



2017

**(1) THE BOARD OF TRUSTEES OF NATIONAL MUSEUMS AND GALLERIES ON
MERSEYSIDE**

and

(2) CONTRACTOR [TBC]

**CONTRACT FOR HEAVY AND LARGE OBJECT MOUNTS AND INSTALLATION AT WORLD
MUSEUM LIVERPOOL**

**DWF LLP
1 Scott Place
2 Hardman Street
Manchester
M3 3AA**

THIS AGREEMENT is dated

and made between:

- (1) The Board of Trustees of National Museums and Galleries on Merseyside of World Museum, William Brown Street, Liverpool, L3 8EN including its successors in title and assigns as permitted under the Conditions ("the **Employer**"); and
- (2) [TBC] (company number [TBC]) whose registered office is at [TBC] ("the **Contractor**").

AGREEMENT:

The following documents shall together form the contract between the Employer and the Contractor:

1. this Agreement including the Recitals, Articles and Contract Particulars;
2. the Joint Contracts Tribunal Minor Works Building Contract with contractor's design 2011 incorporating Amendment 1 (CDM) issued March 2015 as amended by the Schedule of Amendments and Additional Conditions set out in **Schedule 1** ("the **Conditions**"); and
3. the other Schedules to this Agreement.

RECITALS:

- (A) the Employer wishes to have the following work carried out:

design, manufacture, production and installation of heavy and large object mounts and installation of heavy and large objects

at World Museum Liverpool, William Brown Street, Liverpool, L3 8EN ("the **Works**") under the direction of the Contract Administrator referred to in Article 3.
- (B) the Works include the design and construction of:
 - a. bracket and fixing supports to large and heavy objects("the **Contractor's Designed Portion**");
- (C) the Employer has had the following documents prepared which show and describe the work to be done:
 - a. the drawings numbered/listed in **Schedule 2 Part 1** ('the Contract Drawings')
 - b. a Specification set out **Schedule 2 Part 2** ('the Contract Specification')
 - c. other documents showing or describing or otherwise stating his requirements for the design and construction of the Contractor's Designed Portion ("the **Employer's Requirements**") set out **Schedule 2 Part 3**which for identification have been signed or initialled by or on behalf of each Party and those documents together with the Conditions and, if applicable, a Schedule of Rates as referred to in Recital (D) (collectively 'the Contract Documents') are annexed to this Agreement;
- (D) the Contractor has supplied the Employer with a copy of the priced Contract Specification or Work Schedules or provided a Schedule of Rates;

- (E) for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;
- (F) for the purposes of the Construction (Design and Management) Regulations 2015 (the 'CDM Regulations') the status of the project that comprises or includes the Works is stated in the Contract Particulars;
- (G) not used;
- (H) the Supplemental Provisions identified in the Contract Particulars apply.

ARTICLES

Article 1: Contractor's obligations

The Contractor shall carry out and complete the Works in accordance with the Contract Documents.

Article 2: Contract Sum

The Employer will pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of £[TBC] [TBC] ("the **Contract Sum**") or such other sum as shall become payable under this Contract.

Article 3: Contract Administrator

For the purposes of this Contract the Contract Administrator is Estates Department (Projects), National Museums Liverpool of 127 Dale Street, Liverpool L2 2JH or, if he ceases to be the Contract Administrator, such other person as the Employer shall nominate for that purpose (such nomination to be made within 14 days of the cessation), provided that no replacement Contract Administrator appointed for this Contract shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

Article 4: Principal Designer

The Principal Designer for the purposes of the CDM Regulations is Cunliffes Limited or such replacement as the Employer at any time appoints to fulfil that role.

Article 5: Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such replacement as the Employer at any time appoints to fulfil that role.

