BUILDING CONTRACT FOR MINOR WORKS AT THE NATIONAL ARMY MUSEUM

Dated:

PARTIES

1. The Council of the National Army Museum whose registered office is situated at Royal Hospital Road Chelsea London SW3 4HT (the “Employer” which shall include its successors in title and assignees)
2. COMPANY NAME] (Company No. [ ]) whose registered office is situated at [insert company address] (the ”Contractor”)

RECITALS

(A) The Employer wishes to employ the Contractor to carry out [insert description of the works] at [insert description of the property] (the “Property”)

1. WORKS
   1. The Contractor hereby agrees to carry out the Works in accordance with the documents attached in attached quotations, drawings, specifications and other relevant documents]
   2. Where applicable the Employer has applied for any applicable planning permission.

1.3 Where applicable, it is the responsibility of the Contractor to ensure the Works comply with the requirements of the Building Regulations (being the Building Act 1984 and regulations and Approved Documents under the Building Act 1984) and obtain a completion certificate or final certificate under the Building Regulations.

1.4 The Employer shall make available to the Contractor the free use of electricity and water, as may be reasonably required for the carrying out of the Works.

1. CONTRACT PRICE
   1. The price for the Works shown in the Work Details is £[ ] (excl VAT) (the “Contract Price”). The Contractor will itemise the Contract Price and show the items on which VAT is charged, and at what rate. The Contract Price also includes the Contractor’s costs of dealing with any unexpected problems which a competent contractor could have discovered by carrying out a careful inspection of Property and the Work Details.
   2. If the Work Details are changed, the Contract Price will be increased or reduced depending on the change(s) made in accordance with clause 11 below.

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| Stage | Payment |
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Any reduction to the Contract Price pursuant to clause 11 below will reduce the amount payable to the Contractor by the Employer as against the next stage payment(s) due immediately after such reduction, and any increase in the Contract Price pursuant to clause 11 below shall only become payable by the Employer to the Contractor 28 days after the Contractor has finished all the Works\*

1. TIME FOR COMPLETION

3.1 The Contractor will start the Works no later than (the “Start Date”) and finish

the Works by (the “Completion Date”).

3.2 The Completion Date may be extended in certain circumstances as provided for in clause 12.

3.3 The Contractor shall pay to the Employer, alternatively the Employer shall be entitled to deduct from sums otherwise due to the Contractor, liquidated and ascertained damages in the sum of £[ ] per week (or part thereof) for any delay to completion of the Works beyond the Completion Date, as may be extended by clause 12.

4 PRODUCT GUARANTEES

The Contractor give the Employer any guarantees issued by the manufacturers of products installed in the Works as a precondition to the Employer issuing its statement of completion pursuant to clause 13.

5 INSURANCE

5.1 Before the Works start the Contractor will have an “all risks” insurance policy to cover itself and the Employer for the full costs of damage to the Works and to unfixed materials which are on the Property before being used in the Works. The Contractor will maintain such “all risks” insurance policy up to and including the date of completion of the Works as set out in the Employer’s statement issued under clause 13 or until the date of termination under clause 16 or clause 17 (if earlier).

5.2 The Contractor will have an up to date public liability insurance policy in the amount of £10,000,000 for any one claim arising from one event for death or injury to people and damage to any property (real or personal). The Contractor will maintain such public liability insurance policy up to and including the date of completion of the Works as set out in the Employer’s statement issued under clause 13 or until the date of termination under clause 16 or clause 17 (if earlier).

5.3 The Contractor shall take out and maintain professional indemnity with a well established insurance company or underwriter of repute to cover its professional obligations and liabilities under or In connection with this Contract until the expiry of [6] years from the date of completion of the Works specified in the Employer’s statement issued pursuant to clause ‎13 with a limit of indemnity of not less than £[1,000,000] for each and every claim provided that such insurance is generally available in the market at commercially reasonable rates in the normal UK insurance market. The Contractor shall as and when reasonably required so to do by the Employer make available for inspection by the Employer documentary evidence that such insurance is being properly maintained and the Contractor shall immediately inform the Employer if such insurance ceases to be available in the normal UK insurance market to the Contractor at a commercially reasonable rate.][[1]](#footnote-1)

6 WORKING HOURS

6.1 The Employer will allow the Contractor to carry out and complete the Works between 0800 am and 1800 pm from Monday to Friday unless they agree otherwise. Work outside these times will be subject to the prior written agreement of the Employer which should not be assumed to be granted.

