

Invitation to Tender (ITT)

Collection Storage Improvements. Explosion Museum, Gosport

First Issued: 1 November 2018

Contents

- 1. Summary Instructions and Details of Contract3**
- 2. Company Overview4**
- 3. Project Introduction & Overview.....4**
- 4. Tender Process (“Procurement Process”)4**
 - 4.1 Applying before the Submission Deadline.....4
 - 4.2. Instructions for Submitting Tenders.....5
 - 4.3. Clarification Requests.....6
 - 4.4. Evaluation Criteria6
- Annex 1 - Tender Specification9**
 - 1. Scope of Work9
- Annex 2 – Supplier Response13**
- Annex 3 – Pricing Approach.....15**
- Annex 4 – Tender Conditions & Contractual Requirements20**
 - 1. Contracting requirements20
 - 2. Policy Requirements.....20
 - 3. General Tender Conditions (“Tender Conditions”).....21
 - 4. Mandatory Requirements / Constraints23
 - 5 Confidentiality and Information Governance23
 - 6. Tender Validity.....24
 - 7. Payment and Invoicing24
- Annex 5 – Example Terms and Conditions of Contract25**

1. Summary Instructions and Details of Contract

SUBJECT	DETAILS
Contract Description	The National Museum of the Royal Navy (NMRN) wishes to appoint a contractor to undertake building alterations to our collections store rooms at Explosion Museum, Gosport. They will be required to work from approved plans and with the curatorial staff to deliver a store room suitable for collections storage, while meeting listed building guidelines. (For Specification on the Scope of Work and Deliverables see Annex 1)
Programme	To be completed by 15 Feb 2019.
NMRN Contact during tender period	Clarifications and enquiries during the tender process can be sent to Sadie.wilson@nmrn.org.uk . Please note that this email address is different to the submission email.
Date of Tender Return	3 December 2018 - 12 noon Tenders must be submitted to tenders@nmrn.org.uk
Content for Submission	Content requirements for tender returns are listed in Annex 2 of this ITT.
Last date for Clarifications	28 November 2018 – 12 noon
Annexes	Annex 1 – Tender Specification Annex 2 – Supplier Response Documents Annex 3 – Pricing Approach Annex 4 – Tender Conditions & Contractual Requirements Annex 5 – Terms and Conditions of Contract

2. Company Overview

2.1 The National Museum of the Royal Navy, Portsmouth

On 28th June 1911, The Dockyard Museum opened in Portsmouth, growing and evolving into the Royal Naval Museum, which then became a part of the newly formed National Museum of the Royal Navy (NMRN) in September 2009. The Museum changed its name to the National Museum of the Royal Navy, Portsmouth, as the overall organisation grew to encompass the other naval service museums:

- NMRN Portsmouth (including HMS Victory and Gallipoli campaign survivor HMS M.33)
- The Royal Marines Museum at Eastney, Portsmouth.
- The Royal Navy Submarine Museum, Gosport, including HM submarines Alliance, Holland 1 and X.24
- Explosion, the Museum of Naval Firepower, Gosport.
- The Fleet Air Arm Museum, Yeovilton, Somerset.
- NMRN Hartlepool with the UK's oldest historic fighting ship still afloat, HMS Trincomalee.
- HMS Caroline, Belfast, Northern Ireland.

Affiliates include HMS Unicorn (Dundee); HMS Wellington (London); the Medusa Trust (Portsmouth); the Coastal Forces Heritage Trust (Portsmouth), Haslar Heritage Trust (Gosport) and the D-Day Story (Portsmouth)

3. Project Introduction & Overview

3.1. This project is part of a wider development of NMRN collections storage sites to enable collections to be more accessible to all stakeholders including the public. Storage sites will be closed and decanted and others will be developed and improved for use. The stores at Explosion Museum have been designated for investment to improve capacity and use for collection storage.

3.2 Buildings alterations are required over three store areas at Explosion Museum, Gosport, described as main store, workspace, and office/store, including the addition of a new partition wall with security/fire doors Work to fixtures and fittings, lighting, security alarms, air conditioning and re-decoration are also included in the scope.

4. Tender Process (“Procurement Process”)

This section explains the Procurement Process for tenderers before the submission deadline and the evaluation of tenders after submission. Further information on Tender Conditions & Contractual Requirements are found in Annex 4 and must be read before submission.

4.1 Applying before the Submission Deadline

4.1.1 Work Specification

The NMRN wishes to appoint a contractor to undertake building alterations to our collections storerooms at Explosion Museum, Gosport. They will be required to work from approved plans and with the curatorial staff to deliver a store room suitable for collections storage, while meeting listed building guidelines.

For a full, detailed specification of the services required refer to Annex 1.

4.1.2 Key background documents

Further relevant background documents can be provided upon request, including proposed plans and structural calculations.

Contractors submitting the three highest scoring tenders will be invited to a site visit to store at Explosion Museum prior to final appointment.

4.1.3 Timescales

Subject to any changes notified to potential suppliers by the NMRN in accordance with the Tender Conditions, the following timescales shall apply to this Procurement Process:

Activity	Date / time
Issue of Contract Notice / availability of ITT documents	5 November 2018
Deadline for clarification questions (Clarification Deadline)	1700 on 28 November 2018
Deadline for submission of ITT responses by potential suppliers (Tender Response Deadline)	3 December 2018 – 12 noon
Invitations issued to hosted site visit	10 December 2018
Site Visit	12 December 2018
Award decision standstill letters issued	13 December 2018
Contract concluded with winning supplier	24 December 2018
Contract start date	7 January 2019
Works Completed	15 February 2019

Instructions for Submitting Tenders

4.2.1 The documents that must be submitted to form your tender response are listed in Annex 2 (Supplier Response) to this ITT.

4.2.2 **Tender submissions must be sent to tenders@nmrn.org.uk before the submission deadline.**

4.2.3 The following requirements should be complied with when submitting your response to this ITT:

- Please ensure that you send your submission in good time to prevent issues with technology – late tender responses will be rejected by the NMRN.
- Please ensure that information provided as part of your response is of sufficient quality and detail that an informed assessment of it can be made by the NMRN.
- Do not submit any additional supporting documentation with your ITT response except where specifically requested to do so as part of this ITT. PDF, JPG, PPT, Word and Excel formats can be used for any additional supporting documentation (other formats should not be used without the prior written approval of the NMRN).

- All attachments/supporting documentation should be provided separately to your main tender response and clearly labelled to make it clear as to which part of your tender response it relates.
- If you submit a generic policy / document you must indicate the page and paragraph reference that is relevant to a particular part of your tender response.
- Unless otherwise stated as part of this ITT or its Annexes, all tender responses should be in the format of the relevant NMRN requirement with your response to that requirement inserted underneath.
- Where supporting evidence is requested as 'or equivalent' – you must demonstrate such equivalence as part of your tender response.
- Any deliberate alteration of an NMRN requirement as part of your tender response will invalidate your tender response to that requirement and for evaluation purposes you shall be deemed not to have responded to that particular requirement.
- Responses should be concise, unambiguous, and should directly address the requirement stated.
- Your tender responses to the tender requirements and pricing will be incorporated into the Contract, as appropriate.

4.3. Clarification Requests

4.3.1 All clarification requests should be submitted to sadie.wilson@nmrn.org.uk by the Clarification Deadline, as set out in the Timescales section of this ITT. The NMRN is under no obligation to respond to clarification requests received after the Clarification Deadline.

