

ARTICLES OF AGREEMENT

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Canadian Heritage Information Network (hereinafter “CHIN”)

AND:

[*THE NAME AND LEGAL DESCRIPTION*], Complete address, plus GST or Business number (hereinafter “the Institution”)

PREAMBLE

WHEREAS CHIN is responsible for managing the *Virtual Museum of Canada* (VMC) portal and *The Teachers’ Centre*;

AND WHEREAS the Institution has been commissioned by CHIN to produce a virtual exhibition for the VMC portal, which will be hosted by [the Institution OR CHIN];

AND WHEREAS the Institution is required as part of its commission to upload Data (as defined in this Agreement) for public exhibition as part of *The Teachers’ Centre* within the VMC;

THE PARTIES AGREE AS FOLLOWS:

1.0 DURATION

1.1 This agreement shall commence upon the date wherein both parties have signed this agreement and shall expire on [LAUNCH DATE OF PRODUCT PLUS FIVE YEARS]

2.0 ANNEXES AND PREAMBLE PART OF CONTRACT

2.1 The Preamble and Annexes I, II, III, IV and V form part of this Agreement. In the event that there is a conflict between the terms and condition cited in the Annexes and the terms and conditions cited in the body of the Agreement, then the terms and conditions found in the body of the Agreement shall prevail.

3.0 PAYMENT TERMS AND CONDITIONS

3.1 In consideration of the work performed by the Institutions as defined in this Agreement, CHIN will pay the Institution up to a maximum of [\$ amount plus GST/HST] upon signature of this Agreement and receipt of invoices, based on eligible expenses in accordance with the Program Guidelines as identified in Annex V attached and as outlined in the Institution's approved proposal and according to the following schedule:

- a) a first payment of 40% [\$ amount plus GST/HST] of the total payable amount, on or before [DATE] to cover start-up costs related to the development of the Product detailed in Part I of this Agreement and Annex I attached upon delivery and satisfactory acceptance of:
 - i. a detailed production plan;
- b) a second payment of 30% [\$ amount plus GST/HST] of the total payable amount, on or before [DATE] upon delivery and satisfactory acceptance of:
 - i. a preliminary version of the virtual exhibit component of the Product that is a functioning online prototype containing, as a minimum, a sample page for each main section of the site in at least one language, all mandatory navigation elements as identified in Annex II, and examples of all multimedia and interactive elements to be used in the virtual exhibit component of Product.
 - ii. a report on audience evaluation performed on the preliminary version of the virtual exhibit component of the Product.
- c) a third payment of 20% [\$ amount plus GST/HST] of the total payable amount, on or before [DATE] upon delivery and satisfactory acceptance of:
 - i. the completed version of the virtual exhibit component of the Product that meets all technical and content requirements, in all languages, ready for content and technical verification by CHIN;
 - ii. the completed version of the associated learning object collection component of the Product that meets all technical and content requirements, in all languages, ready for content and technical verification by CHIN;
 - iii. five images as per Part I, section 1.3 (j);
- d) a fourth payment of 10% [\$ amount plus GST/HST] of the total payable amount on or before [DATE] for the balance of the Product costs upon delivery and satisfactory acceptance of:

- i. the final version of the virtual exhibit component of the Product in all languages, with the implementation of any changes required as a result of the CHIN verification, to meet all content and technical requirements as established in this Agreement;
- ii. the final version of the learning object collection component of the Product, with the implementation of any changes required as a result of the CHIN verification, to meet all content and technical requirements as established in this Agreement;
- iii. the associated lesson plan;
- iv. the three homepage images as per Part I, section 1.3 (l) and Part II, section 2.10;
- v. catalogue records of the Product as per Part I, section 1.3 (i);
- vi. contribution of Product object records to *Artefacts Canada* as per Part I, section 1.3 (f);
- vii. a digital copy (CD or DVD) of the virtual exhibit component of the Product, in all languages, including the source files, as per clause Part I, section 1.3 (a).
- viii. financial expenditure report as required in Article 7 of this Agreement.

3.2 CHIN reserves the right to cancel the fourth payment or a portion thereof, at its sole discretion, if the Product upon delivery, as set out in Part I section 1.1(c), and following no more than two quality assurance reviews by CHIN, does not meet all technical and content requirements established in this Agreement.

