

GENERAL CONDITIONS

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2.0 GENERAL PROVISIONS

1.1 DEFINITIONS

- 1.1.1 'Budget Fee' is used when the Scope of Work is not well defined.
- 1.1.2 'Calendar Days' means continuous calendar days, including weekends and statutory public holidays.
- 1.1.3 'Contract' means the agreement between the Vendor and the Corporation for the required Work.
- 1.1.4 'Contract Award Price' means the price at which a Contract is awarded to the Vendor.
- 1.1.5 'Corporation/NAC' means the National Arts Centre Corporation.
- 1.1.6 'Cost Estimate' means an anticipated amount for which a Vendor would execute the required Work.
- 1.1.7 'Cost Limit' means the total amount which shall not be exceeded for required Work.
- 1.1.8 'Dispute' means any disagreement regarding any issue identified by the Vendor in the notice submitted to the Corporation which includes any claim by the Vendor arising from such disagreement and any counterclaim by the Corporation as a response, but does not include any claim by either party for punitive or exemplary damages, injury to person, death, or any claim based on an allegation of libel or slander.
- 1.1.9 'Maximum Upset Fee' means the Vendor is expected to complete the Services within this upset fee unless changes to the Scope of Work increase the level of effort.
- 1.1.10 'Mediation' is a process of dispute resolution in which a neutral third party assists the parties involved in a dispute to negotiate their own settlement.
- 1.1.11 'NAC Representative' means the person that may be specifically designated by or on behalf of the Corporation, upon contract award and includes the person specially authorized by Corporation to act on his behalf.
- 1.1.12 'Project Brief' or 'Terms of Reference' or 'Statement of Work' means a document describing the detailed Services to be provided by the Vendor.
- 1.1.13 'Project Schedule' means a time plan, including the sequence of tasks, milestone dates and critical dates which must be met for the implementation of the planning and design of the project.
- 1.1.14 'Services/Work' means everything that is necessary to be done, furnished or delivered by the Vendor, as detailed in the Agreement.

1.2 CONFLICT OF INTEREST

- 1.2.1 The Vendor declares that the Vendor has no pecuniary interest in the business of any third party that would cause, or seem to cause, a conflict of interest in carrying out the Services, and should such an interest be acquired during the life of the Contract; the Vendor shall declare it immediately to the NAC Representative.

1.2.2 The Vendor shall not have any tests or investigations carried out by any persons, firms, or corporations, that may have a direct or indirect financial interest in the results of those test or investigations.

1.3 STATUS OF THE VENDOR

1.3.1 The Vendor is engaged under the Agreement as an independent Vendor for the purpose of performing the Services.

1.4 ENTIRE AGREEMENT

1.4.1 The Agreement constitutes the entire arrangement between the Corporation and the Vendor with respect to the subject matter of the Agreement, and supersedes all previous negotiations, communications and other arrangements relating to it, unless incorporated by reference hereof.

1.5 ORDER OF DOCUMENT PRECEDENCE

1.5.1 In the event of any discrepancy or conflict in the contents of the following documents, such documents shall take precedence and govern in the following order:

1.5.1.1 Articles of Agreement;

1.5.1.2 Any amendment or variation of the Agreement documents that is made in accordance with the General Conditions;

1.5.1.3 Any amendment or addenda issued prior to closing;

1.5.1.4 General Conditions;

1.5.1.5 The Vendor's cost proposal;

1.5.1.6 The Vendor's technical proposal;

1.5.1.7 'Project Brief' or 'Terms of Reference' or 'Statement of Work';

Later dates shall govern within each of the above categories of documents.

1.6 JOINT AND SEVERAL LIABILITY

1.6.1 If at any time there is more than one legal entity constituting the Vendor, their covenants under the Agreement shall be considered to be joint and several and apply to each and every entity. If the Vendor is or becomes a partnership or joint venture, each legal entity who is a member or becomes a member of the partnership or joint venture or its successors is and continues to be jointly and severally liable for the performance of the Services and all covenants of the Vendor pursuant to this Agreement, whether or not that entity ceases to be a member of the partnership, joint venture or its successor.

1.7 INTERNATIONAL SANCTIONS

1.7.1 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.

