



INVITATION TO TENDER FOR BOARD MANAGEMENT SOFTWARE

NMRN OPERATIONS
HM NAVAL BASE (PP66)
PORTSMOUTH
HANTS
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Section 1

Instructions and information on tender process

These instructions are designed to ensure that all tenders are given equal and fair consideration. It is important, therefore, that bidders provide all the information asked for in the format and order specified. If there is any doubt as to what is required, or if bidders have difficulty in providing the information requested, they should contact TENDERS@nmrn.org.uk in accordance with the procedure for raising queries set out in 2.2 below:

1.1 Timetable and Administration Arrangements

The timetable for the ITT is as follows:

No	Event	Date
1	Publication of opportunity on Contracts Finder	23/04/2021
2	Period for questions and answers	21/05/2021
3	Deadline for return of tenders	28/05/2021
4	Desktop Evaluation of tenders	02/06/2021
5	Short-listed supplier presentation day	08/06/2021
6	Business approval of selection	09/06/2021
7	Award notice issues	09/06/2021
8	Commencement of contract	20/06/2021

Although the NMRN will use reasonable endeavours to adhere to the timetable, it reserves the right to vary it.

1.2 Submission of Tender Documents

1.2.1 Your completed response should be submitted by the due date and time required:

Date: 28/05/2021

Time: 17:00

Responses should be submitted in an electronic format addressed to:

tenders@nmrn.org.uk

In order to overcome file size difficulties we request that tender submissions are completed in 'Word', 'PDF' or similar.

1.2.2 It is the sole responsibility of the submitting company to deliver their response as specified.

1.2.3 NMRN Operations (NMRN) takes no responsibility for identifying any clerical errors or misunderstanding in any tenders submitted. Tenderers must therefore ensure that the content of any Tender submitted is complete and accurate.

1.2.4 Please note the NMRN will strictly enforce the deadline for receipt of Tender documentation. Please ensure that you have submitted your tender documentation in good time for it to be received.



- 1.2.5 You must also send an email WITH NO ATTACHMENTS to the Tenders inbox (tenders@NMRN.org.uk) to show a screenshot of your transmission receipt from your email system. This protects you by highlighting to us that your submission may have been blocked by our firewall, due to the nature or size of the files you are submitting.

1.3 Sufficiency of Tender

- 1.3.1 The Contractor shall be deemed to have satisfied themselves before submitting their Tender as to the correctness and sufficiency of the rates and prices stated by them in their Tender which shall cover all their obligations under the Contract.
- 1.3.2 If the NMRN suspects there has been an error in pricing or calculation in a Tender, it reserves the right to seek such clarification as it considers necessary from that Tenderer only.

1.4 Form of Tender

- 1.4.1 All entries entered by the Tenderer on the Form of Tender, and other submitted information, must be typewritten. All prices must be specified in pounds sterling, exclusive of VAT. All Tender Forms must be signed by the Tenderer in a proper manner by a Director or the Secretary of a Company.

1.5 Validity of Tenders

- 1.5.1 All Tenders will remain open for acceptance by the NMRN for 3 calendar months from the date fixed for lodgement of Tender. All Tenders must be submitted on this basis.

1.6 Amendments to the tender documents by the NMRN

- 1.6.1 The NMRN reserves the right to amend the enclosed tender documents at any time prior to the deadline of receipt of tenders. Where amendments are significant, the NMRN may at its discretion extend the deadline for receipt of tenders.

1.7 Questions/Clarifications Arising during the Tender Process

- 1.7.1 The NMRN will endeavour to answer any questions the Tenderer may have regarding the Tender.
- 1.7.2 Questions relating to the tender should be directed to Phil George, Head of IT – phil.george@nmrn.org.uk.
- 1.7.3 **Latest date to request clarification or ask questions – 21/05/2021.**

1.8 Acceptance of Tenders

- 1.8.1 The invitation to tender expresses the current intentions of the NMRN with regard to this contract. It does not constitute an offer capable of acceptance. Its purpose is to obtain proposals from selected potential suppliers.
- 1.8.2 The NMRN is not bound to accept the lowest tender and reserves the right to accept any Tender in whole or part. The NMRN reserves the right to discontinue this tender process at



any time. Any Contract(s) awarded will be on the basis of the Tender Assessment and Evaluation in Part 5.

- 1.8.3 The NMRN shall in no circumstances be liable for any costs involved in the preparation of a Tender.
- 1.8.4 A Tender shall only be accepted by the NMRN by issue of a Contract Award Letter by the NMRN.

1.9 Inducements

- 1.9.1 Offering any inducement of any kind in relation to obtaining this or any other contract with the NMRN will disqualify the relevant tender from being considered.

Section 2

Terms and Conditions applying to this tender

2.1 NMRN Standard Terms and Conditions of Contract

- 2.1.2 This contract will be awarded using the NMRN's standard terms and conditions, which will be implemented with the winning bidder. The NMRN Standard Terms and Conditions are included as Appendix 1 to this document.

2.2 Other Terms and Conditions

- 2.2.1 The Supplier agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Clause.
- 2.2.2 In the event that the information provided by the Supplier in accordance with this Clause becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Purchaser of the inaccuracies and provide the amended information. The Supplier shall be liable for any increase in costs the Purchaser may incur as a result of the inaccurate or late production of data.
- 2.2.3 The provisions of this Condition 2.2 shall apply during the continuance of this Contract and after its termination howsoever arising.



Section 3

Specification

3.1 Contract Term

- 3.1.1 The contract for supply will operate for an extendable term for a minimum of four years (the extension subject to satisfactory performance). It is anticipated that the contracts for the Services will be in place by 1 July 2021.

