

Print Name and Position

SECTION "I" - GENERAL CONDITIONS

GC1. Definitions

- 1.1. In this Memorandum of Agreement, unless the context otherwise requires,
- 1.1.1. "Provider of Services" means the party agreeing to provide services by entering into this MOA with Public Health Agency of Canada (PHAC).
- 1.1.2. "Memorandum of Agreement" or "MOA" means this written agreement between PHAC and the Provider of Services, these general conditions, any supplemental general conditions specified in this written agreement and every other document specified or referred to in any of them as forming part of this Memorandum of Agreement, all of which may be amended by written agreement of the Parties, from time to time.
- 1.1.3. "Contracting Authority" means the person designated as such in this MOA, or by notice to the Provider of Services to act as the representative of PHAC in the management of this MOA.
- 1.1.4. "Parties" means PHAC and the Provider of Services, both of which are signatories to this MOA.

GC2. Entire Agreement

- 2.1. This MOA constitutes the entire agreement between the Parties with respect to the provision of the services described in Annex A ("the Work") and supersedes all previous negotiations, communications and other agreements relating to it, unless they are incorporated by reference herein.

GC3. Time of the Essence

- 3.1. Time is of the essence in the provision of the services described in Annex A.
- 3.2. Any delay by the Provider of Services in performing the Provider of Services' obligations under this MOA which is caused by an event beyond the control of the Provider of Services, and which could not have been avoided by the Provider of Services without incurring unreasonable cost through the use of work-around plans including alternative sources or other means, constitutes an excusable delay.
- 3.3. The Provider of Services shall give notice to PHAC immediately after the occurrence of the event that causes the excusable delay. The notice shall state the cause and circumstances of the delay and indicate the portion of the Work affected by the delay. When requested to do so by the Contracting Authority, the Provider of Services shall deliver a description, in a form satisfactory to PHAC, of work-around plans including alternative sources and any other means that the Provider of Services will utilize to overcome the delay and endeavour to prevent any further delay. Upon approval in writing by PHAC of the work-around plans, the Provider of Services shall implement the work-around plans and use all reasonable means to recover any time lost as a result of the excusable delay.

GC4. Indemnification

- 4.1. The Provider of Services shall indemnify and save harmless PHAC and PHAC's servants and agents from and against all claims, losses, damages, costs, expenses, actions and other proceedings, made, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner based upon, occasioned by or attributable to any injury to or death of a person or damage to or loss of property arising from any wilful or negligent act, omission or delay on the part of the Provider of Service, or the Providers of Services' employees, agents, in performing the Work or as a result of the Work.
- 4.2. The Provider of Services shall indemnify PHAC and PHAC's servants and agents from all costs, charges and expenses whatsoever that PHAC sustains or incurs in all claims, actions, suits and proceedings for the use of the invention

claimed in a patent, or infringement or alleged infringement of any patent or any registered industrial design or any copyright or other intellectual property right resulting from the performance of the Provider of Services' obligations under this MOA, and in respect of the use of or disposal by PHAC of anything furnished pursuant to this MOA.

- 4.3. The Provider of Services' liability to indemnify or reimburse PHAC under this MOA shall not affect or prejudice PHAC from exercising any other rights under law.
- 4.4. The Provider of Services agrees that PHAC shall not be liable for, and agrees to protect and indemnify PHAC with respect to, any injury or damage (including death) to the Provider of Services or to the person of any officer, servant or agent of the Provider of Services or for the loss of or damage to the property of the Provider of Services or its officers, servants or agents in any manner based upon, occasioned by, or in any way attributable to the performance of the said work unless the injury, loss or damage is caused by the negligence of an officer, servant or agent of PHAC while acting within the scope of his or her employment.

GC5. Termination or Suspension for Convenience

- 5.1. PHAC may, by giving notice to the Provider of Services, terminate or suspend the Work with respect to all or any part or parts of the Work not completed.
- 5.2. All work completed by the Provider of Services to the satisfaction of PHAC before the giving of notice shall be paid for by PHAC in accordance with the provisions of this MOA and, for all work not completed before the giving of notice, PHAC shall pay the Provider of Services' costs as determined under the provisions of this MOA and, in addition, an amount representing a fair and reasonable fee in respect of the Work not completed.
- 5.3. In addition to the amount which the Provider of Services shall be paid, the Provider of Services shall be reimbursed for their cost of, and incidental to, the cancellation of obligations incurred by the Provider of Services pursuant to the notice and obligations incurred by the Provider of Services or to which the Provider of Services is subject with respect to the Work.
- 5.4. Payment and reimbursement under these provisions shall be made only to the extent that it is established to the satisfaction of PHAC that the costs and expenses were actually incurred by the Provider of Services and that the same are fair and reasonable and are properly attributable to the termination or suspension of the Work or the part of the Work terminated.
- 5.5. The Provider of Services shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to the Provider of Services under this MOA, exceeds the MOA price applicable to the Work or the particular part of the Work.

GC6. Termination Due to Default

- 6.1. PHAC may, by notice to the Provider of Services, terminate the whole or any part of the Work if the Provider of Services fails to perform any of the Provider of Services obligations under this MOA, or, in PHAC's view, so fails to make progress as to endanger performance of this MOA in accordance with its terms.
- 6.2. In the event that PHAC terminates the Work in whole or in part under this section, PHAC may arrange, upon such terms and conditions and in such manner as PHAC deems appropriate, for the Work to be completed that was so terminated, and the Provider of Services shall be liable to PHAC for any excess costs relating to the completion of the Work.
- 6.3. Upon termination of the Work under this section, PHAC may require the Provider of Services to deliver and transfer title to

PHAC, in the manner and to the extent directed by PHAC, any finished work which has not been delivered and accepted prior to such termination and any materials or work-in-process which the Provider of Services has specifically acquired or produced for the fulfilment of this MOA. PHAC shall pay the Provider of Services for all finished work delivered pursuant to the direction and accepted by PHAC, the cost to the Provider of Services of the finished work plus the proportionate part of any fee fixed by this MOA and shall pay or reimburse the Provider of Services the fair and reasonable cost to the Provider of Services of all materials or work-in-process delivered pursuant to the direction. PHAC may withhold from the amounts due to the Provider of Services the sums that PHAC determines to be necessary to protect PHAC against excess costs for the completion of the Work.

