

# National Gallery of Canada

## General Conditions

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### GC1. INTERPRETATION

1.1 In this contract

- 1.1.1 **"Commencement Date"** means the date when the National Gallery of Canada gives notice to commence the work once both parties have signed the contract.
- 1.1.2 **"CONTRACT"** means the written agreement between the Parties and every document forming part of the contract, all as amended by agreement of the parties from time to time.
- 1.1.3 **"CONTRACTING AUTHORITY"** means the officer authorized by the Museum to approve the Contract and any amendments thereof and to perform any of the Museum's obligations under the contract;
- 1.1.4 **"CONTRACT PRICE"** means the amount expressed in the Contract to be payable to the Contractor for the Work;
- 1.1.5 **"CONTRACTOR"** is the party to the Contract which undertakes, by entering into the Contract, to perform the Work and who is to supply goods and Work;
- 1.1.6 **"GOVERNMENT PROPERTY"** means all materials, parts, components, specifications, equipment, software, articles and things supplied to the Contractor by or on behalf of the Museum for the purposes of performing the Contract and anything acquired by the Contractor in any manner in connection with the Work the cost of which is paid by the Museum under the Contract.
- 1.1.7 **"NGC AUTHORITY"** means an employee(s) of the National Gallery of Canada delegated to manage this contract.
- 1.1.8 **"MUSEUM"** means the National Gallery of Canada (NGC) or the Canadian Museum of Contemporary Photography (CMCP) or the NGC Warehouse and includes a person acting for the Museum or any successor in the Museum and the Museum's representatives appointed for the purposes of this Contract;
- 1.1.9 **"MUSEUM PROPERTIES"** means equipment, government property, software, building sites, and collections.
- 1.1.10 **"ON-SITE" SUPERVISOR"** means the employee of the Contractor who is designated by the Contractor as being in full charge of the site operations of the Contractor for the purpose of the Contract.
- 1.1.11 **"PARTY"** means the Museum or the Contractor or any other signatory to the Contract and "Parties" means all of them.
- 1.1.12 **"PROTOTYPE"** includes a model, a pattern, a sample or a first specimen;
- 1.1.13 **"SPECIFICATIONS"** means the functional or technical description of the Work set out or referred to in the Contract, including drawings, samples and models, and further includes, except to the extent inconsistent with anything set out or referred to in the Contract, any such description set out or referred to in any brochure, product literature or other

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- documentation furnished by the Contractor in relation to the Work or any part thereof.
- 1.1.14 **"SUBCONTRACT"** includes a contract let by any subcontractor at any tier for the performance or supply of a part of the Work.
- 1.1.15 **"SUBCONTRACTOR"** is a party who contracts with the Contractor or a Subcontractor to perform all or any part of the contractor's obligations in a particular contract. The contractor is accountable for the Work performed by the subcontractor.
- 1.1.16 **"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 this Contract. "Work" means the whole of the activities, services, materials, equipment, software, matters and things required to be done, delivered or performed by the Contractor in accordance with the terms of the Contract.
- 1.2 Where there is a conflict, the provisions of the Contract shall prevail over the provisions of these General Conditions.
- 1.3 The headings used in these general conditions are inserted for convenience of reference only and shall not affect their interpretation.

### **GC2. STATUS OF THE CONTRACTOR**

- 2.1 This is a Contract for the performance of a service and the Contractor is engaged as an independent Contractor for the sole purpose of providing a service. Neither the Contractor nor any of its personnel is engaged as an employee, servant or agent of the Museum. The Contractor is responsible for all deductions and remittances required by law in relation to its employees including those required for Canada or Quebec Pension Plans, Unemployment Insurance, Workers' Compensation, or Income Tax.

### **GC3. ASSIGNMENT OF CONTRACT**

- 3.1 This Contract may not be assigned by the Contractor, either in whole or in part, without the written consent of the Museum.

### **GC4. SUBCONTRACTING BY CONTRACTOR**

- 4.1 Subject to this General Condition, the Contractor may subcontract any part of the work.
- 4.2 The Contractor shall notify the NGC Authority in writing of the Contractor's intention to subcontract.
- 4.3 A notification referred to in GC4.2 shall identify the part of the work, and the subcontractor with whom it is intended to subcontract.
- 4.4 The NGC Authority may object to the intended subcontracting by notifying the Contractor in writing within three (3) days of receipt by the NGC Authority of a notification referred to in GC4.2.

