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Social
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RESTRICTED DOCUMENT

Services Contract

Account Code:<insert number>

Service Provider:<insert company name>

Services:<insert services description>

Date:<insert date of contract>

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Services Contract

THIS CONTRACT is made this the <insert>day of <insert>, between

Name: The Trustees of the National Heritage Memorial Fund

Notice details: Mezzanine Floor, International House, 1 St Katharine's Way, London E1W 1UN

(the Fund)

and

Name: <Insert the name>

Company number: <Insert the number>

Notice details: <Insert details>

(Service Provider)

BACKGROUND:

- I. The Fund is a non-departmental public body that provides grants to help acquire the UK's most precious heritage at risk of loss, as a permanent memorial and to help people explore, enjoy and protect the heritage they care about.
- II. The Fund requires the supply of Services and the Service Provider has represented to the Fund that it has the skills and expertise necessary to supply those Services to the satisfaction of the Fund.
- III. The Fund wishes to engage the Service Provider to provide the Services and, in consideration for the Charges, the Service Provider has agreed to supply the Services on the terms and conditions of this Contract.

IT IS AGREED THAT:

A. GENERAL PROVISIONS

A1. Definitions and interpretations

The definitions and interpretations for this Contract are set out in Schedule E.

A2. Term of this Contract

This Contract starts on the Start Date and ends on the Completion Date, unless the Contract is extended by the Fund under the Change Control Procedures, subject always to the termination, break and variation provisions in this Contract.

A3. Provision of Services

A3.1 The Service Provider must make all reasonable enquiries of the Fund to ascertain its requirements and provide the Services:

A3.1.1 with reasonable skill, care and diligence that would be reasonably expected from a prudent and experienced provider of services which are similar to the Services;

A3.1.2 in accordance with the description and timetable of services as well as key performance indicators stated in Schedule A to this Contract;

A3.1.3 in accordance with terms, conditions and provisions of this Contract and its Schedules, as well as all Applicable laws, regulations, Standards and policies;

A3.1.3 in compliance with all reasonable directions and instructions provided by the Fund; and

A3.1.4 to the Fund's satisfaction.

A3.2 The Service Provider must provide each Deliverable by the due date specified for that Deliverable in this Contract. If either party considers a Deliverable due date may not be met, the Service Provider must provide the Fund with a report identifying the nature of the delay, its cause and its anticipated duration. The report must also set out the procedures and resources the Service Provider proposes to apply to overcome and rectify the delay and to ensure the impact of the delay is minimised and future performance of the Contract is not adversely affected. If no due date is specified, the Service Provider shall deliver the Deliverable promptly and such that the overall timetable for delivery is not impacted. The Service Provider acknowledges that a failure to meet any due date may result in the Fund suffering loss or damage.

A3.3 The Service Provider warrants that:

A3.3.1 it has full capacity and lawful authority to enter into this Contract and to perform its obligations under this Contract; and

A3.3.2 it will be available to perform the Services throughout the term specified in Clause A2 and will not owe obligations to a third party during the term that are likely to adversely affect its capacity to perform the Services.

A4. Relationship

The Service Provider, in carrying out the Services, is an independent service provider and not the Fund's servant, agent or employee. The Service Provider shall not make any promise, warranty or representation, or execute any contract or deal on the Fund's behalf.

A5. Severability

The parties agree that the provisions of this Contract are reasonable in all the circumstances. If any clause of this Contract, or part of a clause, is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Contract or that clause shall not be affected.

A6. Waiver

A failure by either party to enforce any part of this Contract will not affect the rights of that party to require performance by the other party subsequently. Any waiver of any rights under this Contract must be in writing signed by the party granting the waiver and will only be effective to the extent specifically set out in that waiver. The waiver of any breach will not be taken as a waiver of any subsequent breach.

A7. Intellectual Property Rights

- A7.1 All Intellectual Property Rights arising out of the performance of the Contract by the Service Provider (or its employees, agents or sub-contractors), including the Materials and any future Intellectual Property Rights therein, are hereby assigned to the Fund and will be owned by the Fund.
- A7.2 The Service Provider must procure the necessary rights from its employees, agents and sub-contractors to be able to assign the Intellectual Property Rights in accordance with Clause A7.1.
- A7.3 The Service Provider grants the Fund a non-exclusive, worldwide, royalty free, perpetual, irrevocable licence (including the right to grant sub-licences) to use and disclose the Service Provider's Background IP to the extent necessary for the Fund to use and exploit the Materials and the Intellectual Property Rights assigned under Clause A7.1.
- A7.4 Subject to Clause B5, the Fund grants the Service Provider a non-transferable, worldwide, revocable, royalty free, non-exclusive licence to use and reproduce all Materials, and the Fund's Background IP, during the term of this Contract, solely for the purpose of complying with this Contract.
- A7.5 The Service Provider must obtain consent from the Fund before it publishes the results of any work undertaken in connection with this Contract, which the Fund may withhold in its absolute discretion or grant subject to conditions.
- A7.6 Each party will do all things reasonably necessary (including signing documents within a reasonable time) for the purpose of giving full effect to the provisions of this Clause A7, at the request and expense of the other party.
- A7.7 Nothing in this Contract prevents the Service Provider from contesting the validity of any patent(s) filed pursuant to this Contract in any legal proceedings..
- A7.8 The Service Provider will pay all royalties and fees on copyright, processes and registered designs of any equipment, systems and publications used, installed or incorporated by the Service Provider as part of a Deliverable under this Contract.

A7.9 The Service Provider:

A7.9.1 warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding the Fund's Background IP) by the Fund and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

A7.9.2 shall indemnify the Fund in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Fund arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables (excluding the Fund's Background IP).

A7.10 If the Service Provider is required to indemnify the Fund under this Clause A.7, the Fund shall:

A7.10.1 notify the Service Provider in writing of any claim against it in respect of which it wishes to rely on the indemnity at Clause A7.9.2 (**IPRs Claim**);

A7.10.2 allow the Service Provider, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Service Provider shall obtain the Fund's prior approval of any settlement terms, such approval not to be unreasonably withheld;

A7.10.3 provide the Service Provider with such reasonable assistance regarding the IPRs Claim as is required by the Service Provider, subject to reimbursement by the Service Provider of the Fund's costs so incurred; and

A7.10.4 not, without prior consultation with the Service Provider, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Service Provider considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Fund into disrepute.

A8. Sub-contracting

A8.1 The Fund acknowledges and agrees that the Service Provider may sub-contract part of this Contract to those parties set out in Item 19 of Schedule A, to the extent set out in that Item 19.

A8.2 Except as set out in Clause A8.1, the Service Provider will not assign or sub-contract any part of this Contract without the prior written consent of the Fund, which it may withhold (in its absolute discretion) or grant subject to conditions. In considering the Service Provider's request, the Fund may request details of any proposed sub-contractor and the personnel the sub-contractor proposes to use to perform the Services.

A8.3 If the Fund consents to the Service Provider sub-contracting any part of this Contract under Clause A8.1 or Clause 8.2:

A8.3.1 it does not relieve the Service Provider of any obligation or duty attributable to the Service Provider under this Contract; and

A8.3.2 the Service Provider must ensure that a term is included in the sub-contract which requires the Service Provider to pay all sums due to the sub-contractor within a specified period not exceeding 30 days from the date of receipt of a valid invoice (as defined by the terms of that sub-contract).

A9. Assignment

A9.1 Subject to Clause A9.2, the Fund may:

A9.1.1 assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any contracting authority (as defined in Regulation 2(1) of the *Public Contracts Regulations 2015*) (a **Contracting Authority**) provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations pursuant to this Contract; or

A9.1.2 assign, novate or otherwise dispose of its rights and obligations under this Contract to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Fund or any Contracting Authority.

A9.2 If the Contract is novated to a body which is not a Contracting Authority pursuant to Clause A9.1.2 (**Transferee**):

A9.2.1 rights of termination equivalent to the rights of termination of the Fund in Clause F1 shall be available to the Service Provider in the event of the bankruptcy, insolvency or default of the Transferee; and

A9.2.2 the Transferee shall in turn only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the Service Provider.

A10. Conflicts of interest

The Service Provider must use its best endeavours to ensure that the Service Provider, its employees or sub-contractors are not placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of such persons and the duties owed by the Service Provider to the Fund under the provisions of this Contract. Immediately on becoming aware or suspecting such a conflict, the Service Provider will disclose the particulars of the conflict to the Fund and co-operate with any reasonable measures implemented or requested by the Fund to mitigate against the conflict.

