

Imperial War Museum  
Survey - Invitation to Tender

## **Appendix G**

### Terms and Conditions

**12 July 2017**



Contract Number:

**IWM/ASA/1754**

Tender Deadline:

**17.00 Monday 31<sup>st</sup> July**

Contact:

**Tom Coleman, AMR Consult Limited, 07525175220**

## 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;

[ ], whose office is situated at: [ ] company reg. no. [ ], hereby referred to as "**the Contractor**";

and hereby to be referred to individually as "**a Party**", and collectively as "**the Parties**".

### 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, materials and other content produced by the Contractor in fulfilling the terms of this Contract (the "**Materials**") 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:

- "**Client Representative**" means the individual appointed by IWM as the responsible official for the purposes of this Contract;
- "**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 his part of the Contract as determined under the provision of the 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;
- "**Loss**" means destruction;
- "**Loss of Property**" includes damage to property, loss of profits and loss of use;
- "**Premises**" mean IWM Duxford, Cambridgeshire CB22 4QR;
- "**Services**" means the delivery of the underground services survey at the Premises;
- "**Specification**" means the scope of services required to deliver the Services;
- "**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.
- "**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 Materials or for using Foreground IPR in accordance with this Contract.
- "**Foreground IPR**" means all Intellectual Property Rights in the Materials arising as a direct result of and in the performance of this Contract.

- **"Third Party IPR"** means Intellectual Property Rights, not owned by Parties subject to this Contract and any other consents or permissions acquired by the Contractor to fulfil the terms of the Contract.
- **"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.

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 **Service**

Subject to the provisions of the Contract, the Contractor agrees to provide the Services set out in the Specification in consideration of the Fee payable.

## 3.0 **Recovery of Sums Due**

Whenever under the Contract any sums of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract.

## 4.0 **Value Added Tax**

IWM shall pay to the Contractor, in addition to the Contract Fee, a sum equal to the Value Added Tax chargeable on the value of the supply of Services provided in accordance with the Contract.

## 5.0 **Bankruptcy**

5.1 IWM may terminate the Contract by written notice having immediate effect if:

- a) the Contractor undergoes a change of control, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
- b) where the Contractor is an individual or a firm, any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of Section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any jurisdiction within the United Kingdom; or

- c) where the Contractor is a company, and shall pass a resolution or the Court makes an order that the Contractor shall be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

5.2 IWM may only exercise its right under clause 5.1 (a) within 3 months after a change of control occurs and shall not be permitted to do so where it is agreed in advance to the particular change of control that occurs. The Contractor shall notify IWM immediately when any change of control occurs.

5.3 The rights and obligations of the parties upon termination under this clause shall be the same as those for termination for default under clause 22 and provisions in clauses 22.6 and 22.7 shall apply.

#### 6.0 **Equal Opportunities Policy**

6.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment thereof relating to discrimination in employment.

6.2 The Contractor shall take all reasonable steps to secure the observance of the provisions pursuant to clause 6.1, hereof by all employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

#### 7.0 **Transfer & Sub-Letting**

The Contractor shall not give, bargain, sell, assign, sub-let, sub-contract or otherwise dispose of the Contract or any part thereof of the benefit or advantage of the Contract or any part thereof without the prior written consent of IWM.

#### 8.0 **Corrupt Gifts and Payment of Commission**

8.1 The Contractor shall not:

- (a) offer; or give; or agree to give to any person in the service of IWM any gift or consideration of any kind as an inducement or reward for doing or forbearing to do; or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract for IWM's service or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for the service of IWM, or;
- (b) enter into this Contract in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to IWM.

8.2 Any breach of this Clause by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts, 1889 to 1916, in relation to this Contract shall entitle IWM to determine the Contract and recover from the Contractor the amount of any loss resulting from such determination and/or to recover from the Contractor the amount or value of any such gift, consideration or commission.

8.3 In any dispute, difference or question arising in respect of:

- (a) the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor pursuant to clause 8.2 in respect of any loss resulting from such determination of the Contract), or;
- (b) the right of IWM to determine the Contract, or;
- (c) the amount or value of any such gift, consideration or commission.

the decision of IWM shall be final and conclusive.