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- 4.5 If the NGC Authority objects to a subcontracting pursuant to GC4.4, the Contractor shall not enter into the intended subcontract;
- 4.6 The Contractor shall not, without the written consent of the NGC Authority, change a subcontractor who has been engaged by the Contractor in accordance with this General Condition;
- 4.7 All the terms and conditions of the this Contract that are of general application shall be incorporated in every other contract, except those contracts issued solely for the supply of plant or material, issued as a consequence of this Contract;
- 4.8 Neither a subcontracting nor the NGC Authority's consent to a subcontracting by the Contractor shall be construed to relieve the Contractor from any obligation under the Contract or to impose any liability upon the Museum.

### **GC5. INDEMNIFICATION BY CONTRACTOR**

- 5.1 The Contractor shall indemnify and save the Museum harmless from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings by whomever made, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the Contractor, the Contractor's servants, agents, subcontractors and sub-subcontractors in performing the Work including an infringement or an alleged infringement of a patent of invention or any kind of intellectual property.
- 5.2 For the purposes of GC5.1, "**Activities**" includes any act improperly carried out, any omission to carry out an act and any delay in carrying out an act.

### **GC6. INDEMNIFICATION BY THE MUSEUM**

- 6.1 The Museum shall, subject to the Crown Liability Act, the Patent Act, and any other law that affects the Museum's rights, powers, privileges or obligations, indemnify and save the Contractor harmless from and against all claims, demands, losses, costs, damage, actions, suits or proceedings arising out of the Contractor's activities under the Contract that are directly attributable to
  - 6.1.1 lack of or a defect in the Museum's title to the work site whether real or alleged; or
  - 6.1.2 an infringement or an alleged infringement by the Contractor of any patent of invention or any other kind of intellectual property occurring while the Contractor was performing any act for the purposes of the contract employing a model, plan or design or any other thing related to the Work that was supplied by the Museum to the Contractor.

### **GC7. AMENDMENTS & WAIVERS**

- 7.1 The Contracting Authority is responsible for the management of the contract and any changes to the contract must be authorized by a contract amendment issued by the Contracting Authority. The Contractor ***IS NOT*** to perform the Work in excess of or outside the scope of this contract based on verbal or written requests or instructions from any Museum personnel other than the

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Contracting Authority.

- 7.2 No amendment of the contract nor waiver of any of the terms and provisions shall be deemed valid unless confirmed by a written amendment.
- 7.3 No waiver shall be valid, binding or affect the rights of the Parties unless it is made in writing by, in the case of a waiver by the Museum, the Contracting Authority and, in the case of a waiver by the Contractor, the authorized representative of the Contractor.

### **GC8. COMPLIANCE WITH APPLICABLE LAWS**

- 8.1 The Contractor shall comply with all legislative and regulatory provisions whether federal, provincial or municipal applicable to the performance of the Work or any part thereof including, without limitation, all laws concerning health and labour conditions and the protection of the environment, and shall require compliance therewith by all of its subcontractors.
- 8.2 Unless otherwise provided in the Contract, the Contractor shall obtain all permits and hold all certificates and licenses for the performance of the Work.
- 8.3 From time to time, the NGC Authority may request the Contractor provide evidence that it complies with all applicable legislative and regulatory provisions and that it holds all required permits, certificates and licenses. Such evidence shall be provided within the time set in the request or otherwise stipulated in the Contract.

### **GC9. CONDUCT OF WORK**

- 9.1 The Contractor represents and warrants that:
- a) It is competent to perform the Work; and
  - b) It has the necessary qualifications, including knowledge, skill, experience, security clearances and licenses, to perform the Work, together with the ability to use those qualifications effectively for that purpose.
- 9.2 Except for Government Property specifically provided for in the Contract, the Contractor shall supply everything necessary for the performance of the Work, including all the resources, facilities, labour and supervision, management, services, equipment, materials, drawings, technical data, technical assistance, engineering services, inspection and quality assurance procedures, and planning necessary to perform the Work.
- 9.3 The Contractor shall:
- a) Carry out the Work in a diligent and efficient manner;
  - b) Apply as a minimum quality assurance tests, inspections and controls consistent with those in general usage in the trade and that are reasonably calculated to ensure the degree of quality required by the Contract; and

