

Appendix E – Resulting Contract Clauses

TABLE OF CONTENTS

INTRODUCTION

- 1.0 SECURITY REQUIREMENTS
- 2.0 STANDARD INSTRUCTIONS AND CONDITIONS
- 3.0 PERIOD OF CONTRACT
- 4.0 OPTION TO EXTEND PERIOD OF CONTACT
- 5.0 BASIS OF PAYMENT
- 6.0 METHOD OF PAYMENT
- 7.0 MODIFICATIONS TO SERVICES AND SERVICE LEVELS
- 8.0 CONTRACTOR PERSONNEL
- 9.0 LIMITATION OF EXPENDITURE
- 10.0 INVOICING INSTRUCTIONS
- 11.0 T1204 GOVERNMENT SERVICE CONTRACT PAYMENTS
- 12.0 AUDIT
- 13.0 CMN CONTRACTING AUTHORITIES
- 14.0 CONTRACTOR CONTACTS
- 15.0 SOFTWARE LICENSES
- 16.0 INTERNATIONAL SANCTIONS
- 17.0 REPRESENTATION AND WARRANTIES
- 18.0 APPLICABLE LAWS
- 19.0 ORDER OF PRECEDENCE

INTRODUCTION

This Appendix contains the Resulting Contract Clauses which will form the basis for any Contract awarded as a result of this RFP. Acceptance by Bidders of all the Resulting Contract Clauses is a mandatory requirement of this RFP. Bidders submitting a Proposal containing statement(s) implying that the proposal is conditional on modification of these Resulting Contract Clauses or containing terms and conditions that purport to supersede these Resulting Contract Clauses may be considered non-compliant.

1.0 SECURITY REQUIREMENTS

- 1.1 The Contractor personnel are subject to a security screening by CMN. The Contractor must specifically identify to the Museum any of its personnel who will have access to CMN PROTECTED, CLASSIFIED or otherwise sensitive information and obtain the appropriate security clearance(s). Personnel requiring access to CLASSIFIED information or assets must EACH hold a valid personnel security screening at the level of SECRET. The CMN accepts valid Government of Canada Security Screening Certificates issued by other federal departments and agencies. Procedures and timeframes for identifying and obtaining required clearances are further described in Appendix B section 3.2.4.
- 1.2 The Contractor MUST NOT copy, move, store, or make accessible any PROTECTED, CLASSIFIED, or otherwise sensitive Museum information outside CMN work site(s) without the explicit written approval of the Museum; and the Contractor must ensure that its personnel are made aware of and comply with this restriction.
- 1.3 All subcontracts issued by the contractor pertaining to this contract, must take into consideration the security requirements set out in this contract. The contractor must consult with the CMN before awarding a sub-contract to determine security requirements applicable to the contract.

2.0 STANDARD INSTRUCTIONS AND CONDITIONS

2.1 Terms and Conditions of the Contract

- a) the general terms, conditions and clauses identified herein by title, number and date, are hereby incorporated reference into and form part of this Contract, as though expressly set out herein, subject to any other express terms and conditions herein contained.

2.2 Supplemental General Conditions

- 2.2.1 This contract shall enure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.
- 2.2.2 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.

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.

- 2.2.3 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.

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.

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.

Notwithstanding that the Contractor has complied with the requirements of 2.2.3, the Corporation may exercise any right of termination contained in 2.2.6.

- 2.2.4 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, OR damage to or loss of property arising from any willful 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.

The Contractor will not be liable to the Museum for any consequential or economic loss except as a result of the illegal or unauthorized use of Museum information 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.

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.

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.

- 2.2.5 Where in this contract, unless specified otherwise, any formal 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 and/or courier 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 and/or courier, when the postal receipt is acknowledged by the other party. The address of either party may be changed by notice in the manner set out in this provision.

- 2.2.6 The Corporation may, by giving sixty (60) days written notice to the Contractor, terminate or suspend this contract with respect to all or any part or parts of the work not completed.

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.

In addition to the amount which the Contractor shall be paid under 2.2.6, 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.

Payment and reimbursement under the provisions of 2.2.6 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.

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.

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 2.2.6 except as expressly provided herein.

In addition to the Transition-out provisions given in Appendix B section 4.9.3, the Contractor will, upon notice of termination of this contract, whether this is at end-of-term or otherwise, make every reasonable effort to ensure minimal disruption of IT Services to the Museum and to ensure a smooth transition of services to the Museum and/or another service provider.

