
Agreement

This Agreement is made the _____ 20 _____

Between

The Employer THE BOARD OF TRUSTEES OF NATIONAL
MUSEUMS & GALLERIES ON
MERSEYSIDE (Company No. _____)^[1]

of/whose registered office is at WORLD MUSEUM, WILLIAM
BROWN STREET, LIVERPOOL, L3 8EN

And

The Contractor _____

(Company No. _____)^[1]

of/whose registered office is at _____

[1] Where the Employer or Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number.

Recitals

Whereas

First the Employer wishes to have the following work carried out^[2]:

BUGHOUSE FIT OUT

at _____

_____ ('the Works')
under the direction of the Architect/Contract Administrator referred to in Article 3;

Second the Employer has had the following documents prepared which show and describe the work to be done:

the drawings ~~numbered~~/listed in as per attached. ('the Contract Drawings')^[3]^[4]

a Specification ('the Contract Specification')^[3]

Work Schedules^[3]

which for identification have been signed or Initialled by or on behalf of each Party; those documents together with this Agreement, the Conditions and, if applicable, a Schedule of Rates as referred to in the Third Recital (collectively 'the Contract Documents')^[5] are annexed to this Agreement^[6];

Third the Contractor has supplied the Employer with a copy of the priced Contract Specification or Work Schedules or with a Schedule of Rates^[3];

Fourth 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;

Fifth 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;

[2] State nature and location of intended works.

[3] Delete as appropriate.

[4] State the identifying numbers of the Contract Drawings or identify the schedule of drawings or other document listing them.

[5] It is envisaged that in those cases where there is an applicable BIM or other communications protocol this will be included within one of the Contract Documents identified in the Second Recital.

[6] Where a Contract Document has been priced by the Contractor it is that version of the document that should be annexed.

Sixth ~~where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;~~

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

Articles

Now it is hereby agreed as follows

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 will 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 becomes payable under this Contract.

Article 3: Architect/Contract Administrator

For the purposes of this Contract the ~~Architect~~ Contract Administrator^[7] is

JENNIFER GREEN
of NATIONAL MUSEUMS LIVERPOOL

or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer nominates (such nomination to be made within 14 days of the cessation). No replacement appointee as Architect and/or Contract Administrator shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

[7] Unless the person appointed by or under Article 3 is entitled to use the title 'Architect' under the Architects Act 1997, the term 'Architect' shall so long as that person holds that post be deemed deleted throughout this Contract. Any appointee as Contract Administrator should be suitably experienced for the role. Irrespective of experience or qualifications, the Employer should not at any time appoint himself to the role without the Contractor's prior agreement.

Article 4: Principal Designer

The Principal Designer for the purposes of the CDM Regulations is the ~~Architect/Contract Administrator~~

(or)^[8] _____

of _____

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

Article 5: Principal Contractor

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

(or)^[9] _____

of _____

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

Article 6: Adjudication

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 7.2.^[9]

Article 7: Arbitration

Where Article 7 applies^[10] then, subject to Article 6 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with Schedule 1 and the JCT 2016 edition of the Construction Industry Model Arbitration Rules (CIMAR)^[11]. The exceptions to this Article 7 are:

any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and

- [8] Insert the name of the Principal Designer in Article 4 if the Architect/Contract Administrator is not to fulfil that role and that of the Principal Contractor in Article 5 if that is to be a person other than the Contractor. Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term 'contractor' is broadly defined by the regulations and treats the Contractor's sub-contractors as separate contractors.
- [9] As to adjudication in cases where the Employer is a residential occupier within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996, see the Guidance Notes.
- [10] If it is intended, subject to the right of adjudication and exceptions stated in Article 7, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars must state that the arbitration provisions of Article 7 and Schedule 1 apply and the words "do not apply" must be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 8 (see also clause 1.8).
- [11] See the Guidance Notes.

- any disputes or differences in connection with the enforcement of any decision of an Adjudicator.

Article 8: Legal proceedings⁽¹⁰⁾

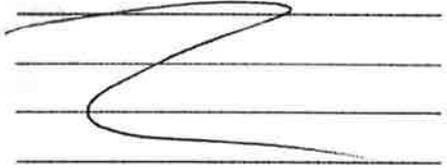
Subject to Article 6 and (where it applies) to Article 7, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

Article 9: Incorporation of Special Conditions

The Articles, Conditions and Schedules include and shall be subject to the Special Conditions annexed hereto.

