



STANDARD TERMS AND CONDITIONS OF CONTRACT
FOR THE
PROVISION OF SERVICES

SAMPLE

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THIS AGREEMENT is made on []

BETWEEN

- (1) **NMRN OPERATIONS** a company limited by guarantee and incorporated under number 09988314 with registered charity number 1169061 whose registered office is at National Museum Of The Royal Navy, HM Naval Base, PP66, Portsmouth, Hampshire PO1 3NH (“the **Customer**”); and
- (2) [] a company registered in England and Wales with number [] whose registered office is at [] OR IF A PERSON [] of [] (“the **Service Provider**”).

BACKGROUND

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

NOW IT IS AGREED as follows:

1 INTERPRETATION

Definitions

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

“Agreement” means an agreement for the purchase of the Services consisting of contract documentation as described in Clause 2.1, the conditions and any schedules;

“Business Day” means 09:00 to 17:00 Monday to Friday, or a day, other than a Saturday or a Sunday, on which banks are open for business;

“Charges” the Service Provider’s charges for the Services as set out in Schedule 2 and any other sums due to the Service Provider under this Agreement;

- “Commencement Date”** means the date on which provision of the Services will commence, as defined in the Agreement;
- “Confidential Information”** means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
- “Data Protection Legislation”** means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;
- “Deliverables”** any documents, products and materials to be developed and provided by the Service Provider as part of or in connection with the Services, including any products of the Services;
- “Firm Price”** a price excluding any Value Added Tax (VAT) which is not subject to variation;

“Intellectual Property Rights”

means:

(a) any and all rights in any patents, trade marks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trade marks and service marks, copyrights, database rights, know-how, rights in designs and inventions;

(b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a);

(c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and

(d) the right to sue for past infringements of any of the foregoing rights;

“Legislation”

in relation to the United Kingdom and Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, or any exercise of Royal Prerogative;

“Parties”

the Customer and the Service Provider collectively, and “Party” means either of them and their permitted assignees;

“Person”

includes any individual, company, Customer, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established);

“Services” means the services to be provided by the Service Provider to the Customer in accordance with Clause 2 of the Agreement, as fully defined in the Agreement, and subject to the terms and conditions of the Agreement; and

“Term” means the term of the Agreement as defined therein.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time;

1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and

1.2.5 a "Party" or the "Parties" refer to the parties to the Agreement.

1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

1.6 References to persons shall include corporations.

2 DURATION

This Agreement shall come into effect on the Commencement Date and, subject to provisions for earlier termination, shall continue for a period of [], unless and until terminated by either party in accordance with this Agreement.

3 SERVICES

- 3.1 With effect from the Commencement Date, the Service Provider shall, throughout the Term of the Agreement, provide the Services to the Customer as described in Schedule 1.
- 3.2 The Service Provider shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the maritime, nautical or heritage sector in the United Kingdom.
- 3.3 The Service Provider shall act in accordance with all reasonable instructions given to it by the Customer provided such instructions are compatible with the specification of Services provided in the Agreement.
- 3.4 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 3.5 The Service Provider may, in relation to certain specified matters related to the Services, act on the Customer's behalf. Such matters shall not be set out in the Agreement but shall be agreed between the Parties as they arise from time to time.
- 3.6 The Service Provider shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Customer, subject to the Customer's acceptance of any related reasonable changes to the Charges that may be due as a result of such changes.

4 INTELLECTUAL PROPERTY RIGHTS – VESTING IN THE NMRN

- 4.1 All intellectual property rights of any nature in the results generated in the performance of work under the Contract and recorded in any written or other tangible form (the 'Results'), including rights in inventions, designs, computer software, databases, copyright works and information shall vest in and be the property of the NMRN.
- 4.2 The [Supplier/Service Provider*] shall take all necessary measures to secure that vesting. On request, the [Supplier/Service Provider*] shall demonstrate to the NMRN's satisfaction that, where they have sub-contracted work under the Contract, they have secured that vesting in the work performed by their sub-[Supplier/Service Provider*]s.
- 4.3 The NMRN may use, have used, copy and disclose the Results by itself or through third parties for any purpose whatsoever subject to the [Supplier/Service Provider*]'s patents and design rights (registered or unregistered) and to the rights of third parties not employed in the performance of work under the Contract.
- 4.4 The NMRN shall determine whether any of the Results should be protected by patent or other protection. The costs of patent or like protection shall be borne by the NMRN. The [Supplier/Service Provider*] shall assist the NMRN in filing and executing documents necessary to secure that protection. The [Supplier/Service Provider*] shall use all commercially reasonable endeavours to secure similar assistance from sub-contractors as appropriate. The costs of such patent or other protection shall be borne by the NMRN.
- 4.5 The NMRN shall have, in respect of any copyright work to which this Clause applies, a free licence;
- 4.5.1 to copy the Results and to circulate and use the Results or any copy thereof within the NMRN, provided that no part of the Results nor any copy thereof shall, except with the prior written permission of the [Supplier/Service Provider*] or pursuant to sub-clause 4.5.2, be made available to any third party;
- 4.5.2 to issue the Results or any part of the Results or any copy of the Results or any part thereof to another supplier or potential supplier to the NMRN for the purpose of use only under a contract, or tendering for a proposed contract, for a NMRN purpose, provided that the supplier or potential supplier is placed under an obligation which restricts disclosure and use of such Results to the said purposes;

provided that, subject to any pre-existing rights of the NMRN, sub-Clauses 4.5.2 above shall only apply to the Results or any part of the Results or any copy of the Results or any part thereof if such Results or part thereof is generated under the Contract. Sub-Clause 4.5.2 shall apply to all Results or parts thereof unless otherwise marked by the [Supplier/Service Provider*] in accordance with Clauses 4.6 and 4.7 below.