- 2.2.7 The Corporation may, by written notice to the Contractor, terminate the whole or any part of this contract if:
- a) 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;
 - b) 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**.

In the event that the Corporation terminates this contract in whole or in part under 2.2.7, 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 value of this contract up to a maximum of \$100,000.00.

Upon termination of this contract under 2.2.7, 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 fulfillment 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.

If, after the Corporation issues a notice of termination under 2.2.7, 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 2.2.6 and the rights and obligations of the parties hereto shall be governed by 2.2.6.

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.

- 2.2.8 In the event of a disagreement regarding any aspect of the services provided by the Contractor or any instructions given under this Contract:
- a) the Contractor is encouraged to attempt to resolve the disagreement first through the issue escalation/dispute resolution process defined in Appendix B, Section 3.4.6.
 - b) 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;
 - c) the Contractor shall continue to perform the services in accordance with the instructions of the Corporation; and
 - d) 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.

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.

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.

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.

Within 14 days of receipt of the written corporate decision, the Contractor shall notify the Corporation if the Contractor accepts or rejects the decision.

If the Contractor rejects the corporate decision, the Contractor by notice may refer the disagreement to mediation.

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.

Negotiations conducted under this Agreement, including those conducted during mediation, shall be without prejudice.

- 2.2.9 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 there from.

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.

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.

- 2.2.10 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.

2.2.11 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.

2.2.12 No member of the House of Commons shall be admitted to any share or part of this contract or to any benefit to arise here from.

2.2.13 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 the agreed terms of payment. 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.

Interest shall be paid only when the Corporation is responsible for the delay in paying the Contractor.

The Museum shall pay interest only if the Contractor, within ninety (90) days of the date of payment, claims any interest owing it by:

- a) Sending an invoice therefore in the manner set out in the Contract relating to invoices; or
- b) Making a written request therefore to the Museum.
- c) The Museum shall not be liable to pay the Contractor any interest on unpaid interest.

2.2.14 The Contractor shall obtain and maintain during the term of this Agreement insurance coverage in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00 aggregate) per claim and per policy period under its Professional Liability Insurance Coverage Policy to compensate the Corporation up to \$2,000,000.00 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.

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

2.2.16 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.

2.2.17 The following is to be negotiated and/or clarified for interpretive purposes when and as required by the Parties named herein)

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. Technical documentation shall contain the following copyright notice:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the CANADIAN MUSEUM OF NATURE

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.

2.2.18 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 licenses and qualifications including the knowledge, skill and ability to perform the Services.

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.

2.2.19 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.

2.2.20 It is a term of this contract:

- a) 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
- b) 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.

2.3 INTELLECTUAL PROPERTY RIGHT INFRINGEMENT

- 2.3.1 If a third party claims that equipment or software that the Contractor provides under the Contract infringes any intellectual property right, the Contractor, if requested to do so by the Corporation, will defend the Corporation against the claim at the Contractor's expense. In this regard, the Contractor will pay all costs, damages and legal fees that a court finally awards, provided that the Corporation:
 - a) promptly notifies the Contractor in writing of the claim; and
 - b) cooperates with the Contractor in, and allows the Contractor full participation in, the defense and related settlement negotiations; and
 - c) obtains the Contractor's prior approval to any agreement resulting from settlement negotiations held with the third party. The Contractor shall participate in any claims, action or proceeding arising under Subsection (1) and no such claim, action or proceeding shall be settled without the prior written approval of the Contractor and the Corporation.
- 2.3.2 If such a claim is made or appears likely to be made, the Corporation agrees to permit the Contractor to enable the Corporation at the Contractor's expense, to continue to use the equipment or software or to modify or replace it with equipment or software which has published specifications equal or superior to the equipment or software being replaced. If the Contractor determines that none of these alternatives is reasonably available, the Corporation may elect, at the Contractor's expense, to independently secure the right to continue to use the equipment or software, or the Corporation may require the Contractor to accept the return of the equipment or software and to refund all moneys paid to the Contractor under the Contract for the equipment and software, as well as all amounts paid for services and license and development fees.
- 2.3.3 The provisions of Subsections 2.3.1 and 2.3.2 do not apply in situations where the Contractor was instructed by the Corporation to purchase a specific item of equipment or software from a specific source on behalf of the Corporation. In this case, the Contractor shall ensure that its subcontract for the equipment or software states that "If a third party claims that equipment or software that the subcontractor supplies under the Contract infringes any intellectual property right, the subcontractor, if requested to do so by either the Contractor or the Corporation, will defend the Contractor and the Corporation against that claim at the subcontractor's expense and will pay all costs, damages and legal fees that a court finally awards." In the event that the Contractor is unable to incorporate this into its subcontract, then it shall advise the Corporation of the situation and not proceed with the subcontract without receiving written notice from the Corporation that the level of intellectual property right infringement protection is acceptable.

