



## **INVITATION TO TENDER**

### **Internal Audit Services**

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## 1. Confidentiality Statement

- 1.1. This Invitation to Tender ("ITT") document contains information that is confidential and business sensitive to the National Museum of the Royal Navy ("NMRN"), the National Army Museum ("NAM") and the RAF Museum ("RAFM") (jointly referred to as "the National Museums"), and has been provided to you solely for the purpose that you understand our business needs in relation to the areas of supply.

## 2. The Request

- 2.1. This is an ITT for the provision of Internal Audit Services ("the Services") to the National Museums with anticipated engagement commencing 1 October 2019. The National Museums are jointly reviewing their supply arrangements to ensure that they are aware of what the market currently has to offer and are in a position to select a supplier that is best able to deliver the National Museums' requirements over the next 3 - 5 years.
- 2.2. Suppliers are requested to respond to this ITT taking into account the nature and size of the National Museums and their strategic plans to grow and develop their operations.

## 3. The Process

- 3.1. This ITT and the responses to it, form the first stage of the evaluation process. The overall evaluation process will include additional activities such as proposal presentations and meetings, additional questions not contained within the ITT, and client references to determine supplementary information in more detail. It is envisaged that a supplier presentations day will take place on **Tuesday 17 September 2019** for short-listed suppliers as part of the ITT process. It is envisaged that 4 to 6 potential suppliers will be shortlisted for the supplier presentations day resulting from the submissions. This overall approach is intended to ensure that the selected supplier has the best certainty of being successful in delivering on time, on budget and to the required quality.
- 3.2. It is recognised that the supplier estimates contained within the response to the ITT will be based on the information provided. Whilst reasonable efforts will be made by us to ensure the completeness and accuracy of the information contained within the ITT, the selected suppliers will be expected to validate the assumptions contained within their submissions as part of the pre-contract phase.
- 3.3. The response to the ITT is an important part of the evaluation process and is required to feed into a Cost Benefit Analysis (CBA) for the business case to be presented to our internal decision makers. The outcome of the CBA, if the business case is approved, will be a sign-off of the Services to proceed to supplier contracts. Each of the National Museums will enter into a separate contract with the chosen Supplier for the duration of the agreement.

3.4. The timetable for the ITT is as follows:

Activity	Date
Publication of opportunity on Contracts Finder	22 July 2019
Period for questions and answers	23 July – 23 August 2019
Submission close date	30 August 2019
Short-listed supplier presentation day	17 September 2019
Business approval of selection	20 September 2019
Contract start date	1 October 2019

Although the National Museums will use reasonable endeavours to adhere to the timetable, they reserve the right to vary it.

#### 4. The Objective

- 4.1. The overall objective is to select a Supplier that gives high confidence of delivering the expected benefits to be derived from the Services on time, on budget and to the required quality. The National Museums requires suppliers that are partners to their businesses by adding strategic value and giving assurance in delivering the agreed outcomes in support of the National Museums' strategies.
- 4.2. The National Museums are going through a period of change and growth that presents both challenges and opportunities that means it requires suppliers that understand the business environment in which they are operating and who can be responsive to changing demands. The Services of each potential supplier will be assessed and measured amongst other things in terms of:
  - i. the approach to the supply of the Services
  - ii. the proposed scope of the Services
  - iii. the Service Level standards that will apply
  - iv. the related costs and benefits
  - v. the strategic value, and
  - vi. supplier fit with the National Museums
- 4.3. The ITT is a vehicle to determine which suppliers are able to meet particular requirements measured against a set of key assessment criteria established for the ITT.

## 5. Business Overview and History

- 5.1. The National Museums are also Non-Departmental Public bodies, sponsored by the Ministry of Defence, and as such are required to comply with the HM Treasury financial reporting requirements and the Public Sector Internal Audit Standards.
- 5.2. The National Museum of the Royal Navy was established in 2008 as a Group of charitable companies and trusts. The Group has its headquarters in Portsmouth and includes the Royal Naval Museum, the Fleet Air Arm Museum, the Royal Navy Submarine Museum with HMS Alliance, Explosion! The Museum of Naval Firepower, the Royal Marines Museum, HMS Victory, HMS Caroline, HMS M33, HMS Warrior, NMRN Hartlepool (including HMS Trincomalee) and the NMRN Trading Company.

[www.nmrn.org.uk](http://www.nmrn.org.uk)

- 5.3. The National Army Museum was established by Royal Charter in 1960 and afforded devolved status under the Heritage Act 1983. It is a registered charity. The Museum is located in Chelsea and has a Reserve Collection Storage and Research Centre in Stevenage. The Museum includes the National Army Museum Trading Company.

[www.nam.ac.uk](http://www.nam.ac.uk)

- 5.4. The RAF Museum was established as a registered charity in 1968. The Museum operates from two public sites at Colindale, London and in Cosford in the West Midlands. The Museum also has two storage facilities at RAF Stafford and RAF Cosford. It operates a trading subsidiary RAF Museum Enterprises Ltd to manage its commercial and non-primary purpose activities, and also Royal Air Force Museum Investments Ltd to hold its property assets.

[www.rafmuseum.org.uk](http://www.rafmuseum.org.uk)

## 6. Operations

- 6.1. Each of the National Museums employs an Accounting Officer, responsible for providing assurance to Parliament and the public and for high standards of probity in the management of public funds and assets. This includes each National Museum's governance, decision-making and financial management assurances when considering, promoting and safeguarding regularity, propriety, affordability, sustainability, risk, and value for money; and accounting accurately and transparently for each National Museum's financial position and transactions. Each Accounting Officer is supported by a team of appropriately qualified and experienced accountants and finance staff who are responsible for the day-to-day operations of the museums.
- 6.2. Each of the National Museums employs a senior finance professional, the "Service Lead" responsible for the coordination and performance of the internal audit service.
- 6.3. The National Museums have independent external audit functions, with the parent companies' statutory audits delivered by the National Audit Office. The external auditors will expect to be able to place reliance on the internal auditor's work.

- 6.4. Each of the National Museums operates a committee (the “Audit Committee”) with responsibilities that include the oversight of its internal audit function: NMRN Audit and Governance Committee meets four times a year; NAM Performance, Audit and Risk Assurance Committee meets four times a year; RAFM Audit and Risk Committee meets no fewer than three times a year. The Supplier will be expected to attend and present its reports to each of these meetings.
- 6.5. The National Museums confirm that there are no TUPE implications in respect of this invitation to tender.
- 6.6. The financial reporting periods for the National Museums run from 1 April to 31 March.

## **7. Contract period**

- 7.1. The National Museums are looking for provision of the Services for an extendable term for a minimum of three and a maximum of five years (the two-year extension subject to satisfactory performance). It is anticipated that the contracts for the Services will be in place by 1 October 2019.

