

#### CONTRACT

**Contract No.**

**IWM/Nor/1521**

**IWM North**

**Exhibition Design & Project Management of *The Enemy: The Wars of Wyndham Lewis* exhibition**

**Contractor:**

# CONTRACT

This Contract is between:

**Imperial War Museums** (as operated by the **Trustees of the Imperial War Museum**, a charitable corporation established by statute) whose office is situated at: Lambeth Road, London SE1 6HZ, hereby referred to as ‘**IWM**’, and;

xxx, whose registered office is at xxx company registration no. xxx(hereby known as ‘**the Contractor**’),

to cover the appointment of the Contractor as the exhibition designer and project manager, for the Exhibition to be held at IWM North as identified in this Contract:

1.0 **Definitions**

1.1 In these conditions "the Contract" means the agreement concluded between IWM and the Contractor including all specifications, plans, drawings and other documents which are relevant to the Contract and also such of these Conditions as are included in these terms and conditions of the Contract.

1.2 The following provisions shall have effect with respect to the interpretation of the Contract except where the context otherwise requires:

* “**Background IPR**” means all Intellectual Property Rights excluding Foreground IPR, owned by either IWM or the Contractor prior to their accession to this Contract, as well as any Intellectual Property Rights pertaining to such information, the application for which has been filed before their accession to this Contract, and which is needed for creating the Deliverables or for using Foreground IPR in accordance with this Contract;
* “**Contract Period**” means the period between **28 July 2016** and  **May 2018** inclusive;
* "**Contract Price**" means the price exclusive of Value Added Tax, payable to the Contractor by IWM under the Contract for the full and proper performance by the Contractor of its part of the Contract as determined under the provision of the Contract;
* "**Designated Officer**" means the individual appointed for the time being by IWM as the responsible official for the purposes of this Contract;
* "**Employees of IWM**" includes persons (and the personal representative of any person) who are employees of IWM when any relevant Personal Injury or Loss of Property occurred, even if he has ceased to be such before any payment in respect of the Personal Injury or Loss of Property is made, and where they have ceased to be such by reason of their deaths, include their personal representatives;
* “**Exhibition**” means *xxx* to run from **xxx – xxx**;
* “**Foreground IPR**” means all Intellectual Property Rights in the Deliverables arising as a direct result of and in the performance of this Contract;
* “**Intellectual Property Rights**” means patents, Trade Marks, trade names, design rights, copyright (including rights in computer software and moral rights), performers’ rights, database rights, and other Intellectual Property Rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;
* “**Project Deliver**ables” means all drawings, designs, text, illustrations, logos, AV production, reports and other documents derived from the Exhibition;
* “**Material(s)**” means any material from any medium to be used in the Exhibition that requires copyright approval;
* “**Final art work files**” means all final signed off visuals, elevations of the all the designed content in the Exhibition;
* "**Month**" means calendar month unless otherwise defined;
* "**Premises**" mean IWM North, The Quays, Trafford Wharf Road, Trafford Park, Manchester M17 1TZ;
* "**Services**" mean all Services which the Contractor is required under the Contract to supply;
* "**Specification**" means the description and specification;
* "**Sub-Contractor**" means any person, firm or company under contract to the Contractor to perform work or provide professional services and/or supply goods and includes any other person or persons taken as a partner or director by such person, firm or company during the currency of the Contract and the surviving member or members of any such firm or company;
* “**Third Party IPR**”meansIntellectual Property Rights, not owned by Parties subject to this Contract.

1.3 The headings to these Conditions shall not affect the interpretation thereof.

1.4 Any notice or other communication whatsoever which IWM are required or authorised by the Contract to give or make to the Contractor shall be seen to be given if sent by post in a prepaid letter addressed to the last known address of the Contractor and that the letter is not returned undelivered by the Royal Mail shall be deemed for the purposes of the Contract to have given or made at the time at which the letter would in the ordinary course of post be delivered.

