



2019

**(1) THE BOARD OF TRUSTEES OF THE NATIONAL MUSEUMS AND GALLERIES ON  
MERSEYSIDE**

**and**

**(2)**

**PRODUCTION AGREEMENT FOR THE SEA GALLERIES – DIGITAL INTERACTIVES**

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THIS AGREEMENT is dated

2019 and made between:

- (1) **THE BOARD OF TRUSTEES OF THE NATIONAL MUSEUMS AND GALLERIES ON MERSEYSIDE** (operating under the name of 'National Museums Liverpool') whose principal office is at World Museum, William Brown Street, Liverpool, L3 8EN ("**NML**") or ("**the Client**"); and
- (2) [ ] (Company No: ) whose registered office is at Chambers, 92 (the "**Producer**").

#### **BACKGROUND:**

- (A) Pursuant to a tender issued by NML, and response to tender issued by the Producer ("**Tender**" as defined below) the Producer has been selected to produce certain digital interactives ("**Interactives**" as defined below) for installation in and use at the National Museums Liverpool as part of the Sea Galleries Project.
- (B) The Producer has agreed to produce, deliver and install the Interactives on the terms and subject to the conditions of this Agreement.

#### **TERMS AGREED**

##### **1. Definitions**

- 1.1 In this Agreement and the Background the following words shall have the following meanings unless inconsistent with the context:

"**Applicable Laws**" all applicable laws, statutes, regulations and codes from time to time in force;

"**Commencement Date**" [ ];

"**Concept Design**" the design to be agreed between NML and the Producer which details the Interactives which are to be delivered by the Producer;

"**Confidential Information**" any information of either party, whether or not specified as confidential, which is or has been disclosed to the other party in connection with the negotiation or performance of this Agreement, including information disclosed prior to the date of this Agreement, which relates to that party's business methods, prices, marketing, sales, relationship with suppliers, specialist knowledge, know-how;

"**Contract Administrator**" the persons or company administering this Agreement with and on behalf of NML, being;

"**Change Request**" means a request to change the Project Brief made by NML to the Producer;

"**Design Team**" means NML's design team;

"**Fees**" the fees for the production of the Interactives as set out in Schedule 4;

**“Force Majeure”** any event or occurrence which is outside the reasonable control of the party concerned, and which is not attributable to any act or failure to take preventative action by the party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring amongst the Producer’s employees or any employee of any sub-contractor appointed by the Producer;

**“Hardware”** the hardware to be sourced by NML from third party Hardware Suppliers contracted by NML in order to meet the requirements of the Project;

**“Hardware Suppliers”** the third party Hardware suppliers contracted by NML to supply the Hardware upon which the Interactives will be installed and displayed at the Museum;

**“Interactives”** the audio visual effects as set out in the Project Brief;

**“Museum”** the National Museums Liverpool;

**“Payment Schedule”** the schedule for the payment of Fees by NML set out in Schedule 4;

**“Practical Completion”** the date on which NML approves and signs off the installation and functionality of the Interactives at the Museum and final acceptance has been given in writing by NML and the Contract Administrator;

**“Production Schedule”** the schedule for pre-production, production and delivery of the Interactives at the Museum as set out in Schedule 3;

**“Project”** the Sea Galleries Project;

**“Interactives”** the Interactives to be used as part of the Project based on the Concept Design and following the Script in respect of the Project;

**“Project Brief”** the project brief for the Project as set out in Schedule 1;

**“Project Manager”** the person managing the project being undertaken under this Agreement, as notified by NML to the Producer;

**“Script”** the script for the Interactives covering the elements included in the Project Brief;

**“Software”** the software required to run the Interactives;

**“Specifications”** the specification and drawings for the Interactives to be produced by the Producer in accordance with Schedule 1;

**“Technicians”** any technicians employed or hired by the Producer to undertake lighting design and sound testing;

**“Tender”** the invitation to tender issued by NML and dated [ ] and the Producer’s response to the invitation to tender (as may have been subsequently clarified);

**“Third Party Materials”** any materials in any format used in producing the Interactives including without limitation, photographs, music or other sound recordings which have not been commissioned by the Producer for the Interactives nor been produced by the Producer,

but have been created by third parties for purposes other than the Interactives and in which copyright vests in such third parties;

**“Valuation Certificate(s)”** the valuation certificate(s) to be issued by the Contract Administrator /Project Manager confirming completion of each relevant stage of the Production Schedule.

1.2 In this Agreement:

- (a) the headings are for convenience only and shall not affect its interpretation;
- (b) references to clauses and Schedules shall be to clauses of and Schedules to this Agreement;
- (c) reference to a “party” shall mean either NML or the Producer as the context requires and references to “parties” shall mean both of them;
- (d) The provisions of the Schedules to this Agreement are to apply as if incorporated in full in the main body of this Agreement.

## 2. **Production and delivery**

2.1 The Producer agrees to deliver the Interactives in accordance with the provisions of this Agreement.

2.2 The Producer undertakes to deliver all Interactives in accordance with clause 5 of this Agreement and the Production Schedule. The Producer acknowledges the importance of complying with the Production Schedule in order that the Museum is able to open and operate the Project, and therefore time is of the essence in this Agreement in relation to compliance by the Producer with the Production Schedule.

2.3 The Producer shall attend all necessary meetings with NML and all relevant third parties including the Hardware Suppliers, the Design Team and other third parties to ensure that the Interactives are produced fully in accordance with and taking the fullest technical advantage of the Hardware delivery platforms to be used in the Project. The Producer will attend necessary meetings and demonstrations relating to the final Specification.