- 6.4. The Provider of Services shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to the Provider of Services under this MOA, exceeds the MOA price applicable to the Work or the particular part of the Work.
- 6.5. If, after PHAC issues a notice of termination under this section, it is determined by PHAC that the default of the Provider of Services is due to causes beyond the control of the Provider of Services, the notice of termination shall be deemed to have been issued pursuant to Section GC5 and the rights and obligations of the parties shall be governed by Section GC5.
- 6.6. All work completed by the Provider of Services to the satisfaction of both Parties, before the giving of the notice, shall be paid for by PHAC in accordance with the provisions of this MOA and, for all work not completed before the giving of notice, PHAC shall withhold an amount reasonably estimated as being required to have the Work completed by another Provider of Services.

GC7. Amendments

- 7.1. The Parties agree that this MOA shall not be altered or amended without the written mutual consent of both the Contracting Authority and the Provider of Services.

GC8. Security and Protection of Work

- 8.1. The Provider of Services shall keep confidential all information provided to the Provider of Services by or on behalf of PHAC in connection with the Work, acquired by the Provider of Services in the course of performing the Work or created by the Provider of Services as part of the Work. The Provider of Services shall not disclose the information to any person without the written permission of Contracting Authority, except that the Provider of Services may disclose to a sub-Provider of Services, authorized in accordance with this MOA, information necessary to the performance of the subcontract. This section does not apply to any information that:
 - 8.1.1. is publicly available from a source other than the Provider of Services ; or
 - 8.1.2. is or becomes known to the Provider of Services from a source other than PHAC, except any source that is known to the Provider of Services to be under an obligation to PHAC not to disclose the information.
- 8.2. Upon request, the Provider of Services shall return to the Contracting Authority all information provided to the Provider of Services by or on behalf of PHAC or acquired by the Provider of Services in connection with the Work and any copies of the information, in any form whatsoever.

GC9. Accounts and Audits

- 9.1. The Provider of Services shall keep proper accounts and records of the cost to the Provider of Services of the Work and all expenditures or commitments made by the Provider of Services.

GC10. Travel and Living Expenses

- 10.1. Travel and Living expenses incurred by the Provider of Services are entirely subject to the content of the current Treasury Board Travel Directive (http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tbm_113/td-dv-1_e.html) and the Treasury Board Secretariat Special Travel Authorities, Section 7, "Persons on contract" (http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TBM_113/sta1_e.asp#_Toc65556472 and http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TBM_113/STA_e.asp).
- 10.2. Travel and Living expenses are considered to be part of the total cost of the MOA. Expenses which exceed the Directive will not be paid. Prior authorization from the Contracting Authority for projected Travel and Living expenses is required.

SECTION "II" – INTELLECTUAL PROPERTY

IP1. Provider of Services to Own Intellectual Property

Rights

1.1. Interpretation

In the MOA,

1.1.1 "Background Information" means all Technical Information that is not Foreground Information and that is proprietary to or the confidential information of the Provider of Services, its sub-Provider of Services or any other supplier of the Provider of Services

1.1.2 "Commercial Exploitation in Competition with the Provider of Services" does not include exploitation by Canada or by any Provider of Services where the good or service produced through such exploitation is for end use by Canada, nor does it include dissemination or distribution by Canada to persons or to other governments at or below cost of any good or service delivered under the MOA or produced through such exploitation;

1.1.3 "Firmware" means any computer program stored in integrated circuits, read-only memory or other similar devices;

1.1.4 "Foreground Information" means any Invention first conceived, developed or reduced to practice as part of the Work under the MOA and all other Technical Information conceived, developed or produced as part of the Work under the MOA;

1.1.5 "Intellectual Property Right" means any intellectual property right recognized by the law, including any intellectual property right protected through legislation (such as that governing patents, copyright, industrial design, integrated circuit topography, or plant breeders' rights) or arising from protection of information as a trade secret or as confidential information;

1.1.6 "Invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter, whether or not patentable;

1.1.7 "Software" means any computer program whether in source or object code (including Firmware), any computer program documentation recorded in any form or medium, and any computer database, and includes modifications to any of the foregoing;

1.1.8 "Technical Information" means all information of a scientific, technical or artistic nature relating to the Work, whether oral or recorded in any form or medium and whether or not subject to copyright, including but not limited to any Inventions, designs, methods, processes, techniques, know-how, models, prototypes, patterns, samples, schematics, experimental or test data, reports, drawings, plans, specifications, photographs, collections of information, manuals and any other documents, and Software. Technical Information does not include data concerned with the administration of the MOA by Canada or the Provider of Services, such as internal financial or management information, unless it is a deliverable under the MOA.

1.2. Disclosure of Foreground Information

1.2.1 The Provider of Services shall promptly report and fully disclose to the Minister all Foreground Information that could be Inventions, and shall report and fully disclose to the Minister all other Foreground Information not later than the time of completion of the Work or at such earlier time as the Minister or the MOA may require.