7 CONTRACTOR’S RESPONSIBILITIES

7.1 The Contractor warrants to the Employer that it shall:

7.1.1 Carry out the Works set out in the Work Details with all skill, care and diligence and as the Employer instructs;

7.1.2 Use materials that are of satisfactory quality and suitable for their intended purpose. The materials will be new unless the Employer agrees otherwise in writing;

7.1.3 Start the Works by the Start Date and complete the Works by the Completion Date, as may be extended by clause 12;

7.1.4 Not sub-contract any of the Works without the Employer’s permission;

7.1.5 Regularly dispose of any rubbish from the Works;

7.1.6 Be responsible for any damage it may cause to the Property and its contents or to neighbouring properties;

7.1.7 Leave the working areas in a clean and tidy condition after finishing the Works; and

7.1.8 Comply with all its legal duties and responsibilities in connection with the Works including, but not limited to, those contained in this Contract.

7.2 The Contractor also warrants to the Employer that it shall provide two full hardcopy sets of as built drawings together with any manufacturers operating manuals relating to the Works to the Employer as a precondition to the Employer issuing its statement of completion pursuant to clause 13 [**OR** within 14 days of the date of the Employer’s statement of completion issued pursuance to clause 13].

7.3 The Contractor shall exercise the standard of skill and care set out in clause 7.1.1 to ensure that in performing the Works no products or materials will be specified for use or used in the Works which at the time of specification:

7.3.1 do not conform with British Standards or Codes of Practice; and/or

7.3.2 which contravene the recommendations of the British Council for Offices Publication *Good Practice in the Selection of Construction Materials (2011)*; and/or

7.3.3 are generally known to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of the building or structure.

8 EMPLOYER’S RESPONSIBILITIES

8.1 The Employer will:

8.1.1 Give the Contractor access to the Property during the agreed working hours throughout the working period; and] [DELETE THIS CLAUSE WHERE EXCLUSIVE POSSESSION IS BEING GIVEN TO THE CONTRACTOR] or

[Give the Contractor possession of the Property to carry out the Works. Subject to any prior termination pursuant to clause 16, the Contractor shall retain possession of the Property up to and including the date of completion of the Works set out in the Employer’s statement issued under clause 13]; and [DELETE THIS CLAUSE WHERE EXCLUSIVE POSSESSION IS NOT BEING GIVEN TO THE CONTRACTOR]

8.1.2 Give the Contractor instructions, extend timescales if necessary pursuant to clause

12 and issue the statements pursuant to clauses 13 and 14.10.

9 HEALTH AND SAFETY

9.1 The Contractor will comply with its obligations under the Construction (Design and Management) Regulations 2015, in so far as they are applicable to the Works.

9.1A The Contractor shall act as required [Principal Designer **AND / OR** Principal Contractor] for the purposes of the Construction (Design and Management) Regulations 2015

9.2 The Contractor shall ensure that it establishes and maintains a culture and working environment in which health and safety is of paramount concern to everyone involved in the Works, duly taking all necessary or prudent health and safety precautions and measures in connection with the Works. In addition to compliance with the Construction (Design and Management) Regulations 2015 pursuant to clause 9.1, in carrying out the Works, the Contractor undertakes to:

9.2.1 Comply with any and all statutory and/or regulatory duties and responsibilities associated with health and safety, including but not limited to compliance with the Health & Safety at Work etc. Act 1974, and any and all approved codes of practice produced by or on behalf of the Health and Safety Executive and/or the Health and Safety Commission;

