

Terms and Conditions of the Canadian Museum of Nature

Note:

Only those terms and conditions pertinent to a scope of work shall apply.

GENERAL CONDITIONS

GC 1 INTERPRETATION

1.1 In this contract,

- 1.1.1 "contract" means the contract documents referred to in the Articles of Agreement;
- 1.1.2 "invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement thereof;
- 1.1.3 "Corporation" includes a person acting for, or appointed for, the purpose of this contract;
- 1.1.4 "work", unless otherwise expressed in this contract, means everything that is necessary to be done, furnished or delivered by the Contractor to perform the Contractor's obligations under the contract;
- 1.1.5 "Corporate Representative" means the officer or employee of the Corporation who is designated by the Articles of Agreement, and includes a person authorized by the Corporate Representative to perform any of the Corporate Representative's functions under the contract;
- 1.1.6 "prototypes" includes models, patterns and samples;
- 1.1.7 "technical documentation" means designs, reports, photographs, drawings, plans, specifications, computer software, surveys, calculations and other data, information and material collected, computed, drawn or produced, including computer printouts.

GC 2 SUCCESSORS AND ASSIGNS

- 2.1 This contract shall enure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.

GC 3 ASSIGNMENT

- 3.1 This contract shall not be assigned in whole or in part by the Contractor without the prior written consent of the Corporation and any assignment made without that consent is void and of no effect.
- 3.2 No assignment of this contract shall relieve the Contractor from any obligation under this contract or impose any liability upon Her Majesty or the Corporation.

GC 4 EXCUSABLE DELAY

- 4.1 Any delay by the Contractor in performing the Contractor's obligations under this contract which is caused by an event beyond the control of the Contractor, and which could not have been avoided by the Contractor without incurring unreasonable cost through the use of work-around plans, including alternative sources or other means, constitutes an excusable delay. Events may include, but are not restricted to: acts of God, acts of Her Majesty, acts of local or provincial governments, fires, floods, epidemics, quarantine restrictions, strikes or labour unrest, freight embargoes and unusually severe weather.
- 4.2 The Contractor shall give notice to the Corporation immediately after the occurrence of the event that causes the excusable delay. The notice shall state the cause and circumstance of the delay and indicate the portion of the work affected by the delay. When requested to do so by the Corporate Representative, the Contractor shall deliver a description, in a form satisfactory to the Corporation, of work-around plans including alternative sources and any other means that the Contractor will utilize to overcome the delay and endeavour to prevent any further delay. Upon approval in writing by the Corporation of the work-around plans, the Contractor shall implement the work-around plans and use all reasonable means to recover any time lost as a result of the excusable delay.
- 4.3 Unless the Contractor complies with the notice requirements set forth in this contract, any delay that would constitute an excusable delay shall be deemed not to be an excusable delay.
- 4.4 Notwithstanding that the Contractor has complied with the requirements of GC4.3, the Corporation may exercise any right of termination contained in GC8.

GC 5 INDEMNIFICATION

- 5.1 The Contractor shall indemnify and save harmless Her Majesty and the Corporation from and against all claims, losses, damages, costs, expenses, actions and other proceedings made, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner based upon occasioned by, or attributable to any injury to or death of a person, damage to or loss of property, or any consequential or economic loss arising from any wilful or negligent act, omission or delay on the part

of the Contractor, the Contractor's servants, or agents in performing the work or as a result of the work or the performance or purported performance of this contract.

- 5.2 The Contractor shall indemnify Her Majesty and the Corporation from all costs, charges and expenses whatsoever that Her Majesty sustains or incurs in or about all claims, actions, suits and proceedings for the use of the invention claimed in a patent, or infringement or alleged infringement of any patent or any registered industrial design or any copyright resulting from the performance of the Contractor's obligations under this contract, and in respect of the use of or disposal by Her Majesty of anything furnished pursuant to this contract.
- 5.3 The Contractor's liability to indemnify or reimburse Her Majesty and the Corporation under this contract shall not affect or prejudice Her Majesty or the Corporation from exercising any other rights under law or equity.