- 4.6 As soon as they become aware that any copyright work or part thereof delivered or proposed to be delivered is a work subject to special conditions or any third party rights known to the [Supplier/Service Provider*], or is a work or part thereof not generated under the Contract, the [Supplier/Service Provider*] shall inform the NMRN and upon delivery shall appropriately mark such work or part thereof to identify the same and indicate the relevant conditions or rights.
- 4.7 The [Supplier/Service Provider*] may mark or include in any copyright work to which this Clause applies a copyright notice provided that such copyright notice acknowledges the NMRN's rights under this Clause. Any such notice shall be perpetuated in any copies of such Results made by the NMRN or its agents or [Supplier/Service Provider*]s.
- 4.8 This Clause shall constitute an 'agreement to the contrary' for the purposes of Section 48 of the Copyright, Design and Patents Act 1988. 8. In this Clause 'copyright work' shall be understood to include any Results as defined in sub-clause 4.1 above, data or other materials in which a database right subsists
- 4.9 Apart from intellectual property rights vested in the NMRN by virtue of sub-clause 4.1 above, ownership of, or rights in, all other intellectual property are not transferred to the NMRN by this Clause.
- 4.10 Unless otherwise agreed with the NMRN, the [Supplier/Service Provider*] shall retain a copy of the Results together with records of all work done for the purposes of the Contract for six (6) years after the completion of the Contract.
- 4.11 The NMRN shall have the right to require the [Supplier/Service Provider*] to furnish to the NMRN copies of any and all of the Results and such records for so long as they are retained by the [Supplier/Service Provider*]. A reasonable charge for this service based on the cost of providing it will be borne by the NMRN unless already included in the price of the Contract.
- 4.12 *The [Supplier/Service Provider*] shall treat the Results as if received in confidence from the NMRN and:*
- 4.12.1 shall not copy, use or disclose to a third party any of the Results without the prior written consent of the NMRN, except that the [Supplier/Service

Provider*] may without prior consent, copy and use the Results, and disclose the Results in confidence to their officers, employees and sub-[Supplier/Service Provider*]s, to such extent as may be necessary for the performance of the Contract or any sub-contract under it or in the exercise of any right granted pursuant to sub-clause 4.16 of this Clause; and

- 4.12.2 shall take all reasonable precautions necessary to ensure that the Results are treated in confidence by those of their officers, employees and sub-[Supplier/Service Provider*]s who receive them and are not further disclosed or used otherwise than for the purpose of performing work or having work performed for the NMRN under the Contract or any sub-contract under it.
- 4.13 The [Supplier/Service Provider*] shall ensure that their employees are aware of their arrangements for discharging the obligations at sub-clause 4.12 and take such steps as may be reasonably practical to enforce such arrangements.
- 4.14 The confidentiality provisions of sub-clause 4.12 shall not apply to the Results or any part thereof to the extent that the [Supplier/Service Provider*] can show that they were or have become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties.
- 4.15 The [Supplier/Service Provider*] shall not be in breach of the confidentiality obligations contained in this Clause where it can show that any disclosure of the Results was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the [Supplier/Service Provider*] shall ensure that the recipient of the Results is made aware of and asked to respect its confidentiality and, wherever possible and permitted by law, shall notify the NMRN as soon as practicable after becoming aware that such disclosure is required. Such disclosure shall in no way diminish the obligations of the [Supplier/Service Provider*] under this Clause.
- 4.16 The [Supplier/Service Provider*] shall be entitled to request consent from the NMRN to re-use (under licence or otherwise) the Results and intellectual property rights vested in the NMRN by virtue of sub-clause 4.1 for other purposes including, but not limited to, tendering for other work for the NMRN or work for other UK Government departments or customers. Such consent shall be properly considered by the NMRN taking into account matters such as the rights of third parties.

5 CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Services.
- 5.2 The Customer may, from time to time, issue reasonable instructions to the Service Provider in relation to the Service Provider's provision of the Services. Any such instructions should be compatible with the description of the Services provided in the Agreement at Schedule 1.
- 5.3 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Customer in order to continue with the provision of the Services or any part thereof at any time, the Customer shall provide the same in a reasonable and timely manner.
- 5.4 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Customer's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 5.5 If the nature of the Services requires that the Service Provider has access to the Customer's site or any other location, access to which is lawfully controlled by the Customer, the Customer shall ensure that the Service Provider has access to the same at the times to be agreed between the Service Provider and the Customer as required.
- 5.6 Any delay in the provision of the Services resulting from the Customer's failure or delay in complying with any of the provisions of Clause 5 of the Agreement shall not be the responsibility or fault of the Service Provider.

