2020

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

and

(2) **[●]**

CONTRACT FOR WORKS IN RELATION TO WALKER ART GALLERY AND MIDLAND RAILWAY BUILDING

DWF Law LLP

THIS AGREEMENT is dated and made between:

(1) **The Board of Trustees of National Museums and Galleries on Merseyside** of World Museum, William Brown Street, Liverpool, L3 8EN including its successors in title and assigns as permitted under the Conditions ("the **Employer**"); and

(2) **[●]**(company number **[●]**) whose registered office is [●] ("the **Contractor**").

AGREEMENT:

The following documents shall together form the contract between the Employer and the Contractor:

1. this Agreement including the Recitals, Articles and Contract Particulars;
2. the Joint Contracts Tribunal Intermediate Building Contract with contractor's design 2016 as amended by the Schedule of Amendments and Additional Conditions set out in **Schedule 1** ("the **Conditions**"); and
3. the other Schedules to this Agreement.

RECITALS

First the Employer wishes to have the following work carried out:

[●] ("the **Works**") under the direction of the Contract Administrator referred to in Article 3.

Second the Works include:

[●] ('the **Contract's Designed Portion'**)

Third the drawings are numbered/listed in **Schedule 2** annexed to this Contract ('the **Contract Drawings'**) and have for identification been signed or initialled by or on behalf of each party

Fourth the Employer has supplied to the Contractor:

the Specification

the Work Schedules

Fifth the Contractor has priced the Specification/Work Schedules (as priced, 'the **Priced Document'**) the total of such pricing being the Contract Sum stated in Article 2 (**'Pricing Option A'**)

the Priced Document and the Specification have each for identification been signed or initialed by or on behalf of each Party.

Sixth in response to the Employer's Requirements the Contractor has supplied to the Employer:

- documents showing and describing the Contractor's proposals for the design and construction of the Contractor's Designed Portion ('the **Contractor's Proposals**'); and
- an analysis of the portion of the Contract Sum relating to the Contractor's Designed Portion ('the **CDP Analysis'**);

Seventh the Employer has examined the Contractor's Proposals and subject to the Conditions, is satisfied that they appear to meet the Employer's Requirements. The Employer's Requirements, the Contractor's Proposals and the CDP Analysis have each for identification been signed or initialled by or on behalf of each Party and particulars of each are given in the Contract Particulars.

Eighth for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;

Ninth not used

Tenth for the purposes of the Construction (Design and Management) Regulations 2015 (the **'CDM Regulations'**) the status of the project that comprises or includes the Works is stated in the Contract Particulars;

Eleventh the division of the Works into Sections is shown in the Bills of Quantities / Specification / Work Schedules and/or the Contract Drawings or in such other documents as are identified in the Contract Particulars

Twelfth not used

Thirteenth whether any of Supplemental Provisions 1 to 6 apply is stated in the Contract Particulars

ARTICLES

Article 1: Contractor's obligations

The Contractor shall carry out and complete the Works in accordance with the Contract Documents.

Article 2: Contract Sum

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of:

£[●]([●])

("the **Contract Sum**") or such other sum as shall become payable under this Contract.

Article 3: Architect/Contract Administrator

For the purposes of this Contract the Architect/Contract Administrator is:

[●]

or, if he ceases to be the Contract Administrator, such other person as the Employer nominates in accordance with clause 3.4 of the Conditions.

Article 4: Quantity Surveyor

For the purposes of this Contract the Quantity Surveyor is:

[●]

or, if he ceases to be the Contract Administrator, such other person as the Employer nominates in accordance with clause 3.4 of the Conditions.

Article 5: Principal Designer

The Principal Designer for the purposes of the CDM Regulations is the Architect

Or such replacement as the Employer at any time appoints to fulfil that role.

Article 6: Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is:

[●]

Or such replacement as the Employer at any time appoints to fulfil that role.

Article 7: Adjudication

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 9.2.

Article 8: Not Used

Article 9: Legal proceedings

Subject to Article 7, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

Article 10: Incorporation of Special Conditions

The Articles, Contract Particulars, Condition and Schedules include and shall be subject to the special conditions annexed hereto.

CONTRACT PARTICULARS

Clause etc	***Subject***	
Fourth Recital	Employer's Requirements	As per tender documentation, specification and drawings
Sixth Recital	Contractor's Proposals	As per the Employer's Requirements
Sixth Recital	CDP Analysis	The relevant parts of the Pricing Document
Eight Recital and clause 4.6	Construction Industry Scheme (CIS)	Employer at the Base Date is not a "contractor" for the purposes of the CIS
Tenth Recital	CDM Regulations	the project is not notifiable
Eleventh Recital	Description of Sections (if any) (if not shown or described in the Bills of Quantities/Specification/Work Schedules or the Contract Drawings, state the reference numbers and dates or other identifiers of documents in which they are shown.)	[●]
Twelfth Recital		NOT USED
Thirteenth Recital and Schedule 5	Supplemental Provisions *(Where neither entry against an item below is deleted, the relevant paragraph applies.)*	
	Collaborative working	Supplemental Provision 1 applies
	Health and safety	Supplemental Provision 2 applies
	Cost savings and value improvements	Supplemental Provision 3 applies
	Sustainable development and environmental considerations	Supplemental Provision 4 applies

	Performance Indicators and monitoring	Supplemental Provision 5 does not apply
	Notification and negotiation of disputes	Supplemental Provision 6 applies
	Where Supplemental Provision 6 applies, the respective nominees of the Parties are	Employer's nominee: [●] Contractor's nominee: [●] or such replacement as each Party may notify to the other from time to time.
Article 8	Arbitration	Article 8 and clauses 9.3 to 9.8 do not apply
1.1	Base Date	5 days prior to tender return
1.1	BIM Protocol (where applicable)	
1.1	Date for Completion	[●]
	Sections: Dates for Completion of Sections	[●]
1.7	Addresses for service of notices by the Parties	**Employer**: [●] **Contractor**: [●]
2.4	Date of Possession of the site	[●]
	Sections: Dates of Possession of Sections	[●]
2.5	Deferment of possession of the site	

