**Organisation name** National Heritage Memorial Fund

**Supplier name and address** BDRC continental

Kingsbourne House
229-231 High Holborn
London WC1V 7DA
United Kingdom

**Value of Contract** £97,200

**Length of Contract** 3 years

**Contract Name** Customer Care Surveys 2015-2018

**Brief Description of Supply** Research Services

**Is Supplier an SME (small or**

**Medium sized enterprise)?** Yes

**Is the supplier a VCSE?**

**(voluntary, Community & social enterprise)** No

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| THE TRUSTEES OF THE NATIONAL HERITAGE MEMORIAL FUND7 Holbein Place, London SW1W 8NR |
| CONSULTANCY SERVICES AGREEMENT |
| Consultant:Consultant contact:Address:Tel No:E-mail: | BDRC continental Jon YoungKingsbourne House229-231 High HolbornLondon WC1V 7DAUnited Kingdom(020) 7400 1010Jon.Young@bdrc-continental.com  |
| NHMF contact:Tel No:E-mail: | Amelia Robinson0207 591 6258amelia.robinson@hlf.org.uk |
| Services: | Delivery of the Customer Care survey.  |
| ConsultancyFee*:* | Total fee: £97,200 (including VAT and expenses) Payment schedule: * £24,300, including VAT, April 2015 (25%)
* £32,076, including VAT, in April 2016 (33%)
* £24,300, including VAT, in April 2017 (25%)
* £16,524, including VAT, on completion in June 2018 (17%)
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| THE TRUSTEES OF THE NATIONAL HERITAGE MEMORIAL FUND hereby appoints the Consultant to perform the Services on the terms and conditions set out in this Agreement.………………………………………………..SIGNED for and on behalf of the Trustees of The National Heritage Memorial FundDate ……………………………………….. |
| THE CONSULTANT hereby agrees to be bound by the terms and conditions of this Agreement.……………………………………………….SIGNED for and on behalf of the Consultant(s)Date ………………………………………..THE CONSULTANT hereby agrees to be bound by the terms and conditions of this Agreement.……………………………………………….SIGNED for and on behalf of the Consultant(s)Date ……………………………………….. |

TERMS AND CONDITIONS

# 1. The Consultant's principal obligations

1. The Consultant shall perform the Services.
2. The Consultant warrants that it is entitled to enter into this Agreement and that it shall ensure that the Services are performed at all times:
* by experienced personnel approved in writing by NHMF and at times and places reasonably agreed by the Consultant with NHMF. All personnel engaged by the Consultant to provide the Services shall be appointed after fair and open competition;
* in full cooperation with NHMF;
* truthfully, accurately, loyally and in good faith towards NHMF and to promote the interests and statutory objectives of NHMF;
* to the best of its ability, in a professional, timely and workmanlike manner;
* in accordance with all applicable laws, rules and regulations (including, where relevant, any World Trade Organisation agreements and European Community directives governing tendering and contractual procedures, and any derivative and implementing UK laws);
* with sensitivity and taste and without doing any act or thing which would or might be expected to damage the reputation of NHMF; and
* in accordance with any reasonable directions of NHMF as to (i) financial procedures and controls and (ii) appraisal, monitoring and evaluation procedures.
1. The Consultant shall ensure that it and (if applicable) its personnel shall have sufficient resources of time to perform the Services promptly and in accordance with Clause 1.2.
2. The Consultant shall notify NHMF in writing of any actual, potential or possible conflict of interests on the part of the Consultant in contracting with NHMF or the provision of the Services, as soon as it becomes aware of the same, or suspects that the same may have arisen.

# 2. The Consultancy Fee and the Consultant's Expenses

1. In consideration of the full performance by the Consultant of its obligations hereunder, NHMF shall pay to the Consultant the Consultancy Fee.
2. The Consultancy Fee shall be inclusive of disbursements and all other costs or expenses incurred by the Consultant.
3. All sums payable under this Agreement are inclusive of VAT which shall, where applicable, be payable in addition on submission of a VAT invoice.
4. The Consultant shall render invoices for sums due from NHMF in arrears. NHMF will settle invoices approved by it within 30 days of receipt.