## **8. Supporting the National Museums**

- 8.1. It is vital that the chosen Supplier supports the National Museums through:
- i. Demonstrating an understanding of the National Museums’ position and accounting obligations as Non-Departmental Public Bodies, charities and/or companies
  - ii. Being committed to service quality standards
  - iii. Making best use of technology
  - iv. Helping to streamline processes and reduce governance costs
  - v. Achieving cost certainty in the delivery of the Services
  - vi. Providing innovation and thought leadership
  - vii. Adding value to the National Museums in the delivery of the Services

## **9. Service specification**

- 9.1. The successful Supplier is required to deliver a comprehensive risk-based internal audit service to each of the National Museums that meets the Public Sector Internal Audit Standards, delivering an objective, independent appraisal of activities, including the governance structure and all levels of management.
- 9.2. The Supplier will be expected to:
- i. Work with the Service Leads and Audit Committees to develop rolling three year risk-based internal audit strategies and plans which outline the programme of work for each National Museum. This must be flexible to reflect business risks and respond to key external and internal influences. The internal audit plans will include an evaluation of the arrangements in place to:
    - Establish and monitor the achievement of organisational objectives;

- Identify, test and evaluate key systems and controls ensuring they are relevant, appropriate and effective;
  - Identify, assess and manage risks;
  - Assess compliance with policies, laws and regulations;
  - Ascertain the integrity and reliability of financial and other information provided to the management and stakeholders; and
  - Ascertain that systems of control are laid down and operate to promote the economic, efficient and effective use of resources and to safeguard assets.
- ii. Define annual internal audit plans to deliver the following (indicative) number of internal audit reviews:
- National Army Museum – two reviews
  - National Museum of the Royal Navy – six reviews
  - RAF Museum – four reviews
  - Annual follow up reviews for each National Museum to ascertain the response to previous internal audit reports
  - At least one thematic review, evaluating best practice across the three National Museums, per annum.
- iii. Offer advice and other services as required to improve the National Museums' performance, risk management, internal control and systems, with a particular focus on the introduction of significant changes to the National Museums systems.
- iv. Liaise with the external auditor(s) to provide assurance to the Audit Committees and to seek to avoid duplication and ensure the maximum coverage of the risks faced by the National Museums.
- v. Provide special reviews requested by the Audit Committees or Service Leads.
- vi. Provide an annual internal audit opinion for each of the National Museums based on an objective assessment of the framework of governance, risk management and control.
- vii. Maintain a professional audit service staffed with persons of appropriate mix of professional qualification, knowledge, experience and skills to meet the above requirements.

## **10. Conditions of Tender**

- 10.1. Every Tender received by the National Museums shall be deemed to have been made subject to these Conditions. Any alternative terms or conditions offered by a Tenderer that are inconsistent with these

Conditions shall be deemed to have been rejected by the National Museums unless previously accepted in writing by the National Museums.

## **11. Tender Preparation**

- 11.1. It is the responsibility of the potential suppliers to obtain at their own expense all information necessary for the preparation of their Tender.
- 11.2. All information provided to potential suppliers by the National Museums is general guidance in the preparation for the Tender for the Services. No responsibility is accepted for any loss or damage of whatever kind and howsoever caused arising from the use by potential suppliers of such information. Potential suppliers must undertake their own investigations to satisfy themselves as to the accuracy of any such information.
- 11.3. If any information in this tender documentation is unclear or incomplete, potential suppliers are welcome to make enquiries to [tenders@nmrn.org.uk](mailto:tenders@nmrn.org.uk) within the period for questions and answers (23 July – 23 August 2019). Any such additional information provided in response to questions will be supplied to all potential suppliers.

## **12. Confidentiality**

- 12.1. All information provided by the National Museums in or in connection with this Tender shall be regarded as confidential to the National Museums.
- 12.2. This Invitation to Tender and its accompanying documents shall remain the property of the National Museums and must be returned upon demand.

## **13. Collusive Tendering**

Any potential supplier who:

- 13.1. makes an arrangement with any other person to refrain from tendering or sets or adjusts the amount of his / her tender, or
  - 13.2. makes an offer or makes payment or other consideration or inducement directly or indirectly to any person in relation to any other tender or proposed tender for the Services, or
  - 13.3. communicates either the amount or approximate amount of his / her tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Tender for insurance) to any person other than the National Museums in the formal tender submission,
- will be liable to disqualification without prejudice to any civil or criminal liability that such conduct may attract.

## **14. Canvassing**

Any potential supplier who:

- 14.1. directly or indirectly canvasses any Trustee or Officer of the National Museums concerning the award of the Contract for the provision of Services or,
- 14.2. who directly or indirectly obtains or attempts to obtain information from any such Trustee or Officer concerning any other Tender or proposed Tender for the provision of Services,
- will be liable to disqualification.

## 15. Contract

- 15.1. The Tender will be awarded by 1 October 2019 and on receipt of the National Museums' written acceptance of the Tender, there will be a binding agreement between each of the National Museums and the successful Tenderer.

## 16. Submission

- 16.1. The Tender and all accompanying documentation, duly completed and signed, must be submitted by electronic mail, clearly marked **'Tender response – Internal Audit'** and sent to the following email: tenders@nmrn.org.uk and to arrive by no later than: **12 noon on Friday 30 August 2019**

**No tender will be considered if it reaches the address after that time and date.**

- 16.2. The National Museums will evaluate the Tenders against a number of qualitative and commercial criteria, as set out in section 19 below, to create a shortlist.
- 16.3. All shortlisted Tenders will be invited to a supplier presentation day at the National Museum of the Royal Navy, Portsmouth Historic Dockyard on 17 September 2019.
- 16.4. Following the supplier presentation day, the National Museums will evaluate the shortlisted Tenders again, as set out in section 19 below.
- 16.5. The National Museums do not bind themselves to accept the lowest or any Tender and will not be liable for any costs incurred by the potential supplier in preparation of their Tender.
- 16.6. Your Tender is to remain open for acceptance for 90 calendar days from the date of submission. No qualifications are to be made to your Tender. Any tender queries are to be raised before Tender submission.

## 17. Certification of Tender Submission

- 17.1. Tender submissions should be signed by the following:
- i. where the Supplier is an individual, by the individual.
  - ii. where the Supplier is a partnership, by **two** authorised partners.
  - iii. where the Supplier is a Company by **two** directors of the Company or by one director and the secretary of the Company.

