

RFP2011-013

Information Technology (IT) Security Audit

APPENDIX "A" STANDARD FORM CONTRACT



CONSULTING CONTRACT NO. _____

This CONSULTING AGREEMENT CONTRACT ("Contract") is dated for reference the day of, 200

BETWEEN

YUKON ENERGY CORPORATION of
2 Miles Canyon Road
P.O. Box 5920
Whitehorse YT Y1A6S7
Phone: 867 393 5300 Fax: 867 393 5301

("The Corporation")

AND

NAME of
Address

Phone: Fax:

("Consultant")

WHEREAS:

The Corporation wishes to engage the Services of the Consultant on the terms and conditions and understandings hereinafter set forth.

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL COVENANTS, CONTRACTS, REPRESENTATIONS AND WARRANTIES AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE CORPORATION AND CONSULTANT AGREE AS FOLLOWS:

1. TERMS OF ENGAGEMENT

- 1.1 The Corporation agrees to retain the Consultant commencing, 2008 and ending, 2008 which date may be extended by mutual consent by the parties.
- 1.2 In consideration for the remuneration hereinafter set out, the Consultant agrees to make available Services as described in Schedule B, Scope of Work, enter detailed Services here ("Services") to the Corporation, provide advice with respect to the provision of Services as required, and other Services as may be requested by the Corporation.

- 1.3 The Services provided by the Consultant under the terms of this Contract will be authorized by the Corporation. The Consultant will not, without the prior written authorization from the Corporation, cause the Corporation to commit any funds or to incur any liability.
- 1.4 The Consultant agrees to act in the best interest of the Corporation and will devote time, effort, skill, attention and energies to carrying out the duties and responsibilities. As part of those responsibilities, the Consultant will provide any and all information requested in a timely fashion and the Consultant will conduct its business in a professional and reputable manner. Failure to comply with these requirements may be cause for termination of this Contract as provided for herein.

2. STATUS OF THE CONSULTANT

- 2.1 The Consultant is an independent Consultant and is not the servant, employee or agent of the Corporation. The Consultant will pay any and all taxes (including GST), Canada Pension Plan premiums or contributions, and any other statutory payments or assessments payable by virtue of the Consultant's engagement hereunder. The Consultant agrees to indemnify and hold harmless the Corporation from any and all claims or demands for taxes, premiums or other statutory payments or assessments that may be made against the Corporation on behalf of the Consultant.
- 2.2 The Consultant may provide the Services at the Consultant's place of business or at the Corporation's place of business in Whitehorse, Yukon or at such other place or places as may be required from time to time by the Corporation.

3. GENERAL PROVISIONS

- 3.1 Unless otherwise specified, this Contract shall be governed by the laws of the Yukon and the Consultant will hereby attorn to the jurisdiction of the Yukon Courts.
- 3.2 Time shall be deemed to be of the essence of this Contract.
- 3.3 The Corporation and the Consultant respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Contract to the partners, successors, assigns and legal representatives of all such other parties with respect to all terms and conditions of this Contract.
- 3.4 Neither party to this Contract may assign any of its rights or obligations under this Contract without the prior written consent of the other party, which consent may be unreasonably withheld, except that either party may assign this Contract or any of its rights or obligations to any of its subsidiaries and/or affiliated companies without consent of the other party.
- 3.5 This Contract and any Schedules hereto, constitute the entire Contract between the Corporation and the Consultant and no other representations or Contracts, oral or otherwise, exist between the parties with respect to the subject matter of this Contract unless referred to in the Contract.
- 3.6 This Contract may be amended only by written instrument signed by both the Corporation and the Consultant.
- 3.7 The Consultant has no authority to make any statements, representations or commitments of any kind or take any action that will bind the Corporation.

- 3.8 No condoning, excusing or waiver by any party of any default, breach of non-observance by any other party at any time or times in respect of any covenant or condition contained in this Contract will operate as a waiver of that party's rights in respect of any continuing or subsequent default, breach of non-observance, or so as to defeat or affect in any way the rights of that party in respect of any such continuing or subsequent defaults, breach of non-observance, and no waiver will be inferred from or implied by anything done or omitted to be done by the party having those rights.
- 3.9 If any provision of this Contract or the application thereof to any person or circumstance to any extent is invalid or unenforceable, the remainder of this Contract or the application of that provision to any other person or circumstance other than those in respect of which it is held invalid or unenforceable will not be affected thereby and each provision of this Contract is separately valid and enforceable to the fullest extent permitted by law.

