

TERMS AND CONDITIONS

1. DEFINITIONS

In these Additional Terms and Conditions, the following terms, whether in singular or plural form, as appropriate, have the meanings set forth below. Capitalized terms not otherwise defined herein have the meaning set forth elsewhere in the Agreement.

- (a) **"Agreement"** means the agreement entered into between CMN and Vendor and to which this Appendix A is attached, together with all schedules, purchase orders, SoW, and other written documents made between CMN and Vendor;
- (b) **"Background IP"** means any and all Intellectual Property conceived, developed, reduced to practice, or otherwise made or acquired by a party prior to the effective date or outside the scope of the Agreement;
- (c) **"Claim"** means all liabilities, losses, claims, damages, penalties, actions, suits, demands, levies, costs, expenses, and disbursements including any and all reasonable legal and adviser fees and disbursements of whatever kind or nature which may at any time be suffered by, imposed on, incurred by, or asserted by an indemnified person;
- (d) **"CMN"** means the Canadian Museum of Nature;
- (e) **"Confidential Information"** means any information identified by either party (or a party's affiliate or Representative) as confidential or proprietary or which, under the circumstances, ought to be treated as confidential or proprietary. Confidential Information includes non-public information related to the Disclosing Party's (or any of its affiliates') business, customers, employees, data, equipment, financial statements, Intellectual Property, inventory, strategies, products, suppliers, or trade secrets, regardless of the manner or means by which such information is disclosed or communicated. Confidential Information does not include information that (i) entered the public domain without the Receiving Party's or any of the Receiving Party's Representatives' breach of any obligation owed to the Disclosing Party; (ii) became known to the Receiving Party from a source other than the Disclosing Party other than by the breach of an obligation of confidentiality owed to the Disclosing Party; or (iii) was independently developed by the Receiving Party without reference to Confidential Information of the Disclosing Party and such independent development is adequately documented. Notwithstanding anything to the contrary, all Personal Information is Confidential Information;
- (f) **"Deliverables"** means, collectively, the Products and Services, as applicable;
- (g) **"Disclosing Party"** means the party that discloses Confidential Information to the other party;
- (h) **"Intellectual Property"** means trade or brand names, business names, trademarks, service marks, copyrights, patents, trade secrets, know-how, inventions, research data, drawings and designs, formulae, processes, technology, and other intellectual, industrial, or proprietary rights, together with all rights under licences and other agreements relating to any of the foregoing or which embody, emulate, or employ any part of the foregoing;
- (i) **"Loss"** means any and all action, damage, Claim, liability, cost, expense, or loss, whether in contract, statute, tort, or otherwise, including reasonable legal fees;
- (j) **"Personal Information"** means personal information as defined in PIPEDA and information about an identifiable individual that is obtained by Vendor from CMN during the performance of its obligations under the Agreement;
- (k) **"PIPEDA"** means the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, as amended, or any successor or replacement thereof;
- (l) **"Products"** means, collectively, the products supplied by Vendor to CMN under the Agreement;
- (m) **"Receiving Party"** means the party to which Confidential Information is disclosed;
- (n) **"Representatives"** means a party's agents, directors, officers, employees, consultants, and advisers;
- (o) **"Services"** means, collectively, the services supplied by Vendor to CMN under the Agreement, as more particularly described in the SoW;
- (p) **"Statement of Work"** or **"SoW"** means the Statement of Work attached to the agreement;
- (q) **"Vendor"** means the party identified as such in the Agreement; and
- (r) **"Work Product"** means Intellectual Property that arises or is developed, produced, created, written, or recorded in the performance of the Services or otherwise in connection with the Agreement, whether independently or jointly by the parties, and regardless of whether it is identified in the Agreement.

2. TITLE AND RISK OF LOSS

- 2.1 **Risk of Loss.** Risk of loss for and title to, including financial responsibility for damage or loss to, the Products shall pass to CMN at CMN's premises on the date and at the time at which the Products are inspected and accepted by CMN in accordance with Section 3.2.

2.2 **Delays.** Without limiting any of CMN's other rights under the Agreement, at law, or in equity, Vendor shall immediately advise CMN of any delays being encountered, the reasons therefor, and the action being taken to recover from such delays.

2.3 **Right to Cancel.** If delivery of a Product or performance of a Service is late by more than ten (10) business days from the delivery date set out in the agreement, the SoW, or the purchase order, as applicable, then CMN may, at its option, cancel the purchase and delivery with respect to that Product or cancel the Service, without incurring any charges or other costs and without prejudice to any of its other rights under the Agreement, at law, or in equity.

