

Contract (Private institutions) – (Chin hosted)
ARTICLES OF AGREEMENT

BETWEEN: HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Canadian Heritage Information Network (hereinafter called “CHIN”);

AND: [*THE NAME, LEGAL DESCRIPTION, COMPLETE ADDRESS, G.S.T. NUMBER*], (hereinafter called {“the Institution”})

WHEREAS CHIN is responsible for managing the *Virtual Museum of Canada* portal and the *Virtual Museum of Canada* Investment Program;

WHEREAS the Institution wishes to create digital content for public exhibition as part of the *Virtual Museum of Canada*;

THE PARTIES AGREE AS FOLLOWS:

1.0 DURATION

1.1 This Agreement shall commence upon the date wherein both parties have signed this Agreement and shall expire on [Date which is five years plus production time].

2.0 PREAMBLE AND ANNEXES

2.1 The preamble and annexes form part of this Agreement.

3.0 SCOPE OF WORK: INSTITUTION

3.1 The Institution shall develop [a virtual exhibition/an interactive game/...] provisionally titled [“_____”] (hereinafter called “the product”) for public exhibition on the World Wide Web as part of the *Virtual Museum of Canada*.

3.2 The product shall consist of a virtual exhibition and/or interactive game as described in Annex A.

- 3.3 The Institution shall ensure that the product respects the technical specifications for *Virtual Museum of Canada* content contained in Annex I.
- 3.4 The Institution shall ensure that recognition of the federal government's financial participation is included in the credits section of the product as specified in Annex I.
- 3.5 The Institution shall produce the product in both official languages, conduct a quality assurance verification of the translation, and provide language navigation choices as specified in Annex I.
- 3.6 The Institution shall conduct a quality assurance verification of the product and ensure that all links and navigational elements are functional prior to its public release.
- 3.7 The Institution shall catalogue the product in both English and French using the cataloguing tool available on the CHIN Web site and shall incorporate the resulting metatags in the product. Stand-alone products within the product, such as interactive games, shall be catalogued separately. Additional linguistic versions of the product may also be catalogued.
- 3.8 The Institution shall provide CHIN with two mutually agreed digital images (captured at a minimum of 300 dpi) from the product as 24 bit TIFF files, along with the requested data for each image, in English and French. CHIN may use these images to promote the product and (or) the *Virtual Museum of Canada*, and may feature them as electronic postcards in the electronic postcard section of the *Virtual Museum of Canada*.
- 3.9 The Institution shall create an *Artefacts Canada* record with an associated image for each object from its collection for which an image is included in the product in accordance with specifications included in Annex I. The Institution shall ensure that this obligation is extended to any other museum partner that receives financial benefit under the Agreement.
- 3.10 The Institution shall provide CHIN with two images (one English, one French) of the homepage of the finalized product in TIFF format (24 bit), along with the requested data for each image, in English and French. CHIN may use these images to promote the product and (or) the *Virtual Museum of Canada*, and may feature them as electronic postcards in the electronic postcard section of the *Virtual Museum of Canada*.
- 3.11 The Institution shall conduct quarterly verifications of all hyperlinks included in the product and correct as required.
- 3.12 As specified in the *Virtual Museum of Canada* Investment Program Guidelines, the Institution shall be responsible for responding to feedback on the product.

- 3.13 To enable the product to be hosted on the CHIN server as requested by the Institution, the Institution shall develop the resource in accordance with the additional specifications provided in Annex I.
- 3.14 Changes to the product after the launch must conform to the terms and conditions of this Agreement.
- 3.15 The Institution shall ensure that any marketing text (ex. press release) that makes reference to the *Virtual Museum of Canada* is sent to CHIN for review and approval prior to release.
- 3.16 The launch date for the product shall be a mutually agreed upon date.
- 3.17 The Institution will add a link to the VMC in a predominant location on its Web site (e.g., its homepage).
- 3.18 The Institution shall provide CHIN with a copy of the product for archival purposes.

4.0 SCOPE OF WORK: CHIN

- 4.1 CHIN shall maintain the *Virtual Museum of Canada* Web site and search facilities to assist the public to locate *Virtual Museum of Canada* content.
- 4.2 CHIN shall provide the Institution with an electronic copy of the *Virtual Museum of Canada* logo for incorporation, without alteration, into the product in accordance with the technical specifications contained in Annex I.
- 4.3 CHIN shall incorporate catalogue information for the product in the *Virtual Museum of Canada* search engine.
- 4.4 CHIN shall provide the Institution with an electronic copy of the metatags created when the product is catalogued and instructions for implementation.
- 4.5 CHIN shall promote the *Virtual Museum of Canada* to the public on behalf of all participating institutions and organizations and may promote the product by featuring it on the *Virtual Museum of Canada* Web site or in other promotional materials.
- 4.6 CHIN shall provide the Institution with a User account on the CHIN server for testing purposes prior to public release of the product.
- 4.7 On behalf of the Institution, CHIN shall make the product freely available to the public on the World Wide Web for a period of five years from the date when it was first released on the Web for public presentation.
- 4.8 CHIN shall provide the Institution with statistics twice a year on product access.

