

Private, Commercial & Confidential

DATED [1st August] 2009

(1) NATIONAL MUSEUMS LIVERPOOL

and

(2) [AN other]

SERVICES AGREEMENT

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Appended hereto as **Appendix "A"** is a document in two parts:

Output Specification – Volume 1

And

Output Specification – Volume 2

Being the:

Building Services Maintenance Specification and Performance Requirements for Heating Ventilation Cooling and Hot and Cold Water Services

And **Appendix "B"**

Being the terms of Payment

These two Appendices are incorporated into, and made a part of this Agreement

THIS AGREEMENT is made on [1st August] 2009

BETWEEN

(1) The Board of Trustees of the National Museums and Galleries on Merseyside (operating at the NATIONAL MUSEUMS LIVERPOOL) with executive offices at 127 Dale Street Liverpool L2 2JH (the "MUSEUM");

AND

(2) [Integral UK Limited] of [1290 Aztec West, Almondsbury, Bristol. BS32 4SG] (the "CONTRACTOR").

In consideration of the mutual covenants and undertakings set out below **THE PARTIES AGREE** as follows:

1. DEFINITIONS

1.1 In this Agreement unless the context otherwise requires:

"Additional Works" means any works carried out by the CONTRACTOR at the request or with the approval of the MUSEUM in addition to the Services;

"Agreement" or **"Contract"** means this document, including its Appendices

"Asbestos" means any of the following

- (a) crocidolite
- (b) amosite
- (c) chrysotile

- (d) fibrous actinolite
- (e) fibrous anthophyllite
- (f) fibrous tremolite

or any mixture, substance or material containing any of those minerals.

"As Fitted Drawings" means up to date drawings of the Site, Plant and Equipment and Systems, which are held by the MUSEUM;

"Asset Maintenance Schedule" means the examples of work schedules or Method Statements in respect of Planned Preventative Maintenance of assets relevant to this Agreement as set out in Appendix A to this Agreement;

"Asset Register" means the schedule of the Plant and Equipment annexed hereto at Appendix A, as amended or updated in writing from time to time;

"Authorised Representative" means a person authorised by the MUSEUM to issue a Work Order on behalf of the MUSEUM or receive a Work Order on behalf of the CONTRACTOR and who shall be identified on a list agreed and updated from time to time by the MUSEUM's Representative and the CONTRACTOR's Representative;

"Change Request" is as defined in clause 6;

"Charges" means the Quarterly Service Charge together with any charges in respect of Additional Works, Emergency Works, Duly Authorised Instruction or Change Request;

"Commencement Date" means [1st August] 2009

"Confidential Information" means secret or confidential commercial, financial, marketing, technical or other information

know-how, trade secrets and other information in any form or medium whether disclosed orally or in writing before or after the date of this Agreement, together with any reproductions of such information in any form or medium or any part(s) of this information (and "**confidential**" means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available);

"Contract Director" means the CONTRACTOR's named director having ultimate responsibility for the relationship with the MUSEUM;

"Contract Term" means the period of years from the Commencement Date or such other period as may be agreed by the Parties in writing;

"Duly Authorised Instruction" means the method by which the MUSEUM authorises the supply of Services under this Agreement, other than Work Order, including, but not limited to, work schedule, work programme, work instruction, maintenance schedule, helpdesk instruction or letter of authority;

"Emergency Works" means Additional Works (as defined elsewhere) to the Services, carried out by the CONTRACTOR at the request of or with or in advance of the approval of the MUSEUM, supported by a Work Order or Duly Authorised Instruction in writing, being of such a nature that it requires immediate attention;

"Employees" means those persons employed by the MUSEUM or any subcontractor of the MUSEUM at the date of the Initial Relevant Transfer and whose employment transfers to the FM Contractor, or a Sub-Contractor under this Agreement;

"Force Majeure" means any event outside the reasonable control of either Party and not attributable to any act or failure to take

preventative action by the Party concerned, affecting its ability to perform any of its obligations (other than payment) under this Agreement including Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strikes, lock-outs or other industrial action (other than those of the CONTRACTOR's employees or those others for which the CONTRACTOR has responsibility), failure of supplies of electrical power or water;

"Intellectual Property Right" means any patent, copyright, design right, registered design, trade mark, service mark, know-how, utility model, unregistered design or, where relevant, any application for any such right, or other industrial or intellectual property right subsisting anywhere in the world but excluding any of the CONTRACTOR's operating procedures, processes and standards;

"MUSEUM's Representative" means a person appointed by the MUSEUM and authorised to determine matters relating to the Services on behalf of the MUSEUM;

"Notice" means written notice delivered as and when required in this Agreement and in conformity with the provisions of Clause 20.