6 CHARGES, PAYMENT AND RECORDS

- 6.1 The Customer shall pay the Charges to the Service Provider in accordance with the provisions of the Agreement and as detailed at Schedule 2.
- 6.2 The Service Provider shall invoice the Customer for Charges due in accordance with the provisions of the Agreement and as detailed at Schedule 2.
- 6.3 All payments required to be made pursuant to the Agreement by either Party shall be made within thirty (30) calendar days of receipt by that Party of the relevant invoice and as detailed at Schedule 2.

- 6.4 All payments required to be made pursuant to the Agreement by either Party shall be made in UK Pound Sterling (£) in cleared funds to such bank in the United Kingdom as the receiving Party may from time to time.
- 6.5 Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 6.6 Each Party shall be required to:
- 6.6.1 keep, or procure that there are kept, such records and books of account as are necessary to enable the amount of any sums payable pursuant to the Agreement to be accurately calculated;
 - 6.6.2 at the reasonable request of the other Party, allow that Party or its agent to inspect those records and books of account and, to the extent that they relate to the calculation of those sums, to take copies of them; and
 - 6.6.3 within ninety (90) calendar days after the end of each calendar year, obtain at its own expense and supply to the other Party an auditors' certificate as to the accuracy of the sums paid by that Party pursuant to the Agreement during that calendar year.
- 6.7 All Charges are expressed exclusive of VAT. The Customer shall pay to the Service Provider, in addition to the Charges, the amount of VAT (if any) which is properly chargeable by the Service Provider to the Customer on or in respect of the Charges.
- 6.8 Any exercise by the Customer of its rights under this Clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

7 LIABILITY, INDEMNITY AND INSURANCE

- 7.1 The Service Provider shall indemnify the Customer in full against all liability, loss, damages, costs and expenses (including legal expenses) incurred or paid by the Customer as a result of, or in connection with:
- 7.1.1 A breach of any warranty given by the Service Provider in relation to the Service;

- 7.1.2 any claim that the Services infringe, or that their importation, use or resale, infringes, the patent, copyright, trademark or other intellectual property rights of any other person;
- 7.1.3 any act, error or omission of the Service Provider, its employees, agents or sub-contractors, in supplying or delivering the Service; or
- 7.1.4 all claims by the customers of the Customer (and their sub-Customers) arising out of any breach by the Service Provider of this Agreement,
- unless such liability arises from:
- 7.1.5 a breach of this Agreement by the Customer; or
- 7.1.6 compliance with any Specification supplied by the Customer.
- 7.2 During the term of this Agreement and for a period of one (1) year afterwards the Service Provider shall maintain in force the following insurance policies with reputable insurance companies:
- 7.2.1 public liability insurance with a limit of at least [[] million (£[]) per claim]; and
- 7.2.2 professional indemnity insurance with a limit of at least [[] million (£[]) for claims arising from a single event or series of related events in a single calendar year.
- 7.3 The terms of any insurance policy or the amount of the cover shall not relieve the Service Provider of any liabilities under the Agreement. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in Clause 7.2.
- 7.4 The Service Provider shall produce to the Customer on request copies of all insurance policies referred to in Clause 7.2 or other evidence confirming the existence and extent of cover given by those policies.
- 7.5 Neither Party limits its liability for:
- 7.5.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- 7.5.2 fraud or fraudulent misrepresentation by it or its employees;
- 7.5.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

- 7.5.4 any liability to the extent it cannot be limited or excluded by law.
- 7.6 The financial caps on the Service Provider's liability set out in Clause 7.7 below shall not apply to the following:
- 7.6.1 for any indemnity given by the Service Provider to the Customer under this Agreement, including but not limited to those instances as noted in Clause 7.1; and
- 7.6.2 the Service Provider's indemnity in relation to Intellectual Property Rights and Restrictions set out in Clause 10.
- 7.7 Subject to Clauses 7.4 and 7.5 and to the maximum extent permitted by law, throughout the Term the Service Provider's total liability in respect of losses that are caused by Defaults of the Service Provider shall in no event exceed:
- 7.7.1 in respect of damage caused by the Service Provider's personnel whilst on the Customer's premises [£ pounds] (£[]) in aggregate;
- 7.7.2 in respect of material breach of contract [£ pounds] (£[]) in aggregate;
- 7.7.3 in respect of loss or damage to Customer's issued property [£ pounds] (£[]) in aggregate; and
- 7.7.4 in respect of loss or damage to Goods [£ pounds] (£[]) in aggregate;
- 7.8 the Service Provider's total liability throughout the Term in respect of all other liabilities, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Agreement shall be [£ pounds] (£[]) in aggregate.
- 7.9 Clause 7.7 shall not exclude or limit the Service Provider's right under this Agreement to claim for the Charges. The Service Provider shall not be liable for any loss or damage suffered by the Customer that results from the Customer's failure to follow any instructions given by the Service Provider.
- 7.10 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

8 DELAY PAYMENTS

- 8.1 The Customer shall be entitled to charge the Service Provider Liquidated and Ascertained Damages ("LADs") for late completion of the contract works.

8.2 LADs shall be the Customer's sole remedy for delay. LADs shall be 0.5% of the Contract Sum per week and will have an overall cap of five percent (5%) of the Contract Sum.

9 GUARANTEE

9.1 The Service Provider shall guarantee that the Deliverables provided will be free from any and all defects for a period that shall be defined in the Agreement.

9.2 If any defects in the Deliverables appear during the guarantee period set out in the Agreement the Service Provider shall rectify any and all such defects at no cost to the Customer.