#### 9.0 **Use of the Materials**

9.1 Except with the consent in writing of IWM, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far as may be necessary for the purposes of the Contract.

9.2 Except with the consent in writing of IWM, the Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of IWM otherwise than for the purpose of the Contract.

#### 10.0 **Intellectual Property Rights ("IPR")**

10.1 Each Party shall retain the IPR in any Materials that they issue to the other Party in relation to this Contract, and agree to provide the other Party with an exclusive licence to use these Materials in the delivery of the Contract.

10.2 Both Parties warrant that all Background IPR is owned by that Party, or in the case of any Third Party IPR is licensed to that Party to be used in the Materials, and that the Materials do not infringe the Intellectual Property Rights of any third party. Either Party shall provide the other Party with copies of any licences, permissions or model consents acquired by that Party to fulfil the terms of the Contract which permit that Party to use Third Party IPR in the Materials. Such licences, permissions or model consents shall be in writing.

10.3 Each Party agrees that the other Party shall have no liability and shall indemnify, defend and hold the other Party harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by the other Party in defending against any third-party claim of Intellectual Property Rights infringements or threats of claims thereof with respect of their use of the Materials, provided that:

- (1) the use of the Materials has been in full compliance with the terms and conditions of this Contract;
- (2) there is prompt notification of any such claim or threat of claim to the rights owning Party;
- (3) the Party owning the IPR has sole and complete control over the defence or settlement of such claim.

10.4 The Contractor is to ensure that they have obtained all appropriate licences for any software used under this Contract, and IWM accepts no liability if the terms of the licence are infringed by the Contractor.

10.5 If the Contractor use software developed by themselves, no rights in the software are transferred to IWM as a result of its use in the Contract.

## 11.0 **Disclosure of Information**

- 11.1 The Contractor shall take every precaution to ensure that information about the Contract, or arising from or connected with the Contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. No information regarding the Services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Contractor except with the written permission of IWM to whom any press or other enquiry or other such matter should be referred.
- 11.2 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, 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.

## 12.0 **English Law**

The Contract shall be considered as a Contract made in England and subject to the law of England.

## 13.0 **Arbitration**

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of IWM is under the Contract to be final and conclusive and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of 2 persons, one to be appointed by IWM and one by the Contractor, or their Umpire, in accordance with the provisions of the Arbitration Acts 1950, 1975 and 1979, or any statutory modification or re-enactment thereof for the time being in force.

## 14.0 **Safety**

The Contractor shall be responsible for the observance by himself, his employees and sub-contractors of all safety precautions necessary for the protection of himself, his employees, sub-contractors and any other person including all precautions required to be taken by or under any Act of Parliament including any regulations or bye-law of any local or other authority. He shall co-operate fully with IWM to ensure the proper discharge of these duties.

## 15.0 **Accidents to Contractor's Employees or Agents**

Accidents to the Contractor's employees or agents which ordinarily require to be reported in accordance with the Health & Safety at Work Act 1974, shall be reported at the earliest opportunity to the Client Representative, or his authorised representative at the time.

## 16.0 **Liability in Respect of Damage to IWM Property**

The Contractor shall, except as otherwise provided for within the Contract, make good or, at the option of IWM, pay for all damage occurring to any IWM property occasioned by the Contractor or by his employees, agents, suppliers or sub-contractors, arising from his or their presence on IWM Premises in connection with the Contract, provided that this Condition shall not apply to the extent that the Contractor

is able to show that any such damage was not caused or contributed to by his neglect or default or the neglect or default of his employees, agents or sub-contractors or by any circumstances within his or their control. The total liability of the Contractor shall be subject to a limit of £1m.

#### 17.0 **Contractor's Property**

All property of the Contractor while at the Premises shall be at the risk of the Contractor and IWM shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby except where any such loss or damage was caused or contributed to by any act, neglect or default of any employee of IWM at the Premises acting in the course of his employment. IWM shall accept liability to the extent to which such loss or damage is so caused or contributed to as aforesaid.