## 18. The Tender

18.1. Tenders must clearly state the following:

### 18.2. Company / Partnership / Consortia

- i. the name of the company or partnership
- ii. legal status
- iii. company registration number (if applicable)
- iv. VAT registration number (if applicable)
- v. company address
- vi. name and contact details of main contact for tender
- vii. the names and addresses of the partners where the Supplier is a partnership, or the names and addresses of the directors and secretary of the company.
- viii. the names and addresses of the members of the company and their shareholdings where the Supplier is a company other than a public limited company.
- ix. the names and addresses of the Supplier's bankers.
- x. the names and addresses of **two** relevant trade references.
- xi. it is recognised that Suppliers may wish to deliver part of the supply through use of subcontractors, or through teaming agreements with partners. Where Suppliers are using other parties in the supply, the words 'third party supply' must be inserted together with a description of the provider and contractual relationship.

### 18.3. Statements

- xii. that the Supplier has not engaged in any collusive tendering as detailed at paragraph 13 above.
- xiii. that the Supplier has not canvassed any Trustee or Officer of the National Museums as detailed at paragraph 14 above.
- xiv. that the Supplier agrees to maintain client confidentiality throughout the period of the contract.

### 18.4. Method Statements

- xv. detailing how the Supplier proposes to meet the requirements set out in the section 8 "Supporting the National Museums" of this ITT.
- xvi. detailing how the Supplier proposes to meet the requirements set out in the section 9 "Service Specification" of this ITT.

### 18.5. Other relevant details

- xvii. the Supplier's experience of delivering an internal audit service to museums, charities and Non Departmental Public Bodies.

- xviii. the details and experience of the Supplier's relevant contract lead who will effectively act as the Chief Internal Auditor for the duration of the contract.
- xix. the skills mix to be used to deliver the contract, including staff competence, relevant experience and qualifications.
- xx. the availability of the Supplier's key staff during the contract period.
- xxi. details of the Supplier's limit to liability.

**NB where Suppliers decline to tender for services and/or decline to provide information for any of the statements, the words 'not applicable' or 'not provided' must be inserted as appropriate.**

## 19. Tender evaluation

19.1. **Stage one:** Tender responses will be checked to ensure that they have been completed correctly and all necessary information has been provided. Tender responses correctly completed with all relevant information will proceed to **Stage two**. Any tender responses not fully and correctly completed in accordance with the requirements of this ITT and/or containing omissions will be rejected at this point. Where a tender response is rejected at this point it will automatically be disqualified and will not be further evaluated.

19.2. **Stage two:** Detailed tenders responses to the requirements set out in this ITT will be assessed to determine the most economically advantageous tender using the following criteria and weightings:

Evaluation	Criteria	Weighting
Qualitative	Quality of method and approach	60%
Commercial	Commercial/ Value for money	40%

The **Qualitative** assessment will be made by reviewing the method statements against the requirements of this ITT. Any tender responses not meeting mandatory requirements will be rejected in full at this point and will not be assessed or scored further.

Tender responses not rejected will be scored by an evaluation panel appointed by the National Museums for all criteria other than Commercial using the following scoring model:

Score	Acceptability	Description
0	Unacceptable	Information is omitted/ no details provided
1	Poor	Evaluator is not confident that the tenderer understands the contract requirements and/or will be able to satisfactorily meet the criterion requirements because of one or all of the following: <ul style="list-style-type: none"> <li>The response indicates a significant lack of understanding</li> </ul>

Score	Acceptability	Description
		<ul style="list-style-type: none"> <li>The response fails to meet the requirement</li> </ul>
3	Fair	<p>The Evaluator has some reservations that the applicant understands the contract requirements and/or will be able to satisfactorily meet the criterion requirements because of one or all of the following:</p> <ul style="list-style-type: none"> <li>There is at least one significant issue needing considerable attention</li> <li>There is insufficient evidence to demonstrate competence or understanding</li> <li>The response is light and unconvincing</li> </ul>
5	Satisfactory	<p>The Evaluator is reasonably confident that the applicant understands the contract requirements and/or will be able to satisfactorily complete the contract requirements covered by this criterion to a reasonable standard. This response shows:</p> <ul style="list-style-type: none"> <li>Basic understanding of the requirements</li> <li>Sufficient competence demonstrated through relevant experience</li> <li>Some minor areas of concern that require attention</li> </ul>
7	Good	<p>The Evaluator is confident that the applicant understands the contract requirements and/or will be able to satisfactorily complete the contract requirements covered by this criterion to a high standard. The response therefore shows:</p> <ul style="list-style-type: none"> <li>Good understanding of the requirements</li> <li>Sufficient competence demonstrated through relevant experience</li> <li>Some insight demonstrated into the relevant issues</li> </ul>
9	Excellent	<p>The Evaluator is completely confident that the applicant understands the contract requirements covered by this criterion and or will be able to satisfactorily complete the contract requirements covered by this criterion to a very high standard. The response therefore shows:</p> <ul style="list-style-type: none"> <li>Very good understanding of the requirements</li> <li>Considerable competence demonstrated through relevant experience</li> <li>Considerable insight into the relevant issues</li> <li>The response is also likely to propose additional value in several respects above that expected</li> </ul>

The **Commercial** evaluation will be based on your “Overall Price” as calculated in accordance with requirements of Appendix 2 (Pricing Approach) and evaluated by the evaluation panel. Prices must not be subject to any pricing assumptions, qualifications or indexation not explicitly detailed. The National Museums may reject any tender response where the Overall Price for the Services is considered to be abnormally low following the relevant processes set out under EU procurement rules. A maximum offer score will be awarded to the tender response offering the lowest “Overall Price”.

19.3. **Stage three:** Following the desktop exercise, the National Museums reserve the right to interview selected candidates only. Interviews will be used to clarify and validate information received in the tender submission and scores may be adjusted accordingly. Interviews will not be scored in their own right. Interviews will take place on **17 September 2019**.

19.4. **The winning tender response** – shall be the tender response scoring the highest percentage score out of 100 when applying the above evaluation methodology.

## 20. Instructions to Suppliers

20.1. Please make reference to your guidance materials, service level agreements and standard documentation where applicable in your answers to this ITT. Please supply relevant documentation with your submission. You are asked to answer questions fully and where indicated in the format required. This is to allow easy comparison between the responses of different Suppliers in making the assessment.

20.2. Any tender not conforming to this requirement is likely to be disqualified.

## 21. Tender Pricing

21.1. The Tender should include the price in Pounds Sterling (GBP) of providing the Service(s) including all costs, fees and other charges, exclusive of VAT.

Tenders should be priced at a fixed sum for each year of the Contract period. The price should identify the fixed daily rates and skills mix for providing the Services.

Tenders should also provide the price for any additional services or ad hoc work.

The fixed sum for subsequent years for the Contract period may be adjusted by negotiation with the National Museums to take into consideration any changes in the workload volumes.