	Sections: deferment of possession of Sections	Clause 2.5 applies Maximum period of deferment (if less than 6 weeks is) [●]
2.23.2	Liquidated damages	at the rate of £5,000 per week for WAG at the rate of £2,500 per week for MRB
	Section: rate of liquidated damages for each Section	Section [●] : £ [●] per [●] Section [●] : £ [●] per [●] Section [●] : £ [●] per [●]
2.29	Sections: Section Sums	Section [●] : £ [●] Section [●] : £ [●] Section [●] : £ [●]
2.30	Rectification Period	12 months from the date of practical completion of the Works
	Sections: Rectification Periods (*if no other period is stated, the period is 6 months*)	Section [●] : [●] months Section [●] : [●] months Section [●] : [●] months from the date of practical completion of each Section
2.34.3	Contractor's Designed Portion: limit of Contractor's liability for loss of use etc. (if any)	£[●] million
4.3 and 4.9	Fluctuations Provision Percentage addition for Schedule 4 (paragraph 12) (if applicable)	N/A

4.7	Advance Payment	Clause 4.7 does not apply
4.7	Advance Payment Bond	An advance payment bond is not required
4.8.1	Interim Payments – Interim Valuation Dates	The first Interim Valuation Date is TBC but at the end of the month following the month of possession and thereafter the same date in each month or the nearest Business day in that month.
4.9.1	Interim payments – percentages of value	
	Where the Works, or those works in a Section, have not achieved practical completion, the percentage of total value in respect of the works that have not achieved practical completion is	95 per cent
	Where the Works, or those in a Section or Relevant Part, have achieved practical completion, the percentage in respect of the completed works is	97.5 per cent
4.10.4	Listed Items – uniquely identified	NOT USED
4.10.5	Listed Items – not uniquely identified	NOT USED
6.4.1	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than	£10 million for any one occurrence or series of occurrences arising out of one event

6.5.1	Insurance – liability of Employer	Insurance is required Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event £10million
6.7 and Schedule 1	Works insurance. — Insurance Option Applicable	None of Options A, B or C applies. Government Policy of non-insurance as it applies to the Employer. Any claim will be dealt with on its own merits and on a basis of strict liability.
6.10 and Schedule 1	Terrorism Cover	NOT USED
6.15	Joint Fire Code	The Joint Fire Code does not apply
6.18	Joint Fire Code – amendments /revisions	N/A
6.19	Contractor's Designed Portion (CDP) Professional Indemnity Insurance	Amount of indemnity required Relates to claims or series of claims arising out of one event and is £5million
	Cover for pollution and contamination claims	Is not required
	Expiry of required period of CDP Professional Indemnity insurance is	12 years

7.21.	Performance bond or guarantee from bank or other approved surety	Is not required
7.2.2	Guarantee from the Contractor's parent company	Is not required
7.3	Collateral Warranties	See Special Conditions and separate Collateral Warranty documents appended.
8.9.2	Period of suspension (if none stated, the period is 2 months)	2 months
8.11.1.1 to 8.11.1.5	Period of suspension (if none stated, the period is 2 months)	2 months
9.2.1	Adjudication	The Royal Institution of Chartered Surveyors
9.4.1	Arbitration	NOT USED

IN WITNESS whereof the parties have executed this Agreement as a deed and is intended to be and is delivered on the date first above written

THE COMMON SEAL of	)	
THE BOARD OF TRUSTEES OF	)	
NATIONAL MUSEUMS AND	)	
GALLERIES ON MERSEYSIDE OF	)	
WORLD MUSEUM	)	
was affixed to this Deed authenticated	)	
by:	)	
Signature of Trustee		…….
Print name of Trustee		…….

EXECUTED as a deed	)	
for and on behalf of	)	…….
[CONTRACTOR]	)	Director Signature
by a Director	)	
In the presence of a witness	)	…….
		Director Name

…….
Witness Signature

…….
Witness Name

…….
Address

…….
Occupation

SCHEDULE 1

Part 1 - Schedule of Amendments

Definitions

1.1 Add as a new definition:

“Change Control Process: the process (and the only process) by which the Employer will provide any authorisation for a change to the Works as set out at Schedule 3.”

"Coronavirus: the novel coronavirus which causes the illness COVID-19, and variants thereof, and which was declared to be a pandemic by the World Health Organisation in March 2020."

Coronavirus Measures: public health measures introduced in connection with the Coronavirus which directly affects the execution of the Works at the site in any of the following ways:

(i) unavailability of appropriate goods and materials

(ii) unavailability of appropriate labour

(iii) restrictions on travel

(iv) closure or partial closure of the site

(v) delays caused by additional health and safety procedures

but only to the extent that any of the events in (i) to (v) above are:

(a) not capable of mitigation or avoidance, either in whole or in part, by a reasonably competent contractor using best endeavours in respect of such mitigation or avoidance; and

(b) not caused or significantly contributed to by the Contractor's or the Contractor's Persons' negligence, default, breach of Contract, failure to follow official governmental guidance (whether mandatory or otherwise) or Statutory Requirements relating to the Coronavirus, COVID-19 or variants thereof.

"Other Contractors: any persons employed engaged or authorised by the Employer to carry out works or provide supplies and/or services not forming part of this Contract, including (without

limitation) any persons as may be specified in the Contract Documents."

Contracts (Rights of Third Parties) Act 1999

1.6 Delete and Substitute:

'This Contract is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.'