Part One – High Level Specification

3.2 The Objective

3.2.1 The overall objective is to select a Supplier that gives high confidence of delivering the expected benefits to be derived from the Services on time, on budget and to the required quality. The National Museum requires suppliers that are partners to their businesses by adding strategic value and giving assurance in delivering the agreed outcomes in support of the National Museums' strategies.

3.2.2 The Services of each potential supplier will be assessed and measured amongst other things in terms of:

- i. the approach to the supply of the Services
- ii. the proposed scope of the Services
- iii. the Service Level standards that will apply
- iv. the related costs and benefits
- v. the strategic value, and
- vi. supplier fit with the National Museums

3.2.3. The ITT is a vehicle to determine which suppliers are able to meet particular requirements measured against a set of key assessment criteria established for the ITT.

3.3 Sustainability

- 3.3.1 The NMRN recognises its responsibility to carry out its procurement activities in an environmentally and socially responsible manner. The NMRN will strive to incorporate environmental and social considerations into our product and services selection process. We recognise that it is our responsibility to encourage our suppliers and contractors to minimise negative environmental and social effects with the products and services they provide. The NMRN will also strive to ensure that local and smaller suppliers are not discriminated against in the procurement process and specifications.

3.4 Site

- 3.4.1 All software is to be delivered to the NMRN's main site in Portsmouth. Address can be found on page 1 of this ITT.



3.5 Client's Responsibilities

- 3.5.1 Agree and facilitate access times with the Contractor before the Commencement of the Contract.

Part Two – Schedule of Services

3.6 Software Requirements

The overall aims for the purchase of this board management system are to:-

- Provide a central and easy to access place for all board, committee and governance documents.
- Save time for our board and committee members, governance team and report authors.
- Increase information security.
- Increase professionalism and efficiency.
- Reduce paper.
- Provide an interactive tool for the board.
- Keep communications on board reports in one central system.
- Shorter packs, and shorter meetings.
- Provide a facility for boards to ask more questions outside of meetings.
- Provide functionality for trustees leading to better decision making.

Therefore, the following functionality is deemed as essential: -

1. Cloud hosted solution that is secured with MFA. This could be using SSO with our Microsoft 365 tenant.
2. If SSO is used, the option of adding secondary email addresses to receive notifications when new board content is generated.
3. Intuitive user interface making it easy for all skill levels to be able to access the documents and information they need in a timely fashion.
4. The ability to have documents that are read only and not downloadable, so our data stays in one single location.
5. Easy for authors of papers to collaborate on, create and upload papers to each meeting.
6. The ability for board members to be able to comment on papers / minutes and ask questions in general.
7. Be device agnostic so it works on PC, laptop, tablet, smartphone and renders as such.
8. Store the meeting papers and minutes from the meeting for up to 7 years, before automatically archiving them to another section of the system.
9. Each individual user be able to annotate / make their own notes against papers which are only visible to themselves.
10. Integration with Microsoft 365 Power BI analytics to pull in pre-configured dashboards around our business performance.
11. The ability to add notes to each meeting to capture items agreed 'out of committee'.
12. Online meeting scheduler that automatically generates a calendar invite for attendees.



13. Ability to create a forward plan of agenda items.
14. Ability for board and committee members to have access to a range of agenda items whether they are attendees or accessing papers for information only.
15. Ability to report on meeting attendances.
16. Intelligent search functionality for key words or phrases.
17. Ability to link agenda actions to other meetings where that action is required in an automated way or cross-reference to previous meeting records.

The following functionality is deemed “Desirable”:

1. Links to the Charity Commission website to pull in the latest news and sector updates.
2. Link to Microsoft Teams so that recordings of the meetings can be automatically uploaded to that meeting section.
3. The ability to include in-built surveys to capture opinions and views from the board in an anonymous way.
4. Board members able to electronically sign documents.
5. Board members able to join the meeting virtually through the management portal.
6. Reporting built-in to pick up time spent on key issues by tagging board topics.
7. Record of Regulatory forms and E-Filings with Companies House and the Charity commission so reminders are sent via the portal to notify us when documents are due.
8. Appointment and resignation of Trustees kept as a record within the portal.
9. A policy section within the portal so the trustees can see which ones are coming up for review and approval.
10. Risk management section so risk registers could be stored and updated in real time.
11. Ability to record training and CPD for trustees and committee members.
12. Automated notifications to update declarations of interest by members.

Section 4

Tender Assessment and Evaluation

4.1 Evaluation of Tenders (Compliance)

- 4.1.1 Submitted tenders will be subject to a compliance check, selection and finally a quality and price evaluation by means of a structured process in order to determine the tender, from a suitably qualified and experienced organisation, that in the NMRN’s opinion offers best value to the NMRN.
- 4.1.2 The initial compliance phase will include checks to ensure the documents have been properly completed and all required information has been provided.
- 4.1.3 If, during the initial compliance phase, it is apparent that a Tenderer has submitted a fundamentally non-compliant or incomplete tender then the NMRN reserves the right to reject that tender and continue to assess the other tenders as appropriate.
- 4.1.4 Tenders who pass this initial sifting process will then have their tenders scored.



4.1.5 The evaluation process will be systematic, thorough and fair.

4.2 Evaluation of Tenders (Selection)

4.2.1 The Selection stage will evaluate Tenderers on the following aspects of their responses to the questionnaire in Section 7 of the Tender document.

1	General Information	Not assessed – for information only
2	Consortia Information	Not assessed – for information only
3	Insolvency and Criminal Proceedings	Pass / Fail
4	Financial Information	Pass / Fail
5	Technical and Professional Capability	Pass / Fail
6	Equalities	Pass / Fail
7	Health and Safety	Pass / Fail
8	Information Security Policy	Pass / Fail
9	Design and Creativity – Ref. Schedule of Services and Mandatory Criteria.	Pass / Fail
10	Environmental and sustainability policy	Pass / Fail

4.2.2 Only information provided as a direct response to the questionnaires will be evaluated. Information and details which forms part of general company literature or promotional brochures etc. will not form part of the evaluation process. **Marketing material should not be included unless it related directly to the amenities proposed on any design.**

4.2.3 All questions must be answered.

4.2.4 Please note that the NMRN may require clarification of the answers provided or ask for additional information. This may be via email during the evaluation process, or via a tender presentation at the end of the process.