21.2. Details on how variations in workload volumes will be responded to should also be included.

## Annex 1 – Supplier Response

### Part 1: Checklist

Below is a checklist of the required content of the tender response to this ITT:

Ref	Content	Ref	Detail	✓
1	<b>Company details</b>	1.1	Name of Company	
		1.2	Legal status (e.g. limited company, partnership, etc.)	
		1.3	Company registration number (if applicable)	
		1.4	Office Address	
		1.5	Name and Contact Details of main contact for tender	
		1.6	the names and addresses of the partners where the Supplier is a partnership, or the names and addresses of the directors and secretary of the company.	
		1.7	the names and addresses of the members of the company and their shareholdings where the Supplier is a company other than a public limited company.	
		1.8	the names and addresses of the Supplier's bankers.	
		1.9	the names and addresses of two relevant trade references.	
		1.10	it is recognised that Suppliers may wish to deliver part of the supply through use of subcontractors, or through teaming agreements with partners. Where Suppliers are using other parties in the supply, the words 'third party supply' must be inserted together with a description of the provider and contractual relationship	
		1.11	evidence of insurances as set out in paragraph 4.4 of the ITT	
2	<b>Statements</b>	2.1	that the Supplier has not engaged in any collusive tendering as detailed at paragraph 13 above.	

		2.2	that the Supplier has not canvassed any Trustee or Officer of the National Museums as detailed at paragraph 14 above.	
		2.3	that the Supplier agrees to maintain client confidentiality throughout the period of the contract.	
3	Method Statements	3.1	detailing how the Supplier proposes to meet the requirements set out in the section 8 “Supporting the National Museums” of this ITT.	
		3.2	detailing how the Supplier proposes to meet the requirements set out in the section 9 “Service Specification” of this ITT	
4	Other	4.1	the Supplier’s experience of delivering an internal audit service to museums, charities and Non Departmental Public Bodies.	
		4.2	the details and experience of the Supplier’s relevant contract lead who will effectively act as the Chief Internal Auditor for the duration of the contract.	
		4.3	the skills mix to be used to deliver the contract, including staff competence, relevant experience and qualifications.	
		4.4	the availability of the Supplier’s key staff during the contract period.	
		4.5	details of the Supplier’s limit to liability.	
5	Costs	5.1	A breakdown of costs for the services as specified in paragraph 21	
		5.2	the fixed daily rates and skills mix for providing the Services	
		5.3	the fixed daily rates and skills mix for providing any additional services or ad hoc work	
		5.4	how variations in workload volumes will be responded to	
			<b>NB where Suppliers decline to tender for services and/or decline to provide information for any of the statements, the words ‘not applicable’ or ‘not provided’ must be clearly stated against the relevant requirement(s).</b>	

## Annex 2 – Tender Conditions & Contractual Requirements

### 1. Contracting requirements

- 1.1 The contracting authorities are: the National Museum of the Royal Navy; the RAF Museum; the National Army Museum (or any National Museum subsidiary companies and other organisations that control or are controlled by the National Museums from time to time). Each contracting authority will enter into a separate contract with the supplier.
- 1.2 The National Museums' contracting and commercial approach in respect of the required goods and/or services is set out at Annex 3 (Terms and Conditions of contract) ("**Contract**"). By submitting a tender response, you are agreeing to be bound by the terms of this ITT and the Contract without further negotiation or amendment.
- 1.3 The Contract awarded will be for a duration as quantified by the tenderer during the tendering process with an option for an extension if the need arises and on permission by the National Museums.
- 1.4 In the event that you have any concerns or queries in relation to the Contract, you should submit a clarification request in accordance with the provisions of this ITT by the Clarification Deadline (as defined in the Timescales section of this ITT). Following such clarification requests, the National Museums may issue a clarification change to the Contract that will apply to all potential Suppliers submitting a tender response.
- 1.5 The National Museums are under no obligation to consider any clarifications / amendments to the Contract proposed following the Clarification Deadline, but before the Tender Response Deadline (as defined in the Timescales section of this ITT). Any proposed amendments that are received from a potential Supplier as part of its tender response shall entitle the National Museums to reject that tender response and to disqualify that potential Supplier from this Procurement Process.

### 2. Policy Requirements

- 2.1 By submitting a tender response in connection with this Procurement Process, potential Suppliers confirm that they will, and that they shall ensure that any consortium members and/or subcontractors will, comply with all applicable laws, codes of practice, statutory guidance and applicable National Museums policies relevant to the goods and/or services being supplied.
- 2.2 The Copyright of any information and/or data generated by the awarded Supplier as part of the works as set out in this ITT shall be considered as under the ownership of the National Museums.

### 3. General Tender Conditions ("**Tender Conditions**")

- 3.1 Application of these Tender Conditions – In participating in this Procurement Process and/or by submitting a tender response it will be implied that you accept and will be bound by all the provisions of this ITT and its Annexes. Accordingly, tender responses should be on the basis of and strictly in accordance with the requirements of this ITT.
- 3.2 Third party verifications – Your tender response is submitted on the basis that you consent to the National Museums carrying out all necessary actions to verify the information that you have provided, and the

analysis of your tender response being undertaken by one or more third parties commissioned by the National Museums for such purposes.

- 3.3 Information provided to potential Suppliers – Information that is supplied to potential Suppliers as part of this Procurement Process is supplied in good faith. The information contained in the ITT and the supporting documents and in any related written or oral communication is believed to be correct at the time of issue but the National Museums will not accept any liability for its accuracy, adequacy or completeness and no warranty is given as such. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the National Museums.
- 3.4 Potential Suppliers to make their own enquires – You are responsible for analysing and reviewing all information provided to you as part of this Procurement Process and for forming your own opinions and seeking advice as you consider appropriate. You should notify the National Museums promptly of any perceived ambiguity, inconsistency or omission in this ITT and/or any in of its associated documents and/or in any information provided to you as part of this Procurement Process.
- 3.5 Amendments to the ITT – At any time prior to the Tender Response Deadline, the National Museums may amend the ITT. Any such amendment shall be issued to all potential Suppliers, and if appropriate to ensure potential Suppliers have reasonable time in which to take such amendment into account, the Tender Response Deadline shall, at the discretion of the National Museums, be extended. Your tender response must comply with any amendment made by the National Museum in accordance with this paragraph 3.5 or it may be rejected.
- 3.6 Compliance of tender response submission – Any goods and/or services offered should be on the basis of and strictly in accordance with the ITT (including, without limitation, any specification of the National Museums' requirements, these Tender Conditions and the Contract) and all other documents and any clarifications or updates issued by the National Museums as part of this Procurement Process.
- 3.7 Format of tender response submission – Tender responses must comprise the relevant documents specified by the National Museums completed in all areas and in the format as detailed by the National Museums in Annex 1 (Supplier Response). Any documents requested by the National Museums must be completed in full. It is, therefore, important that you read the ITT carefully before completing and submitting your tender response.
- 3.8 Modifications to tender response documents once submitted – You may modify your tender response prior to the Tender Response Deadline by giving written notice to the National Museums. Any modification should be clear and submitted as a complete new tender response in accordance with Annex 1 (Supplier Response) and these Tender Conditions.
- 3.9 Rejection of tender responses or other documents – A tender response or any other document requested by the National Museums may be rejected which:
- contains gaps, omissions, misrepresentations, errors, uncompleted sections, or changes to the format of the tender documentation provided;
  - contains hand written amendments which have not been initialled by the authorised signatory;