9.2.2 Ensure that all personnel engaged by the Contractor and members of the Contractor’s supply chain on the Property receive appropriate site-specific health and safety induction training and regular refresher training, where it is appropriate to do so;

9.2.3 Ensure that all such personnel have access at all times to competent health and safety advice in accordance with Regulation 7 of the Management of Health and Safety at Work Regulations 1999;

9.2.4 Ensure that there is full and proper health and safety consultation with all such

personnel in accordance with the Health and Safety (Consultation with Employees)

Regulations 1996; and

9.2.5 Take all practical steps to:

(a) Prevent or minimise health and safety risks to the occupiers / visitors to the

Property;

(b) Prevent environmental disturbance, nuisance or pollution from the Works;

and

(c) Make sure that any temporary protection for the Works is safe and

weatherproof.

9.3 The Contractor shall be liable for, and shall indemnify the Employer against any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person and loss, injury or damage to any property (real or personal) arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any neglect of the Employer.

9.4 COVID - 9 PRECAUTIONS

The Employer has in place a Covid-19 secure environment. The contractor is to ensure that any operative scheduled to work at the Museum has no symptoms of Covid-19. If an operative presents for work displaying symptoms they are to leave site immediately and self-isolate in accordance with the latest government advice leave site. On no account are they to be allowed to work at the Museum without receiving a negative test result. Site operatives are to be issued with the appropriate PPE to minimise risk of Covid -19 spread e.g. masks, gloves and hand sanitiser when on site and working in close proximity of others where social distancing is limited. In accordance with Government Track and Trace Guidelines, operatives will be required to provide names and addresses.

10 SITE CONTROL

For the avoidance of doubt, the terms of this Contract do not provide for exclusive possession of the Property to be granted to the Contractor. The Employer retains control of the Property and shall be entitled to issue instructions requiring the exclusion from the Property of any person employed in connection with the Works. The Contractor shall ensure that at all reasonable times it has on the Property a competent person in charge and any instructions given to that person by or on behalf of the Employer shall be deemed to have been issued to the Contractor.

The Contractor shall ensure that at all reasonable times it has on the Property a competent person in charge and any instructions given to that person by or on behalf of the Employer shall be deemed to have been issued to the Contractor. The Contractor acknowledges that it will be responsible at all times for site control and the good upkeep of the Property.

11 CHANGING THE WORK DETAILS

11.1 Only the Employer can change the Work Details, such changes to be instructed to the Contractor in writing. Changes will be dealt with as follows:

11.1.1 If the change(s) increase the amount of Works shown in the Work Details, the Contractor will quote a price for the extra work and time involved. The Employer will then decide whether to go ahead with the change(s). If the Employer agrees to the change(s), it will confirm the instruction and notify the Contractor of the new Contract Price taking into account the increased amount of work.

11.1.2 If the change(s) reduce the amount of Works shown in the Work Details, the Employer will make an appropriate reduction in the Contract Price and notify the Contractor of the same in writing.

11.1.3 If the change(s) alter the cost of any items in the Work Details without increasing or reducing the amount of Works involved, an appropriate adjustment of the Contract Price will be made by the Employer and notified to the Contractor in writing to reflect those changes.

12 EXTENDING THE COMPLETION DATE

12.1 The Employer will extend the Completion Date by a fair and reasonable amount if the Contractor:

12.1.1 Has to spend extra time on the Works because of change(s) made to the Work

Details pursuant to clause 11; and

12.1.2 Cannot finish the Works on time for reasons beyond its control, including any delay

caused by the Employer.

12.2 The Contractor can claim any reasonable and proper costs arising from the working period being extended because of any delay caused by the Employer.

13 COMPLETION OF WORKS

13.1 When all the Works have been finished to the Employer’s reasonable satisfaction, it will issue a statement to the Contractor showing the date that the Works were completed.

14 PAYMENT AND MAKING GOOD OF DEFECTS

14.1 The due date for payment shall be the date of completion of the Works specified in the Employer’s statement issued pursuant to clause 13 [The due dates for payments to the Contractor shall be the dates of completion of the relevant stage specified at clause [2.3] above]. Not later than 5 days after each due date the Employer shall issue an interim certificate for 95% of what he considers to be the total amount due as at the due date. The certificate shall state the sum due from the Employer and the basis on which that sum has been calculated. The final date for payment of the certified sum shall be [28] days from the due date.