#### 18.0 **Insurance**

18.1 The Contractor shall effect and maintain insurance to the following sums until the expiration of six years from the date of completion:

- Employers Liability - £10m
- Public Liability - £10m
- Professional Liability - £5m

18.2 The Contractor shall ensure that any person or organisation commissioned as a consultant by him takes out and maintains appropriate professional indemnity insurance in respect of their businesses generally throughout the period from the date of commencement of their services under the Contract or Commission until the expiration of six years from the date of completion of each project, which insurance may be limited in respect of any one claim (but shall not be limited in any other respect): provided that any such limit under this clause shall in any event be at least £2m.

18.3 The Contractor shall, whenever required by IWM, produce copies of his and/or his sub-contractors insurance certificates stating that their insurance complies with the requirements pursuant to -clauses 18.1 and 18.2, and is/are currently in date.

18.4 If, for whatever reason, the Contractor fails to comply with this clause, or without the approval of IWM obtains a different policy of insurance from that required by IWM at the time when he submitted his tender, IWM may make alternative arrangements necessary to protect their interests and recover loss and damages from the Contractor.

18.5 The terms of any insurance or the amount of cover shall not relieve the Contractor or his sub-contractors or consultants of any liabilities under the Contract, their sub-contracts or their terms of this Contract.

#### 19.0 **Duty of Care**

The Contractor shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the Services properly and efficiently in accordance with the Contract.

## 20.0 **Injury to Person: Loss of Property**

- 20.1 The Contractor will indemnify and hold IWM harmless from and against any and all legal liabilities for illness or injury or death to any employees of IWM or the Contractor or any third party and for loss of or damage to the property of IWM or the Contractor or the property of their personnel or any third party, and against all claims, costs, demands, proceedings and causes of action resulting directly therefrom, which are due to negligence on the part of the Contractor or its employees or agents or any failure by the Contractor or its employees or agents to perform any of its obligations under this Contract.
- 20.2 IWM will indemnify and hold the Contractor harmless from and against any and all legal liabilities for illness or injury or death to any employees of the Contractor or IWM or any third party and for loss of or damage to the property of the Contractor or IWM or the property of their personnel or any third party, and against all claims, costs, demands, proceedings and causes of action resulting directly therefrom, which are due to negligence on the part of IWM or its employees or agents or any failure by IWM or its employees or agents to perform any of its obligations under this Contract.
- 20.3 If the Contractor shows that any personal injury or loss of property to which this clause applies was not caused nor contributed to by his neglect or default or by that of his employee, agents or sub-contractors, or by any circumstances within his control, he shall be under no liability under this clause, and if he shows that the neglect or default of any person (not being his employee, agent or sub-contractor) was in part responsible for any personal injury or loss of property to which this clause applies, the Contractor's liability under this clause shall not extend to the share in the responsibility attributable to the neglect or default of that person:
- (a) IWM shall notify the Contractor of any claim or proceedings made or brought in respect of any personal injury or loss of property to which this clause applies.
  - (b) if the Contractor admits that he is liable wholly to indemnify IWM in respect of any such claim or proceedings and the claim or proceeding is not an expected claim, he, or, if he so desires, his insurers, shall be responsible, pursuant to sub-clause 20.3 (c) for dealing with or settling that claim or proceeding.
  - (c) if in connection with any such claim or proceeding with which the Contractor or his insurers are dealing, any matter or issue shall arise which involves or may involve any privilege or special right of the Crown (including any privilege or right in relation to the discovery or production of documents) the Contractor or his insurers shall before taking any action thereon, consult the legal adviser to IWM and act in relation thereto as may be required by IWM, and if either the Contractor or his insurers fail to comply with this clause, clause 20.3 (b) shall cease to apply.
- 20.4 Where any such claim or proceeding pursuant to clause 20.3 (a) or (b), is settled otherwise than by the Contractor or his insurers, he shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case and in particular to the damages which might be recoverable at law.

## 21.0 **Observance of Regulations**

- 21.1 The Contractor's representatives, when employed within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to Security arrangements) as may be in force for the conduct of personnel at the Premises. Details of such rules, regulations and requirements shall be provided, on request, by the Client Representative.

21.2 Except as provided in this Contract neither the Contractor nor any of his employees or agents shall carry out any business or trading activity within the confines of the Premises and no advertisement, sign or notice of any description shall be exhibited without prior approval, in writing, from the Client Representative.

## 22.0 **Break**

22.1 If either Party is in breach of 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 14 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.

