



Contract for Services

Contract Number: ART005-0073

Part A - The Particulars

Arts Council England (ACE)

and

**Trends Business Research Limited
(The Service Provider)**

Contract for Services in relation to:

Research to understand the resilience, and challenges to this, of Local Authority museums.

1 The Parties

a) Arts Council England

Full name	The Arts Council of England trading as Arts Council England
Charity Number	1036733
Registered Address	21 Bloomsbury Street London WC1B 3HF
Phone	0845 300 6200
Fax	020 7973 6590
VAT registration number	GB 239 1961 42

b) The Service Provider

Full name	Trends Business Research Limited
Company number	2058785
Registered Address	Floor D Milburn House Dean Street Newcastle Upon Tyne NE1 1LE
Phone	0191 279 0900
Fax	0191 221 2220
VAT registration number	436272845

2 The Services

- 2.1 The Service Provider will produce a detailed study into the challenges and risks faced by local authority-dependent museums in the current economic climate. This study will provide a better understanding of what local authorities value about museums and what their criteria and expectations will be in relation to future funding. The information provided by the Service Provider will be used to effectively support museums over the next three years and beyond, helping ACE to better target their resources and funding support joint working with other museums' development agencies and funders, and inform conversations with local authorities about their support for museums.
- 2.2 REDACTED- SECTION 43(2) OF THE FREEDOM OF INFORMATION ACT 2000
- 2.5 The Service Provider will deliver the following deliverables to ACE:

Deliverable	Due date
REDACTED- SECTION 43(2) OF THE FREEDOM OF INFORMATION ACT 2000	

- 2.6 The parties may vary the due dates for the deliverables by agreement in writing.

3 Fees and expenses

- 3.1 The total fees must not exceed **£24,981** including expenses and VAT and all costs to be incurred in accordance with the charges table below. Arts Council of England will pay the Service Provider, and in accordance with Clause 3 in Part B of this Contract.

REDACTED- SECTION 43(2) OF THE FREEDOM OF INFORMATION ACT 2000

- 3.2 The Service Provider will invoice the Arts Council England in the following instalments:

REDACTED- SECTION 43(2) OF THE FREEDOM OF INFORMATION ACT 2000

4 Duration

This Contract will commence on 16th February 2015
and will conclude on 30th April 2015

5 The Parties' Representatives

Arts Council England

Name: REDACTED- SECTION 40(2) OF THE FREEDOM OF
INFORMATION ACT 2000

Position:

Address:

Phone:

Fax:

Email:

Trends Business Research Limited

Name: REDACTED- SECTION 40(2) OF
THE FREEDOM OF INFORMATION
ACT 2000

Position: REDACTED- SECTION 40(2) OF
THE FREEDOM OF INFORMATION
ACT 2000

Address: Flood D, Milburn House
Dean Street
Newcastle upon Tyne
NE1 1LE

Phone: REDACTED- SECTION 40(2)
OF THE FREEDOM OF
INFORMATION ACT 2000

Fax: REDACTED- SECTION 40(2)
OF THE FREEDOM OF
INFORMATION ACT 2000

Email: REDACTED- SECTION 40(2)
OF THE FREEDOM OF
INFORMATION ACT 2000

6 Termination and additional conditions

6.1 Termination

REDACTED- SECTION 43(2) OF THE FREEDOM OF INFORMATION ACT
2000

6.2 Additional conditions

None

Both Arts Council England and the Service Provider agree that they are bound by the terms detailed above and the attached standard terms and conditions in Part B.

Signed on behalf of

Signed on behalf of

The Arts Council of England

Trends Business Research Limited

by:

by:

Signature of authorised officer

Signature of authorised person

Name of authorised officer (please print)

Name of authorised person (please print)

Date

Date

Part B - Standard Terms & Conditions

1 Definitions

- 1.1 “Contract” means the contract made between you (the Service Provider) and us (Arts Council England) and includes Parts A and B of this Contract for Services and any other documents that have been explicitly agreed to be part of the Contract.
- 1.2 “Fees and expenses” means the fees you will charge us for the time you spend and the costs you incur in providing the Services to us. The Fees and Expenses you are entitled to charge are shown in section 3 of Part A.
- 1.3 “Services” means the Services to be provided by you as described in section 2 of Part A.

