



TERMS & CONDITIONS OF CONTRACT

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1 TERMS AND CONDITIONS

1.1 In these conditions "**the Contract**" means the agreement concluded between the Trustees of the Imperial War Museum and the Contractor including all specifications, plans, drawings and other documents which are relevant to the Contract and also such of these Conditions as are included in these terms and conditions of the Contract. **Note: Should any discrepancy be found between these conditions and those contained within the Conditions of Contract then the former will prevail.**

1.2 The following provisions shall have effect with respect to the interpretation of the Contract except where the context otherwise requires:

- "**IWM**" means the Trustees of the Imperial War Museum;
- "**Client**" "**Employer**" means the IWM
- "**Contract**" means the agreement concluded between IWM and the Contractor including all these conditions, specifications, plans, drawings and other documents, which are relevant to the Contract. In the case of any discrepancies among these documents, these conditions prevail;
- "**Principal Contractor/The Contractor**" means the person who by the Contract undertakes to render such Service for IWM as is provided by the Contract and where the Contractor is an individual or a partnership the expression shall include the personal representatives of that individual or partnership as the case may be and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of IWM;

"**Contractors Employees**" for the purposes of this Contract is defined as employees of the Contractor, their agents, sub-contractors and designers;
- "**Contract Price**" means the price exclusive of Value Added Tax, payable to the Contractor by IWM under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provision of the Contract;
- "**Contracts Administrator**" (CA) means the individual appointed for the time being by IWM as the responsible official for the purposes of this Contract;
- "**Loss**" means destruction;
- "**Loss of Property**" includes damage to property, loss of profits and loss of use;
- "**Month**" means calendar month unless otherwise defined;
- "**Personal Injury**" includes sickness and death;
- "**Premises/Site**" means IWM London, Lambeth Road, London SE1 6HZ and IWM All Saints Building Austral Street London SE11 4SJ;
- "**Project**": means the scope of Works as described within the Contract;
- "**Employee of IWM**" includes persons (and the personal representative of any person) who are employees of IWM when any relevant Personal Injury or Loss of Property occurred, even if he has ceased to be such before any payment in respect of the Personal Injury or Loss of

Property is made, and where they have ceased to be such by reason of their deaths, include their personal representatives;

- **“Services”** and/or **“Works”** means all Services or Works that the Contractor is required to undertaken under this Contract;
- **“The Schedule of Works”** means the description and specification attached to the tender.
- **“Design Services”** means the Services set out and referred to within the Contract as the Principal Contractors Design Scope and Design and Specification Portion
- **“Preliminaries”** means the document providing a description of the Project to enable the Contractor to assess costs required by the method and circumstances of the Works
- **“Sub-contractor”** means any person, firm or company under contract to the Contractor to perform work or provide professional services and/or supplies goods and includes any other person or persons taken as a partner or director by such person, firm or company during the currency of the Contract and the surviving member or members of any such firm or company;
- **“Force Majeure”**: means any event or occurrence which is outside the control of IWM and/or the Contractor and which is not attributable to any act or failure to take preventative action by the Party concerned;
- **“Foreground IPR”** means all Intellectual Property Rights in the Deliverables arising as a direct result of and in the performance of this Contract.
- **“Background IPR”** means all Intellectual Property Rights excluding Foreground IPR, owned by either IWM or the Contractor prior to their accession to this Contract, as well as any Intellectual Property Rights pertaining to such information, the application for which has been filed before their accession to this Contract, and which is needed for creating the Deliverables or for using Foreground IPR in accordance with this Contract.
- **“Third Party IPR”** means Intellectual Property Rights, not owned by Parties subject to this Contract.
- **“Intellectual Property Rights”** means patents, Trade Marks, trade names, design rights, copyright (including rights in computer software and moral rights), performers’ rights, database rights, and other Intellectual Property Rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.
- **“Material”**: all plans, drawings, specifications, schedules, reports, calculations, correspondence and other documents (including any computer software developed by the Contractor used to generate them and any designs contained in them) prepared or provided by the Contractor for or in connection with the Project;
- **“Products”**: materials, both manufactured and naturally occurring, and goods, including components, equipment and accessories, intended for the permanent incorporation into the Works.

1.3 The headings to these Conditions shall not affect the interpretation thereof.

1.4 Within this Contract, IWM and the Contractor are hereby referred to individually as a **“Party”** or collectively as the **“Parties”**.

- 1.5 Any notice or other communication whatsoever which IWM are required or authorised by the Contract to give or make to the Contractor shall be seen to be given if sent by post in a prepaid letter addressed to the last known address of the Contractor and that the letter is not returned undelivered by the Royal Mail shall be deemed for the purposes of the Contract to have been given or made at the time at which the letter would in the ordinary course of post be delivered.
- 1.6 The masculine includes the feminine.
- 1.7 The singular includes the plural and vice versa.
- 1.8 Reference to any enactment, order, regulation or similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.

2 Bankruptcy

- 2.1 IWM may terminate the Contract by written notice having immediate effect if:
- (a) the Contractor undergoes a change of control, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
 - (b) where the Contractor is an individual or a firm, any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of Section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any jurisdiction within the United Kingdom; or
 - (c) where the Contractor is a company, and shall pass a resolution or the Court makes an order that the Contractor shall be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.
- 2.2 IWM may only exercise its right under clause 2.1(a) within 3 months after a change of control occurs and shall not be permitted to do so where it is agreed in advance to the particular change of control that occurs. The Contractor shall notify IWM immediately when any change of control occurs.
- 2.3 The rights and obligations of the parties upon termination under this clause shall be the same as those for termination for default under clause 18 and provisions in clauses 18.5 and 18.6 shall apply.