1.5 The masculine includes the feminine.

1.6 The singular includes the plural and vice versa.

1.7 Reference to any enactment, order, regulation or similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.

2.0 **Appointment**

2.1 IWM appoints the Contractor and the Contractor agrees to act as the Exhibition Designer and the Project Manager, in relation to the design, production and lighting of the Exhibition, to be held in the Special Exhibition Gallery at the Premises.

2.2 In any case of discrepancy between these Conditions and other documents forming part of the Contract, these Conditions shall prevail unless the inconsistent provision of such document is expressed to be, or if the context indicates it to be, an amendment of these Conditions.

3.0 **Contractor’s Obligations**

3.1 The Contractor shall provide the Design Services described in the Brief, and will exercise all reasonable skill, care and diligence expected of a competent, qualified and experienced Exhibition Designer in the performance of their Services who is experienced in carrying out such Services in relation to works of similar size, scope and nature to the proposed works.

3.2 The Contractor shall keep IWM informed of progress in the performance of the Services and of any issue that may affect the Programme, the cost or the quality of the Exhibition.

3.3 The Contractor in performing the Services shall when reasonably required by the Designated Officer:

1. co-operate with them as reasonably necessary for the carrying out of their Services;
2. provide them with information for carrying out their Services;
3. consider and when requested by them comment on their work so that any necessary changes to the work may be made and;
4. integrate into the Contractor’s work relevant information provided by them.

3.4 The Contractor shall not make or cause to be made any material alteration to or addition to or omission from the Services or the approved design without the knowledge and consent of IWM, which consent shall be confirmed in writing to the Contractor. In an emergency the Contractor may make or cause to be made such alteration, addition or omission without the knowledge and consent of IWM but shall inform IWM without delay and subsequently confirm such alteration, addition or omission, in writing.

3.5 Any alterations to the approved design or any other aspect of the Contractor’s obligations as defined in the Brief must be treated as a Variation to this Contract and must be signed off by both parties, clearly indicating the amendment(s) and any impact this will have on the project delivery and/or costs.

3.6 The Contractor agrees to provide a set of the final complete art work files for all work produced for the *xxx* Exhibition by **xxx** (approx 2 weeks after the exhibition has opened), in a format to be agreed between the parties.

4.0 **IWM Obligations**

4.1 IWM shall supply information to the Contractor at the times agreed with IWM.

4.2 IWM shall notify the Contractor in writing of any instruction to vary the Services.

4.3 IWM when requested by the Contractor shall give decisions and approvals as necessary for the proper and timely performance of the Services.

4.4 IWM shall advise the Contractor of the relative priorities of the Brief, the Construction Cost and Programme.

4.5 IWM shall have authority to issue instructions to the Contractor, subject to the Contractor’s right of reasonable objection.

4.6 IWM shall instruct the Contractor on the making of applications for consents under planning legislation, building acts, regulations or other statutory requirements and by freeholders and others having an interest in the Exhibition. IWM shall pay any statutory charges and any fees, expenses and disbursements in respect of such applications.

5.0 **Assignment and subcontracting**

5.1 The Contractor shall not assign the whole or any part of this Contract.

5.2 The Contractor shall not subcontract (apart from the identified consultant services to be provided by the Contractor) any part of the Services without the express permission of IWM.

6.0 **Payment**

6.1 IWM shall pay the Contractor the fees for the Services for theExhibition in such instalments as are set out in Appendix 1. This fee is inclusive of all expenses. All fees under the Contract are exclusive of Value Added Tax which if due shall be paid concurrently in addition. The final date for payment shall be 30 days after the submission of invoice. Payment shall be made no later than the final date for payment.

6.2 Where IWM intends to withhold payment of any amount stated in the Contractor’s invoice, IWM will provide written notice to the Contractor not later than 5 days before the final date of payment, stating the amount to be withheld and the grounds for withholding payment.

6.3 With regards to any additional Services allocated to the Contractor by IWM, these Services must only be undertaken if the Contractor has received written confirmation from IWM.

