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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 –

[insert legal name],

a corporation having an office in the City of [insert], in the province of [insert]

(“Contractor”)

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

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

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) “Background IP” means Background Intellectual Property....
- e) “Contractor” means a third party hired or retained by FNCIAS to supply any part of the Services;
- f) “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 Schedule “A” or a particular Work Order;
- g) “Equipment” means computers, tools, equipment, supplies, and materials used by the Contractor while performing the Services;
- h) “FNCIAS Policies” means all FNCIAS policies, the OCAP principles, and standards, guidelines, plans or procedures applicable to the Services that are provided to the Contractor and/or accessible to the Contractor on FNCIAS’s Contractor Management

webpage as such policy documents are modified, supplemented, or amended by FNCIAS from time to time;

- i) "FNCIAS Workers" has the meaning attributed to it in Section 13.4;
- j) "Includes" / "Including" means includes/including without limitation;
- k) "Intellectual Property" means any subject matter, whether tangible or intangible, that attracts, or is susceptible to protection by, Intellectual Property Rights;
- l) "Laws" means all applicable Federal, Provincial, Territorial, and Municipal laws, statutes, regulations, rules, orders, ordinances, and directives;
- m) "Losses and Liabilities" has the meaning attributed to it in Section 10.1;
- n) "Personnel" means the Contractor's employees, servants, Subcontractors, agents, representatives, and invitees directed by the Contractor in the performance of its obligations under this Agreement and any Work Order issued hereunder;
- o) "Prime Contractor" means the Contractor responsible under The Saskatchewan Employment Act for coordinating the health and safety activities at multi-employer worksites (i.e., ensuring policies, procedures, and safe work practices are used on the worksite; and preparing a written plan that coordinates activities and identifies the prime contractor's backup and the supervisors on the worksite);
- p) "Records" has the meaning attributed to it in Section 12.1;
- q) "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;
- r) "Services" means all work, tasks, and the corresponding obligations of the Contractor to be supplied or performed by the Contractor in accordance with this Agreement and any Work Order issued hereunder;
- s) "Subcontractor" means any third party hired or retained by the Contractor to supply any part of the Services, excluding employees, officers, and directors of the Contractor;
- t) "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
- u) "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
- c) Schedule C – Work Schedule
- d) Schedule D – Change Order

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 – SCOPE OF SERVICES

2.1. The Contractor agrees to perform Services as described in Schedule "A".

- 2.2. This Agreement together with a Schedule A shall govern the provision of Services. Changes (including those pertaining to additional terms, quantity, quality, nature, and timing of Services) are not permitted without the prior consent of both Parties. In the event of any conflict between Schedule A and the body of this Agreement, the body of this Agreement shall govern.
- 2.3. In the performance of the Services, the 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.
- 2.4. Any Equipment or information provided by FNCIAS to the Contractor for the benefit of the 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 the 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. The Contractor agrees to inspect such Equipment and will notify FNCIAS of all defects prior to use. In the event the 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.
- 2.5. 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 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 the Contractor of its responsibility for proper and timely performance or delivery of the Services. If a defect or deficiency becomes apparent during inspection, the Contractor shall promptly repair or re-perform the Services at its own expense. If, after three (3) days notice to the Contractor, the 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 the 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 the Contractor.
- 2.6. If at any time the Contractor’s progress is determined by FNCIAS to be inadequate to meet milestone dates or achieve completion in accordance with the work schedule in Schedule C, or otherwise comply with this Agreement, the Contractor shall immediately take steps as requested by FNCIAS to improve the progress of the Services. If, after seven (7) days notice to the Contractor, the Contractor has not started to diligently take steps to improve the progress of the Services or if FNCIAS is of the opinion the Contractor will be unable to meet milestone dates or achieve completion in accordance with the work schedule in Schedule C or this Agreement, FNCIAS shall have the right to terminate the Agreement in accordance with Section 4.3(d).
- 2.7. Any Contract change request must be submitted to FNCIAS using “Schedule D Change Order Form”. Change Order requests will be reviewed by FNCIAS, and written acceptance or rejection will be provided within thirty (30) days.

