Natural Resource Ministries

# Operational Services Contract

| CONTRACT FILE NO:<br>1070-30/OP23FHQ156 | THIS AGREEMENT DATED FOR REFERENCE THE DAY (including 'nd' 'rd' or 'th' as applicable) DAY OF MONTH, 20YR. |
|---|---|
| PROJECT DESCRIPTION: 2022 Western Redcedar Series A2 Research Trial Maintenance and Measurements. | |

**BETWEEN:**

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the MINISTER OF Forests

**Ministry Location**
**Physical & Mailing Address (including Postal Code)**

**Phone Number: (Area Code) Phone No .....FAX Number: (Area Code) Fax No**
**Ministry Representative: Ministry Representative's name**
**E-mail Address: Ministry Representative's Email Address**

(the "Province")

**AND:**

**Full LEGAL name of Contractor/Company**
**Physical & Mailing Address (including Postal Code)**

**Phone Number: (Area Code) Phone No .....FAX Number: (Area Code) Fax No**
**Business E-mail Address: Contractor's Email Address**

**Contractor Representative: Contractor Representative's name**
**Business Number: Contractor's Business Number for taxation purposes**
**WorkSafe BC and/or Personal Optional Protection Number: WCB / POP No.**

(the "Contractor")

referred herein to as "the Parties".

**WHEREAS:**

**A.** The Province requires the Work described in this Agreement to be carried out for its benefit.

**B.** The Contractor is prepared to do the Work.

**C.** The Province and the Contractor have agreed that the Work shall be carried out in accordance with Contract Documents.

Accordingly, the Parties agree as follows:

## ARTICLE 1 DEFINITIONS

1.01 In this document, the following words have the following meanings:

(a) "**Agreement**" means the agreement between the Parties as set out in the Contract Documents;

(b) "**Amending Document**" means an NRS600 Contract Modification Agreement form or another standard form of similar nature specified by the Province;

(c) "**Assessment**" means a pre-estimate of damages incurred by the Province as a result of the Contractor's failure to perform, unsatisfactory performance or other non-compliance with the provisions of this Agreement;

(d) "**Changed Condition**" means a materially changed physical condition at the Work Area which was not foreseen by the Contractor and which would not have been reasonably foreseen by a reasonable contractor who, before submitting its tender, conducted a thorough investigation of the work to be done to complete the Work, including a thorough inspection of the Work Area and review of all information available from the Province to persons wishing to submit tenders, but does not include any weather conditions or natural events;

(e) "**Contract Documents**" means those documents described in Section 2.01 and the Work Progress Plan;

(f) "**Contract Price**" means the total amount payable to the Contractor for satisfactory performance of the Work, as set out in Schedule 'B';

(g) "**Contractor Representative**" means a person designated pursuant to Section 5.05;

(h) "**Environmental Damage**" means:
   i. slumping or sliding of land;
   ii. inordinate soil disturbance; or
   iii. other damage to the environment which the Province considers significant.

(i) "**Equitable Adjustment**" means a fair and reasonable adjustment negotiated by the Parties to;
   i. the Contract Price; or
   ii. the time within which the Work is to be performed;

(j) "**Fiscal Year**" means the period from April 1 to the next March 31 inclusive;

(k) "**Incorporated Material**" means any material in existence prior to the start of the Term or developed independently of this Agreement, and that is incorporated or embedded in the Produced Material by the Contractor or a Subcontractor;

(l) "**Material**" means the Produced Material and the Received Material;

(m) "**Ministry Representative**" means a person appointed pursuant to Section 5.01;

(n) "**Occupied Area**" means any Work Area, camp or rest area, or any other area occupied by the Contractor for the purposes of this Agreement;

(o) "**Payment Area**" means a portion of a Work Area as specified in the Work Progress Plan which contains a specified amount of scheduled Work;

(p) "**Performance Security**" means the security provided by the Contractor in accordance with Article 4;

(q) "**Produced Material**" means records, software and other material, whether complete or not, that, as a result of this Agreement, are produced or provided by the Contractor or a Subcontractor and includes the Incorporated Material;

(r) "**Received Material**" means records, software and other material, whether complete or not, that, as a result of this Agreement, are received by the Contractor or a Subcontractor from the Province or any other person;

(s) "**Subcontractor**" means a person, firm or corporation contracting with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design according to the Agreement, but does not include one who merely supplies products not so worked;

(t) "**Shortfall**" means the difference between total Contract Price and the amount paid to the Contractor for Work satisfactorily completed;

(u) "**Term**" means the period of time this Agreement is in force pursuant to Article 3;

(v) "**Work**" means all labour, supervision, administration, materials, transportation, supplies, tools, equipment and such other services and materials necessary or desirable to perform the services described in the Contract Documents, and includes any services which are not expressly described, but which are nevertheless necessary for the proper execution of the work;

(w) "**Work Area**" means the area shown outlined on the attached maps;

(x) "**Work Day**" means every day of the week except Saturday, Sunday and statutory holidays; and

(y) "**Work Progress Plan**" means the plan developed on a form approved by the Province and submitted to the Ministry Representative for approval which outlines the scope, timing, location and any other requirements of the Work.

1.02 If any of the words in Section 1.01 are used in any other Contract Document, they have the same meaning as in this document unless the context dictates otherwise.

1.03 Words or abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with those recognized meanings.

1.04 The headings of the clauses of this Agreement have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Agreement.

## ARTICLE 2 CONTRACT DOCUMENTS AND MODIFICATIONS

### Contract Documents

2.01 The attached schedules are applicable to and form part of this Agreement:

| Schedule | Title |
|---|---|
| Schedule "A" | Services |
| Schedule "B" | Payment |
| Schedule "C" | Safety Conditions Schedule |
| Schedule "D" | Insurance |

### Amending Documents

2.02 No modification of this Agreement is effective unless it is in writing and signed by, or on behalf of, the Parties.

### Interpretation

2.03 Any reference in the Contract Documents to a manual or a form means a manual or form published by or for the Province and includes every amendment of such manual or form and any manual or form published from time to time in substitution for them or replacement of such manual or form.

2.04 In the event of a conflict between the Contract Documents, the terms of this Document supersede all other Documents. In the event of a conflict between alike Contract Documents of different dates, the Document of later date prevails.

## ARTICLE 3 TERM OF CONTRACT AND COMMENCEMENT OF WORK

3.01 The Term of this Agreement is from Month & Day, 20YR to Month & Day, 20YR inclusive, and work shall proceed in accordance with the Work Progress Plan.

3.02 The Contractor shall not conduct any Work until the Province notifies the Contractor to commence work.

3.03 The Contractor shall commence Work within Number calendar days from the date specified in the Notice to Commence Work and regardless of the date of execution or delivery of this Agreement, the Contractor must provide the Services during the Term.

3.04 Time is of the essence in this Agreement and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.

## ARTICLE 4 CONTRACT PERFORMANCE SECURITIES

4.01 Upon request of the Province, the Contractor shall furnish Performance Security in the amount specified by and in a form and manner acceptable to the Province as security for the faithful performance by the Contractor of all Work.

4.02 The Province may retain any Performance Security until all Work has been completed in accordance with this Agreement. The Performance Security is subject to forfeiture, at the discretion of the Province, if the Contractor fails to perform or to comply with this Agreement.