1.2.2 The Provider of Services shall, in each disclosure under this section, indicate the names of all sub-Provider of Services at any tier, if any, in which Intellectual Property Rights to any Foreground Information have vested or will vest.

1.2.3 Before and after final payment to the Provider of Services, the Minister shall have the right to examine all records and supporting data of the Provider of Services which the Minister reasonably deems pertinent to the identification of Foreground Information.

1.3. Provider of Services to Own Intellectual Property Rights in Foreground Information

1.3.1 Subject to subsection IP1.3.3 and section IP1.7 (Transfer of Intellectual Property Rights), and without affecting any Intellectual Property Rights or interests therein that have come into being prior to the MOA or that relate to information or data supplied by Canada for purposes of the MOA, all Intellectual Property Rights in the Foreground Information shall immediately, as soon as they come into existence, vest in and remain the property of the Provider of Services.

1.3.2 Notwithstanding the Provider of Services' ownership of the Intellectual Property Rights in Foreground Information that is a prototype, model or custom or customized system or equipment together with associated manuals and other operating and maintenance documents and tools, Canada shall have unrestricted ownership rights in those deliverables, including the right to make them available for public use, whether for a fee or otherwise, and, except in the case of Software that is not necessary for the operation of the prototype, model or system or equipment, the right to sell them.

1.3.3 (i) Where the Work under the MOA involves the preparation of a database or other compilation using information or data supplied by Canada or personal information referred to in paragraph (ii), then the Intellectual Property Rights that shall vest under subsection 1.3.1 shall be restricted to the Intellectual Property Rights in Foreground Information that is capable of being exploited without the use of the information or data supplied by Canada or such personal information. All Intellectual Property Rights in any database or other compilation, the Foreground Information in which cannot be exploited without the use of such information, data, or personal information, shall vest in Canada. The Provider of Services agrees that it shall not use or disclose any such information or data or personal information for any purpose other than completing the Work under the MOA, and shall not dispose of it except by returning it to Canada. The Provider of Services shall comply with the General Conditions of the MOA in regard to maintaining the confidentiality of such information, data or personal information. Unless the MOA otherwise expressly provides, the Provider of Services shall deliver to Canada all such information, data or personal information, together with every copy, draft, working paper and note thereof that contains such information, data, or personal information, upon the completion or termination of the MOA or at such earlier time as the Minister may require.

(ii) Notwithstanding subsection 1.3.1, if the Work under the MOA involves the collection of personal information as that term is defined in the *Privacy Act*

- (R.S.C., c. P-21), then all Intellectual Property Rights in and title to that personal information shall, immediately upon the collection of it by the Provider of Services, vest in Canada, and the Provider of Services shall have no right or interest in it.
- 1.4. ***License to Intellectual Property Rights in Foreground Information***
- 1.4.1 In consideration of Canada's contribution to the cost of development of the Foreground Information, the Provider of Services hereby grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise all Intellectual Property Rights in the Foreground Information that vest in the Provider of Services pursuant to section IP1.3, for any public purpose except Commercial Exploitation in Competition with the Provider of Services. Canada's license to the Intellectual Property Rights in the Foreground Information also includes the right to disclose the Foreground Information to other governments for information purposes only. The Intellectual Property Rights arising from any modification, improvement, development or translation of the Foreground Information that is effected by or for Canada in the exercise of this license shall vest in Canada, or in such person as Canada shall decide.
- 1.4.2 The Provider of Services acknowledges that Canada may wish to award contracts for any of the purposes contemplated in subsection 1.4.1 and that such contract awards may follow a competitive process. The Provider of Services agrees that Canada's license in relation to the Intellectual Property Rights in the Foreground Information that vest in the Provider of Services pursuant to section IP1.3, includes the right to disclose the Foreground Information to bidders for such contracts, and to sub-license or otherwise authorize the use of that information by any contractor engaged by Canada solely for the purpose of carrying out such a contract. Canada shall require the bidder or the contractor not to use or disclose any Foreground Information except as may be necessary to bid for or to carry out that contract.
- 1.4.3 For greater certainty and without limiting the generality of subsections 1.4.1 and 1.4.2, Canada's right to modify, improve, translate, reproduce or further develop any Foreground Information pursuant to subsections 1.4.1 and 1.4.2:
- (a) applies to Foreground Information that is Software, notwithstanding any terms to the contrary delivered by the Provider of Services with any deliverable, including the wording on any shrink-wrapped license attached to any deliverable; and
 - (b) includes the right to reproduce and use Foreground Information that is Software, or any modified or improved or translated or further developed form of it, on any and all computer systems owned, leased or operated by Canada anywhere in the world.
- 1.4.4 Notwithstanding subsections 1.4.1, 1.4.2 and 1.4.3, if any Foreground Information arises solely from correction by the Provider of Services of errors in Background Information that is Software, or from minor modifications made by the Provider of Services to such Software, then the license set out in subsections 1.4.1, 1.4.2 and 1.4.3 shall not apply to that Foreground Information and, unless otherwise agreed, the license that applies to such Background Information shall apply to that Foreground Information.
- 1.4.5 Where the Intellectual Property Rights in any Foreground Information are or will be owned by a sub-Provider of Services at any tier, the Provider of Services shall either obtain a license from that sub-Provider of Services that permits compliance with subsections 1.4.1, 1.4.2 and 1.4.3 or arrange for the sub-Provider of Services to convey directly to Canada the same rights by execution of the form provided for that purpose by the Minister, in which case the Provider of Services shall deliver that form to the Minister, duly completed and executed by the sub-Provider of Services, no later than the time of disclosure to Canada of that Foreground Information.
- 1.4.6 If the Provider of Services wishes to make use of any Canada-owned information that was supplied for purposes of the MOA, for the commercial exploitation or further development of any of the Foreground Information, then the Provider of Services may make a written request for a license to exercise the required Intellectual Property Rights in that Canada-owned information, to the Minister for whose department or agency the Work is being or was carried out. The Provider of Services shall give that Minister an explanation as to why such a license is required. That Minister shall respond in writing to the request within a reasonable period of time. If the request is refused, the response shall provide an explanation for the refusal. Should that Minister agree to grant such a license, it shall be on terms and conditions to be negotiated between the Provider of Services and that Minister. It is understood that those terms may include payment of compensation to Canada.
- 1.4.7 The Provider of Services may apply to the Minister for whose department or agency the Work is being or was carried out for a license to commercially exploit a translation of the Foreground Information which is effected by or for Canada, subject to the same restrictions and obligations as apply under the MOA to commercial exploitation of the Foreground Information that was translated. Any such license shall be on terms and conditions to be negotiated between the Provider of Services and that Minister. It is understood that those terms may include payment of compensation to Canada.
- 1.5. ***License to Intellectual Property Rights in Background Information***
- 1.5.1 Without restricting the scope of any license to exercise the Intellectual Property Rights in the Background Information that Canada may otherwise hold, the Provider of Services hereby grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise such of the Intellectual Property Rights in any Background Information incorporated into the Work or necessary for the performance of the Work as may be required for the following purposes:
- (a) for the use, operation, maintenance, repair or overhaul of the Work;
 - (b) in the manufacturing of spare parts for maintenance, repair or overhaul of any custom part of the Work by Canada if those parts are not reasonably available to enable timely maintenance, repair or overhaul;
 - (c) for disclosure to any contractor engaged by Canada (or bidder for such a contract) to be used solely for a purpose set out in paragraph (a) or (b), but only if the Provider of Services is

