



Ministry of Housing,
Communities &
Local Government

**Ministry of Housing, Communities and
Local Government**
2 Marsham Street
Westminster
SW1P 4DF

[REDACTED]

By email to: [REDACTED]

Date: 1st December 2021
Our ref: CDP 004 120 141

Dear [REDACTED]

National Windrush Monument

Congratulations on your selection by the Windrush Commemoration Committee for the commission to design the National Windrush Monument. This is an incredibly exciting and significant project, and we are thrilled to be working with you on creating a permanent tribute to celebrate and honour the Windrush generation.

Following the information set out in the artists' detailed brief of March 2021, I write to confirm the terms of the contract between us for the design, creation and installation of the National Windrush Monument (which is defined as the "**Deliverable**" in the enclosed agreement) at London Waterloo railway station.

The Contract, as later defined, is in three parts and comprises:

- (i) the specific contract details ("**Order Form**");
- (ii) general contract conditions ("**Short form Terms**"); and
- (iii) the Annexes which set out the Project Specification and Charges.

For information, on 9 December 2021 the Ministry of Housing, Communities and Local Government ("**MHCLG**") is to change its name to the Department for Levelling Up, Housing and Communities ("**DLUHC**"). Assuming that we execute the contract prior to 9 December 2021, the contracting authority is in the name of MHCLG, but the billing address is given as DLUHC. DLUHC will assume all legal liabilities and obligations of MHCLG and from 9 December 2021 onwards, we shall only refer to DLUHC as the contracting party.

We will accept the Deliverable under the terms of this Contract and intend to transfer the legal title of the Deliverable to Network Rail Limited, the owner of the installation site. Network Rail Limited will then be responsible for the ongoing maintenance of the Deliverable under the terms of a separate agreement.

Please confirm your acceptance of the Contract by signing and returning the Order Form to [REDACTED] at your earliest convenience. We will then arrange for an Order Form to be countersigned, which will create a binding contract between us.

If you have any questions about this agreement, please contact [REDACTED] at [REDACTED].

We look forward to building a successful working relationship and working with you to deliver the National Windrush Monument.

Yours sincerely,

[REDACTED]

Order Form

1. Contract Reference	<p>Buyer: The Ministry of Housing, Communities and Local Government (to be renamed Department for Levelling Up, Housing and Communities (“DLUHC”) during the life of this contract. This will not effect the contract terms.</p> <p>Contract reference: CPD 004 120 141</p>
2. Date	1 ST December 2021
3. Buyer	<p>The Secretary of State for the Ministry of Housing, Communities and Local Government (“MHCLG”)</p> <p>2 Marsham Street London SW1P 4DF United Kingdom</p>
4. Artist	[REDACTED]
5. Contract	<p>The Order Form, Short form Terms and Annexes shall constitute the entire agreement (collectively, the “Contract”) between the Buyer and the Artist.</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings throughout the Contract.</p> <p>In the event of any conflict between this Order Form and the Short form Terms, this Order Form shall prevail.</p>
6. Deliverable	The “Windrush Generation Monument” as described in the Artist’s submission dated 22 June 2021, including any amendments agreed between the Parties during the Term, to be installed at London Waterloo railway station.
7. Specification	The specification for the Deliverable is as set out in Annex 1 to this Contract.
8. Term	The period from 7 October 2021 (which will account for work as already done by the artist prior to contract signature) to 30 June 2022, or any earlier termination as provided for in the Conditions (the “ Expiry Date ”).
9. Charges	The charges for the Deliverable payable by the Buyer and the corresponding milestones for payment, as set out in Annex 2 to this Contract.
10. Payment	<p>All invoices must be sent, quoting a valid purchase order number (PO Number), to:</p> <p>Department for Levelling Up Housing and Communities Attention: DLUHC FSSF CP2P Team 4th Floor (3rd floor from 2022) High Trees Hillfield Road Hemel Hempstead HP2 4XN</p> <p>Within 10 Working Days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number and the details (name and telephone</p>