Notices

1.7.3A Add as clause 1.7.3A:

“Any notice, certificate or other communication (notice) to be given under Section 4 (Payment) may, in addition to any other permitted method of service, be delivered by hand or sent electronically to the e-mail address of the addressee, provided, if sent by e-mail and not delivered by hand, a copy is sent on the same day to the addressee by pre-paid first class post. Any notice served in accordance with this clause 1.6.3 takes effect as being given and served:

(a) if delivered by hand or sent by e-mail by 4.00 pm on a Business Day, on that day; but otherwise,

(b) on the next Business Day.”

Effect of Final Certificate

1.9.1.1 Delete.

1.10 In line 1, delete 'Save as stated in clause 1.9 no'. Substitute 'No'.

1.11.2 Delete "and either Party's consent under" and replace with "or".

Materials, goods and workmanship

2.2.1 Delete the second sentence of clause 2.2.1. Substitute:

'Subject as prescribed in the Contract Documents or stated in the Contract Documents to be a matter for the opinion or satisfaction of the Architect/Contract Administrator, all materials and goods shall be new and appropriate for their use, and all materials, goods and workmanship shall be of a satisfactory quality.'

Prohibited materials

2.2A Add as clause 2.2A:

'Save as required under or pursuant to any other provision of this Contract the Contractor shall not use or permit to be used in the Works any materials:

(a) which by their nature or application contravene any British Standard or EU equivalent;

(b) which contravene the recommendations of the British Council for Offices' publication Good Practice in the Selection of Construction Materials (2011); or

(c) which are considered to be deleterious within the building design professions.'

Contractor's master programme

2.8A Add as clause 2.8A:

'The Contractor shall prepare and provide to the Architect/Contract Administrator a detailed master programme for the execution of the Works, and such programme shall:

(a) show the Date of Possession and the Date for Completion;

(b) show the dates for submission of all design information to be submitted by or on behalf of the Contractor to the Architect/Contract Administrator for approval;

(c) be consistent with the Information Release Schedule; and

(d) comply with any other applicable requirements of the Contract Documents,

and if and whenever there is any material delay to the execution of the Works, the Contractor shall provide to the Architect/Contract Administrator a revised programme for the carrying out of the Works.'

Materials and goods – on Site

2.17 In line 4 of clause 2.17, delete 'paid' and substitute 'discharged'.

Materials and goods – off Site

2.18 In line 2 of clause 2.18, delete 'paid' and substitute 'discharged'.

Relevant Events

2.20.2.3 Delete and substitute:

'for the opening up for inspection or testing of any work, materials or goods (including making good) under clause 3.14, unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract; or under clause 3.15, if it is agreed by the Parties or determined by an Adjudicator appointed pursuant to clause 3.15.2 that an extension of time should be awarded in respect of such instruction given under clause 3.15;'

2.20.5 In line 1, after 'under clause 4.14' insert 'or clause 8.10.3'.

2.20.12 At the end of the clause, before ';' insert

'excluding Coronavirus Measures"

2.20.13 Delete and substitute:

'any other occurrence or circumstances amounting to Force Majeure.'

2.20.14 Add as clause 2.20.14:

'delay to Works, which is and/or would have been unavoidable by a competent Contractor acting reasonably, caused by or in connection with:

.1 Coronavirus, COVID-19, or variants thereof;

.2 any epidemic or pandemic (whether global or national; or

any reasonable action(s) taken by the Contractor (to include without limitation, suspension of the whole or any part of the Works) as a consequence of the foregoing.'

Delay caused by Contractor's default

2.20A Add as clause 2.20A:

'Notwithstanding any other provision, the Contractor shall not become entitled to any extension of time for the completion of the Works or any part of the Works on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or of any sub-contractor or supplier, or of any of his or their employees or agents.'

Practical completion

2.21A Add as 2.21A:

'For the purposes of the foregoing, **Practical Completion** means a state in which the Works are (or any Section is) complete in all respects and free from apparent defects, save for any minor items of incomplete work or minor defects the existence, completion or rectification of which would not prevent or interfere with the use and enjoyment (or the fitting out for use) of the Works (or Section); provided that where it is expressly stated in any provisions of the Contract Documents that the testing, commissioning, regulation or adjustment of any mechanical or electrical services is to be completed, or that any other thing is to be done, before the practical completion of the Works or any Section, the Works or Section shall not be considered to be practically completed until the same is completed or done as the Contract Documents require.'

Liquidated damages for non-completion

2.23.2 Add at the end of clause 2.23.2:

'; and the Employer's notice under clause 2.23.2 may also suffice as the Employer's notification under clause 2.23.1.2 provided it is given before the date of the Final Certificate.'

2.24 In line 2, after 'pay or repay' insert 'or allow'.

Defects – rectification

2.30 In line 4 after 'Contractor' insert:

'within a reasonable time after notification by the Architect/the Contract Administrator'.

Defects requiring urgent attention

2.30A Add as clause 2.30A:

'In cases of urgency the Architect/the Contract Administrator may require any matter notified under clause 2.30 to be made good within such period of time specified by the Architect/the Contract Administrator as the circumstances require.'

Defects etc. at Practical Completion

2.30B Add as clause 2.30B:

'The foregoing provisions of this clause 2.30 apply mutatis mutandis to any defects, shrinkages or other faults and to any items of incomplete work remaining at practical completion.'

Certificate of making good

2.31 Add to the end of clause 2.31:

'Provided that the Architect/the Contract Administrator shall not be required to issue any certificate to that effect any earlier than 14 days after the end of the relevant Rectification Period.'

CDP Design Work – copyright

2.33.1 Delete line 1 and change 'the' in line 2 to 'The'.

2.33.4 Add as clause 2.33.4:

'The Contractor warrants that the use of the Contractor's Design Documents will not infringe the rights of any third person.'