- does not reflect and confirm full and unconditional compliance with all of the documents issued by the National Museums forming part of the ITT;
- contains any caveats or any other statements or assumptions qualifying the tender response that are not capable of evaluation in accordance with the evaluation model or requiring changes to any documents issued by the National Museums in any way;
- is not submitted in a manner consistent with the provisions set out in this ITT;
- contains information which is inconsistent with answers already given in the pre-qualification questionnaire completed as part of this Procurement Process or;
- is received after the Tender Response Deadline.

3.10 Disqualification – If you breach these Tender Conditions, if there are any errors, omissions or material adverse changes relating to any information supplied by you at any stage in this Procurement Process, if any other circumstances set out in this ITT, and/or in any supporting documents, entitling the National Museums to reject a tender response apply and/or if you or your appointed advisers attempt:

- to inappropriately influence this Procurement Process;
- to fix or set the price for goods or services;
- to enter into an arrangement with any other party that such party shall refrain from submitting a tender response;
- to enter into any arrangement with any other party (other than another party that forms part of your consortium bid or is your proposed sub-contractor) as to the prices submitted;
- to collude in any other way;
- to engage in direct or indirect bribery or canvassing by you or your appointed advisers in relation to this Procurement Process; or
- to obtain information from any of the employees, agents or advisors of the National Museum concerning this Procurement Process (other than as set out in these Tender Conditions) or from another potential Supplier or another tender response,

the National Museums shall be entitled to reject your tender response in full and to disqualify you from this Procurement Process. Subject to the “Liability” Tender Condition below, by participating in this Procurement Process you accept that the National Museums shall have no liability to a disqualified potential Supplier in these circumstances.

3.11 Tender costs – You are responsible for obtaining all information necessary for preparation of your tender response and for all costs and expenses incurred in preparation of the tender response. Subject to the “Liability” Tender Condition below, you accept by your participation in this procurement, including without limitation the submission of a tender response that you will not be entitled to claim from the National

Museums any costs, expenses or liabilities that you may incur in tendering for this procurement irrespective of whether or not your tender response is successful.

- 3.12 Rights to cancel or vary this Procurement Process - By issuing this ITT, entering into clarification communications with potential Suppliers or by having any other form of communication with potential Suppliers, the National Museum is not bound in any way to enter into any contractual or other arrangement with you or any other potential Supplier. It is intended that the remainder of this Procurement Process will take place in accordance with the provisions of this ITT but the National Museums reserve the right to terminate, suspend, amend or vary (to include, without limitation, in relation to any timescales or deadlines) this Procurement Process by notice to all potential Supplier in writing. Subject to the "Liability" Tender Condition below, the National Museums will have no liability for any losses, costs or expenses caused to you as a result of such termination, suspension, amendment or variation.
- 3.13 Consortium Members and sub-contractors – It is your responsibility to ensure that any staff, consortium members, sub-contractors and advisers abide by these Tender Conditions and the requirements of this ITT.
- 3.14 Liability – Nothing in these Tender Conditions is intended to exclude or limit the liability of the National Museums in relation to fraud or in other circumstances where the National Museums' liability may not be limited under any applicable law.

#### **4. Mandatory Requirements / Constraints**

- 4.1 As part of your tender response, you must confirm that you meet the mandatory requirements / constraints, if any, as set out in the National Museums' specification forming part of this ITT. A failure to comply with one or more mandatory requirements or constraints shall entitle the National Museums to reject a tender response in full.

#### **5 Confidentiality and Information Governance**

- 5.1 All information supplied to you by the National Museums, including this ITT and all other documents relating to this Procurement Process, either in writing or orally, must be treated in confidence and not disclosed to any third party (save to your professional advisers, consortium members and/or sub-contractors strictly for the purposes only of helping you to participate in this Procurement Process and/or prepare your tender response) unless the information is already in the public domain or is required to be disclosed under any applicable laws.
- 5.2 You shall not disclose, copy or reproduce any of the information supplied to you as part of this Procurement Process other than for the purposes of preparing and submitting a tender response. There must be no publicity by you regarding the Procurement Process or the future award of any contract unless the National Museums has given express written consent to the relevant communication.
- 5.3 This ITT and its accompanying documents shall remain the property of the National Museums and must be returned on demand.
- 5.4 The National Museums reserves the right to disclose all documents relating to this Procurement Process, including without limitation your tender response, to any employee, third party agent, adviser or other third party involved in the procurement in support of, and/or in collaboration with, the National Museums. The

National Museums further reserve the right to publish the Contract once awarded and/or disclose information in connection with Supplier performance under the Contract in accordance with any public sector transparency policies (as referred to below). By participating in this Procurement Process, you agree to such disclosure and/or publication by the National Museums in accordance with such rights reserved by it under this paragraph.

- 5.5 The use of blanket protective markings of whole documents such as “commercial in confidence” will not be sufficient. By participating in this Procurement Process you agree that the National Museums should not and will not be bound by any such markings.
- 5.6 In addition, marking any material as “confidential” or “commercially sensitive” or equivalent should not be taken to mean that the National Museums accept any duty of confidentiality by virtue of such marking. You accept that the decision as to which information will be disclosed is reserved to the National Museums, notwithstanding any consultation with you or any designation of information as confidential or commercially sensitive or equivalent you may have made. You agree, by participating further in this Procurement Process and/or submitting your tender response that all information is provided to the National Museums on the basis that it may be used by the National Museums in accordance with the provisions of this ITT.
- 5.7 Tender responses are also submitted on the condition that the appointed Supplier will only process personal data (as may be defined under any relevant data protection laws) that it gains access to in performance of this Contract in accordance with the National Museums’ instructions and will not use such personal data for any other purpose. The contracted Supplier will undertake to process any personal data on the National Museums’ behalf in accordance with the relevant provisions of any relevant data protection laws and to ensure all consents required under such laws are obtained.

## **6. Tender Validity**

- 6.1 Your tender response must remain open for acceptance by the National Museums for a period of ninety days from the Tender Response Deadline. A tender response not valid for this period may be rejected by the National Museums.

