



Framework for Revenue Generation, External Funding and Collaborative Activities

SAMPLE GUIDELINES FOR UNDERTAKING JOINT PROJECTS

Note: this document is intended solely as illustrative of some of the terms and conditions that might be considered in establishing a joint project. It is adapted from the guidelines for the Industrial Partners Program of the Geological Survey of Canada.

- The principal objective of a joint project is to foster closer working relations between NRCan and industry by ensuring that our knowledge and skills are directly applied to areas of mutual interest.
- Participation in a joint project is open to any Canadian-based company or group of companies, crown corporations, public utilities, industry associations, universities, and other government agencies.
- Joint projects are normally for one year but may be up to three years in duration.
- Joint projects must meet the following criteria:

Projects must fall within the mandate of the NRCan; and must support specific objectives outlined in NRCan's Business Plan.

Projects must be carried out in Canada.

Projects must be research-oriented and must provide tangible benefits to all participants.

Projects must use the unique skills or equipment possessed by NRCan.

All participants should participate actively in the project.

Project results must be made publicly available within a reasonable timeframe (not to exceed eighteen months) following completion of the work.

- A participant's contribution can be in the form of cash, task-sharing and in-kind support or a blend of all three. In-kind support must not be the sole contribution to the Project.
- Preference should be given to projects that are innovative in concept, technology or approach - breaking new ground for NRCan and its clients.
- NRCan may use funds received from other participants to pay for its term employees, students, contractors, etc., but these funds must not be used to pay for its indeterminate staff.
- A participant's cash contribution should be deposited into a Government of Canada Specified Purpose Account to be used by NRCan exclusively in support of the project.



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Manager's Guide for Decision-Making for Departmental External User Fees and Charges

1.0 Introduction

This Guide is intended to assist managers in making decisions on whether or not, and how to proceed with the establishment of external user fees and charges.

Consistent with government's emphasis on cost recovery through an open and equitable process that is subject to public and parliamentary scrutiny, Natural Resources Canada (NRCan) is committed to:

- actively pursuing all opportunities to fairly shift the financial burden of its activities to the specific users who derive direct benefits from NRCan products, services, property and facilities;
- prior consultation with affected users or representative groups of affected users and explanation of the rationale and justification for all user fees and charges in keeping with the principles of the Federal Regulatory Process;
- full accountability and reporting to Treasury Board and Parliament on its user fees and cost recovery activities by means of its annual reporting mechanisms (Business Adjustment Plan and Part III of the Main Estimates); and,
- minimizing administrative and paper burden costs associated with all fees and charges for products, services, licensing of intellectual property and the use of NRCan property or facilities.

2.0 Overview

Before setting external user fees and charges, managers need to be aware of the government policies and legal authorities related to fee setting and must be able to demonstrate that the proposals make good business sense. This includes preparing an analysis of the costs involved and projected revenues, establishing that a market exists and demonstrating the impact of the proposed fees on the market. It should be noted that it is government policy to recover full costs. Your Sector Financial Advisor can assist in preparing full cost calculation. In addition, the process used to establish fees must be transparent and able to withstand challenges from internal and external parties. Furthermore, as directed by the Departmental Management Committee, all fees and charges set by the Department must comply with the principles of the Federal Regulatory Process *i.e.* consultation with affected users and transparency.

This Guide is complemented by the "Natural Resources Canada Technical Instructions for the Approval and Implementation of All Departmental External User Fees and Charges" which provides more detailed information on establishing fees and charges. Further assistance can be obtained from your Sector Business Development Office (where established), Legal Services, the Departmental Regulatory Coordinator, Financial Analysis and Planning Directorate and your Sector Financial Advisor.

3.0 Basic Approaches to Fee Setting

The Department may set fees or charges using different approaches depending upon certain criteria. These approaches and criteria are described below for the various types of items for which fees or charges may be set.

3.1 Products

If a product is a one-of-a-kind item being produced by NRCan to satisfy the specific needs of a client, the fee or price will be established in a written contract.

If the product is an over-the-counter product or a product provided repetitively to many clients, its price will be established by a Departmental Fee Schedule that is to be approved by the appropriate ADM (except for products covered by section 4 of the *Canada Lands Surveys Act*, the prices of which must be submitted to the Federal Regulatory Process).