6.4 Interest shall be paid to the Contractor on fees due and payable but remaining unpaid for 30 days after invoicing. The rate of interest is to be 8% over the Bank of England Base Rate.

7.0 **Professional indemnity insurance**

7.1 The Contractor shall maintain Professional Indemnity Insurance to the value of £1million for the duration of the Contract Period.

7.2 The Contractor shall immediately inform IWM if the insurance referred to in clause7.1 ceases to be available at commercially reasonable rates in order that the best means of protecting the respective positions of IWM and the Contractor can be implemented.

7.3 The Contractor shall upon the written request of IWM, provide evidence that the insurance is properly maintained. The Contractor shall bring to IWM’s attention any changes to its insurance policies made at any time before the Completion Dates.

8.0 **Copyright and other Intellectual Property Rights**

8.1 The Contractor shall assign all Foreground IPR to IWM with full title guaranteed together with any renewals thereof throughout the world in all circumstances and in perpetuity.

8.2 IWM shall grant the Contractor a non-exclusive non commercial worldwide revocable licence to use the Deliverables.

8.3 Each party shall grant the other party a non-exclusive royalty free worldwide licence to use the Background IPR within the context of creating the Deliverables and for granting any rights and permissions in 8.1 & 8.2.

8.4 While the Contractor shall retain the moral right of association and credit with the Deliverables, IWM shall retain the ability to edit the Deliverables as required and wherever reasonably practical

8.5 The Contractor shall be credited in association with the Deliverables where reasonably practical.

8.6 The Contractor warrants that all Intellectual Property Rights are owned by the Contractor, or in the case of Third Party IPR are licensed to the Contractor for use in the Deliverables, and that the Deliverables do not infringe the Intellectual Property Rights of any third party.

8.7 The Contractor agrees that IWM shall have no liability and the Contractor shall indemnify, defend and hold IWM harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by IWM in defending against any third-party claim of Intellectual Property Rights infringements or threats of claims thereof with respect of IWM’s or any user’s use of the Deliverables, provided that:

(1) the use of the Deliverables has been in full compliance with the terms and conditions of this Contract;

(2) IWM provides the Contractor with prompt notice of any such claim or threat of claim;

(3) the Contractor has sole and complete control over the defence or settlement of such claim.

8.8 IWM’s logo cannot be used without prior agreement from IWM

9.0 **Confidentiality**

9.1 The Contractor agrees and undertakes to IWM that it will observe strict secrecy as to the nature of the Exhibition and its development, the affairs and dealings of IWM and the terms of this Contract (the “**Confidential Information**”). The Contractor agrees that it will not disclose the Confidential Information to any third party not engaged in the Exhibition. The Contractor further agrees not knowingly to do anything detrimental to, or say anything detrimental about the Exhibition or any person involved in the Exhibition.

9.2 The Contractor shall fully indemnify IWM, his employees or agents against the costs of dealing with any claims made in respect of information subject to the Data Protection Act 1998, or any subsequent amendments, which claims would not have arisen but for some act, omission or negligence on the part of the Contractor, his Sub-Contractors, agents or staff.

9.3 IWM advises the Contractor that they will publish the terms and conditions of this Contract; the specification, and the successful tender submission on its own and/or the Contracts Finder website following the award of the Contract, under the auspices of the Government’s transparency agenda.

Prior to the publication, IWM in concert with the Contractor, will redact any information relating to the following:

* National security;
* Personal data;
* Information protected by intellectual property law;
* Information not in the public interest;
* Third party confidential information;
* IT security, and;
* Prevention of fraud.

9.4 IWM is also obliged under the transparency agenda to publish notification of any individual payment to the Contractor over and above £25,000. This requirement is incumbent on IWM should the transactional value of the payments to be published be amended by the Government.

10.0 **Freedom of Information Act 2000**

10.1 IWM is subject to the provisions of the Freedom of Information Act 2000 (“FoIA”). FoIA obliges IWM to release certain information to third parties upon written request, unless subject to one of the exemptions under FoIA.