"Party or Parties" means the MUSEUM or the CONTRACTOR or both as the context may require;

"Payment" means both the scope for and the process involved in making payment of the Charges in respect of the Services provided by the CONTRACTOR (and any sub-contractor for which it has responsibility) under this Agreement as set out in Appendix "B" of this Agreement;

"Personnel" means the employees officers, agents and sub-contractors of the CONTRACTOR or any persons engaged by the CONTRACTOR in the performance of this Agreement or any

employees of any sub-contractor of the CONTRACTOR who are to be engaged in providing the Services;

"Planned Maintenance" otherwise known as **Planned Preventative Maintenance (PPM)** means that work which is required in connection with the Services Statement and other relevant Appendices which is programmed to be undertaken by the CONTRACTOR;

"Plant and Equipment" means the mechanical and electrical installations, including public health, lifts and fire services, described and specified in the Asset Register;

"Project Works" means Additional Works (as defined elsewhere) to the Services, pursuant to a Work Order or other Duly Authorised Instruction in writing, such work being for a specific purpose and having an identifiable start, finish and outcome agreed, in advance, with the MUSEUM;

"Quarter" means one of the CONTRACTOR's usual quarter periods of three months ending on 31st March, 30th June, 30th September and 31st December in each Year during the term of this Agreement;

"Quarterly Service Charge" means the quarterly charges for the Services set out in Appendix "B", as may be adjusted from time to time in accordance with this Agreement;

"Reactive Maintenance" means that work which is required in line with the Services Statement which is not programmed but which is required to be undertaken by the CONTRACTOR (and/or any Sub-Contractor for which the CONTRACTOR has responsibility) as and when required by the MUSEUM;

"Relevant Third Party" means any Party who replaces the CONTRACTOR in the provision of all or any of the Services upon

termination or expiry in whole or in part of this Agreement

"Service Levels" means the standards of performance, as defined in the Key Performance Indicators ("KPIs"), to be met by the CONTRACTOR in providing the Services, details of which are set out in Appendix "A" as amended in writing from time to time;

"Services" means the services that the CONTRACTOR provides to the MUSEUM for the term of this contract as amended from time to time by agreement between the Parties and confirmed in a Work Order or other Duly Authorised Instruction in writing, or otherwise varied in accordance with the provisions of this Agreement;

"Services Statement" means the document set out in Schedule 1 specifying the Services required together with any additions or amendments agreed in writing from time to time during the term of this Agreement;

"Site" means the premises occupied by the MUSEUM at [as listed in Output Specification 1] and any other premises agreed between the MUSEUM and the CONTRACTOR in writing ;

"Sub-Contractor" means a sub-contractor appointed by the CONTRACTOR to perform specialist work;

"CONTRACTOR's Representative" means the representative appointed by the CONTRACTOR in accordance with clause 5.1;

"Systems" means all of the MUSEUM's systems in operation for the safe maintenance and operation of the Site as described in Schedule 1 - Services Statement;

"Work Order" means a request processed through the MUSEUM's purchase ordering system and issued by the MUSEUM to the CONTRACTOR in accordance with clause 3.2 requesting the CONTRACTOR to supply goods and/or services;

“Year” means a period of twelve months commencing on the Commencement Date and on each successive anniversary of the Commencement Date and ending on the day before each successive anniversary of the Commencement Date.

- 1.2 The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of this Agreement. Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.
- 1.3 References to any statute or statutory provision shall include (i) any subordinate legislation made under it; (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.4 References to a Clause, sub-Clause, Schedule, or Appendix are to a Clause, sub-Clause of or an Appendix to this Agreement as amended from time to time, and references to this Agreement include its Appendices which shall be incorporated into and form part of the Agreement and references in an Appendix to a paragraph or sub-paragraph are to a paragraph or sub-paragraph of that Appendix as amended from time to time.

2. DURATION & SPECIAL CARE

- 2.1 This Agreement shall come into force on the Commencement Date and (subject to the provisions for earlier termination in Clause 13 below) shall continue in force for three (3) years from the date thereof, at which time the Agreement may be extended by mutual agreement of the Parties upon the same

terms and conditions for a further two (2) years.

- 2.2 The CONTRACTOR understands and agrees that the Museum Site is the repository of many artefacts and exhibits of scientific, artistic, or historical importance, in consequence of which special care must be exercised at all times to ensure the safety and integrity of all conserved objects and their environment. The CONTRACTOR will procure that its employees and those of its sub-contractors will be properly supervised and trained to ensure that Museum exhibits are not damaged by their actions or negligence in any way.

3. PROVISION OF SERVICES

- 3.1 The MUSEUM engages the CONTRACTOR in relation to the provision of the Services and the CONTRACTOR hereby agrees to provide the Services to the MUSEUM in accordance with and subject to the terms and conditions of this Agreement and in accordance with the details set out in Appendix A incorporated into this Agreement commencing on the Commencement Date and continuing for the term of this Agreement in consideration of the Charges.
- 3.2 On receipt of a Work Order, or other form of Duly Authorised Instruction in writing from the MUSEUM's Representative the CONTRACTOR shall provide, or procure the provision of, the Services specified in the Work Order, or other form of Duly Authorised Instruction in writing, in accordance with any instructions set out in the Work Order or other form of Duly Authorised Instruction in writing.
- 3.3 The Contractor shall ensure that its employees (and its sub-contractors) are properly equipped with the necessary skills, tools, equipment, clothing, manuals and such other materials

as may be required for the proper execution of the Services.

3.4 Each Party shall use its reasonable endeavours to identify all consents necessary for the fulfilment of its obligations under this Agreement and each Party shall use its reasonable endeavours to obtain any such consent it requires.

3.5 In performing the Services, the CONTRACTOR shall operate as, and have the status of, an independent contractor and shall not operate or have the status of agent, employee or representative of the MUSEUM and the CONTRACTOR shall procure that its staff and those of its sub-Contractors shall not say or do anything that might lead others to think that they are acting as agents or employees of the MUSEUM.

3.6 The CONTRACTOR undertakes throughout the term of this Agreement:

(a) to provide the Services with reasonable skill, care and diligence and in good and workmanlike manner in accordance with the provisions of this Agreement;

(b) to comply with and to ensure that the Personnel comply with all relevant legislation (including the Data Protection Acts 1984 and 1998, the Health & Safety at Work etc. Act 1974 and the Management of Health and Safety at Work Regulations 1992), regulations, codes of practice, guidance notes and other requirements of any relevant government or governmental agency.