3 Equal Opportunities

- 3.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment thereof relating to discrimination in employment.
- 3.2 The Contractor shall take all reasonable steps to secure the observance of the provisions of Clause 3.1 by all Contractors Employees.

4. Transfer & Sub-Letting

The Contractor shall not give, bargain, sell, assign, sub-let, sub-contract or otherwise dispose of the Agreement or any part thereof of the benefit or advantage of the Agreement or any part thereof without the prior written consent of IWM.

5 Anti-Bribery

5.1 The Contractor is aware of IWM's obligation to comply with the anti-bribery rules relevant to the contracting Parties, and represents that it will not use money or other consideration, paid by IWM for unlawful purposes, including purposes violating anti-bribery laws including the Bribery Act 2010, such as make or cause to be made direct or indirect payments to any public official in order to assist IWM or any group member organisation or anyone acting on their behalf in obtaining or retaining business with, or directing business to, any person, or securing any improper advantage.

5.2 The Contractor hereby declares that:

- its members, officers, owners or employees are not public officials;
- it does not and will not employ or otherwise compensate any public officials or make or cause another to make any direct or indirect offers of payments to any public officials, for the purpose of influencing or inducing any decision for the benefit of IWM and it will not employ any sub-contractor, consultant, agent or representative in connection with this Contract without a documented examination of his person, reputation and integrity, and;
- it will not employ any sub-contractor, consultant, agent or representative who does not comply with the anti-corruption rules and if such a violation comes to its attention to inform IWM immediately.

5.3 IWM may immediately terminate this Contract if the Contractor violates any of the anti-corruption laws and the provisions as defined in this clause.

5.4 The Contractor agrees to comply fully with all applicable anti-bribery laws, including those in the jurisdiction where they are registered and the jurisdiction where the relevant contract will be performed (if different), and to comply with IWM's Anti-Bribery Policy.

5.5 The Contractor represents that:

- he or she or, as the case may be, the authorised representatives of the Contractor presently is/are not, and during the life of the Contract will not become, an official or employee of the relevant country's government or of a political party in the country;
- he/she/they will disclose any such appointment immediately to IWM, and;
- such appointment may result in the termination of the Contract.

5.6 The Contractor agrees that all payments made to the Contractor will be made only after receipt by IWM of a detailed and accurate invoice supported by detailed records. IWM will make all payments under this Contract in Pounds Sterling, only by bank transfer to the account of the Contractor at a financial institution within the United Kingdom.

5.7 The Contractor agrees to keep accurate books, accounts, records and invoices and agrees that IWM is entitled, with the help of outside auditors if it deems necessary, to audit all books, accounts, records and invoices and accompanying documentation of the Contractor for compliance with any applicable anti-bribery laws and that the Contractor will cooperate fully in any such audit.

5.8 The Contractor's failure to comply with all applicable anti-bribery laws or IWM's Anti-Bribery Policy will be deemed to be a material breach of the Contract entitling IWM to terminate the Contract. In the event the Contractor will surrender any claim for payment under the Contract including payment for savvies previously performed.

- 5.9 IWM may also terminate the Contract or suspend or withhold payment if it has a good faith belief that the Contractor has violated, intends to violate, or has caused a violation of any anti-bribery laws. IWM will not be liable for any claims, losses or damages arising from or related to failure by the Contractor of the Contract under this clause, and the Contractor will indemnify and hold IWM harmless against any such claims, losses or damages.

6 Drawings, Specifications, Schedules of Work and Other Data

- 6.1 Any drawings, specification, schedule of works or other data completed or provided in connection with this Contract shall become or as the case may be remain the property of IWM and be delivered up to the IWM upon completion or termination of the Contract.

- 6.2 Any drawings required to be made or supplied by the Contractor under the Contract shall be a size appropriate to show the detail to be depicted clearly without magnifying aids and shall conform to British Standards 1192 or 308 or equivalent as appropriate, whereby prior agreement IWM have agreed to accept microfilm, microfiche or other modern storage media, drawings and other documents shall be supplied by the Contractor in such form as has been agreed.

7 Use of Documents, Information, etc.

- 7.1 Except with the consent in writing of IWM, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far as may be necessary for the purposes of the Contract.

- 7.2 Except with the consent in writing of IWM the Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of IWM otherwise than for the purpose of the Contract.

- 7.3 Any specification, plans, drawings, schedule of works, or any other documents issued by or on behalf of IWM for the purposes of the Contract remain the property of IWM and must be returned on completion of the Contract.

8 Disclosure of Information

- 8.1 The Contractor shall take every precaution to ensure that information about the Contract or arising from or connected with the Contract is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. No information regarding the Services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Contractor except with the written permission of IWM to whom any press or other enquiry or other such matter should be referred.

- 8.2 The Contractor shall fully indemnify IWM his employees or agents against the costs of dealing with any claims made in respect of information subject to the Data Protection Act 1998 which claims would not have arisen but for some act, omission or negligence on the part of the Contractor, and the Contractors Employees.

9 Arbitration

All disputes, differences or questions between the Parties to the Contract with respect to any matter or thing arising out of or relating to the Contract other than a matter or thing as to which the decision of IWM is under the Contract to be final and conclusive and except to the extent to which special provision for arbitration is made elsewhere in the Contract shall be referred to the arbitration of 2 persons one to be appointed by IWM and one by the Contractor or their Umpire in

accordance with the provisions of the Arbitration Acts 1950, 1975 and 1979 or any statutory modification or re-enactment thereof for the time being in force.