4.3.2 Any clarification requests should clearly reference the appropriate paragraph in the ITT documentation and, to the extent possible, should be aggregated rather than sent individually.

4.3.3 The NMRN reserves the right to issue any clarification request made by you, and the response, to all potential suppliers unless you expressly require it to be kept confidential at the time the request is made. If the NMRN considers the contents of the request not to be confidential, it will inform you and you will have the opportunity to withdraw the clarification query prior to the NMRN responding to all potential suppliers.

4.3.4 The NMRN may at any time request further information from potential suppliers to verify or clarify any aspects of their tender response or other information they may have provided. Should you not provide supplementary information or clarifications to the NMRN by any deadline notified to you, your tender response may be rejected in full and you may be disqualified from this Procurement Process.

4.4. Evaluation Criteria

4.4.1 You will have your tender response evaluated as set out below:

Stage 1: Tender responses will be checked to ensure that they have been completed correctly and all necessary information has been provided. Tender responses correctly completed with all relevant information being provided will proceed to Stage 2. Any tender responses not correctly completed in accordance with the requirements of this ITT and/or containing omissions will be rejected at this point.

Where a tender response is rejected at this point it will automatically be disqualified and will not be further evaluated.

Stage 2: If a bidder succeeds in passing Stage 1 of the evaluation, then it will have its detailed tender response to the NMRN’s requirements evaluated in accordance with the evaluation methodology set out below.

Stage 3: Bidders who succeed in passing Stage 2 may be invited to visit the site whereupon the specifications will be discussed along with the submitted tender. Based on this, a final evaluation will be carried out.

4.4.2 Award Criteria – Responses from potential suppliers will be assessed to determine the most economically advantageous tender using the following criteria and weightings and will be assessed entirely on your response submitted:

Criteria	Weighting
Quality of Method & Approach	60%
Commercial/ Value for Money	40%

4.4.3 Scoring Model – Tender responses will be subject to an initial review at the start of Stage 2 of the evaluation process. Any tender responses not meeting mandatory requirements or constraints (if any) will be rejected in full at this point and will not be assessed or scored further. Tender responses not so rejected will be scored by an evaluation panel appointed by the NMRN for all criteria other than Commercial using the following scoring model:

Points	Interpretation
0	Very Poor (does not meet any of the requirement) or Very High/Extreme Risk The response is significantly below what would be expected because of one or all of the following: <ul style="list-style-type: none"> • The response indicates a significant lack of understanding • The response fails to meet the requirement
1	Poor (meets some of the requirement) or Above Average/High Risk The response meets elements of the requirement but gives concern in a number of significant areas. There are reservations because of one or all of the following: <ul style="list-style-type: none"> • There is at least one significant issue needing considerable attention • There is insufficient evidence to demonstrate competence or understanding • The response is light and unconvincing
4	Fair (meets most, but not all the requirement) or Average Risk The response meets most of the requirement, but there is a least one significant issue of concern or several smaller issues. These would require some further clarification or attention later in the procurement process and may arise through lack of demonstrated capability and/or appropriate evidence. The response therefore shows: <ul style="list-style-type: none"> • Basic understanding of the requirements • Sufficient competence demonstrated through relevant experience • Some areas of concern that require attention
7	Good (meets the requirement) or Low Risk The response broadly meets what is expected for the criteria. There are no significant areas of concern, although there might be limited minor issues that need further exploration or attention later in the procurement process. The response therefore

	<p>shows:</p> <ul style="list-style-type: none"> • Good understanding of the requirements • Sufficient competence demonstrated through relevant experience • Some insight demonstrated into the relevant issues.
9	<p>Very Good (exceeds the requirement) or Very Low Risk</p> <p>The response exceeds what is expected for the criteria. Leave no doubt as to the capability and commitment to deliver what is required. The response therefore shows:</p> <ul style="list-style-type: none"> • Very good understanding of the requirement • Considerable competence demonstrated through relevant experience • Considerable insight into the relevant issues <p>The response is also likely to propose additional value in several respects above that expected</p>

4.4.4 Quality & Method of Approach Evaluation – The Quality & Method of Approach will be evaluated using the following criteria by the evaluation panel:

- Relevant skills and experience
- Understanding of the Brief
- Quality of Method Statement and Approach.

4.4.4 Commercial Evaluation – Your “Overall Price” (as calculated in accordance with requirements of Annex 2 (Pricing Approach) for the goods and/or services will be evaluated by the evaluation panel for the purposes of the commercial evaluation. Prices must not be subject to any pricing assumptions, qualifications or indexation not provided for explicitly by the NMRN as part of the pricing approach. In the event that any prices are expressed as being subject to any pricing assumptions, qualifications or indexation not provided for by the NMRN as part of the pricing approach, the NMRN may reject the full tender response at this point. The NMRN may also reject any tender response where the Overall Price for the goods and/or services is considered by the NMRN to be abnormally low following the relevant processes set out under the EU procurement rules. A maximum offer score will be awarded to the tender response offering the lowest “Overall Price”.

4.4.5 Moderation and application of weightings – The evaluation panel appointed for this procurement will meet to agree and moderate scores for each award criteria. Final scores in terms of a percentage of the overall tender score will be obtained by applying the relevant weighting factors set out as part of the award criteria table above. The percentage scores for each award criteria will be amalgamated to give a percentage score out of 100.

4.4.6 Hosted Site Visit - Following the desktop assessment, NMRN reserves the right to invite selected candidates to a hosted site visit This will be used to clarify and validate information received in the tender submission and scores may be adjusted accordingly. It will not be scored in its own right. The site visit will take place on 12 December. 4.4.6 The winning tender response – The winning tender response shall be the tender response scoring the highest percentage score out of 100 when applying the above evaluation methodology

Annex 1 - Tender Specification

The following sets out a full, detailed specification of the services required by the potential supplier as part of this ITT.

1. Scope of Work

Item	Description	Spec notes
1.0	<u>Collections store</u>	-
1.1	Clear unwanted furniture and material from store and workspace, as specified by museum staff	
1.2	Opening D101 - Remove door and frame and set aside for re-use	
1.3	Replace fixing bolts to window grilles using secure bolts with shear heads	
1.4	Install double steel security door in existing structural opening to D101. Allow for packing out door frame and making good with plasterboard to suit existing opening	
1.5	Ease and adjust existing ironmongery to re-used door D101	
1.6	Fit sash window locks to windows	https://www.yale.co.uk/en/yale/couk/products/mechanical/additional-security/window-security-/8k114---sash-window-lock/
1.7	Decorate pair of doors D101	Dulux Trade Eggshell. 1 undercoat and 2 top coats
1.8	Make good decorations around door D101	Dulux Trade Durable Flat Matt. Colour to match existing. 2 coats
2.0	<u>Workspace</u>	-
2.1	Construct new partition wall with timber studs, insulation between, ply, supalux board. Finish with vertical timber boarding to both faces and new timber skirting board to both sides to match existing	
2.2	Fit door and frame removed from Collections Store to opening D104	
2.3	Fit new ironmongery to door	
2.4	Fit new 1/2hours FR door and frame to stairwell D103	
2.5	Supply and fit ironmongery to door	