- 2.3.4 Without prejudice to the Corporation 's right to terminate the Contract for default prior to completion of the work, the above represents the Contractor's entire obligation to the Corporation regarding any claim of infringement.

The Contractor has no obligation regarding any claim based on any of the following:

- a) the Corporation 's unauthorized modification of the equipment or software, or the Corporation 's unauthorized use of the equipment or software in other than its published specified operating environment;
- b) the combination, operation or use of the equipment or software with any product, data or apparatus that the Contractor did not provide under the Contract, or which combination, operation or use the Contractor did not authorize or approve in advance, if infringement would not have occurred but for such combination, operation or use.

2.4 LIMITATION OF LIABILITY

- 2.4.1 Circumstances may arise where the Corporation is entitled to recover damages from the Contractor or to be indemnified by the Contractor. In each such instance, the Contractor is liable to the Corporation only for the following:

- a) all damages and costs resulting from intellectual property right infringement; and
- b) all damages for personal injury, including death, caused by the Contractor or its subcontractors; and
- c) all direct damages for physical harm to tangible property and real property caused by the Contractor or its subcontractors; and
- d) all other direct damages resulting from the Contractor's default pursuant to the General Conditions forming part of this Contract, but excluding reprocurement costs; and
- e) claims for liens, attachments, charges or other encumbrances resulting from claims against the Contractor upon or in respect of any materials, parts, work-in-process or finished work furnished to, or in respect of which any payment has been made by, the Corporation; and
- f) indirect and consequential damages associated with (c) above and reprocurement costs up to an amount equal to **\$1,000,000.00 or 15% of the Total Estimated Contract Value**, whichever is greater.

For the purpose of this Section, reprocurement costs shall mean all identifiable direct costs incurred by the Corporation to reprocure the Work with another contractor, including deinstallation and return of the Work to the Contractor, administrative costs of selecting another contractor or retendering the Contract, as applicable, and any increase in the price payable by the Corporation for the other Work having equivalent functionalities, performances and quality.

2.4.2 Under no circumstances is the Contractor liable for the following:

- a) damages of third parties claimed against the Corporation other than those under paragraphs (a) and (e) and, to the extent the Contractor is liable under law to the third party, paragraphs (b), (c) and (d), of Subsection 2.4.1;
- b) harm to the Corporation 's records or data; However, the Contractor is liable under paragraph (f) of Subsection 2.4.1 for failure to restore the Corporation 's records and data in accordance with Subsection 2.4.3 if the Corporation 's records or data are harmed by the Contractor's or its subcontractor's negligence or willful act.; or
- c) special damages unless the Corporation specifically informed the Contractor in writing of the existence of special circumstances or conditions.

2.4.3 If the Corporation 's records or data are harmed by the Contractor's or a subcontractor's negligence or willful act, the Contractor is responsible for restoring the Corporation 's records and data to the same state as in the last available backup copy.

3.0 PERIOD OF CONTRACT

This contract shall have a two (2) year term. This Contract shall begin [insert date] and shall end no later than [insert date]. The transition-in contract term shall be from [insert date] to [insert date]. The official contract start date shall be [insert date].

4.0 OPTION TO EXTEND PERIOD OF CONTRACT

4.1 The Contractor grants to the Corporation the irrevocable option to extend the term of the Contract for three (3) additional periods of two (2) years each, under the same terms and conditions unless agreed to otherwise by the Corporation and the Contractor. The Corporation may exercise this option at any time by sending a notice to the Contractor at least ninety (90) calendar days prior to the expiry of the Contract expiry or the option period then in progress.

4.2 The Contractor agrees that, during the extended period of the Contract, the rates / prices will be in accordance with the provisions of the Contract unless agreed to otherwise by the Corporation and the Contractor. The rates proposed in 'Appendix D' will remain in effect for the term of the contract and any extension thereof. In the event of any changes to legislation, regulations or collective bargaining agreement that increases the Contractor's cost of performing the agreed upon services, the Contractor reserves the right to recover said cost.