4.03 If the Contractor fails to perform or comply with this Agreement, the Province may, in addition to terminating the Agreement and claiming the Performance Security, pursue any other remedies available to it under this Agreement or the laws of the Province of British Columbia.

## ARTICLE 5 PARTY REPRESENTATIVES

### Ministry Representative

5.01 The Province shall appoint a Ministry Representative who shall have full authority to act on behalf of the Province in connection with this Agreement.

5.02 Upon commencement of this Agreement, the Province shall notify the Contractor of the name of the Ministry Representative.

5.03 The Province may substitute a Ministry Representative at any time, and shall immediately notify the Contractor of the change.

5.04 The Ministry Representative may require the Contractor to do anything necessary to satisfy the Ministry Representative that the Work is being performed in accordance with the Contract Documents.

### Contractor Representative

5.05 The Contractor shall appoint a Contractor Representative fluent in English, who shall:

(a) have full authority to act on behalf of the Contractor in connection with the Work and the Agreement; and

(b) be available to the Ministry Representative, when requested, and be present at all times at any site where the Work is carried out.

5.06 Upon entering into this Agreement, the Contractor shall notify the Province of the name, address and telephone number of the Contractor Representative appointed pursuant to Section 5.05.

5.07 The Contractor shall not substitute a Contractor Representative without the written consent of the Ministry Representative.

5.08 If, in the reasonable opinion of the Ministry Representative, the Contractor Representative is not suitably experienced or is unable to properly supervise the Work or communicate with the Ministry Representative, then the Contractor shall, upon receipt of written notice from the Ministry Representative, replace that representative and immediately notify the Province of that change.

5.09 All Work carried out by the Contractor or the Subcontractor must be under the direct and continuous supervision of the Contractor or the Contractor Representative.

## ARTICLE 6 STANDARDS OF PERFORMANCE AND WORK PROGRESS

### Work Progress Plan

6.01 The Contractor Representative shall meet with the Ministry Representative before the commencement of Work to:

(a) inspect the Work Area, and

(b) review the Contract Documents and work performance requirements.

6.02 The Work Progress Plan may divide the scheduled Work into Payment Areas. Where no Payment Areas are approved the entire Work Area shall be considered to be one Payment Area.

6.03 The Work shall proceed in accordance with the Work Progress Plan.

**Standards of Performance**

6.04 The Contractor acknowledges it has satisfied itself to:

(a) the nature and magnitude of the Work; and

(b) the general character, quality and quantity of the equipment and materials required to execute and complete the Work.

Any failure by the Contractor to discover matters which affect or could affect the Work does not relieve the Contractor from its obligations under this Agreement or otherwise affect the Contract Price.

6.05 The Contractor shall at all times exercise the standard of care, skill and diligence normally exercised and observed by persons engaged in the performance of activities similar to the Work.

**Continuity and Suspension of Work**

6.06 The actual date the Work may commence is dependent upon the weather and completion of the Work Progress Plan. Once commenced, Work shall be continuous except as provided for in Section 6.09.

6.07 If the Province reasonably decides that weather or other conditions make it unsuitable for Work to proceed, it may suspend operations for a specified or an indefinite period, and it may require the Contractor remain available for up to five (5) consecutive Work Days to resume work as specified by the Province. If the suspension exceeds twenty-four (24) hours the Parties shall negotiate an Equitable Adjustment to the Contract Price to compensate the Contractor for reasonable and substantiated out-of-pocket costs incurred during the suspension.

6.08 In the event operations are suspended under Section 6.07, the Term may be extended by a length of time agreed to by the Parties.

6.09 If the Province, having suspended Work pursuant to Section 6.07, does not permit Work to resume within five (5) Work Days, either Party may, by giving written notice to the other Party, terminate this Contract without penalty. Neither Party is liable for compensation of any kind arising out of the suspension of operations. Payment shall be made for all Work satisfactorily performed before the suspension of Work.

6.10 A suspension pursuant to Section 6.07 to be effective must be in writing and delivered to the Contractor by a method provided for in Section 15.06.

## ARTICLE 7 INDEMNIFICATION AND INSURANCE

**Indemnity**

7.01 You must indemnify and save harmless the Province and its employees and agents from any loss, claim (including any claims of infringement of third party intellectual property rights), damage award, action, cause of action, cost or expense that the Province or any of its employees or agents may sustain, incur, suffer or be put to at any time either before or after this Agreement ends, (each a “Loss”), to the extent the Loss is directly or indirectly caused or contributed to by:

(a) any act or omission by you or your agents, employees, officers, directors or Subcontractors in connection with this Agreement; or

(b) any representation or warranty by you being or becoming untrue or incorrect.

7.02 Neither the Province nor its Ministry Representative in charge, its agents, authorized representatives, or employees are personally liable for any act performed in the discharge of any duty imposed or in the exercise of any power or authority conferred upon them by, or within the scope of, the Agreement if it can be demonstrated that all reasonable care was exercised in the conduct of the operations; in all such matters these persons act solely as agents and representatives of the Province.

7.03 Neither the Province nor any of its employees, authorized representatives, or agents are liable to the Contractor or the Contractor's employees or agents for any injury, loss, or damage however occasioned to any of them or their equipment or livestock while being transported or conveyed in any vessel, boat, aircraft owned or operated by the Province, and the Contractor shall not undertake claims against the Province, its employees, authorized representatives, or agents to recover any such injury, loss or damage either on its own behalf or on behalf of its employees or agents. The Contractor shall indemnify and save harmless the Province, its employees, authorized representatives, or agents from any such claims initiated by the Contractor's employees, subcontractors, servants, or agents.

**Insurance**

7.04 During the Term, the Contractor shall pay and maintain insurance coverage as specified in writing by the Province from time to time.

## ARTICLE 8 PROTECTION OF WORK AND PROPERTY

**General**

8.01 The Contractor shall protect the Province's property from damage and is responsible for damage which may arise as the result of the Contractor's operations under the Agreement, except damage which occurs as a result of the acts or omissions of the Province or its other contractors, agents and employees.

**Protection of the Environment**

8.02 If the Contractor encounters circumstances such as weather conditions or site factors where the Contractor knows or should reasonably know that proceeding with the Work may, directly or indirectly, cause Environmental Damage, the Contractor shall:

(a) immediately suspend such Work;

(b) immediately advise the Province of the suspension and circumstances;

(c) not proceed with such Work until the Province so instructs; and

(d) upon the Province's instruction to proceed with such Work, do so in accordance with the Province's instructions.

8.03 The Contractor shall not be deemed to be in breach of this Agreement for suspending Work pursuant to Section 8.02.

**Fire Protection**

8.04 The Contractor shall:

(a) take every precaution to prevent unintentional fire from occurring on or about the Work Area,

(b) ensure that no person burns any debris on or about the Work Area unless authorized under a Burning Reference Number issued by the Ministry of Forests, Lands and Natural Resource Operations, BC Wildfire Services, and

(c) ensure that, with respect to smoking,

(i) no person smokes except in areas that are free of or fully cleared of all flammable material,
(ii) no burning material falls outside cleared areas, and
(iii) all burning material is completely extinguished before leaving cleared areas.

## ARTICLE 9 COMPLIANCE WITH THE LAW

9.01 This Agreement is governed by, and is to be interpreted and construed in accordance with, the laws of the Province of British Columbia, including, but not limited to, the *Employment Standards Act* and its Regulations.

9.02 The Contractor shall comply with, and must ensure that any Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under this Agreement, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions.