10.2 The Parties agree that all information pertaining to the Contract shall be released to third parties upon request. Under the terms of FoIA IWM may be ordered by the Information Commissioner to release information to a third party.

10.3 The Contractor confirms that, apart from those disclosed in writing to IWM, it has no existing conflicts of interest with the Exhibition.

11.0 **Suspension and Termination**

11.1 If either party breaches an essential condition of this Contract which is capable of remedy, the party suffering the breach may at any time give the party in breach written notice specifying details of the breach and requiring it to be remedied, or a solution to remedy to be submitted to them within 5 working days of their notification of the breach. If after the specified time given, the breach has not been remedied, or a solution to remedy has not been agreed, this Contract may be terminated by the party suffering the breach, on giving not less than **one month’s notice** in writing to the other party.

11.2 Should the Contractor’s appointment be terminated under clause 11.1, the Contractor is to immediately handover to IWM all work completed and all documentation supplied to the Contractor by IWM, and clause 8 will apply.

11.3 Where the Services have been suspended by IWM and the Contract has not been terminated, IWM may, by giving reasonable notice to the Contractor, require the Contractor to resume the performance of the Services.

11.4 In the event that IWM is in default over payment of amounts at the final date for payment and no notice of intention to withhold payment has been given, the Contractor may suspend its Services. This right is subject to the Contractor first giving IWM not less than 14 days of written notice of such intention and stating the grounds for suspension. The right to suspend performance shall cease when IWM makes payment of the amount due.

11.5 If either party:

* commits an act of bankruptcy or has a receiving or administrative order made against it, and/or;
* goes into liquidation, and/or;
* becomes insolvent, and/or;
* makes any arrangement with its creditors

the other may suspend performance of its Services or may terminate the Contract by giving written notice.

12.0 **Consequence of suspension and termination**

12.1 If the Contractor’s Services have been suspended under clause 11, IWM shall pay the Contractor any instalments of the fees due to the Contractor up to the date of suspension or termination. No additional payment will be made by IWM for claims of loss of profit or overhead.

12.2 Termination of the Contract shall be without prejudice to the rights and remedies of the parties.

### 13.0 **Force Majeure**

13.1 Neither party shall be liable to the other party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure, where there is no practicable means available to the party concerned to avoid such failure or delay.

13.2 If either party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other party of the period for which it estimates that the failure or delay will continue.

13.3 For the purpose of this condition ‘Force Majeure’ means any event or occurrence which is outside the control of the party concerned and which is not attributable to any act or failure to take preventive action by the party concerned, but shall not include industrial action occurring within the Contractor’s organisation or within any sub-contractor’s organisation.

13.4 Any failure or delay by the Contractor in performing his obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with an obligation to the Contractor by Force Majeure.

14.0 **Disputes**

14.1 Should a dispute arise out of this Contract IWM and the Contractor shall attempt to agree a settlement by negotiation and in good faith. For all disputes, ADR (Alternative Dispute Resolution) will be considered as a means of facilitating a settlement.

14.2 If the dispute is not resolved either IWM or the Contractor may at any time give notice to the other in writing that it wishes to refer the dispute to an adjudicator. The person who is to act as the adjudicator shall be agreed between IWM and the Contractor within 2 days of such notice having been given or, failing agreement, be a person appointed by the President or Vice-President of the Chartered Institute of Arbitrators within 5 days of such notice having been given. The referring party shall refer the dispute in writing to the adjudicator within 7 days of such notice having been given.

14.3 The adjudicator may in his discretion direct the payment of legal costs and expenses of one party by another party as part of his decision. The adjudicator may determine the amount of costs to be paid or may delegate the task to an independent costs draftsman.

14.4 No party shall be entitled to raise any right of set-off, counterclaim, and/or abatement in connection with any enforcement proceedings.

14.5 The decision of the adjudicator shall, subject to clauses 14.6 and 14.7 will be binding until the dispute is finally determined by arbitration.