## **7. Payment and Invoicing**

- 7.1 The National Museums will pay correctly addressed and undisputed invoices within 30 days in accordance with the requirements of the Contract. Suppliers to the National Museums must ensure comparable payment provisions apply to the payment of their sub-contractors and the sub-contractors of their sub-contractors. General requirements for an invoice for the National Museums include:
- A description of the good/services supplied is included.
  - The National Museums reference number/Purchase Order number is included.
  - The address must reflect that supplied on the National Museums Purchase Order.

**Annex 3 – Example Terms and Conditions of Contract**

**THIS AGREEMENT** is made on [ ] 2019

**BETWEEN**

- (1) **The National Museum of the Royal Navy** a company limited by guarantee and incorporated under number 6699696 with registered charity number 1126283 whose registered office is at H M Naval Base, PP66, Portsmouth, Hampshire PO1 3NH ("the Supplier"); and
- (2) [ ] a company registered in England and Wales with number [ ] whose registered office is at [ ] OR IF A PERSON [ ] of [ ] ("the Customer").

**BACKGROUND**

The Customer wishes to purchase and the Supplier wishes to supply certain services subject to the following terms and conditions.

**NOW IT IS AGREED** as follows:

- 1 **INTERPRETATION**
- 1.1 **Definitions**

In this Agreement the following words and expressions shall have the following meanings:

<b>Charges</b>	the Supplier's charges for the Services as set out in [specify] and any other sums due to the Supplier under this Agreement;
<b>Commencement Date</b>	[the date of this Agreement;]
<b>Confidential Information</b>	all information disclosed by or on behalf of a party (in whatever medium including in written, oral, visual or electronic form and whether before or after the date of this Agreement) including all business, financial, commercial, technical, operational, organisational, legal, management and marketing information;
<b>Deliverables</b>	any documents, products and materials to be developed and provided by the Supplier as part of or in connection with the Services, including any products of the Services;

**Intellectual Property**

all inventions, patents, utility models, designs (including rights relating to semi-conductor topographies), database rights, copyright and related rights, rights in get up and trade marks (in each case whether registered or unregistered), together with all rights to the grant of and applications for the same and including all similar or analogous rights and all other rights in the nature of intellectual and industrial property throughout the world and all future rights of such nature; and

**Services**

the services described within the Tender Proposal, including the development and provision of any Deliverables.

**1.2 Construction**

1.2.1 In this Agreement, unless otherwise specified or the context otherwise requires:

- (a) words importing the singular only shall include the plural and vice versa;
- (b) words importing the whole shall be treated as including a reference to any part;
- (c) reference to this Agreement or to any other document is a reference to this Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of this Agreement;
- (d) reference to any legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which most closely approximates in that jurisdiction to the English legal term; and
- (e) references to termination of this Agreement shall include its expiry.

1.2.2 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 preceding that term.

1.2.3 Headings used in this Agreement are for reference only and shall not affect its construction or interpretation.

**1.3 Other references**

In this Agreement a reference to:

- 1.3.1 **this Agreement** means this agreement including all Schedules, Annexures, Exhibits and other attachments and recitals to this agreement;
- 1.3.2 **business day** means a day, other than a Saturday or a Sunday, on which banks are open for business in London;
- 1.3.3 **parties** means the Customer and the Supplier collectively, and “party” means either of them and their permitted assignees;
- 1.3.4 **person** includes any individual, firm, company, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established);
- 1.3.5 **recorded delivery** means special or recorded delivery (or other “proof of delivery” or “proof of posting” service that Royal Mail may from time to time offer) and
- 1.3.6 **written** or **in writing** includes any non-transitory form of visible reproduction of words including email but not fax, email or, any form of messaging via social media or text message.

## 2 SERVICES

- 2.1 The Supplier shall provide and the Customer shall receive the Services on the terms set out in this Agreement.
- 2.2 The Supplier shall:
- 2.2.1 co-operate with the Customer in all matters relating to the Services;
- 2.2.2 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer’s premises. The Customer reserves the right to refuse the Supplier access to the Customer’s premises which is not necessary for the performance of the Services;
- 2.2.3 notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
- 2.2.4 obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:
- (a) the Services and their use by the Customer (including use of the Customer’s equipment and software in conjunction with the Supplier’s equipment and software); and
- (b) use by the Supplier of the Deliverables and all documents, information and materials provided by the Supplier [or its agents, subcontractors, consultants or employees], including [computer programs, data, reports and specifications].

- 2.3 The Supplier may not charge for the time it spends assessing or responding to a request from the Customer for a change to the Services except with the prior written agreement of the Customer.
- 2.4 The Supplier acknowledges that:
- 2.4.1 it may be providing the Services for the benefit of any company in relation to which the Customer is a "group undertaking" as defined in section 1161 of the Companies Act 2006 or for the benefit of any unincorporated charity controlled by the Customer or any such company; and
- 2.4.2 any such company is a third party beneficiary which may enforce the terms of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999.

### **3 CUSTOMER'S OBLIGATIONS**

- 3.1 The Customer shall:
- 3.1.1 use reasonable endeavours to co-operate with the Supplier in matters relating to the Services;
- 3.1.2 provide such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Customer in writing in advance, for the purposes of the Services;
- 3.1.3 provide such information as the Supplier may reasonably request and the Customer considers reasonably necessary, in order for the Customer to carry out the Services in a timely manner; and
- 3.1.4 inform the Supplier of all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises.
- 3.2 Actual or potential non-compliance by the Customer with any of its obligations in this clause and elsewhere shall only relieve the Supplier from performance under this Agreement:
- 3.2.1 to the extent that it restricts or precludes performance of the Services by the Supplier, and
- 3.2.2 if the Supplier has notified details to the Customer in writing promptly after the actual or potential non-compliance has come to its attention.

### **4 PERFORMANCE OF THE SERVICES**

- 4.1 The Supplier shall:
- 4.1.1 perform the Services with reasonable skill and care and in accordance with generally recognised commercial practices and standards in the industry for similar services;
- 4.1.2 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;

- 4.1.3 ensure that the Services conform in all respects and at all times with any specification or description for the Services agreed by the parties and comply with all applicable legislation;
  - 4.1.4 ensure that the Deliverables are of satisfactory quality; and
  - 4.1.5 meet any agreed performance dates and time for performance by the Supplier shall be of the essence of this Agreement.
- 4.2 If the Supplier is in material breach of clause 4.1, the Customer may (without prejudice to any other rights it may have, including termination for material or repeated breach under clauses 12.1.1 and 12.1.2):
  - 4.2.1 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
  - 4.2.2 purchase substitute services from elsewhere;
  - 4.2.3 hold the Supplier accountable for any loss and additional costs incurred; and
  - 4.2.4 have all sums previously paid by the Customer to the Supplier under this Agreement refunded by the Supplier less a reasonable charge for provision of the Services up to the date of the breach.
- 4.3 The Customer's rights under this Agreement are in addition to the statutory terms implied in favour of the Customer by the Supply of Goods and Services Act 1982 and any other statute.
- 4.4 During the term of this Agreement and for a period of one year afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies:
  - 4.4.1 public liability insurance with a limit of at least £5 million per claim; and
  - 4.4.2 professional indemnity insurance with a limit of at least £2 million for claims arising from a single event or series of related events in a single calendar year; and
  - 4.4.3 employers liability insurance with a limit of at least £10 million per claim.
- 4.5 The provisions of this clause 4 shall extend to any substituted or remedial services provided by the Supplier.

