



GENERAL CONDITIONS (GC)

1 Definitions

- 1.1 “**Agreement**” means the **Project Agreement** signed by the **Organization** and the **Museum** and these General Conditions.
- 1.2 “**Organization**” refers to the signatory party that has undertaken to create a **Project** for the benefit of the **Museum**.
- 1.3 “**Project**” refers to an online product that must be fully accessible according to the current [Web Content Accessibility Guidelines \(WCAG\)](#) standards and must be accessible via various devices and platforms.
- 1.4 “**DMC**” means Digital Museums Canada, the division of the **Museum** that manages the investment program for online projects.
- 1.5 “**Program Officer**” means the **DMC** representative who is the main contact person during the development of the **Project**. The **Program Officer** acts as the authority responsible for the **Project**, with the following powers and responsibilities:
- They are responsible for verifying that the phases have been completed in accordance with the terms of the **Agreement**. They represent the **Museum** for which the phases are carried out under the **Agreement**. The **Program Officer** is responsible for all matters relating to the completion of phases under the **Agreement**. The **Program Officer** cannot authorize changes to the phases. Any such changes must be made through an amendment to the **Agreement** issued by the **Contracting Authority**.
 - Where necessary, they recommend extensions or amendments to the **Agreement**;
 - They approve the **Organization's** requests for release of funds after verifying that the phases provided for in the **Agreement** have been duly completed;
 - They authorize the closing of the **Agreement**;
 - They produce and distribute performance data on the **Organization**.
- 1.6 “**Museum**” refers to the Canadian Museum of History (CMH).
- 1.7 “**Contracting Authority**” means the **Museum's** Contract Section, Financial and Administrative Services, which shall act as the **Contracting Authority**, with the following powers and responsibilities:
- It responds to inquiries regarding the terms and conditions of the **Agreement**. It alone can bind the **Museum** by contract. Any amendment to the **Agreement** must be authorized in writing by the **Contracting Authority**. The latter is also responsible for resolving disputes arising from the **Agreement**.

2 Gender and number

- 2.1 In this **Agreement**, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

3 Status of the Organization

- 3.1 The **Organization** contracts as an independent contractor. Neither the **Organization** nor its staff members are engaged as employees, agents or clerks of the **Museum**. The **Organization** assumes full responsibility for all payments and deductions required for employment insurance, workers' compensation, income tax or other purposes.



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- 3.2 Nothing in this **Agreement** shall be construed as establishing between the parties a partnership, joint venture or employer-employee relationship, and neither party shall have the power to bind the other with respect to any rights or obligations under this **Agreement** in any manner whatsoever.

4 Independence of the Museum

- 4.1 The **Museum** is the agent of His Majesty the King in Right of Canada for all purposes of the **Agreement**. Nothing in this **Agreement**, or the absence thereof, shall limit the rights or powers of His Majesty and the **Museum** under any Act of the Parliament of Canada or otherwise. The rights and powers conferred upon the **Museum** by the **Agreement** or otherwise are cumulative and not limitative.

5 Members of Parliament

- 5.1 Federal Members of Parliament may not participate in all or part of the **Agreement** or any benefits arising therefrom.

6 Signature and Copies of the Agreement

- 6.1 The **Agreement** may be executed in any number of counterparts, each of which shall be binding on the parties, even if the parties have executed different counterparts. A copy can be faxed, scanned or electronically processed.

7 Language of Agreement

- 7.1 The **Agreement** is drawn up in English or French, according to the preference of the parties.

8 Completion of Project Phases and Organization's Performance

- 8.1 The **Organization** shall not commence any phase of the **Project** until both parties have signed the written **Agreement** or the **Contracting Authority** has authorized it in writing to do so earlier.
- 8.2 The **Organization** shall carry out the phases of the **Project** promptly and efficiently, in accordance with the terms of the **Agreement** and recognized industry quality standards.

9 Joint and Several Liability

- 9.1 Liability under this **Agreement** are joint and several.

