

APPENDIX F – Services Agreement

AGREEMENT No: ____

SERVICES AGREEMENT

Between:

(A.C.C.E.S.) Accessible Community Counselling and Employment Services

("ACCES")

- and -

(the "Contractor")

RECITALS:

- A. The Contractor warrants and represents that it has the expertise, experience, resources, and personnel required to provide the services being sought by ACCES;
- B. ACCES, in reliance of the Contractor's warranty and representations, wishes to engage the Contractor and the Contractor wishes to accept this engagement;
- C. In order to establish a mutually beneficial business relationship, ACCES and the Contractor both wish to set out their agreement with respect to certain terms and conditions which will allow them to work together productively and fairly during the term of this engagement;
- D. **THEREFORE, IN CONSIDERATION** of the mutual covenants and agreements contained in this Agreement, ACCES and the Contractor (collectively, the "**Parties**" and each individually a "**Party**") hereby agree as follows:

Effective Date and Term

1. This Agreement shall take effect on the Effective Date and terminate on the Termination Date, both dates being set out in Schedule "A" hereto (the "Term"). This Agreement is subject to earlier termination as provided for later in this Agreement. This Agreement shall only be extended or renewed by way of explicit written agreement or amendment hereof.
2. In good faith, the Parties agree that, if the Contractor begins providing Services on or after the Effective Date but prior to the execution of this Agreement by both Parties, this shall not affect the validity of the Agreement so long as it is signed and backdated by each Party.

Services to be Provided

3. The Contractor will work independently and without supervision, utilizing its own skills, know-how, expertise, experience, resources and personnel to provide the Services more particularly described in Schedule "A", hereto, in a manner acceptable to ACCES and in accordance with the terms of this Agreement.
4. The Contractor agrees that, in order to ensure the Services provided meet the precise requirements of ACCES, it shall take general direction from the ACCES Business Contact identified in Schedule "A".
5. The Contractor agrees to provide the Services in a timely, competent and professional manner using full attention and all due diligence to ensure the high quality of the Services provided.
6. In providing the Services, the Contractor agrees to comply with the relevant policies of ACCES, including, for example, safety and personal conduct, as well as complying with applicable law, such as the Ontario *Human Rights Code* and *Occupational Health and Safety Act*.

Relationship of the Parties

7. This Agreement is intended to create a relationship between ACCES and the Independent Contractor. Under no circumstance shall either Party be considered the employee or employer of the other. Without limiting the generality of the foregoing, the Contractor specifically agrees that the Contractor (and/or its employees, if any) shall not be entitled to receive from ACCES any wages, salary, employee fringe benefits, transportation expenses, vacation pay, overtime pay, public holiday pay, termination pay, severance pay, leaves of absence, or other forms of time off, or any other rights, benefits, perquisites or entitlements as may be provided to the employees of ACCES or any rights, benefits, perquisites or entitlements as may be granted to employees by law.
8. The Parties acknowledge and agree that if any third-party, including a government agency, does enquire about or dispute the Parties' relationship as ACCES and Independent Contractor, such Party shall immediately advise the other Party and both Parties will cooperate in defending against any attempted reclassification of the relationship or of the Contractor's status as agreed hereunder.
9. In the event the Contractor which is a Party to this Agreement has not registered or incorporated its business, and in the event the Contractor registers or incorporates its business during the term of this Agreement, the Parties hereby agree that this Agreement shall be between ACCES and the Contractor's registered or incorporated business without need of any further amendment to this Agreement.

Time Commitment

10. The Contractor shall not be required to work a fixed number of hours, unless specifically agreed upon; however, it shall be the responsibility of the Contractor to allocate sufficient time to ensure that all tasks required to fulfill the terms of this Agreement are completed in a timely manner and within any time frames or schedule as may be established or required given the nature and objectives of this engagement.

