

Horniman Museum and Gardens

Standard Terms & Conditions of Purchase for Goods and Services (November 2018)

1. Definitions

In these conditions "HMG" means the Horniman Public Museum & Public Park Trust (known as the Horniman Museum and Gardens); "Contract" means the Purchase Order together with these Conditions and any other documents attached or referred to therein; "Data" means all designs, models, mock ups, drawings, prints, samples, analysis results, data and documents of all kinds, materials, photographs, negatives, diskettes, films, software or any similar items supplied by the HMG or procured from the Supplier of any third party for the purposes of the Contract; "Goods" means the goods specified in the Purchase Order (or amendment thereof) to be supplied by the Supplier in accordance with the Contract. "IPRs" means all copyright and other intellectual property rights, howsoever arising throughout the world and in whatever media or format, whether or not registered, including patents, trademarks, service marks, database rights, trade names, design rights, performance rights (incorporating, without limitation, an irrevocable license to use the name, sobriquet, autograph, likeness, photograph, portrait, caricature, silhouette or voice of any performer), publication and distribution rights and any applications for the protection or registration of these rights, for the full period for which such copyright and other rights subsist including all renewals, revivals and extensions thereof; "Purchase Order" means the HMG's official numbered order; "Services" means the services specified in the Purchase Order including the giving of advice (or amendment thereof) to be carried out by the Supplier in accordance with the Contract; The "Supplier" means the supplier named in the order.

2. Assignment or Sub-Contracting

The Supplier shall not assign or subcontract the whole or part of the benefits or burdens under the Contract without the previous consent of the HMG. The HMG may assign or subcontract the whole or part of the benefits or burdens under the Contract to any company which is a subsidiary of the HMG.

3. Performance

Goods supplied under this Contract shall: (a) be of good and sound design, materials and workmanship; (b) be of merchantable quality and fit for the purpose(s) for which they are supplied under the Contract; (c) conform as to description, specification and quantity with the particulars stated in the Contract; (d) comply with all statutory requirements; (e) be free from any defect in title; and (f) be returnable to the Supplier within 21 days in the event the Goods are damaged or have suffered damage during manufacture or transit which could reasonably be discerned from the inspection on delivery or which are not in accordance with the Contract, in which case the Contract shall be deemed to be terminated in accordance with clause 20 (a).

Services executed under the Contract shall (a) be carried out with reasonable skill and care; (b) be carried out with due expedition and in so far as is reasonably practicable within the time if specified under this Contract; (c) comply as to the description, specification and quantity with the particulars stated in the Contract; and (d) comply with all statutory and other regulations applicable to the Services that are in force at the time and delivery of the Services.

4. Price/Payment

- (a) The price(s) detailed in the Contract shall remain firm and fixed for the duration of the Contract. The Supplier shall send a detailed invoice; with VAT quoted separately, quoting the Order number to the Finance Department, Horniman Museum & Gardens, 100 London Road, London, SE23 3PQ or may be emailed to invoices@horniman.ac.uk.
- (b) Payment will be made by the HMG no later than the end of a period of 30 days from the date on which relevant invoice is regarded as valid and undisputed. HMG will consider any invoices for payments submitted by the Supplier in a timely fashion and undue delay in doing so is not to be regarded as sufficient justification for failing to treat an invoice as valid and undisputed.
- (c) In the case of the supply of Services: unless otherwise expressly agreed on the face of the Purchase Order the Supplier shall be fully responsible for arranging his/her travel and any accommodation (and that of any member of the Supplier's staff or any person employed or engaged by a sub-contractor, agent or servant of the Supplier) within and/or to and from the United Kingdom in connection with Contract (including but not limited to all flights, transfers and other travel arrangements, travel insurance and visas) and shall be fully responsible for meeting all costs associated with the above.

5. Delivery/Completion of Order

The Goods shall be delivered at the times, dates and place specified in the Contract. Delivery shall be deemed to be made on receipt of the Goods by the HMG in accordance with the Contract.

The Services shall be deemed completed when completed in accordance with the Contract. Where the Supplier requires access to the HMG's premises in order to discharge its obligations under the Contract, the Supplier shall at all times comply with the security requirements and site rules and regulations of the HMG and it shall be responsible for effecting its own insurances which shall, where applicable, include employer's liability, professional indemnity and public liability insurance.

6. Inspection, Rejection and Guarantee

Without prejudice to any of its other rights hereunder, the HMG may by notice to the Supplier reject all or any of the Goods and/or Services if the Supplier fails to comply with any of its obligations under the Contract. The HMG shall not be deemed to have accepted the Goods and/or Services until the HMG has had a reasonable time after delivery to inspect the Goods and/or Services without charge. The Supplier shall at the HMG's option replace Goods or rectify Services rejected by the HMG with Goods and/or Services which in all respects conform to the Contract or credit the HMG with the invoice price thereof. The Supplier shall guarantee the Goods for the shorter of 12 months from putting into service or 18 months from delivery.