5.0 INTELLECTUAL PROPERTY

- 5.1 Nothing in this Agreement shall be construed as implying the transfer of ownership of intellectual property to CHIN by the Institution or any of its partners or licensors.
- 5.2 In exchange for the consideration described below, the Institution hereby grants to CHIN within the territory and during the term set forth below:

Territory: the world
Term: [Five and a half (5.5)] years, starting on [Start date of production] and ending on [Date which is five years plus production time].

A non-exclusive royalty-free right and license to:

- a) use, reproduce, publish, exhibit, and communicate to the public by telecommunication the product that will be made available to the general public without charge on the World Wide Web as part of the *Virtual Museum of Canada*;
 - b) use, reproduce, adapt, publish, exhibit, and communicate to the public by telecommunication the works specified in paragraphs 3.8 and 3.10 for the purposes of promoting the product, the *Virtual Museum of Canada* and creating an electronic postcard gallery that shall be publicly accessible from the postcard section of the *Virtual Museum of Canada* Web site.
- 5.2.1 Renewal: The Agreement may be renewed by CHIN thereafter for an indefinite period upon six months written notice to the Institution prior to the expiration of the term as provided for in article 5.2 of this Agreement. As a condition of the renewal Agreement, CHIN or the Institution shall have the right to terminate the renewal period upon six months written notice.
- 5.3 CHIN reserves the right to “frame” the product within the *Virtual Museum of Canada* Web site.
- 5.4 CHIN retains all rights and interest in the *Virtual Museum of Canada* name, logo and trademark.
- 5.5 CHIN hereby grants to the Institution the right to use, reproduce and communicate to the public by telecommunication the *Virtual Museum of Canada* logo as part of the product specified in Clause 4.2.
- 5.6 Notwithstanding the term of licence granted to CHIN by the Institution in paragraph 5.2 of this Agreement, the Institution hereby grants CHIN a non-exclusive license, in

perpetuity, to reproduce, exhibit and communicate to the public by telecommunication the works specified in paragraph 3.9 that will be posted on the World Wide Web as part of services such as *Artefacts Canada* and the *Virtual Museum of Canada's Image Gallery*.

- 5.7 Notwithstanding the term of licence granted to CHIN by the Institution in paragraph 5.2 of this Agreement, the Institution hereby grants CHIN the right to archive a copy of the product in perpetuity in a manner and with an institution chosen by CHIN at its sole discretion. Nothing in this Agreement shall obligate CHIN to ensure archival quality or retrieval capability.
- 5.8 The Institution expressly reserves and retains any rights that are not expressly granted to CHIN under this Agreement.
- 5.9 Nothing herein shall impose any obligation on CHIN to make use of any of the rights set forth herein.

6.0 CONSIDERATION AND PAYMENT

- 6.1 In consideration for the work to be performed by the Institution in developing the product, CHIN will pay the Institution up to a maximum of \$ _____ plus G.S.T OR H.S.T. upon receipt of invoices, based on eligible expenses as outlined in the Program Guidelines and according to the following schedule:
- a first payment of 20% \$ _____ plus G.S.T. OR H.S.T. of the total on delivery of a detailed production plan within 14 days from the date upon which both parties signed this Agreement;
 - a second payment of 50% \$ _____ plus G.S.T. OR H.S.T upon completion of a functioning preliminary online version of product (in accordance with the technical specifications outlined in Annex I), including the products in section 3.8, and a formative report on audience evaluation, on or before [DATE];
 - a third payment of 20 % \$ _____ plus G.S.T. OR H.S.T upon delivery of the completed product in all languages for technical verification by CHIN prior to public release, on or before [DATE];
 - a fourth and final payment of 10% \$ _____ plus G.S.T. OR H.S.T. for the balance of the product costs following: delivery of the final version with any changes required as a result of the CHIN technical verification; two homepage images (one English, one French) as described in section 3.10; the cataloguing of the product; the contribution of object records to *Artefacts Canada*, on or before [DATE – 6 weeks after the date of the third deliverables]; and, submission and acceptance by CHIN of the financial expenditure report as required in Section 9 of this Agreement.