- 1.7.2 The Vendor must not supply to the Corporation any goods or Services which are subject to economic sanctions. Details on existing sanctions are available on the Government of Canada web site.
- 1.7.3 The Vendor must comply with changes to the regulations imposed during the period of the Agreement. The Vendor must immediately advise the Corporation if it is unable to perform the Services as a result of the imposition of economic sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or Services. If the parties cannot agree on a work around plan, the Agreement will be terminated for convenience by the Corporation in accordance with terms and conditions of the Agreement.

1.8 EMPLOYEES AND TRUSTEES OF THE CORPORATION

- 1.8.1 No employee or member of the Board of Trustees of the Corporation may receive, directly or indirectly any benefit arising from this Agreement.

1.9 UNFORSEEN OCCURRENCES

- 1.9.1 If the fulfillment of the Agreement by the Vendor is prevented, or rendered impossible or unfeasible, by any act or regulation of any public authority civil tumult, strike lock-out or labour dispute (whether or not involving the Corporation), epidemic, interruption war conditions or emergencies, or any cause beyond the control of the parties of this agreement, then and thereupon this agreement shall terminate and the respective obligations of the parties shall be deemed waived, and there shall be no claim for damage by either party to this Agreement arising from its termination.

2.1 ADMINISTRATION OF THE CONTRACT

2.2 NOTICES

- 2.2.1 Any notice, request, direction, consent, decision, or other communication that is required to be given or made by either party pursuant to the Agreement, shall be in writing, and shall be deemed to have been effectively given when:
 - 2.2.1.1 served personally, on the day it is delivered;
 - 2.2.1.2 forwarded by registered mail, on the day the postal receipt is acknowledged by the other party; or
 - 2.2.1.3 forwarded by facsimile, e-mail or other electronic means of transmission at the time of transmission.
- 2.2.2 The address of either party, or the person authorized to receive notices, may be changed by notice in the manner set out in the provision.

2.3 TIME AND COST RECORDS TO BE KEPT BY THE VENDOR

- 2.3.1 Time charged and the accuracy of the Vendor's time recording system may be verified by the NAC Representative before or after payment is made to the Vendor under the terms and conditions of the Agreement.
- 2.3.2 The Vendor shall keep accurate time and cost records and, if required for the purposes of the Agreement, shall make these documents available to the NAC Representative who may make copies and take extracts.
- 2.3.3 The Vendor shall afford facilities for audit and inspection upon request and shall provide the NAC Representative with such information as may be required from time to time with reference to the documents referred to in 2.2.2 above.
- 2.3.4 The Vendor shall, unless otherwise specified, keep the time and cost records available for audit and inspection for a period of at least seven (7) years following completion of the Services.
- 2.3.5 If the verification is done after payment by the Corporation, the Vendor agrees to repay any overpayment immediately upon demand.

2.4 WORKPLACE HARRASMENT

- 2.4.1 Workplace harassment means engaging in a comment or conduct that is known or should reasonably be known to be unwelcome by an individual in the workplace.
- 2.4.2 The NAC is committed to providing a safe, healthy and respectful work environment where all employees, contractors, patrons, artists and members of the public are treated with respect and dignity. In order to fulfill this commitment, the NAC maintains a 'zero tolerance' policy for harassment or violence in the workplace. All individuals engaged by and with the NAC are required to uphold this policy and are held accountable for their actions and behaviour.
- 2.4.3 Incidents and complaints of workplace harassment and violence will be investigated and addressed in a fair and timely manner.

3.0 VENDOR SERVICES

3.1 DECLARATION BY VENDOR

- 3.1.1 The Vendor declares that based on the information provided pertaining to the Services required under the Agreement, the Vendor has been provided sufficient information to enable the Services required under the 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.

3.2 SERVICES

- 3.2.1 The Vendor shall perform the described Services, in accordance with the terms and conditions of the Agreement.

- 3.2.2 In performing the Services, the Vendor shall provide and exercise the standard of care, skill and diligence required by customarily accepted industry practices and procedures developed in the performance of similar Services at the time when and at the location in which the Services are provided.