10 Security Vetting

- 10.1 The Contractor is responsible for ensuring that all Contractors Employees, who are due to work at the Premises, for longer than four weeks in duration in the delivery of the Contract, whether in a continuous period, or over the duration of the Contract, have been security vetted to Basic level, as defined by Disclosure Scotland.
- 10.2 This requirement will apply to an employee who has not worked at an IWM branch, within the previous 12 months.
- 10.3 A minimum of 48 hours before any individual commences work on the Premises, the Contractor is required to complete and submit the Security Notification Form (see Terms & Conditions Appendix A) to the Technical Security Manager at IWM London.
- 10.4 Upon arrival at the Premises, each new employee must report individually to the Control Room with a copy of their certificate of proof of vetting, and some form of ID. IWM will note the details of the certificate of proof of vetting, but will not retain any documents.
- 10.5 IWM will accept a certificate of proof of vetting which is dated within 12 months of the date of their site commencement at IWM, although IWM reserves the right to request they are security vetted, at its discretion, which IWM agrees not to action unreasonably.
- 10.6 Failure to comply with this requirement could result in the employee not being granted access to IWM.

11 Observance of Regulations

- 11.1 The Contractor's representatives when employed within the boundaries of the Premises shall comply with such rules, regulations and requirements (including those relating to Security arrangements) as may be in force for the conduct of personnel at the Premises. The Contracts Administrator shall provide details of such rules, regulations and requirements, upon request.
- 11.2 Except as provided in this Contract neither the Contractor nor any Contractors Employees shall carry out any business or trading activity within the confines of the Premises and no advertisement, sign or notice of any description shall be exhibited without prior approval in writing from the Contracts Administrator.

12 Safety

The Contractor shall be responsible for the observance by himself and all Contractors Employees of all safety precautions necessary for the protection of himself and all Contractors Employees including all precautions required to be taken by or under any Act of Parliament including any regulations or bye-law of any local or other authority. He shall co-operate fully with IWM to ensure the proper discharge of these duties.

13 Accidents to Contractor's Employees or Agents

Accidents to the Contractors Employees which ordinarily require to be reported in accordance with the Health & Safety at Work Act 1974, shall be reported immediately to the Contracts Administrator or his authorised representative at the time.

14 Liability in Respect of Damage to IWM Property

The Contractor shall except as otherwise provided for within the Contract make good or at the option of IWM pay compensation for all damage occurring to any IWM property occasioned by the Contractor or by Contractors Employees arising from his or their presence on IWM Premises in connection with the Contract provided that this clause shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by his neglect or default or the neglect or default of the Contractor or the Contractors Employees or by any circumstances within their control.

15 Default

15.1 Should the Services or any portion thereof not be undertaken within the time or times specified within or under the Contract, IWM may without prejudice to any other remedies by notice in writing to the Contractor determine the Contract either as respects the Services which have not been carried out in accordance with the Contract at the time of such determination or as respects all the Services to which the Contract relates other than those carried out in accordance with the Contract before that time hereinafter called a relevant determination, and in such case the Contractor shall not be entitled under the Contract to payment of any amount by way of compensation.

15.2 Where IWM have determined the Contract under clause 15.1 and without prejudice as aforesaid IWM may obtain all or any of the Services as respects which the Contract is so determined by arranging for those Services to be carried out by alternative means and there shall be recoverable from the Contractor the amount by which the aggregate of the cost of obtaining Services in this way exceeds the amount which would have been payable to the Contractor in respect of all the Services so replaced if they had been carried out in accordance with the Contract.

15.3 In the event of the Contractor failing to carry out any Services in accordance with these Conditions, IWM shall (without prejudice to any other remedy available) be entitled:

- (a) to deduct from any account rendered by the Contractor in respect of unsatisfactory Services such sum as IWM considers appropriate;
- (b) to have such Services carried out satisfactorily by other persons and in the meantime to debar the Contractor, and the Contractors Employees from the Premises.

15.4 On the occurrence of a relevant determination the Contractor shall notwithstanding such determination co-operate in the transfer of the Services to which the relevant determination relates to any alternative organisation under clause 15.2, in accordance with arrangements to be notified to him by IWM.

16 Insurance

16.1 The Contractor shall effect and maintain insurance to the following sums until the expiration of six years from the date of completion:

- Employers Liability - £5m
- Public Liability - £5m
- Professional Liability - £5m

16.2 The Contractor shall ensure that any person or organisation commissioned as a consultant by him takes out and maintains appropriate professional indemnity insurance in respect of their businesses generally throughout the period from the date of commencement of their Services under the Contract until the expiration of six years from the date of completion of each project, which insurance may be limited in respect of any one claim (but shall not be limited in any other respect): provided that any such limit under this Clause shall in any event be at least £5m.

- 16.3 The Contractor shall, whenever required by IWM, produce copies of his and/or his sub-contractors insurance certificates stating that their insurance complies with the requirements pursuant to clauses 16.1 and 16.2, and is/are currently in date.
- 16.4 If, for whatever reason, the Contractor fails to comply with this clause, or without the approval of IWM obtains a different policy of insurance from that required by IWM at the time when he submitted his tender, IWM may make alternative arrangements necessary to protect their interests and recover loss and damages from the Contractor.
- 16.5 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract, their sub-contracts or their terms of this Contract.