	<p>number) of your Buyer contact. Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment, please contact our Accounts Payable section by email to:</p> <p>glg@invoices@communities.gov.uk</p>				
11. Payment Milestones	<p>In respect of the Artist's fee, the Artist shall be entitled to invoice as follows: [REDACTED]</p>				
12. MHCLG / DLUHC Representative(s)	<p>For general liaison your contact will be [REDACTED]</p>				
13. Address for notices	<table border="0"> <tr> <td>Buyer:</td><td>Artist:</td></tr> <tr> <td> <p>The Secretary of State for the Ministry of Housing, Communities and Local Government (from 9 December 2021, Department for Levelling Up, Housing and Communities)</p> <p>2 Marsham Street London SW1P 4DF</p> <p>Attention: [REDACTED]</p> <p>Email: [REDACTED]</p> </td><td> <p>[REDACTED]</p> </td></tr> </table>	Buyer:	Artist:	<p>The Secretary of State for the Ministry of Housing, Communities and Local Government (from 9 December 2021, Department for Levelling Up, Housing and Communities)</p> <p>2 Marsham Street London SW1P 4DF</p> <p>Attention: [REDACTED]</p> <p>Email: [REDACTED]</p>	<p>[REDACTED]</p>
Buyer:	Artist:				
<p>The Secretary of State for the Ministry of Housing, Communities and Local Government (from 9 December 2021, Department for Levelling Up, Housing and Communities)</p> <p>2 Marsham Street London SW1P 4DF</p> <p>Attention: [REDACTED]</p> <p>Email: [REDACTED]</p>	<p>[REDACTED]</p>				

Signed for and on behalf of the Secretary of State for the Ministry of Housing, Communities and Local Government	Signed by the Artist
Name: [REDACTED]	Name: [REDACTED]
Date: [REDACTED]	Date: [REDACTED]

Signature: [REDACTED]	Signature: [REDACTED]

Annex 1 – Project Specification

1. PROJECT AIM

- 1.1 The Windrush Commemoration Committee (“**WCC**”), chaired by Baroness Benjamin, is commissioning a permanent, fitting, physical tribute to the Windrush generation to be erected in London Waterloo station. The Ministry of Housing, Communities and Local Government (to be renamed Department for Levelling Up, Housing and Communities (“**DLUHC**”)) is delivering and funding this work in collaboration with the WCC.
- 1.2 The aim is for the Deliverable to be designed, fabricated and delivered by the Artist (and any parties sub-contracted by the artist) in time for its unveiling on Windrush Day, 22 June 2022.

2. OVERVIEW OF REQUIREMENT

- 2.1 The Artist will be responsible for:
 - (a) developing and finalising the design of the Deliverable in conjunction with the Buyer.
 - (b) arranging for and overseeing the fabrication of the Deliverable to completion.
 - (c) ensuring that the Deliverable is safely delivered to the Installation Site on a date and at a time to be agreed between the Parties to allow for its secure installation in good time for the monument unveiling on the 22 June 2022.
 - (d) supporting, as required, the construction, assembly and installation process for the Deliverable, including advising on the desired positioning, finish and details of the Deliverable itself and any in the immediate surrounding area. It is envisaged that this will require travelling to the Installation Site prior to the Deliverable’s unveiling and overseeing the installation process itself.
 - (e) working with the arts consultancy (UP Projects), engineering firm, Network Rail and any construction company and associated architects contracted by the Buyer to ensure adherence to site specifications and safety requirements throughout every stage of the project.
 - (f) Ensuring that the Artist is available to attend in person the unveiling ceremony on 22 June 2022.
 - (g) attending meetings with the Buyer and its partners (whether virtually or in person) in order to provide information on the design and to discuss any issues with construction, installation or delivery, and/or other risks to the programme. Such partners may include the WCC, DLUHC, UP Projects, Network Rail, Ramboll, legal advisors or other third parties contracted or funded by DLUHC.
 - (h) liaising with partners delivering the legacy programme by providing content related to the artist, the background and vision of the design, and the fabrication process for the Deliverable.

- (i) engaging in public relations to answer questions and/or to promote the monument and its lasting legacy.

3. DELIVERABLE SPECIFICATIONS AND SITE

- 3.1 The location for the Deliverable at the Installation Site is intended to be is the upper concourse of London Waterloo station, adjacent to Victory Arch, Exit 5. The site is opposite Platform 19.
- 3.2 The dimensions of the Deliverable footprint are 3 metres (wide) x 1.5 metres (deep) with a height limit of 5 metres and 2 tonnes maximum weight.
- 3.3 There should be no public access between the Deliverable site and the glass barrier/handrail.