9.03 Without limiting Section 9.02, the Contractor:

(a) may be considered the "Prime Contractor" for the Work, as described in the attached Safety Conditions Schedule, and as such shall enter into a Prime Contractor Agreement and carry out the duties as described therein;

(b) shall be solely responsible for safety at the Work Area;

(c) shall, at its own expense, provide the necessary WorkSafe BC compensation coverage for itself, all workers and any shareholders, directors, partners or other individuals employed or engaged in the performance of the Work and shall ensure all approved Subcontractors obtain WorkSafe BC coverage;

(d) if the Contractor or its Subcontractors do not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act*, then the Contractor shall ensure that it and its Subcontractors apply for and obtain Personal Optional Protection under the *Workers Compensation Act*;

(e) shall be responsible for and pay for all fines, assessments, penalties, and levies made or imposed under the *Workers' Compensation Act* and regulations relating in any way to the Work;

(f) upon request, provide the Province with evidence of compliance with Section 9.03 (c) and (d);

(g) shall promptly pay all persons employed or engaged in the execution of the Work; and

(h) shall obtain all licences and permits required by law to carry out the Work, unless obtained by the Province and provided to the Contractor before commencement of the Work, and provide the Province with proof of having obtained those licences or permits.

9.04 Nothing in this Agreement shall relieve the Contractor from its responsibility to comply with all applicable provisions of the *Forest & Range Practices Act* and its regulations.

## ARTICLE 10 CHANGED CONDITION

10.01 **(X)** If a Changed Condition occurs during the course of the Work, the following applies:

(a) The Parties shall immediately advise each other of particulars of the Changed Condition and the Contractor Representative and the Ministry Representative shall meet to attempt to deal with the condition.

(b) If the Changed Condition is so substantial that amending the Agreement to deal with the change would change the essential nature of the Work, then either Party may elect not to proceed with the Work any further and the contract shall be brought to an end. If either Party so elects, the following shall apply:

(i) The Contractor shall be entitled to receive payment for any Work which the Contractor has satisfactorily completed;

(ii) If the payment under (i) is for 90% or greater of the original total volume of Work the Contractor shall be entitled to no additional payments;

(iii) If the payment under (i) is for less than 90% of the original total volume of Work the Contractor shall be entitled to an additional payment calculated as 15% of the Shortfall that is less than 90% of the original volume of Work multiplied by the average price per unit as shown in the following equation:

0.15 x (0.90 x [original volume of Work] minus [volume of Work completed]) x (average price per unit).

(c) If the Changed Condition can be dealt with by the substitution of an alternate Work Area or by other amendment to the Agreement and if such substitution or other amendment will not change the essential nature of the Work, then the Province may, in its discretion, substitute such an alternate Work Area (and make changes to this Agreement that are appropriate to deal with the substitution) or make other amendments to this Agreement. The Contractor shall be obliged to proceed on that basis. If the parties cannot agree on a price for the Work as amended in the substituted Work Area, then the price shall subsequently be determined pursuant to Article 14.

(d) The Province is not obliged to make any payment under Section 10.01 (b)(ii) and (iii), or to satisfy any claim by the Contractor for any losses occasioned by such a shortfall if the Shortfall is occasioned by an Act of God, unsuitable weather, natural disaster, withdrawal of labour in disputes, or any other unforeseeable cause over which the Province has no direct control.

## ARTICLE 11 INSPECTION AND ACCEPTANCE

### Request for Inspection and Acceptance

11.01 The Contractor shall, upon completing all Work within a Payment Area, promptly request that the Province inspect and determine the acceptability of the Work. The request must be in writing, may take the form of an invoice, and, must be delivered to the Province by a method provided for in Section 15.06.

**Inspection by the Province**

11.02 The Province shall, following receipt of the Contractor's request for inspection and acceptance, promptly inspect and determine the acceptability of the Work performed in the Payment Area. Work shall be inspected in accordance with the Contract Documents. The Province is not obliged to make any determination of acceptability before receiving the written request.

11.03 The Contractor is encouraged, but not required, to observe inspections while they are underway.

11.04 The Province shall provide the Contractor with a copy of inspection results.

11.05 The Province reserves the right to inspect, at all times during the Term and without notice to the Contractor, any Work performed.

11.06 The Contractor shall pay the Province, on demand, all direct and indirect additional inspection costs incurred because Payment Areas were not fully completed by the time specified in the Contractor's request for inspection and acceptance.

11.07 Inspections are conducted by the Province in order to determine compliance with the provisions of this Agreement and to provide the basis for calculating the payment due. These inspections are conducted for the sole benefit of the Province, and do not release the Contractor from the responsibility of providing quality control measures to assure that the Work strictly complies with this Agreement.

**Re-Inspection**

11.08 If the results of an inspection are unacceptable to the Contractor, it may, if it does so within three (3) Work Days of receiving the inspection results, request the Province re-inspect the Work.

11.09 If the Contractor requests a re-inspection of the Work, the Province shall perform the re-inspection at a time mutually agreed to by the Parties, but in any event no later than ten (10) Work Days after receiving the request.

11.10 The results of the re-inspection shall be used to determine payment and shall be final and binding.

11.11 The Contractor shall pay the Province's costs of the re-inspection only if the difference in Work quality between the original inspection and the re-inspection is less than ten percent (10%) of the original inspection results.

11.12 If the Province bears the costs of the re-inspection, it shall also pay the Contractor, if they are present for the entire re-inspection, the sum of two hundred and fifty dollars ($250.00) for time spent re-inspecting.

## ARTICLE 12 MEASUREMENT AND PAYMENT

**Payment**

12.01 If the Contractor complies with this Agreement, the Province shall pay the Contractor for all Work at the rates [inclusive of taxes paid or payable by the Contractor to a supplier but exclusive of any applicable Provincial Sales Tax (PST) that the Contractor is required to charge the Province as a taxable transaction and the Goods and Services Tax (GST)] and times described in Schedule B and we are not obliged to pay you more than the maximum amount or dollar limit specified in Schedule B.

12.02 Expenses, if payable, will be exclusive of GST or other applicable tax paid or payable to the extent the Contractor is entitled to claim credits (including GST input tax credits), rebates, refunds or remissions of the tax from the relevant taxation authorities.

12.03 The Province will pay any applicable taxes payable under law or agreement with the relevant taxation authorities. Invoices must show the calculation of any applicable taxes (excluding taxes paid directly by the Contractor to a supplier and which were inclusive in the bid price) to be paid as a separate line item and expenses must be listed chronologically, be in reasonable detail and with dates of all expenses claimed with receipts or copies of receipts, where applicable, attached.

12.04 Our obligation to pay money to you is subject to the *Financial Administration Act*, which makes that obligation subject to an appropriation being available in the fiscal year of the Province during which payment becomes due.

12.05 Unless otherwise specified in this Agreement, all references to money are to Canadian dollars.

**Payment Initiation**

12.06 The Province shall upon acceptance of the Work within a Payment Area, promptly initiate a payment.

**Holdback**

12.07 The Province is not obliged to advance to the Contractor more than ninety percent (90%) of the calculated amount of any payment. The ten percent (10%) holdback shall be retained for forty (40) calendar days after the completion, or earlier termination, of all Work and interest is not payable on the amount held back by the Province.