17 Injury to Person: Loss of Property

- 17.1 The Contractor will indemnify and hold IWM harmless from and against any and all legal liabilities for illness or injury or death to any employees of IWM or the Contractor or any third party and for loss of or damage to the property of IWM or the Contractor or the property of their personnel or any third party, and against all claims, costs, demands, proceedings and causes of action resulting directly therefrom, which are due to negligence on the part of the Contractor or Contractors Employees or any failure by the Contractor or Contractors Employees or agents to perform any of its obligations under this Contract.
- 17.2 IWM will indemnify and hold the Contractor harmless from and against any and all legal liabilities for illness or injury or death to any employees of the Contractor or IWM or any third party and for loss of or damage to the property of the Contractor or IWM or the property of their personnel or any third party, and against all claims, costs, demands, proceedings and causes of action resulting directly therefrom, which are due to negligence on the part of IWM or its employees or agents or any failure by IWM or its employees or agents to perform any of its obligations under this Contract.
- 17.3 If the Contractor shows that any personal injury or loss of property to which this clause applies was not caused nor contributed to by his neglect or default or by that of the Contractors Employees, or by any circumstances within his control, he shall be under no liability under this clause and if he shows that the neglect or default of any person (not being the Contractors Employees) was in part responsible for any personal injury or loss of property to which this clause applies the Contractor's liability under this clause shall not extend to the share in the responsibility attributable to the neglect or default of that person:
- (a) IWM shall notify the Contractor of any claim or proceedings made or brought in respect of any personal injury or loss of property to which this clause applies.
 - (b) If the Contractor admits that he is liable wholly to indemnify IWM in respect of any such claim or proceedings and the claim or proceeding is not an expected claim, he or if he so desires his insurers shall be responsible subject to clause 17.3 (c) for dealing with or settling that claim or proceeding.
 - (c) If in connection with any such claim or proceeding with which the Contractor or his insurers are dealing any matter or issue shall arise which involves or may involve any privilege or special right of the Crown (including any privilege or right in relation to the discovery or production of documents) the Contractor or his insurers shall before taking any action thereon consult the legal adviser to IWM and act in relation thereto as may be required by IWM and if either the Contractor or his insurers fail to comply with this clause, clause 17.3 (b) shall cease to apply.

17.4 Where any such claim or proceeding as is mentioned in clauses 17.3 (a) or (b) is settled otherwise than by the Contractor or his insurers he shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case and in particular to the damages which might be recoverable at law.

18 Break

18.1 IWM shall in addition to his powers under any other of these Conditions have power to determine the Contract at any time by giving to the Contractor written notice to expire at the end **7 days** and upon the expiration of the notice the Contract shall be determined without prejudice to the rights of the Parties accrued to the date of determination but subject to the operation of the following provisions of this Contract.

18.2 If either Party to this Contract is found to be in breach of this Contract, they must write to the other Party identifying the breach, and the Party in breach must respond within **five working days** to either put right the breach, or identify the solution to the breach and a timeframe for rectification that is acceptable to the other Party. If the breach is not remedied by the agreed date, the Party whose contractual rights have been breached, can issue a letter of termination giving **two working days' notice** to terminate the Contract.

18.3 IWM shall indemnify the Contractor against any commitments, liabilities or expenditure that are reasonably and properly chargeable to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the determination of the Contract.

18.4 IWM shall not in any case be liable to pay under the provisions of this clause any sum which when taken together with any sums paid or due or becoming due to the Contractor under the Contract shall exceed the Contract Price.

18.5 Following termination of the Contract neither Party shall have any further rights or obligations in relation to the other Party except those stated in this clause, and in the clauses listed in clause 18.6 which shall continue to have full effect. Subject to the other provisions of this clause, termination shall not however affect the rights of action and remedies of the parties which shall have accrued at the date of termination or shall thereafter accrue.

18.6 Clauses which shall apply under 18.5 shall be:

- Confidentiality
- Insurance
- Intellectual Property Rights
- Governing Law and Jurisdiction
- Freedom of Information Act 2000

19 Duration of Contract

19.1 The Services shall be provided during the period stated within the Preliminaries subject to IWM rights of earlier termination under clause 18.

19.2 IWM reserves the right to extend the Contract beyond the period stated in the Preliminaries. Payment for any extension shall be based upon the Contract Price subject to fair and reasonable adjustment to be agreed between IWM and the Contractor. IWM must exercise any such extension by giving written notice the Contractor.

20 Facilities Provided

20.1 The Contract Preliminaries lists the facilities that will be provided by IWM for use by the Contractor

throughout the duration of the Contract.

- 20.2 The Contractor is to be responsible for the cleanliness, proper use and reasonable care of facilities provided.
- 20.3 The Contractor shall ensure that site services are used with due regard to the need for the efficient use and conservation of supplies and IWM shall not bear the costs of any use of such supplies which does not conform to the requirements of this clause whether through the negligence or otherwise of the Contractors Employees. The Contractor shall observe any instructions issued by the Contracts Administrator or his authorised representative in this connection.
- 20.4 Continuity of electricity, heating, water supplies and sewerage is not guaranteed and no liability will be accepted by IWM for shut-down or restrictions due to any cause whatsoever.

21 Variation of Requirement

- 21.1 IWM reserve the right to vary the requirements of the Contract as detailed within the Schedule of Works should this at any time become necessary. In the event of any variation of the contractual requirement, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between IWM and the Contractor.
- 21.2 Any variation of any provision of this Contract must be effected in writing issued by the Contracts Administrator and no purported variation by any other means shall bind IWM.

22 Contract Documents

In any case of discrepancy between these terms and conditions and other documents forming part of the Contract these terms and conditions shall prevail unless the inconsistent provision of such document is expressed to be or if the context indicates it to be an amendment of these terms and conditions and the same shall have been effected in accordance with this clause 22.