Annex 2 – Charges

[REDACTED]

Short form Terms

1. Definitions used in the Contract

In this Contract, unless the context otherwise requires, certain terms have been defined in the Order Form and shall be given those meanings and the following words shall have the following meanings:

“Acceptance Review”	means the pre-Delivery process by which the Buyer or its advisors may assess the Deliverable as set out in clause 4.2;
“Artist”	means the person named as Artist in the Order Form;
“Artist Staff”	all employees, agents, consultants and contractors of the Artist and/or of any subcontractor engaged in the performance of the Artist’s obligations under the Contract;
“Buyer”	means the party identified in the letterhead of the Order Form;
“Buyer Cause”	any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject matter of the Contract and in respect of which the Buyer is liable to the Artist;
“Central Government Body”	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none">a) Government Department;b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);c) Non-Ministerial Department; ord) Executive Agency;
“Charges”	means the charges for the Deliverable as specified in the Order Form and Annex 2;
“Confidential Information”	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Artist, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential. The following will not be considered confidential information: (i) information that is publically known (other than by breach of this contract);

or (ii) was lawfully in the possession of the receiving Party before the date of disclosure without any obligation of confidentiality; or (iii) was received on a non-confidential basis;

“Contract”	means this contract between the Buyer and the Artist which comes into effect when the last of the Parties signs the Order Form. It comprises the Order Form, its Annexes and these ‘Short form Terms’;
“Date of Delivery”	means that date by which the Deliverable must be Delivered to the Installation Site;
“Deliver”	means, following the satisfactory completion of the Acceptance Review, to deliver the Deliverable at the Installation Site. Delivery shall include unloading, unpackaging and any other specific arrangements agreed between the Parties. “Delivered” and “Delivery” shall be construed accordingly;
“Existing IPR”	any and all IPRs that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise) including, without limitation, any and all documents, data, methodologies, software, and/or other materials developed or acquired by a Party prior to the Term;
“Expiry Date”	means the date for expiry of the Contract as set out in the Order Form;
“FOIA”	means the Freedom of Information Act 2000 of the United Kingdom together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
“Force Majeure Event”	any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding : i) any industrial dispute relating to the Artist, the Artist Staff (including any subsets of them) or any other failure in the Artist or the subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;
“Good Industry Practice”	standards, practices, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
“Insolvency Event”	in respect of a person: i) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent

amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;

“Installation”	placing in situ and permanently affixing to the ground in a manner, and by whom, to be agreed between the Parties and Network Rail Limited;
“Installation Site”	means London Waterloo railway station;
“IPR”	“IPR” stands for “Intellectual Property Rights” and means any and all rights arising in any jurisdiction throughout the world in and to (a) patents, patent disclosures, and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, and other similar designations of source or origin, together with the goodwill in any of the foregoing, (c) copyrights and works of authorship (whether copyrightable or not) (d) trade secrets, know-how, and other confidential or proprietary information, and (e) all other intellectual property, in each case whether registered or unregistered, and including all registrations and applications for such rights and renewals or extensions thereof, and all similar or equivalent rights or forms of protection in any part of the world;
“Metal Conservator”	means the person appointed by the Buyer to advise the Buyer on the Acceptance Process and whether the Deliverable should be accepted;
“New IPR”	any and all IPRs in any materials created or developed by, or on behalf of, the Artist pursuant to the Contract but shall not include the Artist's Existing IPR. New IPRs may include but are not limited to calculations, designs, details, drawings, plans, reports, specifications, surveys and other documents (including electronically stored information) prepared by or on behalf of the artist in connection with the Deliverable;
“Order Form”	means the document titled “Order Form” and constituting a part of the Contract between Buyer and Artist;
“Party”	the Artist or the Buyer (as appropriate) and “Parties” shall mean both of them;
“Purchase Order Number”	means the Buyer's unique number relating to the order for the Deliverable to be supplied by the Artist to the Buyer in accordance with the terms of the Contract;
“Regulations”	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;