# 3. Confidentiality

1. The Consultant agrees to keep and to ensure that its personnel shall keep all information disclosed to the Consultant or of which the Consultant has become or becomes aware as a result of performance of the Services (including for example the content of any interviews conducted by the Consultant) and any confidential information regarding the operations, business, affairs or finances of NHMF or those with which NHMF works, those if funds and/or applicants for funding ("the Confidential Information"), strictly secret and confidential and not at any time for any reason whatsoever (whether before or after termination or expiry of this Agreement) to use or to disclose the Confidential Information or any part of it to any third party except as permitted hereunder to enable the Consultant to carry out the Services.
2. The Consultant shall procure that all its personnel (if any) having access to any of the Confidential Information shall be subject to the same obligations as the Consultant and shall enter into a suitable confidentiality agreement in a form approved by NHMF.
3. The obligations of confidence referred to in this Clause 3 shall not apply to any information which through no fault of the Consultant is in or comes into the public domain or is published with the express consent of NHMF.
4. Upon the termination of this Agreement the Consultant shall upon written request deliver up to NHMF all correspondence, documents, records, reports and data in any form whatsoever relating to performance of the Services, together with copies and extracts, which are in the Consultant's possession, power, custody or control as a result of the provision of the Services under this Agreement.
5. The Consultant acknowledges that any such correspondence, documents, records, reports or data relating to performance of the Services shall be the property of NHMF and shall make the same available to NHMF or persons authorised by NHMF on reasonable notice. The Consultant shall additionally provide NHMF (or any person or body to whom NHMF is accountable) on request with a full oral or written (at NHMF's discretion) explanation of its performance of the Services hereunder or any other activities carried out with or on behalf of NHMF.
6. The obligations of the Consultant and its personnel under this Clause 3 shall survive the expiry or the termination of this Agreement for whatever reason.

# 4. Term

1. This Agreement shall commence on the date hereof and, subject to Clauses 4.2 and 4.3, shall continue in force until completion of the parties' obligations hereunder and shall expire on **August 2018**, unless extended by mutual agreement.
2. Either of NHMF and the Consultant may terminate this Agreement forthwith by notice in writing if the other:
* shall have committed a material or persistent breach of its obligations which if capable of remedy shall not have been remedied within 14 days of written notice to do so; or
* if the other is unable to pay its debts as they fall due or is the subject of a bankruptcy petition or enters into compulsory or voluntary liquidation or compounds with or convenes a meeting of its creditors or has a receiver, manager, administrator or administrative receiver appointed of its assets or ceases for any reason to carry on business.
1. Termination of this Agreement shall be without prejudice to the accrued rights and obligations of the parties.

# 5. Liability

The Consultant shall indemnify, hold harmless and defend NHMF from and against any or all direct liabilities, claims, proceedings, damages, charges and reasonable expenses incurred or paid whatsoever by NHMF arising out of or as a direct consequence of a breach by the Consultant of the provisions of this Agreement.

# 6. Assignment and Subcontracting

1. The Consultant shall not assign or subcontract any obligation under this Agreement without the express prior written consent of NHMF.

# 7. Force Majeure

1. Neither party shall be liable to the other in respect of anything which, apart from this provision, may constitute a breach of this Agreement arising by reason of force majeure, namely, circumstances outside that party's reasonable control including (but not limited to) fire, flood, storm, sabotage, delays in transportation, strikes or lock-outs, riot, war, rebellion or acts of local government or parliamentary authority.
2. Each party shall give notice as soon as practicable to the other upon becoming aware of an event of force majeure which prevents that party from performing its obligations under this Agreement, and of the cessation of the said event. Such party shall in addition use all reasonable endeavours to minimise the effect of the event of force majeure on its performance of its obligations under this Agreement.

# 8. Copyright

1. The Consultant hereby:
* irrevocably assigns to NHMF with full title guarantee the worldwide copyright (including database right), whether vested, contingent or future, in any material, report or other document produced as part of the Services, for the full period thereof, including any extensions or renewals, and including all rights of action accrued at the date of this assignment or which may accrue hereafter.
* undertakes to do all acts and execute all documents drafted or prepared by the Consultant for NHMF which may be necessary to confirm the title of NHMF to the copyright assigned;
* warrants that it has not, and shall not, grant or assign any rights of any nature in any material, report or other document produced as part of the Services to any third party whatsoever in any part of the world;
* warrants that copyright in any material, report or other document produced as part of the Services is assigned to NHMF free of all moral rights;
* warrants that it is or shall be the sole and unencumbered owner of all copyright in any material, report or other document produced as part of the Services and that nothing in them (or any exploitation thereof by NHMF) will infringe any right whatsoever of any third party;
* warrants that it has all the applicable permissions and licenses and has fulfilled any other relevant requirements required to copy and provide to NHMF any third party documentation or information in whatever format ("Documentation") provided as part of the Services, and that any Documentation shall be appropriately labelled as such where not immediately identifiable.
1. Notwithstanding the warranties set out in Clause 8.1, the Consultant shall not be liable to NHMF for any breach of warranty arising from material provided by NHMF to Consultant.