4. FEES AND REIMBURSABLE EXPENSES

- 4.1 The Corporation agrees to pay the Consultant for Services performed in accordance with the terms of this Contract, and in accordance with the rates set out in Schedule "A" attached to this Contract. The Consultant will accept such payment as full payment and full reimbursement for the Services performed under this Contract.
- 4.2 If the Corporation fails to make a payment to the Consultant within thirty (30) days from the date of the receipt and acceptance of the fully documented invoice under the terms of this Contract, interest shall be paid at the current prime rate of the Bank of Canada on such unpaid accounts provided such accounts are greater than one hundred (100) dollars. Such interest will be calculated and added to any unpaid amounts. The Corporation will, with reasonable promptness, notify the Consultant of any rejection of an invoice.
- 4.3 The Consultant agrees that any and all engineering changes that are deemed minor by both parties and necessary in the completion of the Services covered under the Contract will be included within the price and rates quoted in the Contract, unless otherwise mutually agreed by the Change Order.
- 4.4 If the Corporation considers it appropriate, the Consultant may be required to submit monthly progress/milestone reports with payment invoices.
- 4.5 The Corporation may require that invoices are allocated into multiple cost codes, which will be provided to the Consultant
- 4.6 Changes to the Services shall only be made on receipt of written instructions from the Corporation. Any resulting adjustment to the agreed price shall be agreed upon by the Corporation and the Consultant and will represent the reasonable and proper costs incurred by or savings accruing to the Consultant using the rates submitted in the proposal.

5. TERMINATION, SUSPENSION OR ABANDONMENT

- 5.1 The Corporation, at its sole discretion, may by providing written notice to the Consultant suspend the Services in whole or part or suspend this Contract. Upon receipt of such notice, the Consultant shall immediately discontinue its work on the suspended Services and continue to perform all other Services that have not been suspended. The Corporation may, by written notice, require the Consultant to resume some or all of the suspended Services in accordance with the notice.

- 5.2 The Corporation, at its sole discretion, may by providing a minimum of thirty (30) days written notice to the Consultant terminate all or any part of this Contract or the Service. Such notice may specify the scope of the termination and will specify the effective date of such termination. Upon receipt of such notice, the Consultant shall immediately discontinue the Services in accordance with the notice.
- 5.3 If the Services or this Contract are suspended or terminated in whole or in part pursuant to this section, the Consultant shall take all steps necessary to minimize the costs associated with such termination or suspension.
- 5.4 In the event of termination of this Contract, the Consultant shall be compensated within thirty (30) days of the date that an invoice is rendered for all Services performed to the date of termination, together with reimbursable expenses then due to the Consultant provided such Services and expenses have been properly documented and justified to the Corporation's satisfaction.

6. INDEMNIFICATION

- 6.1 The Consultant will indemnify and save harmless the Corporation, its successors, assigns, directors, officers, agents, employees, and authorized representatives and each of them from and against any and all claims, demands, losses, costs, damages, actions, suits, or proceedings whether directly or indirectly caused or incurred, related to or occasioned by, arising or resulting from:
- a. any error, omission, or negligent act of the Consultant, any sub-Consultant, or their respective servants, agents, employees or authorized representatives in the performance of this Contract; or
 - b. a breach of this Contract by the Consultant, any sub-Consultant, or their respective servants, agents, employees or authorized representatives

except that the Consultant shall not be liable for any claims, demands, losses, costs, damages, actions, suits or proceedings arising out of any error, omission or negligent act of the Corporation, its successors, assigns, agents, employees or authorized representatives.