4.2.5 The response should be submitted by an individual of the organisation, company or partnership who has the authority to answer on behalf of that organisation, company or partnership.

4.2.6 Should the response be found to be erroneous or in any other way incorrect, the NMRN reserves the right to disqualify the candidate from the tender.

4.2.7 Each of the above Selection stage aspects will be evaluated separately, with a mark of Pass or Fail. Tenderers will be required to pass all aspects in order to achieve an overall Pass for the Selection stage and therefore have their tender further assessed in the final evaluation phase which covers price.



4.3 Evaluation of Tenders (Award)

4.3.1 Quality – 60%

The NMRN will consider the content of the responses from each tenderer and will make a judgement on each tenderer's submission in relation to the criteria below.

4.3.2 Each reply will be scored according to the assessment given in the table below:

Score	Response	Match to specification
0	Very poor response	Too poor for consideration: <ul style="list-style-type: none"> The response indicates a significant lack of understanding The response fails to meet the requirement
1	Poor response	Too poor for consideration: <ul style="list-style-type: none"> Poor (meets some of the requirement) or Above Average/High Risk The response meets elements of the requirement but gives concern in a number of significant areas. There are reservations because of one or all of the following: <ol style="list-style-type: none"> There is at least one significant issue needing considerable attention There is insufficient evidence to demonstrate competence or understanding The response is light and unconvincing
4	Fair (meets most, but not all the requirement) or Average Risk	The response meets most of the requirement, but there is at least one significant issue of concern or several smaller issues. These would require some further clarification or attention later in the procurement process and may arise through lack of demonstrated capability and/or appropriate evidence. The response therefore shows: <ul style="list-style-type: none"> Basic understanding of the requirements Sufficient competence demonstrated through relevant experience Some areas of concern that require attention
7	Good (meets the requirement) or Low Risk	The response broadly meets what is expected for the criteria. There are no significant areas of concern, although there might be limited minor issues that need further exploration or attention later in the procurement process. The response therefore shows: <ul style="list-style-type: none"> Good understanding of the requirements Sufficient competence demonstrated through relevant experience Some insight demonstrated into the relevant issues.
9	Very Good (exceeds the requirement) or Very Low Risk	The response exceeds what is expected for the criteria. Leave no doubt as to the capability and commitment to deliver what is required. The response therefore shows: <ul style="list-style-type: none"> Very good understanding of the requirement Considerable competence demonstrated through relevant experience Considerable insight into the relevant issues



		<ul style="list-style-type: none"> The response is also likely to propose additional value in several respects above that expected
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4.3.3 Price – 40%

This will be determined by examination of the **Pricing Schedule** submitted by each tenderer.

4.3.4 The NMRN is under no obligation to accept the lowest bid or any bid and will not be liable for costs or expenses incurred in connection with the appointment process.

4.3.5 Your “Overall Price” for the goods and/or services will be evaluated by the evaluation panel for the purposes of the commercial evaluation. Prices must not be subject to any pricing assumptions, qualifications or indexation not provided for explicitly by the NMRN as part of the pricing approach. In the event that any prices are expressed as being subject to any pricing assumptions, qualifications or indexation not provided for by the NMRN as part of the pricing approach, the NMRN may reject the full tender response at this point. The NMRN may also reject any tender response where the Overall Price for the goods and/or services is considered by the NMRN to be abnormally low following the relevant processes set out under the EU procurement rules.

4.3.6 The pricing will be assessed in 2 parts, first the year 1 costs and initial implementation fees and the second the sum of the subsequent years support costs and future potential project costs submitted as outlined in the essential criteria, section 3.18. Each of these areas will be calculated as below and then be added together to be out of 40.

Cost Assessment.

The lowest submitted tender for first the year 1 costs and fees will score 20 marks.

The lowest submitted tender for the subsequent years’ support costs and future potential costs will score 20 marks.

Pricing will be scored:

Total Available Marks x (Lowest Priced Technical and Commercially Complaint Tender/Tenderer’s Price) %

Thus if:

Tenderer A submits a compliant bid of £46,000

And Tenderer B submits a compliant bid of £42,000

Then:

Tenderer B Scores 20 marks (lowest bid)

And Tenderer A Scores 40 x (£42,000/£46,000) = 18.3 marks

Moderation and application of weightings



The evaluation panel appointed for this procurement will meet to agree and moderate scores for each award criteria. Final scores will be obtained by applying the relevant weighting factors set out as part of the award criteria table above. The scores for each award criteria will be amalgamated to give a total percentage score.

- 4.3.8 Once tenders have been scored, up to 5 will be shortlisted for a clarification discussion on the 8th June. These discussions will not be scored, however once clarifications have been sought the tender will be awarded to a supplier on this shortlist.

4.4 Variant Bids

- 4.4.1 Subject to the submission of a compliant tender, bidders may also submit an alternative price and method for provision of the services or goods which the NMRN, at its sole discretion, may or may not pursue.

4.5 Confidentiality

- 4.5.1 The NMRN will not disclose to any third party information that is supplied in tenders that is marked as confidential. All other information supplied by bidders to the NMRN will similarly be treated in confidence except that references may be sought from banks, existing or past clients, or other referees submitted by the Bidders.

4.6 Conflict of Interest

- 4.6.1 Bidders are required to confirm that they are not aware of any conflict of interest or any circumstances that could give rise to a conflict of interest in the performance of the proposed Contract.