2.6	Decorate all existing walls	Dulux Trade Durable Flat Matt. Colour to match existing. 2 coats
2.7	Decorate new timber boarded wall	Dulux Trade Eggshell. 1 coat primer, 1 undercoat and 2 top coats
2.8	Decorate doors and frames D103/104	Dulux Trade Eggshell. 1 coat primer, 1 undercoat and 2 top coats
3.0	<u>Office</u>	-
3.1	Take down and reposition wall to staircase. Extend as necessary as specified on drawings. Ensure 1/2 hours fire integrity is maintained.	
3.2	Decorate existing partition to staircase	Dulux Trade Eggshell. 1 undercoat and 2 top coats
3.3	Decorate new timber partition wall	Dulux Trade Eggshell. 1 coat primer, 1 undercoat and 2 top coats
4.0	<u>M&E requirements</u>	-
4.1	Upgrade intruder alarm to Collections Store, Workspace and Office to Grade 3	
4.2	Fit CCTV cameras to Collections Store, Workspace and Stair connected to existing system as follows: - 2no cameras to Collections Store - 2 no cameras to Workspace - 1no camera to top of stairwell	
4.3	Fit air conditioning unit to wall in Collections Store and Workspace. Include for providing power supplies/ fused spurs for each unit connected to existing circuits	
4.4	Alterations to fire alarm (additional smoke head and call points). Allow for: - additional smoke head in the Workspace - fire alarm call point adjacent to 3no new doors - mag lock to door D104 connected to fire alarm	
4.5	Alterations to lighting. Remove existing lighting in Workspace. Supply and fit 4no. 1200mm long suspended LED fittings suitable for office use. Provide new light switch adjacent to door D103	
4.6	Provide new power to the Collections Store as follows: - 6no galvanised surface fixed double sockets with surface fixed galvanised conduits/ tunking. Exact locations to be agreed on site	

4.7	Provide new data points to the Collections Store connected to the existing data network as follows: - 3no surface fixed double data point with surface fixed galvanised conduits/ tunking. Exact locations to be agreed on site	
4.8	BWIC with services	

2. Additional Requirements

2.1 Skills

The Contractor should:

- Have a proven track record and relevant qualifications for carrying out building alterations and construction works inside Listed Buildings [please show examples]
- Experience of working closely alongside client teams to deliver well-coordinated and outstanding work.
- Understanding and implementation of Health and Safety rules and guidelines, including Asbestos Awareness
- Provide details of subcontractor procurement and management/supervision structure.
- Provide details on handover procedure and warranties related to scope of work.

2.2 Budget:

The overall budget for all elements of the project, including supply of materials, provision of labour and contractor overheads (excluding VAT) should not exceed £50,000

2.3 Programme

The store alterations are linked to the collections movement programme and specialist collections racking installation [which is not included in the scope]

2.3.1 Store improvement works to 15/02/2109

2.3.2 Racking installation to 22/02/2019

2.3.3 Collection ingress to 01/03/2019

Carrying out this work during the winter opening hours for Explosion Museum means that the site is not accessible to the public during the week, but will need to be secured at weekends.

2.4 Safe Access

2.4.1 The storerooms are located on the 1st floor, up narrow stairs from the main gallery. There is no lift access.

Annex 2 – Supplier Response

Part 1: Checklist

Below is a checklist of the desired content of the tender response to this ITT, in reference to the Specification in Annex 1:

Ref	Content	Ref	Detail	✓
1	Details of organisation	1.1	Name of Company	
		1.2	Legal status (e.g. limited company, partnership, etc.)	<input type="checkbox"/>
		1.3	Company registration number (if applicable)	
		1.4	Office Address	
		1.5	Name and Contact Details of main contact for tender	
		1.6	The professional skills and qualifications of people involved in the project, including the names and CV's of proposed team members, their specific responsibilities and any arrangements for subcontracting.	
		1.7	Description of how the lead contractor will seek expertise in any specialisms not present in their in-house team eg electrical works	<input type="checkbox"/>
2	Experience	2.1	Descriptions (no more than 200 words each) of up to three projects which your company has delivered. Please include names and contact details of the client lead, project manager or lead consultant to whom we may refer in connection with these projects.	
3	Schedule Work Programme	3.1	Scheduled work programme for all stages of the work with milestones and dates.	
4	H & S	4.1	How the contractor aims to comply with H & S IOSH standards. Please provide detailed description of your method for each deliverable (2.1 – 2.4, Annex 1), together with a template of a Risk Assessment.	<input type="checkbox"/>
		4.2	Provide relevant H & S Qualifications, such as First Aid, Confined Space Training and Working at Height.	<input type="checkbox"/>
5	Costs (see Annex 4 for Pricing Approach)	5.1	A breakdown of costs for the work and materials as specified in Annex 1.	<input type="checkbox"/>
		5.2	Any travel, subsistence and accommodation cost for the work proposed in Annex 1.	<input type="checkbox"/>
		5.3	Schedule of hourly rates for the proposed labour, including sub-contractors	<input type="checkbox"/>
6	Insurance	6.1	Full extent of professional insurance or indemnity cover	<input type="checkbox"/>

Part 2: Confidential/Commercially Sensitive Document Template

Below is a recommended template to allow potential suppliers to indicate any confidential/commercially sensitive information in accordance with the requirements of the Confidentiality and Information Governance section of this ITT.

Specify the precise elements which are considered confidential and/or commercially sensitive

Why do you consider an exemption under the POIA or EIR would apply?

Specify the estimated length of time during which the exemption will apply

Annex 3 – Pricing Approach

The following sets out information and a recommended template for the content and format of the pricing proposals for a bid.

Information

The potential supplier is requested to use terminology consistent with this ITT.

All pricing should be in Pound Sterling (GBP) and Exclusive of VAT.

As part of this ITT the NMRN require two types of pricing proposals;

- 1) A breakdown of costs for the works specified within this ITT (see Annex 1)
- 2) A breakdown of hourly costs for the supplier and any subcontractors, including any travel, subsistence and accommodation. Please also detail normal working hours.

Templates

- 1) A breakdown of costs for the works specified within this ITT

The following is a template for the fee proposal breakdown. It is recommended that this breakdown should reference the scheduled works programme, bringing in milestones and dates. Please note this template is a guidance document and therefore is not all encompassing. Stages and Tasks can be added or removed by tenderers where seen fit:

Item	Description	Quant	Unit	Rate	Cost
1.0	<u>Collections store</u>				
1.1	Clear unwanted furniture and material from store and workspace, as specified by museum staff				0
1.1	Opening D101 - Remove door and frame and set aside for re-use		Item		0
1.2	Replace fixing bolts to window grilles using secure bolts with shear heads	20	Item		0
1.3	Remove pair of existing doors and frames from the Royal Marines Museum in Southsea. Transport to site and fit in existing structural opening to D101. Allow for packing out door frame and making good with plasterboard to suit existing opening		Item		0
1.4	Ease and adjust existing ironmongery to re-used door D101		Item		0
1.5	Fit sash window locks to windows	10	Item		0
1.6	Decorate pair of doors D101		Item		
1.7	Make good decorations around door D101		Item		0
2.0	<u>Workspace</u>				