“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Specification”	means the specification for the Deliverable (including as to quantity, description and quality) as specified in Annex 1;
“Term”	means the period from the start date of the Contract set out in the Order Form to the Expiry Date as such period may be extended or otherwise terminated in accordance with the terms and conditions of the Contract;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

2. Understanding the Contract

In the Contract, unless the context otherwise requires:

- 2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 2.3 the headings in this Contract are for information only and do not affect the interpretation of the Contract;
- 2.4 references to “writing” include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.5 the singular includes the plural and vice versa;
- 2.6 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law; and
- 2.7 the word “including”, “for example” and similar words shall be understood as if they were immediately followed by the words “without limitation”.

3. How the Contract works

- 3.1 The Order Form is an offer by the Buyer to commission the Deliverable subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Artist is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Artist.

- 3.3 The Artist warrants and represents that its tender document and all statements made and documents submitted as part of the procurement of the Deliverable are and remain true and accurate.

4. What the Artist needs to deliver

- 4.1 The Artist must provide the Deliverable:
- (a) in accordance with the Specification, including ensuring that the Deliverable is structurally sound and appropriate for use for the purposes set out in the Specification;
 - (b) to a professional standard;
 - (c) using reasonable skill and care;
 - (d) using Good Industry Practice;
 - (e) using its own policies, processes and internal quality control measures as long as they do not conflict with the Contract;
 - (f) on the dates agreed; and
 - (g) in such a way as to comply with all applicable laws.
- 4.2 Prior to Delivery of the Deliverable by the Artist, the Artist shall make the Deliverable available for review by the Metal Conservator, the Buyer and any other advisors to the Buyer as may be required to ensure the Deliverable meets the criteria set out at clause 0 (the “**Acceptance Review**”). The Acceptance Review shall take place at such times and in such locations as may be agreed between the Parties from time to time.
- 4.3 If the Deliverable passes the Acceptance Review, the Artist may Deliver the Deliverable and the Buyer shall accept Delivery (“**Acceptance**”). The Artist shall make no further changes to the Deliverable following Acceptance, unless otherwise agreed in writing by the Parties.
- 4.4 If the Deliverable fails the Acceptance Review, the Parties shall work together in good faith to create a remediation plan for the Deliverable (the “**Remediation Plan**”), identifying, as far as possible, the steps required to make good any defects identified in the Acceptance Review, including timescale and responsibility for costs. The Deliverable will be re-presented for Acceptance Review on the date set out in the Remediation Plan.
- 4.5 If the Deliverable passes the second Acceptance Review (“**Second Acceptance Review**”), the Artist may Deliver the Deliverable. The Artist shall make no further changes to the Deliverable following the Second Acceptance Review, unless otherwise agreed in writing by the Parties.
- 4.6 If the Deliverable fails the Second Acceptance Review, the Parties, and any further third parties as may be nominated by either Party, shall work together in good faith to create a further remediation plan for the Deliverable (a “**Second Remediation Plan**”), identifying the steps required to make good any defects identified in the Second Acceptance Review, including timescale, the Party or third party responsible for the remedial work and responsibility for costs. The Deliverable will be re-presented for Acceptance Review on the date set out in the Second Remediation Plan.

- 4.7 If the Deliverable passes the third Acceptance Review ("**Third Acceptance Review**"), the Artist may Deliver the Deliverable. The Artist shall make no further changes to the Deliverable following the Third Acceptance Review, unless otherwise agreed in writing by the Parties.
- 4.8 In the event that the Deliverable fails to pass a Third Acceptance Review, the provisions of clause 11.3(b)(ii) shall apply.
- 4.9 The Parties anticipate that the Deliverable will generate media interest. The Artist and Buyer shall work together during the Term to identify and respond to specific public relations opportunities and agree an approach to social media posts. Engagement with the press will be arranged through the Buyer's communications team, and the Artist shall refrain from any contact with the press not agreed in advance with the Buyer.
- 4.10 The Buyer may ask the Artist to:
- (a) contribute to press statements during the Term including but not limited to information to contextualise the design and raise public awareness of the project to which the Deliverable relates;
 - (b) participate in up to three media opportunities in relation to the design process of the Monument to take place in the period following the selection of the Artist and prior to the unveiling ceremony.
- 4.11 In addition to the media opportunities at clause 4.10(b), the Artist shall be expected to attend the unveiling ceremony in person on a date to be confirmed by the Buyer, but which is currently scheduled for 22 June 2022 at the Installation Site.