3.6 The MUSEUM shall advise the CONTRACTOR in writing of the name(s) of its Representative(s) who shall have authority to liaise with the CONTRACTOR's Representative in connection with the Services to be performed under this Agreement and the MUSEUM shall give instructions or directions to and shall

liaise exclusively with the CONTRACTOR's Representative or such other persons advised to it by the CONTRACTOR's Representative from time to time for that purpose under this Clause 3. Instructions or directions given by other members of the MUSEUM's staff should not be followed by the CONTRACTOR and shall not be valid or binding on the MUSEUM unless evidence in writing of delegated authority is provided.

3.7 The MUSEUM shall monitor the performance of the Services. If the CONTRACTOR fails to provide the Services in accordance with this Agreement and/or the Service Levels set out in Appendix A then, without prejudice to its other rights and remedies, the MUSEUM shall be entitled, upon the MUSEUM's Representative providing written Notice to the CONTRACTOR of such failure, to make such abatement from any sums due to the CONTRACTOR under this Agreement as may be stipulated in accordance with the Service Credits system (if any) which is set out in the Appendix A and or Appendix B as the case may be.

4. THE MUSEUM'S OBLIGATIONS

4.1 The MUSEUM undertakes during the term of this Agreement:

- (a) to supply the CONTRACTOR with such information, including forecasts, as the CONTRACTOR may reasonably require to enable the CONTRACTOR to fulfil its obligations under this Agreement;
- (b) to obtain all necessary consents and licences required for the use by the CONTRACTOR of any assets which the MUSEUM is obliged to supply or make available to the CONTRACTOR under this Agreement;

- (c) to provide reasonable access to the Site to enable the CONTRACTOR to provide the Services in accordance with the provisions of this Agreement;
- (d) to make available to the CONTRACTOR at no charge such facilities at the Site as the CONTRACTOR reasonably requires for use by the Personnel resident at the Site including those facilities described in the Service Level Agreement;
- (f) to keep the CONTRACTOR informed of all works being carried out at the Site that do not form part of this contract and may interfere with the CONTRACTOR's ability to perform this contract;
- (g) to work with the CONTRACTOR to obtain business approval for full or partial shut downs to allow maintenance and testing of assets.
- (h) to make available to the CONTRACTOR relevant operating, maintenance or installation documents and As Fitted Drawings in the MUSEUM's possession. The CONTRACTOR will take care of and keep secure such documents and As Fitted Drawings ensuring that they are continuously updated to suit any modifications of the Plant and Equipment made by the CONTRACTOR and return them forthwith to the MUSEUM on the termination of this Agreement; and

4.2 The MUSEUM will be solely responsible for compliance with the Control of Asbestos at Work Regulations 2002 ("the Regulations") and the CONTRACTOR will not be responsible pursuant to those Regulations to carry out any of the obligations of a duty holder. The CONTRACTOR will inform the MUSEUM if the CONTRACTOR in carrying out the Services has reasonable grounds to believe that there is Asbestos present at the Site. The MUSEUM will indemnify the

CONTRACTOR in relation to all direct losses, suffered or incurred by the CONTRACTOR as a consequence of any breaches of the Regulations or any inaccuracies on the information held or supplied pursuant to those Regulations.

- 4.3 The CONTRACTOR will be responsible for issuing any permits to work for the CONTRACTOR's sub contractors only. Any permits to work required for any other contractors will be the responsibility of the Client.

5. PERSONNEL

- 5.1 The CONTRACTOR shall appoint a CONTRACTOR's Representative as its representative to be responsible for the performance of the Services and who will have the authority to liaise with and receive instructions from the MUSEUM. Such appointment (and any subsequent appointment) shall be subject to the prior written approval of the MUSEUM (such approval not to be unreasonably withheld or delayed)
- 5.2 The CONTRACTOR shall not engage any subcontractor without the consent of the MUSEUM (such consent not to be unreasonably withheld) and such sub-contract shall be for a period not exceeding the duration of the Agreement and shall terminate on termination of the Agreement for any reason.

6 CHANGES

- 6.1 For the purposes of this Agreement a "Change Request" is a request to change or add to the Services or to amend this Agreement or any document attached to or referred to in this Agreement (including any specification).
- 6.2 Subject to Clause 6.5 no Change Request shall be binding on the Parties unless the requirements of this Clause 6 have been satisfied and the Change Request is agreed to in writing by _____ an

authorised representative of both Parties.