2.1	Construct new partition wall with timber studs, insulation between, ply, suplalux board. Finish with vertical timber boarding to both faces and new timber skirting board to both sides to match existing				m2	0
2.2	Fit door and frame removed from Collections Store to opening D104				Item	0
2.3	Fit new ironmongery to door	1		250	Item	0
2.4	Fit new 1/2hours FR door and frame to stairwell D103				Item	0
2.5	Supply and fit ironmongery to door	1		250	Item	0
2.6	Decorate all existing walls				m2	0
2.7	Decorate new timber boarded wall				m2	0
2.8	Decorate doors and frames D103/104				Item	0
3.0	<u>Office</u>					
3.1	Take down and reposition wall to staircase. Extend as necessary as specified on drawings. Ensure 1/2 hours fire integrity is maintained.				m2	0
3.2	Decorate existing partition to staircase				m2	0
3.3	Decorate new timber partition wall				m2	0
4.0	<u>M&E requirements</u>					
4.1	Upgrade intruder alarm to Collections Store, Workspace and Office to Grade 3				Item	0
4.2	Fit CCTV cameras to Collections Store, Workspace and Stair connected to existing system as follows: - 2no cameras to Collections Store - 2 no cameras to Workspace - 1no camera to top of				Item	0

	stairwell				
4.3	Fit air conditioning unit to wall in Collections Store and Workspace. Include for providing power supplies/ fused spurs for each unit connected to existing circuits		Item		0
4.4	Alterations to fire alarm (additional smoke head and call points). Allow for: - additional smoke head in the Workspace - fire alarm call point adjacent to 3no new doors - mag lock to door D104 connected to fire alarm		Item		0
4.5	Alterations to lighting. Remove existing lighting in Workspace. Supply and fit 4no. 1200mm long suspended LED fittings suitable for office use. Provide new light switch adjacent to door D103		Item		0
4.6	Provide new power to the Collections Store as follows: - 6no galvanised surface fixed double sockets with surface fixed galvanised conduits/ tunking. Exact locations to be agreed on site		Item		
4.7	Provide new data points to the Collections Store connected to the existing data network as follows: - 3no surface fixed double data point with surface fixed galvanised conduits/ tunking. Exact locations to be agreed on site		Item		0
4.8	BWIC with services		Item		0

- 2) A breakdown of hourly costs for the supplier and any subcontractors, including travel, subsistence and accommodation..

Below is a desired template of daily rate costs from the supplier and their sub-contractors:

Staff Member	Daily Rate (£)	Travel (per day or per visit) (£)	Accommodation (per night) (£)	Subsistence (per day) (£)
	£X	£X	£X	£X
	£X	£X	£X	£X
	£X	£X	£X	£X

Annex 4 – Tender Conditions & Contractual Requirements

1. Contracting requirements

1.1 The contracting authority is NMRN Operations, or any NMRN subsidiary companies and other organisations that control or are controlled by the NMRN from time to time.

1.2 The appointed supplier will be expected to travel to Explosion Museum of Naval Firepower, Gosport.

1.3 The NMRN's contracting and commercial approach in respect of the required goods and/or services is set out at Annex 5 (Terms and Conditions of contract) ("**Contract**"). By submitting a tender response, you are agreeing to be bound by the terms of this ITT and the Contract without further negotiation or amendment.

1.4 The Contract awarded will be for a duration as quantified by the tenderer during the tendering process with an option for an extension if the need arises and on permission by the NMRN.

1.5 In the event that you have any concerns or queries in relation to the Contract, you should submit a clarification request in accordance with the provisions of this ITT by the Clarification Deadline (as defined below in the Timescales section of this ITT). Following such clarification requests, the NMRN may issue a clarification change to the Contract that will apply to all potential suppliers submitting a tender response.

1.6 The NMRN is under no obligation to consider any clarifications / amendments to the Contract proposed following the Clarification Deadline, but before the Tender Response Deadline (as defined below in the Timescales section of this ITT). Any proposed amendments that are received from a potential supplier as part of its tender response shall entitle the NMRN to reject that tender response and to disqualify that potential supplier from this Procurement Process.

2. Policy Requirements

2.1 By submitting a tender response in connection with this Procurement Process, potential suppliers confirm that they will, and that they shall ensure that any consortium members and/or subcontractors will, comply with all applicable laws, codes of practice, statutory guidance and applicable NMRN policies relevant to the goods and/or services being supplied.

2.2 For the successful delivery of the work the tenderer should have an in-depth understanding of exhibition design and delivery.

2.3 The tenderer must also comply with IOSH Health & Safety Standards when on the NMRN's site and when undertaking the tendered work [<http://www.iosh.co.uk/>]. When working in confined spaces or at height, the contractor and/or any sub-contractor must have the necessary relevant training in confined spaces and/or working at height before work commences.

2.4 The Copyright of any information and/or data generated by the awarded supplier as part of the works as set out in this ITT shall be considered as under the ownership of the NMRN.

3. General Tender Conditions (“Tender Conditions”)

3.1 Application of these Tender Conditions – In participating in this Procurement Process and/or by submitting a tender response it will be implied that you accept and will be bound by all the provisions of this ITT and its Annexes. Accordingly, tender responses should be on the basis of and strictly in accordance with the requirements of this ITT.

3.2 Third party verifications – Your tender response is submitted on the basis that you consent to the NMRN carrying out all necessary actions to verify the information that you have provided, and the analysis of your tender response being undertaken by one or more third parties commissioned by the NMRN for such purposes.

3.3 Information provided to potential suppliers – Information that is supplied to potential suppliers as part of this Procurement Process is supplied in good faith. The information contained in the ITT and the supporting documents and in any related written or oral communication is believed to be correct at the time of issue but the NMRN will not accept any liability for its accuracy, adequacy or completeness and no warranty is given as such. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the NMRN.

3.4 Potential suppliers to make their own enquires – You are responsible for analysing and reviewing all information provided to you as part of this Procurement Process and for forming your own opinions and seeking advice as you consider appropriate. You should notify the NMRN promptly of any perceived ambiguity, inconsistency or omission in this ITT and/or any in of its associated documents and/or in any information provided to you as part of this Procurement Process.

3.5 Amendments to the ITT – At any time prior to the Tender Response Deadline, the NMRN may amend the ITT. Any such amendment shall be issued to all potential suppliers, and if appropriate to ensure potential suppliers have reasonable time in which to take such amendment into account, the Tender Response Deadline shall, at the discretion of the NMRN, be extended. Your tender response must comply with any amendment made by the NMRN in accordance with this paragraph 3.3.5 or it may be rejected.

3.6 Compliance of tender response submission – Any goods and/or services offered should be on the basis of and strictly in accordance with the ITT (including, without limitation, any specification of the NMRN’s requirements, these Tender Conditions and the Contract) and all other documents and any clarifications or updates issued by the NMRN as part of this Procurement Process.

3.7 Format of tender response submission – Tender responses must comprise the relevant documents specified by the NMRN completed in all areas and in the format as detailed by the NMRN in Annex 2 (Supplier Response). Any documents requested by the NMRN must be completed in full. It is, therefore, important that you read the ITT carefully before completing and submitting your tender response.

3.8 Modifications to tender response documents once submitted – You may modify your tender response prior to the Tender Response Deadline by giving written notice to the NMRN. Any modification should be clear and submitted as a complete new tender response in accordance with Annex 2 (Supplier Response) and these Tender Conditions.

3.9 Rejection of tender responses or other documents – A tender response or any other document requested by the NMRN may be rejected which:

- contains gaps, omissions, misrepresentations, errors, uncompleted sections, or changes to the format of the tender documentation provided;

- contains hand written amendments which have not been initialled by the authorised signatory;
- does not reflect and confirm full and unconditional compliance with all of the documents issued by the NMRN forming part of the ITT;
- contains any caveats or any other statements or assumptions qualifying the tender response that are not capable of evaluation in accordance with the evaluation model or requiring changes to any documents issued by the NMRN in any way;
- is not submitted in a manner consistent with the provisions set out in this ITT;
- contains information which is inconsistent with answers already given in the pre-qualification questionnaire completed as part of this Procurement Process or;
- is received after the Tender Response Deadline.