- 6.2 Notwithstanding anything to the contrary contained in this Contract, the liability of the Consultant arising under this Contract for any claims, demands, losses, costs, damages, actions, suits or proceedings shall be limited to the sum of:
- a. in cases where the Consultant's liability is covered by a policy of insurance required by this Contract, the amount of the applicable insurance limit as identified in clauses 7.a, 7.b, 7.c. and 7.d up to the identified maximums;
 - b. in all other cases, the aggregate amount of all payments and compensation paid by the Corporation to the Consultant under this Contract.
- 6.3 The Corporation shall indemnify and save harmless the Consultant, its successors, assigns, agents, employees and authorized representatives and each of them from and against any and all claims, demands, losses, costs, damages, actions, suits or proceedings whether directly or indirectly caused or incurred, related to or occasioned by, arising or resulting from:

- a. any error, omission or negligent act of the Corporation or its servants, agents and employees in the performance of this Contract; or
 - b. a breach of this Contract by the Corporation or its servants, agents and employees
- except that the Corporation shall not be liable for any claims, demands, losses, costs, damages, actions, suits or proceedings arising out of any error, omission or negligent act of the Consultant or any Sub-consultant and their respective successors, assigns, agents, employees and authorized representatives.
- 6.4 The indemnity provided by the Consultant in this <Section> will survive the expiration or termination of this Contract for a period of two (2) years.
- 6.5 Notwithstanding anything to the contrary contained in this Contract, neither party will be liable to the other party under this Contract (including without limitation under any indemnity provision) for any indirect, incidental or consequential damages arising out of this Contract or any breach thereof including without any limitation, loss of use, or loss of profits.
- 6.6 In performing the Services, the Consultant (and Sub-Consultants) will:
- a. at all times exercise the standard of care, skill and diligence normally exercised in the performance of services of a similar nature to those contemplated by this Contract; and
 - b. re-perform any Services that fail to comply with this standard of care if the Corporation gives the Consultant notice of such failure within 12 months of performance of such Services by the Consultant.
- 6.7 The Corporation or any person authorized by the Corporation will have the right, at all reasonable times, to inspect or otherwise review the Services performed, or being performed, and the premises and locations where the Services are being performed. No review or approval by or on behalf of the Corporation will have the effect of relieving the Consultant of its responsibilities and obligations under this Contract. No review or approval by the Corporation will be deemed to be a waiver or release of any rights that the Corporation may have against the Consultant; save to the extent that the Corporation expressly waives such rights or releases the Consultant in writing.

7 INSURANCE

Before commencing the Work, Contractor shall obtain and maintain the following insurance policies during the term of the Contract:

- a. A commercial general liability policy, in an amount for each and every occurrence of \$2 million for each and every occurrence, with a standard form cross liability clause and a broad form property damage endorsement, the latter in an amount equal to the full policy limit. The policy will name Yukon Energy Corporation as an additional insured with respect to liabilities that arise out of Contractor's operations, and shall contain cross liability and severability of interest clauses or equivalent wording;
- b. Automobile insurance covering liability for bodily injury, including death, or property damage to third parties arising out of ownership, use or operation of Contractor owned or leased licensed motor vehicles of \$2 million inclusive;

- c. Property insurance covering loss or damage to tools, property and equipment of Contractor or for which Contractor is legally liable or responsible of an amount equal to the full replacement value of such tools, property and equipment with a waiver of the insurer's rights of subrogation against the Corporation.
- d. A Professional Liability Insurance policy in an amount of \$2 million per claim and in the aggregate, to cover damages because of any error, omission or negligent act in professional services rendered by the Contractor. Coverage will be maintained for at least twenty four (24) months after completion of the Work or earlier termination of the Contract.

Contractor shall within fourteen (14) days following a request by Corporation's Designate, provide a completed Certificate of Insurance evidencing Contractor's compliance with this clause, except that no evidence of automobile insurance is required unless evidence of such insurance is specifically requested.

Contractor shall be solely responsible for determining the appropriate type and amount of insurance that Contractor should have in place from time to time, but must maintain during the term of the Contract at least the amount and type of insurance it is required to maintain under this clause.

Contractor shall be responsible for the full amount of all deductibles of all insurance policies required. Failure to furnish proof of insurance shall be considered a breach of the Contract, allowing the Corporation to obtain such insurance and charge the cost to the Contractor, or to terminate the Contract at the Corporation's absolute discretion.