- unable or unwilling to carry out the maintenance, repair or overhaul or provide the spare parts on reasonable commercial terms and within reasonable delivery times;
- and the Provider of Services agrees to make any such Background Information (including, in the case of Software, source code) promptly available to Canada for any such purpose.
- 1.5.2 Without restricting the scope of any license to exercise the Intellectual Property Rights in the Background Information that Canada may otherwise hold, the Provider of Services hereby further grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise such of the Intellectual Property Rights in the Background Information incorporated into the Work or necessary for the performance of the Work as are necessary in order for Canada to modify, improve or further develop the Foreground Information. Canada's rights under this subsection shall not include the right to reproduce the whole or part of any deliverable under the MOA that does not incorporate Foreground Information, save that Canada may reproduce any drawings, plans, designs, or other Background Information that are subject to copyright or industrial design protection, for purposes of modification, improvement or further development of the Foreground Information by or for Canada. The Provider of Services agrees to make any such Background Information (including, in the case of Software, source code) promptly available to Canada for any such purpose.
- 1.5.3 Notwithstanding subsections 1.5.1 and 1.5.2, the license set out therein shall not apply to any Software that is subject to detailed license conditions that are set out elsewhere in the MOA.
- 1.5.4 The Provider of Services acknowledges that, subject to paragraph c) of subsection 1.5.1, Canada may wish to award contracts for any of the purposes contemplated in subsections 1.5.1 and 1.5.2 and that such contract awards may follow a competitive process. The Provider of Services agrees that Canada's license in relation to the Intellectual Property Rights in Background Information includes the right to disclose the Background Information to bidders such contracts, and to sub-license or otherwise authorize the use of that information by any Provider of Services engaged by Canada solely for the purpose of carrying out such a contract. Canada shall require bidders and the contractor not to use or disclose any Background Information except as may be necessary to bid for or to carry out that contract.
- 1.5.5 Where the Intellectual Property Rights in any Background Information are owned by a sub-Provider of Services at any tier, the Provider of Services shall either obtain a license from that sub-Provider of Services that permits compliance with 1.5.1 and 1.5.2, or arrange for the sub-Provider of Services to convey directly to Canada the same rights by execution of the form provided for that purpose by the Minister, in which case the Provider of Services shall deliver that form to the Minister, duly completed and executed by the sub-Provider of Services, no later than the time of disclosure to Canada of that Background Information.
- 1.5.6 Without restricting the scope of any license to exercise the Intellectual Property Rights in the Background Information that Canada may otherwise hold, the Provider of Services hereby grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise such of the Intellectual Property Rights in any Background Information incorporated into the Work or necessary for the performance of the Work as may be required in order for Canada to exercise its license in the Intellectual Property Rights in the Foreground Information. The Provider of Services agrees to make any such Background Information (including, in the case of Software, source code) promptly available to Canada for any such purpose.
- 1.5.7 The Provider of Services acknowledges that Canada may wish to award contracts for any of the purposes contemplated in subsection 1.5.6 and that such contract awards may follow a competitive process. The Provider of Services agrees that Canada's license in relation to the Intellectual Property Rights in the Background Information includes the right to disclose the Background Information to bidders on such contracts, and to sub-license or otherwise authorize the use of that information by any contractor engaged by Canada solely for the purpose of carrying out such a contract. Canada shall require bidders and the contractor not to use or disclose any Background Information except as may be necessary to bid for or to carry out that contract.
- 1.5.8 Where the Intellectual Property Rights in any Background Information are owned by a sub-Provider of Services at any tier, the Provider of Services shall either obtain a license from that sub-Provider of Services that permits compliance with subsections 1.5.6 and 1.5.7 or arrange for the sub-Provider of Services to convey directly to Canada the same rights by execution of the form provided for that purpose by the Minister, in which case the Provider of Services shall deliver that form to the Minister, duly completed and executed by the sub-Provider of Services, no later than the time of disclosure to Canada of that Background Information.
- 1.5.9 Notwithstanding subsection 1.5.6, the license set out therein shall not apply to any Software that is subject to detailed license conditions that are set out elsewhere in the MOA.
- 1.6. **Right to License**
- 1.6.1 The Provider of Services represents and warrants that the Provider of Services has, or the Provider of Services undertakes to obtain, the right to grant to Canada the license to exercise the Intellectual Property Rights in the Foreground Information and Background Information as required by the MOA.
- 1.7. **Transfer of Intellectual Property Rights in Foreground Information**
- 1.7.1 Until the Provider of Services completes the Work and discloses all of the Foreground Information in accordance with section IP1.2 (Disclosure of Foreground Information), the Provider of Services shall not, without the prior written permission of the Minister, sell, assign or otherwise transfer title to the Intellectual Property Rights in any Foreground Information, or license or otherwise authorize the use of the Intellectual Property Rights in any of the Foreground Information by any person.
- 1.7.2 If Canada terminates the MOA in whole or in part for default, or if the Provider of Services fails to disclose any Foreground Information in accordance with section IP1.2, the Minister may, by notice given not later than 90 days from the date of termination or from the date Canada learns of the failure to disclose, as the case may be, require the Provider of Services to convey to Canada all of the Intellectual Property Rights in the Foreground Information or, in the case of a notice based on failure to disclose, all