2 Your Obligations

- 2.1 In delivering the Services you must:
 - 2.1.1 provide the Services with reasonable diligence, competently, and in keeping with this Contract;
 - 2.1.2 comply with our reasonable directions at all times and use your best attempts to promote our interests;
 - 2.1.3 not do or allow anything to be done that would, or would be likely to, bring Arts Council England into disrepute or adversely affect our reputation in any way;
 - 2.1.4 provide and maintain all personnel, equipment and supplies necessary to provide the Services;
 - 2.1.5 seek our prior written consent before entering into a sub-contract with another supplier or contractor for the purpose of performing your obligations under this Contract (such consent not to be unreasonably withheld or delayed by us);
 - 2.1.6 not accept work from other sources that will in any way impair or affect your ability to provide the Services and comply with the terms of this Contract;

- 2.1.7 you must ensure that a provision is included in any such a sub-contract which requires payment to be made of all sums due by you to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 2.2 When providing any written reports as part of the Services, you must comply with the Arts Council England house style document which can be found on our website at www.artscouncil.org.uk/housestyle
- 2.3 We retain the right in our absolute discretion to approve or disapprove any work you do related to this Contract. In addition to any dates specified in this Contract where you will be required to meet with us, you will also be required to consult with us regularly, but no less than at least once a month, or, at any point a significant decision is made about the work under the agreement. After each meeting, you will provide us with a summary of the meeting for our approval.
- 3 Fees and Expenses**
- 3.1 In return for the Services you will provide under this Contract, we will pay you the Fees and Expenses in the instalments and manner outlined in clause 3 in Part A.
- 3.2 If we have agreed to pay your Expenses, you must provide us with original receipts. You may only recover expenses from us in accordance with our current Expenses Policy for Service Providers. We will provide you with a copy of this policy. We are entitled to put a limit on the amount of and type of Expenses you may incur.
- 3.3 Before we can make any payment, you must provide us with a VAT compliant invoice for each payment that describes the work done and the time period to which the payment relates.
- 3.4 Before we will make any payment your invoice must be approved by us.
- 3.5 You agree that the Fees and Expenses set out in clause 3 in Part A cover all your time, resources, costs and tax (including VAT, if applicable) in providing the Services. We are not obliged to pay you any other amounts.
- 3.6 If you are not currently liable to register for VAT but are subsequently required to do so, you agree that the Fees and Expenses payable to you under this

Contract will be deemed to be inclusive of VAT.

- 3.7 We will pay your approved invoices within 30 days of receipt, as long as you have provided the Services referred to in the invoice to our satisfaction.
- 3.8 Our preferred payment method to you will be by BACS transfer. In order to facilitate this payment process your invoice must state your sort code and bank account details. Please contact our finance department if you require further details.
- 3.9 We are not obliged to pay you any wages, salary, sickness pay or holiday allowances.

4 Information & Confidentiality

- 4.1 We are a “public authority” for the purposes of Freedom of Information Act 2000 (“FOIA”). Subject to certain exemptions, we are required to supply information to members of the public on request. This potentially includes any information which relates to your business and the work you will do for us under this Contract.
- 4.2 In addition, from 1 January 2011 we are required by the Government to proactively make all contracts over £10,000 in net value publically available, by publishing them on the appropriate central government website. This includes any information you supplied to us during the tender process.
- 4.3 You and we acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not confidential information. We shall be responsible for determining in our absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, you hereby give your consent for us to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.
- 4.4 We will not be liable for any loss or damage you may suffer from our disclosure of information under the FOIA or from making the Contract publically available in accordance with clause 4.3 above.
- 4.5 This clause will not affect your rights under the Data Protection Act 1998

("DPA").