GC 6 NOTICES

- 6.1 Where in this contract any notice, request, direction, or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person, sent by registered mail, by telegram or by telex addressed to the party for whom it is intended at the address mentioned in this contract and any notice, request, direction or other communication shall be deemed to have been given if by registered mail, when the postal receipt is acknowledged by the other party; by telegram, when transmitted by the carrier; and by telex, when transmitted. The address of either party may be changed by notice in the manner set out in this provision.

GC 7 CANADIAN LABOUR AND MATERIALS

- 7.1 The Contractor shall use Canadian labour and materials in the performance of the work to the full extent to which they are procurable, consistent with proper economy and the expeditious carrying out of the work.

GC 8 TERMINATION OR SUSPENSION

- 8.1 The Corporation may, by giving notice to the Contractor, terminate or suspend this contract with respect to all or any part or parts of the work not completed.
- 8.2 All work completed by the Contractor to the satisfaction of the Corporation before the giving of such notice shall be paid for by the Corporation in accordance with the provisions of this contract and, for all work not completed before the giving of such notice, the Corporation shall pay the Contractor's costs as determined under the provisions, if any, of this contract relating thereto, and, in addition, an amount representing a fair and reasonable fee in respect of such work. Where there are no provisions in this contract respecting the Contractor's costs, the Corporation shall

- pay such sum as the Corporation shall determine to be the Contractor's reasonable costs.
- 8.3 In addition to the amount which the Contractor shall be paid under GC8.2, the Contractor shall be reimbursed for the Contractor's cost of and incidental to the cancellation of obligations incurred by the Contractor pursuant to such notice and obligations incurred by or to which the Contractor is subject with respect to this contract.
- 8.4 Payment and reimbursement under the provisions of GC8 shall be made only to the extent that it is established to the satisfaction of the Corporation that the costs and expenses were actually incurred by the Contractor and that the same are fair and reasonable and are properly attributable to the termination or suspension of this contract or the part thereof so terminated.
- 8.5 The Contractor shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to the Contractor under this contract, exceeds the contract price applicable to the work or the particular part thereof.
- 8.6 The Contractor shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by the Corporation under the provisions of GC8 except as expressly provided herein.

GC 9 TERMINATION DUE TO DEFAULT OF CONTRACTOR

- 9.1 The Corporation may, by written notice to the Contractor, terminate the whole or any part of this contract if:
- i) the Contractor becomes bankrupt or insolvent, or a receiving order is made against the Contractor, or an assignment is made for the benefit of creditors, or if an order is made or resolution passed for the winding up of the Contractor, or if the Contractor takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors, or;
 - ii) the Contractor fails to perform any of the Contractor's obligations under this contract, or, in the Corporation's view, so fails to make progress as to endanger performance of this contract in accordance with its terms.
- 9.2 In the event that the Corporation terminates this contract in whole or in part under GC9.1, the Corporation may arrange, upon such terms and conditions and in such manner as the Corporation deems appropriate, for the work to be completed, and the Contractor shall be liable to the Corporation for any costs relating to the completion of the work which are in excess of the consideration set forth in Article A3 of this contract.

- 9.3 Upon termination of this contract under GC9.1, the Corporation may require the Contractor to deliver and transfer title to the Corporation, in the manner and to the extent directed by the Corporation, any finished work which has not been delivered and accepted prior to such termination and any materials or work-in-process which the Contractor has specifically acquired or produced for the fulfilment of this contract. The Corporation shall pay the Contractor for all such finished work delivered pursuant to such direction and accepted by the Corporation, the cost to the Contractor of such finished work plus the proportionate part of any fee fixed by this contract and shall pay or reimburse the Contractor the fair and reasonable cost to the Contractor of all materials or work-in-process delivered to the Corporation pursuant to such direction. The Corporation may withhold from the amounts due to the Contractor such sums as the Corporation determines to be necessary to protect the Corporation against excess costs for the completion of the work.
- 9.4 If, after the Corporation issues a notice of termination under GC9.1, it is determined by the Corporation that the default of the Contractor is due to causes beyond the control of the Contractor, such notice of termination shall be deemed to have been issued pursuant to GC8.1 and the rights and obligations of the parties hereto shall be governed by GC8.
- 9.5 The Contractor shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to the Contractor under this contract, exceeds the contract price applicable to the work or the particular part thereof.