3. SHIPMENT & ACCEPTANCE OF DELIVERABLES

3.1 **Shipment.** CMN shall have no obligation with respect to unloading of the Products at the designated delivery point or the insurance of the Products during and after such unloading, and such obligations shall be the responsibility of Vendor. Unless otherwise specified or the applicable purchase order, Vendor shall be responsible for all shipping, insurance, and brokerage fees related to the Products and shall act as the importer of record of the Products. Without restricting the generality of the foregoing, Vendor shall be responsible for ensuring that the importation of the Products complies fully with the *Customs Act*, the *Customs Tariff*, and the *Excise Tax Act*.

3.2 **Acceptance.** CMN will inform Vendor in writing within fifteen (15) business days of receiving a Deliverable whether it accepts such Deliverable. CMN may reject any Deliverable that does not comply with the terms of the Agreement. If CMN fails to notify Vendor within the specified time, then CMN will be deemed to have accepted the Deliverable. If CMN rejects the Deliverable, then CMN may, in its sole discretion, either terminate the Agreement pursuant to Section 5.2 or allow Vendor an opportunity to revise or replace the Deliverable to render it acceptable, at Vendor's sole cost and expense. Any replacement Deliverable provided by Vendor shall be subject to the terms of acceptance in this Section 3.2.

4. DOCUMENTATION

Vendor shall provide CMN, without additional cost to CMN, all documentation in English and, if required by CMN, in French required to properly install, use, and maintain the Products and to understand their functions and features, as well as any other relevant documentation reasonably requested by CMN ("**Documentation**"). Vendor hereby grants to CMN a fully paid-up, royalty-free, non-exclusive, perpetual licence authorizing CMN and its Representatives to

use, copy, modify, and distribute the Documentation in connection with CMN's reasonable requirements.

5. TERMINATION

5.1 **Termination for Convenience.** CMN may, at any time and without cause, terminate all or any part of the Agreement, without penalty or further liability, upon giving Vendor at least thirty (30) days' prior written notice.

5.2 **Termination for Cause.** CMN may immediately terminate all or any part of the Agreement by written notice if:

- (a) CMN, in its sole discretion, rejects the quality of Deliverables or Vendor unreasonably delays or refuses to perform, deliver, or supply any Deliverables;
- (b) Vendor is in breach of the Agreement;
- (c) Vendor becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, a receiver is appointed, or a voluntary or involuntary petition in bankruptcy is filed concerning Vendor;
- (d) Vendor attempts to assign or cede any interest in the Agreement without the prior written consent of CMN; or
- (e) Public Services and Procurement Canada ("**PSPC**") has determined that Vendor is ineligible or suspended pursuant to the PSPC Integrity Regime.

5.3 **Obligations upon Termination.** Upon termination or expiration of the Agreement, Vendor shall immediately (a) deliver to CMN, at CMN's request, all originals, copies, reproductions, and summaries of information related to the Agreement, including CMN Confidential Information, or, alternatively, at the option of CMN, certify in writing the secured destruction of all such information in its possession or control, including CMN Confidential Information, using a destruction method deemed appropriate by CMN; and (b) disclose to CMN the progress of the performance or delivery of any outstanding Deliverables and deliver to CMN all finished and unfinished Work Product existing at the time of expiration or termination, and transfer title to any such Work Product to CMN in the manner and to the extent directed by CMN.

5.4 **Liability of Vendor upon Termination.** Upon termination pursuant to Section 5.2, CMN may arrange, upon such terms and conditions as CMN deems appropriate, for the Deliverables to be completed, including, without limitation, for any Products not delivered and accepted in accordance with Section 3.2 to be substituted from an alternative supplier. Vendor shall be liable to CMN for any costs relating to the completion of the Deliverables in excess of the fees stipulated in the Agreement.

