



November 8, 2023

Request for Proposals:

REVIEW OF INDIGENOUS DATA-SHARING AGREEMENT

About Clear Seas

Clear Seas is a Canadian not-for-profit organization that provides independent fact-based information to enable governments, industry, and the public to make informed decisions on marine shipping issues. We work to build awareness and trust so that all people can feel a part of the marine sector. Our vision is a sustainable marine shipping sector that is safe, vibrant, and inclusive, both now and for future generations.

Our mission is:

- To lead and facilitate research that generates independent fact-based information on marine shipping issues.
- To share clear and accessible knowledge that enables governments, industry, and the public to make informed decisions on marine shipping issues.
- To convene all voices in open and respectful dialogue on marine shipping issues.
- To create capacity sharing opportunities and work experiences for a more inclusive marine industry.

Project Context

Clear Seas works with First Nations communities, organizations, and individuals to support ocean conservation and sustainable marine shipping through research. This work is grounded in Indigenous ways of knowing and being, focusing on reconciliation. Clear Seas is working to build internal capacity to do meaningful research with and for Indigenous people.

Clear Seas recognizes the unique place of Indigenous Peoples – including First Nations, Inuit and Métis – in Canada, which affords them rights as protected under Section 35 of the Canadian Constitution and as recognized in the United Nations Declaration on the Rights of Indigenous Peoples. This may include titles or rights and associated stewardship over their territories, including marine areas.

Clear Seas has built a data-sharing agreement template and is seeking guidance on the legal implications and risks associated with the current template, namely:

- Alignment with the principles of data ownership, control, access and possession (OCAP®)
- Multi-directional data flow
- Alignment with reconciliation frameworks, including UNDRIP and the TRC’s 94 Calls to Action

The main drivers behind Clear Seas’ data-sharing agreement are:

1. Desire to work within the bounds of OCAP®
2. Inherent need to ensure that relationships with First Nations, Inuit and Metis people are built on a foundation of trust and respect

Deliverables

The selected provider shall deliver the following services:

- Review of and recommendations on the draft Data-Sharing Agreement for Clear Seas;
- Participation in internal meetings to finetune agreements;
- Ongoing input and customization of data-sharing agreements as and when needed.

Project Timeline

Clear Seas aims to partner with First Nations communities and provide them with data-sharing agreements by January 2024. The exact timeline and project deliverables will be discussed and established in collaboration with the selected firm based on the process and timelines of both parties.

Project milestones (subject to change):

- RFP submissions deadline: November 23, 2023
- Project award: November 30, 2023
- Review of data-sharing agreement: December 2023

- Review and edit of data-sharing agreement(s) as needed: Ongoing

Contract Terms

See Appendix A for Clear Seas' Service Agreement which is proposed to apply to this project.

Criteria for Selection

The service provider for this project will be selected as part of a request for proposals process through which Clear Seas will evaluate submitted proposals to determine the preferred service provider. Proposal submissions will be assessed based on the following criteria:

- General background and overview of the firm:
 - Narrative description of the firm,
 - Size/number of employees,
 - Affiliates,
 - Main areas of business
- Technical expertise: Experience in creating and reviewing data-sharing agreements with First Nations organizations and governments.
- The profile of the lawyer who will lead in providing services.
- The fixed price proposed for the initial data-sharing agreement review as well as the hourly rate proposed for ongoing services.
- Flexibility: Adapt to unforeseen project changes/revisions when needed.
- Language: English is required. Knowledge/understanding of French will be considered an asset.
- Statement of compliance with principles of transparency, non-discrimination, and absence of conflict of interest.

The successful and unsuccessful tenderers will be informed in writing (via email) about the result of the award. If the winning tenderer cannot enter the contract, Clear Seas reserves the right to contract with the provider receiving the second-highest ranking.

PDF submissions of no more than five (5) pages in length, excluding key personnel resumes, (minimum font Arial 10 point) should be emailed to Sarah Thomas, Director of Indigenous Programs, at sarah.thomas@clearseas.org **by November 23, 2023, at 4:00pm PST.**

APPENDIX A - Service Agreement

This Agreement (the “**Agreement**”) is made as of the ___ day of _____, 20__.