12.08 The Province is authorized, but not obliged, to apply the holdback funds as follows:

(a) firstly, to any unpaid government agencies;

(b) secondly, to the Contractor's and Subcontractor's unpaid workers, Subcontractors and material suppliers; and

(c) thirdly, as security for the correction of any breach of, or for payment of any Assessment provided for in, this Agreement.

**Payment for Part Performance**

12.09 If this Agreement expires or is terminated before completion of the Work, the Province shall only pay for that portion of the Work completed to the satisfaction of the Province before the said expiration or termination.

**Method of Measurement**

12.10 All linear and area measurements under this Agreement are measured on the horizontal plane, unless specified otherwise in an attached Schedule.

**Remeasurements**

12.11 If the calculation of a payment depends upon the area completed, and if the Contractor believes the area used in calculating that payment is incorrect, the Contractor may request the Province remeasure the Payment Area. The request shall be delivered in writing to the Province, within three (3) Work Days of the Contractor receiving a copy of the payment calculation for the Payment Area in question.

12.12 If the Province's remeasurement indicates that the originally specified area was correct within five percent (5%), the original measurement will be used and the Contractor will pay for the cost of the remeasurement. If the difference between measurements exceeds five percent (5%), payment will be based on the second measurement without charge for the remeasurement.

**Appropriation**

12.13 Despite any other provision of this Agreement, the Province's obligation to pay the Contractor, pursuant to this Agreement, is subject to:

(a) the Legislative Assembly of the Province of British Columbia having provided sufficient funds to enable the Province, in any Fiscal Year or part thereof, to make payment pursuant to this Agreement when it is due; and

(b) Treasury Board not having controlled or limited expenditure of any funds.

## ARTICLE 13 NON-COMPLIANCE AND TERMINATION

**Termination by the Province**

13.01 The Province may, at its sole discretion, terminate this Agreement at any time, and no claim may be made by the Contractor for any losses occasioned by that termination if the termination:

(a) occurs before the Province notifies the Contractor to commence Work;

(b) is caused by an Act of God, unsuitable weather, natural disaster, withdrawal of labour in labour disputes, or any other unforeseeable causes over which the Province has no direct control; or

(c) is caused by an Event of Default.

**Mutual Termination**

13.02 This Agreement may be terminated at any time by the mutual consent of the Parties.

**Contract Performance Security**

13.03 If the Province terminates this Agreement, the Contract Performance Security will only be returned to the Contractor if the termination is occasioned by an Act of God, unsuitable weather, natural disaster, withdrawal of labour in labour disputes, or any other unforseeable cause clearly beyond the control of the Contractor.

**Non-Compliance with Agreement Provisions**

13.04 An "Event of Default" means any of the following:

(a) failure to perform any of the Contractor's obligations under this Agreement, or

(b) any representation or warranty made by the Contractor in this Agreement (including as part of any competitive process resulting in this Agreement being entered into) is untrue or incorrect, or

(c) an Insolvency Event, which means any of the following;

(i) an order is made, a resolution is passed or a petition is filed, for the Contractor's liquidation or winding up,

(ii) the Contractor commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency,

(iii) a bankruptcy petition is filed or presented against the Contractor or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Contractor,

(iv) a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act* (Canada),

(v) a receiver or receiver-manager is appointed for any of the Contractor's property, or

(vi) the Contractor ceases, in our reasonable opinion, to carry on business as a going concern.

13.05 On the happening of an Event of Default, or at any time thereafter, the Province may, at its option, by written notice to the Contractor do any one or more of the following:

(a) require that the Event of Default be remedied within a time period specified in the notice;

(b) require the Contractor to re-work the area to the Province's satisfaction within a time period specified in the notice;

(c) impose other requirements on the Contractor to deal with the alleged failure of compliance within a time period specified in the notice;

(d) pursue any remedy or take any other action available to us at law or in equity; or

(e) impose an Assessment if such an Assessment is provided for in the Contract Documents;

(f) require the Contractor to do no further Work until the alleged failure of compliance is dealt with according to the Province's requirements; and

(g) by written notice to you, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under Section 13.05(a).

These remedies shall be in addition to and not instead of any other remedy which the Province may have with respect to the Contractor's breach of this Agreement.

13.06 No failure or delay on the Province's part to exercise its rights in relation to an Event of Default will constitute a waiver of such rights.

13.07 If you become aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, you must promptly notify us of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps you propose to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps you propose to take to prevent the occurrence of the anticipated Event of Default.

13.08 Where the Contractor has reworked an area the Province shall inspect any re-worked area and the results of the inspection shall supersede any previous inspection results. The Contractor shall pay the Province's costs of the inspection.

13.09 For the purposes of imposing an Assessment, the Province need not notify the Contractor before imposing an Assessment.

13.10 If the Province imposes an Assessment on the Contractor, the Assessment may be collected by deduction from a payment under this Agreement, any Contract Performance Security or from any holdback.

13.11 If the Contractor does not agree with the Province that there has been a failure to comply, the Contractor shall comply with any and all of the requirements imposed by the Province, but the Contractor shall have the right to seek compensation from the Province under Article 14, if there in fact was no failure to comply.

## ARTICLE 14 DISPUTE RESOLUTION

14.01 If a dispute occurs between the Parties concerning any matter governed by this Agreement, the disputing Party shall promptly advise the other Party and the Parties together shall use all reasonable efforts to resolve the dispute informally.

14.02 If the Parties are unable to resolve the dispute informally, within five (5) Work Days, the Contractor shall then give Notice, within ten (10) Work Days, of the complaint to the Ministry Representative, which particulars shall include the following:

(a) a detailed description of the nature of the complaint;

(b) a list of the relevant provisions of the Contract Documents; and

(c) an evaluation by the Contractor of the matters in dispute.

14.03 The Province shall, within twenty (20) Work Days of receipt by the Ministry Representative of the written particulars, give the Contractor a decision, in writing, of one of the following:

(a) that the Province accepts the position of the Contractor; or

(b) that the Province rejects the position of the Contractor.

14.04 If the Province accepts the position of the Contractor, the Parties shall enter into an Amending Document to reflect the Agreement.

14.05 If the Province rejects the position of the Contractor, the Parties shall proceed to mediation with a mutually agreed upon third party. If the dispute is not resolved within fifteen (15) Work Days of appointment of the mediator, then the Parties may, if they both agree, proceed to arbitration pursuant to the *Commercial Arbitration Act*.

14.06 If the matter in dispute is not resolved promptly pursuant to Section 14.01, the Ministry Representative may give to the Contractor instructions that in his or her opinion are necessary to provide for the proper performance of the Work and to prevent delays.

14.07 If the Contractor receives instructions pursuant to Section 14.06, the Contractor shall act immediately to carry out the Work pursuant to the instructions, but any Work performed by the Contractor in this respect shall be without prejudice to any claim the Contractor may have concerning the dispute.

14.08 Nothing in this Article precludes either Party from having a dispute resolved by a court of competent jurisdiction, although no steps shall be taken by either Party to initiate legal proceedings until after the process described in Sections 14.01 through 14.03 has been completed.

## ARTICLE 15 MISCELLANEOUS

### Confidentiality

15.01 The Contractor will treat as confidential and will not, without the prior written consent of the Province, disclose or permit to be disclosed or used, either before or after the expiration or sooner termination of this Agreement, all information supplied to, accessed or obtained by, or which comes to the knowledge of the Contractor or a Subcontractor (whether verbally, electronically or otherwise) as a result of this Agreement except if the disclosure is necessary to enable the Contractor to fulfill its obligations or to

comply with applicable laws or if it is information that is generally known to the public other than as a result of a breach of this Agreement.