- 5.5 **Liability of CMN upon Termination.** Upon termination by CMN of all or any portion of the Agreement, CMN shall have no liability to Vendor for any Losses suffered or incurred by Vendor in connection therewith (and Vendor shall not bring a Claim against CMN in respect thereof) other than for any payments to be made by CMN to Vendor for all Products delivered and Services properly performed up to the date of termination and accepted by CMN in accordance with Section 3.2, on a pro-rated basis. Vendor 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 CMN under this Article 5 except as expressly provided herein.
6. **PRICING AND PAYMENT**
- 6.1 **Fees.** CMN shall pay Vendor fees for Deliverables properly performed and accepted, in accordance with the terms of acceptance in Section 3.2, the SoW, and any purchase order for Deliverables issued by CMN to Vendor, as applicable, within thirty (30) days of receipt of each properly issued numbered invoice.
- 6.2 **Invoices.** Vendor shall only invoice CMN for Deliverables accepted by CMN in accordance with the terms of acceptance in Section 3.2. Vendor shall send each invoice to CMN by email in .pdf format and shall include on each invoice the invoice number, the purchase order number (as applicable), the date, a detailed description of the Services rendered and Products delivered (as applicable), any applicable taxes shown separately, Vendor's GST/HST registration number, where applicable, and any other required information specified in the SoW or the applicable purchase order.
- 6.3 **Interest.** Notwithstanding any other provision of the Agreement, Vendor shall not charge CMN, and CMN shall have no obligation to pay, any interest or other fees or penalties on or in relation to overdue payments owed to Vendor for the Deliverables.
- 6.4 **Withholding Taxes.** Notwithstanding any other provision of the Agreement, CMN is expressly authorized and directed to deduct from all amounts otherwise payable to Vendor and remit to the applicable taxation authority all withholding taxes that may apply, now or in the future. If CMN does not withhold such taxes, and it is subsequently determined that such taxes should have been withheld, Vendor shall indemnify, defend, and hold harmless Her Majesty and CMN from all claims arising therefrom for the full amount of such taxes.
- 6.5 **Set-Off.** CMN shall have the right to set off against any payments to Vendor any other amounts which may be owing or owed to CMN or Her Majesty by Vendor.
- 6.6 **Overpayment and Disallowed Expenditures.** Any overpayment or disallowed expenditure shall be repayable to CMN and, until repaid, constitutes a debt due to CMN. CMN may deduct such amount from any subsequent payment under the Agreement or, if no further payments remain, or such amount is determined after the termination or expiration of the Agreement, Vendor shall, unless otherwise agreed, repay the amount within thirty (30) days following written notice from CMN.
- 6.7 **Most Favoured Customer.** Vendor shall provide the Deliverables to CMN on terms and conditions no less favourable to CMN than those terms and conditions on which the same or substantially similar Deliverables are provided to any other customer by Vendor.
7. **NO EXCLUSIVITY OR MINIMUM COMMITMENT**
- 7.1 **No Exclusivity.** CMN's retainer of Vendor to provide the Deliverables is not exclusive. CMN shall be entitled to contract with third parties, in its sole discretion, at any time, for (a) the supply of any of the Products to be provided hereunder or similar products, and (b) the performance of any part of the Services to be provided hereunder or similar services. Vendor shall provide all reasonable cooperation as may be required by such third parties.
- 7.2 **No Minimum Commitment.** By entering into the Agreement, and except as may be expressly set out in the SoW, CMN makes no commitment to order or accept delivery of any particular products or services or any minimum weekly, monthly, annual, or other amount or quantity of products or services, or to spend any amount. CMN shall have the right to reduce the scope of the Deliverables ("**Eliminated Work**") to be provided by Vendor under the Agreement for any reason whatsoever by notice in writing to Vendor. Upon receipt of such notice, Vendor shall immediately advise CMN of any work that it has already completed in respect of the Eliminated Work and provide CMN with documentation or other evidence satisfactory to CMN, acting reasonably, in support thereof and deliver to CMN any Work Product (whether completed or in progress) in connection with the Eliminated Work. Upon receipt of such Work Product, and such satisfactory documentation and evidence, CMN shall pay for the portion of the Eliminated Work properly performed under the Agreement to the satisfaction of CMN, up to and including the date on which CMN issued the notice in respect of the Eliminated Work, on a pro-rated basis.