BETWEEN:

CLEAR SEAS CENTRE FOR RESPONSIBLE MARINE SHIPPING SOCIETY, a society incorporated under the laws of British Columbia and having an office at 630 – 355 Burrard Street, Vancouver, BC V6C 2G8.

(“**Clear Seas**”)

AND:

▼ [Insert Contractor’s full legal name] having an office at

(the “**Contractor**”)

WHEREAS:

- A. The Contractor is in the business of providing ▼ [Describe type of services] services; and
- B. Clear Seas wishes to engage the Contractor to perform the Services (as defined herein), and the Contractor agrees to provide the Services to Clear Seas in accordance with the terms and conditions set out in this Agreement, including any terms and conditions that may be set out in other documents incorporated by reference into this Agreement.

THEREFORE in consideration of the agreements and covenants set out in this Agreement Clear Seas and the Contractor agree as follows:

SERVICES

Services

Clear Seas hereby retains the Contractor to provide the services as described generally in Schedule A to this Agreement (the “**Services**”). Clear Seas may deliver to the Contractor variations to the Services in writing or may request the Contractor to submit proposals for variations to the Services.

Standard of Care

The Contractor agrees that it will:

perform the Services with that degree of care, skill and diligence normally provided by a qualified and experienced practitioner performing services similar to the Services, and on the understanding that Clear Seas is relying on the Contractor’s experience and expertise;

comply with all reasonable requests from Clear Seas in relation to providing the Services; and

comply, at its own expense, with all relevant legal requirements, and to apply for and obtain all consents required for providing the Services.

Access by Contractor

Where the Contractor requires access to Clear Seas’ premises, access will be available at such times as agreed by the parties. When accessing Clear Seas’ premises, the Contractor agrees to comply with the policies of Clear Seas, including those in relation to security and occupational health and safety.

Clear Seas may grant, in its absolute and sole discretion, to the Contractor temporary access to Clear Seas’ information technology, systems and data (the "IT Systems") for the limited purpose of providing the Services. The Contractor will only use and access Clear Seas' IT Systems to provide the Services during the Term. At Clear Seas’ option, any access to Clear Seas' IT Systems may be restricted or removed at any time.

Time is of the Essence

The Contractor acknowledges that time is of the essence with respect to the provision of the Services and accordingly the Contractor will undertake the Services in a timely manner, and in accordance with any milestone dates as may be agreed to in writing by Clear Seas and the Contractor.

Independent Contractor

The parties acknowledge that in entering into this agreement and in providing the Services, the Contractor has and will have the status of an independent contractor and that nothing in this Agreement will contemplate or constitute the Contractor as an agent, partner or employee of Clear Seas for any purpose.

FEES

Fees

In exchange for the Services, Clear Seas will pay to the Contractor the fixed fee of \$▼ (the “Fee”) for performance of the Services described in Schedule A plus applicable GST.

Disbursements

Unless specifically set out in Schedule A affixed hereto, the Contractor will not be reimbursed for travel, office and other general overhead expenses related to the Contractor's performance of the Services.

Payment

Payment terms will be as follows:

Clear Seas will pay the Contractor a deposit of \$▼ on account of the Services to be performed by the Contractor; and

the balance of the Fee will be payable on the following basis:

the Contractor will submit an invoice to Clear Seas requesting payment of the applicable portion of the Fee for performance of the Services as each milestone set out in Schedule A is met plus any permitted disbursements incurred (if applicable), together with receipts and invoices for all permitted disbursements claimed (the Contractor will reduce the amount of the first invoice, and subsequent invoices, as applicable, to apply the deposit paid by Clear Seas); and

Clear Seas will pay the portion of an invoice which Clear Seas determines is payable within 30 days of the receipt of the invoice.

Payment by Clear Seas of the Fee and any permitted disbursements will be full payment for the Services and the Contractor will not be entitled to receive any additional payment from Clear Seas.

INSURANCE AND INDEMNITY

Contractor's Insurance Policies

The Contractor will, on request from Clear Seas, provide evidence, satisfactory to Clear Seas, of all the Contractor's insurance policies providing coverage relating to the Services, including any professional liability insurance policies.