10 Subcontracting

- 10.1 The **Organization** may subcontract a phase of the **Project** or part thereof, in which case it must ensure that the subcontract contains the same requirements of the **Agreement** with respect to the execution of the phases of the **Project**. Accordingly, it is suggested that this **Agreement** be appended to any subcontract.
- 10.2 No subcontract shall relieve the **Organization** of any of its obligations under this **Agreement** nor impose upon His Majesty or the **Museum** any liability in respect of any subcontractor.

11 Compliance with Deadlines

- 11.1 Meeting deadlines is an essential condition of the **Agreement**. Accordingly, the **Organization** shall promptly notify the **Museum** in writing of any event which delays or is likely to delay completion of the **Project**. If force majeure or any other reason beyond the



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control of the **Organization** delays or is likely to delay any part of the **Project**, the **Museum** may, at its discretion, extend the time for completion of the part of the **Project** in question.

12 Force Majeure

12.1 In the event of force majeure, the **Museum** will contact the **Organization** to set a new schedule or terminate the **Agreement**, in which case the parties agree that there will be no claim by either party for damages. The **Museum** will not be liable for any costs incurred by the **Organization** or any of its subconsultants, subcontractors or agents as a result of the termination of the **Agreement**. Force majeure means the occurrence of a fortuitous event which is impossible to resist or prevent and which has the effect of rendering either of the parties incapable of executing one or more obligations incumbent upon him under the **Agreement**.

13 Compliance with Health Standards

13.1 If the **Agreement** cannot be performed due to COVID-19 or any other epidemic or pandemic or other health restrictions, the parties shall establish a new schedule. Failing this, the **Agreement** will be terminated, and the parties will be released from their obligations. The parties agree that there will be no claims on either side for direct or indirect damages arising from the termination of the **Agreement**. For example, the **Museum** will not be liable for any costs incurred by the **Organization** or any of its subconsultants, subcontractors or agents as a result of the termination of the **Agreement**.

14 Official Languages

14.1 The **Museum** has an obligation to respect the spirit as well as the letter of the *Official Languages Act*, R.S. 1985, c. 31 (4th Supp.). The **Organization** must therefore ensure that verbal and written communications are in the official language preferred by visitors to the **Project**.

15 Green Procurement

15.1 The **Organization** shall make every effort to ensure that all documents prepared or supplied under the **Agreement** will be printed on both sides on ECOLOGO-certified recycled paper or paper with an equivalent proportion of post-consumer recycled content, where available.

16 Compliance with Applicable Laws

16.1 To fulfill its obligation under the **Agreement**, the **Organization** hereby undertakes to comply with all laws, regulations, ordinances and codes established from time to time by any federal, provincial, municipal or other governmental authority relating to the **Project**.

17 International Sanctions

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

17.2 The **Organization** must not supply to the **Museum** any goods or services subject to economic sanctions.

17.3 The **Organization** must comply with changes to the regulations imposed by Canada during the period of the **Agreement**. The **Organization** must immediately advise the **Museum** if it



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is unable to perform the **Agreement** 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 in accordance with Clause 29.

18 Confidentiality

- 18.1 With the exception of information disseminated by the **Museum** which is in the public domain, the **Organization** acknowledges that the **Agreement** and all information transmitted to, used by or disclosed to it in connection with the **Agreement**, including personal information within the meaning of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) and the *Privacy Act* (R.S.C. 1985, c. P-21), are private. The **Organization** shall treat such information with the highest degree of care required for its protection.
- 18.2 The **Organization** acknowledges that the **Agreement** may include confidential and proprietary information, including, without limitation, procedures, business methods, forms, policies, marketing and development plans, advertising programs, creative materials, methods and plans, trade secrets, knowledge, techniques, as well as information which is not generally or publicly known and which has been learned, discovered, developed, conceived, created or prepared by the **Museum** ("Confidential Information").
- 18.3 The **Organization** shall at all times comply strictly with the **Agreement** so that its acts or omissions do not place the **Museum** in violation of any applicable law relating to access, collection, use, disclosure, storage, retention or destruction of personal information, including PIPEDA and the *Privacy Act*.
- 18.4 The **Organization** shall at all times take all necessary measures, including measures that form part of the instructions given by the **Museum**, to protect confidential information against espionage, sabotage, fire, theft, and any other risk of loss or damage.
- 18.5 The **Organization** agrees to use such confidential information solely on behalf of the **Museum** and for the **Museum's** purposes and not for its own account or personal use. The **Organization** shall not disclose to any third party, either during the term of the **Agreement** or at any time thereafter, any confidential information concerning the operations or affairs of the **Museum**.