- 4.6 If you are handling or processing data on our behalf you must ensure that you are registered with the Information Commissioner's Office if required under the DPA. Both we and you will duly observe all our obligations under the DPA which arise in connection with the Contract.
- 4.7 Where you are processing personal data and or sensitive personal data (as defined in sections 1 and 2 of the DPA) as a data processor for us as Data Controller (as defined by the DPA) you must:
 - 4.7.1 ensure that you have in place appropriate technical and organisational measures to ensure the security of the personal data;
 - 4.7.2 guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data, as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;
 - 4.7.3 provide us with such information as we may reasonably require to satisfy us that you are complying with your obligations under the DPA;
 - 4.7.4 promptly notify us of any breach of the security measures referred to in sub-clause 4.7.1 above;
 - 4.7.5 ensure that you do not knowingly or negligently do anything which places or is likely to place us in breach of our obligations under the DPA; and
 - 4.7.6 comply with all reasonable directions or requests from us regarding any data that you process on our behalf;
- 4.8 Subject to clauses 4.1 to 4.4 inclusive, at no time may either party give any confidential information to any other person unless:
 - 4.8.1 disclosure is required by law; and/or
 - 4.8.2 it has obtained the other party's written consent;
 - 4.8.3 the information is already in the public domain;

4.8.4 disclosure is necessary to ensure the services are performed properly.

5 Intellectual Property

- 5.1 For the purposes of this Contract “Intellectual Property” includes, without limitation and whether registered or unregistered, copyright, trademarks, logos, design rights, patents and database rights.
- 5.2 You agree that all original Intellectual Property and all original documents and materials (including electronic documents) specifically produced or developed in providing the Services (“the Materials”) will be our property. We will own all Intellectual Property rights in the Materials and these Intellectual Property rights shall be immediately assigned to us upon creation without the need for us to enter into any additional agreement with you.
- 5.3 You must not impinge or breach any copyright or other Intellectual Property rights in fulfilling your obligations under this Contract.
- 5.4 You must obtain all permissions necessary to ensure that we will not breach any copyright or other intellectual property rights when we use the materials.
- 5.5 If you are carrying out research on our behalf, we will consider requests to use the research data in your own academic work provided that you:
 - 5.5.1 let us know the overall objective of your academic work, the timetable and proposed date and place of publication;
 - 5.5.2 acknowledge that you conducted the research on our behalf and that it was funded by us in any publications or accompanying publicity;
 - 5.5.3 anonymise all data to protect the identity of any individual or organisation;
 - 5.5.4 provide a copy of the work to us before publication and make any reasonable amendments we may request to ensure accuracy; and
 - 5.5.5 state that any views expressed are yours and not necessarily those of Arts Council England.
- 5.6 We reserve the right in our absolute discretion to refuse any request under clause 5.5 above to use our research data.

6 Right of audit

- 6.1 You must keep secure and maintain full and accurate records of the Services you provide to us, including all paid expenses and the payments we make to you.
- 6.2 These records must be kept secure and maintained for at least two years after the final payment we make under this Contract, or for longer periods if agreed or required by law.
- 6.3 You must allow us access to any records we may reasonably require to check your compliance with this Contract.

7 Conflict of Interest

You must make sure that neither you nor any of your employees, agents or sub-contractors are placed in a position where there is or may be an actual conflict, or a potential conflict, between your interests or the interests of your employees, agents or sub-contractors and your obligations under this Contract. You must disclose to us the particulars of any conflict of interest that arises.

8 Your Status

- 8.1 You are an independent contractor and not our agent, partner or employee.
- 8.2 You cannot incur liabilities or obligations on our behalf unless specifically authorised by us in writing.
- 8.3 You must not hold yourself out as our employee to any third party.