3.10 Disqualification – If you breach these Tender Conditions, if there are any errors, omissions or material adverse changes relating to any information supplied by you at any stage in this Procurement Process, if any other circumstances set out in this ITT, and/or in any supporting documents, entitling the NMRN to reject a tender response apply and/or if you or your appointed advisers attempt:

- to inappropriately influence this Procurement Process;
- to fix or set the price for goods or services;
- to enter into an arrangement with any other party that such party shall refrain from submitting a tender response;
- to enter into any arrangement with any other party (other than another party that forms part of your consortium bid or is your proposed sub-contractor) as to the prices submitted;
- to collude in any other way;
- to engage in direct or indirect bribery or canvassing by you or your appointed advisers in relation to this Procurement Process; or
- to obtain information from any of the employees, agents or advisors of the NMRN concerning this Procurement Process (other than as set out in these Tender Conditions) or from another potential supplier or another tender response,

The NMRN shall be entitled to reject your tender response in full and to disqualify you from this Procurement Process. Subject to the “Liability” Tender Condition below, by participating in this Procurement Process you accept that the NMRN shall have no liability to a disqualified potential supplier in these circumstances.

3.11 Tender costs – You are responsible for obtaining all information necessary for preparation of your tender response and for all costs and expenses incurred in preparation of the tender response. Subject to the “Liability” Tender Condition below, you accept by your participation in this procurement, including without limitation the submission of a tender response that you will not be entitled to claim from the NMRN any costs, expenses or liabilities that you may incur in tendering for this procurement irrespective of whether or not your tender response is successful.

3.12 Rights to cancel or vary this Procurement Process - By issuing this ITT, entering into clarification communications with potential suppliers or by having any other form of communication with potential suppliers, the NMRN is not bound in any way to enter into any contractual or other arrangement with you or any other potential supplier. It is intended that the remainder of this Procurement Process will take place in accordance with the provisions of this ITT but the NMRN reserves the right to terminate, suspend, amend or vary (to include, without limitation, in relation to any timescales or deadlines) this Procurement Process by notice to all potential supplier in writing. Subject to the “Liability” Tender Condition below, the NMRN will have no liability for any losses, costs or expenses caused to you as a result of such termination, suspension, amendment or variation.

3.13 Consortium Members and sub-contractors – It is your responsibility to ensure that any staff, consortium members, sub-contractors and advisers abide by these Tender Conditions and the requirements of this ITT.

3.14 Liability – Nothing in these Tender Conditions is intended to exclude or limit the liability of the NMRN in relation to fraud or in other circumstances where the NMRN's liability may not be limited under any applicable law.

4. Mandatory Requirements / Constraints

4.1 As part of your tender response, you must confirm that you meet the mandatory requirements / constraints, if any, as set out in the NMRN's specification forming part of this ITT. A failure to comply with one or more mandatory requirements or constraints shall entitle the NMRN to reject a tender response in full.

5 Confidentiality and Information Governance

5.1 All information supplied to you by the NMRN, including this ITT and all other documents relating to this Procurement Process, either in writing or orally, must be treated in confidence and not disclosed to any third party (save to your professional advisers, consortium members and/or sub-contractors strictly for the purposes only of helping you to participate in this Procurement Process and/or prepare your tender response) unless the information is already in the public domain or is required to be disclosed under any applicable laws.

5.2 You shall not disclose, copy or reproduce any of the information supplied to you as part of this Procurement Process other than for the purposes of preparing and submitting a tender response. There must be no publicity by you regarding the Procurement Process or the future award of any contract unless the NMRN has given express written consent to the relevant communication.

5.3 This ITT and its accompanying documents shall remain the property of the NMRN and must be returned on demand.

5.4 The NMRN reserves the right to disclose all documents relating to this Procurement Process, including without limitation your tender response, to any employee, third party agent, adviser or other third party involved in the procurement in support of, and/or in collaboration with, the NMRN. The NMRN further reserves the right to publish the Contract once awarded and/or disclose information in connection with supplier performance under the Contract in accordance with any public sector transparency policies (as referred to below). By participating in this Procurement Process, you agree to such disclosure and/or publication by the NMRN in accordance with such rights reserved by it under this paragraph.

5.5 The use of blanket protective markings of whole documents such as “commercial in confidence” will not be sufficient. By participating in this Procurement Process you agree that the NMRN should not and will not be bound by any such markings.

5.6 In addition, marking any material as “confidential” or “commercially sensitive” or equivalent should not be taken to mean that the NMRN accepts any duty of confidentiality by virtue of such marking. You accept that the decision as to which information will be disclosed is reserved to the NMRN, notwithstanding any consultation with you or any designation of information as confidential or commercially sensitive or equivalent you may have made. You agree, by participating further in this Procurement Process and/or submitting your tender response, that all information is provided to the NMRN on the basis that it may be used by the NMRN in accordance with the provisions of this ITT.

5.7 Tender responses are also submitted on the condition that the appointed supplier will only process personal data (as may be defined under any relevant data protection laws) that it gains access to in performance of this Contract in accordance with the NMRN 's instructions and will not use such personal data for any other purpose. The contracted supplier will undertake to process any personal data on the NMRN's behalf in accordance with the relevant provisions of any relevant data protection laws and to ensure all consents required under such laws are obtained.

5.8 NMRN's GDPR Policy is attached as Appendix 6

6. Tender Validity

6.1 Your tender response must remain open for acceptance by the NMRN for a period of ninety days from the Tender Response Deadline. A tender response not valid for this period may be rejected by the NMRN;

7. Payment and Invoicing

7.1 The NMRN will pay correctly addressed and undisputed invoices within 30 days in accordance with the requirements of the Contract. Suppliers to the NMRN must ensure comparable payment provisions apply to the payment of their sub-contractors and the sub-contractors of their sub-contractors. General requirements for an invoice for the NMRN include:

- A description of the good/services supplied is included.
- The NMRN's reference number/Purchase Order number is included.
- The address must reflect that supplied on the NMRN Purchase Order.

7.2 The NMRN will retain 5% of the total contract value until the project has been delivered to agreed standards as detailed on appointment of the successful contractor. Payment of this final invoice will be subject to NMRN's standard 30 day terms of payment.

Annex 5 – Example Terms and Conditions of Contract

THIS AGREEMENT is made on []
2018

BETWEEN

- (1) **NMRN OPERATIONS** a company limited by guarantee and incorporated under number 09988314 with registered charity number 1169061 whose registered office is at National Museum Of The Royal Navy, HM Naval Base, PP66, Portsmouth, Hampshire PO1 3NH (“the **Customer**”); and
- (2) [] a company registered in England and Wales with number [] whose registered office is at [] OR IF A PERSON [] of [] (“the **Supplier**”).

BACKGROUND

The Customer wishes to purchase and the Supplier wishes to supply certain services subject to the following terms and conditions.