- of the Intellectual Property Rights in the Foreground Information not disclosed. In the case of either notice, the rights to be conveyed shall include the Intellectual Property Rights in any Foreground Information that have vested or are to vest in a sub-Provider of Services at any tier. In the case of Intellectual Property Rights in Foreground Information which have been sold or assigned to a party other than a sub-Provider of Services at any tier, the Provider of Services shall not be obligated to convey rights to Canada in accordance with this subsection, but shall pay to Canada on demand an amount equal to the consideration which the Provider of Services received from the sale or assignment of the Intellectual Property Rights in that Foreground Information or, in the case of a sale or assignment that was not at arm's length, the fair market value of the Intellectual Property Rights in that Foreground Information, in each case including the value of future royalties or license fees.
- 1.7.3 In the event of the issuance by the Minister of a notice under subsection 1.7.2, the Provider of Services shall, at its own expense and without delay, execute such conveyances or other documents relating to title to the Intellectual Property Rights as the Minister may require, and the Provider of Services shall, at Canada's expense, afford the Minister all reasonable assistance in the preparation of applications and in the prosecution of any applications for, or any registration of, any Intellectual Property Right in any jurisdiction, including without limitation the assistance of the inventor in the case of Inventions.
- 1.8. ***Sale, Assignment, Transfer or Licensing of Intellectual Property Rights in Foreground Information***
- 1.8.1 In any sale, assignment, transfer or license of Intellectual Property Rights in Foreground Information by the Provider of Services, except a sale or license for end use of a product based on Foreground Information, the Provider of Services shall impose on the other party all of its obligations to Canada in relation to the Intellectual Property Rights in the Foreground Information and any restrictions set out in the MOA on the use or disposition of the Intellectual Property Rights in the Foreground Information (and, if applicable, the Foreground Information), including the obligation to impose the same obligations and restrictions on any subsequent transferee, assignee or licensee.
- 1.8.2 The Provider of Services shall promptly notify Canada of the name, address and other pertinent information in regard to any transferee, assignee or licensee referred to in subsection 1.8.1, and shall ensure that such party is required to do the same with regard to any subsequent transferee, assignee or licensee.
- 1.8.3 The Provider of Services shall not charge or permit any person to charge a royalty or other fee to Canada in respect of the Intellectual Property Rights in any Foreground Information for purposes of a contract or other arrangement with Canada. Where the contract or other arrangement is for a product based on Foreground Information or on any modification or improvement thereof, the Provider of Services shall grant to Canada a reasonable credit against its commercial price for that product to take into account Canada's financial contribution toward the development of the product, and in the case of a product owned by a transferee, assignee or licensee of the Intellectual Property Rights in any Foreground Information, the Provider of Services shall ensure that such party is required to do the same.
- 1.9. ***Access to Information; Exception to Provider of Services Rights***
- 1.9.1 Subject to the *Access to Information Act*, R.S.C., c. A-1 and to any right of Canada under the MOA, Canada shall not release or disclose outside the Government of Canada any information delivered to Canada under the MOA that is confidential information or a trade secret of the Provider of Services or a sub-Provider of Services.
- 1.9.2 Notwithstanding subsection 1.9.1 nothing in these terms and conditions shall be construed as limiting Canada's right to exercise the Intellectual Property Rights in any Foreground Information or any Background Information, or to disclose any Foreground Information or any Background Information, to the extent that such information:
- (a) is or becomes in the public domain, or to the extent that the Provider of Services does not benefit from or ceases to benefit from any intellectual property rights protection for such information under legislation or at law (other than under the terms of the MOA), for any reason including as a result of Canada's use or disclosure of deliverables under the MOA for any purpose whatever that is not expressly excluded under the MOA;
- (b) is or becomes known to Canada from a source other than the Provider of Services, except from any source that is known to Canada to be under an obligation to the Provider of Services not to disclose the information;
- (c) is independently developed by or for Canada; or
- (d) is disclosed under compulsion of a legislative requirement or any order of a court or other tribunal having jurisdiction
- (e) is independently developed by or for Canada; or
- (f) is disclosed under compulsion of a legislative requirement or any order of a court or other tribunal having jurisdiction.
- 1.10. ***Waiver of Moral Rights***
- 1.10.1 The Provider of Services shall obtain a written permanent waiver of Moral Rights in a form acceptable to the Minister, from every author that contributes to any Foreground Information which is subject to copyright protection and which is deliverable to Canada under the terms of the MOA. At the request of the Minister (be it at the completion of the Work or at any other time as the Minister may require), the Provider of Services shall provide the written waiver(s) of Moral Rights to the Minister.
- 1.10.2 If the Provider of Services is an author of the Foreground Information referred to in subsection 1.10.1, the Provider of Services hereby permanently waives the Provider of Services' moral rights in that Foreground Information.

