

THIS AGREEMENT is made on the [●] day of [●] 2020

BETWEEN:

- (1) The National Museum of the Royal Navy registered in England and Wales, with company registration number 06699696, of HM Naval Base, Portsmouth, Hampshire, PO1 3NH (the **NMRN**); and
- (2) **[FULL COMPANY NAME]** [registered in [England and Wales], with company registration number [NUMBER]] of [ADDRESS] (the **Receiving Party**).

The parties are entering into a Tender Process relating to the Structural Modelling and Data Management for the Conservation of HMS Victory, which involves the provision of confidential information by NMRN to the Receiving Party. The parties have agreed to comply with this agreement in connection with the disclosure and use of such confidential information.

DEFINITIONS

- 1.1 In this agreement the following words and expressions shall have the following meanings:

Confidential Information	has the meaning given to it in clause 2
Intellectual Property Rights	patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Materials	the materials listed in Schedule 1 to this agreement including the Models.
Models	the Intelligent and Analytical models (degraded and perfect) and the Victory Information Model (VIM) developed by and on behalf of NMRN

	including their technical descriptions for modelling the performance of the HMS Victory.
Permitted Purpose	the preparation and submission of a tender response by the Receiving Party to determine its suitability to assist in the conservation programme for HMS Victory specifically in relation to the continued support, operation and maintenance of the Hull Support System and its associated modelling as further set out in section 2.1 (Essential Requirements) of the Statement of Requirements document.
Records	records, copies or embodiments of Confidential Information (or any further information derived from the Confidential Information) in whatever form or medium including any document, electronic file, note, extract, analysis, model, prototype or other representation or means of recording or recovering information.
Representatives	the employees, officers and professional advisers of the Receiving Party
Tender Assessment Period	3 rd September 2020 – 26th October 2020

1.2 In this agreement, unless otherwise specified or the context otherwise requires:

- 1.2.1 any phrase in this agreement introduced by the term **include, including, in particular** or similar expression shall be construed as illustrative and shall not limit the sense of the words description, definition, phrase or term preceding those terms.
- 1.2.2 a reference to writing or written includes email.
- 1.2.3 any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2 **CONFIDENTIAL INFORMATION**

2.1 **Confidential Information** means all confidential information disclosed or otherwise made available by or on behalf of the NMRN (in whatever medium including in written, oral, visual or electronic form and whether before or after the date of this agreement) including:

- 2.1.1 all Materials including without limitation the Models and each of their constituent parts, together with any discussions, correspondence or additional documentation relating directly or indirectly to any or all of them;

- 2.1.2 any information, findings, data or analysis derived from the Materials including the Records;
- 2.1.3 any other information that is identified as being of a confidential or proprietary nature or that the Receiving Party ought reasonably to know should be treated as confidential including without limitation all business, financial, commercial, technical, operational and/or organisational information of NMRN.

but excludes any information referred to in clause 4.

3 CONFIDENTIALITY OBLIGATIONS

3.1 In consideration of the disclosure of Confidential Information, the Receiving Party shall:

- 3.1.1 keep the Confidential Information secret and confidential;
- 3.1.2 not use or exploit the Confidential Information in any way except for the Permitted Purpose;
- 3.1.3 not without the NMRN's written consent directly or indirectly disclose or permit the disclosure of the Confidential Information except as permitted in clause 4;
- 3.1.4 only make such Records as are strictly necessary for the Permitted Purpose and clearly mark all Records as confidential; and
- 3.1.5 take all necessary and proper security precautions to safeguard every part of the Confidential Information to prevent it from being disclosed or otherwise made available to, or accessed by, any third party except as permitted by this agreement.

3.2 In respect of any Confidential Information made available to the Receiving Party prior to the date of execution of this agreement, the Receiving Party hereby confirms that it has observed the provisions of clause 3.

4 EXCEPTIONS

4.1 The Receiving Party may disclose Confidential Information to those of its Representatives who need to have access to it for the Permitted Purpose, provided that before disclosure is made, the Receiving Party shall have obtained from such Representatives binding obligations of confidence no less onerous than those set out in this agreement. The Receiving Party undertakes to enforce such obligations and to be responsible for breaches of the obligations by such persons as if those breaches were those of the Receiving Party.

4.2 The provisions of clause 3.1 shall not apply to Confidential Information that:

- 4.2.1 the Receiving Party can prove, using written records, was known to the Receiving Party or in its possession on a non-confidential basis and other

than as a result of breach of confidence before that information was acquired from, or from some person on behalf of, NMRN;

- 4.2.2 is in or enters the public domain through no default of the Receiving Party or any person on its behalf, provided that this clause shall only apply from the date that the relevant Confidential Information enters the public domain;
 - 4.2.3 the Receiving Party receives from a third party without obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence; or
 - 4.2.4 is required to be disclosed by any applicable law or by order of any Court of competent jurisdiction or any government body, agency or regulatory body provided that the Receiving Party shall, to the extent permitted by law, use all reasonable endeavours to give NMRN as much notice of the disclosure as possible.
- 4.3 The Receiving Party shall notify NMRN promptly if it becomes aware that any of the Confidential Information falls within the provisions of Clause 4.2.