- 6.3 Subject to Clause 6.5 the Parties shall, until such time as a Change Request is formally agreed to by both Parties, continue to perform their respective obligations without taking account of the Change Request.
- 6.4 Change Requests may be originated either by the MUSEUM or by the CONTRACTOR or may be originated by the Parties jointly. In the case of any Change Request, the CONTRACTOR shall within 10 working days supply to the MUSEUM either:
- (a) full details of all consequential changes which will be required to the Services, the Service Levels, or the Charges from the MUSEUM pursuant to this Agreement and all other effects of the proposed change; or
 - (b) written confirmation that there will be no such consequential changes or effects.
- 6.5 The Parties shall use all reasonable endeavours to agree a Change Request within 10 days of receipt of the report by the MUSEUM but if they are unable to reach agreement, the following provisions shall apply:
- (a) if a Change Request originated by the CONTRACTOR would in the MUSEUM's reasonable opinion have an adverse impact on the CONTRACTOR's ability to perform the Services in accordance with the Service Levels, the MUSEUM shall be entitled to refuse that Change Request unless such Change Request was made to implement a change in law;
 - (b) if the CONTRACTOR can demonstrate to the MUSEUM's reasonable satisfaction that a Change Request originated by

the MUSEUM would require any consequential changes as set out in Clause 6.4, the MUSEUM shall be entitled to require the CONTRACTOR to comply with that Change Request subject to the MUSEUM agreeing to such consequential changes;

- (c) the CONTRACTOR shall be entitled to refuse any Change Request which would, in the CONTRACTOR's Reasonable opinion result in a breach of law;
- (d) in all other circumstances (including where a dispute arises as to whether any requirement of the MUSEUM or the CONTRACTOR is a Change Request) the dispute shall be referred for determination in accordance with Clause 21.

7. CHARGES AND PAYMENT

- 7.1 In consideration of the provision pursuant to Clause 3 of the Services by the CONTRACTOR to the MUSEUM, the MUSEUM shall pay the Quarterly Service Charge to the CONTRACTOR within 30 days of the date of the invoice therefore, subject to any deductions made in accordance with Paragraph 1.5 of the Payment Mechanism set out in Appendix A.
- 7.2 Subject to the MUSEUM having issued a Work Order, or other form of Duly Authorised Instruction in writing, to the CONTRACTOR either before or after the provision by the CONTRACTOR of any Additional Works, Emergency Works, or Project Works in any form, the MUSEUM shall pay the charges for those Services in accordance Appendix A within 30 days of the invoice.
- 7.3 Simple interest will be paid on late payments from the date by which the payment should have been made until the date when payment is actually made in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 only if the payment is delayed by 14 days or more.

7.4 Deductions to the Fee may be made in accordance with clause 3.7.

8. WARRANTY

The CONTRACTOR warrants that:

8.1 it has the full power and authority to enter into and perform this Agreement;

8.2 in entering this Agreement the CONTRACTOR is not, and will not be, in breach of any express or implied obligation to any third party;

8.3 it will carry out its obligations under this Agreement with due skill and diligence using only staff for this purpose who are appropriately qualified and experienced;

8.4 it takes responsibility for the actions of any Sub-Contractor which the CONTRACTOR employs at, or brings to the Site.

9. INDEMNITIES

9.1 Each Party shall indemnify the other from and against all direct claims, proceedings, damages, costs, charges and expenses caused or contributed to by the breach or default (which term shall include negligence) of its obligations under the Agreement.

9.2 Personnel and Property

Each Party shall be responsible for:

i. any injury to or death of their respective employees, and

ii any loss or damage to or loss of use of their respective property and

equipment and shall indemnify the other Party from and against any direct loss expense or damages in respect

thereof, regardless of the cause or reason therefore, and regardless of the negligence of the other Party and its employees.

9.3 Consequential Loss

Subject to Clauses 4.2 9.5 and 18.3 neither Party shall be liable to the other for any indirect, special or consequential loss or damage whatsoever (including but not limited to loss of profits or interruption of business) arising out of or in connection with this Agreement, whether or not the possibility of such loss or damage was known or foreseeable by the Parties.

9.4 the CONTRACTOR shall not be liable under these indemnities to the extent that any such claim or breach was caused by any act or omission of the MUSEUM or its employees and provided that the CONTRACTOR's liability pursuant to clauses 9.1 and 9.2(ii) above shall be limited to the sum of £5,0000,000 (five million pounds sterling).

9.5 **Asbestos**

(i) The CONTRACTOR shall be relieved of all and any liability for any Asbestos present on the Sites (but such relief shall not terminate the Agreement) and the MUSEUM shall indemnify and hold harmless the CONTRACTOR in respect of all direct costs, losses, damages, or liability suffered or incurred by the CONTRACTOR as a direct consequence of the presence of Asbestos (including any action taken by the Health and Safety Executive, other statutory bodies and/or third Parties in relation to such Asbestos).

(ii) Where and to the extent that the existence of Asbestos adversely affects the performance of the CONTRACTOR's obligations under this Agreement the CONTRACTOR shall be

relieved from performing those obligations and the CONTRACTOR shall not be in breach of this Agreement for the failure to perform those obligations so affected and the Agreement shall not therefore be terminated.

10. INSURANCE POLICIES

10.1 The CONTRACTOR shall maintain in force at its own cost and for the duration of the Agreement and any extensions thereto, the following insurance policies:

- (a) employer's liability insurance in accordance with all relevant legislation in respect of any death, accident or injury to any person or workman in the amount as is required by the Employer's Liability (Compulsory Insurance) Act 1969 including any amendments or Statutory Orders in the amount of not less than £5 million.
- (b) Third party liability insurance covering the liability of the CONTRACTOR for personal injury or death of any person (other than persons covered in accordance with clause 10.1(a) above) and loss or damage to property which occurs or is consequent upon a cause occurring during the period of and which arises out of this Agreement in the amount of not less than £5 million.

10.2 The CONTRACTOR shall on the written request of the MUSEUM from time to time allow the MUSEUM to inspect and/or provide the MUSEUM with copies of the full policy document for such policies and, on the renewal of each policy, the CONTRACTOR shall send a copy of the premium receipt to the MUSEUM when requested to do so in writing by the MUSEUM

10.3 Should the CONTRACTOR fail to acquire and maintain any of

the policies of insurance referred to in Clause 10.1 above the MUSEUM reserves the right to step in and obtain insurance either on its own behalf or on behalf of the CONTRACTOR (to the extent that such is available and lawful) at the CONTRACTOR's expense.