Annex “A” – MOA STATEMENT OF WORK**S1. INTRODUCTION**

This Memorandum of Agreement (“Agreement”) covers the operation of the enhanced integrated surveillance system for foodborne and waterborne infectious gastroenteritis, including provincial microbiological expertise, according to the FoodNet Canada business plan. FoodNet Canada provides a unique and flexible surveillance platform for the collection of epidemiological and laboratory data on cases of enteric illness in sentinel communities. Active sampling of potential exposures (food animals, food and water) is then linked with the disease information, to determine the actual level of risk from pathogens to the human population. This approach highlights food or water safety issues when they emerge, and provides a mechanism to measure the effectiveness of interventions/programs aimed at reducing risk, as well as providing information to policy makers to support activities to reduce the burden of enteric disease in Canada through sentinel site surveillance. The program involves systematic and integrated data collection, analysis, interpretation and communication of results; standardized microbiological and epidemiological methods; and timely and effective reporting and communication.

S2. TITLE

Activities for the operation of FoodNet Canada’s Ontario Site - Middlesex-London Health Unit

S3. OBJECTIVES

This Memorandum of Agreement (“Agreement”) covers the operation of the enhanced integrated surveillance system for foodborne and waterborne infectious gastroenteritis in the FoodNet Canada Ontario Sentinel Site, located in Middlesex-London, Ontario.

The Agreement supports the three main objectives of FoodNet Canada:

1. To detect changes in trends in human enteric disease and in levels of pathogen exposure from food, animal and water sources in a defined population; and determine significant risk factors for enteric illness;
2. To conduct source attribution (determine the proportion of human cases due to exposure via food, animals and water); and
3. To provide practical preventive information to prioritize risks, compare interventions, measure effectiveness of food and water safety activities and inform policy.

S4. BACKGROUND

Whereas, as a result of recent events in Canada and world-wide, attitudes and approaches relating to the surveillance of infectious disease are under critical review;

Whereas, the Naylor Report in 2003, *Renewal of Public Health in Canada*, recommends that all levels of government strengthen infectious disease surveillance systems to be more efficient, timely, sensitive and integrated;

Whereas, for many years, Public Health Agency of Canada and Provincial and Territorial governments, local health units have shared the goal of enhancing infectious-disease surveillance at all levels, and have collaborated in various areas of surveillance activities to meet broad infectious-disease-surveillance goals;

Whereas, the Weatherall Report in 2009, *Report of the Independent Investigator into the 2008 Listeriosis Outbreak*, stated that although the Public Health Agency of Canada is making headway in epidemiological data collection and analysis in cases of human illness, improvements are still required in integrating the data collection and analysis;

Whereas, in consultation with local, provincial and territorial governments, the Public Health Agency of Canada designed a sentinel surveillance system for Foodborne and Waterborne diseases (FoodNet Canada) to provide accurate information on the occurrence of these acute infectious enteric diseases, as well as exposure levels, for the production of national epidemiological reports;

Whereas, Public Health Agency of Canada will provide this surveillance support in exchange for information shared by the Ontario sentinel public health site for use in developing national reports and a repository of information on foodborne and waterborne disease-related surveillance activity nation-wide;

Whereas, the responsibility for national infectious disease surveillance exists within the Public Health Agency of Canada;

Whereas, the Public Health Agency of Canada was created to deliver on the Government of Canada’s commitment to help protect the health and safety of all Canadians;

Whereas, the Ontario Ministry of Health and Long Term Care have endorsed the collaboration with the Public Health Agency of Canada in this innovative, integrated surveillance system;

Whereas, the Middlesex-London Health Unit, Ontario (according to sections 2 and 9 of the Health Protection and Promotion Act) has the authority to collect and share infectious disease information to meet their mandate;

Whereas, FoodNet Canada has successfully run the enhanced enteric disease surveillance in the first site, in Ontario in the Region of Waterloo Public Health from June 2005 to March 31, 2014; and in the second site, in BC in the Fraser Health Authority from April 2010 to present;

Whereas, the Middlesex-London Health Unit and PHAC assessed the feasibility of the FoodNet Canada’s plan for enhanced enteric disease sentinel site surveillance and both positively concluded about its feasibility and usefulness;

Whereas the parties now want to record in writing the terms of their agreement with respect to the enhanced surveillance activities for fiscal years 2014-2015, 2015-2016 and 2016-2017.

S5. SCOPE

RESPONSIBILITIES OF MIDDLESEX-LONDON HEALTH UNIT

1. Provide 1 (one) FTE employee with the following skill set to be the site coordinator and liaison between FoodNet Canada and Middlesex-London Health Unit during this agreement:

- knowledge of enteric diseases including current issues in foodborne and waterborne infectious diseases,
- experience with Infectious Diseases Program at the local and provincial level
- knowledge of planning and evaluation,
- experience with database management,
- experience managing people and/or projects,
- excellent communication and interpersonal skills,
- ability to work collaboratively and with flexibility in an innovative, complex environment.