3.2 Services, Use of Facilities, Licensing of Intellectual Property

3.2.1 Federal Regulatory Process (FRP)

The FRP will be used to set fees where the use of the Department's service is required by law (*e.g.* the service provided by NRCan in the licensing of explosives is required by the *Explosives Act* C any fees set for that service must therefore be submitted to the FRP).

Fees established through the FRP must be examined and 'blue-stamped' by the Department of Justice and approved by the Minister of NRCan. They must be accompanied by a Regulatory Impact Analysis Statement (RIAS) and a Communications Plan and be published in the *Canada Gazette*.

As this can be a lengthy procedure, advance planning is essential. The Departmental Regulatory Coordinator can provide advice on actions to be taken when submitting items to the FRP.

3.2.2 Minister's Authority to Contract

Under a Minister's authority to enter into contracts on behalf of Her Majesty, the Minister of NRCan may negotiate the terms of compensation for a service, for the use of a departmental facility or for the licensing of intellectual property.

This authority, which does not require the submission of fees to the Federal Regulatory Process, may be used

by NRCan to set the majority of its fees for services, facilities and intellectual property licences providing:

- they are purchased or used voluntarily (*i.e.* their purchase or use is not required by law); and
- the prices are market driven.

The two vehicles used to set fees and charges under the Minister's Authority to Contract are:

1. A Written Contract

Whenever the service being provided by NRCan is a one-of-a-kind service being tailored to meet the specific needs of a particular client, the fee will be established in a written contract. Likewise, all fees pertaining to intellectual property licences will be established in a written contract.

2. A Departmental Fee Schedule

Whenever the service being provided is a routine item of a repetitive nature that is offered to many clients, the fee will be established through a Departmental Fee Schedule which is to be approved by the appropriate ADM. Fees established by Departmental Fee Schedule do not require a written contract unless, in a particular instance, they are being used as a component of a one-of-a-kind contract.

4.0 Legal Authority

The Department may establish fees or charges for external users for NRCan products, services, property and facilities only where there is a legal authority to do so. Additional information on legal authorities can be found in the "Natural Resources Canada Technical Instructions for the Approval and Implementation of All Departmental External User Fees and Charges". Depending on the type of item, the identification of the legal authority will define the approach to be used to set the fees or charges. If in doubt as to the existence of legal authority for the establishment of a particular fee, please contact your Sector Business Office or your Sector Financial Advisor who may wish to consult with Legal Services.

5.0 Required Steps

Before deciding to implement fees and charges, managers must ensure that they have taken the necessary steps to answer the following key questions:

- **What type of item do you wish to set fees or charges for?** A full written description of the product, service, property or facility should be developed as it will aid in answering the remaining questions in this list and will be needed if you decide to proceed with the establishment of fees or charges.
- It is also very important to determine if the use of the item is of a mandatory or voluntary nature. If the use of the Department's service is required by law, fees will have to be set through the Federal Regulatory Process. On the other hand, if the service is optional, fees may be set by written contract

or Departmental Fee Schedule under the Minister's Authority to Contract.

- Is the activity for which you wish to set fees or charges within the departmental mandate and covered by the appropriate legal authority? Only activities within the departmental mandate may be carried out by departmental officials. Secondly, an appropriate legal authority must exist before establishing any user fees or charges. If in doubt, please contact your Sector Business Office or your Sector Financial Advisor.
- Is the product/service, etc. similar to other products/services offered within the Department, within the federal government or outside the federal government? The manager needs to question the *raison d'être* for any line of business where there is direct competition between the Department and others.
- **What is the potential market for the new product/service?** Managers wishing to implement user fees must demonstrate that there is a potential market *i.e.* identify potential clients and/or distributors, and comparable goods and services.
- **What is the impact of the new fee or charge on the potential clients?** Managers must determine to the best of their knowledge the sensitivity of the market, the impact of the new fees or charges on the market and the expected reaction of potential clients (*i.e.* are your potential clients prepared to pay, will they lobby the Minister, etc.).
- **What is the full cost to produce/deliver that product/service/property/facility?** This is required to enable managers to prepare an analysis that compares the cost of production/delivery against the aggregate of the amount that can be recovered and any other tangible or intangible benefits that can be expected.
- **Has a price or prices been determined and if so, how?** As stated in the introduction, the Department is committed to the principles of equity and transparency in setting user fees. Managers have to take into account these principles when preparing their preliminary prices.
- **What are the preliminary revenue projections and why do you think that these are realistic projections?** Preliminary revenue projections are required to enable managers to do their own cost-benefit analysis and for use in presenting their business case to their senior management.