NOW IT IS AGREED as follows:

1 INTERPRETATION

1.1 Definitions

In this Agreement the following words and expressions shall have the following meanings:

Applicable Data Protection Law	means all applicable data protection laws including the General Data Protection Regulation (EU) 2016/679 (“GDPR”), read in conjunction with and subject to the Data Protection Act 2018, in each case as amended, re-enacted or replaced from time to time;
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Charges	the Supplier’s charges for the Services as set out in Schedule 2 and any other sums due to the Supplier under this Agreement;
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Commencement Date	[the date of this Agreement;]
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Confidential Information	all information disclosed by or on behalf of a party (in whatever medium including in written, oral, visual or electronic form and whether before or after the date of this Agreement) including all business, financial, commercial, technical, operational, organisational, legal, management and marketing information;
Deliverables	any documents, products and materials to be developed and provided by the Supplier as part of or in connection with the Services, including any products of the Services;
Intellectual Property	all inventions, patents, utility models, designs (including rights relating to semi-conductor topographies), database rights, copyright and related rights, rights in get up and trade marks (in each case whether registered or unregistered), together with all rights to the grant of and applications for the same and including all similar or analogous rights and all other rights in the nature of intellectual and industrial property throughout the world and all future rights of such nature; and
Services	the services described in Schedule 1, including the development and provision of any Deliverables.

1.2 Construction

- 1.2.1 In this Agreement, unless otherwise specified or the context otherwise requires:
- (a) words importing the singular only shall include the plural and vice versa;
 - (b) words importing the whole shall be treated as including a reference to any part;
 - (c) reference to this Agreement or to any other document is a reference to this Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of this Agreement;
 - (d) reference to any legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which

most closely approximates in that jurisdiction to the English legal term; and

(e) references to termination of this Agreement shall include its expiry.

1.2.2 Any phrase in this Agreement introduced by the term “include”, “including”, “in particular” or similar expression shall be construed as illustrative and shall not limit the sense of the words preceding that term.

1.2.3 Headings used in this Agreement are for reference only and shall not affect its construction or interpretation.

1.3 Other references

In this Agreement a reference to:

1.3.1 **this Agreement** means this agreement including all Schedules, Annexures, Exhibits and other attachments and recitals to this agreement;

1.3.2 **business day** means a day, other than a Saturday or a Sunday, on which banks are open for business in London;

1.3.3 **parties** means the Customer and the Supplier collectively, and “party” means either of them and their permitted assignees;

1.3.4 **person** includes any individual, firm, company, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established);

1.3.5 **recorded delivery** means special or recorded delivery (or other “proof of delivery” or “proof of posting” service that Royal Mail may from time to time offer) and

1.3.6 **written** or **in writing** includes any non-transitory form of visible reproduction of words including email but not fax or any form of messaging via social media or text message.

2 DURATION

This Agreement shall come into effect on the Commencement Date and, subject to provisions for earlier termination, shall continue unless and until terminated by either party giving to the other at least [] months’ notice in writing.

3 SERVICES

3.1 The Supplier shall provide and the Customer shall receive the Services on the terms set out in this Agreement.

3.2 The Supplier shall:

- 3.2.1 co-operate with the Customer in all matters relating to the Services;
 - 3.2.2 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises. The Customer reserves the right to refuse the Supplier access to the Customer's premises which is not necessary for the performance of the Services;
 - 3.2.3 notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
 - 3.2.4 obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:
 - (a) the Services and their use by the Customer (including use of the Customer's equipment and software in conjunction with the Supplier's equipment and software); and
 - (b) use by the Supplier of the Deliverables and all documents, information and materials provided by the Supplier [or its agents, subcontractors, consultants or employees], including [computer programs, data, reports and specifications.
- 3.3 The Supplier may not charge for the time it spends assessing or responding to a request from the Customer for a change to the Services except with the prior written agreement of the Customer.
- 3.4 The Supplier acknowledges that:
- 3.4.1 it may be providing the Services for the benefit of any company in relation to which the Customer is a "group undertaking" as defined in section 1161 of the Companies Act 2006 or for the benefit of any unincorporated charity controlled by the Customer or any such company; and
 - 3.4.2 any such company is a third party beneficiary which may enforce the terms of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999.

4 CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- 4.1.1 use reasonable endeavours to co-operate with the Supplier in matters relating to the Services;
 - 4.1.2 provide such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Customer in writing in advance, for the purposes of the Services;

- 4.1.3 provide such information as the Supplier may reasonably request and the Customer considers reasonably necessary, in order for the Customer to carry out the Services in a timely manner; and
 - 4.1.4 inform the Supplier of all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises.
- 4.2 Actual or potential non-compliance by the Customer with any of its obligations in this clause and elsewhere shall only relieve the Supplier from performance under this Agreement:
- 4.2.1 to the extent that it restricts or precludes performance of the Services by the Supplier, and
 - 4.2.2 if the Supplier has notified details to the Customer in writing promptly after the actual or potential non-compliance has come to its attention.

5 PERFORMANCE OF THE SERVICES

- 5.1 The Supplier shall:
- 5.1.1 perform the Services with reasonable skill and care and in accordance with generally recognised commercial practices and standards in the industry for similar services;
 - 5.1.2 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
 - 5.1.3 ensure that the Services conform in all respects and at all times with any specification or description for the Services agreed by the parties and comply with all applicable legislation;
 - 5.1.4 ensure that the Deliverables are of satisfactory quality; and
 - 5.1.5 meet any agreed performance dates and time for performance by the Supplier shall be of the essence of this Agreement.
- 5.2 If the Supplier is in material breach of clause **Error! Reference source not found.**, the Customer may (without prejudice to any other rights it may have, including termination for material or repeated breach under clauses **Error! Reference source not found.** and **Error! Reference source not found.**):
- 5.2.1 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 5.2.2 purchase substitute services from elsewhere;
 - 5.2.3 hold the Supplier accountable for any loss and additional costs incurred; and

- 5.2.4 have all sums previously paid by the Customer to the Supplier under this Agreement refunded by the Supplier less a reasonable charge for provision of the Services up to the date of the breach.
- 5.3 The Customer's rights under this Agreement are in addition to the statutory terms implied in favour of the Customer by the Supply of Goods and Services Act 1982 and any other statute.
- 5.4 During the term of this Agreement and for a period of one year afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies:
- 5.4.1 public liability insurance with a limit of at least [[] million (£[]) per claim]; and
- 5.4.2 professional indemnity insurance with a limit of at least [[] million (£[]) for claims arising from a single event or series of related events in a single calendar year.
- 5.5 The provisions of this clause **Error! Reference source not found.** shall extend to any substituted or remedial services provided by the Supplier.

6 CHARGES AND PAYMENT

- 6.1 In consideration of the provision of the Services, the Customer shall pay to the Supplier the Charges. Unless specified in Schedule 2, the Customer shall be under no obligation to reimburse to the Supplier costs and expenses incurred by the Supplier in the performance of the Services.
- 6.2 Where Services are provided on a time and materials basis:
- 6.2.1 the Supplier's standard daily fee rates for each person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on weekdays (excluding public holidays);
- 6.2.2 all materials shall be supplied at cost unless specified in Schedule 2;
- 6.2.3 the Supplier shall not be entitled to charge on a pro-rata basis for part-days worked by the Supplier's personnel unless it has the Customer's prior written consent to do so;
- 6.2.4 the Supplier shall ensure that the Supplier's personnel complete time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice;
- 6.2.5 each invoice shall set out the time spent by each of the Supplier's personnel and be accompanied by timesheets; and
- 6.2.6 the Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in such form as the Customer shall approve. The Supplier shall allow the Customer and

its agents to inspect and take copies of such records at all reasonable times on request.