8. CONFIDENTIAL INFORMATION

- 8.1 **Confidentiality.** No party will disclose the other party's Confidential Information to any third party except as specifically permitted by way of prior written consent or as required by law. Notwithstanding the foregoing, Vendor acknowledges and agrees that CMN may disclose the existence and contents of the Agreement to third parties.
- 8.2 **Security Safeguards.** Each party shall have in place appropriate technical, physical, and organizational security safeguards to protect Confidential Information against unauthorized, unlawful, or accidental access, collection, use, loss, theft, threats, alteration, disclosure, copying, destruction, or disposal, and provide a level of security for Confidential Information that is appropriate to the sensitivity thereof. Each party shall cause its Representatives to comply with this Section 8.2
- 8.3 **Remedies.** In the event of unauthorized access, collection, use, disclosure, or disposal of Confidential Information, the parties agree to:
- (a) immediately notify the other party, in writing, of the unauthorized incident with full details;
 - (b) provide regular and comprehensive updates about the unauthorized incident to the other party; and
 - (c) immediately take all reasonable steps to respond and prevent a recurrence of the unauthorized incident.
- 8.4 **Injunction & Equitable Relief.** Notwithstanding Article 19, if the Receiving Party or any of its Representatives breaches a confidentiality obligation, then the Disclosing Party shall be entitled to seek injunctive and/or equitable relief to prevent breaches related to disclosure of Confidential Information in addition to any other remedy to which it may be entitled at law or in equity. For the purposes of this Section 8.4, the parties irrevocably attorn to the exclusive jurisdiction of the courts located in Ottawa, Ontario.
- 8.5 **Protection during Transit and Use** CMN Confidential Information will be collected by Vendor's staff from CMN's computers and transported to Vendor's office located at Vendor's address set out in the Agreement or such other location as agreed by CMN. CMN Confidential Information will be housed on Vendor's computer systems for the duration of the term of the Agreement. No later than thirty (30) calendar days after the effective date, Vendor shall provide CMN with a description of the physical and logical controls that Vendor will use to protect CMN Confidential Information while in transit and during any use or analysis. Such protection must be agreed to by CMN in advance in writing. Upon receipt of CMN's written agreement, Vendor shall, at all times, comply

with such physical and logical controls and shall not amend such physical and logical controls without the prior written consent of CMN.

9. PRIVACY

- 9.1 **Acknowledgement.** Without limiting any other provision of this Article 9, Vendor acknowledges and agrees that:
- (a) CMN is subject to PIPEDA, and PIPEDA applies to and governs all records;
 - (b) it may receive Personal Information in order to carry out its obligations under the Agreement;
 - (c) the privacy provisions of PIPEDA governing the collection, retention, use, disclosure, and security of Personal Information continue to apply while the Agreement is in effect and thereafter;
 - (d) all records containing Personal Information that are created or maintained in the course of providing the Deliverables pursuant to the Agreement shall be and remain the property of CMN; and
 - (e) all records shall be returned to CMN at the end of the term of the Agreement, or sooner if required by CMN.
- 9.2 **Vendor's Privacy Obligations.** Without limiting the generality of Section 9.1, but for greater certainty, Vendor agrees:
- (a) to keep all records, files, documents, and other materials containing Personal Information secure, including ensuring its computer security is adequate to protect Personal Information against unauthorized access or disclosure;
 - (b) to provide any and all records to CMN within seven (7) business days of being directed to do so by CMN for any reason;
 - (c) not to directly or indirectly collect, use, disclose, or destroy any Personal Information for any purposes not directly related to the performance of its obligations under the Agreement;
 - (d) to restrict access to Personal Information to those of its employees or subcontractors who have a need to know for the purposes of providing the Deliverables;
 - (e) that any Personal Information cannot be used by Vendor for its own purposes, or for any other purpose not identified in the Agreement;
 - (f) that Personal Information and any records, files, documents, or other materials containing Personal Information can only be disclosed or transferred to a third party with the informed prior written consent of CMN;
 - (g) to immediately notify CMN in writing where Personal Information is collected, used, or disclosed contrary to the provisions of the Agreement, including this Article 9;
 - (h) to immediately notify CMN of and refer to CMN any individual who contacts Vendor to request access or

correction to, or with any inquiries or complaints about, their Personal Information in connection with or otherwise relating to the Agreement, and to provide, in a timely manner, all reasonable cooperation, assistance, information, and access to Personal Information in its possession, custody, or control as is necessary for CMN to promptly (and, in any event, within any time frame required by applicable privacy laws) respond to such request, inquiry, or complaint; and

- (i) not to match or otherwise link or associate Personal Information collected in the performance of its obligations under the Agreement with Personal Information obtained from other sources.

9.3 **Personal Information in Canada.** Vendor represents, warrants, and covenants that no Personal Information, regardless of the form or medium in which it is disclosed or stored, will be held, stored, located, transferred, or processed outside of Canada.

9.4 **Subcontracting of Obligations.** Vendor shall not subcontract, assign, or delegate to any third party its obligations in respect of the protection of Personal Information without CMN's prior written approval.

9.5 **Right to Audit.** Vendor shall:

- (a) permit CMN or its designee to inspect any Personal Information in the custody or possession of Vendor in connection with the Agreement and to audit Vendor's compliance with its obligations described under this Article 9;
- (b) permit CMN to enter onto Vendor's premises for such purposes; and
- (c) otherwise promptly and properly respond to all reasonable inquiries from CMN with respect to Vendor's handling of Personal Information in connection with the Agreement or Vendor's compliance with this Article 9.

