement as of the date first set forth above.

FIRST NATIONS CAPITAL & INFRASTRUCTURE AGENCY OF SASKATCHEWAN INC.

Per: _____
Name: [■]
Title: [■]

[■]

Per: _____
Name: [■]
Title: [■]

SCHEDULE "A"

SCOPE OF SERVICES

1. Description of Services to be provided by Contractor.

Home Inspection and Reporting Services

2. Each Work Order shall contain the following information, which will constitute :

(a) Scope of Services;

(b) Payment Terms, including hourly rates and categories of reimbursable expenses;

(c) Personnel applicable to the Work Order;

(d) Equipment, if any;

(e) Community Representative;

(f) Worksite and Access Requirements; and

(g) Form and Schedule of Deliverables.

3. Description of Equipment to be supplied by Contractor and the applicable Hourly Rate:

Equipment	Rate

4. List of Contractor's Personnel and their Hourly Rates:

Personnel & Position	Rate

SCHEDULE "B"
PRICING AND INVOICES

Hourly Rates

FNCIAS shall pay Contractor in accordance with the following pricing tables:

1. Description of Equipment to be supplied by Contractor and the applicable Hourly Rate:

Equipment	Rate

2. List of Contractor's Personnel and their Hourly Rates:

Personnel & Position	Rate

Reimbursable Expenses

The following categories of Reimbursable Expenses shall be paid for all items approved in advance by FNCIAS in writing:

- (a) [insert list]

Total Estimated Costs

The total cost to perform the Services is estimated to be the following amounts, based upon the Scope of Services and anticipated hours to perform the Services:

Scope Item	Rate	Anticipated Hours	Total