4.7 Consortia

- 4.7.1 Bids from multi-disciplinary organisations and specially formed consortia are encouraged, but all organisations in specially formed consortia must be identified in the response to the ITT. Each group or consortium will be required to nominate a lead person with whom the NMRN can contract or form themselves into a single legal entity before contract award. In the case of group bidders or consortia, each service provider will be required to become jointly and severally responsible for the contract before acceptance.
- 4.7.2 If the tenderer is a group bidder or consortium, each member of the consortium must be identified separately as part of the response to this ITT.
- 4.7.3 If the tenderer is a member of a group of companies they should provide information only about themselves and not the Group as a whole (except where Group information is specifically requested by the question).



Section 5

Pricing Proposals

Pricing Proposals should be in the following format:

Item	Description	Offer Price £ ex VAT
Initial Price		
Initial system purchase		
Year 1 support (if not included)		
Future Costs		
Years 2 – 4 licensing cost (if applicable)		
Years 2 – 4 support costs (if applicable)		

Total: _____

Signature: _____

Designation: _____

Company: _____

Date: _____

Note that **Pricing Proposals** should be completed in full and must be signed by a person properly authorised to do so on behalf of the bidding organisation



Section 6

Supplier Questionnaire

6.1 General Information

6.1.1 Full legal name, address and website of the Potential Provider in whose name the tender will be submitted (the Prime or Single contractor):

Company Name	
Address from which the contract will be delivered	
Town/City	
Postcode	
Country	
Website	

6.1.2 Name, position, telephone number and email address of the main contact for this project:

Name	
Position	
Telephone Number	
Fax Number	
Email Address	

6.1.3 Current legal status of Potential Provider (e.g. partnership, private limited company, etc.)

	Please tick one box
Sole Trader	
Partnership	
Public Limited Company	
Private Limited Company	
Public Sector (including Registered Charities, NDPBs, Housing Associations)	
Other (<i>please state</i>)	

6.1.4 Date and place of formation of the Potential Provider and, if applicable, registration under the Companies Act 2006¹. Please provide copies of Certificates of Incorporation (where appropriate) and any changes of name, registered office and principal place of business.

Date of Formation	
Place of Formation	
Date of Registration	
Company Registration Number	
Certificates enclosed	
Registered VAT Number	

¹ Potential Providers established outside the United Kingdom may provide equivalent information. For a list of acceptable equivalent information, please refer to Regulation 23(7) of the Public Contracts Regulations 2006.



Registered Office	
Principal Place of business	

Ownership Structure

6.1.5 If the Organisation is a member of a group of companies, give the full legal name and address of the Parent/ Holding Company, if applicable:

Company Name	
Address	
Town/City	
Postcode	
Country	
Company Registration Number²	

6.1.6 Full legal name and address of (ultimate) Parent/Holding Company, if applicable:

Company Name	
Address	
Town/City	
Postcode	
Country	
Company Registration Number³	

6.1.7 If the Potential Provider is a division or subsidiary, what is the relationship with the Parent Company (e.g. 100% owned subsidiary)

Relationship	
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6.1.8 Please provide a one-page chart illustrating the ownership of the Potential Provider including relations to any parent or other group or holding companies.

Ownership structure enclosed (please tick ✓)
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² Or, for parent companies established outside the United Kingdom, equivalent information as set out in Regulation 23(7) of the Public Contracts Regulations 2006.

³ Or, for parent companies established outside the United Kingdom, equivalent information as set out in Regulation 23(7) of the Public Contracts Regulations 2006.



6.1.9 Please provide a brief history of the Potential Provider's organisation.

<p>Brief history of the Potential Provider's organisation, no more than 400 words, including details of any parent and associated companies and any changes of ownership over the last 5 years including details of significant pending developments, changes in financial structure or ownership, prospective take-over bids, buy-outs and closures etc. which are currently in the public domain.</p>	
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6.1.10 Is the Potential Provider a consortium joint venture or other arrangement? If so, and if it is available, please provide details of the constitution and percentage shareholdings.

Consortium	YES / NO (<i>please delete</i>)
<i>If yes, please complete the table below:</i>	

Organisation	Percentage Shareholding

6.1.11 Registration with a professional body.

Where applicable, is the Potential Provider registered with the appropriate trade or professional register(s) in the EU member state where it is established (as set out in Annex IX B of Directive 2004/18/EC) under the conditions laid down by that member state⁴).

<p>Evidence of Registration with appropriate professional/trade body <i>Either insert required details or state 'None'</i></p>

6.1.12 VAT registration number

VAT Registration Number	
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⁴ In the UK this condition is satisfied by registration with Companies House or a declaration on oath that the candidate is carrying on business in the trade in question in the UK at a specific place of business and under a specific trading name.



6.2 Consortia Information

All Potential Providers should answer question 6.2.1. Where a Potential Provider at this stage of the process intends to sub-contract they should answer questions 6.2.2 and 6.2.3 below. Where a Potential Provider becomes aware of the intention to sub-contract at later stages in the procurement they are required to notify NMRN of this and provide the information requested below at that time. Where a Potential Provider is a consortium, they should indicate which members are proposing to deliver the services.

6.2.1 Please tick the box below which applies:

(a) Your organisation is bidding to provide all the services required itself (if ticked, go to Section 6.3)	
(b) Your organisation is bidding in the role of Prime Contractor and intends to use the third parties to provide some services	
(c) The Potential Provider is a consortium	

6.2.2 If your answer to 6.2.1 is (b) or (c), please indicate in the table below (by inserting the relevant company/ organisation name) the role your partner organisation(s) will undertake or potentially undertake as part of this service.

Requirement	Company/Organisation	How much of the requirement and what will they directly deliver (%)

6.2.3 If your answer to 6.2.1 is (b) and you are unable to confirm all partners (complete a supply chain) at this stage, you will need to demonstrate a satisfactory methodology and track record of delivering a supply chain. Please give a brief outline on policy regarding the use of partner organisations and, if applicable, the extent to which it is envisaged they may be used in any contract.