Contract Particulars

*Note: An asterisk * indicates text that is to be deleted as appropriate.*

<i>Clause etc.</i>	<i>Subject</i>	
Fourth Recital and Schedule 2 (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2)	Base Date	<u>5 DAYS PRIOR TO TENDER RETURN</u>
Fourth Recital and clause 4.2	Construction Industry Scheme (CIS)	Employer at the Base Date * is a contractor /is not a 'contractor' for the purposes of the CIS
Fifth Recital	CDM Regulations ^[12]	the project * is/ is not notifiable
Sixth Recital	Framework Agreement (if applicable) (State date, title and parties.)	
Seventh Recital and Schedule 3	Supplemental Provisions ^[13] (Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)	
	Collaborative working	* Supplemental Provision 1 applies/ does not apply
	Health and safety	* Supplemental Provision 2 applies/ does not apply
	Cost savings and value improvements	* Supplemental Provision 3 applies/ does not apply
	Sustainable development and environmental considerations	* Supplemental Provision 4 applies/ does not apply
	Performance Indicators and monitoring	* Supplemental Provision 5 applies/ does not apply

[12] Under the CDM Regulations 2015 a project is notifiable if the construction work on a construction site is scheduled either to last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project or to exceed 500 person days.

[13] Supplemental Provision 7 (Transparency) applies only where the Employer is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies; Supplemental Provision 8 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

Notification and negotiation of disputes

Where Supplemental Provision 6 applies, the respective nominees of the Parties are

Supplemental Provision 6
applies/~~does not apply~~

Employer's nominee

Contractor's nominee

or such replacement as each Party may notify to the other from time to time

Article 7

Arbitration
(If neither entry is deleted, Article 7 and Schedule 1 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 7 and Schedule 1 apply.)^[14]

Article 7 and Schedule 1 (Arbitration)
applies/~~does not apply~~

2.2 Works commencement date

20

2.2 Date for Completion

27 SEPTEMBER 2019
or such later date for completion as is fixed under clause 2.7

2.8 Liquidated damages

at the rate of

£ 900 per WK ^[15]

2.10 Rectification Period
(The period is 3 months unless a different period is stated.)

12 months ^[16]
from the date of practical completion

4.3 Interim payments – Interim Valuation Dates^[17]
(Unless otherwise stated, the first Interim Valuation Date is one month after the Works commencement date specified in these Particulars (against the reference to clause 2.2) and thereafter at monthly intervals.)

The first Interim Valuation Date is

20
and thereafter at intervals of

[14] On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Guidance Notes. See also footnote [10].

[15] Insert 'day', 'week' or other period.

[16] An insertion is needed here only if the default position is not to apply. If no retention is required, insert '100' in the percentage entries for clause 4.3.

[17] The first Interim Valuation Date should not be more than one month after the Works commencement date and the intervals between Interim Valuation Dates should not be more than one month.

4.3	Payments due prior to practical completion – percentage of the total value of work etc. <i>(The percentage is 95 per cent unless a different rate is stated.)</i>	<u>95</u> per cent ^[18]
4.3	Payments becoming due on or after practical completion – percentage of the total amount to be paid to the Contractor <i>(The percentage is 97½ per cent unless a different rate is stated.)</i>	<u>97.5</u> per cent ^[18]
4.3 and 4.8	Fluctuations provision <i>(Unless another provision or entry is selected, Schedule 2 applies.)</i>	<ul style="list-style-type: none"> * Schedule 2 (Contribution, levy and tax changes) applies/ * no fluctuations provision applies/ * the following fluctuations provision applies
4.3 and 4.8	Percentage addition for Schedule 2 (paragraph 13) (if applicable)	_____ per cent
4.8.1	Supply of documentation for computation of amount to be finally certified <i>(The period is 3 months unless a different period is stated.)</i>	_____ months ^[18] from the date of practical completion
5.3	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than	£ <u>5,000,000</u> for any one occurrence or series of occurrences arising out of one event
5.4A, 5.4B and 5.4C	Insurance of the Works etc. – alternative provisions ^[18] *SEE BELOW	<ul style="list-style-type: none"> * Clause 5.4A (Works insurance by Contractor in Joint Names) applies/ * Clause 5.4B (Works and existing structures insurance by Employer in Joint Names) applies/ * Clause 5.4C (Works and existing structures insurance by other means) applies
5.4A and 5.4B	Percentage to cover professional fees <i>(If no other percentage is stated, it shall be 15 per cent.)</i>	_____ per cent

***None of the insurance options apply. Government Policy of non-insurance as it applies to the employers. Any claim will be dealt with on its own merits and on a basis of strict liability.**

[18] As to choice of applicable insurance provisions, see the Guidance Notes. Where there are existing structures, it is vital that any prospective Employer – in particular any Employer who is a tenant or a domestic homeowner – who is not familiar with clause 5.4B and the possible solutions under clause 5.4C, or an appropriate member of their professional team, should consult the Employer's insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

5.4C Insurance arrangements – details of the required policy or policies are set out in the following document(s)

7.2 Adjudication^[19]

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)^[20]
(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)

The Adjudicator is _____

- * Royal Institute of British Architects
- * The Royal Institution of Chartered Surveyors
- * constructionadjudicators.com^[21]
- * Association of Independent Construction Adjudicators^[22]
- * Chartered Institute of Arbitrators

Schedule 1
(paragraph 2.1)

Arbitration^[23] – appointor of Arbitrator (and of any replacement)^[24]
(If no appointor is selected, the appointor shall be the President or a Vice-President of the Royal Institute of British Architects.)