6.0 Documentation

Given the Departmental Management Committee's decision that all departmental fees and charges be subject to routine audit, all initiatives related to the establishment of fees or charges must be appropriately documented. A separate file should be started for each initiative and should contain the results of the required steps as described above. For example, the file could contain (but should not be limited to):

- a full description of the type of the item;
- a business case with costing information;
- an impact statement;

- a market study; and
- documentation supporting consultation with and the reaction of potential clients.

The user fee initiatives that are implemented must be reflected in your sector fee inventory. Your Sector Business Office and your Sector Financial Advisor can provide assistance in completing this documentation. Note that for a one-of-a-kind service being tailored to client needs, the contract with supporting costing information will be sufficient.

The Federal Regulatory Process is the process adopted by the government to ensure: better management of federal regulations; more effective ministerial control of the regulatory process; and, greater public access to and involvement in federal regulatory activities.

(Corporate Services Sector / Financial Management Branch)



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AVOIDANCE OF COMPETITION WITH PRIVATE SECTOR

- G** Neither NRCan nor the client are aware of Canadian companies that could do the proposed work.
ÿ NRCan will perform the work.
- G** NRCan is already doing the work and the client is simply buying in.
ÿ NRCan will perform the work.
- G** We or the client are aware of Canadian companies that could do the proposed work. The client wishes NRCan to do it because of:
 - G** Justifiable unhappiness with other supplier(s) based on experience (i.e. poor past performance).
ÿ NRCan will perform the work.
 - G** Legitimate competitive reason (e.g. Intellectual Property, confidentiality)
ÿ NRCan will perform the work.
 - G** Interested in NRCan ideas, or would benefit from link to government.
ÿ NRCan will perform the work.
 - G** Other reason (not including lower cost).
Describe: _____

ÿ NRCan will assess the situation and document its agreement to do the work (if that is its decision) before beginning.
- G** Lower cost
ÿ NRCan will decline the work.
- G** Cannot articulate reason
ÿ NRCan will decline the work.
- G** There is a existing competitive process in Canada.
ÿ NRCan will decline to quote as lead agent but may support other bids on a subcontractual basis if approached.

(Adapted from Minerals and Metals Sector/MMSL document).



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GUIDELINES ON DEPARTMENTAL CONTRIBUTIONS TOWARD COLLABORATIVE PROJECT COSTS

The table below is a guideline for making decisions on amounts that might be contributed toward collaborative projects. Contributions are not additive.

Reason for Possible Contribution	Contribution Guideline
1. Client is strategically important to NRCan	up to 20%
2. Client makes an extraordinary contribution to NRCan's S&T program	up to 50%
3. Project has high potential to reduce in-house effort	up to 20%
4. Project has high potential for impact	up to 50%
5. Potential for benefits to NRCan	up to 50%
6. Client is an NRCan-led consortium	a company share; up to 25%

Factors that could influence a manager’s decision on the amount of NRCan’s contribution to a project are:

1. The client’s strategic importance to NRCan.
 - Certain clients occupy leadership positions in the natural resource industry and NRCan’s success can be linked in part to their own.
 - Small and medium-sized enterprises have been identified as sources of growth for the Canadian economy. They usually have fewer resources available than do larger organizations, and a lesser ability to pay.
 - Communities and municipalities are close to the grass-roots level of Canadian society. They, too, often have a reduced ability to pay as a result of their publicly funded status.

2. The project has a high potential to reduce in-house costs. Marketing and business support costs are reduced when large projects are managed and when projects have high potential for follow-on work. Certain laboratory projects require repetitive use of a particular test, thereby enabling efficiencies of operation to be achieved that can be passed on to the client.

3. The potential impact or return on investment of the project. A large potential impact could merit a greater contribution than a similar project with lower potential for impact.

4. The potential benefits to NRCan. Some projects will assist NRCan to acquire, maintain or further develop its competencies, and may even involve an element of training for staff. Such projects may warrant NRCan contributing toward project costs. Occasionally clients make extraordinary contributions to technology programs, such as donating expensive equipment.
5. The amount of technical risk involved. A high technical risk could warrant a greater NRCan contribution than would a similar project with low technical risk. However, the potential impact of the project and the client's ability to pay are likely to be greater influences than is the amount of technical risk.