ARTICLE 3 - WORK LOCATION AND ACCESS

- 3.1. The Contractor shall, prior to commencing any Services, 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. The Contractor upon acceptance of the Agreement shall be deemed to have accepted the Worksite and satisfied itself as to all such matters which may affect the Services. Any failure by the Contractor to discover matters which affect or could affect the Services shall not relieve the Contractor from its obligations under the Agreement, or under Schedule "A" and the Contractor assumes responsibility for any impact of such matters on the Services.

- 3.2. The Contractor shall provide to FNCIAS all information reasonably required by FNCIAS regarding the identity and qualifications of all the 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 the 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.

ARTICLE 4 - TERM AND TERMINATION

- 4.1. The term of this Agreement begins on day/month/year, and will continue until the completion of the deliverables, not to exceed day/month/year.
- 4.2. Either Party may terminate this Agreement 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 this Agreement upon providing written notice to the Contractor upon the occurrence of any of the following, any of which shall be deemed to be an event of default:
 - a) The Contractor ceases to carry on business at any time;
 - b) The Contractor is adjudicated guilty of fraud, bribery, or bid-fixing by a court of competent jurisdiction.
 - c) The 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 the Contractor as an insolvent or a bankrupt, or any of its equipment becomes subject to an attachment; or
 - d) the failure by the Contractor to cure or take reasonable actions to cure a default of its obligations under this Agreement within seven (7) days following the date that notice of such default is received from FNCIAS.
- 4.4. At any time FNCIAS may suspend or terminate all or any part of this Agreement and any Services being performed thereunder upon providing written notice to Contractor. If the Contractor is not in default of any of its obligations hereunder then FNCIAS shall reimburse the Contractor for all reasonable costs incurred by the Contractor directly resulting from the suspended or terminated Agreement up to the time of suspension or termination plus reasonable de-mobilization costs, less any monies already paid to the Contractor.
- 4.5. After receipt of notice of termination or suspension from FNCIAS, except as otherwise directed by FNCIAS, the 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, the 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 the 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, the Contractor would be required to account for or deliver to FNCIAS.
- 4.6. If FNCIAS terminates this Agreement pursuant to Section 4.3, FNCIAS shall have the right to finish any outstanding Services, with or without the assistance of third parties. The 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, The 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 the 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 the Contractor for the 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) The 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 the 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, the Contractor shall promptly procure its release and hold FNCIAS harmless from all loss, costs, damage or expense incidental thereto; and
 - (iii) The 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. The Contractor shall avoid situations where any of its interest's 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) The Contractor shall submit its Deliverables in accordance with Schedule A.

ARTICLE 6 - TAXES

- 6.1. Prices set forth in Schedule B 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. The 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 the 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 the Contractor is exclusively liable for and shall pay before delinquency all taxes, (other than GST/HST, PST or taxes on income of FNCIAS) assessments, alienable claims, charges or other impositions imposed or levied on the Contractor or FNCIAS in respect of Services furnished hereunder, and the 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 the Contractor’s performance of the Services, FNCIAS shall pay the Contractor at the rates or prices set forth in “Schedule B” hereto. 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. Unless otherwise stated in Schedule B, the rates in effect on the effective date of a Work Order shall be in effect for the duration of the Agreement, notwithstanding any revision to unit rates during the performance of the work in “Schedule A”.
- 7.2. All prices are in Canadian currency.
- 7.3. Unless otherwise stated in “Schedule B”, 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 approved invoice (including all supporting documentation as set forth in this Article 7) in respect of such Services from Contractor. Any payment by FNCIAS to the 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 the 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 the Contractor from its obligations hereunder.
- 7.4. Unless otherwise specified by FNCIAS, upon completion of Services, the Contractor shall promptly submit to FNCIAS its invoice for Services by email to ap@fncias.ca. Each invoice shall be legible and include at a minimum the following information:
 - a) The Contractor’s legal name and all trade names under which the Services was performed;
 - b) Contract Name and Reference Number;

- c) Purchase Order Number;
- d) the applicable GST/HST and PST and sales tax registration numbers, if applicable, of the entity issuing the invoice;
- e) the number of units actually performed and included in the invoice;
- f) the applicable unit rate(s) to the Services;
- g) the Worksite at which the Services were performed;
- 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 the 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 the Contractor under the Agreement, 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 the Contractor for FNCIAS, the Contractor shall indemnify and hold FNCIAS harmless from and against all claims for labour which were incurred by the 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 the Contractor on demand or, at FNCIAS's option, deducted from any payments due the Contractor in accordance with Section 8.1.
- 8.3. FNCIAS shall be entitled to set off against any amount owing to the Contractor hereunder any amount owed by the Contractor to FNCIAS under this Agreement.
- 8.4. FNCIAS's failure to deduct, withhold or set off payments shall not affect the Contractor's obligations to FNCIAS or prejudice any of FNCIAS's rights and remedies.