19 Data Protection and Security

- 19.1 The **Organization** shall ensure that the **Project** complies with laws and regulations concerning the protection and security of personal information, in particular, the [Privacy Act](#) and the [Personal Information Protection and Electronic Documents Act](#).

20 Application for Release of Funds

- 20.1 In order to obtain a release of funds, the **Organization** must submit an application to the **Museum** in accordance with the schedule set out in Annex A. The **Organization** must indicate the **Agreement** number on each application and submit it in writing to the **Museum** at the following address:

Canadian Museum of History
Accounts Payable
100 Laurier St.



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Gatineau, Quebec K1A 0M8
payables@museedelhistoire.ca

20.2 The **Museum** will have thirty (30) days from receipt of the application and supporting documents to release the funds. Where applicable, the **Museum** shall have thirty (30) days from receipt of the application or supporting documents to notify the **Organization** of any objection to the content of the application. The **Organization** must then provide explanations as soon as possible after receiving the objection. The **Museum** may delay payment until the **Organization** provides a satisfactory explanation of the disputed issue.

20.3 The **Museum** may not release any funds until these conditions have been met.

21 Accounting and Safekeeping of Supporting Documents

21.1 The **Organization** shall:

- a) keep accounts and records of costs incurred in carrying out the **Agreement**;
- b) retain, for a period of six (6) years from the end of the calendar year in which the **Agreement** was terminated or completed, documents substantiating costs (accounts, records of costs and other documents), unless it has obtained the prior written consent of the **Museum** to dispose of such accounts;
- c) deliver to the **Museum** upon request the documents referred to in Clause 22.1(b) and authorize the **Museum** to review, verify and make copies and extracts thereof.

22 Disputes

22.1 All claims by the **Organization** against the **Museum** relating to the **Agreement** shall be in writing and shall be submitted to the **Contracting Authority** within thirty (30) days of the date of the occurrence giving rise to the claim. The **Contracting Authority** will issue its decision in writing within a reasonable time, in accordance with regulations promulgated by the **Museum** and taking into account such factors as the scope and complexity of the claim and the adequacy of the information and support regarding the claim provided by the **Organization**. Specific findings of facts are not required but, if made, shall not bind the **Museum** in any subsequent proceeding.

22.2 The **Contracting Authority**'s decision on the claim shall be final and conclusive, subject to review by a tribunal of competent jurisdiction. Pending a decision from a tribunal of competent jurisdiction, the **Museum** has a right to require that, notwithstanding its claim, the **Organization** diligently pursue the execution of the **Agreement** and in accordance with the **Contract Authority**'s decision.

22.3 The **Organization** and the **Museum** may mutually agree to settle the **Organization**'s claim by an alternative dispute-resolution process.

23 Bribery and Conflict of Interest

23.1 The **Organization** represents and warrants that:

- a) no bribe, gift or other inducement has been paid, given, promised or offered to any person for, or with a view to, entering into the **Agreement**;
- b) it has not employed any person to solicit or secure the execution of the **Agreement** for a commission, percentage, brokerage or contingent fee; and
- c) it has no pecuniary interest in the business of any third party that would affect its objectivity in carrying out the **Project**.



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24 Fraud

- 24.1 In the event of a fraud committed by the **Organization's** employees, agents or agents, the **Organization** shall be liable for losses to the **Museum** due to fraud, including but not limited to, losses of revenues and assets, and all costs to the **Museum** related to the fraud.
- 24.2 The **Organization** undertakes to act in good faith and to use the **Museum's** funds for expenses eligible for the **DMC** program.

25 Protection Against Claims

- 25.1 The **Organization** shall at all times indemnify and hold harmless the **Museum** (including its directors, officers, employees and any other person for whom it is responsible) from and against all claims made against it arising out of the **Agreement**, whether or not caused by the negligence of the **Organization**, unless the loss or damage claimed is exclusively attributable to the negligence of the **Museum**.
- 25.2 This clause shall survive the suspension, termination, nullity or expiration of the **Agreement**.