14.6 IWM and the Contractor may agree to accept the decision of the adjudicator as finally determining the dispute.

14.7 If IWM or the Contractor is dissatisfied with the decision of the adjudicator then the dispute may be determined by agreement between the parties.

15.0 **English Law**

This Contract shall be governed by and construed in accordance with the law of England.

16.0 **Notice**

16.1 Any notice to be given under this Contract shall be in writing and delivered by hand or sent by Special Delivery post to the party at the address shown in this Contract such an address as the other party may have specified from time to time by written notice to the other.

16.2 Such notice shall be deemed to have been received on the day of delivery if delivered by hand and otherwise on the next working day.

16.3 Where under this Contract an act is required to be completed within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a public or bank holiday, that day shall be excluded.

### 17.0 **Entire Contract**

17.1 This Contract is the complete and exclusive statement of the Contract between the parties relating to the subject matter of this Contract, which supersedes all previous communications, Contract and other arrangements, written or oral.

17.2 The parties to this Contract are independent organisations, and nothing contained in this Contract shall constitute to create a partnership, agency or joint venture between the parties.

### 18.0 **Severance**

If any part of this Contract is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Contract, which will continue to be valid and enforceable to the fullest extent permitted by law. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall promptly commence good faith negotiations to remedy such invalidity.

### 19.0 **Waiver**

No whole or partial waiver of any breach of this Contract shall be held to be a waiver of any other or any subsequent breach. The whole or partial failure of either party to enforce at any time the provisions within this Contract shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this Contract or any part of it, or the right of either party to enforce subsequently each and every provision.

## 20.0 Assignability and Transferability

Neither party may assign any rights under this Contract without the written consent of the other party, which is not be unreasonably withheld, and any attempt to do without that consent shall be void.

|  |  |  |
| --- | --- | --- |
| **Signed on behalf of the Trustees of the Imperial War Museums** |  | **Signed on behalf of xxxx** |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signed |  |  | Signed |  |
| Name |  |  | Name |  |
| Title |  |  | Title |  |
| Date |  |  | Date |  |

##### Appendix 1 - Details and Design Fees

1. The Design Fee for the Exhibition Designer and the Project Management of the *xxx* Exhibition to be held within the Special Exhibitions Gallery at IWM North from **xxx until xxx**, is not to exceed the lump sum of **£xxx** plus VAT, on the basis of Outline Cost Plan (see Section C of Appendix 2)
2. The Fees shall be payable at the following Stages, dates for which are set out in the Schedule (see Section D of Appendix 2):

|  |  |  |
| --- | --- | --- |
| Work Stage | Approx Percentage of Total Fee | Amount (£) |
| Stage 1: xxx | xx% | **xx** |
| Stage 2: xxx | xx% | **xx** |
| Stage 3: xxx | xx% | **xx** |
| Stage 5: xxx | xx | **xx** |
| **TOTAL** |  | **xx** |

1. If in the opinion of IWM, it becomes apparent that the progress of the *xx* Exhibition is not in accordance with the Programme, instalments of the Fee shall be recalculated so that the balance of the Fee within each work stage after deduction of amounts already paid in appropriate monthly instalments consistent with the Services remaining to be performed.
2. The amount of professional indemnity insurance referred to in clause 8.1 is £1million for each and every claim (without aggregate limit).
3. IWM’s address and numbers for service are as follows:-

IWM North

The Quays

Trafford Wharf Rd

Trafford Park

Manchester, M17 1TZ 0161 836 4000

The Contractor’s address and numbers for service are as follows:-

Xxx

**Appendix 2 – Services, Fees and Costs**

The Contractor’s responsibilities on the Exhibition will primarily be for the Design and Project Management in relation to the design and production of the *xxx* Exhibition.