8. WORKERS' COMPENSATION

8.1 Requirements for Contractors Registered Outside the Yukon

If the Contractor is to perform any work on the Corporation's site including but not limited to delivery, assembly, installation and/or unloading of deliverables, Contractor shall within ten (10) days of the award of a Contract and before commencing work on site, and at any time on the request of the Corporation, provide evidence of certification by the applicable Workers' Compensation Board(s) ("WCB"), including but not limited to:

- an account number and/or certificate from WCB to confirm coverage by the Contractor's and any subcontractor's home province;
- a statement from WCB that the Contractor and any subcontractor's are registered and in good standing in their home province;
- confirmation that all persons performing the Work who are not covered by the Workers Compensation Act are covered under personal optional protection coverage available through WCB.

8.2 Requirements for Contractors Performing Work in the Yukon

If the Contractor is to perform any work on the Corporation's site including but not limited to delivery, assembly, installation and/or unloading of deliverables, Contractor shall within ten (10) days of the award of a Contract and before commencing work on site, and at any time on the

request of the Corporation, provide evidence of certification by the Yukon Workers' Compensation Health and Safety Board ("YWCHSB"), including but not limited to:

- if the Contractor will be performing work on the Corporation's site that does not exceed ten (10) days per year, a statement from the YWCHSB that the Contractor is registered with the YWCHSB;
- if the Contractor will be performing work on the Corporation's site that exceeds ten (10) days per year, a statement and/or certificate from the YWCHSB that the Contractor and all subcontractors are registered and in good standing, and that all workers performing the Work are covered by the Contractor's or subcontractor's workers compensation through the YWCHSB;
- confirmation that all persons performing the Work who are not covered by the YWCHSB are covered under personal optional protection coverage available through YWCHSB.

8.3 Responsibility

The Contractor shall be responsible for the safe performance of all the Work and the safety of all persons engaged in the Work and shall comply with all applicable safety provisions of the applicable Workers' Compensation Board(s) and safety regulations issued by the Corporation for the Work site.

9. COMPLIANCE WITH THE OCCUPATIONAL HEALTH AND SAFETY ACT

- 9.1 The Consultant shall confirm it will comply with all the provisions of the Yukon Occupational Health and Safety Act, regulations and codes, and all amendments thereto, now or hereafter, made there under the said act and shall confirm it will indemnify the Corporation in respect to all matters arising out of or in connection with failure of the Consultant to comply in all respects with applicable provisions of the said act, regulations and codes.

10. CONFIDENTIALITY

- 10.1 In the course of this Contract, the Consultant may acquire confidential information with respect to the work or the Corporation's business operations, including without restriction, costing information, strategic plans and product services. Any information given to or reviewed by the Consultant for the purposes of this Contract shall be considered as confidential and privileged by the Consultant and Sub-consultant(s) and shall include all information relating to the work and any process, technology or system relating thereto, the design, construction, operation, maintenance or any other aspect of the Services or the work or relating to the nature of the Corporation's business and affairs that the Consultant, either directly or indirectly, receives or acquires from the Corporation or from anyone on behalf of the Corporation either in writing or verbally or through observation of the Corporation facilities or rights of way, except information falling into any one of the following categories:

- (a) Information that the Consultant demonstrates was in its possession on a non-confidential basis prior to receipt or acquisition of such information from the Corporation;
- (b) Information that is lawfully in the public domain at the time of receipt by the Consultant of such information from the Corporation;
- (c) Information that upon the Consultant's receipt or acquisition from the Corporation, becomes part of the public domain through no act of the Consultant or of any third party under an

obligation or confidence with respect to such information, but only after such information becomes part of the public domain;

(d) Information that upon the Consultant's receipt or acquisition from the Corporation, is lawfully obtained by the Consultant from a third party, provided that such third party is under no obligation of confidence with respect to such information;

(e) Information that the Corporation is required to disclose pursuant to the *Personal Information Protection and Electronic Documents Act* ("PIPEDA") or other legislation.

10.2 The Consultant shall keep all confidential information in confidence and shall not disclose it to others without the prior written consent of the Corporation and the Consultant shall not use the confidential information except in the performance of the Services.