**Contractor Status**

15.02 In relation to the performance of your obligations under this Agreement, you are an independent contractor and not our:

(a) employee or partner; or

(b) agent except as may be expressly provided for in this Agreement.

You must not act or purport to act contrary to this section.

15.03 The Contractor shall accept instructions from the Province, but the Contractor is not subject to the control of the Province in respect of the manner in which instructions are carried out.

15.04 The Contractor shall not purport to commit the Province to the payment of any money to any person.

15.05 The Contractor shall ensure all personnel hired by the Contractor to perform the Work are at all times employees of the Contractor and not of the Province. The Contractor is solely responsible for arranging reliefs and substitutions, pay, supervision, discipline, employment insurance, leave and all other matters arising out of the relationship of employer and employee.

**Notices**

15.06 Any notice or document required to be given under this Agreement shall be conclusively deemed to be validly given or delivered to and received by the Parties at the work site or at the address, facsimile, or email address specified on the first page of this Agreement (or at such other address as either Party may from time to time designate by notice in writing to the other):

(a) if hand delivered to the Party or the specified Party representative, on the date of that personal delivery;

(b) if prepaid post and if mailed during any period when normal postal services prevail, on the fifth business day after its mailing;

(c) if delivered by courier service, on the fifth business day after collection by the courier service;

(d) if sent by facsimile or electronic transmission, on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a Work Day, in which case it will be deemed to be received on the next following Work Day.

**Non-Waiver**

15.07 A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving Party and is not a waiver of any other term or breach.

**Contractor-Furnished Facilities**

15.08 Except where specified otherwise in the Contract Documents, the Contractor shall undertake all Work and furnish at its cost all labour, equipment, supervision, transportation, supplies and incidentals necessary to perform the Work.

**Unsuitable Workers**

15.09 The Contractor must provide a sufficient number of persons to perform the Work and shall ensure all persons are fully instructed and supervised, legally entitled to work in Canada, competent, English literate, efficient, qualified by education, adequately trained, and experienced to carry out the tasks to which each is assigned.

15.10 The Contractor shall, upon request of the Ministry Representative, remove any person it employs for purposes of the Agreement who, in the reasonable opinion of the Province, is incompetent or has conducted himself or herself improperly, and the Contractor shall not permit a person who has been so removed to perform any further Work.

**Survival of Terms**

15.11 All terms of this Agreement in favour of the Province and all rights and remedies of the Province, either at law or in equity, survive the expiry or sooner termination of this Agreement subject to any applicable limitation period prescribed by law.

**Material and Intellectual Property**

15.12 If the Contractor receives a request for access to any of the Material from a person other than the Province, and this Agreement does not require or authorize the Contractor to provide that access, the Contractor must promptly advise the person to make the request to the Province.

15.13 The Province exclusively owns all property rights in the Material that are not intellectual property rights. Any equipment property the Province may provide to the Contractor or a Subcontractor is the Province's exclusive property. The Contractor must deliver any Material or equipment property to us immediately following expiration of this Agreement, or sooner upon our request, in the same condition it was supplied to the Contractor, excepting always loss or damage attributable to reasonable wear or tear.

15.14 The Province exclusively owns all intellectual property rights, including copyright in:

(a) Received Material the Contractor receives from the Province, and

(b) Produced Material, other than any Incorporated Material.

Upon the Province's request, the Contractor must deliver to the Province documents satisfactory to the Province that irrevocably waives in the Province's favour any moral rights that the Contractor (or its employees) or a Subcontractor (or its employees) may have in the Produced Material and confirm the vesting in the Province of the copyright in the Produced Material, other than any Incorporated Material,

15.15 Upon any Incorporated Material being embedded or incorporated in the Produced Material and to the extent that it remains so embedded or incorporated, you grant the Province:

(a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to exercise, in respect of that Incorporated Material, the rights set out in the *Copyright Act* (Canada), including the right to use, reproduce, modify, publish and distribute that Incorporated Material; and

(b) the right to sublicense or assign to third-parties any or all of the rights granted to the Province under section 15.15(a).

**Conflict of Interest**

15.16 The Contractor shall not perform any service to any other person, firm or corporation in circumstances which, in the reasonable opinion of the Province, could give rise to a conflict of interest between the Contractor's obligations to that person and the Contractor's obligation under this Agreement.

**Site Clean Up**

15.17 The Contractor shall maintain the Occupied Areas free from any accumulations of waste products or debris, other than that caused by the Province or other contractors.

15.18 Upon the Contractor vacating any Occupied Area, the Ministry Representative shall inspect the area to determine, at his or her sole discretion, whether or not the area was left in an acceptable condition.

15.19 If the Ministry Representative determines the Contractor left the Occupied Area in an unacceptable condition, the Province may repair the area and charge the entire cost of the repairs to the Contractor.

**Camping and Parking**

15.20 Use of Provincial sites by the Contractor or the Contractor's employees or agents for the purposes of lodgings, camping or trailer parking in connection with Work under this Agreement, is permitted only with the prior written approval of:

(a) on recreational sites, a representative of the Ministry of Forests, Lands and Natural Resource Operations, Recreation Sites and Trails Branch;

(b) on other Provincial Crown forest land including roads and landings, the Ministry Representative appointed pursuant to Section 5.01 of this Agreement;

Such use, if approved, shall be at the Contractor's own expense, if any. The approval may be revised or revoked at any time by the Province.

**Powers Cumulative**

15.21 The powers set out in the Contract Documents for the Province to enforce the Contractor's compliance with this Agreement may be exercised separately, concurrently or cumulatively.

**Agreement Execution**

15.22 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of, each party and that executed copy being delivered to the other party by a method provided for in Section 15.06 or any other method agreed to by the parties.

**Non-transferable**

15.23 The Contractor must not assign any of its rights or obligations under this Agreement without the Province's prior written consent. Upon providing written notice to the Contractor, the Province may assign to any person any of the Province's rights under this Agreement and may assign to any "government corporation", as defined in the Financial Administration Act, any of the Province's obligations under this Agreement.

**Representations and Warranties**

15.24 As at the date this Agreement is executed and delivered by, or on behalf of, the Parties, the Contractor represents and warrants, except to the extent it has previously disclosed otherwise in writing to the Province,:

(a) all information, statements, documents and reports furnished or submitted by it to the Province in connection with this Agreement (including as part of any competitive process resulting in this Agreement being entered into) are in all material respects true and correct; and

(b) if the Contractor is not an individual:

i) it has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on its behalf, and

ii) this Agreement has been legally and properly executed by the Contractor, or on its behalf, and is legally binding upon and enforceable against the Contractor in accordance with its terms.

15.25 The Parties hereto have duly executed this Agreement.

| | |
|---|---|
| **SIGNED AND DELIVERED** on behalf of the Province by an authorized representative of the Province | **SIGNED AND DELIVERED** by or on behalf of the Contractor (or by an authorized signatory of the Contractor if a corporation) |
| (Authorized Ministry /Expense Authority)<br>Printed Name | (Contractor or Authorized Signatory)<br>Printed Name |
| Dated this _____ day of _____, 20___ | Dated this _____ day of _____, 20___ |

Natural Resource Sector

# Operational Services Contract

## OPERATIONAL SERVICES CONTRACT

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***( Note to Contract Manager**: with this section highlighted, press PF9, select "Update Page Numbers Only" and okay.)*

Ministry of Forests

# Schedule A – Services

for

**2022 Western Redcedar Series A2 Research Trial Measurement and Maintenance**

File: 1070-30/OP23FHQ156

Attachment to the Agreement with TBD 2022 Western Redcedar Series A2 Research Trial Maintenance and Measurements.