9.6 **Precedence.** In the event of any inconsistency between the terms of this Article 9 and the terms of Article 8 or any other terms relating to Confidential Information, the terms of this Article 9 shall prevail.

10. OWNERSHIP AND LICENCES

10.1 **Ownership of Work Product.** CMN will own all right, title, and interest in and to all Work Product and Vendor irrevocably assigns to CMN all Intellectual Property in the Work Product. When requested, Vendor will obtain from all individuals involved in the development of such Work Product an express and irrevocable waiver in favour of CMN of any and all moral rights arising under the *Copyright Act* (Canada) as amended (or its successor legislation) or under similar legislation in other jurisdictions or at common

law that Vendor or such individuals, as authors, have with respect to the Work Product.

10.2 **CMN Background IP.** CMN retains all right, title, and interest in and to the CMN Background IP. CMN hereby grants to Vendor a non-transferable licence to use and reproduce CMN Background IP solely as necessary to provide the Deliverables to CMN and for no other purpose. Vendor will maintain all CMN Background IP in confidence and will not provide it to any third party and will not use it except to provide the Deliverables to CMN.

10.3 **Infringement.** Vendor covenants that all Deliverables and Work Product provided to CMN do not infringe any existing patent, trademark, trade secret, or copyright registered or recognized in Canada or elsewhere with respect to the intended use of the Deliverables and Work Product by CMN.

10.4 **Licence to Use Vendor's Related Rights.** To the extent that Vendor has proprietary rights, including Vendor Background IP, which are incorporated in or necessary to the use of the Work Product ("**Vendor's Related Rights**"), Vendor grants to CMN and its affiliates a royalty-free, irrevocable, perpetual, worldwide, non-exclusive licence to use, disclose, reproduce, modify, sub-license, and distribute Vendor's Related Rights. Vendor will indemnify, hold harmless, and, at CMN's request, defend Her Majesty and CMN and its affiliates from and against all Losses and Claims arising out of or in connection with any allegation that the use or disclosure of Vendor's Related Rights violates any third party's rights.

10.5 **Trademark/Logo Use.** Unless otherwise stated herein or as may be required or permitted by law, Vendor will not use a trademark or logo of CMN in any advertising, marketing, promotion, or disclosure relating to the Agreement without the prior written consent of CMN.

11. AUDIT AND INSPECTION

11.1 **Record Retention.** Vendor shall keep proper accounts and records of the cost to perform or deliver the Deliverables including any related invoices, receipts, or vouchers. Vendor shall not dispose of the documents referred to in this Section 11.1, without the written consent of CMN, for a period of three (3) years following completion of the Deliverables or such longer period as may be specified in the Agreement.

11.2 **Audit and Inspection.** On reasonable notice, CMN has the right to inspect Vendor's work-in-progress. During the term of the Agreement and for three (3) years thereafter, CMN also has the right to access and copy all materials relating to the Agreement and

the Deliverables, including but not limited to files, data, correspondence, books, and accounting records. Vendor shall make no charge to CMN for any such audit.

12. PERFORMANCE OF VENDOR OBLIGATIONS

12.1 **No Subcontractors.** Vendor shall not delegate, assign, or subcontract any of Vendor's obligations under the Agreement to any other person, firm, or corporation without the prior written consent of CMN.

12.2 **Personnel.** Vendor shall provide fully trained, competent, and skilled personnel to perform and deliver the Deliverables and shall ensure that its personnel comply with the Agreement.

12.3 **Key Removal of Personnel.** Vendor shall replace or cause to be replaced any personnel engaged to perform the Services whose removal is requested by CMN acting reasonably. If Vendor takes any other action in respect of any such personnel, or causes any such action to be taken, Vendor shall indemnify, defend, and hold harmless CMN and its Representatives from all Losses and Claims arising therefrom.

12.4 **Time of Performance.** Vendor acknowledges and agrees that it may be required to deliver or perform all or a portion of the Deliverables outside of regular business hours.

12.5 **Policies and Procedures.** Vendor acknowledges and agrees that, while on the premises used by CMN, or when otherwise applicable, it and its Representatives shall:

- (a) only bring food and beverages into the designated eating areas identified by CMN;
- (b) restrict access to the acceptable access routes identified by CMN;
- (c) safely remove, on a daily basis, and dispose of all waste products and debris in accordance with the instructions provided by CMN;
- (d) maintain security standards consistent with security policies of CMN;
- (e) not conduct noisy operations during CMN business hours without CMN's express authorization; and
- (f) comply with all other policies and procedures of CMN from time to time in force which are brought to Vendor's notice or of which Vendor could reasonably be aware.