Non-Exclusivity

11. Nothing in this Agreement shall prevent the Contractor from engaging in other professional or business ventures, from being engaged as a contractor elsewhere, from being employed elsewhere, or from providing services to any other customer or client, so long as such activities do not (i) inhibit or detrimentally affect the Contractor's discharge of its obligations under this Agreement or (ii) conflict with the interests of ACCES.
12. If there is any doubt as to whether any activity or relationship poses a conflict of interest (or potentially poses a conflict), the Contractor agrees to identify the activity or relationship to ACCES in order for ACCES to determine, in its sole discretion, whether the activity or relationship amounts to a conflict of interest. The Contractor agrees that any doubt as to the existence of a conflict shall be resolved in favour of the interests of ACCES and in the event that the Contractor does not take appropriate action to avoid or terminate any such conflict this shall be considered as cause to terminate this Agreement, per the "Termination for Cause" section of this Agreement.
13. Without limiting the generality of the foregoing provision, during the term of this Agreement, the Contractor specifically and strictly agrees not to provide any services or to work for or on behalf of a competitor to ACCES, which includes any person, corporation, agency, association, enterprise, or other entity which provides products and services of a similar nature to those provided by ACCES.

Compensation and Expenses

14. Fee for Services. In consideration of the provision of the Services by the Contractor, ACCES shall pay to the Contractor an agreed fee for services rendered as more particularly described in Schedule "A", plus any HST, if and as applicable, to be invoiced by the Contractor in accordance with Schedule "B" hereto.
15. Expenses. The Contractor shall pay its own expenses in connection with performing its obligations under this Agreement. Notwithstanding the foregoing, any expenses noted as Approved Expenses in Schedule "A", hereto, shall be reimbursed by ACCES to the Contractor, if properly added as a disbursement to the Contractor's invoice.
16. ACCES will not withhold from the compensation paid to the Contractor any sum for income tax, employment insurance, Canada Pension Plan or any other deduction or withholding pursuant to any law or requirement of any governmental body, and the Contractor shall have the sole responsibility for submitting reports and returns, making any necessary payments and

remittances, and maintaining any records required by local, provincial and/or federal governments, or agencies thereof, relating to the compensation received.

17. For greater clarity, the Contractor shall be solely responsible and liable to pay any and all required taxes, remittances and contributions, including, without limitation, all federal, provincial and local personal and/or business income taxes, harmonized sales tax, and any and all required contributions or premiums relating to the Canada Pension Plan, Employment Insurance Act, Workplace Safety and Insurance Act, and any and all other taxes, fees, premiums, remittances or contributions related to, or arising out of, the Services provided by the Contractor under this Agreement and in respect of the fees received by the Contractor in payment for the Services.
18. The Contractor hereby acknowledges and confirms its responsibilities under these provisions and agrees to indemnify ACCES and save it harmless from and against any and all claims, demands, charges, taxes or penalties which may be made by the Canada Revenue Agency, or any other government body or agency, requiring ACCES to pay any taxes, premiums, contributions or remittances, including penalty amounts, which may in the future be found to be payable by ACCES in respect of the Contractor as a consequence of the Contractor's failure to pay or remit, or delay in paying or remitting, any such amounts required to be paid or remitted by the Contractor pursuant to this Agreement, and any costs or expenses incurred by ACCES in defending against such claims or demands, *etc.*, on a solicitor and client basis.
19. **Insurance and Release.** If required by ACCES and/or specified in Schedule "A", hereto, the Contractor shall obtain and maintain during the Term, at the Contractor's own cost and expense, any insurance specified by ACCES as a condition of this Agreement. If ACCES does not require any specific insurance arrangements, the Contractor agrees that it is otherwise its responsibility to carry any insurance that would be considered appropriate for a prudent person or business engaged in the activities contemplated by this Agreement (or as may be required by law or imposed by any professional or regulatory body which may govern the activities of the Contractor). For clarity, in the event that ACCES does not identify any specific insurance arrangements in Schedule "A", this shall not be construed as a waiver of the Contractor's responsibility to carry any insurance that would be considered appropriate for a prudent person or business to carry while engaged in the activities and providing the Services contemplated by this Agreement, including liability insurance, nor does it invalidate the release, below.
20. **Release.** The Contractor hereby acknowledges and confirms its responsibilities in regards to carrying insurance appropriate to mitigating the risks associated with the provision of the Services hereunder, including in regards to personal injury and disability (in respect of itself and its employees, if any), as well as in regards to general or commercial liability, and, accordingly, the Contractor hereby releases ACCES, and its respective directors, officers, employees, and contractors, and their successors and assigns (the "Releasees") from any and all liability for any losses, damages, injuries, expenses, demands, claims, or causes of action of any kind whatsoever that may be suffered by the Contractor (or any employee of the Contractor) or caused by the Contractor (or any employee of the Contractor), even if such losses, damages, injuries, *etc.*, are caused by the negligence of ACCES or a third party.
21. Furthermore, the Contractor agrees to defend, indemnify, and hold the Releasees, individually and collectively, harmless from and against any and all demands, claims, lawsuits, liabilities, damages, costs and expenses in relation to claims of any kind against ACCES, by any party or