4.0 GENERAL TERMS AND CONDITIONS

REPRESENTATIONS AND WARRANTIES

4.1 The Institution represents and warrants that:

- a) prior to the public launch of the Product (as detailed in Part I and Annex I of this Agreement) on the World Wide Web, it will have cleared all necessary rights to use, reproduce, adapt, translate, publish, exhibit, and communicate to the public by telecommunication any underlying works contained in the Product;

- b) it has cleared the rights to use, reproduce, adapt, translate, publish, exhibit and communicate to the public by telecommunication the works licensed herein for the purposes of promoting the Product, the *Virtual Museum of Canada, The Teachers' Centre* and creating an electronic postcard gallery that shall be publicly accessible from the postcard section of the *Virtual Museum of Canada* Web site;
- c) it has the sole and exclusive right to grant the rights, licenses and privileges granted in this Agreement;
- d) it has full right, power, legal capacity and authority to enter into this Agreement and to carry out all of its terms and conditions and the signatory is a duly authorized representative with full powers to sign this Agreement on its behalf;
- e) it will ensure all aspects of the work to be performed pursuant to this Agreement will conform to the technical specifications detailed in the *Technical Specifications for the Development of Learning Object Collections* (Annex III), as appended to this Agreement;
- f) it will meet all deadlines specified in the Agreement;
- g) it will moderate any content uploaded to the Product by third parties for the purpose of ensuring that the content does not violate any privacy, publicity or intellectual property laws.

5.0 LIABILITY AND INDEMNIFICATION

- 5.1 Her Majesty the Queen in right of Canada and CHIN, their officers, employees and agents, shall not be liable for any injury to the person, including death, or for loss or damages to the property of the Institution or of anyone else, occasioned by, or in any way attributable to the Institution under this Agreement unless such injury, loss or damage is caused by the negligence of an officer, employee or agent of Her Majesty or CHIN acting within the scope of his employment.
- 5.2 Except as specified below, the parties will mutually indemnify, defend and forever hold each other and their officers, employees and agents harmless against and from any and all third party claims, lawsuits, judgments and expenses (including, without limitation, reasonable legal fees) arising out of any breach by the other party of any provision of this Agreement or any misrepresentation made by the other party and its officers, employees or agents. This paragraph shall survive the termination of the Agreement.

- 5.3 The Institution undertakes to indemnify and save harmless Her Majesty and CHIN from and against all claims, expenses or actions based upon Her Majesty or CHIN's exercise of the licenses granted to CHIN from the Institution as found in Parts I and II of this Agreement.

6.0 CHOICE OF LAW

This Agreement shall be interpreted according to the laws of the Province of Ontario.

7.0 FINANCIAL REPORT

- 7.1 The Institution shall provide to CHIN, as per clause 3.1 (d – viii), a summary of expenditures incurred by the Institution to complete the work set out in this Agreement.

8.0 AUDIT AND EVALUATION

- 8.1 The Institution shall keep proper accounts and records of the costs involved in order to complete its work under the Agreement, namely of all expenditures or commitments made by the Institution, including the invoices, receipts and vouchers which shall, at reasonable times, be open to audit and inspection by the authorized representatives of CHIN who may make copies and take extracts therefrom.

9.0 DEFAULT AND TERMINATION

- 9.1 The Agreement shall terminate automatically if the Institution:
- a) has been appointed a receiver or manager for its business;
 - b) petitions for relief under any bankruptcy statute, whether now in force or hereafter enacted or takes advantage of the insolvency laws of any state or country, or makes an assignment for the benefit of its creditors;
 - c) transfers its rights under this Agreement to a third party without the prior written approval of CHIN; has made any representation or warranty that proves to be false or misleading;
 - d) notwithstanding the above, this Agreement may also terminate, be suspended or the scope of the obligations under the Agreement may be reduced if the

Institution violates or defaults in the performance of any undertaking or obligation under this Agreement;

- e) in such a case, CHIN may, by notice in writing, clearly specify the nature of the violation or default complained of. If, within thirty (30) days following the date of such notice, the Institution has not rectified the violation or default to the reasonable satisfaction of CHIN or has not given the assurance of its intentions to respect the provisions of this Agreement to the reasonable satisfaction of CHIN, CHIN may unilaterally terminate this Agreement in full right and with no legal action or other formality, without prejudice to its rights to claim damages from the Institution. CHIN shall not unreasonably withhold satisfaction for rectification of default;
- f) upon termination of this Agreement, CHIN shall cease to have any obligation to make any payment to the Institution in respect of the costs incurred by the Institution after the date of termination, and, if applicable, the amount of the unexpended advance paid to the Institution shall be recognized as being a debt due to CHIN;
- g) this Agreement may be amended upon the mutual written consent of the parties.