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- c) Ensure that the Work:
  - i) Is of proper quality, material and Workmanship;
  - ii) Is in full conformity with the Specifications; and
  - iii) Meets all other requirements of the Contract.
- 9.4 The Contractor shall provide such reports on the performance of the Work as required by the Contract and such other reports as may reasonably be required by the Museum or the NGC Authority.
- 9.5 The Museum shall have access to the area at all times where any part of the Work is being carried out, and may make inspections of the Work being rendered when the Museum may think fit. Should the Work or any part thereof not be in accordance with the requirements of the Contract, the NGC Project Authority shall have the right to reject the Work and require its correction or replacement at the Contractor's expense. The NGC Authority shall inform the Contractor of the reasons for any such rejection. Inspection by the NGC Authority shall not relieve the Contractor from responsibility to meet the requirements of the Contract.
- 9.6 The Museum shall have access to all books, accounts and other information in the Contractor's possession relating to the Work called for in the Contract.

### **GC10 COOPERATION WITH OTHER CONTRACTORS**

- 10.1 Where, in the opinion of the NGC Authority, it is necessary that other contractors or workers with or without plant and material, be sent onto the work or its site, the Contractor shall, to the satisfaction of the NGC Authority, allow them access and cooperate with them in the carrying out of their duties and obligation.

#### **10.2 IF**

- 10.2.1 the sending onto the work or its site of other contractors or workers pursuant to GC10.1 could not have been reasonably foreseen or anticipated by the Contractor when entering into the contract; and
- 10.2.2 the Contractor incurs, in the opinion of the NGC Authority, extra expense in complying with GC10.1; and
- 10.2.3 the Contractor has given the NGC Authority written notice of the Contractor's claim for the extra expense referred to in GC10.2.2 within thirty (30) days of the date that the other contractors or workers were sent onto the work or its site,

The Museum shall pay the Contractor all reasonable costs for extra labour, plant and material that was necessarily incurred.

### **GC11. EXAMINATION OF WORK**

- 11.1 If, at time after the commencement of the Work but prior to the expiry of the warranty or guarantee period, the NGC Authority has reason to believe that the Work or any part thereof has not been

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performed in accordance with the Contract, the NGC Authority may have that Work examined by an expert of the NGC Authority's choice.

- 11.2 If, as a result of an examination of the work referred to in GC11.1, it is established that the Work was not performed in accordance with the Contract, then, in addition to and without limiting or otherwise affecting any of the Museum's rights and remedies under the Contract either at law or in equity, the Contractor shall pay the Museum, on demand, all reasonable costs and expenses that were incurred by the Museum in having that examination performed.

#### **GC12. CLEARING OF SITE**

- 12.1 The Contractor shall maintain the work and its site in a tidy condition and free from the accumulation of waste material and debris, in accordance with any direction of the NGC Authority.
- 12.2 Before the issue of a final certificate, the Contractor shall remove from the work and its site all of the surplus plant and material and any waste material and other debris.
- 12.3 The Contractor's obligations described in GC12.1 and GC12.2 do not extend to waste material and other debris caused by the Museum's staff, or contractors and workers referred to in GC10.1.

#### **GC13. CONTRACTOR'S ON-SITE SUPERVISOR**

- 13.1 The Contractor shall, forthwith upon the award of the contract, designate an On-Site supervisor.
- 13.2 The Contractor shall forthwith notify the NGC Authority of the name, address and telephone number of an On-Site Supervisor designated pursuant to GC13.1.
- 13.3 An On-Site Supervisor designated pursuant to GC13.1, shall be in full charge of the operations of the Contractor in performance of the Work and is authorized to accept any notice, consent, order, direction, decision or other communication on behalf of the Contractor that may be given to the On-Site Supervisor under the Contract.
- 13.4 The Contractor shall, until the work has been completed, keep a competent On-Site Supervisor at the work site, daily, during working hours.
- 13.5 The Contractor shall, upon the request of the NGC Authority, remove any On-Site Supervisor who, in the opinion of the NGC Authority, is incompetent or has been guilty of improper conduct, and shall forthwith designate another On-Site Supervisor who is acceptable to the NGC Authority.
- 13.6 Subject to GC13.5, the Contractor shall not substitute an On-Site Supervisor without the written consent of the NGC Authority.
- 13.7 A breach by the Contractor of GC13.6, entitles the NGC Authority to refuse to issue any certificate until the on-site supervisor has returned to the Work site or another On-Site Supervisor who is acceptable to the NGC Authority has been substituted.