ARTICLE 9 - REPRESENTATIONS AND WARRANTIES

- 9.1. The Contractor expressly represents and warrants to FNCIAS the following as of the effective date of this Agreement and throughout its term:
 - a) if the Contractor purports to be incorporated, the 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 the Contractor to perform the Services;
- c) there is no breach by the 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 the Contractor's obligations under this Agreement;
- d) The Contractor has adequate procedures in place concerning confidentiality, privacy, and security to ensure that there will be no conflicts of interest between the Contractor's work for other clients; and
- e) The Contractor has all the licenses, permits or approvals required to undertake the Services, including, where applicable, a community's access requirements and contact information for a Community Representative.

9.2. The 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 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 shall not infringe any patent, copyright, trademark, trade secret or other intellectual property rights.

9.3. The 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 this Agreement, or if FNCIAS determines in its sole discretion that the Contractor's re-performance cannot or will not provide a commercially viable remedy, the Contractor shall, at FNCIAS's option, either refund or credit in full to FNCIAS that portion of the compensation payable under the Agreement that is attributable to the non-conforming Service. If the 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 the Contractor thereafter.

9.4. Notwithstanding anything contained herein, if remediation of a deficiency is required on an urgent basis, FNCIAS may notify the Contractor to remediate it on an urgent basis. If FNCIAS is of the reasonable opinion that the 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 the Contractor.

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

ARTICLE 10 - LIABILITY AND INDEMNITY

10.1. The 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 any 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 any 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 the 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 the Contractor is responsible;
- e) loss or damage to the property or Equipment of the Contractor or the Contractor’s Representatives or Equipment provided by FNCIAS and used by the 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 the Contractor, its Personnel and Affiliates (in the remainder of this Article called “Contractor Indemnified Parties”) for any Losses and Liabilities which the Contractor Indemnified Parties may suffer, sustain, pay or incur and shall indemnify and hold harmless The Contractor Indemnified Parties against any Losses and Liabilities which may be brought against or suffered by the 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 the 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, the 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
 - (ii) Workers’ Compensation covering the 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 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, the Contractor's liability, sudden and accidental pollution liability, products liability, completed operations liability, wildfire 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
- (i) If the Contractor operates an automobile in the course of performing the Services and where not otherwise covered by the Contractor's commercial general liability policy, the 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
- (i) If the Services includes the provision of professional services by the Contractor, the 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 the Contractor or its Personnel's acts, errors, or omissions.
- e) Other
- (i) Such other insurance and insurance limits as may be required to deliver services required in "Schedule A".
- f) General
- (i) The Contractor's Commercial General Liability policy shall include FNCIAS, its directors, officers, employees, Contractors, agents, and Affiliates as additional insureds to the extent of the Contractor's liabilities and indemnities hereunder.
 - (ii) Prior to the commencement of Services, the 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. The 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 the Contractor in accordance with this Agreement shall be primary and non-contributory to any other insurance available.
 - (iv) The insurance maintained by the 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) The 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, the 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.

- (vi) All deductibles or self-insured retentions in the Contractor's Insurance policies are the responsibility of the Contractor.
- (vii) The limits of insurance may be achieved by any combination of primary, umbrella or excess liability.
- (viii) The 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 the Contractor is required to maintain pursuant to this Agreement.
- (ix) The 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, the 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 the 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, the Contractor shall provide all assistance and facilities reasonably required for that purpose in connection with any Audit.
- 12.3. The 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. The 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. The 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 the 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. The 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 the Contractor by FNCIAS, all information of a confidential nature disclosed by a third party to the Contractor in its capacity as a the Contractor to FNCIAS (which, in addition to the confidentiality requirements hereunder will be kept confidential by the Contractor in accordance with the terms of their disclosure by such third party), and all information developed by the 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 the Contractor (but only after it is published or otherwise becomes part of the public domain);
- c) Information, not subject to any confidentiality obligations, which the Contractor can show was in its possession prior to disclosure hereunder;
- d) Information which the 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 the Contractor's knowledge, acquire it, directly or indirectly, from FNCIAS or a third party under an obligation of confidence; or
- e) Information which the 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 the Contractor is otherwise obliged to disclose by law (provided that the Contractor shall give written notice to FNCIAS prior to such disclosure).