5. Pricing and payments

- 5.1 The Artist shall be entitled to invoice the Buyer for the Charges as set out in Annex 2 and at the relevant Payment Milestone or other agreed date, as applicable.
- 5.2 Where the Charges include third-party costs or fees, details of those fees and supporting receipts and invoices, where relevant, shall be provided to the Buyer with the invoice to which they relate. The Artist shall raise invoices promptly and in any event within 90 days from when the charges are due.
- 5.3 All Charges:
- (a) include VAT, which is payable on provision of a valid VAT invoice;
 - (b) shall include all costs related to the stage of work in connection with the Deliverable as specified in the invoice.
- 5.4 The Buyer must pay the Artist within thirty (30) days of receipt by the Buyer of a valid, undisputed invoice including the Purchase Order Number.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Artist shall not suspend the provision of the Deliverable. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 32.
- 5.6 The Buyer may retain or set off payment of any amount owed to it by the Artist if notice and reasons are provided.

- 5.7 The Artist must ensure that all subcontractors are paid in full, within the time set out between the Artist and subcontractor in their agreed payment terms.

6. The Buyer's obligations to the Artist

- 6.1 If Artist fails to comply with the Contract as a result of a Buyer Cause:
- (a) the Buyer cannot terminate the Contract under clause 11;
 - (b) the Artist is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
 - (c) the Artist is entitled to additional time needed to deliver the Deliverable.
- 6.2 Clause 0 only applies if the Artist:
- (a) gives notice to the Buyer within 10 Working Days of becoming aware;
 - (b) demonstrates that the failure only happened because of the Buyer Cause;
 - (c) makes reasonable attempts to mitigate the impact of the Buyer Cause.

7. Record keeping and reporting

- 7.1 The Artist must ensure that it or its suitably qualified representatives attend progress meetings with the Buyer (such attendance may be virtual, as agreed between the Parties) and provide progress reports when specified in the Order Form, or as agreed between the Parties from time to time.
- 7.2 The Artist must keep and maintain full and accurate records and accounts on everything to do with the Contract during the Term and for seven years after the Expiry Date.
- 7.3 Where required by the Buyer, the Artist must allow an auditor appointed by the Buyer to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit. The Artist must provide information to the auditor and reasonable co-operation at their request.
- 7.4 If the Artist reasonably believes that it may not be able to provide any part of the Deliverable, or meet an agreed deadline, it must immediately:
- (a) tell the Buyer and give reasons;
 - (b) propose corrective action;
 - (c) provide a deadline for completing the corrective action.
- 7.5 If the Buyer, acting reasonably, is concerned as to the financial or other stability of the Artist such that it may impact on the continued performance of the Contract then the Buyer may:
- (a) require that the Artist provide to the Buyer (for its approval) a plan setting out how the Artist will ensure continued performance of the Contract and the Artist will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Artist shall act in accordance with such plan and report to the Buyer on demand; and
 - (b) if the Artist fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Buyer notifies).

8. Artist staff

- 8.1 The Artist Staff involved in the performance of the Contract must:
- (a) be appropriately trained and qualified;
 - (b) be vetted using Good Industry Practice;
 - (c) comply with all conduct requirements when on third party premises in the performance of this Contract.
- 8.2 In the event that the Artist enters into any subcontract in connection with this Contract it shall:
- (a) remain responsible to the Buyer for the performance of its obligations under the agreement notwithstanding the appointment of any subcontractor and be responsible for the acts and omissions of its subcontractors as if they were its own;
 - (b) procure the assignment to it with full title guarantee of all IPRs created by the subcontractors in connection with the Contract; and
 - (c) impose obligations on its subcontractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the subcontractor complies with such terms.
- 8.3 If requested, the Artist must replace any person whose acts or omissions have caused the Artist to breach clause 8.