Indemnity

The Contractor will indemnify and save harmless Clear Seas and all its directors, officers, employees, servants, representatives and agents from and against all claims, demands, causes of action, suits, losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) which Clear Seas or its directors, officers, employees, servants, representatives or agents incur, suffer or are put to arising out of or in connection with any failure, breach or non-performance by the Contractor of any obligation of this Agreement, or any wrongful or negligent act of the Contractor or any employee or agent of the Contractor. This indemnity will survive the termination or

completion of this Agreement and, notwithstanding such termination or completion, will continue in full force and effect for the benefit of Clear Seas.

Deductions and Remittances

The Contractor is solely responsible for the deduction and remittance of all statutory remittances and deductions, including without limitation income tax, CPP and EI, in respect of all amounts paid by Clear Seas to the Contractor under this Agreement and in respect of any employees or subcontractors retained by the Contractor to perform the Services. Furthermore, if these amounts are not remitted, the Contractor will indemnify and hold harmless Clear Seas from and against any claim for taxes, penalties and for withholding of funds by the Canada Revenue Agency, the Employment Insurance Commission, the Canada Pension Commission, WorkSafeBC, the British Columbia Employment Standards Branch or any other government agency with respect to any amount found to be payable by Clear Seas to such agency or commission in respect of the Fees (and the Services) including any legal fees incurred by Clear Seas in defending such claims.

TERMINATION

Clear Seas may terminate this Agreement at any time and for any reason whatsoever by giving written notice of termination to the Contractor. Clear Seas will pay the Contractor for Services performed by the Contractor (a percentage of the Fee based on the percentage of the Services completed), and permitted disbursements incurred by the Contractor, up to and including the date of termination. Upon payment of such amounts no other payment will be owed by Clear Seas to the Contractor, and, for certainty, no amount will be owing on account of lost profits relating to the portion of any Services not performed. If the amount payable for Services performed is less than the amount of the deposit paid by Clear Seas, the Contractor will refund the balance to Clear Seas.

CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

Except as provided for by law or otherwise by this agreement, the Contractor will keep strictly confidential any information supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of the performance of the Services and this Agreement (the “**Confidential Information**”), and will not, without the prior express written consent of Clear Seas, publish, release, disclose or permit to be disclosed any such information to any person or corporation, either before, during or after termination of this Agreement, except as reasonably required to complete the Services.

PRIVACY

Privacy

The Contractor acknowledges that as a service provider to Clear Seas, it is subject to the *Personal Information Protection Act* (British Columbia) (“**PIPA**”), and in particular the provisions concerning the protection, use and disclosure of personal information, as

defined by PIPA (“**Personal Information**”). The Contractor agrees to comply with all applicable requirements of PIPA as service providers, including without limitation:

- any applicable order of the commissioner under PIPA; and
- any direction given by Clear Seas under this Agreement.

The Contractor will ensure that the Services are provided so as to comply with the confidentiality obligations under this Agreement and/or the requirements of PIPA, as applicable.

WORK PRODUCT

Definition

For the purposes of this agreement, “**Work Product**” means all of the work product that the Contractor prepares and delivers to Clear Seas as part of the Services.

Ownership of Work Product

Clear Seas will be the exclusive owner of the Work Product, and the Contractor agrees to assign and cause its employees, agents and contractors to assign to Clear Seas, effective at the time of creation, all right, title and interest, including all copyright, in and to the Work Product. The Contractor also hereby irrevocably waives and agrees to waive and cause its employees, agents and contractors to waive in favour of Clear Seas and its successors, assigns and licensees any and all moral rights which it may have in and to the Work Product.

The Contractor will keep and maintain adequate and written records of all Work Product made. These records will be available to Clear Seas and will be the sole property of Clear Seas. The Contractor agrees not to, and not to cause or permit anyone else to, include any third party intellectual property into the Work Product unless otherwise agreed in writing by Clear Seas. The Contractor will assist Clear Seas in obtaining and enforcing, for Clear Seas' benefit, patents, copyrights and any other protections in any and all countries for any and all Work Product made by the Contractor (in whole or in part) the rights to which belong to or have been assigned to Clear Seas. The Contractor agrees, upon request, to execute all applications, assignments, instruments and papers and perform all acts that Clear Seas or its counsel may deem necessary or desirable to obtain any and all patents, copyrights or other protection in such Work Product and to protect the interests of Clear Seas therein.