10.0 NOTICES AND COMMUNICATIONS

All notices and communications concerning this Agreement shall be addressed to the respective contact people as follows:

Esther Rosenberg
Virtual Museum of Canada Investment Programs Manager
Canadian Heritage Information Network
15 Eddy Street, 4th Floor (15-4-A)
Gatineau, QC K1A 0M5
Tel: (819) 934-5034 or 1-800-520-2446
Fax: (819) 994-9555
Email: esther_rosenberg@pch.gc.ca

Representative
Title
Institution Name
Institution Address]
Phone and fax number
Email

PART I – VMC EXHIBITION

The following terms and conditions apply specifically with reference to the creation and distribution of the virtual exhibition as defined below.

1.0 SCOPE OF WORK: THE INSTITUTION

- 1.1 The Institution shall develop [a virtual exhibition...] provisionally titled [“_____”] (hereinafter called “the Product”), as described in Annex I, to be launched on a mutually agreed date, for public exhibition on the World Wide Web as part of the *Virtual Museum of Canada*.
- 1.2 Annexes I, II, III, IV and V hereby form part of this Agreement.
- 1.3 In addition to the specifications set out in Annex II, the Institution shall:
 - a) provide CHIN with a digital copy (CD or DVD) of the Product, in all languages, including the source files;
 - b) ensure that the Product meets all technical and content requirements as provided for in Annex II, and that all links and navigational elements are fully functional prior to its public release;
 - c) produce the Product in English and French, and verify the translation;
 - d) ensure that recognition of the Government of Canada’s financial participation is provided;
 - e) be responsible for responding to public feedback received through the *Virtual Museum of Canada* on the Product;
 - f) create for and contribute to *Artefacts Canada* a record (text and image) for each object from its collection for which an image is included in the Product, and ensure that this obligation is extended to any other museum partner that receives financial benefit under the Agreement;
 - g) add a link to the VMC in a predominant location on its Web site, and from the site map of its Web site;
 - h) catalogue the Product in both English and French using the cataloguing tool available on the CHIN Web site. Stand-alone products within the product, such as interactive games and educational resources, shall be catalogued separately. Additional linguistic versions of the Product may also be catalogued.

- i) provide CHIN with no fewer than five digital images from the Product, (captured at a minimum of 300 dpi, as 24 bit TIFF files), along with the requested data for each image, in English and French, that may be used by CHIN to promote the Product and (or) the *Virtual Museum of Canada*. The Institution will not unreasonably deny CHIN's request for specific images.
- j) seek and obtain CHIN's prior approval, not to be unreasonably withheld, of any content prepared by it for the purposes of ensuring that recognition of the Government of Canada's financial participation is included in any public communications material that makes reference to the Product or to the *Virtual Museum of Canada*, as required by Part I, section 1.3(d).
- k) in addition to the digital images provided by the Institution to CHIN in Part I, section 1.3 (j) of this Agreement, provide CHIN with two images of the homepage (one English, one French) of the final Product in TIFF format, along with data for each image, in English and French, that may be used by CHIN in their entirety or as a detail, to promote the Product and (or) the *Virtual Museum of Canada*.
- l) conduct quarterly verifications of all hyperlinks included in the Product and correct as required.
- m) ensure that any changes to the Product after the launch conform to the terms and conditions of this Agreement.

2.0 SCOPE OF WORK: CHIN

- 2.1 CHIN shall maintain the *Virtual Museum of Canada* Web site and search facilities to assist the public to locate *Virtual Museum of Canada* content.
- 2.2 If the Product is hosted on a CHIN server, CHIN shall provide the Institution with a User account for a CHIN-hosted product on the CHIN server for development and testing purposes prior to CHIN's technical review and the public release of the Product.
- 2.3 CHIN shall provide the Institution with an electronic copy of the *Virtual Museum of Canada* logo for incorporation into the Product in accordance with the technical specifications contained in Annex II.
- 2.4 CHIN shall grant free access of the Product to the public on the World Wide Web for a period of no less than five years from the date the Product was launched to the public.
- 2.5 CHIN shall incorporate metadata for the Product in the *Virtual Museum of*

Canada search engine.