7. Risk and Property

Risk and property in the Goods shall without prejudice to any other rights or remedies of the HMG pass to the HMG at the time of acceptance of the delivery of the Goods at the HMG.

8. Damage in Transit

The Supplier shall without charge to the HMG promptly either repair or replace (at the HMG's option) any Goods damaged in transit or which having been placed in transit fail to be delivered to the HMG, provided that the HMG gives notice, within 30 days of delivery, of damage to the goods or within 10 days of the notified date of delivery that the Goods have not been delivered.

9. Labelling and Packaging

The Goods shall be packed and marked in a proper manner and in accordance with the HMG's instructions and any statutory requirements and any requirements of the carrier. The Goods shall be marked with the Purchase Order number and name of contents on each container and all containers of hazardous Goods (and all related documents) shall bear prominent and adequate warnings. All packaging materials will be considered non-returnable and destroyed unless the Supplier's advice note states otherwise.

10. Intellectual Property Rights

Any Data supplied by the HMG for the purposes of the Contract shall remain the unencumbered intellectual property of the HMG.

The Supplier warrants that in the manufacture of the Goods/ supply of Services/ provision of know-how to the HMG under the Contract the Supplier shall not infringe the IPRs of any third party and that the Supplier shall ensure that it has the right to provide such know-how and is not disclosing the same in breach of confidence.

Unless HMG otherwise expressly agrees in writing all IPRs in the Goods and/or Services (including without limitations IPRs comprised in any associated Data) prepared or developed (or to be prepared or developed) by the Supplier under or in connection with the Contract are hereby assigned to and shall vest in the HMG free from any encumbrance and with full title guarantee. The Supplier unconditionally, irrevocably and in perpetuity waives all moral and author's rights and rights of a similar nature under the laws of any jurisdiction which the Supplier may have in Goods and/or Services and any associated Data.

If for the delivery of the Goods/supply of the Services the Supplier requires the supply by HMG of Data comprising the registered and/or unregistered trademarks of the Horniman Museum and Gardens, together with permission to use the same, such permission and supply shall only be made in the format and context agreed in each case in writing in advance by the Trustees of the Horniman Museum and Gardens, and shall require the Supplier to comply with any brand guidelines and license conditions communicated to the Supplier from time to time. Any right to use the

registered and/or unregistered trademarks of the Horniman Museum and Gardens will automatically terminate upon termination of this Agreement.

11. Health and Safety

The Supplier shall comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety in performance of this Contract and/or working on the HMG's premises.

12. Prevention of Corruption

The Supplier shall not itself or in conjunction with any other person:-

- (a) corruptly solicit, receive or agree to receive, for it or for any other person, or
- (b) offer or agree to give to any person in the HMG's service, or any other supplier who has a contract with the HMG any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person, in relation to this Contract or any other contract to which the HMG is party.

Without prejudice to clause 17, the HMG may forthwith terminate the Contract with the Supplier if the Supplier is

- (a) in breach of clause 12; or
- (b) convicted of any offence under the Bribery Act 2010

Any dispute or difference of opinion arising in respect of either the interpretation or effect or application of this clause 12 shall be decided by HMG whose decision on the matter shall be final and conclusive.

13. Indemnity

The Supplier shall indemnify and keep indemnified, the HMG against:

- (a) all claims, proceedings, actions, damages, legal costs, expenses and other liabilities whatsoever arising out of or in connection with the supply of Goods and/or Services and/or the assignment of IPR's pursuant to the Contract, in respect of death or personal injury to any person (including, without limitation, employees of the HMG), or any damage to property, loss, damages, costs, or other claim for compensation and any legal or other expenses which are awarded against or incurred by or paid or agreed to be paid by the HMG, however the same may arise, unless caused by the negligence of the HMG;
- (b) (in the supply of Services) any demands for any income tax and primary and secondary class 1 National Insurance or similar contribution, including any penalties or interest arising from any claim that the Supplier (which expression in paragraphs (b) (c) and (d) of this clause 13 includes or any member of the Supplier's staff or any person employed or engaged by a sub-contractor, agent or servant of the Supplier) is or was an employee of the HMG at any material time during the performance of the Contract;
- (c) (in the supply of Services) any claim whether statutory, contractual or at common law brought by the Supplier and arising out of or based upon an allegation that the Supplier was at any material time during the performance of the Contract an employee of the HMG;
- (d) (in the supply of Services) any penalties or charges incurred by the HMG in connection with the Supplier's immigration status; and
- (e) the HMG's reasonable costs (on a full indemnity basis) of dealing with any such claim or matter under (a), (b), (c) or (d) above.