There are two circumstances where it is often appropriate to have several clients sharing the results of a project:

- where the results would benefit the whole industry, such as a project with primarily environmental benefits;
- where a project has a high level of technical risk, such as a research project.

In the former case, competition between industry members is minimal. In the latter, for industry members the benefits of sharing costs outweigh the advantages of being the only company with the information.

Contribution for any of the above-listed reasons may be appropriate.

(Adapted from Energy Sector/Energy Technology Branch guidelines)



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SAMPLE GUIDE FOR ASSESSING THE POTENTIAL FOR REAL OR PERCEIVED CONFLICT OF INTEREST

	Yes	No
1. Would undertaking the project further the Department's overall objectives?	Go to 2.	Is it a special service for a particular client? Yes - perform "competition with private sector" test. No - NRCan will not undertake the project.
2. Would the project jeopardise or appear to jeopardise NRCan's ability to provide objective advice to the Minister?	NRCan will not undertake the project.	Go to 3.
3. Would this project give an unfair advantage to a particular client or agency?	Could it be done as a full cost recovery service project? Yes - perform "competition with private sector" test. No - NRCan will not undertake the project.	Go to 4
4. Would this project give a competitive advantage to a non-Canadian company?	Go to 5	Proceed with project.
5. Would this project provide an overall benefit to Canada?	NRCan will assess the value of the benefit before deciding whether or not to proceed with the project.	NRCan will not undertake the project

(Developed by Strategic Planning & Coordination Branch/S&T Policy Division)



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**Treasury Board Policy on Ownership of Intellectual Property in
Government Contracts**

Treasury Board Secretariat
September 19, 1991

1. APPLICATION

- 1.1 This policy applies to all departments and agencies subject to the Government Contracts Regulations.
- 1.2 This policy applies to the intellectual property arising from Research and Development (R&D) carried out in the course of work under contracts issued for the procurement of goods and services.

2. AUTHORITY

Section 7.1(a) of the Financial Administration Act.

3. POLICY

- 3.1 Intellectual property issues are to be addressed prior to the award of a contract involving R&D, and contractors are to have a clear understanding and certainty regarding the nature of, and conditions regarding their rights to intellectual property arising under the contract.
- 3.2 When reviewing intellectual property aspects in preparation for the award of a contract involving R&D, departments are to start with a presumption that contractors will take title to intellectual property. It is recognized that circumstances may arise when this presumption is not supportable. Such cases are to be documented and justified.
- 3.3 When intellectual property is to vest with the Crown, the Deputy Minister of the department sponsoring the contract shall be accountable for proper and valid justification supporting the decision.
- 3.4 In determining exceptions to the presumption of contractor ownership, and in addressing Crown objectives related to the application of the results of R&D performed under contract, the guidelines detailed in section (4) below are to be followed.

4. GUIDELINES

- 4.1 Principles

- a) Regardless of with whom title to intellectual property vests, departments have a responsibility, and are accountable, for ensuring technology and intellectual property arising from R&D performed under Crown contracts can be exploited by the private sector for commercialization. In the event title vests with the Crown, the granting of a license should not be unreasonably refused.
- b) Questions of intellectual property ownership should be dealt with in an expeditious manner and not unduly delay the award of a contract.

4.2 Factors Indicating Crown Title

- a) Title to background technology vests with the Crown and the contractor is simply adding to the technology package by providing a service;
- b) Prior obligations to a third party or parties (such as a research partner or research consortium) would preclude title vesting with the contractor;
- c) The contractor has no intention or capability of pursuing commercialization in a timely manner in Canada;
- d) National security;
- e) The main purpose of the work is to generate knowledge and regulatory information for public dissemination; and
- f) Mutual agreement.

4.3 Procedures

- a) In requesting proposals or solicitations to bid, departments should make clear when an exception to the presumption of contractor ownership will apply, and provide the reasons therefor.
- b) When the vesting of title to intellectual property may depend on the information provided by bidders, departments should describe to potential bidders the circumstances under which title to intellectual property would vest with the Crown.