- 2.6 CHIN shall promote the *Virtual Museum of Canada* to the public and may promote the Product by featuring it on the *Virtual Museum of Canada* Web site or in other promotional materials.
- 2.7 If the Product is hosted on a CHIN server, the collection of visitor statistics for the Product will be enabled by default, and no additional JavaScript file or noscript element is required. CHIN shall provide the Institution with statistics on Product access twice a year. If the Product will **not** be hosted on CHIN's server, CHIN will provide the Institution with the product-specific JavaScript file and noscript element code, as well as explicit directions for their implementation.

3.0 INTELLECTUAL PROPERTY

- 3.1 In exchange for the consideration described below, the Institution hereby grants to CHIN within the territory and during the term set forth below:

Territory: The world

Term: XXX years and XXX months starting on DATE and ending on DATE.

- 3.2 In exchange for the consideration paid by CHIN to the Institution, the Institution hereby grants to CHIN a non-exclusive, royalty-free license to:

- a) reproduce, exhibit, adapt, communicate to the public by telecommunication the Product on the World Wide Web as part of the VMC and related products produced by CHIN;
- b) authorize third parties, chosen by CHIN in their sole discretion, to make royalty-free, reproductions of the Product, or portions thereof, and communicate them by telecommunication on the World Wide Web by means of framing technologies, for the sole purpose of promoting the Product and the VMC, so long as the reproduction is linked to CHIN or VMC sites;
- c) reproduce, adapt, exhibit, and communicate to the public by telecommunication or otherwise use the works specified in Part I, sections 1.3 (j) and (l) for purposes of promoting the Product, and the VMC.
- d) For the duration of the term of the license from the Institution to CHIN specified above, CHIN hereby grants to the Institution a non-exclusive license and right to use, reproduce and communicate to the public by telecommunication, the *Virtual Museum of Canada* logo as part of the Product specified in Part I of this Agreement. CHIN retains all rights and interest in the *Virtual Museum of Canada* name, logo and trademark.

- e) Nothing in this Agreement shall be construed as implying the transfer of ownership of intellectual property from one Party to the other or any of its partners or licensors. The Parties expressly reserve and retain any rights that are not granted by this Agreement.
- f) For the sole purpose of complying with the archival and retention of government documents provisions as required by federal and provincial legislation that includes, but is not limited to the Library and Archives of Canada Act, SC 2004, c.11, the Institution hereby grants CHIN the right to reproduce, translate and adapt the Institution's data for a time and period as prescribed by law.
- g) This license may be renewed on six months written notice by one party to the other prior to the expiration of the term of this license.
- h) For the purposes of complying with the archival and retention of government documents provisions as required by federal and provincial legislation that includes, but is not limited to the Library and Archives of Canada Act, SC 2004, c.11, the Institution hereby grants CHIN the right to reproduce, translate and adapt the Institution's Product for a time and period as prescribed therein.

PART II – *The Teachers' Centre* CONTRIBUTION

The following terms and conditions apply specifically to the contribution of content to *The Teachers' Centre*.

1.0 DEFINITIONS

- 1.1 "The term "Data" is hereby defined as object records, text, images, audio files, video files and any media in any format uploaded by the Institution to *The Teachers' Centre*.