13.2. The Contractor shall comply with any other reasonable confidentiality requirements specified by FNCIAS which may include execution of a confidentiality letter or agreement.

13.3. The 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 the Contractor or its Representatives.

13.4. FNCIAS and its Affiliates reserve the right to disclose any information contained within this Agreement 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.

ARTICLE 14 - INTELLECTUAL PROPERTY

14.1. All documentation, data, reports, and other information prepared, developed, or collected by the Contractor in providing Services shall be the property of FNCIAS. The Contractor shall turn over all such documentation, data, reports, and other information to FNCIAS immediately upon completion of any Services.

14.2. The 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. The 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 the 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. The 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. The Contractor shall be an independent Contractor with respect to Services performed hereunder. Nothing herein shall render the 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 the 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 the 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. The 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 Schedule A, the Contractor must provide at least forty-eight (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 the 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 Schedule A;
- d) The 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 the Contractor and its Subcontractor;
- e) any acts or omissions of the Subcontractor shall be deemed to be acts or omissions of the Contractor;

- f) The 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) The 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) The 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) The 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) The 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 the 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. The 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 Agreement 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 the 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 the 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 the 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 emailed (preferred) or mailed (postage prepaid), or delivered to that Party at its address as follows:

First Nations Capital & Infrastructure Agency of Saskatchewan Inc	[insert legal name of Contractor]
#501-224 4 th Avenue South	[insert]
Saskatoon, Saskatchewan	[insert]
S7N 5M5	[insert]
Telephone: [insert]	Telephone: [insert]
Email: [insert contract owner email] Cc Email: procurement@fncias.ca	Email: [insert]
Attention: [insert contract owner name]	Attention: [insert]

18.2. 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 slowdowns 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. The 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 the Contractor is providing such Services.

ARTICLE 20 - GENERAL PROVISIONS

20.1. This Agreement constitutes the entire agreement between the 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.

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. Time shall be of the essence.
- 20.8. 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.
- 20.9. Any reference to a written notice or communication shall include those in an electronic format.
- 20.10. All headings herein are for convenience of reference and shall not be used in interpreting this Agreement.
- 20.11. This Agreement shall be binding upon and ensure to the benefit of the Parties and their successors, heirs, and assigns.
- 20.12. 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:

Date:

[insert legal name]

Per:

Name:

Title:

Date:

DRAFT

SCHEDULE A – SCOPE OF SERVICES

[insert scope of services]

DRAFT

SCHEDULE B – PRICING

[insert pricing information]

Contractor Line Item(s)	Contractor Pricing
Total	

DRAFT

SCHEDULE C – WORK SCHEDULE

[insert work schedule]

Project Task	Start Date	Finish Date

* Contractor to provide an updated detailed project schedule upon award of Service Agreement.

DRAFT

SCHEDULE D – CHANGE ORDER

To:

CC:

From:

Date:

Subject:

Change Order Number:

Effective Date of Change:

Rationale for Change Order:

Insert description

Table 1 - Change Order Summary

	Original Contract	Contractor Change Request	Excluded Change Order Costs	FNCIAS Approved Change Order Values

Schedule A – Scope of Services

Schedule A: Scope Revision

Insert description

Schedule B – Pricing

Schedule B: Pricing Revision

Insert description

Table 2 – Total Contract Pricing with Approved Change Order

FNCIAS Line Item and Project Phase	Contractor Line Item(s)	Pricing

Schedule C – Work Schedule

Schedule C: Schedule Revision

Insert description of impacts

Attachments

List attachments

THE PARTIES, INTENDING TO BE LEGALLY BOUND, mutually agree to execute the revision to this Agreement as of the date set forth above.

FIRST NATIONS CAPITAL & INFRASTRUCTURE AGENCY OF SASKATCHEWAN INC.

Per:

Date:

Name:

Title:

[insert legal name]

Per:

Date:

Name:

Title:

DRAFT