Methodology for procuring supply chain (no more than 300 words)



6.3 Insolvency and Criminal Proceedings

- 6.3.1 Has the organisation or any of the directors, partners or proprietors been in a state of bankruptcy, insolvency, compulsory winding up, receivership, composition with creditors or subject to relevant proceedings?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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- 6.3.2 Has the organisation or any of the directors, partners or proprietors been convicted of a criminal offence related to business or professional conduct?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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If you are completing the questionnaire as a primary contractor, please confirm this in section 3 for all your proposed consortium members and any other third parties you are considering using to provide the service to the National Museum of the Royal Navy



6.4 Financial Information

6.4.1 Please provide the following financial information or an explanation as to why this information cannot be provided:

(a) A copy of the most recent audited accounts for your organisation that cover the last three years of trading or for the period that is available if trading for less than three years.

or

(b) A statement of the organisation's turnover, Profit & Loss and cash flow position for the most recent full year of trading (or part year if full year not applicable) and an end period balance sheet, where this information is not available in an audited form at (a).

or

(c) Where (a) and (b) cannot be provided, a statement of the organisation's cash flow forecast for the current year and a bank letter or statement from the relevant Director or Accountant outlining the current cash and credit facility position.

and

(d) If the organisation is a subsidiary of a group, (a) or (c) are required for both the subsidiary and the ultimate parent company. Where a consortium or association is proposed the information is requested for each member company.

and

(e) Please provide a statement of the organisation's turnover that relates directly to the supply of this service for the past three years, or for the period the organisation has been trading (if less than three years) in the boxes below:

Year Ended	31/03/2021	31/03/2020	31/03/2019
Turnover (£)	£.....	£.....	£.....

6.4.2 Parent company and/or other guarantees of performance and financial standing may be required if considered appropriate as well as confirmation of the organisation's willingness to arrange for a guarantee or a performance bond.

Where the potential provider is dependent financially on a parent company to support its application for this procurement, it must indicate in the box below whether a Parent Guarantee is available if requested.

Where required, Parent Guarantee available?	YES / NO (please delete)
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6.4.3 Name and address of principal banker:

Bank Name	
Address	
Town/City	
Postcode	
Telephone	
Email Address	

If requested, would you be willing to provide a Banker's reference?	YES / NO (please delete)
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6.4.4 Has your business met the terms of its banking contracts or any loan arrangements or mortgages during the past year?

Yes <input type="checkbox"/>	No <input type="checkbox"/>
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If the answer is no, please provide reasons and state what action has been taken by you to rectify the situation?	
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6.4.5 Has your business met all its obligations to make payments as they fall due to its suppliers, staff and/or landlord/licensor during the past year?

Yes <input type="checkbox"/>	No <input type="checkbox"/>
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If the answer is no, please provide reasons and state what action has been taken by you to rectify the situation?	
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6.5 Technical or Professional Capability

Bidders are required to provide evidence of having the necessary capacity and capability to deliver the requirements of the contract.

Bidding organisations may demonstrate their experience in delivering goods, services and works similar to the current contract using examples from:

- Within their own organisation (bidders may rely on experience of personnel that they intend to use to carry out the current requirement, even if that experience was gained whilst working for a different organisation)
- Other consortium members (where a consortium bid is being proposed)
- Named sub-contractors (where sub-contractors are being used and their identity is known)

6.5.1 Please provide two examples below:

<p>Please provide your first relevant example that demonstrates your organisations, or, where relevant consortium members and/or named sub-contractors experience in delivering similar goods, services or works to the requirements of this procurement exercise. For goods and services contracts your examples must be from within the last three years and for works contracts your examples must be from within the last five years. The information you provide should cover the following areas:</p> <ul style="list-style-type: none"> • A description of the goods, works or services delivered; • Contract value and dates; • Previous or current customer details; • Details of where you have been able to demonstrate added value through the adoption of innovative solutions. <p>Either use the space provided or attach a document to your response, which should be no longer than 2 pages of A4</p>	
<p>Please provide your first relevant example that demonstrates your organisations, or, where relevant consortium members and/or named sub-contractors experience in delivering similar goods, services or works to the requirements of this procurement exercise. For goods and services contracts your examples must be from within the last three years and for works contracts your examples must be from within the last five years. The information you provide should cover the following areas:</p> <ul style="list-style-type: none"> • A description of the goods, works or services delivered; • Contract value and dates; 	



<ul style="list-style-type: none"> • Previous or current customer details; • Details of where you have been able to demonstrate added value through the adoption of innovative solutions. <p>Either use the space provided or attach a document to your response, which should be no longer than 2 pages of A4</p>	
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6.5.2

<p>In relation to two examples above, please attach confirmation that the requirements were delivered successfully e.g. acceptance/completion certificates or customer written declaration (if available)</p>	
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6.5.3

<p>Please provide a statement of the technical resources such as the tools, plant, facilities and technical equipment available to your organisation, or, where relevant consortium members and/or named sub-contractors in relation to the delivery of this contract. Please refer to the Specification in Section 3 of this document</p> <p>Guidance – <i>The buyer will use the information you provide to evaluate whether your organisation, consortium members and/or named sub-contractors have the required technical resources to deliver the requirement.</i></p>	
<p>Please confirm whether or not your organisation, consortium members have:</p> <ul style="list-style-type: none"> • Defaulted on the delivery of a contract within the last 3 years (goods and services) or 5 years (works) • Had a contract cancelled, or not renewed, for failure to perform within the last 3 years (goods and services) or 5 years (works) <p>If any of the above applies, please provide an explanation of the action you have taken to prevent a re-occurrence</p> <p>Guidance – <i>The buyer will use the information to determine whether you have a successful record of delivery.</i></p>	



6.6 Equalities

6.6.1 Does your organisation comply with your statutory obligations under the Equality Act 2010?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

6.6.2 If relevant to the status of your organisation, i.e. if you have more than 5 staff, please attach a copy of your Equality and Diversity policy and/or equal opportunities policy with your response

6.6.3 In the last three years has any finding of unlawful discrimination been made against your business or organisation by any court or employment tribunal, an Employment Appeal Tribunal or any other court (or in comparable proceedings in jurisdiction other than the UK)?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

If you answered 'yes' to the above question, provide a summary of the finding or judgement and explain what action you have taken to prevent similar unlawful discrimination from reoccurring.