#### **GC14. UNSUITABLE WORKERS**

- 14.1 The Contractor shall, upon the request of the NGC Authority, remove any person employed by the

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Contractor or a subcontractor for the purposes of the contract who, in the opinion of the NGC Authority, is incompetent or is guilty of improper conduct, and the Contractor shall not permit a person who has been removed to return to the work site.

### **GC15. CHANGES IN WORK**

- 15.1 Subject to GC7, the NGC Authority may, at any time before issuing a Final Certificate of Completion,
- 15.1.1 Order work or material in addition to that provided for in the Plans and Specifications; and
- 15.1.2 Delete or change the dimensions, character, quantity, quality, description, location or position of the whole or any part of the Work or material provided for in the Plans and Specification or in any order made pursuant to GC15.1.1,
- if that additional work or material, deletion, or change is, in the NGC Authority's opinion, consistent with the general intent of the original contract.
- 15.2 The Contractor shall perform the Work in accordance with such orders, deletions and changes that are made by the NGC Authority pursuant to GC15.1 from time to time as if they had appeared in and been part of the Plans and Specifications.
- 15.3 The NGC Authority shall determine whether or not anything done or omitted by the Contractor pursuant to an order, deletion or change referred to in GC15.1 increased or decreased the cost of the Work to the Contractor.
- 15.4 If the NGC Authority determines pursuant to GC15.3 that the cost of the Work to the Contractor has been increased, the Museum shall pay the Contractor the increased cost that the Contractor necessarily incurred for the additional Work.
- 15.5 If the NGC Authority determines pursuant to GC15.3 that the cost of the Work to the Contractor has been decreased, the Museum shall reduce the amount payable to the Contractor under the contract by an amount equal to the decrease in the cost caused by the deletion or change referred to in GC15.1.2.
- 15.6 An order, deletion or change referred to in GC15.1 shall be in writing, signed by the NGC Authority and given to the Contractor in accordance with GC27.

### **GC16. PUBLIC CEREMONIES AND SIGNS**

- 16.1 The Contractor shall not permit any public ceremony in connection with the Work without the prior consent of the NGC Authority.
- 16.2 The Contractor shall not erect or permit the erection of any sign or advertising on the work or its site without the prior consent of the NGC Authority.

### **GC17. SUSPENSION OF THE WORK**

- 17.1 The Museum may at any time, by written notice, order the Contractor to suspend or stop all or part of the Work under the Contract either for a specified or an unspecified period. The Contractor

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shall immediately comply with any such order in the manner that minimizes the cost of so doing.

- 17.2 While such an order is in effect, the Contractor shall not remove any part of the Work from any premises without the prior written consent of the NGC Authority. At any time prior to the expiration of the specified period, the Museum shall either rescind the order or terminate the Contract, in whole or in part, under section GC29 (Terminate due to Default of Contractor) or section GC28 (Terminate for Convenience).
- 17.3 When an order is made under subsection GC17.1, unless the Museum terminates the Contract by reason of default by the Contractor or the Contractor abandons the Contract, the Contractor shall be entitled to be paid its additional Costs incurred as a result of the suspension plus a fair and reasonable profit on those costs.
- 17.4 When an order is made under subsection GC17.1 and is rescinded:
- a) The Contractor shall as soon as practicable resume Work in accordance with the Contract.
  - b) If the suspension or stoppage has affected the Contractor's ability to meet any delivery date under the Contract, the date for the performance of that part of the Work affected by the suspension shall be extended for a period equal to the period of suspension or stoppage plus a period, if any, which in the opinion of the Museum following consultation with the Contractor is reasonably necessary for the Contractor to resume the Work; and
  - c) Subject to section GC7 (Amendments and Waivers), an equitable adjustment may be made as necessary to affected terms and conditions of the Contract.

### **GC18. WARRANTY AND RECTIFICATION OF DEFECTS IN WORK**

- 18.1 Without restricting any warranty or guarantee implied or imposed by law or contained in the contract documents, the Contractor shall, at the Contractor's expense,
- 18.1.1 Rectify and make good any defect or fault that appears in the Work or comes to the attention of the Museum.
- 18.2 The NGC Authority may direct the Contractor to rectify and make good any defect or fault referred to in GC18.1 or covered by any other expressed or implied warranty or guarantee.
- 18.3 A direction referred to in GC18.2 shall be in writing, may include a stipulation in respect of the time within which a defect or fault is required to be rectified and made good by the Contractor, and shall be given to the Contractor in accordance with GC27.
- 18.4 The Contractor shall rectify and make good any defect or fault described in a direction given pursuant to GC18.2 within the time stipulated therein.