- 6.3 All Charges are expressed exclusive of VAT. The Customer shall pay to the Supplier, in addition to the Charges, the amount of VAT (if any) which is properly chargeable by the Supplier to the Customer on or in respect of the Charges.
- 6.4 Unless otherwise specified in Schedule 2, the Charges and any reimbursable costs and expenses shall be invoiced monthly in arrears. Invoices for agreed expenses shall be payable only if accompanied by a detailed breakdown of the expenses and relevant receipts.
- 6.5 Payment of invoices in relation to which there is no bona fide dispute shall be made in full within 90 days of the date of invoice. Payment of invoices in relation to which there is a bona fide dispute shall be made within 45 days of settlement of the dispute. The time for payment of the Charges shall not be of the essence of this Agreement.
- 6.6 the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

7 CONFIDENTIALITY

- 7.1 Each party shall use the Confidential Information of the other party disclosed to it (by whoever disclosed) only for the proper performance of its duties under the Agreement and shall not without the disclosing party's written consent disclose or permit the disclosure of the Confidential Information except in confidence for the proper performance of its duties under the Agreement to those of its employees, officers and professional advisers who need to have access to it.
- 7.2 The provisions of clause **Error! Reference source not found.** shall not apply to Confidential Information that:
- 7.2.1 the receiving party can prove was known to the receiving party or in its possession before that information was acquired from, or from some person on behalf of, the disclosing party;
- 7.2.2 is in or enters the public domain through no wrongful default of the receiving party or any person on its behalf, provided that this clause **Error! Reference source not found.** shall only apply from the date that the relevant Confidential Information enters the public domain;
- 7.2.3 the receiving party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence; or

- 7.2.4 is required to be disclosed by any applicable law or by order of any Court of competent jurisdiction or any government body, agency or regulatory body, to the extent of the required disclosure.
- 7.3 If the receiving party has reasonable grounds to believe that the disclosing party is involved in activity that constitutes an offence under the Bribery Act 2010, it may disclose relevant Confidential Information to the Serious Fraud Office (or other relevant government body) without informing the disclosing party of such disclosure.
- 7.4 Within three (3) days of receipt of a request to do so made at any time and in any event if the Agreement is terminated, the receiving party shall promptly return or destroy (at the option of the disclosing party) all Confidential Information of the disclosing party.

8 INTELLECTUAL PROPERTY

- 8.1 As between the Supplier and the Customer, all Intellectual Property created in the course of the Services (including in the Deliverables) which subsists now or at any time in the future shall be the exclusive property of the Customer. To the extent that any Intellectual Property created in the course of the Services vests in the Supplier, the Supplier assigns (by way of assignment of present and future rights) without payment all such Intellectual Property to the Customer with full title guarantee. If the Supplier is unable to assign such Intellectual Property (because the laws in another country differ from English law and do not permit such assignment), the Supplier shall immediately on request execute all documents that may be necessary to effect the transaction that most closely resembles the commercial intent of an assignment and is permitted in the relevant territory. Pending the above assignments and remaining formalities relating to such assignments, the Supplier shall hold all such Intellectual Property on trust for the Customer.

9 INDEMNITY

- 9.1 The Supplier shall indemnify and hold the Customer harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Customer as a result of or in connection with:
- 9.1.1 any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property or other rights relating to or arising out of the use of anything created in the course of providing Services; or
- 9.1.2 any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services as a consequence of a breach or negligent performance or failure or delay in performance of this Agreement by the Supplier.

10 RISK AND TITLE IN THE DELIVERABLES AND OTHER MATERIALS

- 10.1 Title to and risk of damage to or loss of the Deliverables shall pass to the Customer on delivery.
- 10.2 All documents, equipment, drawings, specifications and all other materials and data supplied by the Customer to the Supplier shall, at all times, be and remain as between the Customer and the Supplier the exclusive property of the Customer. They shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Customer. They shall not be disposed of or used other than in accordance with the Customer's written instructions or authorisation.

11 ANTI-BRIBERY AND ANTI-CORRUPTION

- 11.1 The Supplier shall:
- 11.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
 - 11.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 11.1.3 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
 - 11.1.4 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.
- 11.2 Breach of this clause **Error! Reference source not found.** shall be deemed a material breach.
- 11.3 For the purpose of this clause **Error! Reference source not found.** the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section **Error! Reference source not found.** of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

12 DATA PROTECTION

- 12.1 Each Party shall comply with its respective obligations under Applicable Data Protection Law and shall not do or omit to do anything which would cause the other Party to breach Applicable Data Protection Law.

- 12.2 To the extent that any personal data is processed by the Supplier under this Agreement, the Supplier shall:
- 12.2.1 process the personal data only in accordance with this Agreement and the Customer's lawful instructions;
 - 12.2.2 implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
 - 12.2.3 only permit the personal data to be processed by persons who are bound by enforceable obligations of confidentiality;
 - 12.2.4 remain entitled to appoint third party sub-processors. Where the Supplier appoints a third party sub-processor, it shall, with respect to data protection obligations: (i) ensure that the third party is subject to, and contractually bound by, at least the same obligations as Supplier; and (ii) remain fully liable the Customer for all acts and omissions of the third party;
 - 12.2.5 not transfer or otherwise process the personal data outside the European Economic Area ("EEA") without obtaining the Customer's prior written consent;
 - 12.2.6 where consent is granted under clause 12.2.5, the Supplier may only process, or permit the processing, of the personal data outside the EEA under the following conditions: (i) the territory has the benefit of a European Commission finding that it provides adequate protection for the privacy rights of individuals; or (ii) the Supplier has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available; or (iii) the transfer otherwise complies with Applicable Data Protection Law;
 - 12.2.7 notify the Customer without delay after becoming aware that it has suffered a personal data breach;
 - 12.2.8 at the Customer's cost, permit the Customer (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier's data processing activities to enable the Customer to verify and/or procure that the Supplier is complying with its obligations under this clause 12
 - 12.2.9 assist the Customer in responding to requests from data subjects who are exercising their rights under Applicable Data Protection Law;
 - 12.2.10 assist the Customer in complying with its obligations pursuant to Articles 32-36 of the GDPR (or such corresponding provisions of Applicable Data Protection Law), comprising (if applicable): (i) notifying a supervisory authority that the Customer has suffered a personal data breach; (ii) communicating a personal data breach to an affected individual; (iii) carrying out an impact assessment; and (iv) where required under an

impact assessment, engaging in prior consultation with a supervisory authority; and

12.2.11 unless applicable law requires otherwise, upon termination of this Agreement delete all personal data provided by the Customer to the Supplier.

12.3 Each Party acknowledges that the factual description of the subject-matter, duration of the processing, the nature and purpose of the processing, the type of personal data and the categories of data subjects shall be as set out in this Agreement. To the extent that the foregoing is not set out in this Agreement, the Parties shall keep a separate record the relevant particulars.

13 **SAFEGUARDING**

13.1 Both Parties warrant that they have adopted and will enforce an appropriate safeguarding policy and will make it available to the other Party on request.

13.2 The Supplier shall report immediately to the Customer any safeguarding incidents it becomes aware of in connection with the Services provided under this Agreement and shall also report without delay any other incidents it becomes aware of concerning its own activities (or otherwise) which could have a detrimental effect on the Customer's reputation.

13.3 The Supplier shall, if requested, assist the Customer to prepare any Serious Incident Report required to be filed with the Charity Commission or other report or notification required by another regulator or authority and shall assist the Charity Commission and any other relevant authorities with any subsequent enquiries.