11. CONFIDENTIALITY AND PUBLICITY

- 11.1 Each Party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other disclosed or obtained as a result of the relationship of the Parties under this Agreement and shall not use nor disclose the same save for the purposes of the proper performance of this Agreement or with the prior written consent of the other Party
- 11.2 The obligations of confidentiality in this Clause shall not extend to any matter which the Party can show:
- (a) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or
 - (b) was in its written records prior to the Commencement Date; or
 - (c) was independently disclosed to it by a third party entitled to disclose the same; or
 - (d) is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.
- 11.3 Where the MUSEUM being a public authority receives a request for information under the Freedom Of Information Act 2000 or such

other similar

Act then the MUSEUM shall immediately consult with the CONTRACTOR as to whether the information requested can be disclosed or is subject to an exemption under the Act.

12. INFORMATION AND REPORTS

- 12.1 The CONTRACTOR shall on request from the MUSEUM, during the term of this Agreement, supply the MUSEUM from time to time with such information and reports (including copies of such documents and other material) as the MUSEUM reasonably requires in relation to the provision of the Services and performance by the CONTRACTOR of its obligations under this Agreement;
- 12.2 The CONTRACTOR agrees to prepare within 4 weeks of each anniversary of the Commencement Date an annual report setting out details of the Services performed in the previous 12 months and, if and when reasonably requested in writing by the MUSEUM, reports on particular topics in amplification of the annual report.

13. TERMINATION

- 13.1 Either Party may terminate this Agreement
- (i) on giving the other six (6) months Notice in writing
 - (ii) immediately if either Party is in material breach of any of his obligations under this Agreement and following the issue to the Party in default a Notice in writing specifying the default. If the defaulting Party continues such default for 14 days after receipt of such Notice or shall repeat the default on a persistent basis.
 - (iii) If the MUSEUM fails to make payment to the CONTRACTOR in the manner agreed as set out in Clause 7 and Appendix A

the CONTRACTOR may upon giving the MUSEUM 30 working days written Notice suspend all work until payment in full is received (including interest thereon), except in the case of a bona fide dispute, in which case the dispute will be settled using the Dispute Resolution Procedure set out in Clause 21 below and the monies owing will be paid into a bank following the procedures in Clause 21.7.

(iv) If the Dispute Resolution Procedure is not invoked, 45 working days after the suspension Notice in clause 13.1 (iii) above has been sent then if no payment has been made the CONTRACTOR may terminate this Agreement forthwith after informing the MUSEUM in writing.

(v) if either Party

- (a) becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except that in the interpretation of this clause the words "it is proved to the satisfaction of the court that" in Sections 123(1)(e) and Section 123(2) shall be deemed to be deleted); or
- (b) proposes or makes any arrangement or composition with its creditors, including any voluntary arrangement under Part 1 of the Insolvency Act 1986; or
- (c) a petition is presented for an administration order to be made against the CONTRACTOR or MUSEUM; or
- (d) an administrative receiver, receiver or manager is appointed over the business assets or undertaking; or
- (e) any encumbrancer enforces any security by taking possession of any of the assets of the CONTRACTOR or MUSEUM or any distress is levied or execution enforced

against any of the assets of the CONTRACTOR or MUSEUM;

this Agreement shall forthwith automatically terminate. Such engagement may, however, be reinstated and continued if the MUSEUM, the CONTRACTOR and any administrator, liquidator, provisional liquidator, administrative receiver, receiver or manager as the case may be shall so agree.

13.2 If the MUSEUM becomes entitled to terminate this Agreement then it may instead at its option immediately terminate this Agreement only in respect of any one or more of the Services to be provided hereunder without terminating the whole of this Agreement. Any termination by the MUSEUM under this Clause 13.2 in respect of any one or more of the Services shall be made as if it were a variation to this Agreement save that a written amendment to this Agreement shall not be required and Clause 19.4 shall not apply to such amendment. Save to the extent of the termination of any one or more of the Services to be provided hereunder, this Agreement shall continue in full force and effect.

13.3 The termination of this Agreement or of any of the Services shall be without prejudice to the rights and remedies of either Party, which may have accrued up to the date of termination.

Consequences of termination

13.4 On the termination of this Agreement under clause 13 above the CONTRACTOR shall:

(i) take immediate steps to bring to an end the performance of the Services in an orderly manner but with all reasonable speed and economy and shall if the CONTRACTOR occupies any part of the MUSEUM's premises forthwith vacate the premises.

(ii) In addition, the CONTRACTOR shall, subject to the MUSEUM having paid all sums due to the CONTRACTOR under this Agreement, cause to be delivered to the MUSEUM all details, plans, specifications, technical data, schedules, programmes, budgets, reports, calculations and other work (whether in the course of preparation or completed) together with all correspondence and documentation in the possession or under the control of the CONTRACTOR relating to the Services.

(iii) In addition the CONTRACTOR shall, if so required by the MUSEUM and in so far as it is able, assign to the MUSEUM the benefit and interest in any contracts made by the CONTRACTOR with any sub contractor for the provision of any operatives, plant, equipment or services in connection with the Services.

13.5 Without prejudice to the MUSEUM's rights in respect of any breach by the CONTRACTOR of its obligations under this Agreement, on termination of the CONTRACTOR's employment pursuant to this Agreement the MUSEUM shall pay to the CONTRACTOR all amounts due to the CONTRACTOR at the date of termination.

13.6 On termination, however caused, the MUSEUM may require the CONTRACTOR to terminate immediately (or within such period as the MUSEUM may reasonably stipulate) any or all of the contracts it may have with any sub contractors for the provision of the Services and remove from the premises all materials not belonging to the MUSEUM.

13.7 The MUSEUM shall indemnify the CONTRACTOR on demand and hold it harmless in relation to all losses, actions, claims, demands, costs, charges and expenses arising out of any action or claim by any person whose contract with the CONTRACTOR is terminated as a result of a termination of the CONTRACTOR's employment by the MUSEUM pursuant to clause 13.1(i) or by the

CONTRACTOR pursuant to clauses 13.1(ii), 13.1(iv), 13.1(v) or 14.6.

13.8 Termination of the CONTRACTOR's employment howsoever arising shall be without prejudice to the rights and remedies of either Party in respect of any negligence, omission or default of the other prior to such termination.

13.9 The provisions of this Agreement shall continue to bind each Party insofar as and for so long as may be necessary to give effect to their respective rights and obligations hereunder. Any expiry or termination of this Agreement (for whatever reason) shall not affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

14. FORCE MAJEURE

14.1 If either Party is affected by Force Majeure it shall immediately and in any event within 10 days of the date of the occurrence notify the other Party in writing of the matters constituting the Force Majeure and shall keep that Party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure continues.

14.2 The Party affected by Force Majeure shall take all reasonable steps available to it to minimise the effects of Force Majeure on the performance of its obligations under this Agreement. Save as provided in Clause 14.6 below Force Majeure shall not entitle either Party to terminate this Agreement and neither Party shall be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance, or non-performance of any of its obligations due to Force Majeure.

- 14.3 If the Party affected by Force Majeure fails to comply with its obligations under Clauses 14.1 and 14.2 above then no relief for Force Majeure, including the provisions of Clause 14.3 above, shall be available to it and the obligations of each Party shall continue in force.
- 14.4 If an event of Force Majeure results in the suspension of the Services, then if the CONTRACTOR is the affected Party the MUSEUM shall not be obliged to pay the Charges until such time as the event of Force Majeure shall have ceased to have effect. If the Services are partly suspended a pro rata amount of the Charges shall be forfeit.
- 14.5 If in either Party's reasonable opinion an event of Force Majeure results in disruption of the Services and such disruption continues for more than 90 days, either Party may whilst such Force Majeure continues give 5 days' Notice in writing to the CONTRACTOR to terminate this Agreement with termination taking effect upon the expiry of such Notice.

15. ASSIGNMENT

This Agreement shall not be assigned by either Party without the prior written consent of the other, such consent not to be unreasonably delayed or withheld, it being understood and agreed however that any new Contractor must be capable of, and willing to be bound by, all of the terms and conditions of this Agreement including, without limitation, the insurance requirements set out in Clause 10.

16. DATA PROTECTION

Each Party warrants to the other that it has complied with and will continue to comply with all the requirements of the Data Protection Act 1984. Each Party indemnifies the other against all direct losses, costs, expenses, damages, liabilities,

which the other Party may incur arising out of any breach of this clause.

17. EMPLOYMENT

- 17.1 The Parties agree that if the transaction contemplated by this agreement constitutes a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 1981 ("the Transfer Regulations"), it is agreed that the contracts of employment of the Employees will have effect from the Commencement Date as if originally made between the CONTRACTOR and the Employees (other than in respect of pension arrangements).
- 17.2 The MUSEUM shall co-operate with the CONTRACTOR and procure where possible and reasonable that any sub contractors of the MUSEUM co-operate with the CONTRACTOR in providing full details of the employment of the Employees including but not limited to copies of their full personnel files and all relevant records relating to pay and benefits. The MUSEUM shall comply and shall procure where possible and reasonable that any sub contractor of the MUSEUM shall comply promptly with any reasonable request made by the CONTRACTOR for information relating to an Employee.
- 17.3 The MUSEUM shall indemnify the CONTRACTOR and keep it indemnified against all direct losses, and direct costs (including reasonable legal costs) ("Included Losses") arising out of or in connection with:
- (a) any claim by a transferring Employee (where the transfer is from the MUSEUM to the CONTRACTOR) or an appropriate representative of a Transferring Employee whether in contract, tort or under statute (including the Treaty

establishing the European Union and any directives made under the authority of that Treaty) for any remedy (including without limitation breach of contract, loss of office, unfair dismissal, a statutory redundancy payment, unlawful discrimination, unlawful deduction from wages, a protective award, under the National Minimum Wage Act 1998 or the Working Time Regulations 1998 or for breach of statutory duty or of any other nature) as a result of anything done or omitted to be done in relation to the Transferring Employee's employment on or before the Commencement Date;

- (b) In the event that, during the term of this Agreement, the CONTRACTOR terminates the employment of any of the Transferring Employees who are engaged in providing the Services at the time of their termination, by reason of their positions having become redundant, the MUSEUM shall indemnify the CONTRACTOR for the proportion of any Company redundancy payment which related to such Transferring Employees' period of service with the MUSEUM up to Completion (the CONTRACTOR being responsible for the balance off such Company redundancy payment in respect of service with the CONTRACTOR since Completion)

17.4 Subject to the provisions of clauses 17.5(b) the CONTRACTOR shall indemnify the MUSEUM and keep it indemnified against all direct losses, costs (including reasonable legal costs), liabilities, expenses, actions, proceedings, claims and demands arising out of or in connection with any claim by an Employee or an appropriate representative of an Employee whether in contract, tort or under statute (including the Treaty establishing the European Union and any directives made under the authority of that Treaty) for any remedy (including without limitation

breach of contract, loss of office, unfair dismissal, a statutory redundancy payment, unlawful discrimination, unlawful deduction from wages, a protective award, under the National Minimum Wage Act 1998 or the Working Time Regulations 1998 or for breach of statutory duty or of any other nature) as a result of anything done or omitted to be done in relation to the Employee's employment after the Commencement Date until termination or expiry of this Agreement.