3.3 TIME SCHEDULE

- 3.3.1 The Vendor shall:
- 3.3.1.1 submit in a timely manner to the NAC Representative, for approval, a time schedule for the Services to be performed, in detail appropriate to the size and complexity of the Agreement, and in the prescribed format;
 - 3.3.1.2 adhere to the approved time schedule and, if changes in the approved time schedule become necessary, indicate the extent of, and the reasons for such changes, and obtain the approval of the NAC Representative.

3.4 PROJECT INFORMATION, DECISIONS, ACCEPTANCE, APPROVALS

- 3.4.1 The Corporation shall provide, in a timely manner, project information, written decisions and instructions, including acceptances and approvals relating to the Services provided by the Vendor.
- 3.4.2 No acceptance or approval by the Corporation, whether expressed or implied, shall be deemed to relieve the Vendor of the technical responsibility for the Services provided by the Vendor.

3.5 PROVISION OF STAFF

- 3.5.1 The Vendor shall, on request, submit to the NAC Representative for approval, the names, work addresses, qualifications, experience and proposed roles of all persons, including principals, to be employed by the Vendor to provide the Services under the Agreement.

3.6 COST CONTROL

- 3.6.1 Throughout design development, the prepared Cost Estimate shall not exceed the Cost Limit where such a limit was set elsewhere in the Agreement.
- 3.6.2 In the event that the Vendor considers that the Cost Estimate will exceed the Cost Limit, the Vendor shall immediately notify the NAC Representative and
- 3.6.2.1 if the excess is due to factors under the control of, or reasonably foreseeable by the Vendor, the Vendor shall, if requested by the NAC Representative, and at no additional cost to the Corporation, make such changes or revisions to the design as may be necessary to bring the Cost Estimate within the Cost Limit; or
 - 3.6.2.2 if the excess is due to factors that are not under the control of the Vendor, changes or revisions may be requested by the NAC Representative. Such changes or revisions shall be undertaken by the Vendor at the Corporation's

expense, and the cost involved shall become an amount to be mutually agreed, prior to the performance of the said changes or revisions.

- 3.6.3 If the lowest price obtained by procurement process or negotiations exceeds the Cost Limit, and if the excess is due to reasons within the control of, or reasonably foreseeable by the Vendor, the Vendor shall, if requested by the NAC Representative, and without additional charge, cooperate in revising the project scope and quality as required to reduce the cost and shall modify the documents as necessary to comply with the Cost Limit.

4.0 TERMS OF PAYMENT

4.1 FEES

- 4.1.1 Subject to the terms and conditions of the Agreement, and in consideration for the performance of the Services, the Corporation shall pay to the Vendor a sum of money calculated in accordance with the provisions herein.
- 4.1.2 The Vendor's fees are only payable when the Vendor has performed the Services as determined by the NAC Representative.
- 4.1.3 The maximum amount payable under the Agreement, including fees and disbursements, shall not exceed the sum specified in the Agreement particulars, without the prior written authorization of the NAC Representative.

4.2 FEE ARRANGEMENT(S) FOR SERVICES

- 4.2.1 The fee to be paid to the Vendor for the Services described in the Agreement shall be determined by one or more of the following arrangements:
- 4.2.1.1 Fixed Fee-may be in the form of a fixed lump sum or an amount made up of fixed unit priced multiplied by a number of units of deliverables in the amount(s) specified in the Agreement.
- 4.2.1.2 Time Based Fee-may in the form of a Maximum Upset Fee or a Budget Fee.
- 4.2.1.2.1 Maximum Upset Fee means the Vendor is expected to complete the services within this upset fee unless changes to the Scope of Work increase the level of effort.
- 4.2.1.2.2 Budget Fee is used when the Scope of work is not well defined and NAC wants to establish a budget envelope.
- 4.2.2 Personnel shall be paid at the hourly rates quoted in the Vendor's cost proposal. The rates shall include all costs for salary, labour burden, profit, administrative overhead, disbursements as per Section 4.8.1, and all coordination costs.
- 4.2.3 These will be the only rates payable to the Vendor and shall be applicable for the entire contract, subject to the provisions for Consumer Price Index (CPI) rate adjustments in Section 4.10 and authorized in writing by the NAC Representative.