9.3 The Customer's rights under this Agreement are in addition to the statutory terms implied in favour of the Customer by the Supply of Goods and Services Act 1982 and any other statute.

10 CONFIDENTIALITY

10.1 Each Party shall undertake that, except as provided by Clause 10.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and for two (2) years after its termination:

10.1.1 keep confidential all Confidential Information;

10.1.2 not disclose any Confidential Information to any other party;

10.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;

10.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

10.1.5 ensure that none of its directors, officers, employees, agents, sub-Service Providers or advisers does any act which, if done by that Party, would be a breach of the provisions of Clauses 10.1.1 to 10.1.4 of the Agreement.

10.2 Either Party may:

10.2.1 disclose any Confidential Information to:

(a) any sub-Service Provider or Service Provider of that Party;

- (b) any governmental or other Customer or regulatory body; or
- (c) any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under Clause 10.2.1.b or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question; and

- 10.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.
- 10.3 If the receiving party has reasonable grounds to believe that the disclosing party is involved in activity that constitutes an offence under the Bribery Act 2010, it may disclose relevant Confidential Information to the Serious Fraud Office (or other relevant government body) without informing the disclosing party of such disclosure.
- 10.4 Within five (5) Business Days of receipt of a request to do so made at any time and in any event if the Agreement is terminated, the receiving party shall promptly return or destroy (at the option of the disclosing party) all Confidential Information of the disclosing party.
- 10.5 The provisions of Clause 10 of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

11 RISK AND TITLE IN THE DELIVERABLES AND OTHER MATERIALS

- 11.1 Title to and risk of damage to or loss of the Deliverables shall pass to the Customer on delivery.
- 11.2 All documents, equipment, drawings, specifications and all other materials and data supplied by the Customer to the Service Provider shall, at all times, be and remain as

between the Customer and the Service Provider the exclusive property of the Customer. They shall be held by the Service Provider in safe custody at its own risk and maintained and kept in good condition by the Service Provider until returned to the Customer. They shall not be disposed of or used other than in accordance with the Customer's written instructions or authorisation.

12 FORCE MAJEURE

- 12.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 12.2 In the event that a Party to the Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period to be defined in the Agreement, the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.

13 ANTI-BRIBERY AND CORRUPTION

- 13.1 The Service Provider shall:
- 13.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
 - 13.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 13.1.3 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the

Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and

13.1.4 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Service Provider in connection with the performance of this Agreement.

13.2 Breach of this Clause 13 shall be deemed a material breach.

13.3 For the purpose of this Clause 13 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 11 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. See: <https://www.legislation.gov.uk/ukpga/2010/23/section/7>.

14 DATA PROTECTION

14.1 Each Party shall comply with its respective obligations under Applicable Data Protection Law and shall not do or omit to do anything which would cause the other Party to breach Applicable Data Protection Law.

14.2 To the extent that any personal data is processed by the Service Provider under this Agreement, the Service Provider shall:

14.2.1 process the personal data only in accordance with this Agreement and the Customer's lawful instructions;

14.2.2 implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;

14.2.3 only permit the personal data to be processed by persons who are bound by enforceable obligations of confidentiality;

14.2.4 remain entitled to appoint third party sub-processors. Where the Service Provider appoints a third party sub-processor, it shall, with respect to data protection obligations:

- (a) ensure that the third party is subject to, and contractually bound by, at least the same obligations as Service Provider; and
- (b) remain fully liable to the Customer for all acts and omissions of the third party;

not transfer or otherwise process the personal data outside the European Economic Area (“EEA”) without obtaining the Customer's prior written consent;

14.2.5 where consent is granted, the Service Provider may only process, or permit the processing, of the personal data outside the EEA under the following conditions:

- (a) the territory has the benefit of a European Commission finding that it provides adequate protection for the privacy rights of individuals; or
- (b) the Service Provider has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available; or
- (c) the transfer otherwise complies with Applicable Data Protection Law;

notify the Customer without delay after becoming aware that it has suffered a personal data breach;

14.2.6 at the Customer's cost, permit the Customer (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Service Provider's data processing activities to enable the Customer to verify and/or procure that the Service Provider is complying with its obligations under this Clause 14;

14.2.7 assist the Customer in responding to requests from data subjects who are exercising their rights under Applicable Data Protection Law;

14.2.8 assist the Customer in complying with its obligations pursuant to Articles 32-36 of the GDPR (or such corresponding provisions of Applicable Data Protection Law), comprising (if applicable):

- (a) notifying a supervisory Customer that the Customer has suffered a personal data breach;
- (b) communicating a personal data breach to an affected individual;
- (c) carrying out an impact assessment; and
- (d) where required under an impact assessment, engaging in prior consultation with a supervisory Customer; and

unless applicable law requires otherwise, upon termination of this Agreement delete all personal data provided by the Customer to the Service Provider.

14.3 Each Party acknowledges that the factual description of the subject-matter, duration of the processing, the nature and purpose of the processing, the type of personal data and the categories of data subjects shall be as set out in this Agreement. To the extent that the foregoing is not set out in this Agreement, the Parties shall keep a separate record the relevant particulars.

15 SAFEGUARDING

15.1 Both Parties warrant that they have adopted and will enforce an appropriate safeguarding policy and will make it available to the other Party on request.