parties, that arise, either directly or indirectly, from the activities of the Contractor (or its employees) pursuant to this Agreement.

22. **Ownership & Protection.** Unless otherwise specified as an exception in Schedule “A” hereto, all deliverables, and any and all information, data, research, documents, statistics, reports, opinions, workshops, applications and all other materials created, developed, provided, written, discovered or produced by the Contractor (which includes its officers and employees) in the performance of this Agreement, and all intellectual property rights (including copyright) therein (collectively, the “**Materials**”), shall be the exclusive property of ACCES. The Contractor hereby assigns all rights, including intellectual property and moral rights, in respect of the Materials, to ACCES.
23. **Exception:** For clarity, any unique process or pre-existing formats or any previously-prepared materials developed by the Contractor prior to entering into this Agreement, but expressly excepting any ACCES-provided Materials, if any, shall remain the property of the Contractor. Any doubt as to rights or ownership arising under this provision shall be resolved in favour of ACCES and the onus is on the Contractor to request an exception in regards to ownership prior to executing this Agreement.
24. **Protection of ACCES Marks.** “ACCES Marks” means all trademarks, trade names, logos, slogans, service marks, symbols and names of ACCES, whether registered or not. Contractor may use ACCES Marks only if necessary in providing the Services and even then only when pre-approved in writing by ACCES, and Contractor will use the ACCES Marks in strict accordance with any specifications provided by ACCES for their use. Contractor agrees that the ACCES Marks are and remain the property of ACCES and this Agreement confers no right, title or interest in or to the ACCES Marks, except the limited use of same as herein set out. The Contractor will not, directly or indirectly, do or cause to be done, or permit, any acts which may in any way jeopardize or adversely affect the validity or reputation of any ACCES Marks or ACCES’ title to the ACCES Marks.
25. **Termination.** The Parties agree that this Agreement and their relationship may be terminated:
 - (a) Without further notice, on the Termination Date (i.e., at the end of the Term of this Agreement), as provided for by Paragraph 1, herein, and Schedule “A”, hereto, without further obligation to the Contractor except any earned and outstanding fees, and any approved expenses, incurred prior to the Termination Date;
 - (b) By ACCES, at any time prior to the end of the Term, without notice or any further obligation or liability, in the following circumstances:
 - (i) Immediately, in the event the Contractor ceases to exist as a business entity, becomes insolvent, or otherwise terminates its business operations or suffers any fortuitous circumstance rendering it incapable of fulfilling the terms of this Agreement;
 - (ii) Upon ACCES advising the Contractor of a default in the work, services or materials provided, and the Contractor fails to remedy the default to the satisfaction of ACCES within ten (10) business days following notice of such default, whether such notice is provided verbally or in writing;