4.3 COST BREAKDOWN

- 4.3.1 When requested by the NAC Representative, the Vendor shall provide a cost breakdown with the level of details requested.
- 4.3.2 The cost breakdown will be used to assess progress and payments during the contract and cannot be changed without the prior consent of the NAC Representative.

4.4 PAYMENT TO THE VENDOR

- 4.4.1 The Vendor shall be entitled to receive progress payments at monthly or other agreed intervals, subject to the limitations of the Terms of payment. Such payments shall be made prior to or on the due date. The due date shall be the 30th day following receipt of an acceptable invoice.
- 4.4.2 An acceptable invoice shall be an invoice delivered to the NAC Representative in the agreed format with sufficient detail and information to allow verification.
- 4.4.3 The amount of tax shown on the invoice shall be paid by the Corporation to the Vendor in addition to the amount of the progress payment for Services satisfactorily performed.
- 4.4.4 The NAC Representative shall notify the Vendor within fifteen (15) calendar days after the receipt of an invoice of any error, missing information or discrepancy.

4.5 DELAYED PAYMENT

- 4.5.1 Any delay by the Corporation in making any payment when it is due shall not be a breach of the Agreement by the Corporation.
- 4.5.2 An amount is overdue when it remains unpaid on the first day following the day upon which it is due and payable.

4.6 CLAIMS AGAINST, AND OBLIGATIONS OF, THE VENDOR

- 4.6.1 The Vendor shall ensure that all his lawful obligations and lawful claims against him arising out of the execution of the Services are discharged and satisfied, at least as often as the Agreement requires the Corporation to discharge its obligations to the Vendor and shall supply the NAC Representative with a Statutory Declaration deposing to the existence and condition of such claims and obligations when called upon to do so.
- 4.6.2 The Corporation may, in order to discharge lawful obligations of an satisfy lawful claims against the Vendor arising out of the execution of the Services, pay any amount, which is due and payable to the Vendor under the Agreement directly to the obligees of and the claimants against the Vendor.

4.7 NO PAYMENT FOR ERRORS AND OMISSIONS

- 4.7.1 The Vendor shall not be entitled to payment in respect of costs incurred by the Vendor in remedying errors and omissions in the Services that are attributable to the Vendor, the Vendor's employees, or persons for whom the Vendor had assumed responsibility in performing the Services.

4.8 DISBURSEMENTS

- 4.8.1 The following costs must be included in the hourly rates or fees required to deliver the Services and will not be reimbursed separately;
 - 4.8.1.1 reproduction and delivery costs of technical documentation specified in the Project Brief/Terms of Reference/Statement of Work;
 - 4.8.1.2 standard office expenses such as any photocopying, computer costs, Internet, cellular phone costs, long distance telephone and fax costs, including that between the Vendor's main office and branch offices or between the Vendor's offices and other team members offices;
 - 4.8.1.3 courier and delivery charges for deliverables specified in the Project Brief/Terms of Reference/Statement of Work;
 - 4.8.1.4 plotting; and
 - 4.8.1.5 presentation material.

4.9 TRAVEL ALLOWANCES

- 4.9.1 The travel allowances to be paid to the Vendor for the Services described hereof, shall be determined by one or more of the following arrangements as specified in the Agreement:
 - 4.9.1.1 Fixed Amount – may be in the form of a fixed lump sum or an amount made up of fixed unit prices multiplied by a number of units in the amount(s) specified in the Arrangement and includes travel time. The Vendor is expected to complete the Services within the Fixed Amount unless changes to the Scope of Work increase the amount of travel required to complete the Services.
 - 4.9.1.2 Actual Cost – travel time plus reasonable expenses for travel by air, rail or car, for commercial accommodation, and for meals in accordance with the current Treasury Board Secretariat Travel Directive, up to the Cost of Return Trip per Person and the Maximum Upset Travel Amount, as specified in the Agreement. The Vendor is expected to complete the Services within the Maximum Upset Travel Amount unless changes to the Scope of Work increase the amount of travel required to complete the Services.
 - .1 Cost of Return Trip per person is the cost of one return trip, including travel time and reasonable out-of-pocket expenses, for one individual to travel to the site of work.