10.3 The Consultant may disclose the confidential information to those of its employees, Sub-consultant(s) or suppliers and their respective employees to whom disclosure is required for the Consultant to perform the Services provided that the Consultant shall ensure that its employees, Sub-consultant(s) and suppliers keep confidential information in confidence and shall not disclose it to others without prior written consent of the Corporation.

10.4 The Consultant shall not use the Corporation's name, registered or unregistered trademarks or any of the Corporation's slogans or logos in any advertising or promotional materials or publicity releases, and shall not take, permit to be taken or use any photographs of the Corporation facilities without the prior written approval of the Corporation.

10.5 Any documentation relating to the work that is in the custody or under the control of the Corporation is subject to the *Personal Information Protection and Electronic Documents Act* ("PIPEDA"). Except as stated above in this section, and subject to the *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), all information submitted by the Consultant to the Corporation will be considered confidential during the term of this Contract.

11. AUTHORSHIP AND USE OF DOCUMENTS

11.1 Reports, plans, sketches, drawings, graphic representations and specifications as instruments of Service prepared by the Consultant pursuant to this Contract (the "Documents") are and shall belong to the Corporation. The copyright in such Documents shall belong to the Corporation and such copyright shall continue for fifty (50) years from the date of their first publication. The Consultant may retain one copy of such Documents for its records.

11.2 All Engineering drawing and mapping products provided to the corporation as part of this contract (and any modifications to them), shall be provided in **all** of the following formats:

- 1 Hard copy paper;
- 2 pdf format;
- 3 either Microstation (.dgn) or Autocad (.dwg or .dxf) format. These drawings are to be provided on the title blocks provided by the Corporation;
- 4 The original source file format; (where the originating program differs from those noted above in item 3).

All mapping products shall be in the UTM coordinate system, NAD 83 datum, unless otherwise requested. The Consultant shall check and ensure that all formats use versions consistent with those used by the Corporation.

After the Contractor's drawings have been accepted by the Corporation, the Corporation may use any or all of the drawings including but not limited to the design, method of fabrication and arrangement of the Work for its own use in the installation, construction, maintenance, repair, operation and replacement of any or all of the Work, including to complete the Work as permitted under the Contract, or for any other purpose at the Corporation's sole discretion. All drawings prepared by the Contractor will remain the property of the Corporation and the Corporation will retain all copyrights for fifty (50) years. The Contractor may retain one copy of such documents for its records.

Without in any way limiting the foregoing, the Corporation, at its sole discretion, may allow third parties to have access to and use any or all of the drawings, including the design, method of fabrication and arrangement of the Work, for the installation, construction, maintenance, repair, operation and replacement of any or all of the Work for the Corporation, including as part of procurement processes for such installation, construction, maintenance, repair, operation or replacement.

- 11.3 The Corporation may use the Documents for any other purposes and the Corporation and Consultant shall agree on the fees for any Services necessary to properly revise the Documents for such use. If the Corporation and Consultant are unable to reach such an agreement, the Corporation may retain another Consultant for the purpose of revising the Documents for such alteration, addition or deletion, as it deems fit.
- 11.4 The Documents referred to above include Documents prepared by Sub-consultant(s) as well.
- 11.5 The Corporation shall indemnify and save harmless the Consultant and Sub-consultant(s) from and against any costs, damages, actions, suits or proceedings arising out of any modification or revision of the plans, sketches, drawings, graphic representations and specifications made pursuant to this section made by the Corporation other than by the Consultant or the Sub-consultant(s).
- 11.6 Submission or distribution of the Documents to meet official regulatory requirements or for other purposes in connection with the Corporation's requirements in accordance with this Contract will not be construed as publication in disparagement of the Corporation's rights.

12 INTELLECTUAL PROPERTY

- 12.1 All information and data, in any form, prepared by the Consultant pursuant to this Contract, together with all designs or materials capable of intellectual property protection, prepared, developed or created by the Consultant, its employees or agents during the performance of and/or pursuant to this Contract shall automatically become the property of the Corporation unless specifically noted otherwise in this Contract.