- President or a Vice-President:
- * Royal Institute of British Architects
 - * The Royal Institution of Chartered Surveyors
 - * Chartered Institute of Arbitrators

[19] The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body. The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.

[20] Delete all but one of the nominating bodies asterisked.

[21] constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.

[22] Association of Independent Construction Adjudicators is controlled by and acts as an agent of the National Specialist Contractors' Council for the purpose of the nomination of adjudicators.

[23] This only applies where the Contract Particulars state (against the reference to Article 7) that Article 7 and Schedule 1 (Arbitration) apply.

[24] Delete all but one of the bodies asterisked.

Attestation

Note on Execution

This Agreement should be executed by both the Employer and the Contractor either under hand or as a deed. As to the main factor relevant to that choice, see the Guidance Notes.

Execution under hand

If this Agreement is to be executed under hand, use the form set out on the following page. Each Party or his authorised representative should sign where indicated in the presence of a witness who should then sign and set out his name and address.

Execution as a Deed

If this Agreement is to be executed as a deed, each Party should use the relevant form marked 'Execution as a Deed' in accordance with the notes provided.

Other forms of Attestation

In cases where the forms of attestation set out are not appropriate, e.g. in the case of certain housing associations and partnerships or if a Party wishes an attorney to execute this Agreement on his behalf, the appropriate form(s) may be inserted in the vacant space opposite and/or below.

As witness

the hands of the Parties
or their duly authorised representatives

Signed by or on behalf of
the Employer

In the presence of:

witness' signature

witness' name

witness' address

Signed by or on behalf of
the Contractor

In the presence of:

witness' signature

witness' name

witness' address

Notes on Execution as a Deed

- 1 For the purposes of execution as a deed, two forms are provided for execution, one for the Employer and the other for the Contractor. Each form provides four methods of execution, (A) to (D), for use as appropriate. The full name of the Employer or Contractor (whether an individual, a company or other body) should be inserted where indicated at the commencement of the relevant form. This applies irrespective of the method used.
- 2 For public and private companies incorporated and registered under the Companies Acts, the three principal methods of execution as a deed are:
 - (A) through signature by a Director and the Company Secretary or by two Directors;
 - (B) by affixing the company's common seal in the presence of a Director and the Company Secretary or of two Directors or other duly authorised officers; or
 - (C) signature by a single Director in the presence of a witness who attests the signature.

Methods (A) and (C) are available to public and private companies whether or not they have a common seal. (Method (C) was introduced by section 44(2)(b) of the Companies Act 2006.) Methods (A) and (C) are not available under companies legislation to local authorities or to certain other bodies corporate, e.g. bodies incorporated by letters patent or private Act of Parliament that are not registered under companies legislation and such bodies may only use method (B).
- 3 Where method (A) is being used, delete the inappropriate words and insert in the spaces indicated the names of the two Directors, or of the Director and the Company Secretary, who are to sign.
- 4 If method (B) (affixing the common seal) is adopted in cases where either or both the authorised officers attesting its affixation are not themselves a Director or the Company Secretary, their respective office(s) should be substituted for the reference(s) to Director and/or to Company Secretary/Director. (In the case of execution by bodies that are not companies, the reference to "Company" under the second signature should be deleted where appropriate.)
- 5 Method (C) (execution by a single Director) has been introduced primarily, but not exclusively, for 'single officer' companies. The Director should sign where indicated in the presence of a witness who should then sign and set out his name and address.
- 6 Where the Employer or Contractor is an individual, he should use method (D) and sign where indicated in the presence of a witness who should then sign and set out his name and address.

Executed as a Deed by the Employer

namely ¹ _____

(A) acting by a Director and the Company Secretary/two Directors of the company ^{2,3}

(Print name of signatory) and _____
(Print name of signatory)

Signature Director Signature Company Secretary/Director

(B) by affixing hereto the common seal of the company/other body corporate ^{2,4}

in the presence of

Signature Director

Signature Company Secretary/Director



[Common seal of company]

(C) by attested signature of a single Director of the company ^{2,5}

Signature Director

In the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

(D) by attested signature of the individual ⁶

Signature

In the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.