## 1. THE SERVICES

### *1.01 General Requirements*

**Submitting Project Records**

**NOTE:** The Contractor shall provide completed, accurate, electronic data files to the Ministry Representative on or before completion of the project, but no later than the contract completion date of March 15th, 2023. Completed electronic data files must be in Excel format with data on one tab and metadata (as required – see below) on the second tab. Each site will have its own Excel file.

Any non-electronic data, field notes, access maps, Ministry equipment, access keys, or supplies must be either sent by mail or delivered in person to the Ministry Representative at Cowichan Lake Research Station within seven (7) working days after the contract completion date.

**Data Handling Procedures**

a) Data files containing tree identification (site, row, column, rep, set and labelled identity number/tree #), as well as previous measurements for comparison with current measurements will be supplied by the Ministry Representative;
b) All data shall be entered into an electronic field data recorder at the time of measurement and if needed transferred to Excel file when project data is submitted;
c) Excessive growth or shrinking measurements require comments;
d) The Contractor shall be responsible for ensuring that collected data is kept secure during the course of the Contract; no data analysis is required;
e) A telephone orientation meeting will be provided by the Ministry Representative prior to commencement of Project Work as is deemed necessary;
f) **Note** A first site cedar leaf blight and/or frost assessment calibration will be done with Ministry Representative as deemed necessary

Site visit reports, maps, KMZs, and photos can be found at the following website:
www.for.gov.bc.ca - /ftp/HTI/external/!publish/Attachments_Cw_Yc_Contractors/SeriesA2_NorthMain_BigTree600/

Ministry Representative- **Rose Schmidt**
Research Technician
Western Redcedar (Coastal) and Yellow Cypress Breeding Programs
Forest Genetics, Forest Improvement and Research Management Branch
British Columbia Ministry of Forests, Lands, Natural Resource Operations and Rural Development
Cowichan Lake Research Station
Rose.Schmidt@gov.bc.ca

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1.02 The Contractor shall provide Services to the following sites:

(a) Bigtree 600, 10 year measurement. Near Sayward. 3840 total positions with 3,556 living trees at last measurement; this is the second measurement

(b) North Main, 10 year measurement. Located off of North Main FSR, near Jordan River. 3,856 positions total with 3,385 living trees at last measurement; this is the second measurement

1.03 The Contractor shall provide the Services according to the following table, with details to each service following:

| General Site Information | | | Required services 2022 | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Name** | **Year_Est** | **Trial Spots** | **Ht22** | **CLB22 assessment** | **Frost22 assessment** | **Brushing** | **Comment codes** | **Site visit report** |
| Bigtree600 | 2013 | 3840 | Yes | Yes | Yes | No | Yes | Yes |
| NorthMain | 2013 | 3856 | Yes | Yes | No | Yes | Yes | Yes |

(a) Ht22. Measure tree height. Measure height at mid-slope to the nearest cm. If leader "droops", or tree is bent or leaning, straighten and measure total length. Height measurements will be checked and must be within 5cm or 5%, whichever is greater. Tree heights average between 4 and 8m, requiring a hypsometer for measurements

(b) CLB22. Assess Cedar Leaf Blight (CLB). Cedar leaf blight assessment as follows

0 = Little to no cedar leaf blight < 5% of foliage

1 = Noticeable, but not affecting tree. 5% – 25% of foliage

2 = Evidence of CLB affecting tree, but mostly on older growth 26% - 50% of foliage

3 = Significant amounts of foliage missing and damage to new growth 51% - 75% of foliage

4 = Whole tree affected by CLB, very little healthy foliage, likely much missing foliage. 76-100% of foliage

(c) Frost22 Assessment: Assess frost damage as follows:

0 = No cracks on stem

1 = Cracks in stem are present but tree's branches are alive/OK

2 = Cracks in stem with branches impacted/dying

(d) Brushing at North Main must be done as follows:

- Ensure trial trees are not damage

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- Remove all ingress (conifers and broadleaves) within 3m of a trial tree. Ingress must be pulled out or cut below lowest green with stump height less than 15cm.

- Knock down herbaceous species where trial trees are overgrown.

- Ingress over 2m must be bucked. All brush must be on the ground, not left hanging.

(e) Comment codes. Assess health concerns, damage or stem form abnormalities using the following comment codes. These codes will be reviewed with the successful bidder prior to commencing contract. Data must be submitted with codes in either Com# or ComT format.

| Com# | ComT | Description |
|---|---|---|
| 1 | ms | Multistem - more than one stem from below DBH |
| 2 | x | Tree is dead. No measurements or assessments taken. |
| 3 | m | Multitop - more than 1 leader; multiple stem form above DBH |
| 4 | ln | Lean - tree is visibly leaning; not growing upright |
| 5 | cr | Crook - tree has significant crook or crooks |
| 6 | sw | Sweep - tree shows significant sweep at base |
| 7 | sn | Snow pressed/pressed - tree form flattened by snow |
| 8 | br | Browsed - ungulate browse (code used if browse not scored separately) |
| 9 | s | Sick - tree sick or poor looking |
| 10 | sc | Scar |
| 11 | ok | Unusual value (e.g., height shrunk or previously missed) checked and determined to be correct |
| 12 | bt | Brokentop - top of tree is broken. Ht measured only to break point |
| 13 | dt | Deadtop - top of tree is dead. Ht measured only to top of living tissue (may explain shrinking height) |
| 14 | sup | Suppressed by vegetation (eg overgrown by a clump of hemlock) |
| 15 | x## | If you know why it died, please let us know |
| 16 | dn | Down - tree has been knocked down |
| 17 | rr | Root rot - evidence of root rot |
| 18 | bd | Brushed - tree was damaged by brushing |
| 19 | pm | Poor microsite (eg planted in low wet ground, or chunky duff) |
| 20 | hs | Heat stress, tree shows signs of heat stress (burnt tips of branches and or leader). |
| | * | Please include any remarks that do not fit into above comment codes in the remarks column |
| | ** | Multiple codes<br>Where a tree exhibits more than the three columns of comments, separate by "_"<br>For example: cr_sw means a tree had both crooked form and sweep at stem |

(f) Site visit report: Completion of the site visit report template as provided by Ministry Representative upon completion of work at each trial site.

SECURED

1.04 Outcomes:

(a) Through the delivery of the Services the Province wishes to realize the following outcomes and, without limiting the obligation of the Contractor to comply with other provisions of this Part, the Contractor must use commercially reasonable efforts to achieve them:

i) Meet the BC Forest Genetics Council and Ministry of Forests, Lands, Natural Resource Operations and Rural Development forest stewardship goals for the western redcedar breeding program.

The parties acknowledge that the Contractor does not warrant that these outcomes will be achieved

**2. KEY PERSONNEL**

2.01 The Services shall be performed by the following "Key Personnel":

(a) TBD

and there shall be no substitution for the person(s) listed above without the prior consent of the Province.