Design liability

2.34 Delete and substitute:

'The Contractor warrants that there has been exercised and will be exercised in the design of the Contractor's Designed Portion and each and every part of the same all the skill and care reasonably to be expected of duly qualified and experienced designers undertaking the design of works similar in scope and character to the Contractor's Designed Portion or such part of the Contractor's Designed Portion.'

Person-in-Charge

3.2 Delete clause 3.2 and substitute:

'3.2.1 Before commencing the Works on Site, the Contractor shall appoint a Person-in-Charge whose identity is to be approved in advance of appointment by the Architect/Contract Administrator in writing (such approval not to be unreasonably withheld or delayed). The Person-in-Charge shall be employed to act as the full time representative of the Contractor on the Site throughout the construction period. The Contractor shall not (save in circumstances which render it unavoidable) remove the Person-in-Charge without the written consent of the Architect/Contract Administrator, which consent shall not be unreasonably withheld or delayed. Any vacancy in the office of Person-in-Charge shall be filled by a person to the approval of the Architect/Contract Administrator as aforesaid.

3.2.2 Any instructions given to the Person-in-Charge by the Architect/Contract Administrator shall be deemed to have been issued to the Contractor.'

Conditions of sub-contracting

3.6.5.3 Delete from 'clause 2.18' until the end of the clause. Substitute: 'clause A2'.

Postponement of Work

3.12 Re-number clause 3.12 as 3.12.1

3.12.2 Add as clause 3.12.2

'The Parties agree that if an instruction is issued under clause 3.12.1 postponing work for reasons related to Coronavirus, COVID-19, variants thereof or Coronavirus Measures, there shall be no adjustment to the Contract Sum under this Contract and/or no entitlement for the Contractor to seek general damages connected to the postponement whether under this Contract or otherwise.'

Instructions on Provisional Sums

3.13 In line 1, delete 'The'. Substitute:

'If and as required by the Employer, the'.

Work not in accordance with the Contract

3.15.2 In the last two lines of clause 3.15.2, delete 'shall be referred to person appointed under the dispute resolution procedures of this Contract.' Substitute:

'may be referred to an Adjudicator appointed under clause 9.2 (**Adjudication**) whose decision shall be final and not subject to review by the court or any arbitrator save in respect of any irregularity or alleged irregularity in the appointment of the Adjudicator or in the conduct of the Adjudication.'

Instructions as to removal of work etc.

3.16.1 In lines 1 and 2, after 'removal from the site', insert 'or rectification'.

CDM Regulations

3.18.1 Add at the end of clause 3.18.1:

'The Contractor shall promptly on the written request of the Principal Designer provide, and shall ensure that any sub-contractor, through the Contractor, provides, to the Principal Designer (or, if the Contractor is not the Principal Contractor, to the Principal Contractor) such information Principal Designer reasonably requires for the preparation of the health and safety file.'

Payment for goods on Site – passing of property

4.9.1.2 Add before the semi-colon at the end:

'and provided the Contractor has supplied to the Architect/the Contract Administrator reasonable evidence that property in such materials and goods will pass to the Employer after the value of such materials and goods included in an Interim Certificate has been discharged by the Employer, pursuant to clause 2.17'.

Contractor's Payment Applications and Payment Notices

4.11.1 In line 1, delete 'may' and insert 'shall'.

4.11.2.2 In line 2, after 'Payment notice to' insert 'the Employer, with a copy to'.

Interim payments – final date and amount

4.12.1 Delete '14 days'. Substitute '31 days'.

4.12.5 Delete the last sentence and substitute:

'Where a Pay Less Notice is given, the sum to be paid by the Employer on or before the final date for payment shall be the sum stated as due in the notice.'

Pay Less Notices and general provisions

4.13.3 Delete and substitute:

'The Employer shall be under no fiduciary obligation with regard to the percentage of the total value not included in the amounts of the interim payments to be certified under clauses 4.8.2 (**Retention**); and any right of the Employer to deduct or to set off any amount (whether arising under any express term or under any rule of law or of equity) shall be exercisable against any monies due or to become due to the Contractor, whether or not such monies consist of or include any Retention.'

Loss and expense: Relevant Matters

4.17.2.1 Add after '3.12'

'(excluding any such instruction which is in response to or connection with Coronavirus and/or Coronavirus Measures)'

4.17.4 Add at the end of clause

'For the avoidance of doubt the Parties acknowledge that an act or omission which is in response to or connection with Coronavirus and/or Coronavirus Measures will not amount to impediment, prevention or default under this clause 4.17.4.'

4.17A Add as clause 4.17A:

'Notwithstanding any other provision, the Contractor shall not become entitled to the addition of any amount to the Contract Sum nor to any other financial adjustment under clause 4.15 in respect of any cost, loss or expense incurred by reason of any error, omission, negligence or default of the Contractor or of any sub-contractor or supplier or of any of his or their employees or agents.'

Contractor's liability – personal injury or death

6.1 In line 3, after 'Works', insert:

'or in the performance of the Contractor's obligations under clause 2.30 (Defects rectification)'.

Contractor's liability – injury or damage to property

6.2 In line 4, after 'Works', insert:

'or in the performance of the Contractor's obligations under clause 2.30 (Defects rectification)'.

Government Policy of Non-Insurance

Delete 6.7 and substitute:

"In the event of any physical loss or damage being caused which would be covered by a policy of All Risks Insurance, the Contractor shall with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris and proceed with the carrying out and completion of the Works. The Employer shall pay the Contractor the reasonable and properly incurred costs of the restoration, replacement or repair of such loss or damage and the removal and disposal of debris and such amounts shall be paid to the Contractor under certificates of the Architect/Contract Administrator."

Joint Names Policy

6.8 In the definition of Joint Names Policy, after 'Contractor', insert:

'and any one or more third persons specified in writing by the Employer to the Contractor, being persons having or acquiring an interest in or mortgage or charge over the Site or the Works'.