9. Rights and protection

- 9.1 The Artist warrants and represents that:
- (a) the Contract is executed by it or its authorised representative;
 - (b) it has full capacity and authority to enter into the Contract;
 - (c) it has the expertise, resources and skill necessary to satisfy the Contract and complete the Deliverable as set out in the Specification;
 - (d) it will at all times allocate sufficient resources and appropriate expertise to the Contract;
 - (e) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
 - (f) it maintains all necessary rights, authorisations, licences and consents to perform all its obligations under the Contract;
 - (g) it doesn't have any contractual obligations or other conflicts of interest which are likely to have a material adverse effect on its ability to perform the Contract;
 - (h) it is not impacted by an Insolvency Event; and
 - (i) the proposed use of the Deliverable as set out in this Contract will not infringe the intellectual property rights of any third party.
- 9.2 The Artist further warrants and represents that the Deliverable, and to the extent relevant, any preparatory work made by the Artist in connection with the Deliverable,

will be original and not copied wholly or substantially from any other works anywhere in the world.

- 9.3 If either Party becomes aware of a representation or warranty that becomes untrue or misleading, it will notify the other Party immediately.
- 9.4 The Artist agrees to indemnify the Buyer against all losses, damages, costs or expenses (including professional fees and fines) against each of the following:
- (a) misconduct of the Artist, any of its subcontractor and/or Artist Staff that impacts the Contract;
 - (b) any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property right arising out of, or in connection with, the Deliverable (an "**IPR Claim**"). If an IPR Claim is asserted against Artist, then Artist may at its own expense and the Buyer's sole option: (1) obtain for the Buyer a licence to use the material which is the subject of the IPR Claim without infringing any third-party intellectual property rights; (2) replace or modify the relevant element with a substitute that doesn't infringe intellectual property rights without adversely affecting the nature and use of the Deliverable;
 - (c) non-payment by the Artist of any tax or National Insurance;
 - (d) any costs resulting from any default by the Artist relating to any applicable law to do with the Contract and/or Deliverable.
- 9.5 Any third-party warranties and indemnities covering the physical Deliverable must be assigned for the Buyer's benefit by the Artist.

10. Intellectual Property Rights (IPRs)

- 10.1 Nothing herein shall transfer any right or title in the Existing IPRs to the other Party and each Party keeps ownership of its own Existing IPRs. The Artist reserves all rights not expressly granted to Buyer under this Contract.
- 10.2 Any New IPRs created under or in connection with the Contract are owned by the Party creating it.
- 10.3 During the Term, each Party grants the other Party a right to use the Existing IPRs or New IPRs for the purpose of fulfilling its obligations under the Contract and in each case only for such duration as may be desirable for the purpose of performing the Contract, unless otherwise agreed in writing by the Party granting the licence.
- 10.4 The Artist hereby grants to the Buyer a perpetual, irrevocable, royalty-free, assignable, sublicensable, non-exclusive licence to:
- (a) use any New IPRs for the purpose of maintenance and repair of the Deliverable;
 - (b) photograph the Deliverable and use such images in any external and internal communications (including media, websites, email, video and print).
- 10.5 Ownership of the physical Deliverable shall pass to the Buyer on the Date of Delivery or such earlier date as may be agreed between the Parties. Unless otherwise agreed in writing by the Parties, the Artist shall retain all ownership of IPRs in the Deliverable and shall not waive its moral rights.

- 10.6 The Artist acknowledges and agrees that the Buyer shall use the Artist's name and information about it in connection with the Deliverable and for the purpose of press and publicity in connection with the Deliverable. Where the Buyer references the Deliverable, the Buyer shall credit the Artist as the creator.

11. Ending the contract

- 11.1 The Contract takes effect on the date specified in the Order Form and ends on the Expiry Date or earlier if required by Law.
- 11.2 The following clauses survive the termination of the Contract: 7.2, 9, 10, 11, 14, 15, 16, 17, 18, 32, 33 and any clauses which are expressly or by implication intended to continue.