The specific roles, responsibilities and tasks of the site coordinator include:

1.1 Communication

- With FoodNet Canada Public Health Lead on a regular (bi-weekly) basis
- With FoodNet Canada team quarterly through Steering Committee and as required
- Planning with and updating Middlesex-London Health Unit management and other public health staff as required
- With PHO Toronto Public Health Lab as required
- With other Public Health Agency of Canada initiatives in collaboration with FoodNet Canada

1.2 IT/Database Management

- Ensure data quality
- Ensure monthly transmission of data to PHAC

1.3 Relationship Building/Liaison

- Within Middlesex-London Public Health
- Within community (physicians, institutions, infection control, etc.)
- With provincial government ministry as required
- With PHAC & FoodNet Canada

1.4 Enhanced Investigations of Sporadic Cases

- Ensure completion of standardized questionnaire by local public health staff
- Ensure data quality
- Review protocols and processes quarterly

1.5 Enhancing Outbreak Investigations

- Ensure transfer of summary outbreak information to FoodNet Canada

1.6 Laboratory Coordination

- Work with Provincial Lab for coordination/communication with private and hospital laboratories
- Coordination with Provincial Lab to receive sub-typing information on a regular basis
- Track submission of stool specimens monthly

1.7 Training

- Work with FoodNet Canada on needs assessments and public health training as identified
- Personal development
- Support public health staff involved in FoodNet Canada activities

1.8 Administration

- Meetings
- Presentations
- Request for information
- Other FoodNet Canada tasks, as required

1.9 Communication Products

- Contribute to development of FoodNet Canada bulletins, annual report, email updates, feedback, information for website, etc.

1.10 Analysis

- Assist with writing of reports and interpretation of data
- Assist with journal articles

1.11 Targeted initiatives

- Work with FoodNet Canada to address specific issues related to FoodNet Canada objectives
- Liaise with students and others, as required.

1.12 Surge Capacity

- Work with Middlesex-London Health Unit management to provide assistance with regular duties at Health Unit as prioritized and appropriate; and in particular when surge capacity is required

The roles and responsibilities of the FoodNet Canada Site Coordinator, in each of the sentinel sites, will revolve around the continuous surveillance activities of the FoodNet Canada mandate. In particular, the responsibilities will focus on relationship building within the Health Unit and the sentinel community, coordination of the various pieces of the surveillance system at the health unit level, and follow-up on the

laboratory submission/tracking of information related to the submission of stool samples and analytical results. Data management, through the development of data sharing software, will be critical to the process.

The responsibilities of the site coordinator suggest an investment of salary and support for 1 FTE with extensive public health training and managerial (project/person) experience as appropriate. Any episodic surveillance activities, such as intervention, case-control studies or cohort follow-up studies will be additional to the roles described herein, and will be accompanied by extensive involvement by the FoodNet Canada Team.

2. Allow for the use and enhancement of the following tools and provision of training for Health Unit staff and managers:

- enhanced, standardized questionnaire for sporadic cases of infectious enteric disease,
- standardized operating procedures for the investigation of sporadic cases of infectious enteric disease,
- analytical methods and standardized operating procedures for the analysis of data from sporadic cases and other data from syndromic and alert surveillance systems to detect potential outbreaks,
- enhanced, standardized questionnaire for outbreak cases of infectious enteric disease,
- standardized operating procedures for the investigation of outbreak of infectious enteric disease,
- standardized operating procedures to follow up the information transfer related to the lab results coming back to the Health Unit
- procedures to extract the required depersonalized data and to securely transfer them to PHAC.

3. Provide depersonalized¹ data on every sporadic case of infectious enteric disease to PHAC on quarterly basis.

4. Provide depersonalized data on outbreak cases of infectious enteric disease to PHAC on an annual basis.

¹ Depersonalized data on cases of infectious disease are all lab results related to the case, age and sex of the patient, time of onset or related dates (e.g. of diagnostic), and other data related to risk factors for foodborne and waterborne diseases (broadly: sources of food, outside house eating, source of drinking water, contact with recreational water, contact with animal or animal product, and travelling over the seven to ten days prior to the disease). Depersonalized data excludes the patient’s name, home address, name and address of place of work or school, home and work phone numbers and fax, email address, personal health record beyond the current enteric illness.

5. RETAIL SAMPLING

- Provide PHAC with a census of the retail grocery stores in the sentinel site
- Provide staffing to perform retail sampling (1 day per week), throughout the year
- Site Coordinator to supervise activities of the retail sampler

Retail sampler activities:

- Perform weekly sampling at the retail level as per the FoodNet Canada retail sampling manual
 - Prepare and ship retail food samples and temperature data loggers to the FoodNet Canada lab as per FoodNet Canada sampling manual
 - Provide PHAC with the weekly sample information in the specified electronic format
 - Provide PHAC with a digital electronic photograph of the front and back of each package
6. Allow for the FoodNet Canada audit of procedures with regards to the agreed upon data collection and transfer.
7. For the purposes of this Agreement, the retail sampling area will include the following area: the Middlesex-London Health Unit.
8. The Middlesex-London Health Unit will ensure the provision of required office equipment (desk, chair, telephone) and computer equipment for the site coordinator and retail sampler.

MILESTONES

See Section S5 Scope – Responsibilities of Middlesex-London Health Unit (Site Coordinator) and Retail Sampling.

See also Appendix A.

INVOICES

Invoices will be submitted on a **quarterly basis** and payment will be made upon receipt of the deliverables noted in S5.Scope.

Two separate invoices shall be submitted:

1. Middlesex-London Health Unit shall submit an invoice for the salary of the site coordinator and related costs (Office, Training and Administration) as detailed in Appendix A.
2. Middlesex-London Health Unit Health Unit shall submit an invoice, with receipts, for the costs related to the retail sampling program as detailed in Appendix A.