Preservation of All Risks Insurance

6.9A Add as clause 6.9A:

'The Employer and the Contractor shall each comply with the terms and conditions of the Works Insurance Policy to be complied with on its part, and neither the Employer nor the Contractor shall by any act or neglect cause such insurance to be void or voidable or entitle the insurer to refuse any claim (in whole or in part) in respect of any risk or amount for which such policy is expressed to provide indemnity.'

Loss or damage to Existing Structures – right of termination

6.14 In line 2 delete 'either Party'. Substitute 'the Employer'.

In line 3 delete 'given to the other'

6.14.1 Delete 'the Party to whom it is given'. Substitute 'the Contractor'.

Assignment

7.1 Delete clause 7 and substitute:

7.1 The Employer's rights under this Contract may be assigned:

(a) as security to any Mortgagee (and such rights may be re-assigned on redemption);

(b) by absolute assignment to any Group Company;

(c) by absolute assignment on two other occasions only.

7.2 The Contractor may not assign or charge the benefit of this Contract or any right arising under it without the written consent of the Employer.

Collateral Warranties

Delete clauses 7.3, 7.4, 7.5, 7.6, 7.7 and 7.8

Termination – default by Contractor

8.4.1.3 In line 2, after 'remove', insert 'or rectify'.

Termination – assignment by Contractor

8.4.1.4 Delete ‘7.1’ and substitute ‘7.2’.

Termination – insolvency of Contractor

8.5.1 Delete. Substitute:

'If the Contractor is or becomes Insolvent, the Contractor shall so notify the Employer forthwith and either Party may at any time by notice to the other, terminate the Contractor's employment under this Contract.'

8.5.3 In line 1, delete 'the Employer'. Substitute:

'either Party'.

Termination – Contractor to vacate Site

8.6A Add as clause 8.6A:

'Upon the termination of the Contractor's employment under this Contract (and any purported termination by notice given by the Employer) the Contractor shall forthwith vacate the Site.'

Consequences of termination

8.7.4 Add at the end of clause 8.7.4:

'provided that if the Employer procures the completion of the outstanding Works for less than the Employer would have had to pay the Contractor to complete the outstanding Works, then for the purposes of this clause 8.7.4 the Employer shall be deemed to have paid the same

amount to procure the completion of the outstanding Works under clause 8.7.1 as the Employer would have had to pay the Contractor to complete the outstanding Works under this Contract.'

Payments on account

8.8A Add as clause 8.8A:

'If the Contractor's employment is terminated under clause 8.4, 8.5 or 8.6 the following provisions shall apply:

.1 At any time before service of the Employer's Statement under clause 8.7.4 or 8.8, the Employer may serve on the Contractor a particularised forecast of the amount of the debt for which the Contractor will become liable under clause 8.7.5 or 8.8,2, or if it is not practicable to forecast the full amount of such debt, the Employer may forecast an amount below which such debt could not fall in any foreseeable circumstances, and in either case the Employer may thereafter from time to time serve a revised forecast whenever it is practicable to make such revised forecast.

.2 The Contractor may agree any forecast provided under clause 8.8A.1 or may propose any lesser forecast and in that case the amount agreed or proposed shall be payable by the Contractor to the Employer as an on-account payment in respect of the Contractor's liability under clauses 8.7.5 or 8.8.2.

.3 Any Employer's forecast under clause 8.8A.1 if not agreed, may be referred for determination by an expert (Expert) under clauses 8.8A.4–8.8A.9.

.4 The Expert, if not agreed between the Parties, may be appointed on the application of either Party by the nominating body specified for the purposes of clause 9.2.1 in Part 1 of the Contract Particulars, but the Expert shall act as an Expert and not as an arbitrator, nor as an adjudicator.

.5 In respect of any Employer's forecast, the Expert may order the Contractor to make an on-account payment to the Employer of such amount (if any) as he sees fit and in respect of any Employer's revised forecast (or in respect of any application to him made by the Contractor) may order the payment of such further amount (or may order the repayment of all or any part of any previous on-account payment) as he sees fit.

.6 The Parties shall provide to the Expert and to each other such information and documentation as is in their possession or command and as the Expert requires, to enable him to determine any matter referred to him for decision (other than any information or documentation that would enjoy privilege from disclosure in legal proceedings).

.7 The Parties are jointly and severally liable to the Expert for his fees and expenses, provided that, as between the Parties, the Expert may make such order or orders as he sees fit as to liability for any costs in and of the expert determination.

.8 In the absence of fraud, the Expert shall have no liability to either Party for any act or omission in connection with the discharge of his functions as Expert.

.9 The Parties shall be bound by and shall comply with any order or direction of the Expert until the discharge of the Contractor's liability to the Employer (or of the Employer's liability to the Contractor) under clause 8.7.5 or 8.8.2, provided that any orders of the Expert as to the costs in and of the expert determination shall be final. Any on-account payments or repayments made pursuant to this clause 8.8A shall be taken into account in the determination of the amount of any debt due by either Party to the other, pursuant to clause 8.7.5 or 8.8.2.'

Termination by Contractor – Default by Employer

8.9.1.1A Add as clause 8.9.1.1A:

'fails to comply with the decision of an adjudicator appointed under clause 9.2 requiring the Employer to pay any amount to the Contractor (except to the extent that the court has granted relief from enforcement of the adjudicator's decision, subject to the Employer's compliance with any condition attaching to such relief); or'.

Insolvency of Employer

8.10.1 In line 1, after 'notice to the Employer', insert:

'or the Employer may by notice to the Contractor'.

8.10.3 Add at the end of clause 8.10.3:

'and an extension of time for completion shall be given under clause 2.19 equal to the period of suspension'.

Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations

8.11.1.5 Delete ',' and add ';or'

8.11.1.6 Add as clause 8.11.1.6

'Coronavirus Measures.'