15.2 The Service Provider shall report immediately to the Customer any safeguarding incidents it becomes aware of in connection with the Services provided under this Agreement and shall also report without delay any other incidents it becomes aware of concerning its own activities (or otherwise) which could have a detrimental effect on the Customer's reputation.

15.3 The Service Provider shall, if requested, assist the Customer to prepare any Serious Incident Report required to be filed with the Charity Commission or other report or notification required by another regulator or Customer and shall assist the Charity Commission and any other relevant authorities with any subsequent enquiries.

16 TERM AND TERMINATION

- 16.1 The Agreement shall come into force on the agreed Commencement Date and shall continue for a defined Term from that date, subject to the provisions of this Clause 16 of the Agreement.
- 16.2 Either Party shall have the right, subject to the agreement and consent of the other Party and exercisable by giving not less than thirty (30) calendar days written notice to the other at any time prior to the expiry of the Term specified in Clause 16.1 of the Agreement (or any further period for which the Agreement is extended) to extend the Agreement for a further period.
- 16.3 Either Party may terminate the Agreement by giving to the other not less than thirty (30) calendar days written notice, to expire on or at any time after the minimum term of the Agreement (which shall be defined in the Agreement).
- 16.4 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
- 16.4.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within ninety (90) Business Days of the due date for payment;
 - 16.4.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within sixty (60) Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 16.4.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - 16.4.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 16.4.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);

- 16.4.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 16.4.7 the other Party ceases, or threatens to cease, to carry on business; or
 - 16.4.8 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of Clause 16, “control” and “connected persons” shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 16.5 For the purposes of Clause 16.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 16.6 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

17 EFFECTS OF TERMINATION

- 17.1 Upon the termination of the Agreement for any reason:
- 17.1.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
 - 17.1.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
 - 17.1.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;
 - 17.1.4 subject as provided in this Clause 17 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other;
 - 17.1.5 each Party shall (except to the extent referred to in Clause 9 of the Agreement) immediately cease to use, either directly or indirectly, any

Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information; and

- 17.1.6 the Intellectual Property Rights licence granted under Clause 4.1 of the Agreement shall terminate and the Customer shall forthwith cease to use, either directly or indirectly, any such Intellectual Property Rights, and shall forthwith return to the Service Provider any such material in its possession or control.

18 AMENDMENTS

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

19 WAIVERS AND REMEDIES

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

20 SEVERANCE

20.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

20.1.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

20.1.2 the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

21 FURTHER ASSURANCE

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

22 COSTS

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

23 ASSIGNMENT AND SUB-CONTRACTING

23.1 The Agreement shall be personal to the Parties.

23.2 Neither Party may assign, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

23.3 The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-Service Providers. Any act or omission of such other member or sub-Service Provider shall, for the purposes of the Agreement, be deemed to be an act or omission of the Service Provider.

24 RELATIONSHIP OF THE PARTIES

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

25 NON-SOLICITATION

- 25.1 Neither Party shall, for the Term of the Agreement and for a period of twelve (12) months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement without the express written consent of that Party.
- 25.2 Neither Party shall, for the Term of the Agreement and for a period of twelve (12) months after its termination or expiry, solicit or entice away from the other Party any customer or Customer where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

26 THIRD PARTY RIGHTS

- 26.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.
- 26.2 Subject to Clause 26 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

27 NOTICES

- 27.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 27.2 Notices shall be deemed to have been duly given:
- 27.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 27.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

- 27.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- 27.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

28 ENTIRE AGREEMENT

- 28.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 28.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

29 COUNTERPARTS

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

30 DISPUTE RESOLUTION

- 30.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the Customer to settle such disputes.
- 30.2 If negotiations under Clause 30.1 of the Agreement do not resolve the matter within <<insert period>> of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.

- 30.3 If the ADR procedure under Clause 30.2 of the Agreement does not resolve the matter within <<insert period>> of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.
- 30.4 The seat of the arbitration under Clause 30.3 of the Agreement shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.
- 30.5 Nothing in this Clause 30 of the Agreement shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 30.6 The decision and outcome of the final method of dispute resolution under this Clause 30 of the Agreement shall [not] be final and binding on both Parties.

31 LAW AND JURISDICTION

- 31.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 31.2 Subject to the provisions of Clause 30 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

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

Signed for and on behalf of

[The Service Provider]:

)

) _____

(Signature of director)

Director

(name of director)

Signed for and on behalf of

The National Museum of the Royal Navy (NMRN) Operations:

(Signature)

(name)

SCHEDULE 1

STATEMENT OF WORK - SERVICES

1 INTRODUCTION

- 1.1 This Schedule sets out the intended scope of the Services to be provided by the Service Provider and to provide a description of what each Service entails.

2 SERVICES DESCRIPTION

2.1 **Implementation Services –**

2.2 **Operational Services –**

2.3 **Security Requirements -**

2.4 **Other Requirements -**

2.5 **Optional Services -**

SCHEDULE 2

CHARGES AND INVOICING

PART A: PRICING

1 APPLICABLE PRICING MECHANISM

- 1.1 Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in Annex 1 and on the basis of the rates and prices specified in Annex 1 as more particularly set out in this Schedule.
- 1.2 Table 1 of Annex 1 sets out which pricing mechanism shall be used to calculate each Milestone Payment, which shall be one or more of the following:
 - 1.2.1 “Time and Materials”, in which case the provisions of Paragraph 2 shall apply; or
 - 1.2.2 “Firm Price”, in which case the provisions of Paragraph 3 shall apply.