# 9. Insurance

The Consultant shall carry and maintain during the performance of this Agreement Public Liability and Employer’s Liability Insurance covering the place where services are to be performed and such other insurance coverage as may be required to insure against losses or damages to NHMF’s personnel, property or production caused by the Consultant’s activities. The Consultant shall, at its sole expense, maintain in effect at all times during the performance of its obligations hereunder insurance coverage with limits not less than those set forth below with insurers and under forms of policies satisfactory to NHMF.

* Public Liability and Employer’s Liability insurance for the risks described and in the sum of at least £1,000,000.
* Professional Indemnity insurance for the risks described and in the sum of at least £500,000.

# 10. General

1. Entire Agreement. This Agreement, together with any documents referred to in it, constitutes the whole agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter provided that this clause shall not operate to exclude either party's liability to the other for fraudulent misrepresentation.
2. Waiver. Failure or neglect by either party to enforce at any time any of the provisions of this Agreement shall not be construed nor shall be deemed to be a waiver of that party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement not prejudice that party's rights to take subsequent action.
3. Severability. In the event that any of the terms, conditions or provisions of this Agreement shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms, conditions or provisions which shall continue to be valid to the fullest extent permitted by law.
4. Notices. Any notice, request or other document to be submitted under this Agreement shall be delivered or sent by first class post, by facsimile transmission or by e-mail to the party to be served at that party's last known postal or e-mail address or facsimile number appearing in this Agreement or such other address as that party shall notify in accordance with this Clause 10.4. The notice will be effective if posted, on the fourth day after posting and if sent by facsimile or e-mail when the sender receives confirmation of receipt.
5. No partnership or agency. Except as permitted by this Agreement, neither party shall in any way represent itself as being the other or an agent, partner, employee or representative of the other and shall not hold itself out as having any authority to incur any obligation of any nature whether express or implied on that other's behalf.
6. Prevention of fraud, theft and corruption.

The Consultant shall:

* not offer or give, or agree to give, to any person employed by or in the service of NHMF or the Crown any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing any act in relation to the obtaining or performance of this Agreement or any other agreement with NHMF or with any minister of the Crown or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any other such agreement;
* not enter into this Agreement or any other agreement with NHMF or with any minister of the Crown in connection with which commission has been paid or agreed to be paid by it or on its behalf or to its knowledge to any person employed by or in the service of NHMF or the Crown unless before the agreement is made, particulars of any agreement for the payment thereof have been disclosed in writing to the Chief Executive of NHMF;
* comply fully with the Prevention of Corruption Acts 1889 to 1916;
* comply with such reasonable directions as NHMF shall make as to the establishment of procedures and controls to detect fraud, theft and/or corruption in the obtaining of this Agreement and the performance of the Services; and
* require its external auditors to report any suspected or actual frauds, theft or corruption on the part of the Consultant directly to NHMF.
1. Joint and several liability. If the Consultant is comprised of more than one person the performance of the obligations of the Consultant under this Agreement shall be the joint and several liability of each such person.
2. No third party rights. This Agreement shall not confer any rights on any third parties.
3. Law. The parties hereby agree that this Agreement shall be governed by and interpreted in accordance with English Law, and hereby submit to the non-exclusive jurisdiction of the English Courts.
4. Definitions.
5. In this Agreement:
* words and expressions defined on the front page of this Agreement shall (unless the context otherwise admits) bear the same meaning when used in these Terms and Conditions or elsewhere in this Agreement;
* the term "Agreement" shall mean the front and back pages hereof, these Terms and Conditions and any or all other documents scheduled hereto.
1. Headings. The headings of the clauses of this Agreement are used for convenience only and shall not affect the construction hereof.
2. Reports and other documents produced under this contract should adhere to HLF’s accessibility and formatting guidance (see Appendix 3). Consultants are required to adhere to all appropriate regulations and guidelines on the collection, storage, transmission and destruction of personal data ([MRS/SRA, Data Protection Act 1998: Guidelines for Social Research, April 2013](https://www.mrs.org.uk/pdf/2013-04-23%20MRS%20SRA%20-%20DP%20Guidelines%20updated.pdf)
3. Successors and assigns. This Agreement shall be binding on the successors and assigns of the Consultant.