8.11.2 Delete everything after 'clause 8.11.1 in respect of' and insert:

.1 the matter referred to in clause 8.11.1.3 where the loss or damage to the Works was caused by the negligence or default of the Contractor or any Contractor's Person; and/or

.2 any delay or suspension referred to in 8.11.1 where

(i) such suspension was caused or materially contributed to by the Coronavirus, COVID-19, or variants thereof; and/or

(ii) the Contractor was granted an extension of time pursuant to the Relevant Event at clause 2.26.15 in respect of such suspension or part thereof.'

Adjudication

9.2 Add at the end of clause 9.2:

'Provided that:

.3 the Adjudicator shall have power to determine more than one dispute under this Contract at the same time, and if requested to do so by either Party shall determine any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to him; and

.4 at the same time as he gives any decision, the Adjudicator shall give reasons for the decision in writing.'

Arbitration

9.3–9.8 Delete clauses 9.3–9.8 inclusive.

Schedule 4 – Fluctuations

9.2.1 Delete.

Part 2 – Additional Conditions

A1. Contractor's Warranty

The Contractor shall whenever required to do so by the Employer promptly execute and deliver a deed or deeds of warranty in favour of any Mortgagee and/or Purchaser and/or Tenant in the terms of the draft Contractor's warranty contained in Appendix 1.

A2. Sub-Contractors

A2.1 In this clause A2 Specified Sub-Contractors means any sub-contractor or supplier of the Contractor for the following elements of the Works:

[Ground improvement works]

[Piling]

[Structural steel frame/roof structure]

[Pre-cast concrete floors/stairs]

[Profile metal cladding/roofing]

[Mechanical services]

[Electrical services]

[Fenestration]

[Curtain walling]

[Raised Access Floors]

[Lifts]

[●]

[●]

A2.2 Each of the Specified Sub-Contractors shall be appointed by deed on terms to be approved by the Employer, and within 7 days after the appointment of a Specified Sub-Contractor the Contractor shall supply a complete certified copy of the sub-contract to the Employer.

A2.3 The Contractor shall ensure that each Specified Sub-Contractor, upon his appointment, executes and delivers a deed of warranty in favour of the Employer in the form of the draft contained in appendix 2, mutatis mutandis, with such modifications (if any) as the Contractor or sub-contractor shall propose and the Employer shall approve.

A2.4 Whenever the Employer from time to time requires, the Contractor shall ensure that each Specified Sub-Contractor executes and delivers a deed or deeds of warranty in favour of any Mortgagee and/or Purchaser and/or Tenant in the form of the draft contained in appendix 2, mutatis mutandis, with such modifications (if any) as the Contractor or sub-contractor shall propose and the Employer shall approve.

A3. Site conditions

A3.1 The Employer gives no warranty or representation as to the condition of the Site or any adjoining property or any services in or under the site or as to the accuracy or sufficiency of any soils or survey data or other data contained in any document made available to the Contractor by the Employer, or as to any recommendations or conclusions made or reached in any such document.

A3.2 Clause A3.1 shall not affect the application or interpretation of clause 2.12 of the Conditions (Contract Bills).

A4. Project meetings

From time to time on reasonable written notice the Architect/Contract Administrator may convene such periodic or ad hoc site meetings as are reasonably necessary for the conduct and management of any matters relating to the Works. Such meetings shall be attended by the Person-in-Charge and by such other representatives of the Contractor and/or its sub-contractors or suppliers as are appropriate in the circumstances, and may be attended by representatives of the Employer and/or any of the Employer's consultants.

A5. Operations on site

A5.1 On or before the Date for the Commencement of the Works, the Contractor shall provide to the Architect/Contract Administrator a programme for the carrying out of the Works, and if and whenever there is any material delay to the Works, the Contractor shall provide to the Architect/Contract Administrator a revised programme for the carrying out of the Works.

A5.2 The Contractor shall provide to the Architect/Contract Administrator if and as the Architect/Contract Administrator requests in writing, details of the Contractor's proposals for the means of access to the site during the construction period, vehicle parking facilities on site, loading and unloading areas for materials, site compounds, temporary warning and direction signs on adjacent highways and within the museum and any other similar information as to the Contractor's working arrangements. If necessary the Contractor shall amend such details to obtain the approval of the local planning authority or other relevant public authority having jurisdiction with respect to the Works.

A5.3 The Contractor shall be wholly responsible for the design, adequacy, stability and safety of all temporary works required in and about the construction of the Works, save insofar as it is provided in any Contract Document that the design of any temporary works is to be provided by any member of the Employer's design team, in which case the Contractor shall not be responsible for the production or the adequacy of such design.

A5.4 In and about the execution of the Works the Contractor shall maintain and not cause any interference to any support enjoyed by any adjoining land or any structures, other than any structures which are to be demolished as part of the Works.

A5.5 The Contractor shall:

(a) carry out the Works in such a manner as not to cause any trespass or actionable nuisance and as to cause as little noise, interference, inconvenience or disturbance to

the public or to the owners and occupiers of adjoining property as is reasonably practicable; and

(b) make good or meet the cost of making good of all damage caused to roads, footpaths and property adjoining the site and to any services, arising from the carrying out of the Works.

A5.6 The Contractor shall permit and facilitate the execution of work on the Site not forming part of the Works by the Other Contractors or as may be required by the Employer having regard to the progress of the Works and the Contractor shall provide access to the Site and the use of thoroughfares, service ways and drainage to such persons. The Contractor shall fully and actively cooperate with all such persons and shall coordinate his work with them. The Contractor shall comply with all instructions issued by the Architect/Contract Administrator in respect of coordination of all work on site. The Contractor shall where necessary or where directed by the Employer arrange and/or attend meetings with the Other Contractors on the Site and shall ensure that no interruption, delay, impediment or interference is caused by or to such Other Contractors in or by the execution of the Works.