14. Taxation

At all times during the term of this Contract or after it has ended, the Supplier shall comply properly with the requirements of all relevant legislation and agreements relating to payment of value added tax, corporation taxes, income and other taxes and statutory charges levied in respect of the provision of the services to HMG and/or the fees payable to the Supplier under this Contract ("the Tax"), and shall be responsible for payment of the Tax.

Where the Supplier is liable to National Insurance Contributions (NICs) in respect of consideration received under this Contract, they shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration, and shall be responsible for paying all NICs. HMG may, at any time during this Contract, request the Supplier to provide information which demonstrates how the Supplier complies with the above obligations in relation to taxation or why those clauses do not apply to the Supplier. Such a request may specify the information which the Supplier must provide and the period within which that information must be provided.

HMG may supply any information which it receives under a request above to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

15. Insurance

The Supplier shall effect and maintain general third party and where applicable product liability and professional indemnity insurance cover with a combined bodily injury and property damage limit of not less than five million pounds (£5,000,000) per occurrence or series of occurrences arising

from the one event and unlimited cover in any period of insurance (aggregate or product liability). Such insurance shall contain an indemnity or principals clause. The Supplier shall provide evidence of such cover to HMG, if requested.

16. Confidentiality

(a) The Supplier shall treat all information, data or process in connection with the Contract as confidential and shall not use any confidential information supplied by the HMG other than for the purposes of the Contract.

(b) The Supplier acknowledges and agrees that HMG may at any time during the term of the Contract be subject to a legal duty or central governmental directive to publish prescribed parts or full terms of any contract in the public interest (including without limitation the whole or any terms of this Contract and the specification/scope of services and/or the prices comprised herein) and that such legislation or central governmental directive overrides any contractual duty of commercial confidence owed to the Supplier whether under this Contract or otherwise and the Supplier waives any and all rights of claim for breach of commercial confidence against HMG, its agents and employees, howsoever arising, and shall hold HMG, its agents and employees, harmless in respect of any claim for loss or damage suffered by the Suppliers as the consequence of HMG's discharge of any duty of law of central government policy to publish prescribed parts or the whole of this Contract.

(c) Information supplied electronically by HMG to the Supplier, marked as "Sensitive" encrypted and password protected shall not be transmitted by the Supplier to any third party other than in an encrypted and password protected format and with the prior consent in writing of HMG.

(d) Where the Services supplied under this Contract involve:

- (i) the handling by the Supplier of the personal information of citizens, such as home addresses, bank details or payment information; or
- (ii) the personal information of employees or agents of HMG such as payroll, travel booking or expenses information; or
- (iii) the supply of ICT systems and services which are designed to store, or process, data marked "official" or "sensitive" by HMG;

Then, in any of the above cases (i)-(iii):

(iv) where the Supplier acts as HMG's data processor, HMG and the Supplier must enter into a collateral agreement or addendum to this Contract governing such data processing in compliance with the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction; and

(v) the Supplier shall hold and maintain Cyber Essentials (or, if appropriate, Cyber Essentials Plus) certified assurance in respect of cyber security to the standards set out in the HM Government Procurement Policy Note: *Cyber Essentials Scheme; Action Note 09/14; 25 May 2016*, a copy of which may be inspected here:

<https://www.gov.uk/government/publications/procurement-policy-note-0914-cyber-essentials-scheme-certification>

17. Transparency

(a) The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act ("the Act") the text of this Agreement, and any Schedules to this Agreement, is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any part of the Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the Act

(b) Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Authority to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the Authority decides.

18. Suppliers Staff

HMG reserves the right to refuse to admit to its premises (or to withdraw permission to remain on its premises), any member of the Supplier's staff or any person employed or engaged by a sub-contractor, agent or servant of the Supplier:

- (a) who does hold all necessary and applicable immigration permits to work legally for HMG pursuant to this Contract;
- (b) in respect of whom the Supplier cannot or does not provide all necessary details and/or supporting documentation as requested by HMG from time to time to enable HMG at its own cost to conduct relevant security clearance checks to satisfy the requirements of HMG's Security Policy and HMG's Baseline Personnel Security Standard for the verification of the identity, nationality, and immigration status, employment history and criminal record prior to and during the continuance of this Contract;

(c) who does not wear or carry valid HMG identification at all times while on the HMG's premises and produce it immediately upon the HMG's request; or

(d) whose admission or continued presence would be, in the unfettered opinion of HMG contrary to its interest.