GC 10 RESOLUTION OF DISAGREEMENTS

- 10.1 In the event of a disagreement regarding any aspect of the services provided by the Contractor or any instructions given under this Agreement:
- 10.1.1 the Contractor may give a notice of disagreement to the Corporation. Such notice shall be promptly given and contain the particulars of the disagreement, any changes in time or amounts claimed, and reference to the relevant clauses of the Agreement;
- 10.1.2 the Contractor shall continue to perform the services in accordance with the instructions of the Corporation; and
- 10.1.3 the Contractor and the Corporation shall attempt to resolve the disagreement by negotiations conducted in good faith. The negotiations shall be conducted, first, at the level of the Contractor's project representative and the project representative of the Corporation and secondly and if necessary, at the level of a principal of the Contractor firm and a Corporate Representative of the Corporation.

- 10.2 The Contractor's continued performance of the services in accordance with the instructions of the Corporation shall not jeopardize the legal position of the Contractor in any disagreement.
- 10.3 If it was subsequently agreed or determined that the instructions given were in error or contrary to the Agreement, the Corporation shall pay the Contractor those fees the Contractor shall have earned as a result of the change(s) in the services provided, together with those reasonable disbursements arising from the change(s) and which has been authorized by the Corporation.
- 10.4 The fees mentioned in GC10.3 shall be calculated in accordance with the Terms of Payment set out in this Agreement.
- 10.5 If the disagreement is not settled, the Contractor may make a request to the Corporation for a written corporate decision and the Corporation shall give notice of the corporate decision within 14 days of receiving the request, setting out the particulars of the response and any relevant clauses of the Agreement.
- 10.6 Within 14 days of receipt of the written corporate decision, the Contractor shall notify the Corporation if the Contractor accepts or rejects the decision.
- 10.7 If the Contractor rejects the corporate decision, the Contractor by notice may refer the disagreement to mediation.
- 10.8 If the disagreement is referred to mediation, the mediation shall be conducted with the assistance of a skilled and experienced mediator chosen by the Contractor from a list of mediators proposed by the Corporation, and the Corporation's mediation procedures shall be used unless the parties agree otherwise.
- 10.9 Negotiations conducted under this Agreement, including those conducted during mediation, shall be without prejudice.

GC 11 RECORDS TO BE KEPT BY THE CONTRACTOR

- 11.1 The Contractor shall keep proper accounts and records of the cost of the work and of all expenditures or commitments made by the Contractor including the invoices, receipts and vouchers, which shall at all reasonable times be open to audit and inspection by the authorized representatives of the Corporation who may make copies and take extracts therefrom.
- 11.2 The Contractor shall afford facilities for audit and inspection and shall furnish the authorized representatives of the Corporation with such information as the Corporation or they may from time to time require with reference to the documents referred to herein.

- 11.3 The Contractor shall not dispose of the documents referred to herein without the written consent of the Corporation, but shall preserve and keep them available for audit and inspection for such period of time as may be specified elsewhere in the contract or, in the absence of such specification, for a period of two years following completion of the work.

GC 12 CONFLICT OF INTEREST

- 12.1 The Contractor declares that the Contractor has no pecuniary interest in the business of any third party that would cause a conflict of interest or seem to cause a conflict of interest in carrying out the work. Should such an interest be acquired during the life of this contract, the Contractor shall declare it immediately to the Corporate Representative.