Invoices should be sent to the attention of FoodNet Canada/Centre for Food-borne, Environmental and Zoonotic Infectious Diseases Canada quoting the MOA Number, the Financial Code and the Contractor's HST/GST Registration Number (if available).

If sending invoices by email send to: P2P.East.Invoices-Factures.est@hc-sc.gc.ca

If sending invoices by regular mail, send to:

Eastern Canada Hub
Public Health Agency of Canada
Accounting Operations East-P2P Invoices 2
932 Baseline Road, Tower C, Ottawa, Ontario, K1A0K9

S6. RESPONSIBILITIES OF PUBLIC HEALTH AGENCY OF CANADA

1. Assist the development of improved collection of laboratory data on sporadic cases of infectious enteric disease, helping co-ordinating the private, hospital and public health medical diagnostic laboratory network within Middlesex-London Health Unit, providing procedures for stools, isolates and information flows between patients, labs, and Middlesex-London Health Unit for efficient information transfer.
2. Assist the development of improved collection of epidemiological data on outbreak cases of infectious enteric disease through the provision of tools (enhanced, standardized questionnaire for outbreak, standardized operating procedures to investigate outbreaks) and training Middlesex-London Health Unit personnel about the use of such tools.
3. Provide efficient, science based procedures to analyse sporadic case data by providing the necessary tools (standardized operating procedures) and training to Middlesex-London Health Unit site coordinator and staff as required.

For greater clarity, PHAC will not be providing for use by the Middlesex-London Health Unit any computers or any proprietary computer software, documents, symbols, designs, and images that, if used, may infringe on third party Intellectual Property rights.

4. Provide assistance during outbreak investigation (at the request of the Middlesex-London Health Unit).
5. Provide orientation to Middlesex-London Health for the retail sampling program, as well as detailed training for the retail sampler.
6. Audit Middlesex-London Health Unit in relation to the way the procedures and tools provided by PHAC are being effectively used; and that the depersonalized data submitted from the Middlesex-London Health Unit to PHAC is of expected quality.
7. Annually assess training needs for Middlesex-London Health Unit personnel related to the functioning of the enhanced enteric disease surveillance system and help providing the adequate training accordingly.
8. Annually report to the Middlesex-London Health Unit the summary of the depersonalized data received, the summary of the other activities undertaken by PHAC in collaboration with the Health Unit, the results of the audit and recommendations for improving the running of this enhanced surveillance system.
9. Research plans and potential publications that include data from Middlesex-London Health Unit will be discussed as per the Terms of Reference of the FoodNet Canada – Ontario Site Steering Committee. The Public Health Agency of Canada will notify Middlesex-London Health Unit and Ontario Site Steering Committee at least one month in advance of publishing/presenting results (scientific journals, annual reports, conference or other external presentations) that include data from Middlesex-London Health Unit.
10. Facilitate the development of the isolate identification and traceability system between PHO Toronto PH Lab, Middlesex-London Health Unit, the private human microbiology laboratories and hospital laboratories serving Middlesex-London Health Unit.
11. Because of the extra work under this agreement, PHAC will pay for the PHO Toronto PH Lab staff time for the isolate handling and processing and the information recording and transfer, and for the extra laboratory analyses according to the number of analyses actually done, according to a separate Memorandum of Agreement with the PHO Toronto PH Lab.
12. PHAC will pay for the shipping of the isolates from the private and hospital laboratories to the PHO Toronto PH Lab, as required.

13. Working with the Middlesex-London Health Unit, PHAC will plan quarterly steering committee meetings according to the FoodNet Canada Ontario Site Steering Committee Terms of Reference.

14. PHAC (The Centre for Food-borne, Environmental and Zoonotic Infectious Diseases) will pay for the salary and benefits for the site coordinator, for start-up costs, and for the other expenses related to administration, office supplies and training for the site coordinator; salary for the retail sampler and costs associated with the retail sampling program as described in this MOA. See S6. MILESTONES and detailed budgets in Appendix "A".

S7. PROVIDER OF SERVICES RESPONSIBILITY

In addition to the Scope outlined in Section S-5, Middlesex-London Health Unit shall:

- meet all tasks, deliverables and milestones as identified;
- keep all documents and proprietary information confidential;
- conduct and maintain all documentation in a secure area;
- provide to PHAC at any time during the course of the MOA Period a minimum three months' notice of intent to terminate the Work outlined in this agreement. Middlesex-London Health Unit shall be reimbursed by PHAC for the work completed up to the termination date in accordance with Part GC5 of Section I "General Conditions". Middlesex-London Health Unit shall not be liable for any costs incurred by PHAC to perform further Work by PHAC or an alternate Provider of Services after the termination date.

S8. WORK SITE / LOCATION OF WORK

Within Middlesex-London Health Unit

S9. LANGUAGE PROFICIENCY.

English

S11. MEMORANDUM OF AGREEMENT CONTACT

The Contracting Authority designated as primary contact for the Contracting Authority is:

Lisa Landry
Director,
Centre for Food-borne, Environmental and Zoonotic Infectious Diseases
IDPC, PHAC
120-255 Woodlawn Road, West
Guelph, ON N1H 8J1
Telephone: 519-826-2995
E-mail: Lisa.landry@phac-aspc.gc.ca

S12. MEMORANDUM OF AGREEMENT CONTACT FOR THE PROVIDER OF SERVICES

The representative designated as primary contact for the Provider of Services:

Christopher Mackie, Medical Officer of Health
Middlesex-London Health Unit
50 King Street
London, ON N6A 5L7

SECURITY REQUIREMENTS

The Provider of Services, the Middlesex-London Health Unit, shall keep all documents and proprietary information confidential; and conduct and maintain all documentation in a secure area.