9 Indemnity

- 9.1 You must pay us back for any damage, costs or liability we may incur due to your negligence or your failure to comply with this Contract.
- 9.2 The amount you may be required to pay us under sub-clause 9.1 will include without limitation:
 - 9.2.1 legal and other professional advisory fees; and
 - 9.2.2 any economic loss (including any loss of profit, future revenue, reputation or goodwill and anticipated savings).

10 Insurance

- 10.1 In addition to the indemnity you give us above, you must maintain appropriate

insurance cover with a reputable insurance company. Appropriate insurance means a policy or policies of insurance providing an adequate level of cover for all risks you may take on by providing the Services and for all statutory or other legal requirements you may be under.

10.2 If we request you to do so you must:

10.2.1 include our interests on the insurance policy or policies referred to in sub-clause 10.1 so that we may obtain benefits under such policy or policies; and/ or

10.2.2 show us evidence that the insurances as required by sub-clause 10 a) are being maintained at your expense.

11 Default

11.1 If you decide that you are unable to meet your obligations under this Contract you must immediately write to us and explain the reasons.

11.2 If you are in material breach of your obligations under this Contract we may issue a default notice detailing the breach, and the time period and terms by which you must remedy the breach.

11.3 Any action taken by us under this clause will not affect any right we may have to immediately terminate the Contract.

12 Termination and end of Contract

12.1 Any of the following conditions is a fundamental breach, which will automatically and immediately enable us to terminate this Contract:

12.1.1 failure to comply with a default notice under sub-clause 11.2;

12.1.2 you become insolvent (within the meaning of the Insolvency Act 1986);

12.1.3 any order is made, or resolution passed, for your administration, winding-up or dissolution (other than for the purposes of a solvent amalgamation or reconstruction);

12.1.4 an administrator or other receiver, manager, liquidator, trustee or similar officer is appointed over all or any substantial part of your assets;

- 12.1.5 you enter into or propose any composition or arrangement with your creditors generally;
 - 12.1.6 you breach clause 17 below (Prevention of Corruption);
 - 12.1.7 you assign any of your obligations under this Contract without our prior written consent;
 - 12.1.8 you merge with any other organisation or organisations without informing us first or;
 - 12.1.9 you cease to trade for any reason.
- 12.2 Upon termination under sub-clause 12.1 we may obtain the remainder of the Services from a third party. You must pay us the difference between:
- 12.2.2 the amount we pay the third party to complete the remainder of the Services; and
 - 12.2.3 the amount that we would have paid you for the remainder of the Services under this Contract, had the Contract continued in force,
- together with any other costs we may have to pay as a direct consequence of terminating the Contract.
- 12.3 We will use our reasonable endeavours to ensure that the amount we pay to a third party under sub-clause 12.2 is at a commercially acceptable rate and where possible this amount will not exceed the level of the fee we would have paid you under this Contract.
- 12.4 Where specified in section 6 of Part A, either party may terminate this Contract on written notice to the other within the time specified.
- 12.5 On termination or expiry of this Contract, you will promptly provide us (or someone else we advise you to) with all information and property, sign or enter into any agreement, cooperate generally with and provide all reasonable assistance to us to ensure an orderly handover of this project.
- 12.6 Termination of this Contract as provided in this clause will not affect any right of action or remedy of either party.

13 Uncontrollable Events

- 13.1 An 'uncontrollable event' is an extraordinary natural event (such as a flood or earthquake) that cannot be reasonably foreseen or prevented, fire, explosion, industrial dispute, debilitating illness or injury, or any other extraordinary event beyond that party's control. Neither party will be liable for failure to perform their obligations due to an uncontrollable event.
- 13.2 If either party is unable to perform its obligations as a direct result of an uncontrollable event, that party must notify the other immediately with reasons. At that point this Contract will be suspended.
- 13.3 The suspension of the Contract will only continue during the time when the party is unable to meet its obligations due to the uncontrollable event. As soon as the uncontrollable event is over, the affected party must give written notice to the other of this fact.
- 13.4 If the failure to perform obligations due to the uncontrollable event exceeds one month, either party may immediately terminate this Contract by giving written notice to the other.