A5.7 If in the Contractor's opinion any works or proposed works by the Other Contractors are likely to delay the progress of the Works under this Contract the Contractor will so notify the Employer as soon as such delay becomes reasonably apparent.

A5.8 The Contractor shall not be entitled to any extension of time and/or loss and expense arising from any delay caused by any Other Contractors to the extent that such delay and/or loss and expense is caused or contributed to by the Contractor's breach of this clause A5.8.

A6. As-built data

A6.1 At or before practical completion of the Works or any Section, the Contractor shall without charge provide to the Architect/Contract Administrator such draft as-built or final issue drawings, specifications and other details (in 3 copies) and draft service manuals (in 3 copies) as are specified in the Contract Documents, containing sufficient information to enable the Works to be properly maintained and operated.

A6.2 Within 4 weeks after practical completion of the whole of the Works, the Contractor shall without charge provide to the Architect/Contract Administrator 3 copies of all such as-built or final issue drawings, specifications and other details and service manuals as are specified in the Contract Documents.

A7. Confidentiality

A7.1 Save with the Employer’s prior written approval or as is reasonably necessary to enable the Contractor to perform its obligations under this Contract, the Contractor shall treat all information relating to this Contract and/or the Works as confidential.

A7.2 The Contractor may not without the prior written approval of the Employer use or authorise the use of any photograph or drawing or other depiction of the Works or any part of the Works for publicity purposes or in any annual report or accounts or otherwise for any purpose other than in connection with the performance of the Contractor’s obligations under this Contract.

A7.3 The Contractor shall ensure that any sub-contract and any appointment of a consultant entered into by the Contractor for the purposes of the Works contains the provisions in clauses 1 and 4 (mutatis mutandis) of these Additional Conditions and shall take all reasonable steps to ensure that such provisions are enforced.

A8. Set-off

Nothing contained in this Contract (other than as to the giving of notices) shall oust or limit any right of the Employer under any statute or rule of law or of equity in the nature of set-off or abatement of price.

A9. Interpretation

In the case of any inconsistency between the Schedule of Amendments and Additional Conditions and any other term of this Contract the between the Schedule of Amendments and Additional Conditions shall prevail. In the case of any inconsistency between the Conditions and any other term of this Contract (except between the Schedule of Amendments and Additional Conditions) the Conditions shall prevail.

SCHEDULE 2

Part 1 – Drawings

See appended drawings

Part 2 – Specification

See appended

SCHEDULE 3

This document sets out the proposed process to be implemented on the project to identify and raise potential changes early in the construction process to eliminate the un-necessary and un-controlled growth of the project cost and to avoid potential delays to the project.

1 The Change Control Process

1.1 Definitions

- "Instruction" means, where the building contract is in the traditional form, an instruction issued by the Architect; or, if the building contract is in a design and build form, an instruction issued by the Employer's Agent.
- "NML" means The Board of Trustees of National Museums and Galleries on Merseyside.
- "Project Manager" means Client/Consultant.
- "Project Team" means NML, the Professional Team (including any Architect, Principal Designer, Structural Engineer and Quantity Surveyor), the Principal Contractor and any sub-consultants/sub-contractors.

1.2 Introduction

The greatest risk for increased costs, disruption and programme delay revolve around change. It is recognised that some change(s) will be necessary and it is imperative that the process of change is managed so as to control the project within NML's financial constraints. The Project Team are therefore required to:

- Implement and adopt the change control process. This process ensures that the cost and programme affects are clearly understood and approved prior to changes being implemented.
- Link the change control process to contingency management. This will ensure that where change threatens the project budget, compensatory savings are secured.
- Apply the process throughout the construction stage of the project.

1.3 Overview

The Change Control process will be managed by the Client/Consultant with the support of the Project Team.

No change will be implemented by the Design team or the Contractor unless written authorisation has been obtained from the Client through this process.

Change for the purpose of this process is defined as follows:

"Any movement or development in terms of design, specification, workmanship or construction method from the approved design and defined by the Contract and the drawings and specification listed therein."

Effective change control requires input from all members of the Project Team and it is important to ensure that all members of the Team are fully aware of their responsibilities and are committed to implement the process.

1.4 Process

Changes can be originated by any organisation within the Project Team. One person from each organisation shall be nominated as their 'Change Originator' and will be responsible for all aspects of complying with process.

The project must be closely monitored in order that any changes, from whatever source, are identified.

The process for Change Control can be summarised as follows:

1. The Change Originator should firstly discuss the proposed change with NML in order to gain their approval that the change is to be considered further. It is however essential that the flow of information is not obstructed and it is the responsibility of all of the relevant parties to ensure that the momentum of the process is maintained

2. The Change Originator must obtain a number for his Change Request. Numbers will be issued in sequence by the Client/Cunliffes.

3. On the issued Change Request form, the Change Originator is required to complete, Originator (name & company), date, Description (of change) and Reason (for change).

4. The Change Originator then indicates in the distribution box those organisations that are to receive and comment on the proposed change. He then circulates this form for comment and facilitates appraisal by each of the recipients of the Change Request. The Change Originator then prepares a co-ordinated response from all relevant parties for submission to the contract administrator and the principal contractor, indicating a description of the proposed change, the reason for the change and the implications of the change, in the boxes provided. It is essential at this point that all of the effects of the change whether direct or in direct are identified. This information must be supplemented by drawings and other attachments as required.

5. Once submitted, contract administrator and the principal contractor will undertake an assessment of the likely commercial impact and affect on programme. Once again the contract administrator and the principal contractor must consider both the direct and the indirect effect of the change. (Through the process outlined above cost and time assessments are based on the full co-ordinated implications of the change).