GC 13 CONTRACTOR STATUS

- 13.1 This is a contract for the performance of a service and the Contractor is engaged under this contract as an independent contractor for the sole purpose of providing a service. Neither the Contractor nor any of the Contractor's personnel is engaged under this contract as an employee, servant or agent of the Corporation or of Her Majesty. The Contractor shall be solely responsible for any and all payments and/or deductions required to be made including those required for Canada or Quebec Pension Plans, Unemployment Insurance, Workmen's Compensation or Income Tax.

GC 14 WARRANTY BY CONTRACTOR

- 14.1 The Contractor warrants that the Contractor is competent to perform the work required under this contract in that the Contractor has the necessary qualifications including the knowledge, skill and ability to perform the work.
- 14.2 The Contractor warrants that the Contractor shall provide under this contract a quality of service at least equal to that which contractors generally would expect of a competent contractor in a like situation.

GC 15 MEMBER OF HOUSE OF COMMONS

- 15.1 No member of the House of Commons shall be admitted to any share or part of this contract or to any benefit to arise herefrom.

GC 16 PAYMENT OF ACCOUNTS

- 16.1 Payment as specified in the terms of payment contained in Appendix "D" will be made by the Corporation to the Contractor upon receipt of invoices showing in detail the services performed, the amounts charged therefore and the period of

time to which such invoices relate. Payment shall be conditional upon the Contractor having complied with the terms of this contract.

GC 17 INTEREST ON OVERDUE ACCOUNTS

- 17.1 The Corporation shall be liable to pay simple interest at the Bank of Canada rate on the date of payment plus 1 1/4 percent, on any amount owing to the Contractor under this contract which has not been paid pursuant to Article GC 16 hereof. Interest will be calculated from the day such amount became overdue until and including the day before the date of payment. However, interest will not be payable nor paid unless the amount has been outstanding for more than 15 days following the due date. Interest will not be payable on overdue advance payments.
- 17.2 Interest shall be paid only when the Corporation is responsible for the delay in paying the Contractor.
- 17.3 The Museum shall pay interest only if the Contractor, within ninety (90) days of the date of payment, claims any interest owing it by:
- i) Sending an invoice therefore in the manner set out in the Contract relating to invoices; or
 - ii) Making a written request therefore to the Museum.

The Museum shall not be liable to pay the Contractor any interest on unpaid interest.

GC 18 INSURANCE

The Contractor shall obtain and maintain during the term of this Agreement insurance coverage in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00 aggregate) per claim and per policy period under its Professional Liability Insurance Coverage Policy to compensate the Corporation up to \$1,000,000.00 for any loss or damage incurred by the Corporation as a result of the negligence of the Contractor, its servants, sub-contractors, or agents for whom the Contractor may be responsible. The Contractor shall provide a Certificate of Insurance and such additional evidence as the Corporation may from time to time request confirming that the said insurance policy is in good standing. The Contractor shall keep such policy in force (at the expense of the Contractor) throughout the term of this Agreement and for a period of five (5) years after the date of final completion.

The Contractor shall obtain and maintain during the term of this Agreement Public Liability and Property Damage Insurance - including coverage for owned

or non-owned vehicles used by the Contractor. The limits of such insurance shall not be less than \$1,000,000.00.

GC 19 AMENDMENTS

- 19.1 No amendment of this contract nor waiver of any of the terms and provisions shall be deemed valid unless effected by a written amendment.

GC 20 ENTIRE AGREEMENT

- 20.1 The contract constitutes the entire agreement between the parties with respect to the subject matter of this contract and supersedes all previous negotiations, communications and other agreements relating to it unless they are incorporated by reference to this contract.