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**Ministry of Forests**

# Schedule B – Contract Payment

2022 Wester Redcedar Series A2 Research Trial Maintenance and Measurement

File: 1070-30/OP23FHQ156

Attachment to the Agreement with TBD for 2022 Western Redcedar A2 Research Trial Maintenance and Measurement.

## FEES

1.01 Your fees (**exclusive of any applicable taxes described in this Agreement that is a taxable transaction chargeable to the Province**) will be based on an all-inclusive lump sum price of $TBD for total satisfactory completion of the Services in accordance with this Agreement.

1.02 In no event will fees payable to you, in accordance with this Schedule exceed in total $TBD.

## 1. Expenses

2.01 We will not pay any expenses to you for the completion of the Services.

## 2. Holdback from Payment

3.01 As per the Agreement, the Province does not intend to retain a holdback from contract payments but the Province does retain the right to withhold from any payments due to you under this Agreement an amount sufficient to indemnify us against any third party claims.

## 3. Submission of Statement of Account

5.01 In order to obtain payment for any fees and, where applicable, expenses under the Agreement, you must submit to us a written Statement of Account in a form satisfactory to us on total satisfactory completion of the Services.

5.02 The Statement of Account(s) must show the following:

(a) your legal name, address, the date and the period of time which the invoice applies ("Billing Period"), the contract number, and a statement number for identification;

(b) the calculation of all fees claimed under this Agreement for the Billing Period, with, dates and name(s) of persons providing the Services, a description of specific services/works completed during the Billing Period, including a declaration that the Services have been completed;

(c) and where expenses are to be paid under this Agreement, a chronological listing, in reasonable detail and with dates, of all expenses claimed by you under this Agreement for the Billing Period with receipts or copies of receipts, where applicable, attached;

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# SCHEDULE B

## *CONTRACT PAYMENT*

(d) if you are claiming reimbursement of any GST or other applicable taxes paid or payable by you in relation to those expenses, a description of any credits, rebates, refunds, or remissions you are entitled to from the relevant taxation authorities in relation to those taxes;

(e) the calculation of any applicable taxes payable by us in relation to the Services provided under this Agreement and for the Billing Period as a separate line item (excluding taxes paid directly by you to a supplier and which were included in the bid price);

(f) any other billing information reasonably requested by us.

5.03 Within thirty days of our receipt of your invoice, or the date we authorize payment, whichever is the latter, we must pay you fees and, where applicable, expenses for those Services we determined were satisfactorily received during the Billing Period.

5.04 Invoices are to be submitted to:

Rose Schmidt via email: Rose.Schmidt@gov.bc.ca

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**Ministry of Forests**

# Schedule C
# Safety Conditions
## 2022 Western Redcedar Series A2 Research Trial Maintenance and Measurement

File: 1070-30/OP23FHQ156

Attachment to the Agreement with TBD for 2022 Western Redcedar Series A2 Research Trial Maintenance and Measurement

Terms such as “employer”, “supervisor”, “multiple employer workplace”, “owner”, “prime contractor”, and “worker” have the meanings given those terms under the *Workers’ Compensation Act* (*WC Act*) and its regulation.

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## ARTICLE 1 OTHER SAFETY CONSIDERATIONS

**Notice of Project**

1.01 Where a Notice of Project is required as set out in the *WC Act* and its regulations, the Contractor, unless otherwise notified in writing by the Province or the Prime Contractor, must submit the Notice of Project in a format acceptable to WorkSafe BC.

1.02 Where the Contractor submits the Notice of Project, a copy must be provided to the Province. Where the Province or Prime Contractor will submit the Notice of Project, the Contractor must provide, upon request, all information necessary to support the Notice of Project and the Contractor will be provided with a copy of the Notice of Project.

1.03 The Contractor will commence and conduct all operations consistently with the Notice of Project.

**Reporting**

1.04 The Contractor must immediately submit written notice to the Province on all matters reported to WorkSafe BC by the Contractor or the Contractor’s Subcontractors. The written notice must include all information necessary to allow the Province to adequately collect and address safety or other related incidences, and will be anonymized so as not to include personal information about an identifiable individual including their name, address, telephone number, age, sex, race, religion, sexual orientation, disability, fingerprints, or blood type, health care, educational, financial or employment history and anyone else's opinion about the individual. This scope does not include business contact information (e.g., name, title, address, telephone or fax numbers or email address used for business contact purposes).

1.05 Where a Party brings safety concerns to the attention of the other Party, the Party will give full consideration to the issues raised. Where the Contractor receives safety concerns from the Province, the Contractor will provide the Province with a considered response, including any information necessary to demonstrate that the Contractor is in compliance with *WC Act* and its regulations.

1.06 Upon the Province’s request, the Contractor or any of its Subcontractors must provide evidence to the satisfaction of the Province that the Contractor or its Subcontractor(s) has:

(a) an effective business process in place to:

i) remedy any workplace conditions that are hazardous to the health or safety of the employer's workers including safe work practices and procedures;

ii) ensure that the employer's workers:

A. are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work;

B. are made aware of their rights and duties under the *WC Act* and its regulations.

(b) established occupational health and safety policies and programs in accordance with the regulations, which includes:

i) first aid assessment and provision services and equipment;

ii) an employee monitoring system that will periodically ensure the well being of all workers working alone or in isolation;

iii) accident injury reporting and investigation;

iv) an emergency response plan and employee understanding of said plan that will ensure adequate and timely response to any emergency that can be reasonably expected to occur in relation to the Works or Services being performed;

v) evidence of training and any required certifications required under *WC Act* or its regulations;

vi) evidence of a maintenance program for all equipment and vehicles owned or operated by the Contractor or its Subcontractors commensurate with the risks associated with such equipment and vehicles;

vii) provision for the regular inspection of premises, work methods and work practices; and

viii) provision by the employer for the instruction and supervision of workers including orientation of workers in the safe performance of their work.

(c) provided and maintained in good condition protective equipment, devices, and clothing as required by the *Occupational Health and Safety Regulation* and ensure that these are used by the employer's workers;

(d) provided the employer's workers all information, instruction, training, and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace;

(e) a copy of the *WC Act* and its regulations readily available for review by the employer's workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review.

**ARTICLE 2 PRIME CONTRACTOR PROVISIONS**

2.01 The Contractor acknowledges, agrees, and warrants that:

(a) The Contractor will be considered to be the Prime Contractor and shall enter into a Prime Contractor Agreement with the Province and shall carry out the duties described therein, where any of the following conditions exist:

(i) the Province gave notice that the Successful Bidder would be the Prime Contractor;

(ii) the Province designates the Contractor to be the Prime Contractor at any time during the performance of the Work or Services;

(iii) the Contractor creates a multiple employer workplace through subcontracting any of the Work or Service at any time.

2.02 Where the Contractor is being considered as the Prime Contractor as per clause 2.01, the following is applicable:

(a) upon request, the Contractor must satisfy the Province that the Contractor has the experience and capacity to address Prime Contractor responsibilities in accordance with the Agreement and the WC Act and its regulations; and

(b) the Province provides written acknowledgement of the Contractor’s experience and capacity to function as Prime Contractor; and

(c) where the Contractor creates a multiple employer workplace, the Contractor will provide or acquire at their own expense all resources necessary to discharge the Prime Contractor responsibilities; or

(d) the Province may, in its sole discretion, give consideration for compensation related to any additional costs where, after commencement of the work, the Province creates a multiple employer workplace and designates the Contractor to be the Prime Contractor.