5 DESTRUCTION OF CONFIDENTIAL INFORMATION

- 5.1 On receipt of a request to do so made by NMRN at any time and in any event following notification to the Receiving Party of its unsuccessful outcome following the Tender Assessment Period the Receiving Party shall:
- 5.1.1 On expiry of the standstill period immediately destroy all Records of the Confidential Information (save that fourteen days shall be allowed in relation to the obligations in (5.1.2));
 - 5.1.2 Within fourteen days erase all Confidential Information and Records of the Confidential Information from its computer and communications systems and devices used by it, including such systems and data storage services provided by third parties.
 - 5.1.3 certify in writing that it has complied with the requirements of this clause 5.1.
- 5.2 Where a challenge is made by the Receiving Party regarding the appointment of the contract, the provisions of this clause 5.1 shall apply from the conclusion of any formal proceedings.

6 DURATION

The provisions of this agreement shall apply for a period of 10 years from the date it is executed.

7 INTELLECTUAL PROPERTY

- 7.1 The Receiving Party acknowledges and agrees that all title, interest and Intellectual Property Rights that may subsist in the Materials and Records shall at all times belong to and vest in NMRN.

- 7.2 The Receiving Party further acknowledges and agrees that no Intellectual Property Rights in the Materials or Records shall be, or at any time become, the Receiving Party's property. The Receiving Party shall not claim any rights or ownership in the Materials or Records (or any part thereof) before, during or at any time after this agreement is entered into.
- 7.3 Should any Intellectual Property Rights in the Materials (or any part thereof) or the Records created in pursuance of the Permitted Purpose, accrue to the Receiving Party, it will in consideration of the disclosure of information under this agreement, irrevocably and unconditionally assign absolutely to NMRN, (by way of present assignment of future property, rights, title and interest) all such Intellectual Property Rights.
- 7.4 Without prejudice to the generality of clause 7.3, if the Receiving Party (whether in breach of this agreement or otherwise) creates or devises any modification, improvement, derivative, variation, development, application, technique, know-how, product or process of or based upon or derived from any of the Materials (a "**Development**"), then:
- 7.4.1 the Receiving Party shall promptly notify NMRN of the Development;
- 7.4.2 the Receiving Party hereby assigns all Intellectual Property Rights in the Development to NMRN by way of present assignment of future rights. The Receiving Party shall do all acts and things necessary to vest such rights in NMRN;
- 7.4.3 the Receiving Party shall not apply for or otherwise seek to obtain or assert rights in any Intellectual Property Right in a Development.

8 RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT

The Receiving Party acknowledges and agrees with NMRN that:

- 8.1 the NMRN makes no representation or warranty (express or implied) with respect to the Confidential Information including as to its accuracy or completeness or otherwise in respect of the use by the Receiving Party of the Confidential Information;
- 8.2 the NMRN reserves all rights in its Confidential Information and this agreement shall not constitute the grant of or an agreement to grant a licence in respect of the Confidential Information or any intellectual property rights of any nature protecting the Confidential Information beyond the specific rights set out in this agreement;
- 8.3 it is solely responsible for making its own decisions in relation to the Confidential Information and any other documentation or data supplied by or on behalf of the Disclosing Party in relation to the Permitted Purpose; and
- 8.4 the disclosure of Confidential Information by NMRN shall not form any offer by, or representation or warranty on the part of, the NMRN to enter into any further agreement with the Receiving Party.

9 GENERAL

- 9.1 For the avoidance of doubt the provisions of this agreement shall apply irrespective of whether NMRN decides to proceed with the Receiving Party following the Tender Assessment Period.
- 9.2 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.
- 9.3 No amendment of this agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties.
- 9.4 Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by an internationally recognised delivery service to the address set out at the top of this agreement and shall be deemed to have been received 3 days after it has been sent or if sent by email, 24 hours after it has been sent to tenders@nmrn.org.uk for NMRN and *[insert email address]* for the Receiving Party.
- 10 This agreement and any dispute or claim arising out of or in connection with it (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

SIGNED by [●] duly authorised for and on)
behalf of NMRN:)

.....
Signature

SIGNED by [●] duly authorised for and on)
behalf of [●]:)

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Signature

Schedule 1

Number	Title	Reference
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1	Ship Planking Drawing – ‘For Tenderers UGD Wales’	20200731 (pdf and CAD.dwg)
2	Ship VIM Model (.dwg format)	
3	Fenton Holloway Report Modelling and Structural Analysis of HMSV VOL 1 Full Report Version 1.3	Version 1.3 Dated 14 February 2014
4	Fenton Holloway Report Modelling and Structural Analysis of HMSV VOL 2 Appendices Version 1.3	Version 1.3 Dated 14 February 2014