26 Representations and Warranties

- 26.1 Prior to the public launch of the **Project** (as described in *Responsibilities – The Organization of the Agreement*) on the Internet, the **Organization**:
- will have ensured that all phases identified in Annex A contained in the **Project** have been completed in accordance with the DMC Technical Requirements.
 - will have cleared and paid for all rights necessary for the use, reproduction, adaptation, translation, publication, exhibition, performance and communication to the public by telecommunication of the authorized works contained in the **Project** for the purpose of promoting the **Project** and **DMC**;
 - warrants that it has the right, power and authority to grant all the rights, licenses and privileges referred to in this **Agreement**;
 - acknowledges that the Museum will not pay for the required fees if a **Project** is renewed or the **Agreement** is extended. The **Organization** will be responsible for the payment of any copyright fees related to the extension of the **Agreement**;
 - warrants that it has the right, power, legal capacity and authority to enter into the **Agreement** and to abide by all its terms and conditions; and its representative is duly authorized to sign the **Agreement** on its behalf;
 - will ensure that all aspects of the phases carried out under the terms of the **Agreement** comply with the requirements detailed in the DMC Technical Requirements, **DMC** and will meet all deadlines set out in the **Agreement**; and
 - monitor any content uploaded to the **Project** by third parties to ensure that the content does not violate any laws relating to the protection of fundamental human rights, privacy, publicity or intellectual property.

27 Intellectual Property

- 27.1 In consideration of the funds paid to the **Organization** by the **Museum**, the **Organization** grants to the **Museum** a worldwide, non-exclusive, royalty-free license for the duration of the **Agreement** and any subsequent renewals:
- Reproduce, adapt, translate, publish, exhibit, perform and communicate to the public



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- by telecommunication the **Project** on the Internet as part of **DMC** and related products;
- b) Authorize third parties, chosen at the **Museum's** sole discretion, to hold a license for the rights granted to the **Museum** by the Organization, in order to promote and expand the distribution of the **Project** and **DMC**, as long as the reproduction is linked to the **Museum** or **DMC** sites;
 - c) Authorize third parties, including social media as chosen at the sole discretion of the **Museum**, to hold a license for the rights granted to the **Museum**, in order to promote and expand the distribution of the **Project** and **DMC**, as long as the reproduction is linked to the **Museum** or **DMC** sites; and
 - d) Reproduce, adapt, translate, publish, exhibit, perform and communicate to the public by telecommunication or otherwise make available the works for the purpose of promoting the **Project** and **DMC**.
- 27.2 Throughout the term of the **Agreement**, and any subsequent renewals, the **Museum** grants to the **Organization** a worldwide, royalty-free, non-exclusive license to use, reproduce, make available and communicate to the public by telecommunication, the **DMC** trademark, in connection with the **Project** contemplated by the **Agreement**. The **Museum** retains all rights to and interest in the **DMC** name, logo and trademark.
- 27.3 The **Organization** may, with the prior consent of the **Museum**, which shall not be unreasonably withheld, assign to a third party the right to host, on the third party's website, the **Project** provided that the **Project** remains intact and displays all of the **Museum's** logos, trademarks and accreditation statements, and so long as a link is created by the third party on its site to the **DMC** website.
- 27.4 Nothing in this **Agreement** shall be construed to imply the transfer of intellectual property from one party to the other. The **Agreement** shall not be construed to authorize the transfer of the rights of the owner of the intellectual property to third parties. The **Museum** and the **Organization** retain and reserve all rights to the intellectual property not expressly granted in this **Agreement**.
- 27.5 For the sole purpose of complying with the archival and official records retention provisions required by federal and provincial legislation, including the *Library and Archives of Canada Act*, S.C. 2004, c. 11, the **Organization** grants the **Museum** the right to reproduce, translate and adapt its data for the term set out in the said Act.
- ### 28 Termination for Non-performance by the Organization
- 28.1 The **Museum** may terminate the **Agreement** immediately if the **Organization** fails to perform its obligations. The **Organization** is in violation of the **Agreement** and remains so by operation of law if:
- a) It assigns its rights under the **Agreement** to a third party without the prior written approval of the **Museum**, or if the **Organization** has made any representation or warranty that proves to be false or misleading;
 - b) It fails to comply with any obligation or commitment or is in breach of any obligation or commitment arising from the **Agreement**.
 - c) It becomes bankrupt or insolvent, or a receiving order is made against the **Organization**, or an assignment is made for the benefit of creditors, or if an order is made or resolution passed for the liquidation of the **Organization**, or if the



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Organization takes the protection of any bankruptcy or insolvency law.