14.2 Subject to any notice given by the Employer under clause 14.5, the sum to be paid by the Employer on or before the final date for payment under clause 14.1 shall be the sum stated as due in the interim certificate.

14.3 If an interim certificate is not issued in accordance with clause 14.1, the Contractor may at any time after the 5 day period referred to in that clause give a payment notice to the Employer stating the sum that the Contractor considers to be or have been due to him at the due date and the basis on which that sum has been calculated. In the event, the sum to be paid by the Employer shall, subject to any notice subsequently given by him under clause 14.5, be the sum stated as due in the Contractor’s payment notice.

14.4 Where the Contractor gives a payment notice under clause 14.3, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5 day period referred to in clause 14.1 that the Contractor’s payment notice is given.

14.5 If the Employer intends to pay less than the sum stated as due from him in the interim certificate or, where applicable, the Contractor’s payment notice, he shall not later than 5 days before the final date for payment give the Contractor notice of that intention stating the sum that he considered to be due to the Contractor at the date he gives notice under this clause 14.5 and the basis on which that sum has been calculated. Where the Employer gives that notice, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in his notice.

14.6 In relation to the requirements for the issue of certificates and the giving of notices under this clause 14, it is immaterial that the amount then considered to be due may be zero.

14.7 No later than [3] months after all the Works have been completed pursuant to clause 13, the Employer shall notify the Contractor of any defects or faults or minor outstanding items in the Works which the Contractor is responsible for. The Contractor shall rectify any such defects or faults or minor outstanding items within one month of such notification by the Employer.

14.8 When the Contractor has rectified all such defects and faults notified to it to the Employer’s reasonable satisfaction, the Employer will issue a statement to confirm this. The Employer will then pay the remaining 5% of the Contract Price (as adjusted by clause 11 above, if applicable) no later than 28 days after the date on which the Employer issued its statement.

15 CONTRACTOR’S CONTINUING RESPONSIBILITY

15.1 For 6 years after the date of completion of the Works specified in the Employer’s statement issued pursuant to clause 13, the Contractor will remain responsible for any faults in the Works (other than fair wear and tear).

16 TERMINATION AND SUSPENSION

16.1 If the Contractor is in material breach of the terms of this Contract and does not remedy such breach within 14 days of receiving a written warning from the Employer (or immediately in the case of any breach representing an imminent health and safety risk), the Employer can terminate this Contract by giving the Contractor a written notice. The Contractor’s employment under this Contract will terminate as soon as that notice is given. On any such termination, the Employer will only have to pay any money due to the Contractor for work properly carried out by the Contractor once the Works have been finished by another contractor and subject to receipt of a VAT invoice properly addressed to the Employer in respect of such amount. The Employer may deduct from such monies otherwise due to the Contractor any additional costs above the Contract Price (as adjusted by clause 11 above, if applicable) the Employer incurs in having the Works completed by others in circumstances where the Employer has terminated this Contract pursuant to this clause 16.1 or such additional costs shall be owed by the Contractor to the Employer as a debt.

16.2 The Employer may also at its entire discretion terminate this Contract on giving the Contractor 28 days prior written notice of the same. If this Contract is terminated pursuant to this clause 16.2 the Employer will pay the Contractor for work properly carried out within 28 days of the Contract being terminated, subject to receipt of a VAT invoice properly addressed to the Employer in respect of such amount.

16.3 If the Employer:

16.3.1 Does not pay an amount due, without having good reason; or

16.3.2 Substantially prevents or obstructs the Contractor from carrying out the Works;

and does not correct the matter within 14 days of receiving a written warning from the Contractor, the Contractor can suspend its performance under this Contract by giving the Employer a written notice. If the Employer remedies its breach then the Contractor shall resume the performance of the Works under the Contract provided that if the Works have been suspended for a continuous period exceeding four months, the Contractor may give written notice terminating the Contract with immediate effect.