6. The cost and programme implications are indicated in the boxes provided and the source of funding the change i.e. contingency, VE or compensatory saving will be indicated by Contractor/Consultant / NML. All proposed changes will be included in the Change Control Report prepared by the Client/Consultants.

7. The Change Request is then signed off by the contract administrator and the principal contractor for approval by NML.

NO CHANGES SHOULD BE ACTIONED UNTIL THIS FORMAL PROCESS IS COMPLETED AND WRITTEN APPROVAL IS ATTAINED FROM THE PROJECT SPONSOR OR, IN THEIR ABSENCE, A FORMALLY DELEGATED NAMED PARTY.

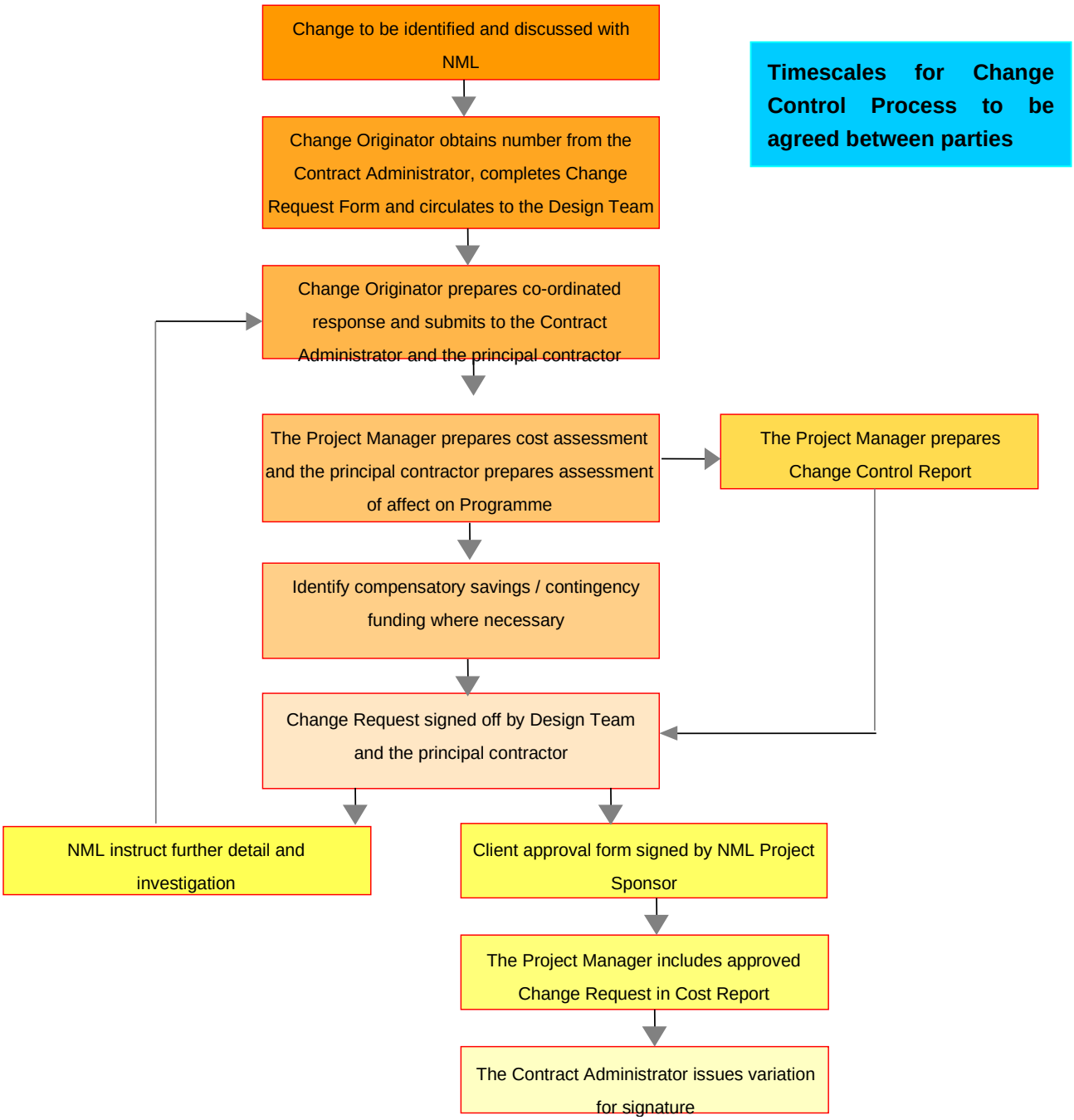
8. The Change Control Status Report will be presented along with the Change Request Forms at formal monthly meetings, or more regularly as required.

9. The Change and its consequential impact, will be discussed and challenged at that meeting, agreed, revised or rejected by NML and if necessary, resubmitted at a subsequent stage.

10. If the Change is approved, the Change Request Form is signed by NML and a Contract Administrator Instruction can then be raised referenced back to the approved Change Control Form. Funds can only be drawn from the appropriate source once approval of the change is given.

11. Only in agreement with NML will Change Proposals be considered and approved outside of the formal Change Control meeting

Change Control Process



CHANGE CONTROL FORM

REQUEST FOR CHANGE **Change Nr**

Date Raised:	Date Response Required:
Proposed Change:	
Proposed by: Architect/Client/Principal Contractor/Other	

Effect to:

Programme

Resources

Construction Cost	**Omit**	**Add**	
			ex VAT
Net Add			
Design Fee:			

Architect Comments: See justification above

Signed For Date

....

Contractor's Comments: None

Signed For Date

....

Cost Managers Comments: The costs are considered fair and reasonable

Signed For Date

....

Client's Comments:

Change APPROVED by National Museums Liverpool Yes No

Signed Project Sponsor Date

....

APPENDIX 1

Contractor's Warranty

APPENDIX 2

Sub-Contractors' Warranty