- 28.2 In such cases, the **Museum** must give written notice of the nature of the violation or breach reported. If, within thirty (30) days following the date of such notice, the **Organization** has not rectified the situation to the satisfaction of the **Museum**, or if it has not given assurances of its intention to comply with the provisions of the **Agreement** to the satisfaction of the **Museum**, the latter may, as of right and without prejudice to its right to sue the **Organization** for damages, terminate the **Agreement** without further formality or procedure. The **Museum** may not, without reasonable cause, refuse to accept any rectification of the situation.
- 28.3 The **Organization** shall have no claim for direct or consequential damages or any other compensation by reason of any action taken or notice given by the **Museum** under this clause, except as expressly provided in the **Agreement**.

29 Termination with notice

- 29.1 The **Museum** may, at any time and upon giving notice to the **Organization**, terminate or suspend the **Agreement** with respect to all or any uncompleted phase of the **Project**.
- 29.2 If the **Organization** has at all times complied with the **Agreement**, the **Museum** will release funds for the phase(s) of the **Project** completed to its satisfaction during the period prior to the giving of notice of termination, in accordance with the timetable set out in Annex A. If there is no provision in the **Agreement** governing expenses incurred by the **Organization**, the **Museum** will pay such expenses as it deems appropriate.
- 29.3 In order to be reimbursed, the **Organization** must demonstrate that it has actually incurred the expenses charged, that they are fair and reasonable and attributable to the termination of all or part of the **Agreement**.
- 29.4 The **Organization** shall have no claim to any other form of compensation arising from the **Museum's** decision to terminate the **Agreement**.

30 Entire Agreement

- 30.1 The **Agreement** and the attached appendices constitute the entire agreement between the parties. This **Agreement** supersedes all prior and contemporaneous agreements, negotiations and discussions, both oral and written, relating to the same matter. No warranty, representation or agreement of any kind between the parties with respect to the subject matter of the **Agreement** shall supersede the written provisions of the **Agreement**. In the absence of fraud, neither party shall have any recourse with respect to any misrepresentation (whether inadvertent or negligent) based on any statement in the **Agreement**.

31 Severability

- 31.1 If any provision of the **Agreement** is declared null, void, illegal, invalid, ineffective or unenforceable, it shall be struck out and deemed no longer to form part of the **Agreement**. The **Agreement** shall otherwise remain valid.

32 Amendments

- 32.1 To be valid, changes and amendments to the **Agreement** must be in writing and signed by both parties.
- 32.2 The failure of the **Museum** to exercise or enforce any right conferred upon it by the



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Agreement shall not be deemed a waiver of such right nor prevent the exercise or protection of such right at any time thereafter, unless such waiver is confirmed by a specific writing from the Contracting Authority.

33 Notice

- 33.1 Notices, requests, instructions and any other form of communication arising out of this Agreement shall be sent by the parties in writing by registered mail, facsimile or email to the party to whom they are addressed at the address set out below.
33.2 Communications sent by registered mail will be deemed received when the receiving party acknowledges receipt of the mailing. Communications sent otherwise will be deemed received on the date of dispatch.
33.3 The parties may change their address by giving notice to the other party in the manner set forth herein.

To the Organization: As stipulated in the Agreement.

To the Museum:

Table with 2 columns: To the Project Authority for matters relating to the Project, in accordance with the provisions of the Agreement. To the Contracting Authority for other matters, under the terms of the Agreement.

34 Governing Law

- 34.1 Unless otherwise specified, the Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec.
34.2 The judicial district of Gatineau, located in Quebec, will have jurisdiction over any dispute arising from the Agreement.