4.10 HOURLY RATES ADJUSTMENT

- 4.10.1 The hourly rates, when included in the cost proposal, shall remain firm for a period of two years after award. Rate adjustment will be made in accordance with the percentage change in the Statistics Canada CORE Consumer Price Index (CPI) for the province of

Ontario. Where rates will be adjusted at the two-year anniversary of the award by calculating the percentage change in the CPI between the month in which the award took place and the month of the two-year anniversary.

- 4.10.2 The adjustment would be applied to the hourly rates submitted in the cost proposal and be in effect starting the month after the two-year anniversary. The rates will then be adjusted annually thereafter on the anniversary of the award by calculating the percentage change in the CPI over each twelve-month period.
- 4.10.3 There will be no retroactive rate adjustments. The CORE CPI used for calculation will not be seasonally adjusted.

5.0 CHANGES

5.1 CHANGES IN THE SERVICES

- 5.1.1 The Vendor shall:
 - 5.1.1.1 make changes in the Services to be provided as part of the Agreement, including changes which may increase or decrease the original scope of Services, when requested in writing by the NAC Representative; and
 - 5.1.1.2 prior to commencing such changes, advise the NAC Representative of any known and anticipated effects of the changes on the Cost Limit, Vendor fees, Project Schedule and other matters concerning the Agreement.

5.2 CHANGES IN THE VENDOR'S TEAM

- 5.2.1 Should any entity or person that is named in the Vendor's proposal be unable to perform or complete the Services, the Vendor shall obtain the concurrence of the NAC Representative prior to entering into an agreement with another equally qualified entity or person to perform or complete the Services.
- 5.2.2 No replacement entity or person will be considered until the Vendor has conclusively demonstrated to the satisfaction of the NAC Representative that the reason the entity or person are unavailable is beyond the Vendor's control.
- 5.2.3 In seeking to obtain the concurrence of the NAC Representative, the Vendor shall provide the following information in writing, to the NAC Representative:
 - 5.2.3.1 the reason for inability of the entity or person to perform the Services;
 - 5.2.3.2 the name, qualifications and experience of the proposed replacement entity or person.
- 5.2.4 The Vendor shall not, in any event, allow performance of any part of the Services by unauthorized replacement entities or persons, and acceptance or rejection of a replacement entity or person by the NAC Representative shall not relieve the Vendor from responsibility to perform the Services. No payment shall be made for Services performed by unauthorized replacement entities or persons.

- 5.2.5 The NAC Representative may order the removal from the Vendor Team of any unauthorized replacement entity or person and the Vendor shall immediately remove the entity or person from the performance of the Services and shall, as stated above, secure a further replacement.
- 5.2.6 The fact that the NAC Representative does not order the removal of a replacement entity or person from the performance of the Services shall not relieve the Vendor from the Vendor's responsibility to meet all the Vendor's obligations in the performance of the Services.
- 5.2.7 Failure to honour these requirements may result in default of the Agreement.

5.3 PAYMENT FOR CHANGES AND REVISIONS

- 5.3.1 Payment for any additional or reduced Services authorized by the NAC Representative prior to their performance, and for which a basis of payment has not been established at the time of execution of the Agreement, shall be in amount or amounts to be agreed to by the parties, acting reasonably, in accordance with Section 4.0.
- 5.3.2 Where it is not possible, or not appropriate, to determine a fixed price fee or percentage fee prior to the performance of the additional or reduced Services, payment shall be made on the basis of a time based fee in accordance with Section 4.2.1.2. Disbursements shall be paid in accordance with Section 4.8.
- 5.3.3 Prior to the performance of additional or reduced Services on the basis of a time based fee, the NAC Representative shall determine, based on industry practice, input from the Vendor and their cost proposal, hourly rates for any of those persons for whom the relevant information does not appear in the Agreement.
- 5.3.4 The NAC accepts no liability for any additional Services done by the Vendor over above that required of the Agreement, unless a Change Order is issued authorizing the Vendor to do such additional Services.