### **GC19. TIME OF ESSENCE**

- 19.1 Time shall be deemed to be of the essence of this Contract, provided that: the time for completing any of the Work which has been or is likely to be delayed by reason of force majeure or other

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cause beyond the reasonable control of the Contractor shall be extended by a period equal to the delay so caused, provided that prompt notice in writing of the occurrence causing or likely to cause such delay is given to the Museum.

### **GC20. ACCOUNTS AND AUDIT**

- 20.1 The Contractor shall keep proper accounts and records of the cost to the Contractor of the Work and of all expenditures or commitments made by the Contractor in connection therewith, and shall keep all invoices, receipts and vouchers relating thereto, the Contractor shall not, without prior written consent of the Museum, dispose of any such accounts, records, invoices, receipts or vouchers until the expiration of 6 years after final payment under this Contract, or until the settlement of all outstanding claims and disputes, whichever is later.
- 20.2 All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the retention period referred to in subsection GC20.1 be open to audit, inspection and examination by the authorized representatives of the Museum, who may make copies and take extracts thereof. The Contractor shall provide all facilities for such audits and inspections and shall furnish all such information as the representatives of the Museum may from time to time require with respect to such accounts, records, invoices receipts and vouchers.

### **GC21. NO BRIBES, ETC.**

The Contractor represents and warrants that,

- 21.1 no bribe, gift, benefit or other inducement has been or will be paid, given, promised or offered directly or indirectly to any person for, or with a view to obtaining this contract by the Contractor, and;
- 21.2 it has no pecuniary interest in the business of any third party that would affect its objectivity in carrying out the Work.

### **GC22. CERTIFICATION - CONTINGENCY FEES**

- 22.1 The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a commission, percentage, brokerage or contingency fee for the solicitation, negotiation or obtaining of the Contract to any person other than an employee acting in the normal course of the employee's duties.
- 22.2 All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the Contract shall be subject to the Accounts and Audit provisions of the Contract.
- 22.3 If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Museum may either terminate this Contract for default in accordance with the provisions of the Contract or recover from the Contractor by way of reduction to the Contract Price or otherwise the full amount of the contingency fee.
- 22.4 In this section:  
**"Contingency Fee"** means any payment or other compensation that is contingent upon or is

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calculated upon the basis of a degree of success in soliciting or obtaining a Contract or negotiating the whole or any part of its terms.

"**Employee**" means a person with whom the Contractor has an employer/ employee relationship.

"**Person**" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the Lobbyist Registration Act R.S.C. 1985 c. 44 (4th Supplement) as the same may be amended from time to time.

### **GC23. MEMBERS OF THE HOUSE OF COMMONS**

23.1 No member of the House of Commons shall be admitted to any share or part of the contract or to any benefit arising from the Contract.

### **GC24. GOVERNMENT OFFICIALS AND EMPLOYEES**

24.1 No official or employee of the Government of Canada shall be admitted to any share or part of this contract or to any benefit to arise therefrom without the written consent of the Chairperson of the Museum.

### **GC25. CONFIDENTIALITY**

- 25.1 The Contractor shall treat as confidential, during as well as after the performance of any Work under this contract, any information, including any personal information as defined in the Privacy Act, to which the Contractor becomes privy as a result of acting under the contract. For more certainty, the Contractor shall not disclose any such information to any other person or party which is not participating in the contract in a form that could reasonably be expected to identify the person, including individuals, to whom such information relates.
- 25.2 the Work to be performed under the contract involves access by the Contractor to confidential, classified or protected documents, the Contractor shall comply with all applicable security procedures and requirements of the Museum.

### **GC26. OWNERSHIP OF PROPERTY DATA**

26.1 All information obtained initially or accumulated in the performance of any Work under this Contract, is and shall remain the property of the Museum and shall be returned to the Museum in electronic format acceptable to the Museum (where it exists electronically) or in its original format (where it does not exist electronically) at the Museum's request

### **GC27. NOTICES**

27.1 Any notice, consent, order, decision, direction or other communication, other than a notice

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referred to in GC27.4, that may be given to the Contractor pursuant to the Contract may be given in any manner.