5.0 BASIS OF PAYMENT

5.1 The Corporation will pay the Contractor for services according to the ceiling rates provided by the Contractor in their Pricing Proposal (Appendix D) and, for non-recurring projects with a pre-established price, at the agreed to fixed price.

- 5.2 Consistent with Contractor's Pricing Proposal the applicable monthly Recurring Service Fees at Contract Start will be:
- a) Network and System Management Services
 - b) Service/Help Desk Services
 - c) Deskside/Onsite Services
 - d) Telecommunications Services
 - e) DBA Services
 - f) Software Maintenance Fee
- Total Monthly Recurring Service Fees At Contract Start =**

5.3 Consistent with Contractor's Pricing Proposal the Corporation will pay the Contractor a maximum one time **Transition-In fee of \$TBD** to be invoiced monthly as services are rendered during the Transition-In period.

5.4 The Corporation may engage the Contractor for additional non-transition related work if/as required during the Transition-In period. This work will be described, costed and approved on a Task Authorization Form as per the normal task authorization process identified in Appendix B section 4.2.6.

6.0 METHOD OF PAYMENT

6.1 Payment by the Corporation for the Work shall be made in accordance with the Basis of Payment specified herein:

a) within thirty (30) days following the date on which the Work has been performed; or

b) within thirty (30) days following the date on which an invoice and substantiating documentation are received according to the terms of the Contract (see also Section 10.0 - Invoicing);

whichever is later.

6.2 If the Corporation has any objection to the form of the invoice or the substantiating documentation, within fifteen (15) days of its receipt the Corporation shall notify the Contractor of the nature of the objection. "Form of the invoice" means an invoice which contains or is accompanied by such substantiating documentation as the Corporation requires. Failure by the Corporation to act within fifteen (15) days will only result in the date specified in paragraph 1 of the clause to apply for the sole purpose of calculating interest on overdue accounts.

The Corporation will only withhold payment on invoice amounts under dispute and/or that require clarifications/corrections.

7.0 MODIFICATIONS TO SERVICES & SERVICE LEVELS

- 7.1 The Corporation retains the right to modify the Services and Service Levels set out in Appendix B.
- 7.2 For modifications to the Services or Service Levels, special meetings may be held with the Contractor as required, but normally on a calendar quarterly basis, to review the extent to which the services and service levels are meeting the Corporation's business needs. The decision to modify the specific services or service levels will be made at these review meetings and implemented at a mutually agreed date.
- 7.3 The Contract price shall be adjusted to reflect any change in price resulting from any such modifications and shall be evidenced through a formal contract amendment.

8.0 KEY PERSONNEL

- 8.1 The Contractor shall ensure that all personnel assigned to meet the requirements of this Contract shall be capable of performing the Work at the level of competence described in the Statement of Work and be acceptable to the Project Authority.
- 8.2 The Contractor shall monitor its employees to ensure that performance is maintained to the satisfaction of the Corporation's Technical Authority.

9.0 LIMITATION OF EXPENDITURE

- 9.1 The Corporation's total liability under this contract shall not exceed \$_TBD_, GST or HST included, as appropriate. This limit on the Corporation's total liability under this Contract does not represent a commitment on the part of the Corporation to expend such amount over the course of the Contract.
- 9.2 No increase in the total liability of the Corporation or in the price of Work resulting from any design changes, modifications or interpretations of specifications, made by the Contractor, will be authorized or paid to the Contractor unless such changes, modifications or interpretations, have been approved, in writing, by the Corporation's Contracting Authority, prior to their incorporation into the Work. The Contractor shall not be obliged to perform any work or provide any service that would cause the total liability of the Corporation to be exceeded without the prior written approval of the Corporation's Contracting Authority. The Contractor shall notify the Corporation's Contracting Authority in writing as to the adequacy of this sum when:
- a) it is 75 percent committed, or b) four (4) months prior to the Contract expiry date, or c) if the Contractor considers the funds provided are inadequate for the completion of the Work,

whichever comes first.

- 9.3 In the event that the notification refers to inadequate funds, the Contractor shall provide to the Corporation's Contracting Authority, in writing, an estimate for the additional funds required. Provision of such notification and estimate for the additional funds does not increase the Corporation's liability.

10.0 INVOICING INSTRUCTIONS

- 10.1 The Contractor shall invoice the Corporation for services provided on a monthly basis. The details of invoicing requirements are provided in Appendix B, section 3.6.

11.0 T1204 GOVERNMENT SERVICE CONTRACT PAYMENTS

Under the Income Tax Act, the Corporation is required to issue T1204 Government Service Contract Payments slips for amounts earned under this contract.

12.0 AUDIT

- 12.1 The following are subject to government audit before or after payment is made:

a) Amounts claimed under the terms and conditions of the Contract, as computed in accordance with the Basis of Payment, including time charged and salaries paid for labour charges based on salaries times a firm negotiated multiplier.

b) The accuracy of the Contractor's time recording system.

c) The estimated amount of profit in any firm-priced element, firm time rate, firm overhead rate, or firm salary multiplier, for which the Contractor has provided the appropriate certification. The purpose of such audit would be to determine whether the actual profit earned on a single contract if only one exists, or the aggregate of actual profit earned by the Contractor on a series of negotiated contracts containing one or more of the aforementioned prices, time rates or multipliers, and received during a particular period selected, is fair and reasonable based on the estimated amount of profit included in earlier certification (s).

d) Any firm-priced element, firm time rate, firm overhead rate, or firm salary multiplier for which the Contractor has provided a "most favoured customer" certification. The purpose of such audit would be to determine whether the Contractor has charged anyone else, including the Contractor's most favoured customer, lower prices, rates or multipliers, for like quality and quantity of goods or services.

- 12.2 Any payments made pending completion of the audit shall be regarded as interim payments only and shall be adjusted to the extent necessary to reflect the results of the audit. If there has been any overpayment, it shall be refunded promptly to the Corporation.

13.0 AUTHORITIES

13.1 Canadian Museum of Nature Contracting Authority

13.1.1 The Canadian Museum of Nature Contracting Authority for this Contract is:

Head, Contracts and Procurement, Canadian Museum of Nature.

13.1.2 The Canadian Museum of Nature Contracting Authority is responsible for the management of this Contract. Any changes to the Contract must be authorized in writing by the Canadian Museum of Nature Contracting Authority. The Contractor is not to perform work in excess of or outside the scope of this Contract based on verbal or written requests or instructions from anyone other than the aforementioned officer.

14.0 CONTRACTOR CONTACTS

(To be provided upon Contract Award).

15.0 SOFTWARE LICENSE

For software provided by the Contractor, the Corporation does not accept, nor will it be bound by, any terms and conditions contained in a shrink-wrap license, or any other software license, express or implied, which is contained within or on the packaging of the software, regardless of any notification to the contrary. This Contract, including any terms and conditions incorporated by reference and any amendments made thereto, forms the entire agreement between the Corporation and the Contractor.

16.0 INTERNATIONAL SANCTIONS

16.1 Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. As a result, the Corporation cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions.

16.2 It is a condition of this Contract that the Contractor not supply to the Corporation any goods or services which are subject to economic sanctions.

16.3 By law, the Contractor must comply with changes to the regulations imposed during the life of the Contract. During the performance of the Contract, should the imposition of sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services cause an impossibility of performance for the Contractor, the situation will be treated by the Parties as an excusable delay. The Contractor shall forthwith inform the Corporation of the situation; the procedures applicable to excusable delay shall then apply.

17.0 REPRESENTATIONS AND WARRANTIES

The Contractor has made statements in the Proposal that has resulted in the award of this Contract in relation to its experience and expertise. The Contractor represents and warrants that all such statements are true and acknowledges that the Corporation has relied on such statements in awarding this Contract to the Contractor.

18.0 APPLICABLE LAWS

This Contract shall be interpreted and governed, and the relations between the Parties, determined by the laws in force in Ontario.

19.0 ORDER OF PRECEDENCE

19.1 The documents specified below form part of and are incorporated into the Contract. If there is a discrepancy between the wording of any documents which appear on the list, the wording of the document which first appears shall prevail over the wording of any document which subsequently appears on the list.

- a) Appendix "E" - Resulting Contract Clauses
- b) Appendix "B" - Statement of Technical/Service Requirements;
- c) Appendix "D" – Bidder Pricing Proposal Requirements;
- d) Appendix "A" – Current CMN Information Technology Environment;
- e) RFP document / Instructions
- f) Any amendments and/or updates to the Solicitation;
- g) The Contractor's Pricing Proposal, dated [insert date].
- h) The Contractor's Technical/Services Proposal, dated [insert date].