2 TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

- 2.1 Where Table 1 of Annex 1 indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:
 - 2.1.1 the day rates set out in Table 1 of Annex 1 shall be used to calculate the relevant Charges, provided that the Service Provider (or its Sub-contractor) shall:
 - (a) not be entitled to include any uplift for risks or contingencies within its day rates;
 - (b) not be paid any Charges to the extent that they would otherwise exceed any cap specified against the relevant Charge in Table 2 of Annex 1 unless the Service Provider has obtained the Customer’s prior written consent. The Service Provider shall monitor the amount of each Charge incurred in relation to any relevant cap and notify the Customer immediately in the event of any risk that the cap may be exceeded and the Customer shall instruct the Service Provider on how to proceed;

(c) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Service Provider's obligation to deliver the Services in a proportionate and efficient manner; and

2.1.2 the Service Provider shall keep records of hours properly worked by Service Provider Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Customer requests copies of such records, the Service Provider shall make them available to the Customer within 10 Business Days of the Customer's request.

3 FIRM PRICE MILESTONE PAYMENTS

3.1 Where Table 1 of Annex 1 indicates that a Milestone Payment is to be calculated by reference to a Firm Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 3 of Annex 1.

3.2 Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to increase by way of Indexation.

4 REIMBURSABLE EXPENSES

4.1 Where Services are to be charged using the Time and Materials and the Customer so agrees in writing, the Service Provider shall be entitled to be reimbursed by the Customer for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

4.2 The Customer shall provide a copy of its current expenses policy to the Service Provider upon request.

4.3 Except as expressly set out in Paragraph 4.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Service Provider's performance of its obligations under this Agreement and no further amounts shall be payable by the Customer to the Service Provider in respect of such performance, including in respect of matters such as:

- 4.3.1 any incidental expenses that the Service Provider incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Service Provider Personnel, including network or data interchange costs or other telecommunications charges; or
- 4.3.2 any amount for any services provided or costs incurred by the Service Provider prior to the Commencement Date.

PART B: CHARGING

1 MILESTONE PAYMENTS

- 1.1 On the Achievement of a Milestone the Service Provider shall be entitled to invoice the Customer for the Milestone Payment associated with that Milestone less the applicable Milestone Retention in accordance with this Part B.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by:
 - 1.2.1 a Milestone Achievement Certificate; and
 - 1.2.2 where the Milestone Payment is to be calculated by reference to a Time and Materials pricing mechanism, a Certificate of Costs with Supporting Documentation.
- 1.3 The “Milestone Retention” for each Milestone shall be calculated where the Milestone Payment for the relevant Milestone is determined by reference to a Time and Materials, or Firm Price pricing mechanism, 10% of the Charges for that Milestone.

2 CHANGES TO CHARGES

- 2.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 3 (Change Control Procedure) and on the basis that the Service Provider Profit Margin on such Charges shall be no greater than that applying to Charges using the same pricing mechanism as at the Commencement Date (as set out in the Contract Inception Report).

- 2.2 The Customer may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

3 INDEXATION

- 3.1 Any amounts or sums in this Agreement which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this Paragraph 3 to reflect the effects of inflation.
- 3.2 Where Indexation applies, the relevant adjustment shall be:
- 3.2.1 applied on the first day of the second April following the Commencement Date and on the first day of April in each subsequent year (each such date an “adjustment date”); and
- 3.2.2 determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the twelve (12) months ended on the 31 January immediately preceding the relevant adjustment date.
- 3.3 Except as set out in this Paragraph 3, neither the Charges nor any other costs, expenses, Charges or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Service Provider or Sub-contractors of the performance of their obligations.

4 RISK REGISTER

- 4.1 The Service Provider shall be required to provide a Risk Register as part of the Service delivery.
- 4.2 The Parties shall review the Risk Register from time to time and as otherwise required for the purposes of managing the Service.

PART C: INVOICING AND PAYMENT

1 SERVICE PROVIDER INVOICES

- 1.1 The Customer shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.
- 1.2 If the Service Provider proposes to submit for payment an invoice that does not comply with the European standard the Service Provider shall:
 - 1.2.1 comply with the requirements of the Customer's e-invoicing system where applicable;
 - 1.2.2 prepare and provide to the Customer for approval of the format a template invoice within ten (10) Business Days of the Commencement Date which shall include, as a minimum the details set out in Paragraph 1.3 together with such other information as the Customer may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
 - 1.2.3 make such amendments as may be reasonably required by the Customer if the template invoice outlined in (b) is not approved by the Customer.
- 1.3 The Service Provider shall ensure that each invoice is submitted in the correct format for the Customer's e-invoicing system, or that it contains the following information:
 - 1.3.1 the date of the invoice;
 - 1.3.2 a unique invoice number;
 - 1.3.3 the Service Period or other period(s) to which the relevant Charge(s) relate;
 - 1.3.4 the correct reference for this Agreement;
 - 1.3.5 the reference number of the purchase order to which it relates (if any);
 - 1.3.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - 1.3.7 a description of the Services;