- 27.2 Any notice, consent, order, decision, direction or other communication required to be given in writing, to any party pursuant to the Contract shall, subject to GC27.4, be deemed to have been effectively given
- 27.2.1 to the Contractor, if delivered personally to the Contractor or the Contractor's On-site Supervisor, or forwarded by mail, or facsimile to the Contractor at the address set out in the Contract, or
- 27.2.2 to the Museum, if delivered personally to the NGC Authority, or forwarded by mail or facsimile to the NGC Authority at the address set out in the Contract.
- 27.3 Any such notice, consent, order, decision, direction or other communication given in accordance with GC.27.2 shall be deemed to have been received by either party
- 27.3.1 if delivered personally, on the day that it was delivered;
- 27.3.2 if forwarded by mail, on the earlier of the day it was received and the sixth day after it was mailed; and
- 27.3.3 if forwarded by facsimile, 24 hours after it was transmitted.
- 27.4 A notice given under GC17, GC28 and GC29, if delivered personally, shall be delivered to the Contractor if the Contractor is doing business as a sole proprietor or, if the Contractor is a partnership or corporation, to an officer thereof.

### **GC28. TERMINATION FOR CONVENIENCE**

- 28.1 Notwithstanding anything contained in the Contract, the Museum may, at any time prior to the completion of the Work, by giving notice to the Contractor, (in this section sometimes referred to as a "termination notice"), terminate the Contract as regards all of any part of the Work not completed.
- Upon a termination notice being given, the Contractor shall cease Work (including the manufacture and procuring of materials for the fulfilment of the Contract) in accordance with and to the extent specified in the notice, but shall proceed to complete such part or parts of the Work as are not affected by the termination notice. The Museum may, at any time or from time to time, give one or more additional termination notices with respect to any or all parts of the Work not terminated by any previous termination notice.
- 28.2 In the event of a termination notice being given pursuant to subsection GC28.1, the Contractor shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for purposes of performing the Contract and to the extent that the Contractor has not already been so paid or reimbursed by the Museum including the un-liquidated portion of any advance payment:
- a) On the basis of the Contract Price, for all completed Work that is inspected and accepted in accordance with the Contract, whether completed before, or after and in compliance

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with the instructions contained in, the termination notice;

- b) The cost to the Contractor plus a fair and reasonable profit thereon, for all Work terminated by the termination notice before completion, the cost to the Contractor being determined in accordance with the terms of the Contract;
  - c) The amount of any capital expenditures actually incurred only if they were specifically authorized under the Contract or approved in writing by the Museum for the purpose of the Contract, less any depreciation in respect thereof already taken into account in determining cost, to the extent that the capital expenditures are properly apportionable to the performance of the Contract;
  - d) If the Contract is exclusively for the making of capital expenditures in respect of additional equipment or plant additions, in lieu of the amounts described in paragraphs (a) to (c) inclusive, the reasonable and proper cost to the Contractor of:
    - .1 all additional equipment that, prior to the giving of the termination notice, has been purchased, acquired or manufactured by the Contractor or contracted for and for which the Contractor is obligated to make payment, and
    - .2 all additional equipment in process of manufacture by the Contractor at the date of giving of the termination notice and all Work in connection with the construction of the plant additions to that date, including the cost of materials and parts contracted for by the Contractor for the purpose of such manufacture or construction and for which the Contractor is obligated to make payment; and
  - e) All costs of and incidental to the termination of the Work or part thereof, including the cost of cancellation of obligations incurred by the Contractor with respect to the terminated Work or part thereof, the cost of and incidental to the taking of an inventory of materials, components, Work-in-process and finished Work on hand related to the Contract at the date of the termination, and the cost of preparation of necessary accounts and statements with respect to Work performed to the effective date of the termination and commitments made by the Contractor with respect to the terminated portions of the Work; but not including the cost of severance payments or damages to employees whose services are no longer required by reason of the termination except wages that the Contractor is obligated by statute to pay them and except for reasonable severance payments or damages paid to employees hired to perform the Contract whose hiring was expressly required by the Contract or approval in writing by the Museum for the purpose of this Contract.
- 28.3 In paragraphs GC28.2 (c) and (d), “capital expenditures” includes the entry into leases of real property and equipment.
- 28.4 The Museum may reduce the payment in respect of any of the Work to the extent that, upon inspection, it is deficient in meeting the requirements of the Contract.
- 28.5 Notwithstanding anything in subsection GC28.2, the total of the amounts to which the Contractor is entitled under paragraphs GC28.2 (a) to (d) inclusive, together with any amounts paid or due or becoming due to the Contractor under other provisions of the Contract, shall not exceed the Contract Price or the portion thereof that is applicable to the part of the Work that is terminated,