23 Monitoring and Liaison Meeting

- 23.1 The Contractor shall be responsible for monitoring his performance of the Contract and provide the Contracts Administrator with full particulars of any aspects of his said performance that fail to meet the requirements of the Contract unless otherwise notified in writing by IWM.
- 23.2 The Contractor shall taking into account all requirements arising from the Contract issue appropriate operating and procedural instructions in writing to all staff engaged on the Contract and provide copies to IWM by not later than the date of issue of the Certificate of Practical Completion of the Works. The Contractor shall provide copies to IWM of any instructions that withdraw, notify or supplement any instructions previously in force within FIVE days of the issue of any such instructions.
- 23.3 The Contractor shall maintain such records in respect of the Contract as the IWM may reasonably require and shall on request produce them for inspection by the IWM.
- 23.4 The Contractor shall make available such records for the use of IWM when required. They shall not be released, published or disposed of without the prior written approval of IWM.
- 23.5 The Contractor shall as required by the Contracts Administrator make written submissions or oral presentations of the work undertaken under the Contract in aid of any review of policy or of the conduct of business at the Premises. Liaison meetings between IWM and the Contractor shall be held as required by IWM or the Contractor. IWM will make the necessary arrangements for these meetings that will be held at a location determined by the Contracts Administrator. A record of all

meetings shall be made by the Contracts Administrator which shall be circulated to all attendees and nominated people.

- 23.6 The Contractor shall arrange for the attendance of Contractors Employees, as applicable who may be required by IWM to attend as witnesses at Boards of Enquiry or similar proceedings.

24 Price

Unless otherwise stated in the Contract, the Contract Price shall be the total Price for the Services including the cost of all labour, materials, equipment, holiday relief or substitute as and when necessary, overheads and all other costs of the Contractor in connection with the Contract for full and proper performance by the Contractor.

25 Payment

- 25.1 Itemised claims accompanied by all necessary documentation shall be submitted to the Contracts Administrator for scrutiny and approval. Payment shall be made against certification of satisfactory performance signed by the Contracts Administrator. Payments may be withheld or reduced by IWM in the event of unsatisfactory performance without prejudice to the other rights of IWM under Contract.

- 25.2 The first Payment shall commence 2 weeks from the Date for Possession or the date that the Contractor takes possession whichever is the later. Valuations for Interim Payments will be made at two week intervals and a final payment upon practical completion of the Contract.

- 25.3 Retention will be 5% of the agreed Contract Sum

- 25.4 When in the opinion of the Contracts Administrator that the Works have been practically completed he shall within 14 days of practical completion issue a Certificate of Practical Completion stating the day upon which the Works had been so practically completed. IWM shall then pay the Contractor within 30 days of the date of issue of the Certificate of Practical Completion half the amount of the Retention referred to in clause 25.3.

- 25.5 The defects period begins on the day after the date specified in the Certificate of Practical Completion as the date of Practical Completion.

If no defects appear within the Defects Period, or when all defects specified in the Schedule of Defects prepared by the Contracts Administrator within 14 days of the expiry of the Defects Period have been rectified, the Contracts Administrator shall issue a Final Certificate. IWM shall within 30 days of the date of issue of the said Certificate pay to the Contractor such sum as represents the Contract Sum plus any additional sums due under this Contract, less any payments previously made to the Contractor and less any liquidated damages due to IWM.

- 25.6 Advanced Payment

The following clause is only applicable if IWM have made an advance payment to the Contractor, prior to delivery, installation, testing and commissioning of Products.

- **Ownership** – upon the receipt of IWM's advance payment, all goods, equipment, accessories, plant, materials, works-in-progress and/or completed, intended for the permanent incorporation into the Works, held by the Contractor on behalf of IWM, must be clearly labelled as "**The property of Imperial War Museums**", wherever they are stored by the Contractor;
- **Location** – The Contractor is required to ensure IWM is advised of the location of the Products at all times prior to their delivery to IWM

- **Risk** – risk of damage, loss, etc. in the Products rests solely with the Contractor at all times, until the Products have successfully been installed at the Premises;
- **Inspection** – clause 25.1 equally applies to Products as identified under this clause. If due to the location of the Products, IWM or any of its representatives, is unable to view the Products, the Contractor is required to provide photographic evidence of the condition of the Products.

26 Practical Completion

The Contracts Administrator shall certify the date when in his opinion the Works have reached practical completion.

27 Defects Liability

Any defects, excessive shrinkages or other faults to the Works which appear within **12 months** of the date of practical completion and are due to materials or workmanship not in accordance with the Contract or frost occurring before practical completion shall be made good by the Contractor entirely at his own cost unless the Contracts Administrator shall otherwise instruct.

28 Defects in Existing Structures

Defects in the existing structure are to be notified to the Contracts Administrator without delay. Instructions are to be obtained from the Contracts Administrator before proceeding with any remedial works that may cover up or otherwise hide defective components/building fabric.

29 Proposals for Rectification

29.1 As soon as possible after any part/s of the work or any products are known not to be in accordance with the Contract or appear that they may not be in accordance, the Contractor is to submit proposals to the Contracts Administrator for opening up, inspection, testing, making good, adjustment of the Contract Sum, or removal and re-execution.

29.2 Where such proposals may be unacceptable to the Contracts Administrator, the Contracts Administrator will have the authority to issue and have alternative instructions carried out.

30 Extensions of Contract Period

If it becomes apparent that the Works will not be completed by the date specified for completion (or any later date fixed in accordance with the provisions of clause 30) for reasons beyond the control of the Contractor, including compliance with any instruction of the Contracts Administrator under this Contract whose issue is not due to a default of the Contractor then the Contractor shall thereupon in writing so notify the Contracts Administrator who shall make, in writing such extension of time for completion as may be reasonable.

Reasons within the control of the Contractor include any default of the Contractor or of others employed or engaged by or under him for or in connection with the Works and of any supplier of goods or materials for the Works.

31 The Work

31.1 The Work will be the subject of separate schedule/s and/or specification/s and any drawing/s as the case may be and shall be appended to this Contract.