- 1.3.8 the pricing mechanism used to calculate the Charges (such as Time and Materials or Firm Price);
 - 1.3.9 any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - 1.3.10 the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Customer under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of each of the same;
 - 1.3.11 reference to any reports required by the Customer in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Service Provider for validation by the Customer, then to any such reports as are validated by the Customer in respect of the Services);
 - 1.3.12 a contact name and telephone number of a responsible person in the Service Provider's finance department in the event of administrative queries;
 - 1.3.13 the banking details for payment to the Service Provider via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
 - 1.3.14 where the Services have been structured into separate Service lines, the information at (a) to (n) of this paragraph 1.3 shall be broken down in each invoice per Service line.
- 1.4 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Customer as to what constitutes Supporting Documentation shall not be conclusive and the Service Provider undertakes to provide to the Customer any other documentation reasonably required by the Customer from time to time to substantiate an invoice.
- 1.4.1 The Service Provider shall submit all invoices and Supporting Documentation through the NMRN's Finance Department email address;

finance@nmrn.org.uk

with a copy (again including any Supporting Documentation) to such other person and at such place as the Customer may notify to the Service Provider from time to time.

- 1.5 All Service Provider invoices shall be expressed in sterling or such other currency as shall be permitted by the Customer in writing.
- 1.6 The Customer shall regard an invoice as valid only if it complies with the provisions of this Part C. Where any invoice does not conform to the Customer's requirements set out in this Part C, the Customer shall promptly return the disputed invoice to the Service Provider and the Service Provider shall promptly issue a replacement invoice which shall comply with such requirements.
- 1.7 If the Customer fails to consider and verify an invoice in accordance with paragraphs 1.4 and 1.8, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 2.1 after a reasonable time has passed.

2 PAYMENT TERMS

- 2.1 Subject to the relevant provisions of this Schedule, the Customer shall make payment to the Service Provider within thirty (30) calendar days of verifying that the invoice is valid and undisputed.
- 2.2 Unless the Parties agree otherwise in writing, all Service Provider invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Service Provider has specified on its invoice.

ANNEX 1: PRICING AND PAYMENT

1 TABLE 1: SERVICE PROVIDER RATE CARD FOR CALCULATION OF TIME & MATERIALS CHARGES

Staff Grade/Level	Day Rate (£)

2 TABLE 2: MAXIMUM TIME & MATERIALS CHARGES

Service Item	Maximum Time & Materials Charges (the cap) (£)
Service Line 1	
[e.g. S1M1]	
[e.g. S1M2]	
Service Line 2	
[e.g. S2M1]	
[e.g. S2M2]	
[Service Line X – insert further lines as necessary]	
[etc.]	

3 TABLE 2: FIRM PRICES

Service Item	Firm Price (£)
Service Line 1	
[e.g. S1M1]	
[e.g. S1M2]	
Service Line 2	
[e.g. S2M1]	
[e.g. S2M2]	
[Service Line X – insert further lines as necessary]	
[etc.]	

SCHEDULE 3 CHANGE CONTROL

1 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 1.1 This Schedule sets out the procedure for dealing with Changes.
- 1.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 1.3 The Parties shall deal with Contract Change as follows:
- 1.3.1 either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
 - 1.3.2 unless this Agreement otherwise requires, the Service Provider shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
 - 1.3.3 the Customer shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
 - 1.3.4 the Service Provider shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
 - 1.3.5 save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Service Provider until a Change Authorisation Note has been signed and issued by the Customer in accordance with Paragraph 6.2.
- 1.4 Until a Change Authorisation Note has been signed and issued by the Customer in accordance with Paragraph 6.2, then:
- 1.4.1 unless the Customer expressly agrees (or requires) otherwise in writing, the Service Provider shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
 - 1.4.2 any discussions, negotiations or other communications which may take place between the Customer and the Service Provider in connection with any proposed Contract Change, including the submission of any

Change Communications, shall be without prejudice to each Party's other rights under this Agreement.

1.5 The Service Provider shall:

1.5.1 within ten (10) Business Days of the Customer's signature and issue of a Change Authorisation Note, deliver to the Customer a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and

1.5.2 thereafter provide to the Customer such further copies of the updated Agreement as the Customer may from time to time request.

2 COSTS

2.1 Subject to Paragraph 2.3 the costs of preparing each Change Request shall be borne by the Party making the Change Request.

2.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 2 (Charges and Invoicing).

2.3 The Service Provider shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

2.4 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Service Provider shall be paid for by the Service Provider.

3 CHANGE REQUEST

- 3.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1.
- 3.2 If the Service Provider issues the Change Request, then it shall also provide an Impact Assessment to the Customer as soon as is reasonably practicable but in any event within ten (10) Business Days of the date of issuing the Change Request.
- 3.3 If the Customer issues the Change Request, then the Service Provider shall provide as soon as reasonably practical and in any event within ten (10) Business Days of the date of receiving the Change Request an estimate (“**Impact Assessment Estimate**”) of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Customer within ten (10) Business Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Customer.
- 3.4 If the Customer accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Service Provider shall provide the completed Impact Assessment to the Customer as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Service Provider requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Customer and provided that sufficient information is received by the Customer to fully understand:

3.4.1 The nature of the request for clarification; and

3.4.2 The reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Customer to provide that clarification. The Customer shall respond to the request for clarification as soon as is reasonably practicable.