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- and shall not exceed the proportion of the price quoted by the Contractor for all of the Work that is reasonably attributable to the proportion of the Work performed to the effective date of the termination.
- 28.6 In the procuring of materials and parts required for the performance of the Contract and in the subcontracting of any of the Work, the Contractor shall, unless otherwise authorized by the Museum, place purchase orders and subcontracts on terms that will enable the Contractor to terminate the same upon terms and conditions similar in effect to those provided in this section, and generally the Contractor shall co-operate with the Museum and do everything reasonably within its power at all times to minimize the amount of the Museum's obligations in the event of a termination under this section.
- 28.7 Title to all materials, parts, plant, equipment, Work-in-process and finished Work in respect of which payment is made to the Contractor shall, upon such payment being made, pass to and vest in the Museum unless already so vested under any other provision of the Contract, and such materials, parts, plant, equipment, Work-in-process and finished Work shall be delivered according to the order of the Museum, but the Museum will not accept and will not pay for materials, parts, plant, equipment or Work-in-process that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
- 28.8 The Contractor shall have no claim for damages, compensation, and loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or termination notice given by the Museum under this section, except to the extent that this section expressly provides.

### **GC29. TERMINATION DUE TO DEFAULT OF CONTRACTOR**

- 29.1 Where the Contractor is in default in carrying out any of its obligations under the Contract, the Museum may, upon giving written notice to the Contractor, terminate for default the whole or any part of the Contract, either immediately, or at the expiration of a cure period specified in the notice if the Contractor has not cured the default to the satisfaction of the Museum within that cure period.
- 29.2 Where the Contractor becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the Contractor, or an order is made or a resolution passed for the winding up of the Contractor, the Museum may, to the extent permitted by the laws of Canada, upon giving notice to the Contractor, immediately terminate for default the whole or any part of the Contract.
- 29.3 Upon the giving of a notice provided for in subsection GC29.1 or GC28.2, the Contractor shall have no claim for further payment other than as provided in this section, but shall be liable to the Museum for any amounts, including milestone payments, paid by the Museum and for all losses and damages which may be suffered by the Museum by reasons of the default or occurrence upon which the notice was based, including any increase in the cost incurred by the Museum in procuring the Work from another source. The Contractor agrees to repay immediately to the Museum the portion of any advance payment that is un-liquidated at the date of the termination. Nothing in this section affects any obligation of the Museum under the law to mitigate damages.
- 29.4 Upon termination of the Contract under this section, the Museum may require the Contractor to deliver to the Museum, in the manner and to the extent directed by the Museum, any completed

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- parts of the Work which have not been delivered and accepted prior to the termination and any materials, parts, plant, equipment or Work-in-process which the Contractor has acquired or produced specifically in the fulfilment of the Contract.
- 29.5 Subject to the deduction of any claim that the Museum may have against the Contractor arising under the Contract or out of the termination, the Museum shall pay or credit to the Contractor the value, determined on the basis of the Contract Price including the proportionate part of the Contractor's profit or fee included in the Contract Price, of all completed parts of the Work delivered to the Museum pursuant to a direction under subsection GC29.4 and accepted by the Museum, and shall pay or credit to the Contractor the cost to the Contractor that the Museum considers reasonable in respect of all materials, parts, plant, equipment or Work-in-progress delivered to the Museum pursuant to a direction under subsection GC29.4 and accepted by the Museum, but in no event shall the aggregate of the amounts paid by the Museum under the contract to the date of termination and any amounts payable pursuant to this subsection exceed the Contract Price.
- 29.6 Title to all materials, parts, plant, equipment, Work-in-process and finished Work in respect of which payment is made to the Contractor shall, upon such payment being made, pass to and vest in the Museum unless already so vested under any other provision of the Contract, and such materials, parts, plant, equipment, Work-in-process and finished Work shall be delivered according to the order of the Museum, but the Museum will not accept and will not pay for materials, parts, plant, equipment or Work-in-process that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
- 29.7 Where, subsequent to issuance of a notice pursuant to subsection GC29.1, the Museum is satisfied that grounds did not exist for a termination under this section, the notice shall be deemed a notice of termination for convenience issued under subsection GC28.1 (Termination for Convenience).