31.2 Subject to an agreed programme all works shall be completed on a continuous basis.

32 Leave Blank

33 Leave Blank

34 Contractor's Property

All property of the Contractor whilst at the Premises shall be at the risk of the Contractor and IWM shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby except where any such loss or damage was caused or contributed to by any act, neglect or default of any employee or other contractor of IWM. IWM shall accept liability to the extent to which such loss or damage is so caused or contributed to as aforesaid.

35 Duty of Care

The Contractor shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the Services properly and efficiently in accordance with the Contract.

36 Hours of Work

36.1 The Contracts Administrator or his authorised representative may specify the period which the Contractor shall carry out his operations and work shall be carried out in such a manner so as not to interfere with the business of IWM. In the event that the Contractor wishes to work outside normal working hours for his own benefit such Work shall be subject to the Contracts Administrator's approval and any additional costs arising therefrom shall be borne by the Contractor.

36.2 The Contractor shall ascertain from the Contracts Administrator when the Premises will be closed for public holidays etc when apart from exceptions set out in clause 36.1, entry will not be permitted.

37 Contractor's Organisation

37.1 The Contractor shall provide and maintain an organisation having the necessary facilities and employees of appropriate qualifications and experience to undertake the tasks identified in the Schedule of Works.

37.2 All personnel deployed on Work relating to the Contract must have appropriate qualifications and competence and in all respects be acceptable to IWM. Where so required full particulars of all personnel to be employed shall be forwarded in advance to the Contracts Administrator for confirmation of acceptability, including trade and/or professional certification.

38 Service

Subject to the provisions of the Contract the Contractor agrees to provide the Services set out in the contract documentation in consideration of the Contract Price .

39 Recovery of Sums Due

Whenever under the Contract any sums of money shall be recoverable from or payable by the Contractor the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or under any other Contract with IWM.

40 Value Added Tax

- 40.1 IWM shall pay to the Contractor in addition to the Contract Price a sum equal to the Value Added Tax chargeable on the value of the Works provided in accordance with the Contract.
- 40.2 Any invoice or other request for payment of monies due to the Contractor under the Contract shall if he is a taxable person be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Finance Act 1972.

41 Payment of Sub-Contractors

Where the Contractor enters a sub-contract with a supplier or Contractor for the purposes of performing the Contract he shall cause a term to be included in each sub-contract which requires payment to be made to the supplier or Contractor within a specified period not exceeding 30 days from the receipt of the valid invoice as defined by the sub-contract requirements.

42 Audit

- 42.1 The Contractor shall at all times during the course of the Contract and for a period of two years after final payment of all sums due under the Contract maintain in accordance with his normal procedures a record of the costs incurred by him in the execution of the Contract including for example details of times taken and of wage rates paid and such further particulars reasonably specified by IWM as being necessary for the purpose of determining such costs with reasonable accuracy.
- 42.2 At the time before the expiry of the period mentioned in clause 42.1, the Contractor shall, when requested by IWM furnish a summary of any such costs mentioned in such form and detail as IWM may reasonably require and afford such facilities as IWM may reasonably require for his representatives to visit the Contractor's premises and examine the records under that clause.
- 42.3 The Contractor shall keep and maintain until two years after the Contract has been completed or terminated earlier under clause 18, full and accurate records of all employees directly or indirectly involved in the Contract, all expenditures which are reimbursable by IWM and of the hours worked and costs incurred by the Contractor or in connection with any employees, agents, or consultants of the Contractor paid for by IWM on a time charge basis. The Contractor shall on request and without charge afford IWM or its representatives such access to those records as may reasonably be required by IWM in connection with the Contract.
- 42.4 The Contractor shall permit IWM, or their appointed representatives, access at all reasonable times to all such documents, including computerised records and data and other information, as IWM may reasonably require for the purpose of a financial audit by IWM, and for carrying out examinations into the economy, efficiency and effectiveness with which IWM has used its resources. The Contractor shall furnish such explanations as are reasonably required for these purposes at IWM's reasonable cost.
- 42.5 The Contractor shall ensure that the same requirements for the retention of contractual information as stated in this clause is included within all sub-contracts.

43 Transfer of Responsibility

- 43.1 In the event that a different organisation is required to take on the Service at the expiry or termination or the Contract the Contractor shall co-operate in the transfer under arrangements to be notified to him by IWM.

43.2 The transfer shall be arranged between IWM and the Contractor so as to reduce to a minimum any interruption to the Services.

44 Quality Assurance

44.1 The Contractor shall ensure that all Services carried out under the Contract and performed by suitably qualified persons and that British Standards, or equivalent Specifications where such exist are used unless otherwise agreed in writing by IWM.

45 Statutory Requirements

45.1 The Contractor shall comply with all local and national Statutory Requirements relating to the Works and shall pay for any and all fees and charges in respect of all such costs

45.2 In this agreement the term "**Statutory Requirements**" includes any Act of Parliament and Order, Act, Regulation, Instrument, Notice, Byelaw or Requirement made or authorised by or under any Act of Parliament and includes the requirements of any statutory undertaker affected or likely to be affected by the Works or the proposed works.

46 Tender and Contract Documents

46.1 The Contract Drawings will be the same as the Tender Drawings subject to any post tender amendments.

46.2 Where CDM Regulations apply the Pre Construction Information Pack will be appended to the Contract Documents and will refer to information given elsewhere in the preliminaries, schedule of works and drawings.

46.3 Inspection: Drawings and other documents relating to the Contract but not in the Tender Documents may be seen by appointment during normal office hours at the office of the Contracts Administrator.

47 Occupied Premises

The Works are to be carried out on occupied premises with the minimum of inconvenience, nuisance and/or danger to the occupants and other users.