- (iii) Immediately, if ACCES, in its sole discretion, determines that a default is of a nature that it cannot be remedied or cured (or if ACCES, in its sole discretion, decides it does not wish to provide the Contractor with an opportunity to remedy or cure the default), then termination shall be effective immediately upon notification by ACCES to the Contractor of such default and termination;
 - (iv) Immediately, if the Contractor fails to provide adequate assurance of its ability to perform its obligations under this Agreement, as determined by ACCES in its reasonable business judgment, or in the event of non-performance or any material breach of any of the Contractor's obligations hereunder, or in any situation which puts ACCES at risk of a termination, reduction or cancellation of a Funding Agreement by a Funding Provider, as determined by ACCES in its sole discretion; and
 - (v) Immediately, if the Contractor (or the Contractor's employees) commits any act or omission which is or is likely to be illegal, criminal, fraudulent, harassing or distressing, or violates any applicable laws, licenses or the rights of any third party, as determined by ACCES in its sole discretion.
- (c) This Agreement may also be terminated by ACCES at any time prior to the end of the Term, for any reason, including convenience or based on reassessment of its needs, by providing the Contractor with 10 business days of notice of termination in writing (by email is satisfactory), which the Contractor agrees is reasonable, during which period the Contractor will only be paid fees for Services actually performed during the notice period with the agreement of ACCES or, at the option of ACCES, payment in lieu of the Contractor performing any Services during the notice period. Any payment in lieu will be based strictly on the amount the Contractor would have earned by providing services on any dates falling during the notice period only, on which the Contractor was previously scheduled to provide services, *i.e.*, dates scheduled prior to notice being given, if any. Except as explicitly specified in this paragraph, any other right to damages as compensation for fees which the Contractor did not earn but which the Contractor might have earned had notice of termination not been given is hereby removed by agreement of the Parties.
- (d) This Agreement may be terminated by the Contractor at any time prior to the end of the Term, for any reason (including convenience), by providing 10 business days of notice in writing (including by e-mail), which ACCES agrees is reasonable, during which the Contractor shall continue to provide Services and endeavor to complete any work-in-progress to the satisfaction of ACCES or take any other steps as may be directed by ACCES in order to advance or achieve the objectives of this Agreement and/or to minimize the consequences of the termination. The Contractor agrees that, at its sole discretion, ACCES may waive the requirement for the Contractor to provide services during the notice period, without further obligation or payment to the Contractor except in respect of Services provided up to the date on which notice is given by the Contractor.
26. **Return of Materials.** Upon termination of the Contractor's services by either party, or at any time on request of ACCES, the Contractor shall promptly deliver to ACCES all property belonging to ACCES, including, without limitation, all documents, files, client lists, manuals, records, computer programs, devices, and all brochures, marketing or promotional materials, as well as any

deliverable or other materials required to be produced by the Contractor pursuant to the terms of this Agreement.

27. **AODA Training.** ACCES supports and promotes the objectives of the Accessibility for Ontarians with Disabilities Act (AODA) and, therefore, in accordance with the AODA and its Regulations, ACCES strives to ensure that all contractors that deal with the public on behalf of ACCES have, through their own efforts and at their own expense, been appropriately trained in human rights and AODA principles, including in regards to customer service. It is a condition and requirement of this Agreement that the Contractor, in turn, ensures that any personnel used in fulfilling the terms of this Agreement, if such personnel deal with the public on behalf of ACCES, are trained in accordance with the principles and requirements of AODA, and makes and retains appropriate training records (and provides such records on request by ACCES).
28. **No Assignment.** The Contractor acknowledges that the Contractor's specific qualifications, reputation and/or identity are of particular importance to ACCES and that it is because of such qualifications, reputation and/or identity that ACCES is entering into this Agreement. The Contractor therefore agrees that the Contractor's rights and obligations under this Agreement may not be assigned or transferred in any manner, in whole or in part, without the prior written consent of ACCES.
29. **Confidentiality.**
 - (a) During and after the Term (for so long as the information at issue remains confidential), the Contractor:
 - (i) shall treat as confidential any material or information, supplied by ACCES, or received on ACCES' behalf, or derived from any data which the Contractor may have acquired in the course of, or incidental to, the performance of this Agreement, or otherwise, which is non-public or expressly indicated to be confidential by ACCES, or which the Contractor ought reasonably to know is confidential ("**Confidential Information**");
 - (ii) without limiting the generality of the foregoing statement, agrees that Confidential Information specifically includes any information, including personal information, about or relating to the clients and customers of ACCES, and the Contractor specifically agrees to treat all such information as Confidential Information, and to take all reasonable precautions to safeguard and protect the confidentiality of such information;
 - (iii) shall use any Confidential Information only with our prior written consent or as is required for the performance of this Agreement, and for no other purposes whatsoever; and
 - (iv) shall not disclose to any person or entity any Confidential Information except with the prior and express written consent of ACCES.
 - (b) The Contractor agrees that if there is any doubt whatsoever on its part as to whether any information is Confidential Information, it shall treat such information as Confidential

Information unless and until it seeks direction or advice from ACCES as to whether or not the information at issue is Confidential Information.