A11. Land or premises

Any land or premises made available to the Service Provider by the Fund in connection with the Services under the Contract will be made available to the Service Provider on a non-exclusive basis, free of charge and shall be used by the Service Provider solely for the extent reasonably required for the purpose of performing the Services. The Service Provider will have the use of such land or premises as licensee and will vacate the land or premises on completion, termination or abandonment of the Services or as otherwise directed by the Fund. The Service Provider and the Service Provider's employees, servants, agents, suppliers or sub-contractors must observe and comply with rules and regulations as may be in force at any time for the use of such premises determined by the Fund, and pay the Fund for the cost of making good any damage caused by the Service Provider, its employees, servants, agents, suppliers or sub-contractors other than fair wear and tear. For the avoidance of doubt damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

A12. Property

A12.1 Property issued or otherwise furnished by or on behalf of the Fund in connection with this Contract will remain the property of the Fund and will be used by the Service Provider solely for

the purpose of performing this Contract and for no other purposes whatsoever unless prior approval in writing of the Fund has been obtained.

- A12.2 All such property is deemed to be in good condition when received by or on behalf of the Service Provider unless it notifies the Fund to the contrary within fourteen days of receiving the property.
- A12.3 The Service Provider undertakes the safe custody of and the due return of all property and, subject always to the provisions of Clause E1.4, is responsible for all loss from whatever cause, and will indemnify the Fund against such loss. All property must be immediately returned to the Fund on or before the expiry or termination of this Contract.
- A12.4 The Service Provider is responsible for any deterioration in such property, except for any deterioration resulting from its normal and proper use in the execution of the Contract (but not insofar as the deterioration is contributed to by any want of due maintenance or repair), and will indemnify the Fund against such loss.
- A12.5 Neither the Service Provider nor any supplier or sub-contractor, nor any other person, shall have a lien on any such property for any sum due to the Service Provider, supplier, sub-contractor or other person, and the Service Provider shall take all reasonable steps to ensure that the title of the Fund and the exclusion of any such lien are brought to the notice of all suppliers and sub-contractors and any other persons dealing with any such property.
- A12.6 The indemnity contained in Clause A12.3 and Clause A12.4 survives the expiry or termination of this Contract.
- A12.7 Apart from any property (including equipment) provided by the Fund, the Service Provider will supply, at its own cost, all equipment required to perform the Services.

A13. Notices

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service to the address of the party as set out at the front of this Contract (marked for the attention of the relevant representative set out in Clause A16 or, in the case of the Service Provider, the **Company Secretary**), or to such other address as the party may by notice have advised the other party, shall be deemed effectively given, if served personally at the time of service and if served by post, 48 hours after it was posted provided such 48 hours expires on a working day (being Monday-Friday when the Banks in the City of London are open to the public for business) and if not, such 48 hours shall be extended until the next working day.

A14. Offers of employment

For the duration of the Contract and for a period of up to six months after the Completion Date or earlier termination of the Contract, neither party shall employ or offer employment to any of the staff of the other party who have been associated with the delivery of the Services without the other party's prior agreement in writing.

A15. Special Conditions

The parties agree to comply with the Special Conditions.

A16. Representatives

A16.1 The Fund's representatives for this Contract are set out in Item 4 of Schedule A.

A16.2 The Service Provider's representatives for this Contract are set out in Item 5 of Schedule A.

B. STATUTORY OBLIGATIONS AND REGULATIONS

B1. Audit

B1.1 The Service Provider must keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the Service Provider and the Fund, all information produced in the course of this Contract or relating to the Contract and all records of all expenditures which are reimbursable by the Fund to the Service Provider or its employees and sub-contractors which are paid for by the Fund on a time charge basis, invoices and monthly progress reports. The Service Provider shall on reasonable advance notice (at no cost to the Fund) afford the Fund, the Fund's Representatives, its auditors and representatives from the National Audit Office such access to such records as may be required by them in connection with this Contract, and shall furnish such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification and inspection of the accounts of the Service Provider by the Comptroller and Auditor General under Section 6(3)(d) of the *National Audit Act* of 1983.

B1.2 The provisions of this clause survive the expiry or termination of this Contract.

B2. Prevention of corruption

B2.1 The Service Provider shall:

B2.1.1 abide and procure that the Service Provider's employees, servants, suppliers, sub-contractors and agents abide by (and not act in a manner which constitutes a breach of) the provisions of all Applicable Laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including the *Bribery Act 2010* (**Relevant Requirements**);

B2.1.2 have and maintain in place throughout the duration of this Contract (and make available for the Fund to inspect at reasonable times and on reasonable notice) its own policies and procedures, including adequate procedures under the Bribery Act 2010 (as defined in the Bribery Act 2010), to ensure compliance with the Relevant Requirements and will enforce them where appropriate;

B2.1.3 promptly report to the Fund any request or demand for any undue financial or other advantage of any kind received by the Service Provider in connection with the performance of this Contract;

B2.1.4 allow the Fund at reasonable times and on reasonable notice to inspect and assure itself of the measures implemented by the Service Provider in compliance with the Relevant Requirements and this Clause B2.1; and

B2.1.5 agree, undertake and warrant to the Fund that in performing its obligations under the Contract, it will not induce or improperly reward any third party, including any public official, to act improperly (where to act improperly shall also be interpreted in accordance with the Bribery Act 2010).

B2.2 Where the Service Provider or the Service Provider's employees, servants, suppliers, sub-contractors or agents commit such an offence in relation to this Contract or any other contract with the Fund, the Fund has the right to terminate this Contract and the Fund may elect not to

award any further contracts to the Service Provider concerned and may recover any costs incurred by the termination from the Service Provider. Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Fund and provided always that the Fund may recover from the Service Provider the amount or value of such gift, consideration or commission.

B2.3 The decision of the Fund will be final and conclusive in any dispute, difference or question arising in respect of:

B2.3.1 the amount of any such gift, consideration or commission; and

B2.3.2 the right of the Fund under this clause to terminate this Contract.

B3. Data Protection

B3.1 Each party shall comply with its respective obligations under the provisions of applicable legislation relating to data protection and privacy and (without prejudice to the foregoing), in cooperation with the other, take all reasonably prudent steps to deal fairly and lawfully with any personal data collected pursuant to this Contract.

B3.2. If the Service Provider processes any Personal Data on the Fund's behalf when performing its obligations under this Contract, the Fund shall:

B3.2.1 only carry out the processing of any such Personal Data to the extent it relates to the types of data, categories of data subject, the nature and purpose and durations as set out in Schedule E;

B3.2.2 only carry out processing of any such Personal Data on the Fund's documented instructions from time to time. This clause shall apply unless the Service Provider is required to process Personal Data otherwise than as instructed in accordance with Data Protection Legislation to which the Service Provider is subject; in such case, the Service Provider shall inform the Fund of that legal requirement before processing, unless prohibited to do so by law;

B3.2.3 immediately inform the Fund if it believes that the Fund's instructions infringe Data Protection Legislation;

B3.2.4 only use and process such Personal Data in accordance with the terms of this Contract and in compliance with the provisions of Data Protection Legislation;

B3.2.5 ensure that access to such Personal Data is limited to the Service Provider's employees or other representatives who need access to the Personal Data to meet the Service Provider's obligations under this Contract;

B3.2.6 shall not use sub-processors unless it has obtained the prior, written consent from the Fund;

B3.2.7 subject to Clause 3.2.6 above ensure that in the case of all the sub-processors, the Service Provider has entered into a written contract with them which imposes adequate safeguards in relation to the processing of Personal Data, prior to any processing of Personal Data taking place;

B3.2.8 take and/or implement all appropriate technical and organisational measures against unauthorised or unlawful processing of such Personal Data, and against accidental loss,

alteration or destruction of, or damage to, such Personal Data, and ensure the security of such Personal Data at all times (and the Service Provider shall promptly inform the Fund if any Personal Data is lost, altered or destroyed or becomes damaged, corrupted or unusable and shall use its reasonable endeavours to restore the Personal Data to its original condition);

- B3.2.9 not modify, amend or alter the contents of such Personal Data other than as strictly necessary for the purposes of providing the Services or as set out in this Contract; and
- B3.2.10 not disclose or permit the disclosure of any such Personal Data to any third party (including a data subject) unless specifically authorised in writing by the Fund.
- B3.3 If the Service Provider receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data or to compliance by it or the Fund with the Data Protection Legislation (including requests from data subjects for the exercising of their statutory rights), it shall promptly notify the Fund and shall provide the Fund with reasonable co-operation and reasonable assistance in relation to any such complaint, notice or communication.
- B3.4 The Service Provider shall provide all reasonable assistance to the Fund, having regard to the nature of processing and the information available to the Service Provider, in order to assist the Fund in complying with its obligations under the Data Protection Legislation.
- B3.5 The Service Provider shall keep and provide to the Fund on request a record of the Service Provider's use of the Personal Data and processing activities and shall make available to the Fund all information necessary (and allow for audits or inspections which the Fund will bear the cost of) to demonstrate compliance with the Service Provider's data processing obligations set out in this Contract.
- B3.6 The Service Provider shall take reasonable steps to ensure the reliability of all its employees or other representatives who have access to the Personal Data and shall ensure that all such persons:
- B3.6.1 are informed of the confidential nature of the Personal Data before they gain access to it;
- B3.6.2 have committed themselves to confidentiality obligations or are under an appropriate statutory obligation of confidentiality; and
- B3.6.3 have undertaken training in the requirements of the Data Protection Legislation.
- B3.7 The Service Provider shall be entitled to charge the Fund for the reasonable and verified costs of its specific assistance and cooperation provided pursuant to this clause (including without limitation any support provided under Clause B3 above) except to the extent that such measures have been necessitated by a breach of this clause by the Service Provider or its Sub-processors.

B4. Compliance with equality legislation and public duties

- B4.1 The Service Provider must comply with all applicable equality law (whether in relation to race, gender, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise).
- B4.2 The Service Provider will co-operate with any investigations or proceedings concerning any alleged contravention of any of the applicable equality laws as specified in the provisions of

Clause B4.1 and will indemnify the Fund for losses suffered by the Fund as a result of the Service Provider's contraventions of such laws.

- B4.3 The Service Provider shall take all reasonable steps to ensure the observance of the provisions of Clauses B4.1 and B4.2 by all servants, employees or agents of the Service Provider and all sub-contractors and suppliers employed in the execution of the Contract. It will ensure that those involved in the provision of Services under this Contract receive appropriate training on equality legislation and associated good practice.

B5. Confidentiality

- B5.1 Each party (**Receiving Party**) must:

B5.1.1 keep secret and not disclose (and shall procure that its employees, affiliates and subcontractors keep secret and do not disclose) any Confidential Information of the other party (**Disclosing Party**) to any third party except:

B5.1.1.1 for disclosures permitted under Clause B5.2; and

B5.1.1.2 to the extent the Receiving Party is required by law to disclose the Confidential Information of the Disclosing Party; and

B5.1.2 only use the Confidential Information of the Disclosing Party for the purposes of this Contract.

- B5.2 The Receiving Party may disclose Confidential Information of the Disclosing Party to the Receiving Party's officers, employees and professional advisors who have a need to know (and only to the extent that they need to know) provided that before disclosure they have been directed to keep the Confidential Information confidential.

- B5.3 Clause B5.2 shall not apply to the extent that:

B5.3.1 such disclosure is a requirement of an Applicable Law placed upon the party making the disclosure, including any requirements for disclosure under Clauses B5.5 – B5.10, in connection with which, for the avoidance of doubt, the provisions set out in Clauses B5.5 – B5.10, shall apply;

B5.3.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

B5.3.3 such information was obtained from a third party without obligation of confidentiality;

B5.3.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

B5.3.5 it is independently developed without access to the other party's Confidential Information.

- B5.4 On the expiry or termination of this Contract the Receiving Party must deliver up to the Disclosing Party (or, at the Disclosing Party's written election, securely destroy) all Confidential Information of the Disclosing Party which is in its possession or control.

- B5.5 The Service Provider acknowledges that the Fund is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004

(EI Regulations) and shall assist and cooperate with the Fund to enable the Fund to comply with its information disclosure obligations.

B5.6 The Service Provider shall and shall procure that its sub-contractors shall:

B5.6.1 transfer to the Fund each Request for Information (as defined in the FOIA) that it receives as soon as practicable and in any event within two (2) working days of receiving the Request for Information;

B5.6.2 provide the Fund where necessary as a result of a Request for Information with a copy of all information in its control, possession or power in such reasonable form as the Fund requires within five (5) working days (or such other longer period as the Fund may specify) of the Fund's request; and

B5.6.3 provide all reasonable and necessary assistance as reasonably requested by the Fund to enable the Fund 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 EI Regulations.

B5.7 Whilst the Fund acknowledges the nature of Commercially Sensitive Information (as defined in FOIA) the Fund shall be responsible for determining in its absolute discretion whether the Commercially Sensitive Information and/or any other information:

B5.7.1 (is exempt from disclosure in accordance with the provisions of the FOIA or the EI Regulations; and/or

B5.7.2 is to be disclosed in response to a Request for Information.

B5.8 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Fund.

B5.9 The Service Provider acknowledges that the Fund may be obliged to disclose information without consulting or obtaining consent from the Service Provider or despite having taken the Service Provider's views into account although the Fund will use its reasonable endeavours to consult, take views and obtain consent where possible.

B5.10 The Service Provider shall ensure that all information is retained for disclosure and shall permit the Fund to inspect such records as reasonably requested from time to time on reasonable notice.

B5.11 The Fund is entitled to disclose to any Contracting Authority or Transferee any Confidential Information of the Service Provider which relates to the performance of the Services by the Service Provider. In such circumstances, the Fund shall authorise the Contracting Authority or Transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and shall take all reasonable steps to ensure that such body accepts an obligation of confidence.

B6. Value Added Tax

B6.1 The Fund shall pay the Value Added Tax on the Contract price at the rate and in the manner prescribed by law, from time to time.

B6.2 Where applicable the Service Provider shall issue a proper VAT invoice in respect of any VAT due.

B6.3 The Service Provider shall, if so requested by the Fund, furnish such information as may reasonably be required by the Fund as to the amount of Value Added Tax chargeable on the value of the services supplied in accordance with the Contract and payable by the Fund to the Service Provider in addition to the Contract price. Any overpayments by the Fund to the Service Provider shall be recoverable by the Fund from the Service Provider.

B7. Publicity

B7.1 The Service Provider (including its sub-contractor(s), agents, servants, suppliers and employees) must not, without the prior written consent of the Fund (which shall not be withheld unreasonably), advertise or publicly make any announcement regarding this Contract or that the Service Provider is undertaking work for the Fund.

B7.2 In the event of any enquiries including media, Parliamentary or official enquiries being received by the Service Provider, its sub-contractor(s), agents, servants, suppliers or employees about this Contract, the delivery of the Services or any other matter relating to the Contract, the Service Provider or its sub-contractor(s), agents, servants, suppliers or employees shall immediately refer the matter to the Fund's Representative. Except for such referral, the Service Provider shall make no other formal or informal response without the prior written approval of the Fund.

B7.3 The Service Provider (including its sub-contractor(s), agents, servants, suppliers and employees) must not commit any act, or omit to do any act, or do anything which attracts public or media attention that is prejudicial or otherwise detrimental to the Fund's name, messages or reputation. If such an event does occur, the Service Provider must immediately notify the Fund's Representative.

B8. Rights of third parties

A person who is not a party to this Contract shall have no right under the *Contract (Rights of Third Parties) Act 1999* to enforce any of its terms.

B9. Modern Slavery

B9.1 The Service Provider undertakes to the Fund that:

B9.1.1 it has not and its current and former directors, officers and employees have not and shall not engage in activity which would amount to a breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;

B9.1.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Fund in breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;

B9.1.3 it has and shall maintain and implement:

B9.1.3.1 procedures to ensure compliance with the Modern Slavery Legislation; and

- B9.1.3.2 adequate procedures designed to prevent conduct that would give rise to an offence under the Modern Slavery Legislation;
- B9.1.4 it shall include undertakings similar to those contained in this Clause B9 in any contract it may enter into with sub-contractors; and
- B9.1.5 from time to time, at the reasonable request of the Fund, it will confirm in writing that it has complied with its undertakings under this Clause B9 and will provide any information reasonably requested by the Fund in support of such compliance.
- B9.2 Service Provider shall maintain adequate records to assist in verifying its compliance with the provisions of this Clause B9 and shall permit the Fund and its representatives immediately upon request to access and take copies of such records and to audit Service Provider's compliance with its obligations under this Clause B9. Service Provider shall give all necessary assistance to the conduct of such audits. Service Provider shall notify the Fund immediately should it become aware of any breach or potential breach of the Modern Slavery Legislation or any activity which would constitute an offence under the Modern Slavery Legislation if the activity had taken place in the United Kingdom.

C. THE SERVICES

C1. Service Provider's personnel

- C1.1 The Service Provider shall take the steps reasonably required by the Fund to prevent unauthorised persons being admitted to the Fund's premises.
- C1.2 The Service Provider, its employees or agents whilst on the premises of the Fund in connection with the Contract shall, in all respects, conform to and comply with any requirements, rules, regulations and instructions that may be given by an employee or agent of the Fund or on its behalf, as to the Fund's employment and equality policies, the work environment, site and safety precautions and the conduct of the Service Provider, its employees or agents whilst engaged thereof.
- C1.3 If the Fund gives the Service Provider notice that any person must not:
- C1.3.1 be admitted to or is to be removed from the Fund's premises; or
- C1.3.2 become involved in or is to be removed from involvement in the delivery of the Services, and the Service Provider shall take all reasonable steps to comply with such notice.
- C1.4 In the event that the Fund is dissatisfied with the work of a Service Provider employee or subcontractor or wishes to remove them from the Services, the Fund shall request a meeting with the Service Provider to discuss such performance issues and provide evidence wherever possible. Without restricting the Fund's rights under Clause C1.4, the parties will seek to agree a plan to resolve such issues or if necessary the replacement of such personnel.

C2. Key Personnel

- C2.1 The Service Provider's Key Personnel for the provision of the Services are set out in Item 6 of Schedule A. The delivery of the Services shall be undertaken or directly overseen by the Key Personnel.

- C2.2 The Service Provider shall not without the prior written approval of the Fund make any changes to the Key Personnel for a particular phase of the Services except for reasons of long term sickness, parental leave or termination of employment.
- C2.3 The Service Provider shall undertake all reasonable steps to ensure that the Key Personnel will remain for the full period of the relevant phase of the Services for which they are appointed. In the event of a Key Personnel's sickness or other emergencies, the Service Provider must consult with the Fund, and if required provide suitably qualified and experienced replacement personnel who are acceptable to the Fund without additional charge or expense at the earliest possible opportunity.
- C2.4 If, for any other reasons, changes in the Key Personnel become necessary:
- C2.4.1 in the reasonable opinion of the Fund due to such person's misconduct or repeatedly substandard work, then the Service Provider will provide replacement Key Personnel at the earliest opportunity (or at least within the reasonable time period specified by the Fund) and at no additional cost to the Fund; or
- C2.4.2 at the Service Provider's request, then such changes shall be subject to a minimum of ten working days written notice by the Service Provider to the Fund in the first twenty elapsed working days of the Contract and twenty working days written notice any time thereafter and the Key Personnel must be provided at no additional cost to the Fund.
- C2.5 Subject always to the provisions of Clause C1.1, in the event that the Service Provider having provided the Fund with a number of alternatives is unable to provide replacement Key Personnel with the appropriate skills who are acceptable to the Fund within sufficient time to enable the Service Provider to complete the delivery of the Services on time then the Fund following consultation with the Service Provider may obtain replacement personnel from other sources or terminate the Contract at its discretion. In event of termination the Fund shall only be liable for Services completed by the Service Provider up to the date of the termination and any committed costs which cannot be mitigated by the Service Provider on receiving the notice of termination. Such termination does not restrict any other rights the Fund may have under this Contract or by law.
- C2.6 The parties shall discuss and agree whether a handover period is required and if so for how long (but for no greater than ten (10) working days), whereupon the Service Provider shall provide both the Key Personnel and the replacement personnel during this period at no extra charge.

C3. Standard of work

The Service Provider shall at all times employ a sufficient number of staff assigned to the performance of the Services, and warrants that they shall be suitably qualified and possess and exercise such skill and experience as is necessary to perform the Services and fulfil the Service Provider's obligations under this Contract and any training of staff to achieve or maintain this standard shall be at no cost to the Fund.

C4. Security of systems

- C4.1 The Fund may issue a Change Request under the Change Control Procedure to request the Service Provider to alter any security systems at any time during the Contract period, and the Service Provider must not unreasonably withhold its agreement to such a request.

C5. Monitoring of performance

C5.1 The Fund will monitor the Service Provider in its performance of the Services under this Contract. The Service Provider agrees to assist the Fund with any requests which it may make from time to time in relation to monitoring the Service Provider's performance, which may include (without limitation):

C5.1.1 attendance at regular meetings at working level and director level to confirm there is a clear understanding of scope of work, the interpretation of information, timetables, deadlines and timing of reports;

C5.1.2 a request to review security procedures and (availability for inspection) of all relevant documentation; and

C5.1.3 the delivery of such written reports in such format as the Fund may reasonably request from time to time and, if appropriate, time sheets as may reasonably be requested.

C5.2 The Fund will provide the Service Provider the assistance specified in Item 8 of Schedule A (the **Assistance**). The Service Provider agrees that no other assistance is required from the Fund in order for the Service Provider to provide the Services and otherwise carry out its obligations under this Contract. If the Fund does not provide the Assistance to the Service Provider, the Service Provider must give notice of non-provision to the Fund, and the Service Provider accepts responsibility for, and will mitigate, the consequences of such non provision of the Assistance until such notice is given and the Fund has had an opportunity to provide the Assistance required.

C6. Reports

C6.1 The Service Provider shall provide a Progress Report to the Fund on the dates specified in Item 9 of Schedule A, and from time to time as requested by the Fund.

C6.2 The Service Provider will provide a Final Progress Report to the Fund on or before the date specified in Item 10 of Schedule A.

C6.3 The Service Provider must provide the Fund with a Risk Report on the Fund's reasonable request and, if the Fund requests the Service Provider to do so, to prepare and maintain a Risk Register with the Fund.

C6.4 The Service Provider shall provide reports in the format as reasonably requested by the Fund.

C6.5 If the Fund requests additional information in respect of any of the above named reports, the Service Provider agrees to provide such additional information and/or updates to the Fund within 10 working days of the Fund's request.

C7. Surveys

The Service Provider shall not carry out any survey in connection with this Contract (whether or not such survey forms part of the Services) which includes any interviews or the circulation of questionnaires or similar documents without first obtaining the prior agreement of the Fund to the form and content of such interviews, questionnaires or other documents.

C8. Environmental requirements

C8.1 The Service Provider will:

C8.1.1 comply in all material respects with all applicable environmental laws and regulations in force from time to time in connection with the Services; and

C8.1.2 promptly provide all information regarding the environmental impact of the Services to the Fund as may reasonably be requested by the Fund.

C8.2 The Service Provider will meet all reasonable requests by the Fund for information evidencing compliance with this Clause C8.

C9. Risk

The Service Provider must assess the risk of not being able to provide the Services to the Fund in accordance with this Contract for any reason, and apply appropriate risk mitigation strategies, and implement all necessary resources to ensure the Services are provided in accordance with this Contract.

C10. Variation of requirement

In the event that the Fund wishes to amend any requirements of this Contract, the Service Provider agrees to negotiate the terms of any changes in good faith and any payment as a result of the variation of the Fund's requirements shall be subject only to a fair and reasonable adjustment to reflect the additional obligations imposed on the Service Provider (if any). Such variation will be subject to the Change Control Procedure.

C11. Amendment of Contract

C11.1 This Contract (including its Schedules) and the Services may only be varied in writing under the Change Control Procedure via a Change Request signed by both parties.

C11.2 If a change in legislation has an impact on the Services, or increases the Service Provider's cost of providing the Services, either party may raise the matter under the Change Control Procedure.

C11.3 Neither party will claim any cost of expense from the other party in connection with any Change Request including but not limited to reviewing, negotiating or discussing any Change Request.

D. PAYMENT**D1. Fees and expenses**

D1.1 Subject to Clause D4, the Fund will pay to the Service Provider the fees and expenses specified in Item 2 of Schedule D (except to the extent the invoice is in dispute) at the times set out in Item 3 of Schedule D and via the method set out in Item 4 of Schedule D.

D1.2 The Service Provider will invoice the Fund at the times set out in Item 5 of Schedule D. All invoices must:

D1.2.1 be correctly rendered;

D1.2.2 include the contract number (set out on the front page of this Contract);

D1.2.3 clearly identify and detail the Services provided during the period of the invoice; and

D1.2.4 be submitted in both hard copy and electronic formats to the Fund at the address set out in Item 6 of Schedule D.

D1.3 Where the Services are provided on a time and materials daily rate basis, the Service Provider must only invoice for the time actually worked by its personnel and must not invoice for travel time, any leave entitlements or for more than eight hours per day or the agreed maximum daily rate unless it has received prior written approval from the Fund in respect of those additional hours.

D1.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

D2. Recovery of sums due

Wherever under this Contract any sum of money is recoverable from or payable by the Service Provider to the Fund, that sum may be deducted by the Fund from any sum then owed, or which at any later time may become owing to the Service Provider by the Fund under this Contract or under any other agreement or contract with the Fund.

D3. Final payment

The Service Provider shall submit a final invoice to the Fund within six weeks of the delivery of the final Services (or of termination of the Contract if that is earlier).

D4. Limitations on payment

D4.1 The Fund is not required to pay the fees or expenses under Clause D1.1 and/or may withhold the payment if:

D4.1.1. the Fund has not received an invoice that complies with Clause D1.2;

D4.1.2. the Services have not been provided in accordance with Clause A3.1 (including but not limited to the Services not having been rendered in accordance with the description of Services, requirements of the Fund and key performance indicators as stated in Schedule A to this Contract);

D4.1.3. the Services have not been delivered to the satisfaction of the Fund and have not been accepted under the Acceptance Procedures.

D4.2 Where the Fund agrees to pay any expenses in connection with this Contract, the Fund is not required to pay if:

D4.2.1 it is not satisfied that the expense was incurred by the Service Provider directly for the provision of the Services;

D4.2.2 the Fund does not receive a copy of a tax invoice from the applicable third party evidencing that the Service Provider paid for the expense;

D4.2.3 in the Fund's opinion, the expense is not reasonable as against the Fund's policy on out of pocket expenses.

D5. Fee and invoice disputes

Any dispute about the fees or expenses under this Contract, or any invoice issued under this Contract, will be subject to the dispute resolution procedure set out in Clause G1.

E. LIABILITY AND INSURANCE**E1. Liability**

E1.1 Without prejudice to any rights or remedies of the Fund and subject to the provisions of Clauses E1.2, E1.3 and E1.4, the Service Provider indemnifies the Fund, and agrees to keep the Fund indemnified, against all actions, suits, claims, demands, losses, charges, costs and expenses made against the Fund (or any of its employees, officers or agents) by any third party (including any current or former employee, servant, agent, supplier or sub-contractor) arising out of or in connection with this Contract or the relationship established by it, including:

E1.1.1 loss of or damage to any property;

E1.1.2 personal injury (whether fatal or otherwise) to any person;

E1.1.3 any fraudulent, unlawful or negligent act or omission of the Service Provider in connection with this Contract; and

E1.1.4 termination of this Contract for material breach under Clause F1.1.1.

E1.2 The indemnity contained in Clause E1.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Fund, or any employee, servant, agent, supplier or sub-contractor of the Fund.

E1.3 Neither party shall be liable to the other for any loss (howsoever arising) of profits, business, contracts, revenues, goodwill or reputation or any indirect, incidental, punitive or consequential loss, damage, cost or expense whatsoever.

E1.4 The Service Provider's liability under or in connection with the Services (whether in contract, tort or otherwise) will be limited to the maximum amount set out in Item 11 of Schedule A in respect of each incident or series of connected incidents. For the avoidance of doubt, nothing in this Contract shall limit the Service Provider's liability for death or personal injury due to the negligence of the Service Provider or its employees or for any breach or claimed breach of a third party's intellectual property rights.

E1.5 The Fund's liability under this Contract or in connection with the Services (whether in contract, tort or otherwise) will be limited to the maximum amount set out in Item 12 of Schedule A.

E2. Insurance

E2.1 The Service Provider shall have in force, and shall require any sub-contractor to have in force, for the period set out in Item 13 of Schedule A:

E2.1.1 employer's liability insurance in accordance with any legal requirement for the time being in force;

E2.1.2 public liability insurance for the sum of not less than the amount set out in Item 14 of Schedule A; and

E2.1.3 professional indemnity cover for the sum of not less than the amount set out in Item 15 of Schedule A.

E2.2 The Service Provider will provide the Fund on request with written confirmation from its insurance brokers that it has in place the insurance cover referred to in Clause E2.1 together with satisfactory evidence of payment of the associated premium or premiums.

F. END OF CONTRACT AND BREACH

F1. Termination

F1.1 The Fund may terminate this Contract immediately by notice in writing if:

F1.1.1 the Service Provider commits a material breach of this Contract and (if such breach is capable of remedy) fails to remedy such breach within 30 days of being required by the Fund in writing to do so;

F1.1.2 the Service Provider does not comply with any of the terms, conditions and provisions of this Contract and its Schedules (including the Delivery Plan if applicable) and fails to remedy that breach (if that breach is capable of remedy) within 10 days of receiving a request from the Fund to do so;

F1.1.3 the Service Provider is an individual and he or she dies or is adjudged incapable of managing his or her affairs within the meaning of Part VII of the *Mental Health Act 1983*;

F1.1.4 the Service Provider is an individual and a petition is presented for the Service Provider's bankruptcy or a criminal bankruptcy order is made against the Service Provider, or the Service Provider makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Service Provider's affairs;

F1.1.5 the Service Provider is not an individual but is a firm, or a number of persons acting together in any capacity, and Clause F1.1.4 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Service Provider to be wound up as an unregistered company;

F1.1.6 the Service Provider is a company, and the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under a fixed or floating charge (but excluding for the purposes of this Clause any bona fide company reconstruction);

F1.1.7 there is a change of "control" as defined by Section 416 (2) of the Income and Corporation Taxes Act 1988 in the Service Provider;

F1.1.8 the Service Provider is a firm or partnership and there is a change in the identity of any of the partners in the firm and/or a change in the extent to which any partner is able to exercise or entitled to acquire direct or indirect control over the firm's affairs.

F1.2 If the Fund terminates this Contract under Clause F1.1:

F1.2.1 the Service Provider will hand over to the Fund all Materials in which the Fund owns the Intellectual Property Rights including all work in progress and the Fund's Background IP;

F1.2.2 the Fund may, without prejudice to any other of the Fund's rights, complete the delivery of the Services or have them completed by a third party;

F1.2.3 the Fund shall not be liable to make any further payment to the Service Provider;

F1.2.4 the Fund may deduct from any amount due to the Service Provider the costs and expenses incurred by the Fund (including the Fund's own costs) in connection with the termination and procuring or performing similar services. If the total cost to the Fund exceeds the amount (if any) due to the Service Provider, the Service Provider must pay to the Fund the difference within 30 days of the Fund's request.

F1.3 Termination under Clause F1.1 shall not prejudice or affect any right of action or remedy that shall have accrued or shall thereupon accrue to the Fund and shall not affect the continued operation of Clauses A7, A10, A12.3, B1 and B5.

F2. Remedies cumulative

Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F3. Survival

Clauses A1, A7, B1, B3, B7, D2, E1, E2 and F5 and any other provision of this Contract (including its Schedules) that by its nature is intended to survive expiry or termination or that is necessary for its interpretation or enforcement shall survive the expiry or termination of this Contract.

F4. Break

F4.1 The Fund shall in addition to its powers under any other Clause of this Contract have power to determine this Contract at any time by giving to the Service Provider written notice, to expire at the end of the period set out in Item 16 of Schedule A, and upon the expiration of the notice this Contract shall be determined without prejudice to the rights of the parties accrued to the date of determination.

F4.2 In the event of notice being given by the Fund under Clause F4.1, the Fund 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 it considers expedient:

F4.2.1 to direct the Service Provider, where work has not been commenced, to refrain from commencing work; or

F4.2.2 to direct the Service Provider to complete in accordance with this Contract all or any of the delivery of the Services, or any part or component thereof, which shall be paid for at the agreed Contract fee.

F4.3 The Fund shall indemnify the Service Provider against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Service Provider directly in

connection with this Contract to the extent to which those commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Service Provider by reason of the determination of this Contract under clause F4.1.

- F4.4 The Fund shall not in any case be liable to pay under the provisions of this Clause F4 any sum which, when taken together with any sums paid or due or becoming due to the Service Provider under this Contract, shall exceed the total Contract price.
- F4.5 The Fund shall pay the Service Provider for all work carried out to the Fund's satisfaction by the Service Provider, its employees and subcontractors up to the date of termination.

F5. End of Contract assistance

- F5.1 For the term of the End Phase, the Service Provider must comply with the Fund's reasonable exit management requirements and provide to the Fund any assistance reasonably requested, including the assistance set out in Item 20 of Schedule A.
- F5.2 If the Fund requires any such assistance after the termination date of this Contract or which requires the Service Provider to use additional resources to those needed to supply the Services then:
- F5.2.1 if this Contract was terminated otherwise than due to the Service Provider's breach or insolvency, the Fund will compensate the Service Provider for such assistance at the Service Provider's standard time and materials rates as agreed by the parties; or
- F5.2.2 if this Contract was terminated due to the Service Provider's breach or insolvency, the Fund will pay the Service Provider on a cost of services recovery basis only.
- F5.3 Before performing any Services in respect of which the Service Provider may make a charge of the Fund under this Clause F5, the Service Provider must notify the Fund of the fact that such a charge may be made and the likely amount of the charge. The Service Provider must only perform the Services which are approved and agreed by the Fund under the Change Control Procedures set out in Schedule C.

G. LAW AND DISPUTE RESOLUTION

G1. Dispute resolution

- G1.1 The parties' representatives set out in Clause A16 (or any other person nominated by the party) shall attempt in good faith to negotiate a settlement to any dispute, including escalating the dispute to senior management as required.
- G1.2 If the dispute cannot be resolved by the parties pursuant to Clause G1.1 within 28 days (unless otherwise agreed), the dispute may be referred by either party to mediation pursuant to Clause G1.4.
- G1.3 The performance of the Services shall not be suspended, cease or be delayed by the reference of a dispute to mediation pursuant to Clause G1.2 and each party shall (and shall procure that its employees, servants, agents, suppliers and sub-contractors shall) comply fully with the requirements of the Contract at all times.
- G1.4 The procedure for mediation and consequential provisions relating to mediation are as follows:

G1.4.1 A neutral adviser or mediator (**the Mediator**) shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 14 days after a request by one party to the other, or if the Mediator agreed upon is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of the notice to either party that the Mediator is unable or unwilling to act (whichever is the later), apply to the Centre for Dispute Resolution (**CEDR**) to appoint a Mediator.

G1.4.2 The parties shall within 14 days of the appointment of the Mediator meet with the Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

G1.4.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

G1.4.4 If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives.

G1.4.5 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.

G1.4.6 If the parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

G1.5 Each party must pay its own costs of complying with this clause G1. The parties must equally pay the costs of any Mediator.

G1.6 This dispute resolution procedure does not prevent a party from applying to a court for urgent interlocutory or other relief to protect Intellectual Property Rights.

G2. Contract is not exclusive

The Service Provider will provide the Services on a non-exclusive basis. Nothing in this Contract prevents the Fund from obtaining services which are the same as or similar to the Services from any third party or from itself performing services which are the same as or similar to the Services.

G3. Governing law

This Contract shall be governed by and construed in accordance with English Law and the parties hereby irrevocably submit to the jurisdiction of the English Courts.

G4. Entirety

This Contract and the related Schedules shall constitute the entire Contract between the Fund and the Service Provider and shall supersede all previous contracts, regulations, correspondence and representations whether written or oral in respect of the delivery of the Services.

G5. Pre-contractual documents and other terms and conditions

G5.1 In the event of any conflict in the interpretation of the terms and conditions of this Contract, the parties must refer to the relevant interpretation in the pre-contractual documents in the following order of precedence:

G5.1.1 the Invitation to Tender; or

G5.1.2 if the Invitation to Tender does not provide the interpretation, the Tender Response.

G5.2 This Contract takes precedence over any other terms and conditions (including the Service Provider's terms and conditions whether provided as part of the Tender Response, with an invoice, or at any time) in connection with the subject matter.

Schedule A – Contract details

Item 1 - Start Date

(Clause A2) <insert>

Item 2 - Completion Date

(Clause A2) <insert>

Item 3 - Tender information

(Clause G5.1) <insert title of the Fund's ITT and Account Code>

Item 4 - Fund's representatives

(Clause A16.1) - For the purpose of dealing with the Service Provider on all matters relating to the provision and performance of the Services, the Fund's Representative and contract owner is:

Name: <insert>

Title: <insert>

Telephone: <insert>

Email: <insert>

The Fund's Representative's line manager is:

Name: <insert>

Title: <insert>

Telephone: <insert>

Email: <insert>

Item 5 Service Provider's representatives

(Clause A16.2) The Service Provider's representative is:

Name: <insert>

Title: <insert>

Telephone: <insert>

Email: <insert>

Item 6 - Key Personnel

(Clause C2.1) The Key Personnel for this Contract are:

<insert name>, <insert title>; and

<insert name>, <insert title>.

Item 7 - Standards

(Clause A3.1.2) <insert specific standards>

The Service Provider will use the best applicable techniques and standards and execute the Contract with all reasonable care, skill and diligence.

[confirm that this is applicable]

The Service Provider must comply with the Accessibility requirements set out in the Fund's Brief and attached to the Statement of Work as Appendix 1.

Item 8 - Assistance of the Fund

(Clause C5.2) <insert any assistance the Fund must give the Service Provider for the Service Provider to provide the Services>

Item 9 - Progress reports due date

(Clause C6.1) <insert dates>

Item 10 - Final Progress report due date

(Clause C6.2) <insert date>

Item 11 - Service Provider's liability limitation

(Clause E1.4) <£250,000> [NB! Subject to consideration depending on the value of the Contract]

Item 12 - Fund's liability limitation

(Clause E1.5) The Fund's liability is limited to an amount equal to the total charges payable under this Contract.

Item 13 - Insurance period

(Clause E2) The Service Provider must take out and maintain insurance <for the term of this Contract and for six years after its termination or expiry>

Item 14 - Public liability

(Clause E2) <£1,000,000 (one million pounds)> for any one incident

Item 15 - Professional indemnity

(Clause E2) <£1,000,000 (one million pounds)> for any one incident

Item 16 - Break notice period

(Clause F4.1) 90 days

Item 17 - Services description

The services are specified in the Statement of Work, set out in the Annexure to this Schedule A.

Item 18 - Timetable

The timetable is specified in the Statement of Work, set out in the Annexure to this Schedule A.

Item 19 - Authorised sub-contractors

(Clause A8.1) <"There are no authorised sub-contractors at the date of this Contract" or insert: name of sub-contract, company registration number, and the services the sub-contract will perform>

Item 20 - Exit assistance

(Clause F5) <Not applicable, or insert exit requirements, or "any exit assistance is to be agreed by the parties during the term of this Contract">

Item 21 - Special Conditions

(Clause A15) The parties do not intend for TUPE to apply upon the commencement or during the term of this Contract or upon its expiry or termination (whether in whole or in part). Consequently, the Service Provider shall ensure that its personnel are organised in a manner such that in the provision of its Services and performance of its obligations, the Service Provider does not in any way or for any reason provide the Fund with any dedicated personnel. <NB! To be updated if TUPE applies>

<If applicable insert other special conditions such as option to extend, technology update, escalation procedures, complaints handling, etc

Annexure to Schedule A – Statement of work

Statement of Work

Scope of Services

1. Scope of Services

1.1 <insert high-level description of services scope>

2. Inception Meeting and Delivery Plan

2.1 <insert details relating to any Inception Meeting and Delivery Plan - note: if not using this paragraph delete the definitions in Schedule E>

3. Description of Services

3.1 The Service Provider will provide the following services to the Fund:

(a) <insert detailed description>

(b) <insert detailed description>

3.2 *[If evaluation or research contract please identify the Final report as Final research report and include what must be covered by such report]*

3.3 The detailed Delivery Plan will be agreed between the Parties at the Inception Meeting. Both Parties will revise the Delivery Plan regularly and keep it up to date as working document.

4. Meeting and reporting

4.1 <insert details relating to any meeting or reporting requirements>

5. Deliverables

5.1 The Service Provider will provide the following deliverables to the Fund:

| Deliverable | Due date | Format / media |
|-------------|----------|----------------|
| <insert> | <insert> | <insert> |
| <insert> | <insert> | <insert> |

6. Acceptance

6.1 The procedure described in Schedule B of the Contract will apply to the Deliverables, subject to the following clarifications:

<insert details, if applicable>

7. Timetable for performance

7.1 The Service Provider will provide the Services in accordance with the following timetable:

| Activity / Deliverable | Start date | End date |
|------------------------|------------|----------|
| <insert> | <insert> | <insert> |
| <insert> | <insert> | <insert> |

8. Key performance indicators

8.1 The Service Provider must meet or exceed the following key performance indicators (KPIs):

| KPI | Measure |
|------------------------|------------------------|
| <insert if applicable> | <insert if applicable> |
| <insert if applicable> | <insert if applicable> |

9. Location of performance

9.1 The location for provision of the Services is: <insert>

Appendix: Accessibility and formatting guidance

The Fund is committed to providing a website that is accessible to the widest possible audience. Our website is annually tested by accessibility auditors and we must meet the WCAG 2.0 AA compliance level. Our accessibility testing covers all of our content, including downloadable documents, as well as the design and functionality of the site.

Reports and other documents created for the Fund (**including the tender submissions**) need to be clear, straightforward to use, and ready to circulate internally, externally and online, as well as suitable for use by screen reading software. Tips for creating accessible documents can be found below. However, we strongly recommend referring to the RNIB, Gov.uk and WebAIM for more detailed information.

Readability

In the final report, and all other documents that may be published online including the tender application consultants should ensure that:

- The size of the font is at least 11pt;
- There is a strong contrast between the background colour and the colour of the text. Black text on a white background provides the best contrast. This also applies to any shading used in tables and/or diagrams;
- Italics are only used when quoting book titles for citations and items on the reference list should be arranged alphabetically by author
- Colour formatting and use of photos should be of a resolution size that is easily printable and does not compromise the printability of the document.

For further guidance on ensuring readability of printed materials, please refer to the RNIB Clear Print guidelines. These can be found on the [RNIB website](#).

Accessibility

Reports should adhere to the following guidelines:

Formatting

Headings and content in your document should be clearly identified and consistently formatted, to allow easy navigation for users. Heading Styles should be used to convey both the structure of the document and the relationship between sections and sub-sections of the content.

Spacing

Screen readers audibly represent spaces, tabs and paragraph breaks within copy, so it is best practice to avoid the repetitive use of manually inserted spaces. Instead, indenting and formatting should be used to create whitespace (e.g., use a page break to start a new page, as opposed to multiple paragraph breaks).

Alternative text

Alt text is additional information for images and tables. This extra information is essential for both document accessibility (screen reading software reads the Alt text aloud) and for the web. Alt text should be concise and descriptive, and should not begin with 'Image of' or 'Picture of'.

Images

These should be formatted in-line with text, to support screen readers. Crediting pictures may be necessary, usually in response to a direct request from a third party.

Tables

These should be for used for presenting data and not for layout or design. They should also be simple, and include a descriptive title.

Additional documents

Any additional information, separate to the report, for example proformas and transcripts which may be used as standalone documents must be fully referenced to the piece of work being submitting and therefore dated, formatted and numbered appropriately.

Acknowledgement

All reports should acknowledge the Fund. Our logo can be found on the [website](#).

Further resources

Please refer to the links below for further information:

- ['Microsoft Word: creating accessible documents' - webaim.org](#)
- ['How to create an accessible PDF' - GOV.UK](#)

We also recommend using an accessibility consultant to help you produce your reports. Agencies that the Fund have worked with include [Shaw Trust](#) and [The Accessible Digital Documents Company](#).

The Fund retains the right to amend documents in order to create accessible versions for publishing.

Schedule B – Acceptance Procedures

1. The Fund will within 10 working days following receipt of any Deliverable
 - (a) accept the Deliverable by providing the Service Provider with a Milestone Certificate;
 - (b) not accept the Deliverable by notifying the Service Provider of the nature, extent, and identity of any errors, defects, or omissions in the Deliverable which cause the Fund to not accept the Deliverable; or
 - (c) provide the Service Provider with written notice that additional time is required to review the Deliverable, in which case the Fund must specify the time before which it must complete its review and make a decision under (a) or (b) within that time.
2. If the Fund fails to notify the Service Provider as set out in paragraph 1, then the Service Provider may request the Fund notify it of its determination under paragraph 1 within five working days. If the Fund fails to notify the Service Provider of its determination within five working days of the Service Provider's request, the Deliverable is deemed accepted.
3. If the Fund uses a Deliverable before acceptance under this Schedule other than for testing and reviewing the Deliverable in accordance with paragraph 1, then such Deliverable shall be deemed to be accepted by the Fund.
4. If the Fund does notify the Service Provider of defects or want of information in the Deliverable under paragraph 1(b), then the Service Provider shall, as soon as is reasonably practical (but within 5 working days, unless otherwise agreed), remedy such defects or work out a plan to do so. The Fund shall have 10 working days to accept any Deliverable revised by the Service Provider under this paragraph and to notify the Service Provider of any further defects. If the Fund requires extra time to test or review the Deliverable, the period for acceptance is extended to a date reasonably specified by the Fund.
5. If following three remedial periods set out in paragraph 4 above the revised Deliverables still fail to meet the standard required by the Fund, the Fund shall retain the right to reject such Deliverable and reasonably to recover fees previously paid in relation to such Deliverable. If the Fund and the Service Provider fail to agree on the reasonableness of the Fund's grounds for rejection then either party may raise the dispute under the dispute resolution procedures of Clause G1 of the Contract.

Schedule C – Change Control Procedures

In the event either party desires to change the terms of the Contract, the following procedures shall apply:

1. The party requesting the change will:
 - a. if the Fund is requesting the change, deliver a **Change Request** (in the form attached in the Annexure to this Schedule C) to the Service Provider which describes the nature of the requested change, the reason for the requested change, and the effect the requested change will have on the scope of work. On receipt of the Change Request, the Service Provider will review the effect on the scope of work and update the Change Request with any changes to the Contract price or the time for the delivery of the Services. The Service Provider will also make any changes or add information it requires for the Change Request to be agreed. The Service Provider will deliver the updated Change Request back to the Fund within three working days of its receipt.
 - b. if the Service Provider is requesting the change, deliver to the Fund a Change Request which describes the nature of the requested change, the reason for the requested change, and the effect the requested change will have on the scope of work, which may include changes to the Services, the Contract price or the time for the delivery of the Services.
2. The authorised representative of the requesting party will review the proposed change with his/her counterpart within five working days of making the request (unless otherwise agreed by the parties). The parties will evaluate the Change Request and negotiate in good faith the changes to the Services and the additional charges, if any, required to implement the proposed Change Request. If additional changes to the Change Request are required, the Fund will provide the Service Provider with a timeline for the parties to make and discuss the additional changes
3. If both parties agree to implement the Change Request, the appropriate authorised representatives of the parties will sign the Change Request, indicating the acceptance of the changes by the parties. Upon execution of the Change Request it will be incorporated into, and made a part of, this Contract.
4. Neither party is under any obligation to proceed with a Change Request that is proposed by the other party.
5. If there is a conflict between the terms and conditions set out in the Contract and the terms and conditions set out in any fully executed Change Request, then the most recent fully executed Change Request shall prevail.

Annexure to Schedule C – Change Request Form

Change Request Form

Contract Ref:

Date:

Both parties hereby certify, by the signature of an authorised representative, that this Change Request will amend and be fully incorporated into the existing Contract

1. **Change Request Number:**
2. **Reason for Change Request:**
3. **Changes to Contract or Schedules:**
4. **Cost Impact:**

| Value | Costs | Expenses | Total |
|------------------------------------|--------------|-----------------|--------------|
| Original value of the Contract | | | |
| Value of this Change Request | | | |
| New total value of Contract | | | |

Except as changed herein, all terms and conditions of the Contract remain in full force and effect.

IN WITNESS THEREOF, the duly authorised representatives of the parties have caused this Change Request to be fully executed.