12.6 **Official Languages.** Vendor acknowledges and agrees that it shall comply with CMN's obligations under the *Official Languages Act* when providing Services to the public, in locations where sufficient demand exists, in both official languages, where those Services, if provided directly by CMN, would be

required by law to be provided in both official languages.

12.7 **Security Clearance.** Vendor shall ensure that each of its personnel, including those of its subcontractors, engaged to perform the Services are screened in accordance with the PSPC Industrial Security Program and security cleared at the Reliability Level, and Vendor will provide to CMN a PSPC-issued certificate as proof thereof. Vendor acknowledges and agrees that such screening includes a criminal record check and may include a credit check. Vendor is responsible for all costs in any way associated with the security clearance of all personnel under this Section 12.77.

13. HEALTH AND SAFETY

13.1 **Health and Safety Policies.** In addition to any applicable health and construction safety legislation, Vendor shall comply at all times with any and all health and safety requirements of CMN, as determined in CMN's sole discretion, that are or come into force during the performance of the Services and that are related or applicable to the Services, the preservation of public health, or construction safety, even if such requirements exceed provincially mandated workplace health and safety requirements and legislation.

13.2 **Non-Compliance.** If CMN determines, in its sole discretion, that Vendor is not in compliance with any of the requirements described in Section 13.1, Vendor shall immediately suspend performance of the applicable Services and take all necessary steps to cure such non-compliance within four (4) hours, or such longer period as CMN may agree to in writing, acting reasonably ("**Cure Period**"). If the non-compliance is not cured within the Cure Period, CMN may terminate all or any part of the Agreement in accordance with Section 5.2.

14. REPRESENTATIONS AND WARRANTIES

14.1 **Representations and Warranties.** Vendor represents and warrants that:

- (a) it has the right and full corporate power to enter into the Agreement;
- (b) it has and shall maintain all such rights as are necessary to fulfil its obligations under the Agreement and it is not a party to any agreement or business relationship that prevents it from carrying out its obligations under the Agreement;
- (c) its knowledge, skill, experience, and abilities are appropriate and sufficient to perform the Services properly and efficiently;
- (d) it has not paid, given, promised, or offered any bribe, gift, benefit, or other inducement to any officer or

employee of CMN for or with a view to influencing the entry into the Agreement or administration of the Agreement;

- (e) no person has been employed or retained by or on behalf of Vendor to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee;
- (f) the Agreement creates legal, valid, and binding obligations on it and is enforceable against it in accordance with its terms;
- (g) as of the effective date, there are no legal or financial circumstances with respect to Vendor that, if known by CMN, would reasonably be expected to cause CMN not to enter into the Agreement; Vendor shall advise CMN promptly if any such circumstances occur after the effective date; and
- (h) none of the domestic criminal offences or other circumstances described in the Ineligibility and Suspension Policy of the PSPC Integrity Regime that will or may result in a determination of ineligibility or suspension, apply to Vendor, its affiliates, or proposed subcontractors.

14.2 Product Warranties. Vendor represents and warrants that:

- (a) it has fully disclosed to CMN all developments, improvements, changes, and particulars in its knowledge, possession, or control that materially enhance or improve the design of any of the Products, and will continue to do so during the term of the Agreement;
- (b) it has good and marketable title to the Products supplied hereunder to CMN, free and clear of all liens, charges, encumbrances, security interests, mortgages, pledges, and other claims, rights, and obligations of every kind;
- (c) there are no special tools, jigs, or test fixtures required to properly maintain the Products;
- (d) it has obtained any and all rights, permits, licences, and third-party consents required in connection with the sale and use of the Products purchased by CMN; and
- (e) the Products shall be:
 - (i) manufactured, assembled, and tested in accordance with the specifications in and applicable quality-control standards and conditions; of new original equipment manufacturer materials, parts, and components only unless the parties otherwise expressly agree in writing;
 - (ii) produced, packaged, and shipped in compliance with goods manufacturing practices, applicable licences, and all applicable laws, regulations, and rules;

- (iii) of good and merchantable quality and free from defects in material, design, and workmanship;
- (iv) fit for the purpose for which they are required by CMN; and
- (v) certified and appropriately labelled by Vendor in accordance with current applicable Canadian standards, including those of the Canadian Standards Association.