4 IMPACT ASSESSMENT

- 4.1 Each Impact Assessment shall be completed in good faith and shall include:

- 4.1.1 details of the proposed Contract Change including the reason for the Contract Change; and
 - 4.1.2 details of the impact of the proposed Contract Change on the Services and the Service Provider's ability to meet its other obligations under this Agreement;
 - 4.1.3 any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
 - (a) the Services Description;
 - (b) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
 - (c) other services provided by third party contractors to the Customer;
 - 4.1.4 details of the cost of implementing the proposed Contract Change;
 - 4.1.5 details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the Business practices of either Party;
 - 4.1.6 a timetable for the implementation, together with any proposals for the testing of the Contract Change;
 - 4.1.7 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
 - 4.1.8 such other information as the Customer may reasonably request in (or in response to) the Change Request.
- 4.2 Subject to the provisions of Paragraph 4.4, the Customer shall review the Impact Assessment and respond to the Service Provider in accordance with Paragraph 6 within fifteen (15) Business Days of receiving the Impact Assessment, it.
- 4.3 If the Customer is the Receiving Party and the Customer reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five (5) Business Days of receiving the Impact Assessment, it shall notify the Service Provider of this fact and detail the further information that it requires. The

Service Provider shall then re-issue the relevant Impact Assessment to the Customer within ten (10) Business Days of receiving such notification. At the Customer's discretion, the Parties may repeat the process described in this Paragraph 4.4 until the Customer is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

- 4.4 The calculation of costs for the purposes of Paragraphs 4.1.4 and 4.1.5 shall:
- 4.4.1 facilitate the Financial Transparency Objectives;
 - 4.4.2 include estimated volumes of each type of resource to be employed and the applicable rate card;
 - 4.4.3 include full disclosure of any assumptions underlying such Impact Assessment;
 - 4.4.4 include evidence of the cost of any assets required for the Change; and
 - 4.4.5 include details of any new Sub-contracts necessary to accomplish the Change.

5 CUSTOMER'S RIGHT OF APPROVAL

- 5.1 Within fifteen (15) Business Days of receiving the Impact Assessment from the Service Provider or within ten (10) Business Days of receiving the further information that it may request pursuant to Paragraph 4.4, the Customer shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- 5.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 5.2;
 - 5.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Service Provider of the rejection. The Customer shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Service Provider or the Services to comply with any Changes in Law. If the Customer does reject a Contract Change, then it shall explain its reasons in writing to the Service Provider as soon as is reasonably practicable following such rejection; or

- 5.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Service Provider to modify the relevant document accordingly, in which event the Service Provider shall make such modifications within five (5) Business Days of such request. Subject to Paragraph 4.4, on receiving the modified Change Request and/or Impact Assessment, the Customer shall approve or reject the proposed Contract Change within ten (10) Business Days.
- 5.2 If the Customer approves the proposed Contract Change pursuant to Paragraph 5.1 and it has not been rejected by the Service Provider in accordance with Paragraph 6, then it shall inform the Service Provider and the Service Provider shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Customer for its signature. Following receipt by the Customer of the Change Authorisation Note, it shall sign both copies and return one copy to the Service Provider. On the Customer's signature the Change Authorisation Note shall constitute (or, where the Customer has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
- 5.3 If the Customer does not sign the Change Authorisation Note within ten (10) Business Days, then the Service Provider shall have the right to notify the Customer and if the Customer does not sign the Change Authorisation Note within five (5) Business Days of such notification, then the Service Provider may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

6 SERVICE PROVIDER'S RIGHT OF APPROVAL

- 6.1 Following an Impact Assessment, if:
- 6.1.1 the Service Provider reasonably believes that any proposed Contract Change which is requested by the Customer would:
- (a) materially and adversely affect the risks to the health and safety of any person; and/or
 - (b) require the Services to be performed in a way that infringes any Law; and/or

6.1.2 the Service Provider demonstrates to the Customer's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Service Provider Solution nor the Services Description state that the Service Provider does have the technical capacity and flexibility required to implement the proposed Contract Change, then the Service Provider shall be entitled to reject the proposed Contract Change and shall notify the Customer of its reasons for doing so within five (5) Business Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

7 COMMUNICATIONS

For any Change Communication to be valid under this Schedule, it must be sent to either the Customer Change Manager or the Service Provider Change Manager, as applicable. The provisions of Clause 27 (*Notices*) shall apply to a Change Communication as if it were a notice.

ANNEX 1: CHANGE REQUEST FORM

CHANGE REQUEST NO:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
RASIED BY:		
AREA(S) IMPACTED [<i>OPTIONAL</i>]:		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
SERVICE PROVIDER REFERENCE NO:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT, PRICE AND MILESTONES):		
DETAILS OF ANY ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS OF PROPOSED CHANGE:		
DISADVANTAGES OF PROPOSED CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2: CHANGE APPROVAL FORM

CHANGE REQUEST NO:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
KEY MILESTONE DATE <i>[IF ANY]</i> :		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ON-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (e.g. FIRM PRICE BASIS):		
SIGNED ON BEHALF OF THE CUSTOMER:		SIGNED ON BEHALF OF THE SERVICE PROVIDER:
Signature:		Signature:
Name:		Name:
Position:		Position:
Date:		Date: