

Dated

2016

**(1) THE BOARD OF TRUSTEES OF NATIONAL MUSEUMS
AND GALLERIES ON MERSEYSIDE**

and

(2) []

Deed of Appointment

Relating to the provision of services
as a [] at
[]



DWF LLP
1 Scott Place
2 Hardman Street
Manchester
M3 3AA

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Schedule 1 – Services

Schedule 2 – Remuneration

THIS DEED is made the day of 2016

BETWEEN:-

- (1) The Board of Trustees of National Museums and Galleries on Merseyside (the “**Employer**”) whose office is situate at World Museum Liverpool, William Brown Street, Liverpool L3 8EN and its successors and assigns; and
- (2) [] (the “**Consultant**”) (Company No. []) whose registered office is situated at [].

WHEREAS:

- A The Employer wishes to carry out certain Works at the Site and has or will engage the Contractor to carry out those Works.
- B The Employer under this Agreement wishes to engage the Consultant in the capacity of [].

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

'Additional Fees' means the additional fees (if any) payable by the Employer to the Consultant for performing any Additional Services which the Employer may instruct the Consultant to perform pursuant to Clause 5.

'Additional Services' means any and all additional services which the Employer may instruct the Consultant to perform pursuant to Clause 5.

'Building Contract' means the contract entered into or to be entered into between the Employer and the Contractor in connection with the Development.

'CDM Regulations' means The Construction (Design and Management) Regulations 2015 as amended and the related Code of Practice together with any guidance requirements issued from time to time by the Health & Safety Executive.

'Consultant's Personnel' means [].

'Contractor' means the contractor or contractors appointed by the Employer under the Building Contract or any other contractor appointed from time to time to act in his place and shall include where the context so admits the contractor's employees agents sub-contractors and suppliers.

'Deleterious Materials' means any products, substances or materials which:

- (a) do not conform with British and European Union Standards or Codes of Practice or good building practice or the publication entitled 'Good Practice in the Selection of Construction Materials 2011' authored by

Hoare Lea and Partners and published by the British Council for Offices; or

- (b) are generally known to be deleterious to health and safety and/or the durability of buildings or structures in the particular circumstances in which they are used or specified for use; or
- (c) are known to be prohibited materials (either to health and safety or to the durability of the Works); or
- (d) contravene any relevant or standard code of practice issued from time to time by the BSI Group or under a European directive relating to standards or good building practice.

'Development' means the works to [] at the Site.

'Documents' means the designs, drawings, models, details, plans, calculations, specifications, surveys, reports and other similar or related documents and the designs contained in them, whether in hard copy or in electronic form, which have been or are hereafter prepared, written, originated or made by or on behalf of the Consultant for any purpose whatsoever in connection with the Development.

'Employer' means the person named as Employer in the Appointment or any substitute Employer having all the benefits obligations and liabilities arising under the Appointment due to, without limitation:-

- (i) the operation of a deed of novation; or
- (ii) the operation of any substitution provisions contained in any other instrument.

'Practical Completion' means practical completion of the construction of the Works in accordance with the terms of the Building Contract.

'Principal Contractor' means the person appointed by the Employer from time to time to act as principal contractor in connection with the Development pursuant to Regulation 5(1)(b) of the CDM Regulations.

'Principal Designer' means the person appointed by the Employer from time to time to act as principal designer pursuant to Regulation 5(1)(a) of the CDM Regulations or any other principal designer appointed from time to time to act in his place.

'Professional Team' means the team of professional consultants engaged by the Employer from time to time in connection with the Development.

'Prohibited Act' means:

- (a) offering, giving or agreeing to give to any servant of the Employer any gift or consideration of any kind as an inducement or reward:

- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Employer; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Employer;
- (b) entering into this agreement or any other contract with the Employer in connection with which commission has been paid or has been agreed to be paid by the Consultant or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Employer; or
- (c) committing any offence:
- (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Employer;
- (d) defrauding or attempting to defraud or conspiring to defraud the Employer.

'Services' means the services set out in Schedule 1.

'Site' means the land situate at and known as the [].

'Statutory Requirements' means any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Development or the performance of any obligations under this Agreement and any regulation or bye-law of any local authority or statutory undertaker or equivalent or relative public body which has any jurisdiction with regard to the Development or with whose systems the Works are or are to be connected, any requirements relating thereto which may be stipulated as pre-requisites for the adoption of any services, drains, sewers, pipes, wires, cables, or other service transmission media by any such local authority, statutory undertaker or body (where the same are to be adopted) and any requirements of the fire officer.

'Works' means the work to be undertaken by the Contractor in relation to the Development more particularly described in the Building Contract.

1.2 In this Agreement unless there is something in the subject or context inconsistent therewith:

- (a) where the expression 'Consultant' includes two or more persons, obligations expressed or implied to be made by or with any of such

persons, shall be deemed to be made by or with such persons jointly and severally;

- (b) any reference to a statute shall include any statutory extension, or modification or re-enactment of such statute and any order instrument, plan, regulation, permission or direction made or issued thereunder or deriving validity therefrom;
- (c) the clause and paragraph headings in this Agreement are for convenience only and shall not affect the construction in this Agreement;
- (d) any reference to a clause sub-clause paragraph or appendix shall be a reference to the clause sub-clause or paragraph of or appendix to this Agreement so numbered or named;
- (e) words importing the singular only shall include the plural and vice versa and words importing one gender shall be treated as including reference to any gender;
- (f) words importing the whole shall be treated as including reference to any part thereof.

2. APPOINTMENT

- 2.1 The Consultant warrants that in entering into this Agreement it has not committed any Prohibited Act.
- 2.2 The Employer appoints the Consultant to perform the Services upon the terms and conditions set out in this Agreement and the Consultant accepts the appointment.
- 2.3 The effective date of this Agreement shall be the date upon which the Consultant first commenced performance of the Services or the date of this Agreement, whichever is the earlier.
- 2.4 In accordance with the terms of this Agreement, save in respect of any terms that may be implied by law, this Agreement constitutes the entire agreement and represents the entire understanding between the parties in relation to the Services and supersedes and replaces any previous agreements between the parties in relation to the Services (whether written or oral).
- 2.5 The Consultant shall carry out such Additional Services in connection with the Development as instructed by the Employer in writing and the terms of this Agreement shall apply to such Additional Services to be provided by the Consultant whether performed before or after the date of this Agreement.
- 2.6 No additions, amendments or variations to this Agreement shall be binding unless in writing and signed by the duly authorised representatives both of the Employer and the Consultant.

3. SERVICES

- 3.1 The services to be provided by the Consultant are included in Schedule 1 together with any other services the Employer may request reasonably incidental to those specified in Schedule 1.
- 3.2 The Consultant shall in respect of those elements of the Development for which he is providing or has provided services under this Agreement comply with all planning agreements permissions and conditions and the Statutory Requirements.
- 3.3 The Consultant warrants to the Employer that it has exercised and shall continue to exercise in the performance of all its obligations under this Agreement the skill, care and diligence to be expected of a properly qualified and competent consultant of the Consultant's discipline who is experienced in carrying out services for a project of similar size, scope, nature, complexity and value to the Development.
- 3.4 The Employer shall rely upon the Consultant performing the Services and its obligations under this Agreement. No approval, comment or lack of comment, consent, inspection or lack of inspection, or the like by the Employer shall limit or discharge the liability of the Consultant to the Employer however that liability arises.
- 3.5 The Consultant is competent to perform the duties imposed on it by the CDM Regulations and shall carry out and fulfil in all respects the duties of a 'Designer' imposed under the CDM Regulations insofar as the same apply to this Development.
- 3.6 The Consultant shall regularly and diligently proceed with all the Services to be provided by it under this Agreement in accordance with the requirements set out in all relevant programmes and timetables prepared for the Development and any revised versions thereof and shall use all reasonable endeavours to prevent any delay or disruption to the progress of the Development and shall not impede any of the Professional Team or the Contractor.
- 3.7 In the performance of the Services the Consultant shall have regard to and exercise all reasonable endeavours to adhere to any budget and specific Employer requirements for the development notified by the Employer or the Employer's Agent prior to completion of the Works. The Consultant shall immediately notify the Employer if it becomes apparent to the Consultant that such budget or requirement may be exceeded or fail to be met.
- 3.8 The Consultant shall liaise with the Professional Team, other professional consultants and sub-contractors that are appointed or engaged by the Employer or the Contractor in relation to the Development as often as is appropriate for the proper carrying out of the Services in accordance with the terms of this Agreement.
- 3.9 The Consultant will have due regard to the capital expenditure and project costs of the Development (as advised to the Consultant by the Employer or Employer's Agent) and use reasonable endeavours to inform the Employer if, at any time, it anticipates that design for the Project may result in an increase in such expenditure or costs.

4. DELETERIOUS MATERIALS

- 4.1 Subject to Clause 3.3 the Consultant further warrants to and undertakes with the Employer that it has not specified for use and shall not specify for use and shall use all reasonable skill and care consistent with the supervisory and inspection responsibilities to be undertaken as part of the Services to ensure that there shall not be used in the Works (unless authorised by the Employer in writing) any Deleterious Materials.
- 4.2 The Consultant shall notify the Employer as soon as reasonably practicable if any materials that the Consultant has specified for the Development become classified as deleterious and/or prohibited in accordance with Clause 4 before the completion of the Services.

5. ADDITIONAL SERVICES

- 5.1 The Consultant shall as soon as reasonably practicable advise the Employer in writing of any circumstances which have arisen or which are likely to arise which require or may require the Consultant to perform or the Consultant or Employer to procure the performance of any Additional Services in connection with the Development not currently being performed by the Consultant or other members of the Professional Team.
- 5.2 Whether on the advice of the Consultant or otherwise, the Employer shall be entitled to instruct the Consultant to perform any and all Additional Services in relation to the Development which are within the general competence of the Consultant to perform. Subject to Clauses 5.3 and 5.4 the Consultant shall comply with the Employer's instructions and any Additional Services instructed by the Employer pursuant to this Clause shall form part of the Services which the Consultant is obliged to perform under and in accordance with this Agreement.
- 5.3 Subject to Clause 5.4, the Employer shall pay the Consultant a fair and reasonable amount for any Additional Services instructed under Clause 5 hereof not included within the Services to be performed by the Consultant in accordance with this Agreement. The Parties shall endeavour to agree a specific lump sum Additional Fee for performing the Additional Services, failing which the Consultant shall be entitled to be paid for time properly, effectively and efficiently spent in performing the Additional Services.
- 5.4 The Consultant shall not be entitled to additional remuneration for performing Additional Services where and to the extent such Additional Services were necessitated, in whole or in part, by any negligence, omission or default on the part of the Consultant.

6. REMUNERATION

- 6.1 The Employer shall pay the Consultant for the performance of the Services a fee calculated in accordance with the provisions of Part 1 of Schedule 2. The fee payable calculated in accordance with Clause 6.1 shall be paid in the instalments and at the intervals as set out in Part 2 of Schedule 2. If not set out in Part 2 of Schedule 2, the fee shall be paid at intervals of not less than one month, beginning one month after the Consultant begins performing the Services.

- 6.2 The fee payable pursuant to Clauses 5 and 6 shall be inclusive of all overheads, costs, disbursements and expenses (including without limitation the cost of professional indemnity insurance and all travelling and subsistence expenses) incurred by the Consultant in the performance of the Services.
- 6.3 Any fees payable to the Consultant shall be deemed to be exclusive of Value Added Tax. Value Added Tax shall be payable by the Employer on the submission by the Consultant of a valid Value Added Tax invoice.

7. CONSULTANT'S PERSONNEL

- 7.1 The Consultant shall ensure that only the Consultant's Personnel shall be engaged in the performance of the Services and are present at all meetings at which the Consultant's attendance is required.
- 7.2 The Consultant shall neither remove nor replace any Consultant's Personnel without the prior written consent of the Employer which consent shall not be unreasonably withheld or delayed. The Consultant shall replace promptly each of the Consultant's Personnel so removed or replaced with a suitably experienced and properly qualified person approved in writing by the Employer.
- 7.3 The Employer may require by notice in writing to the Consultant the removal of any personnel engaged in the performance of the Services if, in the Employer's reasonable opinion, his or her performance or conduct is or has been unsatisfactory. The Consultant shall remove and replace promptly the person specified.

8. NOT USED

9. ASSIGNMENT AND SUB-CONTRACTING

- 9.1 The Consultant agrees that the Employer may freely assign or otherwise transfer the benefit of this Agreement without the consent of the Consultant subject to notice of any such assignment being given to the Consultant to any other person assuming the entire role of the Employer.
- 9.2 This Agreement is personal to the Consultant and the Consultant shall not assign, charge or transfer any right or obligation under this Agreement to any other person.
- 9.3 The Consultant may not sub-contract any of the Services without the prior written consent of the Employer (both as to the principle of sub-contracting and the identity of the proposed sub-contractor). No sub-contracting and no consent to sub-contract shall operate to exclude or limit the obligations and liabilities of the Consultant under this Agreement and the Consultant shall be and shall remain fully responsible in respect of all Services performed by sub-contractors as if they had been performed by the Consultant under this Agreement.

10. COPYRIGHT AND CONFIDENTIALITY

- 10.1 Copyright and property in the Documents prepared or to be prepared by or on behalf of the Consultant or his sub-consultants shall remain vested in the Consultant or his sub-consultants, as the case may be. The Consultant hereby grants with full title guarantee to the Employer an irrevocable, royalty-free, non-

exclusive licence to copy and use the Documents prepared or to be prepared by or on behalf of the Consultant or his sub-consultants and to reproduce the designs contained in them for any purpose whatsoever relating to the Development including, but without limitation the execution, completion, maintenance, letting, advertisement, reinstatement and repair of the Development. Such licence shall enable the Employer to copy and use the Documents for the extension of the Development but such use shall not include a licence to reproduce the designs contained in it for any extension of the Development. Such licences shall be capable of sub-licence and transfer by the Employer. The Consultant hereby undertakes to procure from his sub-consultants the grant of the necessary licences in favour of the Employer to give effect to this Clause 10.1. The Consultant shall not be liable for any use of any of the Documents for any purpose other than that for which the Documents were prepared or provided by the Consultant.

- 10.2 The Consultant hereby undertakes that it will not assert against the Employer or any sub- licensee of the Employer any right which the Consultant may have to be identified as author of any the Documents and the Consultant hereby waives any moral rights it has in the Documents (and if any of the Documents are prepared by any employee of the Consultant, the Consultant shall obtain a waiver and release of any moral rights in the Documents from such employee) and consents to acts or omissions of the Employer which would without such waiver constitute a breach or infringement of such moral rights.
- 10.3 The Consultant shall be liable for and shall indemnify the Employer against any and all legally enforceable and reasonably mitigated claims, proceedings, losses, liabilities, damage, costs and/or expenses the Employer may suffer or incur in the event:-
- (a) that the rights granted by the Consultant pursuant to this clause are at any time determined by a court of law or advised by leading counsel to be invalid, ineffective or impaired in any way; and/or
 - (b) in the event of any claim or proceedings by any third party (whether upheld or not) that the exercise of the rights granted by the Consultant pursuant to this clause infringe the rights of such third party.
- 10.4 The Consultant shall supply copies of any Documents to the Employer within 7 days of any reasonable request by the Employer and the Employer shall pay the Consultant's reasonable copying charges for such copies.
- 10.5 The Consultant shall not during his employment hereunder, (save to essential employees in the proper course of their duties, his suppliers and his sub-consultants and to legal or other advisors, law enforcement or other regulatory bodies), or at any time after its expiry or determination for any reason disclose to any person any information not already in the public domain relating to this Agreement or the Development. The Consultant shall see that any persons having access to such information are aware of these obligations.
- 10.6 The Consultant shall not, without the prior written approval of the Employer (such approval not to be unreasonably withheld or delayed), take or permit to be taken any photographs of the Development for use in any publicity or advertising or publish alone or in conjunction with any other person, any articles, photographs or other illustrations in any publication journal or

newspaper or any radio or television programme or internet site in relation to the Development or any part thereof.

- 10.7 The Consultant must at all times keep confidential, treat as privileged, and not directly or indirectly make or allow any disclosure of, or use of, any provisions of this Agreement or any information relating to any provision or subject matter of the project or services, or any information directly or indirectly obtained from another party under or in connection with the Development, except to the extent:
- (a) required by law;
 - (b) the parties to this Agreement otherwise agree in writing;
 - (c) necessary to carry out his duties in relation to the Development, or in order to make full and frank and proper disclosure to his insurers or intended insurers, or to obtain legal or accounting advice.

11. INDEMNITY INSURANCE

- 11.1 The Consultant warrants and undertakes to the Employer that he has maintained at all times since he commenced work in respect of the Development professional indemnity insurance cover with a reputable insurer of at least [] million pounds (£[],000,000.00) for any one claim that may be made against the Consultant in relation to defects or insufficiency of his Services.
- 11.2 The Consultant undertakes to the Employer to maintain such insurance as detailed in Clause 11.1 above for a period of 12 years from the date of Practical Completion of the Development provided that such insurance is generally available in the United Kingdom insurance market on commercially reasonable rates.
- 11.3 Any increase or additional premium required by insurers by reason of the Consultants own claims record or other acts or omissions particular to the Consultant shall be deemed to be within commercially reasonable rates.
- 11.4 The Consultant shall ensure that any sub-consultants engaged in relation to any such design of the Development shall carry appropriate insurance cover for such design.
- 11.5 The Consultant undertakes to the Employer:
- (a) upon written request from the Employer to provide the Employer with documentary evidence that such insurance has been renewed and remains in force;
 - (b) to inform the Employer if such insurance ceases to be available and to fully cooperate with the Employer with any measure required including obtaining single project indemnity cover and without limitation completing any proposal for insurance and associated documents and to obtain in respect of that period such reduced cover (if any) as is available to the Consultant on reasonable rates.

12. APPROVALS

- 12.1 The obligations of the Consultant under this Agreement shall not be lessened or affected by:
- (a) any power or duty of the Employer or any of the Professional Team to grant or withhold approval of, or object to, any matter in connection with the Development, or to inspect the Development; or
 - (b) the grant, or failure to grant, such approval, or the making, or failure to make, such objection or any such inspection of, or failure to inspect, the Development.

13. TERMINATION AND SUSPENSION

- 13.1 The Employer may suspend or terminate the performance of any or all of the Services by giving not less than 14 days' notice to the Consultant. The Employer reserves the right in an emergency to suspend or terminate the performance of all or any of the Services forthwith on notice in writing to the Consultant. Such termination shall not determine the operation of Clauses **Error! Reference source not found.**, 10 and 11 above which shall continue to apply but only insofar as they relate to duties falling due for performance prior to the date of termination.
- 13.2 The Employer may terminate the appointment of the Consultant immediately in writing in the event of the Consultant being adjudged bankrupt or making a composition or arrangement with creditors or having a winding-up petition or a petition for an administration order presented against it or having a receiver, manager, administrative receiver or provisional liquidator appointed or on the occurrence of another event of or giving rise to insolvency of the Consultant.
- 13.3 The Employer may terminate the appointment of the Consultant immediately in writing in the event of a material or persistent breach by the Consultant of its obligations under this Agreement which the Consultant shall fail to remedy within 14 days after receiving a notice from the Employer specifying the breach and requiring its remedy.
- 13.4 Upon suspension or termination of this Agreement or the suspension or termination of the performance of any or all of the Services:
- (a) the Consultant shall proceed in an orderly manner but with all reasonable speed and economy to take all necessary steps to terminate or suspend the Services as the case may be;
 - (b) the Consultant shall within a period of 28 days from receipt of a notice served under Clauses 13.1 or 13.2 or 13.3 deliver to the Employer all Documents or copies thereof connected with the Development within his possession or control;
 - (c) the Employer shall pay to the Consultant a reasonable sum commensurate with the Services properly performed by the Consultant under this Agreement up to the date of termination or suspension less any payments which have previously been paid to the Consultant and

such payment shall be made in accordance with the provisions of Schedule 2.

- 13.5 Where the Employer has suspended the Services, it may serve notice upon the Consultant to resume the Services within 28 days from the date of such notice provided that, if all original and copy Documents have previously been delivered to the Employer under Clause 13.4(b), the Consultant shall not be obliged to resume the Services until 7 days after return of a complete set of such Documents.
- 13.6 If the Consultant resumes performance of the Services in accordance with this Agreement and any payment made under Clause 13.4(c) shall rank as payment on account towards the payments to be made under this Agreement.
- 13.7 If the Employer has not served such notice of resumption within 12 months of the date of suspension either party may immediately after such period has expired terminate the Consultant's appointment under this Agreement by notice in writing to the other.
- 13.8 Any termination or suspension of this Agreement howsoever arising shall be without prejudice to the accrued rights and remedies of either party.

14. NOTICES

- 14.1 Any notice to be given by the parties hereunder shall be deemed to be duly given if it is delivered by hand or sent by special delivery to the other party at its registered office or such other address as the party to be served shall have previously notified in writing and in the case of any such notices the same if sent by special delivery shall subject to proof of the contrary be deemed to have been received forty eight hours after being posted (excluding Saturday Sunday and public holidays) and if delivered by hand shall be deemed to have been received at the time of delivery.
- 14.2 A notice or other communication received on a non-working day or after business hours in the place of receipt shall be deemed to be given or made on the next following working day in that place.

15. HEALTH & SAFETY: CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2015

- 15.1 In this Clause the expressions 'Principal Designer' and 'Principal Contractor' shall have the same meanings as in the CDM Regulations.
- 15.2 The Consultant shall comply with its obligations pursuant to the CDM Regulations and:
- (a) see that all relevant information is provided to the Principal Designer and Principal Contractor to enable them to perform their duties under the CDM Regulations;
 - (b) allow sufficient time and resources to assist the Principal Designer and Principal Contractor to comply with their obligations relating to health and safety matters arising from the CDM Regulations;

- (c) co-operate with the Principal Designer and Principal Contractor in the performance of their obligations under the CDM Regulations;
- (d) promptly notify the Principal Designer and Principal Contractor of any change in circumstances relating to the Development of which he becomes aware which may affect the health and safety of persons involved in the Development or of persons likely to become so involved;
- (e) include in the design all information relating to the design and materials which might reasonably affect the health and safety of persons working on the Development.

16. JOINDER

- 16.1 If a dispute under or arising in relation to this Agreement (the '**Dispute**') raises issues which are substantially the same as or connected with issues raised in a dispute under any Employer's third party agreement ('**Related Dispute**') and an adjudicator is to be appointed the Adjudicator appointed to determine a dispute, shall if possible, on application from the Employer order the consolidation of the Dispute with any such Related Disputes.
- 16.2 In the event of such an order being made, the Dispute and Related Dispute(s) shall be determined together by the Adjudicator originally appointed to determine the Dispute in accordance with the Agreement.
- 16.3 If because of the requirement of the Housing Grants Construction and Regeneration Act 1996, as amended, it is not possible to consolidate the Dispute and the Related Dispute in the way described above the Employer and the Consultant shall endeavour to use the same Adjudicator to determine the Dispute and the Related Dispute.

17. ADJUDICATION

Where and to the extent adjudication applies to this Agreement any dispute or difference arising out of this Agreement may be referred to Adjudication by either party at any time. The Adjudication procedures and the Agreement for the appointment of an Adjudicator shall be as set out in the Scheme for Construction Contracts (England) Regulations 2011.

18. EXCLUSION OF THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 (the "**Act**") shall not apply to this Agreement such that none of the provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Act on any party who is not a party to this Agreement.

19. LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and Wales and the parties irrevocably agree to submit to the jurisdiction of the Courts of England and Wales.

20. LIMITATION PERIOD

No proceedings shall be commenced against the Consultant under this Agreement more than 12 years after the date of Practical Completion of the Works as certified under the Building Contract.

21. SEVERABILITY

If any term or condition of this Agreement is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Agreement and the validity and enforceability of the remainder of this Agreement shall not be affected or impaired thereby.

IN WITNESS whereof the parties hereto have executed this document as a Deed on the day and year first before written

EXECUTED as a deed and delivered by)
)
THE BOARD OF TRUSTEES OF)
NATIONAL MUSEUMS AND)
GALLERIES ON MERSEYSIDE)
)
By affixing the Common Seal)

Authenticated by:

.....
Trustee

EXECUTED as a deed and delivered by)
for and on behalf of)
[])
acting by a director)
and by a director/secretary)
or

.....
Director
.....
Director / Secretary

In the presence of:

.....
Name

.....
Address

.....
Occupation

SCHEDULE 1 – SERVICES

[Insert schedule of services]

SCHEDULE 2 – REMUNERATION

PART 1

The Employer shall pay the Consultant a total fee of £[] plus VAT as set out in the instalments below:

1. []
2. []
3. []
4. []
5. []

PART 2

- 1.1 The Consultant shall submit to the Employer a valid VAT invoice for each instalment of fee, together with any supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) shall specify the sum that the Consultant considers will become due on the payment due date in respect of the instalment of the fee, and the basis on which that sum is calculated.
- 1.2 Payment shall be due on the date the Employer receives each invoice.
- 1.3 Not later than five days after payment becomes due, the Employer shall notify the Consultant of the sum that the Employer considers to have been due at the payment due date in respect of the payment (notwithstanding that the sum the Employer considers to have been due may amount to zero) and the basis on which that sum is calculated.
- 1.4 The final date for payment shall be 28 days after the date on which payment becomes due.
- 1.5 If the Employer fails to provide a notice in accordance with the provisions of paragraph 1.3 and the Consultant fails to submit an invoice in accordance with the provisions of paragraph 1.1, the Consultant may give the Employer a notice (**'Default Notice'**) confirming the amount the Consultant considers to have been due when the Consultant submitted the invoice pursuant to paragraph 1.1 and the basis on which that amount is calculated.
- 1.6 Where the Consultant gives the Employer a Default Notice, the final date for payment as prescribed at paragraph 1.4 shall be postponed by the same number of days as the number of days after the date referred to in paragraph 1.3 that the Default Notice was given.
- 1.7 Subject to the Employer serving a notice under paragraph 1.8, the Employer shall pay the Consultant the sum referred to in:

- (a) the Employer's notice under paragraph 1.3; or,
- (b) if the Employer has not served notice under paragraph 1.3, the sum referred to in the invoice referred to in paragraph 1.1; or
- (c) if the Consultant has not submitted an invoice in accordance with the provisions of paragraph 1.1, the sum referred to in the Consultant's Default Notice referred to in paragraph 1.5 (in this Part 2, the '**Notified Sum**')

on or before the final date for payment of each invoice.

- 1.8 Not less than five days before the final date for payment (in this Part 2, the '**Prescribed Period**'), the Employer may give the Consultant notice that it intends to pay less than the Notified Sum (in this Part 2, a '**Pay Less Notice**'). Any Pay Less Notice shall specify:
- (a) the sum that the Employer considers to be due on the date the notice is served (notwithstanding that the sum the Employer considers to have been due may amount to zero); and
 - (b) the basis on which that sum is calculated.
- 1.9 If the Employer fails to pay an amount due to the Consultant by the final date for payment, simple interest shall be added to the unpaid amount from the final date for payment until the actual date for payment. This shall be calculated on a daily basis at the annual rate of 3% above the rate set from time to time by the Bank of England's Monetary Policy Committee or any successor to it. The parties acknowledge that the Employer's liability under this paragraph 1.9 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 1.10 Notwithstanding paragraphs 1.7 and 1.8 and without prejudice to clause 14, in the event of the Consultant being adjudged bankrupt or making a composition or arrangement with creditors or having a winding-up petition or a petition for an administration order presented against it or having a receiver, manager, administrative receiver or provisional liquidator appointed or on the occurrence of another event of or giving rise to insolvency of the Consultant after the Prescribed Period, the Employer shall not be required to pay the Consultant in accordance with paragraph 1.7.