48 Materials and Workmanship

48.1 Materials and Workmanship shall be of the highest order.

48.2 Only operatives skilled in their respective trades must be employed on site during the execution of the Works with the exception of apprentices in training and labourer's as required for moving equipment etc.

48.3 All work undertaken will comply with the relevant British Standard Code of Practice and/or the Manufacturer's Fixing and Fitting Instructions.

48.4 Materials may be stored on-site only with the prior agreement of the Contracts Administrator during the progress of the Works.

49 Temporary Works

49.1 The Contractor shall provide ladders, steps, trestles, scaffolding and platforms as necessary for the complete execution of the Work.

49.2 The Contractor shall provide covers and dustsheets as necessary to protect floors, carpets, tables, fittings and furnishings, or as requested by the Contracts Administrator

49.3 The Contractor shall provide adequate temporary lighting to all work areas during the progress of the Works

49.4 The Contractor shall provide all mandatory site safety signage during the progress of the Works

50 Protection of IWM Property

50.1 The Contractor is to protect and maintain all services and make good any damage/s caused by reason of the Works.

50.2 The Contractor is to protect existing buildings, fences, gates, walls, internal furniture and fittings etc. and other site features.

50.3 The Contractor is to ensure that no damage is caused to roads, paved areas, paths, trees, shrubs and lawns, site drainage and covers.

50.4 The Contractor is to ensure that no unused paint is to be tipped into the drainage system, and site access routes are to be kept clear of all builders' plant, materials and other debris.

51 Fire Precautions

51.1 The Contractor is to take all reasonable precautions to prevent loss or damage from fire, and to supply a maintained fire points within the area of the Works. Locations and number of units to be approved by the Contracts Administrator.

51.2 Any fire fighting equipment provided by the Contractor is to be inspected by Contracts Administrator or his authorised agent.

51.3 All flammable paints shall be stored in metal containers and in an approved location.

51.4 The use of naked flame stripping equipment or hot air guns above 450°C air temperature is not permitted.

52 Ownership

Materials arising from the alteration works are to become the property of the Contractor except where otherwise stated. All such materials arising shall be removed from the Premises as the Works proceed, by the Contractor.

53 Cleaning on Completion

The Contractor is required to clean the works thoroughly, removing all splashes, deposits, rubbish and surplus materials from fittings and glass, and to clear the site.

54 Safety, Health and Welfare

The Contractor and the Contractors Employees shall comply with current enactments, regulations and working rules relating to safety of employee's and the general public, and the health and welfare of all employee's and persons visiting the Site.

55 Contractor's Design

- 55.1 The Contractor shall submit to IWM in writing its proposals, if any, as to any design to which the Design Services relate which the Contractor considers should be carried out by the Contractor or any consultant or supplier. The Contractor shall, with such proposals, supply to IWM a comprehensive description of the design to be carried out by the Contractor or any Consultant or supplier in sufficient detail to form part of the Contract to be entered into by such Consultant, or supplier and a description of the inter-relationship of such design with the design to be carried out by the Contractor and by the Project Team.
- 55.2 If and to the extent that IWM agrees that any design may be carried out by the Contractor or any sub-consultant or supplier in accordance with Clause 55.1, the Contractor shall nevertheless be responsible for examining such design using the reasonable skill, care and diligence required by Clause 56.1 and for co-ordinating and integrating such design with the design of the Project. Except as may be necessary for the co-ordination and integration of the same with the design of the Project, the Contractor is not required to examine the detailed design of any proprietary product to be supplied by the Contractor or any consultant or supplier.

56 Design Obligations

- 56.1 The Contractor shall provide the Design Services in delivering the Brief, upon and subject to the terms of this Contract. The Contractor warrants that he has exercised and that he will continue to exercise in the performance of the Design Services the reasonable skill, care and diligence to be expected of a Designer holding himself out as having the competence, experience and resources necessary for the proper performance of such services in connection with a project of a size, scope and complexity similar to that of the Project.
- 56.2 The Contractor shall ensure that all Design Services carried out under this Contract are performed by suitable qualified persons and that any British Standard, or equivalent Specifications where such exist, are used unless otherwise agreed in writing by IWM.
- 56.3 The Contractor shall comply at all times with IWM's instructions in relation to the Project except that if, in the performance of the Design Services, the Contractor has a discretion exercisable as between IWM and the Contractor, the Contractor shall exercise its discretion independently and fairly.
- 56.4 The Contractor shall provide and maintain an organisation having the necessary facilities and employees of appropriate qualifications and experience to undertake the Design Services.
- 56.5 All personnel deployed on work relating to the Contract must have appropriate qualifications and competence and in all respects be acceptable to IWM.

Where so required, full particulars of all personnel to be employed shall be forwarded in advance to the Contracts Administrator for confirmation of acceptability.

- 56.6 The Contractor shall provide the Contracts Administrator with details of his named temporary works designer and coordinator, who for the purpose of the Contract will be the named qualified and responsible person for the design, specification and site certification of all temporary works requirements, installations and operations.
- 56.7 The Contractor shall carry out the Design Services so as to ensure that the Material shall comply with all the requirements of any directly applicable provision of the EU treaty, or any EU regulation, any statutory enactment or any regulation, rule or order made pursuant thereto or any regulation or bye-law of any local authority or under and pursuant to any notices served under any such enactment, regulation, rule or order, regulation or bye-law.