Guidance – Buyer may not be able to select a bidder to tender if it has been found to have unlawfully discriminated in the last three years unless it has provided compelling evidence that it has taken robust and appropriate action to prevent similar unlawful discrimination reoccurring

+

6.6.4 In the last three years, has your organisation had a complaint upheld following a formal investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in the jurisdiction other than the UK), on grounds of alleged unlawful discrimination?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

If you answered 'yes', provide a summary of the nature of the investigation and an explanation of the outcome (so far) of the investigation. If the investigation upheld the complaint against your organisation, provide an explanation of what action (if any) you have taken to prevent unlawful discrimination from re-occurring.

Guidance – Buyer may not be able to select a bidder if a complaint is upheld following investigation, unless robust and appropriate action has been taken to prevent similar unlawful discrimination from reoccurring



6.7 Health and Safety

6.7.1 Does your organisation have a written Health and Safety Policy?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

6.7.2 Does your organisation ensure compliance with the Health and Safety at Work Act 1964?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

6.7.3 Does your organisation train staff in Health and Safety?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

6.7.4 Please provide the name of the person in the business specifically responsible for health and safety matters:

-



6.8 Information Security Policy

- 6.8.1 Does your firm have a policy on the protection of client data with respect to the statutory requirements on Data Protection, Freedom of Information and Environmental Information Regulations and confidentiality?

Yes <input type="checkbox"/>	No <input type="checkbox"/>
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Please provide details	
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- 6.8.2 Please provide any further information you think might be relevant to the provision of this service such as: any additional skills or processes your organisation possesses which you consider would lead to additional value/ benefit for the NMRN

Please provide details	
------------------------	--

6.9 Design and Creativity Match

- 6.9.1 Does your submission acknowledge each of the mandatory specifications shown in the schedule of services and

Yes <input type="checkbox"/>	No <input type="checkbox"/>
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Section 7

Form of Tender

To: NMRN

Dear Sir/Madam

TENDER FOR:

1. I/We* the undersigned DO HEREBY UNDERTAKE on the acceptance by the NMRN of my/our* tender to supply and/or deliver the goods and/or services on such terms and conditions and in accordance with such specifications as are contained or incorporated in the invitation to tender.
2. Any prices, rates or discounts quoted in this tender are valid for 90 days after the tender return date and we confirm that the terms of the tender will remain binding upon us and may be accepted by you at any time before the expiry of that period.

Signed	
Name	
Position in Organisation	
Duly authorised to sign tenders for and on behalf of [Name]	
Registered Address	
Nationality of Company	
Date	



Section 8

Certificate of Non-Collusion

TO: NMRN

RE:

The essence of the public procurement process is that the NMRN shall receive bona fide competitive tenders from all Tenderers. We, the undersigned, hereby certify that this is a bona fide bid and (except as authorised in the Invitation to Tender) we have not, and insofar as we are aware neither has any of our (or any of our proposed sub-contractors) officers, employees, servants or agents:

- (a) Entered into any agreement with any other person with the aim of preventing bids being made or as to the fixing or adjusting of the amount of any bid or the conditions on which any bid is made; or
- (b) Informed any other person, other than the person calling for this bid, of the amount or the approximate amount of the bid, except where the disclosure, in confidence, of the amount of the bid was necessary to obtain quotations necessary for the preparation of the bid for insurance, for performance bonds and/or contract guarantee bonds or for professional advice required for the preparation of the bid; or
- (c) Caused or induced any person to enter into such an agreement as is mentioned in paragraph (a) above or to inform us of the amount or the approximate amount of any rival bid for the Contract; or
- (d) Committed an offence under any applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; or
- (e) Offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Bid or proposed Bid for the works any act or omission; or
- (f) Canvassed any other persons referred to in paragraph (a) above in connection with the Contract; or
- (g) Contacted any officer of NMRN or their agents about any aspect of the contract including (but without limitation) for the purposes of discussing the possible transfer to the employment of the Tenderer of such officer or agent for the purposes of the Framework Contract or for soliciting information in connection with the Contract.



We also undertake that we shall not procure the doing of any of the acts mentioned in paragraphs 1 to 7 above before the hour or date specified for the return of the bid nor (in the event of the bid being accepted) shall we do so while the resulting contract(s) continue in force between us (or our successors in title) and NMRN.

In this certificate, the word 'person' includes any person, body or association, corporate or incorporate and 'agreement' includes any arrangement whether formal or informal and whether legally binding or not

Signed	
Name	
Position in Organisation	
For and behalf of	
Date	



Appendix 1

THIS AGREEMENT is made on [] 2021

BETWEEN

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

BACKGROUND

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

NOW IT IS AGREED as follows:

1 INTERPRETATION

1.1 Definitions

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

Charges	the Supplier's charges for the Services as set out in 0 and any other sums due to the Supplier under this Agreement;
Commencement Date	[the date of this Agreement;]
Confidential Information	all information disclosed by or on behalf of a party (in whatever medium including in written, oral, visual or electronic form and whether before or after the date of this Agreement) including all business, financial, commercial, technical, operational, organisational, legal, management and marketing information;
Deliverables	any documents, products and materials to be developed and provided by the Supplier as part of or in connection with the Services, including any products of the Services;



Intellectual Property

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

Services

the services described in Schedule 1, including the development and provision of any Deliverables.