14 Anti-discrimination

- 14.1 You must comply with all anti-discrimination legislation from time to time in force including, but not limited to, the Equalities Act 2010 and any subordinate or associated legislation.
- 14.2 You must not treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin, gender, sexual orientation or disability including when deciding about recruiting, training or promoting staff.
- 14.3 You must, as far as possible, comply with all statutory codes of practice issued from time to time by the Equality and Human Rights Commission or any of its predecessor bodies such as the Commission for Racial Equality. You must provide any information we require to determine whether you are complying with these codes of practice.
- 14.4 When working on our premises, you must comply with our employment policies and codes of practice relating to diversity and equal employment opportunities.
- 14.5 You must monitor the representation among your staff of persons of different groups. If it seems that any group or groups are not represented or are under-represented among your staff in a particular type of job, you must, where

appropriate and reasonable:

14.5.1 place and use job advertisements to reach members of the specific groups to encourage their applications;

14.5.2 use employment agencies and careers offices in areas where members of such groups live and work;

14.5.3 use recruitment and training schemes for school-leavers and/or unemployed persons intended to reach members of such groups;

14.5.4 train and encourage members of your staff from such groups so they may apply for promotion or transfer to do the type of job in which such groups are under-represented.

14.6 You must ensure that you maintain effective whistle-blowing policies whereby your employees may raise in confidence concerns about possible malpractice without fear of victimisation, discrimination or disadvantage.

15 Protection of Children and Vulnerable Adults

15.1 This clause will only apply if in providing the Services you or your business partners or employees will supervise, care or have significant direct contact with a Vulnerable Person.

15.2 In this clause, "Vulnerable Person" means:

15.2.1 persons under the age of 18; and

15.2.2 people who need or may need community care services because of mental or learning disability, other disability, age or illness, and who are, or may be, unable to take care of themselves or unable to protect themselves against significant harm or exploitation.

15.3 You must consider all the risks associated with providing the Services and take all reasonable steps to ensure the safety of all Vulnerable Persons, and seek the written consent of the legally authorised carer or guardian of the Vulnerable Person before having of any significant direct contact with the Vulnerable Person.

15.4 Without limiting sub-clauses 15.2 and 15.3 you must adopt and carry out a written policy and set of procedures to protect Vulnerable Persons if:

- 15.4.1 you are a company or partnership, or you are an individual who employs other persons; and
- 15.4.2 in the course of providing the Services, your employees or your contractors supervise, care for or have significant direct contact with Vulnerable Persons.

- 15.5 As part of the procedures mentioned in sub-clause 15.4 you must check the backgrounds of and view disclosures from the Disclosure and Barring Service for your potential employees, contractors or volunteers who will, in the course providing the Services, supervise, care or otherwise have significant direct contact with Vulnerable Persons.
- 15.6 If you are the person having significant direct contact with Vulnerable Persons, you must, prior to any significant direct contact with the Vulnerable Person, offer to his or her legally authorised carer or guardian your consent to having your background checked and disclosures from the Disclosure and Barring Service viewed, should the carer or guardian wish to do so.
- 15.7 You must comply with sub-clauses 15.3 to 15.6 inclusive even if are not required to do so under any child protection or care standards legislation and even if the work is formal, informal, voluntary or salaried.
- 15.8 Arts Council England cannot advise you of your legal obligations in relation to your dealings with Vulnerable Persons, and this clause should not be seen as such. If you have any queries about your obligations, we strongly advise that you seek your own independent legal advice and also contact the National Society for Prevention of Cruelty to Children (www.nspcc.org.uk).

16 Health and Safety

You must comply with the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999, and all other regulations and approved codes of practice relevant to the Services.

17 Prevention of Corruption

We can terminate this Contract immediately if you, your employees or your agents have offered, given or agreed to give any person any money or gifts of any kind, to bring about this Contract.