5.4 EXTENSION OF TIME

- 5.4.1 If the time for the contract is exceeded or extended through no fault of the Vendor, such an extension of time shall be administered and the Vendor shall be compensated **based on agreement between the Corporation and the Vendor.**

6.0 TERMINATION OR SUSPENSION

6.1 TAKING THE SERVICES OUT OF THE VENDOR'S HANDS

- 6.1.1 The Corporation may take all or any part of the Services out of the Vendor's hands and may employ reasonable means necessary to complete the Services if:
 - 6.1.1.1 the Vendor has become insolvent or has committed an act of bankruptcy, and has neither made a proposal to its creditors nor filed a notice of intention to make such a proposal, pursuant to the Bankruptcy and Insolvency Act; or

- 6.1.1.2 fails to observe or perform any of the Agreement provisions; or
- 6.1.1.3 makes unauthorized changes in the Vendor Team.
- 6.1.2 Further to Section 6.1.1.1, the Vendor must immediately forward a copy of the proposal or the notice of intention to the NAC Representative.
- 6.1.3 Prior to the Services or any part of the Services are taken out of the Vendor's hands, the NAC Representative will provide notice to the Vendor, and may require such failure of performance or progress to be corrected. If within fourteen (14) calendar days after receipt of notice the default is not corrected or corrective action is not initiated, the NAC Representative may take all or any part of the Services out of the Vendor's hands.
- 6.1.4 If the Services or any part of the Services have been taken out the Vendor's hands, the Vendor will be liable for and shall pay the Corporation the amount equal to all loss and damage suffered by the Corporation for the Vendor's non-completion of the required Services under the Agreement.
- 6.1.5 If the Vendor does not pay the amount for loss and damage suffered by the Corporation, the Corporation will be entitled to deduct this amount from any payments due to the Vendor.
- 6.1.6 The taking of the Services, or any part of the Services, out of the Vendor's hands does not relieve or discharge the Vendor from any obligation under the Agreement, or imposed upon the Vendor by law, in respect to the Services or any part of the Services that the Vendor has performed.
- 6.1.7 For any action taken by the Corporation, as detailed in this Section, the Vendor has no claim for damages, compensation, loss of profit, loss of opportunity or allowance.

6.2 SUSPENSION

- 6.2.1 The NAC Representative may upon providing a notice in writing to the Vendor require the Vendor to suspend the Services or part of the Services being provided, for a specified or unspecified period.
- 6.2.2 If the NAC Representative suspends the work for thirty (30) calendar days or less the Vendor must resume the performance of the Services in accordance with the terms of the Agreement.
- 6.2.3 If the work is suspended in excess of thirty (30) calendar days, the NAC Representative may decide to resume the performance of the Services or that the Agreement will be terminated under Section 6.0.
- 6.2.4 During the period of suspension of the Services the Vendor shall minimize all costs and expenses relating to the Services that may occur during the suspension period.
- 6.2.5 Within fourteen (14) calendar days of notice of suspension, the Vendor shall submit to the NAC Representative a schedule of all costs and expenses the Vendor incurred during the suspension period, for which the Vendor will request reimbursement.

- 6.2.6 Payment shall be made to the Vendor for those costs and expenses incurred within fourteen (14) calendar days of notice of suspension, if in the opinion of the Corporation, those costs are substantiated as having been reasonably incurred.

7.0 DISPUTE RESOLUTION

7.1 CONSULTATION AND CO-OPERATION

- 7.1.1 The parties agree to maintain open and honest communication throughout the Agreement.
- 7.1.2 The parties agree to consult and co-operate with each other in the furtherance of the Services and the resolution of problems or differences that may arise.