1.2 Construction

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

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

1.2.2 Any phrase in this Agreement introduced by the term “include”, “including”, “in particular” or similar expression shall be construed as illustrative and shall not limit the sense of the words preceding that term.

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

1.3 Other references

In this Agreement a reference to:



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

2 DURATION

This Agreement shall come into effect on the Commencement Date and, subject to provisions for earlier termination, shall continue unless and until terminated by either party giving to the other at least [] months’ notice in writing.

3 SERVICES

- 3.1 The Supplier shall provide and the Customer shall receive the Services on the terms set out in this Agreement.
- 3.2 The Supplier shall:
- 3.2.1 co-operate with the Customer in all matters relating to the Services;
- 3.2.2 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer’s premises. The Customer reserves the right to refuse the Supplier access to the Customer’s premises which is not necessary for the performance of the Services;
- 3.2.3 notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
- 3.2.4 obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:



- (a) the Services and their use by the Customer (including use of the Customer's equipment and software in conjunction with the Supplier's equipment and software); and
 - (b) use by the Supplier of the Deliverables and all documents, information and materials provided by the Supplier [or its agents, subcontractors, consultants or employees], including [computer programs, data, reports and specifications.
- 3.3 The Supplier may not charge for the time it spends assessing or responding to a request from the Customer for a change to the Services except with the prior written agreement of the Customer.
- 3.4 The Supplier acknowledges that:
 - 3.4.1 it may be providing the Services for the benefit of any company in relation to which the Customer is a "group undertaking" as defined in section 1161 of the Companies Act 2006 or for the benefit of any unincorporated charity controlled by the Customer or any such company; and
 - 3.4.2 any such company is a third party beneficiary which may enforce the terms of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 4 CUSTOMER'S OBLIGATIONS**
- 4.1 The Customer shall:
 - 4.1.1 use reasonable endeavours to co-operate with the Supplier in matters relating to the Services;
 - 4.1.2 provide such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Customer in writing in advance, for the purposes of the Services;
 - 4.1.3 provide such information as the Supplier may reasonably request and the Customer considers reasonably necessary, in order for the Customer to carry out the Services in a timely manner; and
 - 4.1.4 inform the Supplier of all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises.
- 4.2 Actual or potential non-compliance by the Customer with any of its obligations in this clause and elsewhere shall only relieve the Supplier from performance under this Agreement:
 - 4.2.1 to the extent that it restricts or precludes performance of the Services by the Supplier, and



- 4.2.2 if the Supplier has notified details to the Customer in writing promptly after the actual or potential non-compliance has come to its attention.

5 PERFORMANCE OF THE SERVICES

5.1 The Supplier shall:

- 5.1.1 perform the Services with reasonable skill and care and in accordance with generally recognised commercial practices and standards in the industry for similar services;
- 5.1.2 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
- 5.1.3 ensure that the Services conform in all respects and at all times with any specification or description for the Services agreed by the parties and comply with all applicable legislation;
- 5.1.4 ensure that the Deliverables are of satisfactory quality; and
- 5.1.5 meet any agreed performance dates and time for performance by the Supplier shall be of the essence of this Agreement.

5.2 If the Supplier is in material breach of clause 5.1, the Customer may (without prejudice to any other rights it may have, including termination for material or repeated breach under clauses 13.1.1 and 13.1.2):

- 5.2.1 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 5.2.2 purchase substitute services from elsewhere;
- 5.2.3 hold the Supplier accountable for any loss and additional costs incurred; and
- 5.2.4 have all sums previously paid by the Customer to the Supplier under this Agreement refunded by the Supplier less a reasonable charge for provision of the Services up to the date of the breach.

5.3 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.

5.4 During the term of this Agreement and for a period of one year afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies:

- 5.4.1 public liability insurance with a limit of at least [[] million (£[]) per claim]; and



5.4.2 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.

5.5 The provisions of this clause 5 shall extend to any substituted or remedial services provided by the Supplier.

6 CHARGES AND PAYMENT

6.1 In consideration of the provision of the Services, the Customer shall pay to the Supplier the Charges. Unless specified in **Error! Reference source not found.**, the Customer shall be under no obligation to reimburse to the Supplier costs and expenses incurred by the Supplier in the performance of the Services.

6.2 Where Services are provided on a time and materials basis:

6.2.1 the Supplier's standard daily fee rates for each person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on weekdays (excluding public holidays);

6.2.2 all materials shall be supplied at cost unless specified in Schedule 2;

6.2.3 the Supplier shall not be entitled to charge on a pro-rata basis for part-days worked by the Supplier's personnel unless it has the Customer's prior written consent to do so;

6.2.4 the Supplier shall ensure that the Supplier's personnel complete time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice;

6.2.5 each invoice shall set out the time spent by each of the Supplier's personnel and be accompanied by timesheets; and

6.2.6 the Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in such form as the Customer shall approve. The Supplier shall allow the Customer and its agents to inspect and take copies of such records at all reasonable times on request.

6.3 All Charges are expressed exclusive of VAT. The Customer shall pay to the Supplier, in addition to the Charges, the amount of VAT (if any) which is properly chargeable by the Supplier to the Customer on or in respect of the Charges.

6.4 Unless otherwise specified in 0, the Charges and any reimbursable costs and expenses shall be invoiced monthly in arrears. Invoices for agreed expenses shall be payable only if accompanied by a detailed breakdown of the expenses and relevant receipts.