Article 6: Adjudication

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 7.2

Article 7: Not Used**Article 8: Legal proceedings**

Subject to Article 6, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

CONTRACT PARTICULARS

Clause etc	Subject	
Fifth Recital and Schedule 2 (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2)	Base Date	Date of Contract
Fifth Recital and clause 4.2	Construction Industry Scheme (CIS)	Employer at the Base Date is not a "contractor" for the purposes of the CIS
Sixth Recital	CDM Regulations	the project not notifiable
Eighth Recital and Schedule 3	Supplemental Provisions <i>(Where neither entry against an item below is deleted, the relevant paragraph applies.)</i>	
	Collaborative working	Paragraph 1 applies
	Health and safety	Paragraph 2 applies
	Cost savings and value improvements	Paragraph 3 applies
	Sustainable development and environmental considerations	Paragraph 4 applies
	Performance Indicators and monitoring	Paragraph 5 does not apply
	Notification and negotiation of disputes	Paragraph 6 applies
	Where paragraph 6 applies, the respective nominees of the Parties are	Employer's nominee Jenny Green Contractor's nominee TBC or such replacement as each Party may notify to the other from time to time

2.3	Date for Commencement of the Works	TBC (Approx End of February 2017)]
2.3	Date for Completion	TBC [4 weeks from commencement]
2.9	Liquidated damages	at the rate of £900 per week and pro rata per part thereof
2.11	Rectification Period <i>(The period is 3 months unless a different period is stated.)</i>	6 months from the date of practical completion
4.3	Percentage of the total value of work etc.) <i>(The percentage is 95 per cent unless a different rate is stated.)</i>	95 per cent
4.4	Percentage of the total amount to be paid to the Contractor <i>(The percentage is 97.5% per cent unless a different rate is stated.)</i>	97.5 per cent
4.8.1	Supply of documentation for computation of amount to be finally certified <i>(The period is 3 months unless a different period is stated.)</i>	3 months from the practical date of completion
5.3.2	Contractor's insurance: injury to persons or property — insurance cover <i>(for any one occurrence or series of occurrences arising out of one event)</i>	£10 million
5.4A, 5.4B and 5.4C	Insurance of the Works etc. — alternative provisions	None of clauses 5.4A, 5.4B or 5.4C applies. Government Policy of non-insurance as it applies to the Employer. Any claim will be dealt with on its own merits and on a basis of strict liability.
5.4A.1 and 5.4B1.2	Percentage to cover professional fees <i>(If no other percentage is stated, it</i>	15 per cent

shall be 15 per cent.)

7.2

Adjudication

The Royal Institution of Chartered
Surveyors

Nominating body — where no
Adjudicator is named or where the
named Adjudicator is unwilling or
unable to act (whenever that is
established)

*(Where an Adjudicator is not named
and a nominating body has not
been selected, the nominating body
shall be one of the bodies listed
opposite selected by the Party
requiring the reference to
adjudication.)*

IN WITNESS whereof the parties have executed this Agreement as a deed and is intended to be and is delivered on the date first above written

THE COMMON SEAL of)
THE BOARD OF TRUSTEES OF)
NATIONAL MUSEUMS AND)
GALLERIES ON MERSEYSIDE OF)
WORLD MUSEUM)
was affixed to this Deed acting by:)

Signature of Trustee
Print name of Trustee

EXECUTED as a deed)
for and on behalf of)
[CONTRACTOR TBC]) Director
by [TBC])
and by [TBC])
Director / Secretary

SCHEDULE 1

Part 1 - Schedule of Amendments

Definitions

- 1.1 Add as a new definition:

“Change Control Process: the process (and the only process) by which the Employer will provide any authorisation for a change to the Works as set out at Schedule 3.”

Contracts (Rights of Third Parties) Act 1999

- 1.5 In line 1, after ‘Contract’ insert:

“but subject to clause 3.1 (Assignment),”

Notices

- 1.6.3 Add as clause 1.6.3:

“Any notice, certificate or other communication (notice) to be given under Section 4 (Payment) may, in addition to any other permitted method of service, be delivered by hand or sent electronically to the e-mail address of the addressee, provided, if sent by e-mail and not delivered by hand, a copy is sent on the same day to the addressee by pre-paid first class post. Any notice served in accordance with this clause 1.6.3 takes effect as being given and served:

- (a) if delivered by hand or sent by e-mail by 4.00 pm on a Business Day, on that day; but otherwise,
- (b) on the next Business Day.”

Contractor’s obligations

- 2.2.1 At the end of clause 2.2.1, add:

“Subject to the foregoing, and subject to the Contract Documents, all materials and goods shall be new, and all materials, goods and workmanship shall be of a satisfactory quality.”

Commencement and completion

- 2.3 In line 1, of clause 2.3 delete “may”. Substitute “shall”.

Damages for non-completion

- 2.9.2 Delete clause 2.9.2. Substitute:

“The Employer may deduct the liquidated damages from any money due to the Contractor under this Contract (provided that a notice of deduction pursuant to clause 4.5 or 4.8 has been given) and may recoup any liquidated damages not so deducted from the Contractor as a debt.”

Defects

2.11 In line 4 of clause 2.11, after “shall”, insert “without unreasonable or unnecessary delay, and in any event”.

2.11 At the end of clause 2.11 add:

“Provided that in the case of urgency the Architect/Contract Administrator may instruct the Contractor to make good any such matter within such period as the circumstances require.”

Assignment

3.1 Delete. Substitute:

“The Employer may assign its entire rights and benefit under this Contract to any person having or acquiring an interest in the Works; and the Employer’s said rights and benefit may be charged and/or assigned by way of security and may be reassigned on redemption. The Contractor may not assign the benefit of this Contract without the written consent of the Employer.”

Person-in-Charge

3.2 Delete clause 3.2 and substitute:

‘3.2.1 Before commencing the Works on site, the Contractor shall appoint a Person-in-Charge whose identity is to be approved in advance of appointment by the Architect/Contract Administrator in writing (such approval not to be unreasonably withheld or delayed). The Person-in-Charge shall be employed to act as the full time representative of the Contractor on the Site throughout the construction period. The Contractor shall not (save in circumstances which render it unavoidable) remove the Person-in-Charge without the written consent of the Architect/Contract Administrator, which consent shall not be unreasonably withheld or delayed. Any vacancy in the office of Person-in-Charge shall be filled by a person to the approval of the Architect/Contract Administrator as aforesaid.

3.2.2 Any instructions given to the Person-in-Charge by the Architect/Contract Administrator shall be deemed to have been issued to the Contractor.’

Variations

3.6 Add as clause 3.6.4:

“3.6.4 The Contractor shall comply with the Change Control Process and the Contractor shall not make or permit any change to the Works unless written authorisation has been obtained from the Employer/Contract Administrator in accordance with the Change Control Process. For the avoidance of any doubt, verbal instructions for a change given to the Contractor shall not be permitted and shall not be in accordance with the Change Control Process. The Contractor shall not be entitled to any extension of time or an addition to the Contract Sum in respect of any change for

which the written authorisation of the Employer or of the Contract Administrator has not been obtained in accordance with the Change Control Process.”

Interim payments to practical completion

4.3 In the last sentence, delete “14 days” and substitute “21 days”.

Interim payments after practical completion

4.4 In the last sentence, delete “14 days” and substitute “21 days”.

Payment – amount and notices

4.5.2 At the beginning of line 3, add:

“Employer, with a copy to the”.

4.5.4 Delete the last sentence and substitute:

“Where the Employer gives that notice, the sum to be paid by the Employer on or before the final date for payment shall be the sum stated to be due in the notice.”

Failure to pay amount due

4.6 In the first sentence, delete “under clause 4.3 or 4.4”. Substitute:

“under clause 4.5”.

Liability of Contractor – personal injury or death

5.1 In line 3, after ‘Works’, add:

“or the performance of the Contractor’s obligations under clause 2.11 (Defects)”.

Liability of Contractor – injury or damage to property

5.2 In line 6, after ‘Works’, add:

“or the performance of the Contractor’s obligations under clause 2.11 (Defects)”.

Government Policy of Non-Insurance

5.6 Add as clause 5.6:

“In the event of any physical loss or damage being caused which would be covered by a policy of All Risks Insurance, the Contractor shall with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris and proceed with the carrying out and completion of the Works. The Employer shall pay the Contractor the reasonable and properly incurred costs of the restoration, replacement or repair of such loss or damage and the removal and disposal of debris and such amounts shall be paid to the Contractor under certificates of the Architect/Contract Administrator at the intervals stated in clause 4.3.”

Professional Indemnity Insurance

5.7 Add as clause 5.7:

"The Contractor shall take out and maintain for a period ending 12 years from the Completion of the Works professional indemnity insurance in an amount pre-agreed by the Employer."

Termination – Default by the Contractor

6.4.1.4 Add as clause 6.4.1.4:

"or commits any other breach of this Contract having or which may have consequences sufficiently serious to justify determination of the Contractor's employment,"

Insolvency of Contractor

6.5.1 Delete and substitute:

"If the Contractor is or becomes Insolvent, the Contractor shall so notify the Employer forthwith and either Party may at any time by notice to the other, terminate the Contractor's employment under this Contract."

6.5.2 In line 1, delete "the Employer" and substitute "either Party."

6.5.2.2 In line 2, delete "suspended" and substitute "terminated".

Consequences of termination

6.7.4 Add at the end of clause 6.7.4:

"Provided that:

- .1 if the Employer elects not to procure the completion of the Works, then the amount to be allowed under clause 6.7.3.3 shall be the portion of the Contract Sum earned by the Contractor; and
- .2 if the Employer procures the completion of the outstanding Works for less than the Employer would have had to pay the Contractor to complete the outstanding Works then for the purposes of this clause 6.7.4 the Employer shall be deemed to have paid the same amount to procure the completion of the outstanding Works under clause 6.7.1 as the Employer would have had to pay the Contractor to complete the outstanding Works under this Contract."

Default by Employer

6.8.1.1A Add as clause 6.8.1.1A:

"fails to comply with the decision of an adjudicator appointed under clause 7.2 requiring the Employer to pay any amount to the Contractor (except to the extent that the court has granted relief from enforcement of the adjudicator's decision, subject to the Employer's compliance with any condition attaching to such relief); or".

Insolvency of Employer

6.9.1 In line 1, after 'notice to the Employer', insert:

"or the Employer may by notice to the Contractor"

6.9.2 Add after end of clause 6.9.2:

"and an extension of time for completion shall be given under clause 2.7 equal to the period of suspension".

Adjudication

7.2 Add at the end of clause 7.2:

"and provided that:

.1 the Adjudicator shall have power to determine more than one dispute at the same time, and if requested to do so by either Party shall determine any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to him; and

.2 at the same time as he gives any decision, the Adjudicator shall give reasons for the decision in writing."

Arbitration

7.3 Delete.

Schedule 1 Delete schedule 1 (Arbitration).

Schedule 2: Fluctuations

10.2.1 Delete.

Part 2 – Additional Conditions

1. Project meetings

From time to time on reasonable written notice the Architect/Contract Administrator may convene such periodic or ad hoc site meetings as are reasonably necessary for the conduct and management of any matters relating to the Works. Such meetings shall be attended by the Person-in-Charge and by such other representatives of the Contractor and/or its sub-contractors or suppliers as are appropriate in the circumstances, and may be attended by representatives of the Employer and/or any of the Employer's consultants.

2. Operations on site

- 2.1 On or before the Date for the Commencement of the Works, the Contractor shall provide to the Architect/Contract Administrator a programme for the carrying out of the Works, and if and whenever there is any material delay to the Works, the Contractor shall provide to the Architect/Contract Administrator a revised programme for the carrying out of the Works.
- 2.2 The Contractor shall provide to the Architect/Contract Administrator if and as the Architect/Contract Administrator requests in writing, details of the Contractor's proposals for the means of access to the site during the construction period, vehicle parking facilities on site, loading and unloading areas for materials, site compounds, temporary warning and direction signs on adjacent highways and within the museum and any other similar information as to the Contractor's working arrangements. If necessary the Contractor shall amend such details to obtain the approval of the local planning authority or other relevant public authority having jurisdiction with respect to the Works.
- 2.3 The Contractor shall be wholly responsible for the design, adequacy, stability and safety of all temporary works required in and about the construction of the Works, save insofar as it is provided in any Contract Document that the design of any temporary works is to be provided by any member of the Employer's design team, in which case the Contractor shall not be responsible for the production or the adequacy of such design.
- 2.4 In and about the execution of the Works the Contractor shall maintain and not cause any interference to any support enjoyed by any adjoining land or any structures, other than any structures which are to be demolished as part of the Works.
- 2.5 The Contractor shall:
 - (a) carry out the Works in such a manner as not to cause any trespass or actionable nuisance and as to cause as little noise, interference, inconvenience or disturbance to the public or to the owners and occupiers of adjoining property as is reasonably practicable; and
 - (b) make good or meet the cost of making good of all damage caused to roads, footpaths and property adjoining the site and to any services, arising from the carrying out of the Works.

3. As-built data

- 3.1 At or before practical completion of the Works or any Section, the Contractor shall without charge provide to the Architect/Contract Administrator such draft as-built or final issue drawings, specifications and other details (in 3 copies) and draft service manuals (in 3 copies) as are specified in the Contract Documents, containing sufficient information to enable the Works to be properly maintained and operated.
- 3.2 Within 4 weeks after practical completion of the whole of the Works, the Contractor shall without charge provide to the Architect/Contract Administrator 3 copies of all such as-built or final issue drawings, specifications and other details and service manuals as are specified in the Contract Documents.

4. Confidentiality

- 4.1 Save with the Employer's prior written approval or as is reasonably necessary to enable the Contractor to perform its obligations under this Contract, the Contractor shall treat all information relating to this Contract and/or the Works as confidential.
- 4.2 The Contractor may not without the prior written approval of the Employer use or authorise the use of any photograph or drawing or other depiction of the Works or any part of the Works for publicity purposes or in any annual report or accounts or otherwise for any purpose other than in connection with the performance of the Contractor's obligations under this Contract.
- 4.3 The Contractor shall ensure that any sub-contract and any appointment of a consultant entered into by the Contractor for the purposes of the Works contains the provisions in clauses 1 and 4 (mutatis mutandis) of these Additional Conditions and shall take all reasonable steps to ensure that such provisions are enforced.

5. Interpretation

In the case of any inconsistency between the Schedule of Amendments and Additional Conditions and any other term of this Contract the between the Schedule of Amendments and Additional Conditions shall prevail. In the case of any inconsistency between the Conditions and any other term of this Contract (except between the Schedule of Amendments and Additional Conditions) the Conditions shall prevail.

SCHEDULE 2

Part 1 – Drawings

Part 2 – Specification

Part 3 - Employer's Requirements

SCHEDULE 3

Change Control Process

This document sets out the process to be implemented on the project to identify and raise potential changes early in the design or construction process to eliminate the un-necessary and un-controlled growth of the project cost and to avoid potential delays to the project.

The Change Control Process

Definitions

- “Instruction” means, where the building contract is in the traditional form, an instruction issued by the Architect/Contract Administrator.
- “NML” means The Board of Trustees of National Museums and Galleries on Merseyside.
- “Project Team” means NML Project Team
- “Design Team” means NML Design Team

Introduction

- The greatest risk for increased costs, disruption and programme delay revolve around change. It is recognised that some change(s) will be necessary and it is imperative that the process of change is managed so as to control the project within NML’s financial constraints. The Project Team are therefore required to:
 - Implement and adopt the change control process. This process ensures that the cost and programme affects are clearly understood and approved prior to changes being implemented.
 - Link the change control process to contingency management. This will ensure that where change threatens the project budget, compensatory savings are secured.
 - Apply the process throughout the construction stage of the project.

Overview

- The change control process will be managed by the Contract Administrator with the support of the Project Team.
- No change will be implemented by the Design Team or the Contractor unless written authorisation has been obtained from NML through this process.
- “Change” for the purpose of this process is defined as follows:

“Any movement or development in terms of design, specification, workmanship or construction method from the approved design and defined by the Contract and the drawings and specification listed therein.”

- Effective change control requires input from all members of the Project Team and it is important to ensure that all members of the Project Team are fully aware of their responsibilities and are committed to implement the process.

Process

Changes can be originated by any organisation within the Project Team. One person from each organisation shall be nominated as their 'Change Originator' and will be responsible for all aspects of complying with process.

The project must be closely monitored in order that any Changes, from whatever source, are identified.

The process for change control can be summarised as follows:

1. The Change Originator should firstly discuss the proposed Change with NML in order to gain their approval that the Change is to be considered further. It is however essential that the flow of information is not obstructed and it is the responsibility of all of the relevant parties to ensure that the momentum of the process is maintained
2. The Change Originator must obtain a number for his Change Request. Numbers will be issued in sequence by the Contract Administrator.
3. On the issued Change Request form, the Change Originator is required to complete, Change Originator (name & company), date, description (of change) and reason (for Change).
4. The Change Originator then indicates in the distribution box those organisations that are to receive and comment on the proposed Change. He then circulates this form for comment and facilitates appraisal by each of the recipients of the Change Request. The Change Originator then prepares a co-ordinated response from all relevant parties for submission to the Contract Administrator and the principal contractor, indicating a description of the proposed Change, the reason for the Change and the implications of the Change, in the boxes provided. It is essential at this point that all of the effects of the Change whether direct or in direct are identified. This information must be supplemented by drawings and other attachments as required.
5. Once submitted, the Contract Administrator and the principal contractor will undertake an assessment of the likely commercial impact and affect on programme. Once again the Contract Administrator and the principal contractor must consider both the direct and the indirect effect of the Change. (Through the process outlined above cost and time assessments are based on the full co-ordinated implications of the Change).
6. The cost and programme implications are indicated in the boxes provided and the source of funding the change i.e. contingency, VE or compensatory saving will be indicated by the Contract Administrator / NML. All proposed Changes will be included in the Change Control Report prepared by the Contract Administrator.

7. The Change Request is then signed off by the Contract Administrator and the principal contractor for submission to NML (Project Sponsor/Director) for approval and signing of the Change Control Form. In the absence of the Project Sponsor there will be a formal delegation of the approval process to a named individual notified to the team in writing at that time.

NO CHANGES SHOULD BE ACTIONED UNTIL THIS FORMAL PROCESS IS COMPLETED AND WRITTEN APPROVAL IS ATTAINED FROM THE PROJECT SPONSOR OR, IN THEIR ABSENCE, A FORMALLY DELEGATED NAMED PARTY.

8. The Change Control Status Report will be presented along with the Change Request Forms at formal monthly meetings, or more regularly as required.
9. The Change and its consequential impact, will be discussed and may be challenged at that meeting, agreed, revised or rejected by NML. If necessary, pending refinement or further information it may be resubmitted at a subsequent stage at which stage the process will need to be followed again. Change orders which have been rejected will be recorded as such in the Change Control Register.
10. If the Change is approved, the Change Request Form is signed by NML and an Instruction can then be raised referenced back to the approved Change Control Form. Funds can only be drawn from the appropriate source once approval of the Change is given.
11. In exceptional circumstances only and in agreement with NML (Project Sponsor/Director) will Change Proposals be considered and approved outside of the formal Change Control meeting or monthly project meeting.

Change Control Process