Signed on behalf of the

Signed on behalf of the

Service Provider by:

The Trustees of the National Heritage
Memorial Fund by:

<template agreement: do not sign>

<template agreement: do not sign>

←

Signature of authorised representative

Signature of authorised representative

Name of authorised representative

Name of authorised representative

Title of authorised representative

Title of authorised representative

Date

Date

Schedule D – Financial obligations

Item 1 - Service Provider's VAT registration number

<insert>

Item 2 - Fees

(Clause D1.1) The total fixed price will not exceed <£insert> inclusive of VAT <and inclusive of expenses and all costs> to be incurred as follows:

insert table of costs>

<insert table of agreed expenses, if applicable>

Item 3 - Time of payment

(Clause D1.1) insert payment schedule or time for payment, e.g. 30 days after the Fund's receipt of a valid invoice>

Item 4 - Method of payment

(Clause D1.1) <Cheque or electronic funds transfer>

Item 5 - Time of invoice

(Clause D1.2) <After completion of all the Services>

Item 6 - Invoice address

(Clause D1.2.4) All Invoices must comply with clause D1.2 of this Contract and must:

be addressed to and be submitted in hard copy to:

ATTENTION: Finance
The National Lottery Heritage Fund
International House
St Katharine's Way
London
E1W 1UN
Cc: [insert contract manager's email]

Schedule E – Definitions and interpretation

1. Definitions

In this Contract:

Acceptance Procedures means the procedures set out in Schedule B;

Applicable Laws means all laws, legislation, rules, regulations and standards (including those imposed by any governmental or regulatory authority) and all applicable industry standards and standards determined by any self-regulatory body which apply from time to time to the person or activity in the circumstances in question;

CEDR has the meaning given in Clause G1.4.1;

Change Control Procedures are the procedures set out in Schedule C;

Change Request has the meaning given to it in Schedule C;

Completion Date is the date set out in Item 2 of Schedule A (or, if the Contract is extended by the Fund, the date set out in the extension notice) on or before which the Service Provider is required to have completed the Services (unless otherwise agreed by the parties);

Confidential Information means all information a commercially confidential nature relating to the business or trade secrets of the Fund or the Service Provider obtained by it by reason of this Contract, and includes the terms of this Contract, information relating to any client or employee of the Fund and any information relating to the financial position, assets or liabilities of the Fund. Confidential Information does not include information that is public knowledge (otherwise than as a result of breach of this Contract by the Receiving Party);

Contract means this contract between the Fund and the Service Provider consisting of the terms and conditions of this contract and the schedules and any other documents (or parts of documents) expressly referred to in this Contract or as otherwise agreed by both parties;

Contract Data has the meaning given in Clause C4.1;

Contracting Authority has the meaning given to it in Clause A9.1;

Controller means a controller as defined under the Data Protection Legislation;

Data Protection Legislation means the General Data Protection Regulation (EU Regulation 2016/679) (GDPR), the UK Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, together with any legislation which replaces it; and at all times, any other applicable laws relating to the protection of personal data, each as may be amended or superseded from time to time;

Deliverables means the deliverables to be produced in the course of providing the Services, including as specified in Items 9, 10, 17 and 18 of Schedule A;

Delivery Plan means the Service Provider's plan detailing how it will deliver the Services to the Fund during the term of the Contract;

Disclosing Party has the meaning given in Clause B5.1.1;

End Phase means the period commencing on the date:

three months before the Completion Date; or

that this Contract terminates under any other provision of this Contract,

and ending on:

if the End Phase commenced under paragraph (a) of this definition, the Completion Date; and in any other case, the first to occur of:

three months elapsing from the commencement of the Exit Phase under paragraph (b) of this definition; and

the date notified by the Fund to the Service Provider for the purpose of this definition within one month of the commencement of the End Phase;

Final Progress Report means a report which sets out:

an executive summary of the Services;

a copy of any products and resources produced as part of the Services;

any outcomes of the Services;

a copy of any media releases or coverage relating to the Services;

details of any problems encountered by the Service Provider in conducting the Services and solutions (including timeframes) identified to overcome those problems;

a review of any factors likely to affect the satisfactory completion of the delivery of the Services in accordance with the timetable or due dates; and

any other information reasonably requested by the Fund;

Fund's Background IP means all Intellectual Property Rights owned or licensed by the Fund which is made available or which becomes known to the Service Provider in connection with the provision of the Services or this Contract;

Fund's Representatives are the persons detailed in Item 4 of Schedule A;

Inception Meeting means the first meeting between the Fund and the Service Provider in relation to the Services;

Intellectual Property Rights means all intellectual property rights whether or not such rights are capable of registration including trademarks, designs, patents, copyright (and any applications for such);

Invitation to Tender means the Fund's invitation to the tender for the Services, the details of which are set out in Item 3 of Schedule A;

Key Personnel means the persons detailed in Item 6 of Schedule A;

Materials means all materials created by the Service Provider, its personnel or sub-contractors (including any material created jointly with the Fund) relating to or in performing the Services and includes software, data, reports, case studies, schedules, drawings, specifications, designs, inventions or other material;

Mediator has the meaning given in Clause G1.4.1;

Milestone Certificate means written notice that the Fund accepts a deliverable or that a milestone in the provision of the Services has been completed or achieved to the Fund's satisfaction;

Modern Slavery Legislation means the legislation referred to in s. 54 of the Modern Slavery Act 2015;

Personal Data means personal data as defined under the Data Protection Legislation;

Processor means a processor as defined under the Data Protection Legislation;

Progress Report means a report which sets out:

the progress of the provision of the Services in relation to any contractual programme or timetable;

the cost of the work during the period covered by the report;

details of any problems encountered by the Service Provider in conducting the Services and solutions (including timeframes) identified to overcome those problems;

a review of any factors likely to affect the satisfactory completion of the delivery of the Services in accordance with the timetable or due dates; and

any other information reasonably requested by the Fund.

Receiving Party has the meaning given in Clause B5.1;

Risk Report means a report which sets out the Service Provider's compliance with Clause C9;

Risk Register means a document in a format agreed with the Fund that sets out the risks of the Service Provider in not being able to provide the Services or comply with any term of this Contract and the strategies to mitigate those risks.

Service Provider's Background IP means all Intellectual Property Rights used by the Service Provider or its personnel in performing the Services but not the Intellectual Property Rights in the Materials created by the Service Provider, its personnel or sub-contractors in performing the Services;

Services means the services or work to be provided as specified in Item 17 of Schedule A;

Special Conditions means the terms and conditions set out in Item 21 of Schedule A;

Standards means the standards set out in Item 7 of Schedule A;

Start Date is the date set out in Item 1 of Schedule A;

Statement of Work means the document set out in the Annexure to Schedule A;

Tender Response means the Service Provider's response to the Invitation to Tender. A copy of the Tender Response is set out in Exhibit 1 to this Contract; and

Transferee has the meaning given to it in Clause A9.2.

2. Interpretation

The interpretation and construction of this contract is subject to the following provisions:

- 2.1 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- 2.2 a reference to a Clause or Schedule is a reference to a clause or schedule of this Contract (unless specified otherwise);
- 2.3 reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument;
- 2.4 headings are for reference only and do not affect their interpretation;
- 2.5 the meaning of general words is not limited to specific examples introduced by "including", "for example" or similar expressions; and
- 2.6 this Contract is not to be construed adversely to a party on the basis that such party prepared it.

Schedule E – Data Processing

1. Type of Personal Data to be Processed
2. Categories of Data Subject whose Data will or is likely to be Processed
3. Nature and Purpose of Processing

The Service Provider is processing Personal Data for the purposes of providing the Services.

The nature of the processing activities carried out by the Service Provider in respect of such Personal Data include the:

- Collection of data;
- Recording of data;
- Organisation of data;
- Structuring of data;
- Storage of data;
- Retrieval of data;
- Erasure of data;
- Destruction of data; and
- [Other: complete if relevant/applicable].

4. Duration of Processing

Processing will continue for as long as it is required for the Service Provider to supply the Services and perform and comply with its obligations under the terms of this Contract.

N.B. PLEASE NOTE A DATA PROCESSING IMPACTS ASSESSMENT MUST BE UNDERTAKEN BY THE FUND.

Signing page

EXECUTED as an agreement
Signed on behalf of the
**The Trustees of the National Heritage
Memorial Fund** by:

Signature ←

Name

Title

Date

Signed on behalf of the
<Name of Service Provider> by:

Signature of director ←

Name of director

Date

Signature of director ←

Name of director

Date

Exhibit 1 - Tender

<To be attached>

Exhibit 2 - Tender Response

<To be attached>