## **5 CHARGES AND PAYMENT**

- 5.1 In consideration of the provision of the Services, the Customer shall pay to the Supplier the Charges. Unless specified, the Customer shall be under no obligation to reimburse to the Supplier costs and expenses incurred by the Supplier in the performance of the Services.
- 5.2 Where Services are provided on a time and materials basis:
  - 5.2.1 the Supplier's standard daily fee rates for each person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on weekdays (excluding public holidays);

- 5.2.2 all materials shall be supplied at cost unless specified;
  - 5.2.3 the Supplier shall not be entitled to charge on a pro-rata basis for part-days worked by the Supplier's personnel unless it has the Customer's prior written consent to do so;
  - 5.2.4 the Supplier shall ensure that the Supplier's personnel complete time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice;
  - 5.2.5 each invoice shall set out the time spent by each of the Supplier's personnel and be accompanied by timesheets; and
  - 5.2.6 the Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in such form as the Customer shall approve. The Supplier shall allow the Customer and its agents to inspect and take copies of such records at all reasonable times on request.
- 5.3 All Charges are expressed exclusive of VAT. The Customer shall pay to the Supplier, in addition to the Charges, the amount of VAT (if any) which is properly chargeable by the Supplier to the Customer on or in respect of the Charges.
- 5.4 Unless otherwise specified, the Charges and any reimbursable costs and expenses shall be invoiced monthly in arrears. Invoices for agreed expenses shall be payable only if accompanied by a detailed breakdown of the expenses and relevant receipts.
- 5.5 Payment of invoices in relation to which there is no bona fide dispute shall be made in full within 30 days of the date of invoice. Payment of invoices in relation to which there is a bona fide dispute shall be made within 45 days of settlement of the dispute. The time for payment of the Charges shall not be of the essence of this Agreement.
- 5.6 If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

## 6 CONFIDENTIALITY

- 6.1 Each party shall use the Confidential Information of the other party disclosed to it (by whoever disclosed) only for the proper performance of its duties under the Agreement and shall not without the disclosing party's written consent disclose or permit the disclosure of the Confidential Information except in confidence for the proper performance of its duties under the Agreement to those of its employees, officers and professional advisers who need to have access to it.
- 6.2 The provisions of clause 6.1 shall not apply to Confidential Information that:
- 6.2.1 the receiving party can prove was known to the receiving party or in its possession before that information was acquired from, or from some person on behalf of, the disclosing party;

- 6.2.2 is in or enters the public domain through no wrongful default of the receiving party or any person on its behalf, provided that this clause 6.2.2 shall only apply from the date that the relevant Confidential Information enters the public domain;
  - 6.2.3 the receiving party receives from a third party without similar 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
  - 6.2.4 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, to the extent of the required disclosure.
- 6.3 If the receiving party has reasonable grounds to believe that the disclosing party is involved in activity that constitutes an offence under the Bribery Act 2010, it may disclose relevant Confidential Information to the Serious Fraud Office (or other relevant government body) without informing the disclosing party of such disclosure.
- 6.4 Within three (3) days of receipt of a request to do so made at any time and in any event if the Agreement is terminated, the receiving party shall promptly return or destroy (at the option of the disclosing party) all Confidential Information of the disclosing party.

## **7 INTELLECTUAL PROPERTY**

- 7.1 As between the Supplier and the Customer, all Intellectual Property created in the course of the Services (including in the Deliverables) which subsists now or at any time in the future shall be the exclusive property of the Customer. To the extent that any Intellectual Property created in the course of the Services vests in the Supplier, the Supplier assigns (by way of assignment of present and future rights) without payment all such Intellectual Property to the Customer with full title guarantee. If the Supplier is unable to assign such Intellectual Property (because the laws in another country differ from English law and do not permit such assignment), the Supplier shall immediately on request execute all documents that may be necessary to effect the transaction that most closely resembles the commercial intent of an assignment and is permitted in the relevant territory. Pending the above assignments and remaining formalities relating to such assignments, the Supplier shall hold all such Intellectual Property on trust for the Customer.

## **8 INDEMNITY**

- 8.1 The Supplier shall indemnify and hold the Customer harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Customer as a result of or in connection with:
- 8.1.1 any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property or other rights relating to or arising out of the use of anything created in the course of providing Services; or
  - 8.1.2 any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer's employees or agents or by any customer or third

party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services as a consequence of a breach or negligent performance or failure or delay in performance of this Agreement by the Supplier.

## **9 RISK AND TITLE IN THE DELIVERABLES AND OTHER MATERIALS**

- 9.1 Title to and risk of damage to or loss of the Deliverables shall pass to the Customer on delivery.
- 9.2 All documents, equipment, drawings, specifications and all other materials and data supplied by the Customer to the Supplier shall, at all times, be and remain as between the Customer and the Supplier the exclusive property of the Customer. They shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Customer. They shall not be disposed of or used other than in accordance with the Customer's written instructions or authorisation.

## **10 ANTI-BRIBERY AND ANTI-CORRUPTION**

- 10.1 The Supplier shall:
- 10.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
  - 10.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 10.1.3 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
  - 10.1.4 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Seller in connection with the performance of this Agreement.
- 10.2 Breach of this clause 10 shall be deemed a material breach.
- 10.3 For the purpose of this clause 10 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 10 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

## **11 DATA PROTECTION**

### **11.1 Properly notified**

Each party warrants that it has made all relevant notifications in accordance with its obligations under the Data Protection Act 1998 to the extent required for the processing of personal data (as defined under that Act) in the performance of its obligations and exercise of its rights under this Agreement.

### **11.2 Compliance**

The parties agree to comply with the relevant provisions of the Data Protection Act 1998 and any directions issued by the Information Commissioner in its processing of such personal data.