17.5 The MUSEUM Confirms that

- (a) the MUSEUM and/or its sub-contractors are not in breach of the contract of employment of any of the Employees nor so far as the MUSEUM is aware is any of the Employees in breach of his contract of employment;
- (b) the MUSEUM and/or its sub-contractors are not aware of any outstanding grievances or complaints relating to the Employees or any of them, and none of the Employees is currently subject to or under investigation in respect of disciplinary action or warnings;
- (c) none of the Employees has given or threatened to give the MUSEUM or any sub-contractor of the MUSEUM, or been given by the MUSEUM or any sub-contractor of the MUSEUM Notice to terminate his employment;
- (d) the details of the Employees provided by the MUSEUM to the CONTRACTOR are true, complete and accurate in all material respects and are not misleading. The MUSEUM is not aware of any fact, matter or circumstances not disclosed to the CONTRACTOR that renders such information untrue, inaccurate or misleading in any material respect.

If any of the details of the Employees given by the MUSEUM or sub contractor to the CONTRACTOR are incorrect or inaccurate in any way (including the omission of any Employees) then the CONTRACTOR shall be entitled to a variation to this Agreement and to a proportional adjustment to the Quarterly Service Charge as set out in Appendix B.

17.6 Where the TUPE Regulations apply on termination or expiry of this Agreement, the MUSEUM shall by negotiation in good faith endeavour to ensure that any Relevant Third Party meets its obligations under the TUPE Regulations and that all Relevant Employees transfer to the Relevant Third Party.

17.7 If the termination or expiry of this Agreement results directly in the termination of employment of any Transferring Employees who are still engaged in providing the Services at the time of their termination, by reason of redundancy, the MUSEUM shall indemnify the CONTRACTOR in full against all costs, losses liabilities and expenses arising out of the termination

17.8 The MUSEUM shall indemnify the CONTRACTOR against all direct losses which the CONTRACTOR may incur arising out of or in relation to:

- (a) any act or omission of the MUSEUM relating to the employment or termination of employment of any of the Personnel after the date of termination or expiry of this Agreement; and
- (b) any substantial changes which are made, proposed or anticipated to take effect after the date of termination or expiry of this Agreement by the MUSEUM to the terms of employment of any of the Personnel to their

detriment.

17.9 The provisions of this Clause 17 shall survive the expiry or termination of this Agreement except where termination has been because of CONTRACTOR default.

17.10 Neither Party shall approach an employee of the other working directly within this Agreement with a view to making an offer of employment (other than through a public recruitment or advertising campaign) either during the term of this Agreement or for a period of six (6) months after such personnel leave the employment of that Party, without the consent in writing of that Party. In the event that a Party engages any of the other Party's personnel within the embargo period, the engaging Party shall pay an introduction fee of the equivalent of 16 weeks of the engaged person's wages, to the other Party, unless otherwise agreed in advance

18. INTELLECTUAL PROPERTY

18.1 Any and all Intellectual Property Rights ("IPR"), which are owned or licensed to the CONTRACTOR, which exist prior to the date of this Agreement and which are or may be used by the CONTRACTOR in the performance of the Services shall remain vested in CONTRACTOR or third party as appropriate. Any IPR developed by the CONTRACTOR during the course of this Agreement will be vested in the MUSEUM to the extent that the IPR was created for or intended for use in the performance of the Services or Additional Services..

18.2 The CONTRACTOR shall indemnify the MUSEUM from and against all claims and proceedings for or on account of infringement of any patent right design trademark or name or other protected right in respect of the Services or any part thereof for the Contract Term.

- 18.3 Subject to the MUSEUM having paid all sums due to the CONTRACTOR under this Agreement, the CONTRACTOR hereby grants to the MUSEUM an irrevocable royalty free, non-exclusive, non assignable licence to use the IPR for any purpose whatsoever relating to the Services during the Contract Term.
- 18.4 The MUSEUM irrevocably and unconditionally agrees to indemnify the CONTRACTOR in full and keep the CONTRACTOR so indemnified from and against all claims, demands, actions, proceedings and all damages, direct losses, costs and expenses (including legal and other professional advisers' fees but excluding loss of profit, future revenue, reputation or goodwill and anticipated savings)) which are made or brought against or incurred or suffered by the CONTRACTOR officers, employees, representatives, agents or sub-contractors directly and indirectly and whether wholly or in part resulting from any claim by a third party that the use by or on behalf of the MUSEUM of any assets used and supplied by the MUSEUM for the purposes for which the MUSEUM supplied such assets ("Permitted Purposes") (and where the Permitted Purposes were not expressly designated when the assets were supplied the Permitted Purposes shall be any purposes which were in the reasonable contemplation of the Parties at that time), in connection with the performance of the Services infringes the IPR of that third party.
- 18.5 Upon termination of this contract for any reason or on expiry of the Contract Term the CONTRACTOR shall procure on behalf of the MUSEUM any licences from third Parties required to enable the MUSEUM to use the IPR. In so far as the IPR are vested in the CONTRACTOR then the

CONTRACTOR will grant to the MUSEUM an irrevocable royalty free, non-exclusive, non assignable licence to use the IPR for any purpose whatsoever relating to the Services.