### GC30. DISPUTE

- 30.1 Any claim or dispute arising out of or in connection with this contract that cannot be resolved through negotiation shall be submitted by the parties to binding arbitration pursuant to the **Commercial Arbitration Act**. The party requesting such arbitration shall do so by written notice to the other party/parties. The costs of the arbitration and fees of the arbitrator shall be borne equally by the parties. The arbitration shall take place in Ottawa, Canada, before a single arbitrator to be chosen jointly by the parties. If the parties cannot agree on the choice of an arbitrator within thirty (30) days of written notice to submit to arbitration, then the arbitrator shall be chosen by the Arbitration and Mediation Institute of Canada.
- 30.2 The parties may determine the procedure to be followed by the arbitrator in conducting the proceedings, or may request the arbitrator to do so. The arbitrator shall issue a written award within thirty (30) days of completion of the hearing. The award shall be rendered in such form that judgment may be entered thereon in any court having jurisdiction.
- 30.3 The arbitrator shall resolve this dispute in accordance with the laws of Ontario.

### GC31. PERFORMANCE NOTWITHSTANDING DISPUTE

- 31.1 Except where clearly prevented by the nature of the matter in dispute, both parties shall agree to

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continue performing their respective obligations under the Contract while the dispute is being resolved or arbitrated unless and until such obligations, are suspended, terminated or expire in accordance with the provisions of this agreement.

### **GC32. INSURANCE**

32.1 The Contractor shall, at the Contractor's expense, obtain and maintain insurance contracts in respect of the work and shall provide evidence thereof to the Museum in accordance with the requirements of the Insurance Conditions, Section D, Appendix D.

### **GC33. CONFLICT OF INTEREST**

33.1 The Contractor agrees that it is a term of the Contract that no person who is not in compliance with the provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders or the Conflict of Interest and Post-Employment Code for the Public Service, shall derive any direct benefit from this Contract.

### **GC34. SEVERABILITY**

34.1 If any provision of the Contract is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from the Contract and all other provisions of the Contract shall remain in full force and effect.

### **GC35. SUCCESSORS AND ASSIGNS**

35.1 The Contract shall enure to the benefit of, and shall be binding upon, the successors and permitted assignees of the Museum and of the Contractor.

### **GC36. ENTIRE AGREEMENT**

36.1 The contract constitutes the entire and sole agreement between the parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the parties other than those contained in the Contract.

### **GC37. PAYMENTS/HOLD BACK**

37.1 Progress payments (Net 30 days) shall be made as negotiated with the Contractor. There will be a 10% hold back on each invoice. The hold back shall be identified on a separate line on each invoice. The hold back shall be paid to the Contractor upon acceptance and final approval of all work by the Engineer and the Chief, Facilities Planning & Management. Payment shall be made within thirty (30) days following the date on which an invoice and substantiating documentation are received according to the terms of the Contract, whichever date is later.

37.2 If the Museum has any objection to the content of the invoice or the substantiating documentation, within fifteen (15) days of its receipt it shall notify the Contractor of the nature of the objection, and

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where such notice is given within that period the date for payment of the amount invoiced shall be postponed until the Contractor remedies the inadequacy to the satisfaction of the Museum.

### GC38. INTEREST ON OVERDUE ACCOUNTS

- 38.1 In this Contract an amount is "**due and payable**" when it is due and payable by the Museum to the Contractor according to the terms of the Contract, or within thirty (30) days following on which an invoice and substantiating documentation are received according to the terms of the Contract, whichever date is later;
- 38.2 For the purposes of this Contract an amount is overdue when it is unpaid on the first day following the day upon which it is due and payable;
- 38.3 In this Contract "**date of payment**" means the day prior to the date of the negotiable instrument drawn by the Museum and given for payment of an amount due and payable;
- 38.4 In this Contract "**Bank Rate**" means the discount rate of interest set by the Bank of Canada;
- 38.5 Subject to the provisions of subsection 38.7 hereof the Museum shall be liable to pay to the Contractor interest at the Bank Rate plus 1.25 percent on any amount which is overdue from the date such amount was overdue until the date of payment.
- 38.6 The Bank Rate shall be that prevailing at the close of business on the date upon which the amount became overdue.
- 38.7 Interest shall only be paid when the Museum is responsible for the delay in paying the Contractor. In the event the Museum is not responsible for the delay in paying the Contractor, no interest shall be paid.
- 38.8 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.

**END OF GENERAL CONDITIONS**