14.3 Product Warranty Period. For a period of two (2) years following acceptance of the Products by CMN in accordance with Section 3.2, or if another longer warranty period is stipulated in the Vendor's proposal. ("Product Warranty Period"), Vendor shall repair or replace any Product or part of any Product which is determined by CMN, in its sole discretion acting reasonably, to be in breach of the Product warranties set out in Section 14.2, and Vendor is solely responsible for paying all costs in any way associated with such repair or replacement.

14.4 Conflict of Interest. Vendor represents and warrants that Vendor has no financial or professional obligations or interests that could interfere or be perceived to interfere with Vendor's ability to adequately perform its obligations under the Agreement. If Vendor acquires any such obligation or interests during the term of the Agreement, Vendor shall immediately notify CMN.

15. INDEPENDENT CONTRACTOR

Vendor is and will be acting as an independent contractor and is not an employee of CMN or Her Majesty. Nothing contained herein shall be construed to create an employer-employee relationship between Vendor and CMN or Her Majesty, nor shall the Agreement be construed to imply that Vendor or any of its Representatives is a partner, franchisee, joint venturer, agent, officer, or employee of CMN or Her Majesty.

16. INSURANCE

16.1 Professional Liability Insurance. Vendor shall obtain and maintain Professional Liability Insurance coverage in an amount not less than five million dollars (\$5,000,000.00) per claim and per policy period to compensate CMN for any Loss incurred by CMN as a result of the negligence of Vendor or its Representatives. Vendor shall keep such policy in force, at Vendor's sole expense, throughout the term of the Agreement and for a period of five (5) years after the date of final completion.

16.2 Public Liability and Property Damage Insurance. Vendor shall obtain and maintain during the term of the Agreement Public Liability and Property Damage

Insurance coverage in an amount not less than five million dollars (\$5,000,000.00).

- 16.3 **Notice to CMN.** Each policy of insurance described in this Article 16 shall provide CMN with not less than thirty (30) business days' prior written notice of any cancellation or termination thereof. Vendor shall provide certificates of insurance and such additional evidence as CMN may from time to time request confirming that such policies are in good standing. All insurance maintained by Vendor shall be primary and shall not call into contribution any insurance maintained by CMN.

17. INDEMNITY

- 17.1 **Vendor Indemnity.** Vendor shall indemnify, defend, and hold harmless Her Majesty, CMN, and their Representatives from and against all Claims and Losses that arise from any:

- (a) breach of the Agreement by Vendor or any of its Representatives;
- (b) incorrectness or breach of a representation or warranty by Vendor;
- (c) wilful or negligent act or omission of Vendor or any of its Representatives;
- (d) allegation or finding in law that the relationship between CMN and Vendor or any of Vendor's Representatives is an employment or similar relationship, notwithstanding that such relationship is expressly denied; and
- (e) allegation that any Deliverable, Work Product, or Third Party Property infringes any Intellectual Property or other proprietary right of a third party.

Vendor shall immediately notify CMN of such Claims and Vendor shall fully defend any Claims at its own expense. Vendor's obligations under this Section 17.1 shall not restrict or prejudice Her Majesty or CMN from exercising any other rights under law or equity.

- 17.2 **CMN Right to Work Product.** When notified of an action or motion that seeks to restrict Her Majesty or CMN from using any Work Product created or provided by Vendor, Vendor may (and in the case of a judgment, order, or injunction that restricts the use of any such Work Product, shall), at Vendor's expense, (a) obtain for Her Majesty and CMN the right to use such Work Product in accordance with the Agreement or (b) modify or substitute such Work Product so that Her Majesty's and CMN's use of such Work Product in accordance with the Agreement is non-infringing.

18. LIMITATION OF LIABILITIES

In no event will a party be liable to another party for any special, incidental, indirect, consequential, or punitive damages or any damages for loss of profits, loss of data, business interruption, or loss of business

information arising from or relating to the Agreement. These limitations will apply regardless of the Claim, and regardless of whether the other party had been advised of the possibility of such damages. If circumstances arise where Vendor is entitled to recover damages relating to the Agreement, the aggregate liability of CMN, if any, will in no event exceed the value of the fees paid to Vendor in the twelve (12) months preceding the event giving rise to such damages. Notwithstanding the foregoing, this Article 18 shall not apply to limit any party's liability for any Claim arising from such party's own fraud, wilful misconduct, gross negligence, intellectual property infringement or breach of confidentiality obligations.