The Supplier shall at all times adhere to the requirements of the National Minimum Wage Act 1998 (as amended from time to time).

The Supplier warrants that its Staff have obtained the necessary immigration authorisation to allow the Supplier and its Staff to work legally for HMG for the term of this Contract (whether in the United Kingdom or at another location).

HMG and/or its authorised representative shall be entitled, at any time and without giving notice to the Supplier, to carry out at its own cost such tests of the Supplier's compliance with the requirements of this clause as it may deem necessary. Such tests shall be designed and implemented so as to minimise the impact on the Supplier's performance of this Contract.

19. Disability Rights

The Supplier warrants that all Goods and/or Services supplied under this Contract conform (or shall be capable of conforming in the hands of the HMG) with the guidance contained in the Disability Rights Commission's Code of Practice: Rights of Access: services to the public, public authority functions, private clubs and premises (2006) a copy of which may be inspected at <http://www.opsi.gov.uk/SI/si2006/20061967.htm>.

20. Termination

(a) Without prejudice to either party's other rights and remedies under this Contract or at law, either party may terminate the Contract forthwith on notice if the other ("the defaulting party"):

(i) commits a breach of this Contract and fails to remedy such breach (where it is capable of remedy) within 30 days of receipt of a notice in writing requiring it to do so; or

(ii) ceases to trade, or is unable to pay its debts as they fall due or has a petition presented or a meeting convened for the purpose of winding up the defaulting party or enters into liquidation whether compulsorily or voluntarily or compounds with its creditors generally or an administration order is made in relation to it or it has a receiver or administrative receiver appointed over all or a substantial part of its assets or any similar analogous order is made or proceeding commenced or officer appointed or action taken in consequence of debt.

In the event of termination by the HMG under sub-clause 20(a), the HMG may retain from any amount due to the Supplier under the Contract an amount equal to any bona fide claim the HMG may have against the Supplier arising out of such breach including reimbursement costs incurred up to the date of termination.

(b) The HMG may at its convenience terminate the Contract or any part thereof at any time by giving notice to the Supplier. In this event the HMG shall subject to any other provisions of the Contract pay the Supplier for all Goods and/or Services supplied in accordance with the Contract up to the time of termination and shall otherwise be free from liability to the Supplier.

(c) Upon termination of the Contract the Supplier shall immediately return to the HMG any HMG Data or equipment or other materials belonging to the HMG which the Supplier may have in its possession.

(d) HMG may summarily terminate this Agreement in writing to the Supplier if the Supplier in the case of a request for taxation information referred to in Clause 14 above -

(i) fails to provide information in response to the request within a reasonable time (as specified by HMG);

(ii) provides information which is inadequate to demonstrate either how the Supplier complies with the taxation requirements in clauses 14 above or why those clauses do not apply to the Supplier;

(iii) fails to provide the specified information within the period specified by HMG; or

(iv) receives information which demonstrates that, at any time when the taxation requirements set out in clause 14 above apply to the Supplier, the Supplier is not complying with those clauses.

21. Entirety

The Contract constitutes the entire agreement between the parties and shall prevail over any terms contained in the Supplier's acceptance of the Purchase Order. No terms may be implied herein from any course of regular previous dealings between the Supplier and the HMG. The Contract supersedes all prior negotiations representations and undertakings, whether written or oral, except this clause shall not exclude liability in respect of any fraudulent misrepresentation. The Contract may not be modified except by an instrument in writing signed by the duly authorised representatives of HMG and the Supplier.

22. Notices

Except as otherwise expressly provided within the Contract, no notice or other communications between the parties shall have any validity under the Contract unless made in writing by or on behalf of the party concerned.

23. Scope of the Contract

Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the HMG and the Supplier.

24. Third Party Rights

Neither the HMG nor the Supplier confers or purports to confer on any third party any benefits or any right to enforce any term of this Contract under the Contracts (Rights of Third Parties) Act 1999.

25. No Partnership or Agency:

Nothing in the Contract shall create, or be deemed to create a legal partnership or the relationship of employer and employee between HMG and the Supplier. The Supplier shall not in any way represent itself as being the other or an agent, partner, employee or representative of HMG.

26. Right of Audit

The HMG and/or its agents shall have the right on reasonable notice to inspect the Supplier's records relating to the supply of Goods or Services under this Contract as it may reasonably require in order to ascertain the Supplier's compliance with the terms of this Contract.

27. Governing Law

This Contract shall be governed by and interpreted in accordance with English Law and the parties submit to non-exclusive jurisdiction of the courts of England and Wales.