4.4 Associated Contractual Issues when Title to Intellectual Property Vests with the Contractor

In the preparation of bid solicitation documents and the drafting of contracts, sponsoring departments and agencies should address the following factors:

- a) Disclosure and protection of intellectual property arising from the contract.

- b) The Crown's right to use, and have others use, the intellectual property for the Crown's purposes.
- c) Access by the Crown to background technology owned or controlled by the contractor.
- d) Access by contractors, for the purposes of commercialization, to related background technology owned or controlled by the Crown.
- e) Optimization of post-contract economic benefits to Canada, within a reasonable time.
- f) Export mandates from a Canadian base.



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GENERAL NRCan POLICY ON INTELLECTUAL PROPERTY

- NRCan Sectors will encourage the widest possible dissemination of their scientific and technical information in a way that will fulfil their mandate and preserve the character and economic value of their intellectual property.
- NRCan will diligently manage the intellectual property it controls, and safeguard it from unauthorized disclosure or exploitation.
- NRCan will use licensing as a major instrument for the commercialization of its intellectual property and as a direct and effective method of transferring intellectual property. Licences provide broad access to NRCan's extensive range of intellectual property, including software, while at the same time retaining Crown ownership of the intellectual property.
- Licences will be conditional on effective use of the rights granted, and will be subject to termination if reasonable performance is not demonstrated by the licensee.
- Only in exceptional cases will NRCan license intellectual property to non-Canadian companies. This could occur if a Canadian firm cannot be found that can effectively commercialize the technology, or when Canadian firms have declined any interest in the technology.
- In the event that NRCan controls intellectual property that it is not able to support or promote effectively, NRCan may request that the Crown assign full control or ownership of it, through an Order-in-Council, to an organization or a person who can effectively support and promote its use in a manner that is fair, and of benefit to Canada.



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GUIDE TO ASSESSING THE VALUE OF IN KIND SUPPORT

In kind support refers to payment in goods or services rather than cash and to the informal support to our programs that we receive from clients and stakeholders without there being a formal contract or letter of understanding in place.

Several different approaches to the valuation of in kind support may be envisioned.

- *Market Value* - the cost to NRCan if it were to purchase the goods or services directly.
- *Client's acquisition cost* - the original cost to the client or stakeholder of the goods and services that were in turn provided to NRCan.
- *Client's incremental cost* - the incremental or actual cost to the client or stakeholder to provide the support to NRCan.

There will sometimes be little difference among the three approaches. This would be the case, for example, with the value of commercial accommodation and travel expenses underwritten by a client. Significant differences arise, however, when we attempt to assign a value to such things as sharing of field camp facilities and provision of data and sample materials.

For example, consider the case of a geologist invited by a mining company to inspect drill core and drill logs, and take away drill core samples.

The first approach is not practical because it is likely impossible to impute a market value for the drill core and data, because there is simply not a market for it - it is proprietary. Using the second approach, we might find that the total cost to the company of acquiring the core and data was \$200,000. Under the third approach, we might assess the incremental cost as simply that of the client's staff time - say \$1000.

The recommended approach is as follows:

1. *Can a direct market value be assessed for the support?* In many cases, it can. For example, the provision of commercial accommodation or travel, or the provision of standard laboratory services by the client. The price of such services can be readily obtained. Alternatively an assessment of the value can be made using standard rates provided by NRCan Financial Management Branch - for example, the daily rate for chartered aircraft.

If the answer to question 1 is yes, the full market value should be used (i.e. no attempt should be made to apportion a share to the company and to NRCan). If it is no, go to 2.

2. *What is the incremental cost to the client?* If no market value can be assessed, the provider's incremental costs of the support should be used. An example of where this approach is appropriate is the provision of accommodation at a company's field camp. The incremental cost to the company can be assessed in terms of the food and lodging it provides. Another example would be the provision of samples to NRCan. The incremental cost would simply be the provider's staff time in processing the transfer of the samples, plus any additional cost of acquiring the samples if this had been done at the request of NRCan and was beyond the requirements of the provider.

In determining incremental costs, the provider's overheads, such as such as facilities, capital depreciation, office equipment and supplies etc. should be included.

Wherever possible, costs can be assessed using standard rates - it is not necessary to ask the provider to give this kind of information. For example, in the case of field camp, accommodation, Treasury Board per diem allowance rates would be appropriate.

(Based on Geological Survey of Canada document)