19. DISPUTE RESOLUTION

- 19.1 **Good Faith Negotiations.** Without limiting termination rights set out at Article 5, in the event of a dispute between the parties arising out of or in connection with the fees or any payment under the Agreement, senior representatives of each party shall make reasonable efforts to resolve the dispute through negotiations in good faith within thirty (30) days after a written request from either party to the other.

- 19.2 **Mediation and Arbitration.** Without limiting termination rights set out at Article 5, if a dispute referred to in Section 19.1 is not settled through negotiation, then the parties shall try in good faith to settle the dispute by mediation in accordance with the ADR Institute of Canada Mediation Rules. If mediation is not successful, then such unresolved dispute shall be submitted to final and binding arbitration. Disputes subject to arbitration will take place in Ottawa, Ontario, and shall be governed by the ADR Institute of Canada Arbitration Rules ("**ADR Rules**"). A single arbitrator shall be selected in accordance with the ADR Rules. The arbitrator's award may be entered into any court having jurisdiction. Fees and expenses of the mediator and arbitrator will be shared equally by each party in the dispute, but each party shall otherwise bear its own legal and other expenses.

- 19.3 **Continued Performance.** Vendor shall continue to perform its obligations in accordance with the Agreement and instructions of CMN during any dispute, negotiations, mediation, or arbitration.

20. GENERAL

- 20.1 **Time of the Essence.** Vendor acknowledges that time is of the essence in the performance of all of Vendor's obligations under the Agreement.

- 20.2 **Further Assurances.** Vendor shall from time to time promptly execute and deliver all documents and take

all further action reasonably necessary or appropriate to give effect to the provisions of the Agreement.

- 20.3 **Severability.** If any provision of the Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions shall, to the extent reasonably possible, continue in force and effect.
- 20.4 **Waiver.** Except as provided for in the Agreement, a waiver by any party of any rights or the failure to exercise any remedy will not operate or be construed as a continuing waiver of the same right or remedy or any of the other of such party's rights or remedies.
- 20.5 **Notice.** When a notice is to be given or served by a party, the notice shall be in writing and shall be delivered personally to the party to whom it is given or sent by prepaid registered mail or confirmed receipt by electronic communications (e.g., email), addressed to Vendor as described in the Agreement.
- A notice shall be deemed to have been received (a) if sent by personal delivery or email, on the date it was sent; (b) if sent by courier, on the next business day following delivery; or (c) if sent by regular mail, on the fifth (5th) business day following the date of mailing. Any party may change its address for the purpose of this Section 20.5 by giving written notice of such change to the other party in the manner set out above.
- 20.6 **Survival.** Upon expiration or termination of the Agreement, all provisions of the Agreement which, by their nature and surrounding circumstances, reasonably should survive expiration or termination, will survive expiration or termination of the Agreement.
- 20.7 **Assignment.** The Agreement enures to the benefit of and binds each party's respective successors and permitted assigns. Vendor shall not assign, transfer, or pledge the Agreement, or any of its rights or obligations thereunder, without the prior written consent of CMN. No assignment of the Agreement shall impose any liability upon Her Majesty or CMN. CMN may assign the Agreement at any time.
- 20.8 **Integrity.** The Ineligibility and Suspension Policy and all related Directives of the PSPC Integrity Regime are incorporated herein and are binding on the parties.
- 20.9 **Entire Agreement.** The Agreement contains the entire understanding and agreement between the parties and replaces all previous oral or written discussions or negotiations.
- 20.10 **Amendment.** The Agreement may only be amended by written agreement signed by each party.

- 20.11 **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and such laws of Canada that are applicable therein. The parties irrevocably attorn to the exclusive jurisdiction of the courts located in Ottawa, Ontario.
- 20.12 **UN Convention.** The parties specifically exclude application of the *United Nations Convention on Contracts for the International Sale of Goods* ("**Vienna Convention**") and the application of any domestic statute that has adopted the Vienna Convention into law for its jurisdiction.
- 20.13 **No Contra Proferentum.** These Additional Terms and Conditions are the product of the joint efforts of both parties and have been reviewed by each party's professional advisors, and each party acknowledges that no rule of interpretation favouring one party over another based on authorship will apply to resolve any ambiguity.
- 20.14 **Public Office Holders.** No public office holder, as defined in the *Lobbying Act*, shall be admitted to any share or part of the Agreement or to any benefit arising from the Agreement.
- 20.15 **Counterparts and Electronic Delivery.** The Agreement may be executed and delivered by the parties in one or more counterparts, each of which will be an original, and each of which may be delivered by email or other functionally equivalent electronic means of transmission and those counterparts will together constitute one and the same instrument.