30. **Non-Solicitation.**

- (a) Non-Solicitation of ACCES Employees. During the term of this Agreement and for a period of twelve (12) months following the termination of this Agreement, the Contractor agrees that it will not hire, solicit, procure or take away any employees of ACCES, or attempt to do so, or to interfere in any way which causes or could reasonably cause any such employees to alter their relationship with ACCES.
- (b) Non-Solicitation of ACCES Clients. During the term of this Agreement and for a period of twelve (12) months following the termination of this Agreement, the Contractor agrees that it will not solicit, or contact any clients of ACCES, either directly or indirectly, for the purpose of soliciting, their business (*i.e.*, seeking to provide or providing said clients with any services), if the services in question are in any way similar in nature to any service provided by ACCES and if the service(s) would be provided at any location within a 50-kilometre radius of any location of ACCES, which includes any future locations of ACCES in operation during this period of restriction. The Contractor hereby agrees that the time and geographic scope of these restrictions are reasonable, and further, agrees that if the Contractor breaches its obligations hereunder, ACCES shall be entitled to full and fair compensation for any and all losses suffered as a consequence of the breach by the Contractor, in addition to any other remedies, such as an injunction or specific performance.

31. **General.**

- (a) Independent Advice. The Contractor acknowledges and agrees that:
 - (i) the Contractor is free of any restrictions that might impair the Contractor's ability to enter into this Agreement or provide the Services hereunder (or that he/she has brought any such restrictions to the attention of ACCES); and
 - (ii) the Contractor has been advised and has been given a reasonable opportunity to seek independent legal, tax and financial advice in connection with the execution of this Agreement, or has voluntarily opted not to do so.
- (b) Publicity. Any publicity or publications relating to this Agreement or the Services shall be arranged by ACCES. The Contractor shall not make use of the Contractor's association with ACCES or this Agreement without ACCES' prior written consent. The Contractor can state on LinkedIn that they provided services as a service provider to ACCES as an independent contractor.
- (c) Governing Law. This Agreement shall be interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the laws of the Province of Ontario. ACCES and the Contractor hereby irrevocably and unconditionally attorn to the jurisdiction of the Courts of the Province of Ontario as being the proper jurisdiction in which to bring any claim arising out of any breach of this Agreement.

- (d) Amendment and Waiver. This Agreement may not be amended or modified in any respect except by written instrument signed by both Parties. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver unless otherwise provided.
- (e) Severability. In the event that any provision, paragraph or part of any provision or paragraph of this Agreement is deemed to be void, invalid or unenforceable by a court or tribunal of competent jurisdiction, the remaining provisions or parts shall remain in full force and effect.
- (f) Reference to Employees of the Contractor. Any references to the Employees of the Contractor apply if and as applicable, and in the event the Contractor is a sole proprietorship without employees, the Contractor agrees that such references shall not impair the validity, interpretation or application of this Agreement to the Contractor.
- (g) Compliance with Laws – The Independent Contractor shall comply with all federal, provincial, and local laws, regulations, and orders in fulfilling its obligations under the Agreement, including, without limitation, privacy legislation.
- (h) Time. Time shall be of the essence of this Agreement and the Contractor agrees to provide the services and deliverables specified in Schedule “A” in accordance with any target dates and deadlines as may be agreed.
- (i) Counterpart and Facsimile. This Agreement may be executed in counterpart, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile or by electronic mail transmission.

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- (j) Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether written or oral between ACCES and the Independent Contractor.

ACCEPTANCE

The Parties hereby execute this **Services Agreement No: _____**, which is made as of the Effective Date set out in Schedule "A":

FOR:

**(A.C.C.E.S.) ACCESSIBLE COMMUNITY
COUNSELLING AND EMPLOYMENT SERVICES**

Name:

Title:

Signature: _____

I have authority to bind the Corporation

FOR:

XXXX

Name:

Title:

Signature: _____

I have authority to bind the Corporation

RFP TEMPLATE