22.2 In the event of such notice being given, IWM shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as he considers expedient:

- (a) to direct the Contractor, where work has not been commenced, to refrain from commencing work;
- (b) to direct the Contractor to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid for at the agreed contract price, or, where no agreement exists, a fair and reasonable price.

22.3 IWM shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the determination of the Contract.

22.4 IWM shall not in any case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed the total contract price.

22.5 If the Contractor is convicted under a charge of bribery, then this Contract will be terminated with immediate effect, and the Contractor will be required to immediately terminate any works/services under this contract, to ensure that all paperwork is completed and forwarded to IWM with immediate effect, and payment will only be made for works completed at the time of the termination.

22.6 Following termination of the Contract neither Party shall have any further rights or obligations in relation to the other Party except those stated in this clause, and in the clauses listed in clause 22.7 which shall continue to have full effect. Subject to the other provisions of this clause, termination shall not however affect the rights of action and remedies of the Parties which shall have accrued at the date of termination or shall thereafter accrue.

22.7 Clauses which shall apply under 22.6 shall be:

- Confidentiality
- Intellectual Property Rights
- Insurance
- Governing Law and Jurisdiction
- Freedom of Information Act 2000

- Anti-Bribery Act

#### 23.0 **Leave Blank**

#### 24.0 **Contractor's Organisation**

- 24.1 The Contractor shall provide and maintain an organisation having the necessary facilities and employees of appropriate qualifications and experience to undertake the tasks identified in the specification.
- 24.2 All personnel deployed on work relating to the Contract must have appropriate qualifications and competence and in all respects be acceptable to IWM.

#### 25.0 **Contract Documents**

In any case of discrepancy between these terms and other documents forming part of the Contract, these terms 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 terms and the same, shall have been effected in accordance with clause 26.

#### 26.0 **Variations of Contract**

Any variation of any provision of this Contract must be effected in writing issued by the Client Representative, and no purported variation by any other means shall bind IWM. All variations to this Contract will be submitted in writing to the Contractor using the Variation Notice shown as Appendix 1 to these terms and conditions of contract.

#### 27.0 **Contract Fee**

Unless otherwise stated in the Contract, the Contract Fee shall be the total fee for the Services including the cost of all labour, materials, equipment, holiday relief or substitute as and when necessary, overheads and all other costs of the Contractor in connection with the Contract for full and proper performance by the Contractor.

#### 28.0 **Availability of Information**

- 28.1 the Contractor shall at all times during the course of the Contract and for a period of two years after final payment of all sums due under the Contract maintain in accordance with his normal procedures, a record of the costs incurred by him in the execution of the Contract including, for example, details of times taken and of wage rates paid, and such further particulars reasonably specified by the IWM as being necessary for the purpose of determining such costs with reasonable accuracy.
- 28.2 At the time before the expiry of the period pursuant to clause 28.1, the Contractor shall, when requested by IWM, furnish a summary of any such costs mentioned in such form and detail as IWM may reasonably require, and afford such facilities as IWM may reasonably require for his representatives to visit the Contractor's premises and examine the records under this clause.

#### 29.0 **Transfer of Responsibility**

- 29.1 In the event that a different organisation is required to take on the Service at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer under arrangements to be notified to him by IWM.

29.2 The transfer shall be arranged between IWM and the Contractor so as to reduce to a minimum any interruption to the Services

30.0 **Quality Assurance**

The Contractor shall ensure that all Services carried out under the Contract and performed by suitable qualified persons and that British Standards, or equivalent Specifications where such exist, are used unless otherwise agreed in writing by IWM.

31.0 **Freedom of Information Act 2000**

31.1 The Contractor acknowledges that IWM is subject to the requirements of the Freedom of Information Act ("**FOIA**") and the Environmental Information Regulations ("**EIRs**"). the Contractor shall, at its own expense, assist and cooperate with IWM to enable IWM to comply with its information disclosure obligations.

31.2 Where the Contractor holds on behalf of IWM information that is subject to the FOIA and EIR, the Contractor shall and shall procure that its sub-contractors shall:

- (a) transfer any request for information received by the Contractor to IWM as soon as practicable after receipt and in any event within two working days of receiving a request for information;
- (b) provide IWM with a copy of all Information in its possession, or power in the form that IWM requires within five Working Days (or such other period as IWM may specify) of IWM's request; and,
- (c) provide all necessary assistance, as reasonably requested by IWM to enable IWM to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

31.3 IWM shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations

31.4 The Contractor shall only respond to a Request for Information unless this has been submitted by a nominated representative of IWM.