2.0 SCOPE OF WORK: INSTITUTION

- 2.1 The Institution shall develop Data consisting of a collection of learning objects provisionally titled “_____”, as well as an associated lesson plan for public exhibition on the World Wide Web as part of *The Teachers’ Centre* as described in Annex I.
- 2.2 The Data shall consist of a collection of learning objects as described in the institution’s proposal attached as Annex I.
- 2.3 The Institution shall use the *Learning Object Input Tool* designed to guide the creation of the Data (provided by CHIN).
- 2.4 The Institution shall ensure that the Data respects the requirements as described in the *Technical Specifications for the Development of Learning Objects* (Annex III).
- 2.5 The Institution shall test / evaluate the Data.
- 2.6 The Institution shall modify the Data based on evaluation by CHIN.
- 2.7 The Institution shall ensure that the federal government’s financial participation is recognized in the credits section of the Data.
- 2.8 The Institution shall produce the Data in both official languages and conduct a quality assurance verification of the translation.
- 2.9 The Institution shall conduct a quality assurance verification of the Data and ensure that all links and navigational elements are functional prior to its public release.
- 2.10 The Institution shall provide CHIN with a minimum of two mutually agreed digital images (captured at a minimum of 300 dpi) from the Data as 24 bit TIFF files, along with the requested Data for each image, in English and French. One image will consist of the image that constitutes the homepage of the collection created through use of the *Learning Object Input Tool*. CHIN may use these images to promote the Data, the *Virtual Museum of Canada*, and (or), *The Teachers’ Centre* and may feature them as electronic postcards in the electronic postcard section of the *Virtual Museum of Canada*.
- 2.11 The Institution shall create an *Artefacts Canada* record with an associated image for each object from its collection for which an image is included in the Data. The Institution shall ensure that this obligation is extended to any other museum partner that receives financial benefit under the Agreement.
- 2.12 The Institution shall be responsible for responding to feedback on the Data.

- 2.13 Changes to the Data after the launch must conform to the terms and conditions of this Agreement.
- 2.14 The Institution shall ensure that any marketing text (e.g. press release) that makes reference to the *Virtual Museum of Canada* or *The Teachers' Centre* is sent to CHIN for review and approval prior to release.
- 2.14 The institution will add a link to the VMC in a predominant location on its Web site, and from the site map of its Web site.
- 2.16 The Institution shall conduct quarterly verifications of all hyperlinks included in the Data and correct as required.

3.0 SCOPE OF WORK: CHIN

- 3.1 CHIN shall maintain the *Virtual Museum of Canada* Web site and search facilities to assist the public to locate the *Virtual Museum of Canada* and *The Teachers' Centre* content.
- 3.2 CHIN shall promote the *Virtual Museum of Canada* and *The Teachers' Centre* to the public on behalf of all participating institutions and organizations and may promote the Data by featuring it on the *Virtual Museum of Canada* Web site or in other promotional materials.
- 3.3 CHIN shall provide the Institution with a User name and password to access the *Learning Object Input Tool* for Data development purposes.
- 3.4 On behalf of the Institution, CHIN shall make the Data freely available to the public on the World Wide Web for the duration of the agreement.

4.0 INTELLECTUAL PROPERTY

- 4.1 In exchange for the consideration described below, the Institution hereby grants to CHIN within the territory and during the term set forth below:

Territory: The world

Term: XXX years and XXX months starting on DATE and ending on DATE.

- 4.2 In exchange for the consideration paid by CHIN to the Institution, the Institution hereby grants to CHIN a non-exclusive, royalty-free license to:

- (a) reproduce, exhibit, adapt, translate and communicate to the public by telecommunication the Data for the purpose of featuring it from time to time, on any of CHIN's web sites.
 - (b) reproduce, exhibit, adapt, translate and communicate to the public by telecommunication the Data for the purposes of participating in studies and test bed projects with third parties chosen by CHIN in its sole discretion that relate to the research and development of technology, interoperability standards and digital rights management applications.
- 4.3 With the Institution's prior approval received upon reasonable notice, CHIN may license the reproduction and distribution of the Institution's data for a fee to third parties. Should the Institution approve the use of its Data as described herein, the parties may enter into a revenue sharing arrangement on mutually agreed upon terms and conditions.
- 4.4 Nothing in this Agreement shall be construed as implying the transfer of ownership of intellectual property from one Party to the other or any of its partners or licensors. The Parties expressly reserve and retain any rights that are not granted by this Agreement.
- 4.5 For the sole purpose of complying with the archival and retention of government documents provisions as required by federal and provincial legislation that includes, but is not limited to the Library and Archives of Canada Act, SC 2004, c.11, the Institution hereby grants CHIN the right to reproduce, translate and adapt the Institution's data for a time and period as prescribed by law.
- 4.6 This license may be renewed on six months written notice by one party to the other prior to the expiration of the term of this license.

IN WITNESS WHEREOF, the parties have executed this Agreement:

For the Institution:

For CHIN:

 [Person with signing authority
 Title]

 Gabrielle Blais
 Director General

 Date

 Date