18 Notices

- 18.1 Either party may send notices, letters and other documents by prepaid first class recorded delivery post or facsimile message to the other party at the

address identified in the particulars, or at any other address or fax number provided to the other party.

- 18.2 To prove that a notice or document has been delivered, it is sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery letter or that the facsimile message was properly addressed and despatched.

19 Disputes

- 19.1 The parties will attempt to settle any dispute which may arise between them under this Contract.
- 19.2 If a dispute is not resolved to the satisfaction of both parties within 10 working days, the parties will attempt to settle it by mediation under the Centre for Effective Dispute Resolution's (CEDR's) Model Mediation Procedure.
- 19.3 To begin mediation, either party must give written notice to the other party requesting mediation. The initiating party must send a copy of such request to CEDR.
- 19.4 If there is any issue on the conduct of the mediation (including nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of any party, decide the issue for them.
- 19.5 If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation, either party may begin legal proceedings.

20 Contracts (Rights of Third Parties) Act 1999

As provided in the Contracts (Rights of Third Parties) Act 1999, unless otherwise expressly stated in this Contract, no third party will have any right of enforcement under this Contract.

21 Change and Assignment

No change or assignment of this Contract will be effective unless it has been agreed in advance by both parties in writing.

22 Waiver

The failure of either party to exercise any right or remedy will not constitute a waiver of that right or remedy. A waiver is only effective if provided to the other party in

writing.

23 Severance

If any part of this Contract is or becomes legally ineffective or unenforceable it will not affect the validity of the rest of this Contract.

24 Whole Agreement

This Contract contains the whole agreement between the parties relating to the Services and replaces all previous agreements between the parties relating to the Services. However this provision shall not operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

25 Law

This Contract is governed by English law and subject to the jurisdiction of the English Courts.

26 Costs

Each party will pay its own costs in preparing and carrying out this Contract and in undertaking any mediation under clause 19 above.

27 Change Control Procedures

In the event that either party desires to change the terms of this Contract, the following procedures will apply:

27.1 The party requesting the change will deliver a “Change Request” (in the form annexed to this Part B) which describes:

27.1.1 the nature of the change

27.1.2 the reason for the change

27.1.3 the effect that the requested change will have on the scope of the Services

27.1.4 any changes to the Fees, the Deliverables and the Duration

27.2 Upon receipt of a Change Request, the receiving party’s authorised representative will contact his/ her counterpart within 5 working days to discuss and agree the Change Request. The parties will negotiate the proposed changes to the Contract in good faith and agree a timeline in which to finalise the Change Notice.

- 27.3 Neither party is obliged to agree to a Change Request, but if the parties do agree to implement such a Change Request, the appropriate authorised representatives of both parties will sign the Change Request which will be effective from the date set out in the Change Request.
- 27.4 If there is any conflict between the terms and conditions set out in the Contract and the Change Request, then the terms and conditions set out in the most recent fully executed Change Request will apply.

Annexe 1 - Change Control Notice

Contract Reference:					
1. Change Request Number:					
2. Requested Amendments to Contract or Schedules (including reasons):					
2.1 Effective date:					
This change is effective from: _____					
2.2 The Contract Term is amended as follows:					
This contract will commence on: _____					
And will conclude on : _____					
3. Cost impact					
3.1 The fees and expenses schedule is amended as follows:					
	Quantity	Unit cost (£)	Net cost (£)	VAT (£)	Gross cost (£)
Original Contract Value					
New contract Value					

3.2 New call off agreement terms:					

Both Arts Council England and the Service Provider agree that they are bound by the terms and conditions set out in this Change Request and, except as set out in this Change Request, all terms and conditions of the Contract remain in full force and effect

Signed on behalf of

Signed [on behalf of]/ [by]

The Arts Council of England

Trends Business Research Limited

by:

by:

Signature of authorised officer

Signature of authorised person

Name of authorised officer (please print)

Name of authorised person (please print)]

Date

Date

Exhibit 1 – Tender Response