13. DISPUTES

- 13.1 Amicable Negotiation. Each party will make bona fide efforts to resolve any disputes arising among them by amicable negotiations and provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations. The parties will use their best efforts to conduct any dispute resolution procedures under this Contract as efficiently and cost effectively as possible. If there is a dispute among the parties under this Contract, a party will provide written notice (the "Dispute Notice") to the other party to the dispute of the nature of the dispute.

- 13.2 Reference to Senior Officials. If a dispute cannot be resolved between the parties within 5 working days after the date of receipt of the Dispute Notice, the parties will attempt to resolve the dispute with the assistance of one senior official from each party to the dispute. The place of discussion will be Whitehorse, Yukon, unless the senior officials otherwise agree. Each party will bear its own costs of the discussion. The results of the discussion will be non-binding and will be reported to the parties forthwith.
- 13.3 Mediation. If a dispute cannot be resolved under above section within 10 working days of receipt of the Dispute Notice, either party may give notice to the other party of a desire to commence mediation and the parties will jointly appoint a mutually acceptable mediator within 5 working days after such notice is given.
- 13.4 Arbitration. If a dispute cannot be resolved under above section within 20 working days of a mediation under above section, either party may, by written notice to the other party, commence arbitration. Arbitration will be administered under the Arbitration Act (Yukon). The place of arbitration will be Whitehorse, Yukon. Each party will bear its own costs of the arbitration and any additional costs of the arbitrator(s) will be borne equally by each of the parties. Arbitration will be final and binding on the parties.
- 13.5 Confidentiality. All negotiations and/or matters relating to the arbitration under this Contract will be kept confidential and will not be disclosed to any other persons except those persons authorized in writing by the parties.
- 13.6 Continued Performance. For greater certainty the parties will continue to perform their respective obligations under this Contract while a dispute under this Contract is being resolved.

14. FORCE MAJEURE (ACT OF GOD)

- 14.1 Neither party shall be responsible for any delay or failure to perform its obligations under this Contract where such delay is due to fire, flood, explosion, war, embargo, government action, act of public authority, act of god, or to any other cause beyond its control, except labour disruption.
- 14.2 In the event Force Majeure occurs, the party who is delayed or fails to perform shall give prompt notice to the other party and shall take all reasonable steps to eliminate the cause.
- 14.3 Should the Force Majeure event last longer than thirty (30) days, the Corporation may terminate this Contract by notice to the Consultant without further liability, expense or cost of any kind except for the fees and expenses incurred to the date of termination and demobilization costs.

In witness whereof the parties hereto have executed this Contract as of the dates listed below:

YUKON ENERGY CORPORATION

By:

(Signature of Procurement Representative)

(Signature of Authorized Representative)

(Print Name)

(Print Name)

(Date)

VENDOR NAME

(Print Name)

By:

(Date)

(Signature of Authorized Representative)

SCHEDULE "A"

**CONSULTING AGREEMENT CONTRACT BETWEEN
YUKON ENERGY CORPORATION ("THE CORPORATION")
AND
NAME ("THE CONSULTANT")**

**FEES AND DISBURSEMENTS
TIMING OF PAYMENT**

- A.1 The Corporation shall pay fees and reimbursable expenses at cost to the Consultant when invoices are received and approved for payment by the Corporation. All invoices submitted must have supporting time sheets with hours and services provided. Claims for pre-approved expenses must include receipts as backup to qualify for reimbursement. Please quote the Contract number on all invoices and all correspondence submitted to the Corporation.
- A.2 This Contract shall not exceed \$amount (if applicable) plus GST (including expenses).
- A.3 Detailed rate schedule if required.
- A.4 Invoices to be mailed to: **Yukon Energy Corporation, P.O. Box 5920, Whitehorse, Yukon Y1A6S7.**
- A.5 All reimbursable expenses (if applicable) are subject to prior approval by the Corporation. The cost of daily expenses incurred by the Consultant may be reimbursed by the Corporation at cost and are subject to the Corporation's current per diem schedule and prior approval.

SCHEDULE “B”

**CONSULTING AGREEMENT CONTRACT BETWEEN
YUKON ENERGY CORPORATION (“THE CORPORATION”)
AND
NAME (“THE CONSULTANT”)**

SCOPE OF WORK