6.5 Payment of invoices in relation to which there is no bona fide dispute shall be made in full within 30 days of the date of invoice. Payment of invoices in relation to which there is a bona fide dispute shall be made within 45 days of settlement of the dispute. The time for payment of the Charges shall not be of the essence of this Agreement.



- 6.6 the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

7 CONFIDENTIALITY

- 7.1 Each party shall use the Confidential Information of the other party disclosed to it (by whoever disclosed) only for the proper performance of its duties under the Agreement and shall not without the disclosing party's written consent disclose or permit the disclosure of the Confidential Information except in confidence for the proper performance of its duties under the Agreement to those of its employees, officers and professional advisers who need to have access to it.
- 7.2 The provisions of clause 7.1 shall not apply to Confidential Information that:
- 7.2.1 the receiving party can prove was known to the receiving party or in its possession before that information was acquired from, or from some person on behalf of, the disclosing party;
 - 7.2.2 is in or enters the public domain through no wrongful default of the receiving party or any person on its behalf, provided that this clause 7.2.2 shall only apply from the date that the relevant Confidential Information enters the public domain;
 - 7.2.3 the receiving party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence; or
 - 7.2.4 is required to be disclosed by any applicable law or by order of any Court of competent jurisdiction or any government body, agency or regulatory body, to the extent of the required disclosure.
- 7.3 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.
- 7.4 Within three (3) days of receipt of a request to do so made at any time and in any event if the Agreement is terminated, the receiving party shall promptly return or destroy (at the option of the disclosing party) all Confidential Information of the disclosing party.

8 INTELLECTUAL PROPERTY

- 8.1 As between the Supplier and the Customer, all Intellectual Property created in the course of the Services (including in the Deliverables) which subsists now or at any time in the future shall be the exclusive property of the Customer. To the extent that any



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

9 INDEMNITY

9.1 The Supplier shall indemnify and hold the Customer harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Customer as a result of or in connection with:

9.1.1 any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property or other rights relating to or arising out of the use of anything created in the course of providing Services; or

9.1.2 any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services as a consequence of a breach or negligent performance or failure or delay in performance of this Agreement by the Supplier.

10 RISK AND TITLE IN THE DELIVERABLES AND OTHER MATERIALS

10.1 Title to and risk of damage to or loss of the Deliverables shall pass to the Customer on delivery.

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

11 ANTI-BRIBERY AND ANTI-CORRUPTION

11.1 The Supplier shall:



- 11.1.1 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**);
 - 11.1.2 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;
 - 11.1.3 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
 - 11.1.4 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Seller in connection with the performance of this Agreement.
- 11.2 Breach of this clause 11 shall be deemed a material breach.
- 11.3 For the purpose of this clause 11 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.
- 12 **DATA PROTECTION**
- 12.1 **Properly notified**
- Each party warrants that it has made all relevant notifications in accordance with its obligations under the Data Protection Act 1998 to the extent required for the processing of personal data (as defined under that Act) in the performance of its obligations and exercise of its rights under this Agreement.
- 12.2 **Compliance**
- The parties agree to comply with the relevant provisions of the Data Protection Act 1998 and any directions issued by the Information Commissioner in its processing of such personal data.
- 13 **TERMINATION**
- 13.1 This Agreement may be terminated:
- 13.1.1 immediately by either party on written notice, if the other is in material breach of an obligation under this Agreement and in the case of any such breach capable of remedy has failed to remedy the breach within a period of 30 days after receipt of written notice to do so;
 - 13.1.2 immediately by either party on written notice, if the other party repeatedly breaches any of the terms of this Agreement in such manner as reasonably



demonstrates conduct which is inconsistent with an intention or ability to give effect to the terms of this Agreement.

13.1.3 immediately by either party on written notice:

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



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

13.2 For the purposes of this clause 13:

13.2.1 a breach shall be considered capable of remedy:

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

13.3 Termination of this Agreement for any reason, whether under this clause 13 or not, shall be without prejudice to the accrued rights and liabilities of the parties on the date of termination.

13.4 Upon the termination of this Agreement for any reason:

13.4.1 the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all materials of the Customer referred to in clause 10.2; and

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

14 **GENERAL**

14.1 **Subcontracting and Assignment**

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

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

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

14.2 **Force Majeure**

14.2.1 Neither party shall be liable to the other party for any delay or non-performance of its obligations under this Agreement to the extent that its



performance is interrupted or prevented by any act or omission beyond its reasonable control.

- 14.2.2 Such delay or non-performance shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented provided that if such delay or failure persists for sixty (60) days or more, the party not affected may, at its option and if in its opinion it is reasonable for it to do so, terminate this Agreement by giving fourteen (14) days written notice of such termination to the other party.

14.3 Amendments

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

14.4 Waivers and Remedies

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

14.5 Severance

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

14.6 Entire Agreement

- 14.6.1 This Agreement:
- (a) constitutes the entire agreement between the parties with respect to the subject matter of this Agreement; and



- (b) supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the parties relating to such subject matter.

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

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

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

14.7 **Survival Of Obligations**

Notwithstanding any provision of this Agreement to the contrary, the provisions of clauses 6, 7, 8, 9, 10, 11, 13.3, 13.4, and 14 and any other clauses which expressly or impliedly survive termination of this Agreement for any reason whatsoever shall continue in full force and effect after termination.

14.8 **No Partnership/Agency**

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

14.9 **Rights of Third parties**

Subject to clause 3.4, a person who is not a party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.



14.10 Notices

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

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

14.11 Governing Law

The Agreement and any dispute or claim arising out of or in connection with it (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of England and Wales.

14.12 Jurisdiction

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

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

Signed for and on behalf of
[The Supplier]:

)

)

(Signature of director)

Director

(name of director)

Signed for and on behalf of
The National Museum of the Royal Navy:

)

)

(Signature)

(name)



SCHEDULE 1

Services

The services to be provided by the Supplier are:

[REDACTED]