19 GENERAL

19. 1 Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties and no employee of the CONTRACTOR or its sub-contractors shall be deemed to be or have become an employee of the MUSEUM.
- 19.2 Any rights of any person who is not a Party to this Agreement to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.
- 19.3 This Agreement (and Appendices) and any Work Order or other form of Duly Authorised Instruction in writing contains the entire agreement between the Parties in relation to its subject-matter and in the event of a conflict between the terms of this Agreement and the terms of a Work Order or other form of Duly Authorised Instruction in writing the terms of this Agreement shall prevail.
19. 4 No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed and signed by a duly authorised representative of each of the Parties to this Agreement.
19. 5 The rights and remedies of either Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension

of time granted by such Party to the other nor by any failure of, or delay by the said Party in ascertaining or exercising any such rights or remedies. Any waiver of any breach of this Agreement shall be in writing. The waiver by either Party of any breach of this Agreement shall not prevent the subsequent enforcement of any subsequent breach of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

19. 6 If at any time any part of this Agreement (including any one or more of the Clauses of this Agreement or any sub-clause or paragraph or any part of one or more of these clauses) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

19. 7 Each of the Parties shall, and shall use their reasonable endeavours to procure that any necessary third Parties shall, execute and deliver to the other Party such other instruments and documents and take such other action as is necessary to fulfil the provisions of this Agreement in accordance with its terms.

19.8 This Agreement may be executed in counterparts, each of which is an original and which together evidence the same agreement.

19.9 Except where this Agreement provides otherwise, the rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law.

20 NOTICES

Any Notice to be given by either Party under this Agreement shall be deemed to be duly given if it is in writing and delivered by hand to the Authorised Representative of the other Party. Alternatively Notice may be sent by registered post, and Notice will be deemed to have been given two (2) working days after posting, to the address as follows:

(a) If to the MUSEUM, to
Mr Chris Bailey,
Estate Manager
National Museums Liverpool,
27 Dale Street
Liverpool, **L2 2JH**

(b) If to the CONTRACTOR, to
[Mr Phil Dodson]
[Broadoak Business Centre]
[Ashburton Road West, Trafford]
[Manchester M17 1RW]

21. DISPUTE RESOLUTION PROCEDURE

21. 1 Either Party may call a meeting of the Parties by service of not less than 15 days' written Notice and each Party agrees to procure that an authorised representative shall attend

21.2 Those attending the relevant meeting shall use all reasonable endeavours to resolve disputes arising out of this Agreement. If the meeting fails to resolve the dispute within 15 days of its being referred to it, either Party by Notice in writing shall refer the dispute to the board director of each Party responsible for the provision of the Services who shall co-

operate in good faith to resolve the dispute as amicably as possible within 15 days of the dispute being referred to them. If they fail to resolve the dispute in the allotted time, the Parties may within that period on the written request of both Parties ("**the ADR Request**") agree in writing to enter into an Alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the Parties or, in default of such agreement within 15 days of receipt of the ADR Request, appointed by the Centre for Dispute Resolution, Fetter Lane, London.

21. 3 The Parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution for the exchange of relevant information and for setting the date for negotiations to begin.
21. 4 Recourse to this Dispute Resolution Procedure shall be binding on the Parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings. Except for any Party's right to seek interlocutory relief in the courts, no Party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 15 days after the Parties have failed to reach a binding settlement by mediation.
21. 5 If, with the assistance of the mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by a duly authorised representative of each of the Parties, shall remain binding on the Parties.
21. 6 The Parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the Parties equally.

21. 7 While the Dispute Resolution Procedure referred to in this Clause 20, is in progress and any Party has an obligation to make a payment to another Party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant Parties at a clearing bank and such payment shall be a good discharge of the Parties' payment obligations under this Agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the Parties pro rata according to the split of the principal sum as between the Parties.

22. SEVERABILITY

22.1 If any provision of this Agreement is found to be illegal, invalid or unenforceable, in whole or in part, its other provisions and the remainder of the affected provision shall remain in force and shall not thereby be terminated.

22.2 This Agreement (and Schedules "A" & "B" which constitutes a part thereof) contains the entire agreement of the Parties hereto and may not be assigned without written agreement, and no modification of this Agreement shall be binding on the Parties unless the same is in writing signed by an authorised representative of the respective Parties.

23. GOVERNING LAW & JURISDICTION

23. 1 This Agreement shall be governed by, and construed in accordance with, the laws of England.

23.2 All disputes and claims arising out of or relating to this

Agreement shall be subject to the exclusive jurisdiction of the English Courts to which the Parties irrevocably submit.

IN WITNESS WHEREOF this Agreement has been executed by or
on behalf of the Parties on the date set out above

SIGNED by a duly authorised representative of:

NATIONALMUSEUMS LIVERPOOL

..... (Signature)

..... (Print name)

..... (Print title)

..... (Date)

SIGNED by a duly authorised representative of:

..... (Signature)

Regional Director (Print title)

..... (Date)