GC 21 OWNERSHIP OF INTELLECTUAL AND OTHER PROPERTY INCLUDING COPYRIGHT

- 21.1 Technical documentation and prototypes produced by the Contractor in the performance of the work under this contract shall vest in and remain the property of the Corporation, and the Contractor shall account fully to the Corporation in respect of the foregoing in such manner as the Corporation shall direct.
- 21.2 Technical documentation shall contain the following copyright notice:
HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the CANADIAN MUSEUM OF NATURE
- 21.3 Technical information and inventions conceived or developed or first actually reduced to practice in performing the work under this contract shall be the property of the Corporation. The Contractor shall have no rights in and to the same. The Contractor shall not divulge or use such technical information and inventions, other than in performing the work under this contract, and shall not sell, other than to the Corporation, any articles or thing embodying such technical information and inventions. Technical information developed by the Contractor outside of this contract but included in the project documentation shall remain the property of the Contractor. The Corporation shall have unlimited reproduction rights for the direct purposes of the redevelopment project.

GC 22 DECLARATION BY CONTRACTOR

- 22.1 The Contractor declares that based on the information provided pertaining to the Services required under this Agreement, the Contractor has been provided sufficient information by the Corporation to enable the Services required under this Agreement to proceed and is competent to perform the Services and has the necessary licences and qualifications including the knowledge, skill and ability to perform the Services.

- 22.2 The Contractor declares that the quality of Services to be provided by the Contractor shall be consistent with the highest generally accepted professional standards and principles.

GC 23 ERRORS AND OMISSIONS

- 23.1 Notwithstanding any other provision of this contract, no payment shall be made by Her Majesty to the Contractor in respect of the costs incurred by the contractor in remedying errors and omissions in the performance of the service that are attributable to the Contractor, the contractor's servants or agents, or persons for whom the Contractor has assumed responsibility.

SUPPLEMENTARY CONDITIONS

SC 1 CONFLICT OF INTEREST

It is a term of this contract:

- (1) that no former public office holder who is not in compliance with the post-employment provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders shall derive a direct benefit from this contract; and
- (2) that during the term of the contract, any persons engaged in the course of carrying out this contract shall conduct themselves in compliance with the principles of the Conflict of Interest and Post-Employment Code for Public Office Holders. Should an interest be acquired during the life of the contract that would cause a conflict of interest or seem to cause a departure from the principles, the Contractor shall declare it immediately to the Corporate Representative.

TERMS OF PAYMENT & OTHER COSTS

SC 2 METHOD OF PAYMENT

Payments shall be made, subject to standard Museum payment terms, (net - 30 days) following submission of invoices which have been certified as to services rendered by the Corporate Representative, to whose complete satisfaction all services shall be performed. The appropriate GST and PST are to be included and shown separately on all invoices and progress claims for taxable goods supplied or work performed. The Corporation agrees to pay this amount to the contractor who, in turn, agrees to remit the GST to Revenue Canada - Customs and Excise.

INVOICE ADDRESS:

Canadian Museum of Nature
P.O. Box 3443, Station 'D'
Ottawa, ON K1P 6P4

PAYMENT OF ACCOUNTS

1. Payment by the Corporation to the Contractor shall be made:
 - a) In the case of a progress payment other than the final payment, within thirty (30) days following the date of receipt of a duly completed Progress Claim or invoice with supporting documentation, on which all of the work has been delivered at the locations specified in the contract and all other work required to be performed by the Contractor under the terms of the contract has been completed.
 - b) In the case of one payment or a final payment, within thirty (30) days following the date of receipt of an invoice and substantiating documentation or a duly completed

final Progress Claim, or within thirty (30) days following the date on which the work is completed, whichever is later.

2. a) If the Corporation has any objection to the form of the Progress Claim or invoice, it shall within fifteen (15) days of its receipt, notify the Contractor of the nature of its objection.
- b) "Form of the claim or invoice" means a claim or invoice which contains or is accompanied by such substantiating documentation as the Corporation requires.
- c) If the Corporation fails to act within fifteen (15) days only the date specified in paragraph 1 of the clause will apply when calculating interest on overdue accounts.