NO COMMITMENT TO FUTURE WORK

The parties have entered into this Agreement on the basis that Clear Seas makes no commitment to retain the Contractor to perform any additional services.

DISPUTE RESOLUTION

Notice of Dispute

Any dispute under this Agreement which cannot be resolved by the parties within thirty (30) days of one party giving written notice to the other of a dispute will be mediated.

Mediation

Clear Seas and the Contractor will agree on the choice of mediator and will share the cost equally. If Clear Seas and the Contractor cannot agree on the choice of mediator within forty-five (45) days of one party giving written notice to the other of a dispute, then the President of the British Columbia Arbitration & Mediation Institute will be requested to appoint a mediator.

Mediation Rules

The National Mediation Rules and Code of Conduct for Mediators will apply to the mediation.

GENERAL

Applicable Laws

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

Compliance with Laws and Clear Seas' Rules

The Contractor will provide the Services in full compliance with all applicable laws. The Contractor agrees to abide by all of Clear Seas' applicable policies, security and safety regulations provided to it.

The Contractor agrees that it will comply with all applicable health and safety regulations including the *Workers Compensation Act*. On request from Clear Seas, the Contractor will provide evidence of registration and good standing with WorkSafeBC or other provincial body as relevant to the Contractor's location under the *Workers Compensation Act*.

Subcontracting and Assignment

The Contractor will not sub-contract or assign its obligations under this Agreement, in whole or in part, without the prior written approval of Clear Seas.

Entire Agreement

This Agreement, including all attached schedules, contains the entire Agreement of the parties regarding the provision of Services and no understandings or agreements, oral or otherwise, exist between the parties except as expressly set out in this Agreement.

Further Assurances

Each of the parties will execute and deliver (and cause to be executed and delivered) such further and other documents and do and perform (and cause to be done and performed) such further and other acts or things as may be necessary or desirable to give full effect to this Agreement, including the execution and delivery of assignments of title to and copyright in the Work Product, and waivers of moral rights, in favour of Clear Seas, at the request of Clear Seas from time to time.

Amendment

This Agreement may be amended only by agreement in writing, signed by both parties.

Notices

Any notice, report or other document that either party may be required or may wish to give to the other must be in writing, and will be deemed to be validly given to and received by the addressee, if served personally, on the date of such personal service or, if delivered by mail, fax or email, when received. The addresses for delivery will be as follows:

To Clear Seas at:
630 – 335 Burrard Street,
Vancouver, BC V6C 2G8
Attention: ▼
Fax: ▼
E-mail: ▼

To the Contractor at:

▼
▼
Attention: ▼
Fax: ▼
E-mail: ▼

Unenforceability

If any provision of this agreement is invalid or unenforceable, it will be severed from the Agreement and will not affect the enforceability or validity of the remaining provisions of the Agreement.

Headings

The headings in this agreement are inserted for convenience of reference only and will not form part of nor affect the interpretation of this Agreement.

Waiver

No waiver by either party of any breach by the other party of any of its covenants, obligations and agreements will be a waiver of any subsequent breach or of any other covenant, obligation or Agreement, nor will any forbearance to seek a remedy for any breach be a waiver of any rights and remedies with respect to such or any subsequent breach.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the day and year first above written.

[If Contractor is a corporation, use the following execution blocks]

CLEAR SEAS CENTRE FOR RESPONSIBLE MARINE SHIPPING SOCIETY

▼ [INSERT FULL LEGAL NAME OF CONTRACTOR]

Per: _____

Per: _____
Authorized Signatory

OR

[If Contractor is an individual, use the following execution blocks]

**CLEAR SEAS CENTRE FOR
RESPONSIBLE MARINE SHIPPING
SOCIETY**

Per: _____
Authorized Signatory

SIGNED AND DELIVERED in the presence)
of:)

Signature of Witness)

**[INSERT FULL LEGAL NAME OF
CONTRACTOR]**

Name of Witness)

Address)

Occupation)

SCHEDULE A – SCOPE OF SERVICES

[describe milestones and percentage of fee payable at each milestone]