- 56.8 The Contractor shall in the performance of the Services observe the requirements of any codes of practice, guidance notes and recommendations for the time being in force and approved by the Health & Safety Commission or published by the Health & Safety Executive.
- 56.9 The Contractor shall not, without the prior written approval of Contracts Administrator, make any material alteration to or omission from the design of any part of the Project which has previously been approved by, or agreed with Contracts Administrator.
- 56.10 No approvals, comments or consents from IWM in connection with the Project shall in any way relieve the Contractor of its obligations under this Contract.
- 56.11 If and to the extent that IWM agrees that any design may be carried out by the Contractor or any sub-consultant or supplier in accordance with Clause 55, the Contractor shall nevertheless be responsible for examining such design using the reasonable skill, care and diligence required by Clause 56.1 and for co-ordinating and integrating such design with the design of the Project. Except as may be necessary for the co-ordination and integration of the same with the design of the Project, the Designer is not required to examine the detailed design of any proprietary product to be supplied by the Designer or any consultant or supplier.

57 Patents and Information

- 57.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by IWM, the Services will not infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party and the Contractor shall indemnify IWM against all actions, claims, demands, costs and expenses which IWM may suffer or incur as a result of or in connection with any breach of this Clause.
- 57.2 All rights (including ownership and copyright) in any reports, specifications, instructions, plans, drawings, patents, models, designs or other documents and material ("the Material") furnished to or made available to the Contractor by IWM are hereby assigned to and shall vest in IWM absolutely.

58 Intellectual Property Rights

- 58.1 The Contractor shall assign all Foreground IPR to IWM with full title guaranteed together with any renewals thereof throughout the world in all circumstances and in perpetuity.
- 58.2 Each party shall grant the other party a non-exclusive royalty free worldwide licence to use the Background IPR within the context of creating the Materials and for granting any rights and permissions in clause 58.1.
- 58.3 While the Contractor shall retain the moral right of association and credit with the Materials, IWM shall retain the ability to edit the Materials as required and wherever reasonable practical
- 58.4 The Contractor shall be credited in association with the Materials where reasonably practical.
- 58.5 The Contractor warrants that all Intellectual Property Rights are owned by the Contractor, or in the case of Third Party IPR are licensed to the Contractor for use in the Materials, and that the Materials do not infringe the Intellectual Property Rights of any third party.
- 58.6 The Contractor agrees that IWM shall retain no liability and the Contractor shall indemnify, defend and hold IWM harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by IWM in defending against any third-party claim of Intellectual Property Rights infringements or threats of claims thereof with respect of IWM's or any user's use of the

Materials, provided that:

- (1) the use of the Materials has been in full compliance with the terms and conditions of this Contract;
- (2) IWM provides the Designer with prompt notice of any such claim or threat of claim;
- (3) the Contractor has sole and complete control over the defence or settlement of such claim.

59 English Law

The Contract shall be considered as a Contract made in England and subject to the law of England.

60 Freedom of Information Act 2000

60.1 The Contractor acknowledges that IWM is subject to the requirements of the Freedom of Information Act (“**FOIA**”) and the Environmental Information Regulations (“**EIRs**”). The Contractor shall, at its own expense, assist and cooperate with IWM to enable IWM to comply with its information disclosure obligations.

60.2 Where the Contractor holds on behalf of IWM information that is subject to the FOIA and EIR, the Contractor shall and shall procure that its sub-contractors shall:

- (a) transfer any request for information received by the Contractor to IWM as soon as practicable after receipt and in any event within two working days of receiving a request for information;
- (b) provide IWM with a copy of all Information in its possession, or power in the form that IWM requires within five Working Days (or such other period as IWM may specify) of IWM's request; and,
- (c) provide all necessary assistance, as reasonably requested by IWM to enable IWM to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

60.3 IWM shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations

60.4 The Contractor shall only respond to a Request for Information unless this has been submitted by a nominated representative of IWM.

60.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 60) IWM may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“**the Code**”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

- (a) without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;

provided always that where 60.5(a) applies IWM shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor' attention after any such disclosure.

60.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit IWM to inspect such records as requested from time to time.

60.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that IWM may be obliged to disclose it in accordance with this clause 60.

61 Waiver

No whole or partial waiver of any breach of this Contract shall be held to be a waiver of any other or any subsequent breach. The whole or partial failure of either Party to enforce at any time the provisions within this Contract shall no way be construed to be a waiver of such provisions nor in any way affect the validity of this Contract or any part of it, or the right of either Party to enforce subsequently each and every provision.

62 Force Majeure

62.1 Neither Party shall be liable to the other Party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure, where there is no practicable means available to the Party concerned to avoid such failure or delay.

62.2 If either Party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that Party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other Party of the period for which it estimates that the failure or delay will continue.

62.3 For the purpose of this Condition "**Force Majeure**" means any event or occurrence which is outside the control of the Party concerned and which is not attributable to any act or failure to take preventive action by the party concerned, but shall not include industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.

62.4 Any failure or delay by the Contractor in performing his obligations under the Contract which results from any failure or delay by the Contractors Employees shall be regarded as due to Force Majeure only if the Contractors Employees are impeded in complying with an obligation to the Contractor by Force Majeure.

63 Severance

If any part of this Contract is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Contract, which will continue to be valid and enforceable to the fullest extent permitted by law. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall promptly commence good faith negotiations to remedy such invalidity.

64 Assignability and Transferability

Neither Party may assign any rights under this Contract without the written consent of the other Party, which is not be unreasonably withheld, and any attempt to do without that consent shall be void.

65 Entire Contract

- 65.1 This Contract is the complete and exclusive statement of the Contract between the Parties relating to the subject matter of this Contract which supersedes all previous communications, contracts and other arrangements, written or oral.
- 65.2 The Parties hereto are independent organisations, and nothing herein contained shall constitute to create a partnership, agency or joint venture between the parties.

Terms & Conditions of Contract

Appendix 1

Staff Security Clearance Notification Form