2.03 The Province may from time to time give prior written notice that a person other than the Contractor is designated as the Prime Contractor. The Contractor agrees that on receiving such written notice, the Contractor will cooperate with the Prime Contractor and shall coordinate health and safety activities and ensure compliance with the Prime Contractor's safety program.

2.04 The Contractor shall, upon becoming aware of any apparent deficiencies in the Prime Contractor's work which would affect the Work or Services, shall report such deficiencies in writing to the Ministry Representative.

**ARTICLE 3 HAND FALLING**

3.01 Where hand falling activity will be taking place under the Agreement and without limiting any other provision of the Agreement or the Contract Documents, the Contractor shall comply with the following safety requirements.

3.02 Hand falling means the falling of trees by any means with at least one person at or near the base of the tree during falling and not inside a protected cab, where the trees are greater than 6 inches diameter at 12 inch stump height, or as may be determined by WorkSafe BC.

3.03 The Contractor must ensure that:

(a) all hand falling is undertaken by fallers certified by BC Forest Safety Council (BCFSC) or ENFORM and are qualified for the slope and timber conditions being addressed;

(b) a qualified Falling Supervisor satisfactory to the Province is designated for all forestry related hand falling activities and for all non-forestry related hand falling activities taking place.

3.04 A Falling Supervisor will be deemed qualified where:

(a) it has satisfactorily completed the BCFSC Falling Supervisor Training course; or

(b) it is BCFSC Falling Supervisor Certified; or

(c) in the Province's sole opinion, evidence of qualifications/certifications and proficiency for the timber and slope for the Work Area and competency to discharge the expectations of a falling supervisor is satisfactory.

3.05 No hand falling operations will commence without the Province's prior satisfaction of acceptable proof of qualification/certification and of the Falling Supervisor's ability and competence.

3.06 The Contractor must, at least five Work Days prior to commencement of any hand falling operations, notify the Ministry Representative of the name of the designated Falling Supervisor or substitution thereof.

3.07 A Falling Plan must be developed with full engagement by the Falling Supervisor in collaboration with Hand Falling personnel and others responsible to discharge aspects of the falling plan.

3.08 The Contractor must ensure:

(a) no work will commence prior to all considerations of the Falling Plan being implemented as established by the designated Falling Supervisor;

(b) all hand falling operations performed occur and are supported in accordance with the Falling Plan; and

(c) upon request of the Ministry representative, provide any documents and evidence to verify adherence to the Falling Plan.

3.09 If the Contractor engages a subcontractor as its Falling Supervisor, the Contractor shall not be relieved from the subcontracted obligations or any obligations under this Agreement.

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**Natural Resource Ministries**

# Schedule D – Insurance

## 2022 Wester Redcedar Series A2 Research Trial Maintenance and Measurement

File: 1070-30/OP23FHQ156

Attachment to the Agreement with TBD for 2022 Western Redcedar Series A2 Research Trial Maintenance and Measurements.

1. Without restricting the generality of the indemnification provisions contained in the Agreement, the Contractor shall, at its own expense, provide and maintain, during the term of this Agreement, the following insurance coverage as fully specified in Paragraph
2. 12 and any additional insurance which it is required by law to carry or which it considers necessary to cover risks not otherwise covered by insurance specified in this Schedule in its sole discretion.
3. All such insurance described herein must be primary and not require the sharing of any loss by any insurer of the Province.
4. Where a warranty period is required by the Province under this Agreement, the Contractor shall ensure that Products and Completed Operations coverage, as applicable, shall be in force for the duration of the warranty period.
5. Insurance shall be placed with Insurers licensed to underwrite such insurance in Canada and in forms and amounts acceptable to the Province. All such insurance shall be at no expense to the Province. If the Province requires additional Insurance Coverage to be obtained by the Contractor, the additional expense of such additional insurance shall be borne by the Province.
6. Notwithstanding Paragraph 6, the Contractor shall, prior to the commencement of services and before any payments are made under this Agreement, file with the Ministry Representative evidence of insurance coverage in the form of a completed Province of British Columbia Certificate of Insurance (Form FIN 173). When requested by the Province, the Contractor shall provide certified copies of required insurance policies.
7. ICBC's Confirmation of Automobile Insurance Coverage (Form APV 47) or Confirmation of Unlicensed Vehicle Coverage (Form APV 45) may be used when applicable as evidence of Automobile Liability Insurance for vehicles or off-road vehicles used during the performance of the services.
8. The insurance policies, except for ICBC Automobile Liability Insurance, shall provide that the insurance shall not be cancelled or materially changed so as to affect the coverage provided under the Agreement, without the Insurer giving at least thirty (30) days prior written notice to the Province. Material change with respect to Professional Liability Insurance does not require the Insurer to give thirty (30) days prior written notice to the Province.
9. Failure to provide the required insurance documentation shall result in termination of this Agreement.
10. If the insurance policies expire prior to the end of the Agreement Term, the Contractor shall provide the ministry evidence of renewal or new policy meeting the requirements of the expired insurance in the form of a completed Province of British Columbia Certificate of Insurance and ICBC's Form APV 47 or APV45, if applicable, at least ten (10) days prior to the expiry date of the policies listed in this Schedule.
11. The Contractor shall ensure that all its subcontractors performing Services under this Agreement carry insurance in the form and limits specified in Paragraph 12.
12. Unless stated otherwise under any subsection of Paragraph 12, where the Province is to be added as an Additional Insured or otherwise to be identified on the policy, it shall be written as follows: "Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of

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Forests, Lands, Natural Resource Operations and Rural Development and any of its employees, servants or agents".

13. The following forms of insurance and specified minimum limits are required:

a) **Commercial General Liability**

Commercial General Liability insurance in an amount not less than $2 million inclusive per occurrence against bodily injury, personal injury, and property damage and including liability assumed under the Agreement.

Such policy(s) of insurance shall include, but not be limited to:

i) Products and Completed Operations Liability;
ii) Owner's and Contractor's Protective Liability;
iii) Contingent Employer's Liability;
iv) Blanket Written Contractual Liability;
v) Personal Injury Liability;
vi) Non-Owned Automobile Liability;
vii) Cross Liability;
viii) Employees as Additional Insureds;
ix) Broad Form Property Damage;

and where such further risk exists:

x) Forest Fire Fighting Expense Coverage in the amount of:
- ☐ $1 million
- ☐ $500,000
- ☒ Not applicable

xi) Sudden and Accidental Pollution endorsement on the Commercial General liability insurance policy with a limit of liability not less than the amount indicated below per occurrence insuring against bodily injury, property damage and clean-up expenses arising from new pollution conditions arising from the Contractor's performance of the Agreement, or if such endorsement is unavailable on the Commercial General Liability insurance policy, a Sudden and Accidental Pollution insurance policy insuring against same and with same limits of liability indicated below, such policy shall not contain an "insured vs insured" exclusion and this insurance shall include the Province as an additional insured as stated below:
- ☐ $250,000
- ☐ $500,000
- ☐ $1 million
- ☒ Not applicable

As per Paragraph 11, the Province is to be added as an "Additional Insured" under this policy.

b) **Automobile Liability**

Where any licensed vehicle or off-road vehicle is owned, leased, rented, or used in the performance of this Agreement, Third Party Automobile Liability insurance in an amount not less than $2 million inclusive per occurrence must be provided for any such vehicle.

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