11.3 When the Parties can end the Contract

- (a) If any of the following events happen, either Party has the right to immediately terminate the Contract by issuing a termination notice in writing to the other Party:
- (i) if a Party repeatedly breaches the Contract in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
 - (ii) if a Party is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the breaching Party's receiving notice specifying the breach and requiring it to be remedied;
- (b) If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Artist:
- (i) if the Artist declines to take the steps agreed by it as set out in any Remediation Plan;
 - (ii) if the Deliverable fails a Third Acceptance Review;
 - (iii) if the Buyer discovers that the Artist was in one of the situations in 57(1) or 57(2) of the Regulations at the time the Contract was awarded;
 - (iv) the Artist, the Artist's Staff or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them.

11.4 What happens if the Contract ends?

Where the Buyer terminates the Contract under clause 11.3 all of the following apply:

- (a) the Buyer's payment obligations under the terminated Contract stop immediately; and
- (b) accumulated rights of the Parties are not affected.

12. How much you can be held responsible for

- 12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 100% of the Charges paid or payable to the Artist.
- 12.2 No Party is liable to the other for:
- (a) any indirect losses;
 - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

- 12.3 In spite of clause 12.1, neither Party limits or excludes any of the following:
- (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;
 - (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
 - (c) any liability that cannot be excluded or limited by law.
- 12.4 In spite of clause 12.1, the Artist does not limit or exclude its liability for any indemnity given under clause 9.4.
- 12.5 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.

13. Obeying the law

- 13.1 The Artist must, in connection with provision of the Deliverable, use reasonable endeavours to:
- (a) comply and procure that its subcontractors comply with the Supplier Code of Conduct appearing at (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf) and such other corporate social responsibility requirements as the Buyer may notify to the Artist from time to time;
 - (b) support the Buyer in fulfilling its Public Sector Equality duty under s149 of the Equality Act 2010; and
 - (c) not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment.

14. What you must keep confidential

- 14.1 Subject to clause 14.3, each Party agrees the terms of this agreement are not Confidential Information and may be published.
- 14.2 The Artist must not exploit the artwork or any designs produced in connection with the Deliverable for any purpose, whether commercial or non-commercial, during the Term without the written agreement of the Buyer.
- 14.3 Each Party must:
- (a) keep all Confidential Information it receives confidential and secure;
 - (b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract;
 - (c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 14.4 In spite of clause 14.3, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:
- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - (b) to its auditors or for the purposes of regulatory requirements;

- (c) on a confidential basis, to its professional advisers on a need-to-know basis;
 - (d) to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 14.5 The Artist may disclose Confidential Information on a confidential basis to Artist Staff on a need-to-know basis to allow the Artist to meet its obligations under the Contract. The Artist Staff must enter into a direct confidentiality agreement with the Buyer at its request.
- 14.6 The Buyer may disclose Confidential Information in any of the following cases:
 - (a) on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
 - (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
 - (c) if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - (d) where requested by Parliament;
 - (e) under clause 15.
- 14.7 For the purposes of clauses 14.4 to 14.6 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 14.
- 14.8 Information which is exempt from disclosure by clause 15 is not Confidential Information.
- 14.9 Subject to clauses 4.9 and 4.10 the Artist must not make any press announcement or publicise the Contract or the Deliverable or any part of it in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Artist Staff do not either.
- 14.10 All publicity in connection with the Deliverable during the Term shall be managed by the Buyer.

15. When you can share information

- 15.1 The Artist must tell the Buyer within 3 Working Days if it receives a Request For Information.
- 15.2 Within the required timescales the Artist must give the Buyer full co-operation and information needed so the Buyer can:
 - (a) comply with any Freedom of Information Act (FOIA) request;
 - (b) comply with any Environmental Information Regulations (EIR) request.
- 15.3 The Buyer may talk to the Artist to help it decide whether to publish information under clause 15. However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

16. Invalid parts of the contract

If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

17. No other terms apply

The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

18. Other people's rights in a contract

No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third-party rights and remedies that exist independently from CRTPA.

19. Circumstances beyond your control

- 19.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
 - (a) provides written notice to the other Party;
 - (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 19.2 Either party can partially or fully terminate the Contract if the provision of the Deliverable is materially affected by a Force Majeure Event which lasts for 90 days continuously.
- 19.3 Where a Party terminates under clause 19.2:
 - (a) each party must cover its own losses;
 - (b) clauses 11.4(a) and 11.4(b) apply.