17 INSOLVENCY

17.1 If the Employer or the Contractor becomes insolvent (including entering into administration or administrative receivership), the Contractor’s employment under this Contract will automatically terminate.

17.2 If the Contractor’s employment under this Contract terminates because the Contractor becomes insolvent (including entering into administration or administrative receivership), the Employer will not have to pay any amount then due to the Contractor for work properly carried out by the Contractor until the Works have been finished by another contractor and subject always to the Employer having the right to deduct any additional costs above the Contract Price (as adjusted by clause 11 above, if applicable) it incurs in having the Works completed by others and such additional costs shall be owed by the Contractor to the Employer as a debt.

18 OTHER RIGHTS AND REMEDIES

18.1 The Employer and the Contractor can claim from each other the costs and expenses which result from either of them failing to keep to the terms of this Contract save that the Contractor shall not be entitled to claim for loss of profits or loss of contract or any indirect or consequential loss in connection with this Contract.

18.2 This Contract does not exclude or limit any other legal remedies which may be available to the Employer or the Contractor.

19 COPYRIGHT

# 19.1 The Contractor assigns to the Employer with full title guarantee, for the full period of copyright and all renewals, extensions, revivals and reversions, all present and future copyright and other rights of whatever nature in and to any drawings, calculations, specifications, models, audiovisual materials, sound recordings and/or any other copyright materials provided by the Contractor and the Sub-Contractors pursuant to this Contract (“the Proprietary Material”).

# 19.2 To the extent that the above assignment is not effective to assign any of the rights to be assigned under clause 19.1 (“the Rights”) because the law in another territory does not permit assignment, the Contractor shall hold all rights that are not so assigned on trust for the Employer and the Contractor shall at the Employer’s request and cost execute such documents and do such things as are necessary to effect that assignment if possible, and if no assignment is possible the Contractor shall put in place such legal arrangement as most closely resembles an assignment in the relevant territory.

# 19.3 The Contractor assigns and undertakes to deliver to the Employer [on the date of this Contract] a copy of all Proprietary Material.

# 19.4 The Contractor shall not be liable for the use of any of the Proprietary Material for any purpose other than those for which the Contractor or the Sub-Contractors produced them.

# 19.5 The Contractor shall waive or procure the waiver of any right to be identified as author of the Proprietary Material in accordance with section 77, Copyright Designs and Patents Act 1988 and any right not to have any Proprietary Material subjected to derogatory treatment in accordance with section 80 of that Act.  The Contractor shall procure that it shall be a term of the Sub-Contractors’ sub-contracts that they also waive and procure the waiver of such rights.

# 19.6 The Contractor also assigns all rights of action that may have accrued in respect of the Rights, including without limitation all rights and remedies in respect of any infringement occurring prior to the date of this Contract.

20 THIRD PARTY RIGHTS

20.1 The parties do not intend that any of its terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to this Contract.

21 ASSIGNMENT

21.1 The Employer’s rights under this Contract may be assigned.

21.2 The Contractor may not assign or charge the benefit of this Contract or any right arising under it without the consent of the Employer.

22 LAW OF THIS CONTRACT AND DISPUTES

22.1 This Contract shall be governed by English law and any dispute or difference arising hereunder shall be subject to the jurisdiction of the English Courts.

22.2 Any dispute or difference shall be referred to adjudication in accordance with the Adjudication Rules of the Technology and Construction Solicitors Association, which are incorporated into this Contract by reference. The decision of the Adjudicator shall be binding on the parties unless and until the appropriate court of England and Wales finally determines the dispute or difference.

IN WITNESS WHEREOF the parties have duly executed this Contract on the date at the beginning of this Contract.

Signed by [insert name]

For and on behalf of Council of the National Army Museum

Signed by [insert name]

For and on behalf of [insert Contractor’s name]

SCHEDULE 1: WORK DETAILS

Attached biddings documents]

1. [↑](#footnote-ref-1)