7.2 DISAGREEMENT AND NEGOTIATION

- 7.2.1 In the event of a disagreement regarding any aspect of the Services or any direction given under the Agreement:
- 7.2.1.1 the Vendor may give a written notice of disagreement to the NAC Representative. The written notice shall be promptly given and contain the particulars of the disagreement, any changes in time or amount claimed and make reference to the relevant clauses of the Agreement;
 - 7.2.1.2 the Vendor shall continue to perform the Services in accordance with the Agreement and the NAC Representative instructions;
 - 7.2.1.3 The Vendor and the NAC Representative shall attempt to resolve the disagreement by negotiations conducted in good faith. The negotiations shall be conducted, first, at the level of the Vendor's Representative and the NAC Representative and, secondly and if necessary, at the level of a principal of the Vendor's firm and a senior representative of the NAC.
- 7.2.2 The Vendor's continued performance of the Services in accordance with the instructions of the NAC Representative shall not jeopardize the legal position of the Vendor in any disagreement.
- 7.2.3 If it was subsequently agreed or determined that the instructions given were in error or contrary to the Agreement, the Corporation shall pay the Vendor fees the Vendor would 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 have been authorized by the NAC Representative. The fees mentioned in this section shall be calculated in accordance with the Terms of Payment set out in the Agreement.
- 7.2.4 The Corporation and Vendor will make reasonable efforts to resolve disputes arising under this Agreement by amicable negotiations. They agree to provide frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations, without prejudice to their rights and recourses.

- 7.2.5 If a dispute has not been resolved by negotiations, either party may notify the other party, in writing, that it wishes the dispute to be resolved by mediation. If the parties are unable to agree upon the choice of a mediator, either party may apply to a superior court justice to appoint a mediator.
- 7.2.6 Should mediation not resolve the dispute, a party may refer the unresolved dispute to the courts or, upon mutual agreement, to any other form of dispute resolution, including binding arbitration.

8.0 INDEMNIFICATION AND INSURANCE

8.1 INDEMNIFICATION BY THE VENDOR

- 8.1.1 The Vendor shall indemnify and save harmless the Corporation, its employees and agents, from losses arising out of the errors, omissions or negligent acts of the Vendor, its employees and agents, in the performance of the Services under the Agreement.
- 8.1.2 The Vendor's liability to indemnify or reimburse the Corporation under the Agreement shall not affect or prejudice the Corporation from exercising any other rights under law.

8.2 INDEMNIFICATION BY THE CORPORATION

- 8.2.1 The Corporation shall indemnify and save the Vendor harmless from and against all claims, demands, losses, costs, damage, actions, suits or proceedings arising out of the Vendor's activities under the contract that are directly attributable to an infringement or an alleged infringement by the Vendor of any patent of invention or any other kind of intellectual property occurring while the Vendor was performing any act for the purposes of the contract employing a model, plan or design or any other thing related to the Services that was supplied by the Corporation to the Vendor.

8.3 INSURANCE REQUIREMENTS - GENERAL

- 8.3.1 The Vendor shall ensure that appropriate liability insurance coverage is in place to cover the Vendor and shall maintain all required insurance policies as specified herein for the duration of the Agreement.
- 8.3.2 The Vendor shall, if requested by the NAC Representative at any time, provide to the NAC Representative an Insurer's Certificate of Insurance.
- 8.3.3 The payment of monies up to the deductible amount made in satisfaction of a claim shall be borne by the Vendor.

8.4 COMMERCIAL GENERAL LIABILITY

- 8.4.1 This policy is written on the Comprehensive General Liability Form, insuring the Corporation and Vendor. This policy also includes any individual firm or corporation under the Contract for the supply of the Services specific to this Contract.

- 8.4.2 The minimum limit of the Policy is five million dollars (\$5,000,000.00) inclusive, for bodily injury and property damage, any one occurrence or series of occurrences, arising out of one cause.
- 8.4.3 The Policy contains, at a minimum, the following provisions:
 - 8.4.3.1 bodily injury and property damage on an occurrence basis;
 - 8.4.3.2 personal injury coverage;
 - 8.4.3.3 contingent employer's liability;
 - 8.4.3.4 contractual liability assumed under the Contract;
 - 8.4.3.5 completed operations coverage for two (2) years after the date of issue of Final Certificate of Completion of the entire project;
 - 8.4.3.6 cross liability clause; and
 - 8.4.3.7 legal liability for hired automobiles.
- 8.4.4 This insurance takes effect on the date of Contract award and remains in effect until the date the Final Certificate of Completion for the entire project is issued, and for two (2) years thereafter for completed operations.

9.0 PERFORMANCE EVALUATION

9.1 PERFORMANCE EVALUATION - DETAILS

- 9.1.1 The Vendor will be evaluated by the NAC Representative on a regular basis to ensure proper delivery of required services.
- 9.1.2 A regular ongoing review process will be practices during the operational and maintenance part of the Contract.