20. Relationships created by the contract

The Contract does not create a partnership, joint venture or employment relationship. The Artist must represent themselves accordingly and ensure others do so.

21. Giving up contract rights

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

22. Transferring responsibilities

- 22.1 The Artist cannot assign the Contract.
- 22.2 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.

- 22.3 When the Buyer uses its rights under clause 22.2 the Artist must enter into a novation agreement in the form that the Buyer specifies.
- 22.4 The Artist remains responsible for all acts and omissions of the Artist Staff as if they were its own.
- 22.5 If the Buyer asks the Artist for details about subcontractors, the Artist must provide details of subcontractors at all levels of the supply chain including:
- (a) their name;
 - (b) the scope of their appointment;
 - (c) the duration of their appointment.

23. Changing the contract

- 23.1 Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties.

24. How to communicate about the contract

- 24.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00 pm GMT/BST as applicable on a Working Day. Otherwise, the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.
- 24.2 Notices to the Buyer or Artist must be sent to their address in the Order Form.
- 24.3 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

25. Preventing fraud, bribery and corruption

- 25.1 The Artist shall not:
- (a) commit any criminal offence referred to in the Regulations 57(1) and 57(2);
 - (b) offer, give, or agree to give anything, to any person (whether working for or engaged by the Buyer or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.
- 25.2 The Artist shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with Good Industry Practice, to prevent any matters referred to in clause 0 and any fraud by the Artist Staff and the Artist in connection with the Contract and shall notify the Buyer immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.
- 25.3 If the Artist or the Artist Staff engage in conduct prohibited by clause 0 or commit fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:

- (a) terminate the Contract and recover from the Artist the amount of any loss suffered by the Buyer resulting from the termination, including the cost reasonably incurred by the Buyer of making other arrangements for the supply of the Deliverable and any additional expenditure incurred by the Buyer throughout the remainder of the Contract; or
- (b) recover in full from the Artist any other loss sustained by the Buyer in consequence of any breach of this clause.

26. Equality, diversity and human rights

- 26.1 The Artist must follow all applicable equality law when they perform their obligations under the Contract, including:
- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;
 - (b) any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 26.2 The Artist must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

27. Health and safety and Insurance

- 27.1 The Artist shall arrange appropriate insurance cover in respect of the Contract to include public liability insurance in the sum of five million (£5,000,000) GBP.
- 27.2 The Buyer may notify the Artist of certain health and safety requirements stipulated by the owner of the Installation Site.
- 27.3 The Artist must perform its obligations meeting the requirements of:
- (a) all applicable law regarding health and safety;
 - (b) the current health and safety policy of any third party as provided to it while at third party premises in connection with the Contract.
- 27.4 The Artist and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer or third-party premises that relate to the performance of the Contract.

28. Environment

- 28.1 Where relevant, the Artist must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.
- 28.2 The Artist must ensure that Artist Staff are aware of the Buyer's Environmental Policy if applicable.

29. Tax

- 29.1 The Artist must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any

interest or any fines. The Buyer cannot terminate the Contract where the Artist has not paid a minor tax or social security contribution.

- 29.2 Where the Artist or any Artist Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Artist must both:
- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions;
 - (b) indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverable by the Artist or any of the Artist Staff.

30. Conflict of interest

- 30.1 The Artist must take action to ensure that neither the Artist nor the Artist Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Artist or the Artist Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer.
- 30.2 The Artist must promptly notify and provide details to the Buyer if a conflict of interest happens or is expected to happen.
- 30.3 The Buyer can terminate its Contract immediately by giving notice in writing to the Artist or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

31. Reporting a breach of the contract

- 31.1 As soon as it is aware of it the Artist and Artist Staff must report to the Buyer any actual or suspected breach of law, clause 0, or clauses 25 to 30.
- 31.2 The Artist must not retaliate against any of the Artist Staff who in good faith reports a breach listed in clause 0.

32. Resolving disputes

- 32.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute.
- 32.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clause 32.3.
- 32.3 The Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- (a) determine the dispute;
- (b) grant interim remedies;
- (c) grant any other provisional or protective relief.

32.4 The Artist cannot suspend the performance of the Contract during any dispute.

33. Which law applies

This Contract and any issues arising out of, or connected to it, are governed by English law.