14 **TERMINATION**

14.1 This Agreement may be terminated:

14.1.1 immediately by either party on written notice, if the other is in material breach of an obligation under this Agreement and in the case of any such breach capable of remedy has failed to remedy the breach within a period of 30 days after receipt of written notice to do so;

14.1.2 immediately by either party on written notice, if the other party repeatedly breaches any of the terms of this Agreement in such manner as reasonably demonstrates conduct which is inconsistent with an intention or ability to give effect to the terms of this Agreement.

14.1.3 immediately by either party on written notice:

(a) if the other party is dissolved or struck off the register of companies maintained by Companies House or it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business or it is removed from the Register of Companies or

ceases to exist (whether or not capable of re-instatement or reconstruction);

- (b) if a meeting is convened, a petition is filed, a notice is given, a resolution is passed or an order is made for or in connection with the winding up of the other party except for the purpose of a solvent reconstruction, reorganisation, merger or consolidation;
- (c) if a person becomes entitled to appoint or has appointed a receiver (including fixed charge or court appointed), administrative receiver, liquidator, administrator, manager, insolvency practitioner or similar officer over the whole or a substantial part of the undertaking, property or assets of the other party;
- (d) if the other party stops or suspends, or threatens to stop or suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) if a statutory demand is presented against the other party (which is not the subject of a bona fide dispute) and remains unsatisfied for more than 21 days;
- (f) if the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or enters into (or proposes to enter into) a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise or a moratorium is agreed imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the other party;
- (g) if notice of intention to appoint an administrator is given by any person (including the other party's directors, the other party or any qualifying floating charge holder as defined in the Insolvency Act 1986), an application is made to court or an order is made for the appointment of an administrator or if an administrator is appointed or any step is taken by any person with a view to placing the other party into administration as defined by the Insolvency Act 1986; or
- (h) if any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed in clauses **Error! Reference source not found.** to **Error! Reference source not found.** in relation to the other party.

14.2 For the purposes of this clause **Error! Reference source not found.**:

14.2.1 a breach shall be considered capable of remedy:

- (a) if the party in breach can comply with the provision in question in all respects other than as to the time of performance; and
- (b) if time of performance is not of the essence.

14.3 Termination of this Agreement for any reason, whether under this clause **Error! Reference source not found.** or not, shall be without prejudice to the accrued rights and liabilities of the parties on the date of termination.

14.4 Upon the termination of this Agreement for any reason:

14.4.1 the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all materials of the Customer referred to in clause **Error! Reference source not found.**; and

14.4.2 the Supplier shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it. In the absence of agreement, the Customer shall pay for any such assistance at the Supplier's standard time and material rates.

15 GENERAL

15.1 Subcontracting and Assignment

15.1.1 The Supplier may not without the prior written consent of the Customer sub-contract to any other person the performance of any of the obligations undertaken by it.

15.1.2 The Customer may assign, transfer (in whole or in part), charge, declare a trust over or deal in any manner with this Agreement or the benefit or burden of or the rights under this Agreement.

15.1.3 The Supplier may not without the prior written consent of the Customer assign, transfer (in whole or in part), charge, declare a trust over or deal in any manner with this Agreement or the benefit or burden of or the rights under this Agreement.

15.2 Force Majeure

15.2.1 Neither party shall be liable to the other party for any delay or non-performance of its obligations under this Agreement to the extent that its performance is interrupted or prevented by any act or omission beyond its reasonable control.

15.2.2 Such delay or non-performance shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented provided that if such delay or failure persists for sixty (60) days or more, the party not affected may, at its option and if in its opinion it is reasonable for it to do so,

terminate this Agreement by giving fourteen (14) days written notice of such termination to the other party.

15.3 **Amendments**

No amendment of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties.

15.4 **Waivers and Remedies**

15.4.1 Except as otherwise stated in this Agreement, the rights and remedies of each party under this Agreement:

- (a) are in addition to and not exclusive of any other rights or remedies under this Agreement or the general law; and
- (b) may be waived only in writing and specifically.

15.4.2 Delay in exercising or non-exercise of any right under this Agreement is not a waiver of that or any other right.

15.4.3 Partial exercise of any right under this Agreement shall not preclude any further or other exercise of that right or any other right under this Agreement.

15.4.4 Waiver of a breach of any term of this Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

15.5 **Severance**

15.5.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (b) the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

15.6 **Entire Agreement**

15.6.1 This Agreement:

- (a) constitutes the entire agreement between the parties with respect to the subject matter of this Agreement; and
- (b) supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the parties relating to such subject matter.

- 15.6.2 Each party acknowledges to the other that it has not been induced to enter into this Agreement by, nor has it relied upon, any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of the other party or any other person save for those contained in this Agreement. Accordingly, each of the parties acknowledges and agrees that the only remedy available to it in respect of the subject matter of this Agreement shall be for breach of contract under the terms of this Agreement and it shall have no right of action against any other party in respect of any such representation, promise, assurance, warranty or undertaking.
- 15.6.3 This clause shall not exclude any liability which either party would otherwise have to the other or any right which either of them may have to rescind this Agreement in respect of any statements made fraudulently by the other prior to the execution of this Agreement or any rights which either of them may have in respect of fraudulent concealment by the other.
- 15.6.4 In the event of a conflict between any of the terms of this Agreement, the conflict shall be resolved according to the following descending order of priority, (i) the clauses of this Agreement, then (ii) the Schedules.

15.7 **Survival Of Obligations**

Notwithstanding any provision of this Agreement to the contrary, the provisions of clauses **Error! Reference source not found.**, and **Error! Reference source not found.** and any other clauses which expressly or impliedly survive termination of this Agreement for any reason whatsoever shall continue in full force and effect after termination.

15.8 **No Partnership/Agency**

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15.9 **Rights of Third parties**

Subject to clause **Error! Reference source not found.**, a person who is not a party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

15.10 Notices

15.10.1 All notices between the Parties with respect to the Agreement shall be in writing and signed by or on behalf of the Party giving it. Any notice shall be duly served (i) on delivery if delivered by hand, (ii) 48 hours after sending if sent by first class post or special or recorded delivery (or other “proof of delivery” or “proof of posting” service that Royal Mail may from time to time offer) or (iii) on sending if sent by fax or email (provided that a copy is also sent by post), provided that in each case the notice is sent to the address of the addressee given at the start of the Agreement or such other address as the addressee may from time to time have notified for the purpose of this condition.

15.10.2 Any notice or communication given under the Agreement shall not be validly served if sent by text messaging via mobile phone.

15.11 Governing Law

The Agreement and any dispute or claim arising out of or in connection with it (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of England and Wales.

15.12 Jurisdiction

In relation to any legal action or proceedings (a) arising out of or in connection with the Agreement or its implementation or effect or (b) relating to any non-contractual obligations arising out of or in connection with the Agreement, each of the Parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.

This Agreement has been entered into on the date stated at the beginning of it.

Signed for and on behalf of)

[The Supplier]:)

(Signature of director)

Director

(name of director)

Signed for and on behalf of

)

NMRN OPERATIONS:

)

(Signature)

(name)

SCHEDULE 1

Services

The services to be provided by the Supplier are:

[REDACTED]

SCHEDULE 2

Charges and other sums payable

Charges

[Details of charges and when payable if not monthly in arrears]

[Costs and expenses]

[set out position – or leave out]

[Increase in charges]

[The Supplier may with the prior written consent of the Customer review and increase any of the Charges with effect from [each anniversary] of the Commencement Date] by a percentage not greater than the increase in the retail prices index over the 12 month period up to date on which notice of increase is given. The Supplier shall give the Customer written notice of any such increase not less than 30 days before the date that the increase takes effect.]