## 12 TERMINATION

12.1 This Agreement may be terminated:

- 12.1.1 immediately by either party on written notice, if the other is in material breach of an obligation under this Agreement and in the case of any such breach capable of remedy has failed to remedy the breach within a period of 30 days after receipt of written notice to do so;
- 12.1.2 immediately by either party on written notice, if the other party repeatedly breaches any of the terms of this Agreement in such manner as reasonably demonstrates conduct which is inconsistent with an intention or ability to give effect to the terms of this Agreement.
- 12.1.3 immediately by either party on written notice:
  - (a) if the other party is dissolved or struck off the register of companies maintained by Companies House or it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business or it is removed from the Register of Companies or ceases to exist (whether or not capable of re-instatement or reconstruction);
  - (b) if a meeting is convened, a petition is filed, a notice is given, a resolution is passed or an order is made for or in connection with the winding up of the other party except for the purpose of a solvent reconstruction, reorganisation, merger or consolidation;
  - (c) if a person becomes entitled to appoint or has appointed a receiver (including fixed charge or court appointed), administrative receiver, liquidator, administrator, manager, insolvency practitioner or similar officer over the whole or a substantial part of the undertaking, property or assets of the other party;
  - (d) if the other party stops or suspends, or threatens to stop or suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (e) if a statutory demand is presented against the other party (which is not the subject of a bona fide dispute) and remains unsatisfied for more than 21 days;
  - (f) if the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or enters into (or proposes to enter into) a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise or a moratorium is agreed imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the other party;
  - (g) if notice of intention to appoint an administrator is given by any person (including the other party's directors, the other party or any qualifying floating charge holder as

defined in the Insolvency Act 1986), an application is made to court or an order is made for the appointment of an administrator or if an administrator is appointed or any step is taken by any person with a view to placing the other party into administration as defined by the Insolvency Act 1986; or

- (h) if any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed in clauses (a) to (g) in relation to the other party.

12.2 For the purposes of this clause 12:

12.2.1 a breach shall be considered capable of remedy:

- (a) if the party in breach can comply with the provision in question in all respects other than as to the time of performance; and
- (b) if time of performance is not of the essence.

12.3 Termination of this Agreement for any reason, whether under this clause 12 or not, shall be without prejudice to the accrued rights and liabilities of the parties on the date of termination.

12.4 Upon the termination of this Agreement for any reason:

12.4.1 the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all materials of the Customer referred to in clause 9.2; and

12.4.2 the Supplier shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it. In the absence of agreement, the Customer shall pay for any such assistance at the Supplier's standard time and material rates.

## 13 GENERAL

### 13.1 Subcontracting and Assignment

13.1.1 The Supplier may not without the prior written consent of the Customer sub-contract to any other person the performance of any of the obligations undertaken by it.

13.1.2 The Customer may assign, transfer (in whole or in part), charge, declare a trust over or deal in any manner with this Agreement or the benefit or burden of or the rights under this Agreement.

13.1.3 The Supplier may not without the prior written consent of the Customer assign, transfer (in whole or in part), charge, declare a trust over or deal in any manner with this Agreement or the benefit or burden of or the rights under this Agreement.

### 13.2 **Force Majeure**

- 13.2.1 Neither party shall be liable to the other party for any delay or non-performance of its obligations under this Agreement to the extent that its performance is interrupted or prevented by any act or omission beyond its reasonable control.
- 13.2.2 Such delay or non-performance shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented provided that if such delay or failure persists for sixty (60) days or more, the party not affected may, at its option and if in its opinion it is reasonable for it to do so, terminate this Agreement by giving fourteen (14) days written notice of such termination to the other party.

### 13.3 **Amendments**

No amendment of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties.

### 13.4 **Waivers and Remedies**

- 13.4.1 Except as otherwise stated in this Agreement, the rights and remedies of each party under this Agreement:
  - (a) are in addition to and not exclusive of any other rights or remedies under this Agreement or the general law; and
  - (b) may be waived only in writing and specifically.
- 13.4.2 Delay in exercising or non-exercise of any right under this Agreement is not a waiver of that or any other right.
- 13.4.3 Partial exercise of any right under this Agreement shall not preclude any further or other exercise of that right or any other right under this Agreement.
- 13.4.4 Waiver of a breach of any term of this Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

### 13.5 **Severance**

- 13.5.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:
  - (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
  - (b) the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

### **13.6 Entire Agreement**

#### **13.6.1 This Agreement:**

- (a) constitutes the entire agreement between the parties with respect to the subject matter of this Agreement; and
- (b) supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the parties relating to such subject matter.

13.6.2 Each party acknowledges to the other that it has not been induced to enter into this Agreement by, nor has it relied upon, any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of the other party or any other person save for those contained in this Agreement. Accordingly, each of the parties acknowledges and agrees that the only remedy available to it in respect of the subject matter of this Agreement shall be for breach of contract under the terms of this Agreement and it shall have no right of action against any other party in respect of any such representation, promise, assurance, warranty or undertaking.

13.6.3 This clause shall not exclude any liability which either party would otherwise have to the other or any right which either of them may have to rescind this Agreement in respect of any statements made fraudulently by the other prior to the execution of this Agreement or any rights which either of them may have in respect of fraudulent concealment by the other.

13.6.4 In the event of a conflict between any of the terms of this Agreement, the conflict shall be resolved according to the following descending order of priority, (i) the clauses of this Agreement, then (ii) the Schedules.

### **13.7 Survival Of Obligations**

Notwithstanding any provision of this Agreement to the contrary, the provisions of clauses 5, 6, 7, 8, 9, 10, 12.3, 12.4, and 13 and any other clauses which expressly or impliedly survive termination of this Agreement for any reason whatsoever shall continue in full force and effect after termination.

### **13.8 No Partnership/Agency**

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

### **13.9 Rights of Third parties**

Subject to clause 2.4, a person who is not a party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

### 13.10 Notices

13.10.1 All notices between the Parties with respect to the Agreement shall be in writing and signed by or on behalf of the Party giving it. Any notice shall be duly served (i) on delivery if delivered by hand, (ii) 48 hours after sending if sent by first class post or special or recorded delivery (or other "proof of delivery" or "proof of posting" service that Royal Mail may from time to time offer) or (iii) on sending if sent by fax or email (provided that a copy is also sent by post), provided that in each case the notice is sent to the address of the addressee given at the start of the Agreement or such other address as the addressee may from time to time have notified for the purpose of this condition.

13.10.2 Any notice or communication given under the Agreement shall not be validly served if sent by text messaging via mobile phone.

### 13.11 Governing Law

The 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.

### 13.12 Jurisdiction

In relation to any legal action or proceedings (a) arising out of or in connection with the Agreement or its implementation or effect or (b) relating to any non-contractual obligations arising out of or in connection with the Agreement, each of the Parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.

This Agreement has been entered into on the date stated at the beginning of it.

Signed for and on behalf of \_\_\_\_\_ )

**[The Supplier]:**

\_\_\_\_\_  
(Signature of director)

Director

\_\_\_\_\_  
(name of director)

Signed for and on behalf of )

**The National Museum of the Royal Navy:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(name)