# A. The principal responsibilities of the Contractor are:-

* To design the Exhibition in line with the Exhibition Design and Project Management Brief and in association with IWM;
* Preparation of all designs, drawings and specifications necessary to tender the fit-out of the Exhibition. This includes all drawings and specifications relating to the final fit-out and decoration of the galleries, and the positions of all the installed elements including case layouts for exhibits.
* Achieving best value for the allocated budget within the timescale and bearing in mind the need for quality and durability to an agreed standard, and the need for best value in procuring all the sub-contracted marketing elements.
* Preparing papers and assisting with the tender process leading to the appointment of the lighting and production contractors who will deliver the exhibition lighting, structures, graphics, interactives and any other agreed elements falling within the scope of the Exhibition, to ensure completion of the Exhibition by the due date.
* Project managing and coordinating all contractors and approved sub-contractors responsible for delivering the lighting, structures, graphics, interactives, audio-visual elements and any other agreed elements falling within the scope of the exhibition, to ensure completion of the exhibition by the due date.
* Liaison with IWM’s appointed FM contractor, xxx, and the authorised representatives of IWM in relation to the types of luminaries, lighting fittings, lighting tracks, switching and control arrangements for the lighting system, and all types, switching and control of the audio and video systems within the Exhibition.
* Co-ordination and overseeing installation of the Graphics Programme for the Exhibition to ensure completion by the due date.
* Co-ordination and development of the design ideas, and the integration into the design scheme, of any AV/IT and Audio Visual Production systems, to ensure completion by the due date.
* Addressing the lighting and acoustic implications of the design to deliver the optimum solutions within the limitations of the budget, by consulting, designing, appointing and briefing contractors as required and conferring with IWM at every stage.

All in accordance and as outlined in:

* The Programme provided by IWM North
* The Exhibition Design and Project Management Brief and Working Drawings provided by IWM North

# B. The specific components of the Services to be delivered in order to create the exhibition shall include:

# Design exhibition in line with Exhibition Design and Project Management Brief, producing full working drawings for Exhibition Contractor and other appointees or designated staff to use

# 2. Project manage and coordinate the production and installation of the Exhibition by the appointed Exhibition Contractor and all other appointees or designated staff to meet the agreed schedule and within the agreed costs for each element as set out in the Exhibition Design and Project Management Breakdown and schedule in sections C & D below

C. The Outline Cost Plan for the Exhibition Design and Project Management shall be as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  | £ |
| 1 Concept designs |  |  |  |  | £xxx |
|  |  |  |  |  |  |
| 2 Scheme designs |  |  |  |  | £xxx |
|  |  |  |  |  |  |
| 3 Detailed designs |  | | |  | £xxx |
|  |  | | |  |  |
| 4 Project Management & contractor liaison, including onsite installation oversee | | | |  | £xxx |
|  |  | | |  |  |
| 5 Expenses |  | | |  | £xxx |

**TOTAL**  **£xxx**

|  |  |  |  |
| --- | --- | --- | --- |
| Notes | All costs exclude VAT |  |  |
|  | Costs are based on relevant contractors quotations | | |
|  | Costs assume use in the first instance of current stock of AV and lighting equipment, exhibition cases and furniture | | |
|  | Excludes copyright fees |  |  |

# The Exhibition Design, Production and Installation Schedule for *xxx* shall be as follows:

|  |  |
| --- | --- |
| Stage | Date |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

##### Appendix 3 – Variation Notice

**VARIATION TO CONTRACT**

**Contract Title: Exhibition Design & Project Management – *xxx* Exhibition**

#### Contract Ref: IWM/Nor/1521 Variation no: Date:

**Between:**

|  |
| --- |
| The Trustees of Imperial War Museums (hereinafter called ‘IWM’) and **xxx** (hereinafter called ‘the Contractor’) |

1. The Contract is varied as follows:

|  |
| --- |
| **Details of Variation:** |
| **Variation effective from:** |

1

2. Words and expressions in this Variation shall have the meaning given to them in the Contract.

3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**SIGNED:**

|  |  |
| --- | --- |
| For: **IWM** | For: **xxx** |
| By: | By: |
| Full Name: | Full Name: |
| Position: | Position: |