31.5 The Contractor acknowledges that (notwithstanding the provisions of clause 31) IWM may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

- (a) without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;

provided always that where 31.5(a) applies IWM shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

- 31.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit IWM to inspect such records as requested from time to time.
- 31.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that IWM may be obliged to disclose it in accordance with this clause 31.

32.0 **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 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.

33.0 **Force Majeure**

- 33.1 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.
- 33.2 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.
- 33.3 For the purpose of this Contract "**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.
- 33.4 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.

34.0 **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.

35.0 **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.

### 36.0 **Entire Contract**

36.1 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, contracts and other arrangements, written or oral.

36.2 The Parties hereto are independent organisations, and nothing herein contained shall constitute to create a partnership, agency or joint venture between the Parties.

### 37.0 **Anti-Bribery**

37.1 The Contractor is aware of IWM's obligation to comply with the anti-bribery rules relevant to the contracting Parties, and represents that it will not use money or other consideration, paid by IWM for unlawful purposes, including purposes violating anti-bribery laws including the Bribery Act 2010, such as make or cause to be made direct or indirect payments to any public official in order to assist IWM or any group member organisation or anyone acting on their behalf in obtaining or retaining business with, or directing business to, any person, or securing any improper advantage.

37.2 The Contractor hereby declares that:

- its members, officers, owners or employees are not public officials;
- it does not and will not employ or otherwise compensate any public officials or make or cause another to make any direct or indirect offers of payments to any public officials, for the purpose of influencing or inducing any decision for the benefit of IWM and it will not employ any sub-contractor, consultant, agent or representative in connection with this Contract without a documented examination of his person, reputation and integrity, and;
- it will not employ any sub-contractor, consultant, agent or representative who does not comply with the anti-corruption rules and if such a violation comes to its attention to inform IWM immediately.

37.3 IWM may immediately terminate this Contract if the Contractor violates any of the anti-corruption laws and the provisions as defined in this clause.

37.4 The Contractor agrees to comply fully with all applicable anti-bribery laws, including those in the jurisdiction where they are registered and the jurisdiction where the relevant contract will be performed (if different), and to comply with IWM's Anti-Bribery Policy.

37.5 The Contractor represents that:

- he or she or, as the case may be, the authorised representatives of the Contractor presently is/are not, and during the life of the Contract will not become, an official or employee of the relevant country's government or of a political party in the country;
- he/she/they will disclose any such appointment immediately to IWM, and;
- such appointment may result in the termination of the Contract.

37.6 The Contractor agrees that all payments made to the Contractor will be made only after receipt by IWM of a detailed and accurate invoice supported by detailed records. IWM will make all payments under this Contract in Pounds Sterling, only by bank transfer to the account of the Contractor at a financial institution within the United Kingdom.

- 37.7 The Contractor agrees to keep accurate books, accounts, records and invoices and agrees that IWM is entitled, with the help of outside auditors if it deems necessary, to audit all books, accounts, records and invoices and accompanying documentation of the Contractor for compliance with any applicable anti-bribery laws and that the Contractor will cooperate fully in any such audit.
- 37.8 The Contractor's failure to comply with all applicable anti-bribery laws or IWM's Anti-Bribery Policy will be deemed to be a material breach of the Contract entitling IWM to terminate the Contract. In the event the Contractor will surrender any claim for payment under the Contract including payment for savvies previously performed.
- 37.9 IWM may also terminate the Contract or suspend or withhold payment if it has a good faith belief that the Contractor has violated, intends to violate, or has caused a violation of any anti-bribery laws. IWM will not be liable for any claims, losses or damages arising from or related to failure by the Contractor of the Contract under this clause, and the Contractor will indemnify and hold IWM harmless against any such claims, losses or damages.

**Signed on behalf of the Trustees of  
the Imperial War Museum**

Signed

Print

Title

Date

**Signed on behalf of the Contractor**

Signed

Print

Title

Date