7.0 WARRANTIES AND REPRESENTATIONS

7.1 The Institution warrants and represents that:

- a) prior to the public launch of the product on the World Wide Web, it will have cleared all necessary rights to use, reproduce, adapt, translate, publish, exhibit, and communicate to the public by telecommunication any underlying works contained in the product;
- b) it has cleared the rights to use, reproduce, adapt, translate, publish, exhibit and communicate to the public by telecommunication the works specified in paragraphs 3.8 and 3.10 for the purposes of promoting the product, the *Virtual Museum of Canada* and creating an electronic postcard gallery that shall be publicly accessible from the postcard section of the *Virtual Museum of Canada* Web site;
- c) it has the sole and exclusive right to grant the rights, licenses and privileges granted in paragraph 5.2;
- d) it has full right, power, legal capacity and authority to enter into this Agreement and to carry out all of its terms and conditions and the signatory is a duly authorized representative with full powers to sign this Agreement on its behalf;
- e) it will ensure all aspects of the work to be performed pursuant to this Agreement will conform to the technical specifications appended to this Agreement and meet all deadlines specified in the Agreement.

8.0 LIABILITY AND INDEMNIFICATION

8.1 Her Majesty the Queen in right of Canada and CHIN, their officers, employees and agents, shall not be liable for any injury to the person, including death, or for loss or damages to the property of the Institution or of anyone else, occasioned by, or in any way attributable to the Institution under this Agreement unless such injury, loss or damage is caused by the negligence of an officer, employee or agent of Her Majesty or CHIN acting within the scope of his employment.

- 8.2 Except as specified in Clause 8.3 of this Agreement, the parties will mutually indemnify, defend and forever hold each other and their officers, employees and agents harmless against and from any and all third party claims, lawsuits, judgments and expenses (including, without limitation, reasonable legal fees) arising out of any breach by the other party of any provision of this Agreement or any misrepresentation made by the other party and its officers, employees or agents. This paragraph shall survive the termination of the Agreement.
- 8.3 The Institution undertakes to indemnify and save harmless Her Majesty and CHIN from and against all claims, expenses or actions based upon Her Majesty or CHIN's use in the *Virtual Museum of Canada* of the underlying works contained in the product or identified in clauses 3.8, 3.9 and 3.10 of this Agreement.

9.0 FINANCIAL REPORT

- 9.1 The Institution shall provide to CHIN, by [One month after launch date], a summary of expenditures incurred by the Institution to complete the product.

10.0 AUDIT AND EVALUATION

- 10.1 The Institution shall, for a period of five years, keep proper accounts and records of the costs involved in the product, namely of all expenditures or commitments made by the Institution, including the invoices, receipts and vouchers which shall, at reasonable times, be open to audit and inspection by the authorized representatives of CHIN who may make copies and take extracts therefrom.

11.0 DEFAULT AND TERMINATION

- 11.1 The Agreement shall terminate automatically if the Institution:
- a) has been appointed a receiver or manager for its business;
 - b) petitions for relief under any bankruptcy statute, whether now in force or hereafter enacted or takes advantage of the insolvency laws of any state or country, or makes an assignment for the benefit of its creditors;
 - c) transfers its rights under this Agreement to a third party without the prior written approval of CHIN;
 - d) has made any representation or warranty that proves to be false or misleading.

- 11.2 Notwithstanding the above, this Agreement may also terminate, be suspended or the scope of the obligations under the Agreement may be reduced if the Institution violates or defaults in the performance of any undertaking or obligation under this Agreement.
- 11.3 In such a case, CHIN may, by notice in writing, clearly specify the nature of the violation or default complained of. If, within thirty (30) days following the date of such notice, the Institution has not rectified the violation or default to the reasonable satisfaction of CHIN or has not given the assurance of its intentions to respect the provisions of this Agreement to the reasonable satisfaction of CHIN, CHIN may unilaterally terminate this Agreement in full right and with no legal action or other formality, without prejudice to its rights to claim damages from the Institution. Satisfaction for rectification of default shall not be unreasonably withheld by CHIN.
- 11.4 Upon termination of this Agreement, CHIN shall cease to have any obligation to make any payment to the Institution in respect of the costs incurred by the Institution after the date of termination, and, if applicable, the amount of any excess cost paid to the Institution shall be recognized as being a debt due to CHIN.

12.0 NOTICES AND COMMUNICATIONS

- 12.1 All notices and communications concerning this Agreement shall be addressed to the respective contact people as follows:

For CHIN:

Ms. Esther Rosenberg
Virtual Museum of Canada Investment Programs Manager
Canadian Heritage Information Network
15 Eddy Street, 4th Floor (15-4-A)
Gatineau, Québec K1A 0M5
Phone: (819) 934-5034 or 1-800-520-2446
Fax: (819) 994-9555

For the Institution:

[Representative
Title
Institution Name
Institution Address]
Telephone
Fax

**13.0 General Terms and Conditions for Government of Canada contracts,
please see Annex II.**

IN WITNESS WHEREOF, the parties have executed this Agreement:

For the Institution:

For CHIN:

[Person with signing authority
Title]

Namir Anani
Director General

Date

Date