2.4 The Producer shall ensure that the Interactives will be:

- (a) produced in accordance with this Agreement, the Tender and all Schedules incorporated within it;
- (b) fully synchronised as to dialogue, music and effects (where applicable);
- (c) developed to the highest possible standards and pictorial quality;
- (d) produced in English language and any other languages deemed appropriate to enhance the interpretation of the historic and modern periods covered by the commission and the Agreement and where relevant to include sub-titles;
- (e) unless otherwise specified, completed and delivered in the medium in which it was produced;

- (f) fully compatible with the chosen sound and vision delivery platforms which form part of the Project in which the Interactives will be presented. Effective 'firewall' systems for the Interactives must be included and the possibility of screen burn avoided;
  - (g) suitable and accessible to a family of all abilities as provided for in the Project Brief;
  - (h) compliant with all Applicable Laws including the Equality Act 2010 (as may be amended from time to time, where appropriate and as agreed with NML from time to time).
- 2.5 The Producer shall attend meetings with NML in relation to the preparation of the Concept Design in order to agree the final content of the Interactives, which shall be based on the Tender and any other views and requirements of NML.
- 2.6 On approval of the Concept Design the Producer may commence pre-production of the Interactives and production of the Interactives as will be more specifically detailed in the Concept Design and in accordance with the Production Schedule.
- 2.7 The parties and Contract Administrator shall agree a mutually convenient meeting schedule taking into account the Production Schedule, at which the Producer shall report on the progress of the production of the Interactives in order to assist the Producer with the approvals required under clause 4.2.
- 2.8 The Interactives shall follow the Project Brief and shall be produced in accordance with the Concept Design, Script and all other reasonable directions of NML and the Contract Administrator.
- 2.9 No tie-in, sponsorship or product placement arrangement shall be entered into by the Producer in relation to the Interactives.
- 2.10 The Producer shall produce the Interactives and develop, produce and install the Interactives with all due care and skill and such Interactives shall be of first class quality.
- 2.11 After Practical Completion, the Producer shall, where required by NML or the Contract Administrator rectify any faults or defects in the Deliverables, free of charge, which occur in the operation of the Interactives, at any time during the Term of the Project including without limitation, the Software at the Museum, to the satisfaction of NML.
- 3. Interaction with Hardware**
- 3.1 The Producer must:
- (a) Ensure that the Interactives will be fully compatible with the Hardware in all respects to ensure the quality of projection and that special effects are of the highest quality;
  - (b) ensure that the Interactives function to the satisfaction in all respects of NML and with the requirements of the Project Brief;
  - (c) ensure that NML's data security and other systems are not compromised;

- (d) work closely with NML's IS team to ensure that systems and security of the data and installation are approved;
- (e) oversee the installation of the Interactives into the specified Hardware on site working closely with the Project works contractors as coordinated by the Project Manager;

#### 4. **Approvals**

4.1 The Producer shall deliver to NML the Concept Design, the Script and all other relevant materials for approval in accordance with the Production Schedule and in relation to each stage of the development, production and installation of the Interactives at the Museum. For the avoidance of doubt, NML shall have approval over each stage of and all aspects of the Interactives, including without limitation;

- (a) the Concept Design;
- (b) visual treatments and storyboard;
- (c) the contributors;
- (d) the Script;
- (e) all Third Party Materials;
- (f) all original slides and photographs;
- (g) any music to be used in relation to the Interactives;
- (h) on-screen graphics, images and content (including without limitation, text).

4.2 The Producer shall not proceed to the next stage of the Production Schedule without the prior written approval of NML. Once concepts and materials have been approved, the Producer may proceed to the next stage of development in accordance with the Production Schedule. No variations or alterations may be made to any approved concept or design without the prior written approval of NML. NML shall endeavour to approve or object in writing, such submissions, within the time frame specified in the Production Schedule as agreed between the parties. Where changes are required to be made by NML, the Producers shall make the relevant changes free of charge and resubmit to NML for its approval.

4.3 All materials and Interactives must conform with the Concept Design and follow the Project Brief. At each stage in the Production Schedule if NML believes that the materials do not conform, it shall give reasons for its decision and the Producer shall make any required amendments at its own cost and resubmit for NML's approval.

4.4 All Interactives must conform with other exhibits in the Project at the Museum and with all guidelines supplied by NML to the Producer from time to time, including those documents forming part of the Tender and its response.

4.5 Any Change Request must be undertaken in accordance with the NML Change Control Procedure set out in Schedule 5.

## 5. **Delivery**

- 5.1 The Software in the Interactives shall be supplied by the Producer to the Hardware Suppliers upon the request and at the direction of NML and the Producer will ensure that its employees and any sub-contractors shall follow all guidelines and instructions of NML, including but not limited to, those set out in the Tender (including but not limited to those relating to health and safety and security) and any other regulations of NML and all Applicable Laws.
- 5.2 In the event that the Producer or installers or maintenance technicians cause any damage to NML's property or the Hardware in the installation of the Interactives or at any other time, the Producer shall immediately report the incident to NML staff and the Producer agrees to rectify the damage and in any event within 14 (fourteen) days of the damage occurring, at the sole expense of the Producer as directed by NML.
- 5.3 The Producer shall work in liaison with the Hardware Suppliers and Technicians on delivery and installation of the Interactives onto the Hardware to synchronise the Interactives with the Hardware supplied by the Hardware Suppliers and to check and programme the sound balancing and lighting design for the Interactives.
- 5.4 The Interactives shall be delivered to the Hardware Suppliers, as NML directs, in the formats specified by NML or the Hardware Suppliers.
- 5.5 All risk in the Interactives shall be the Producers and such risk shall pass on successful installation of the Interactives onto the Hardware. Title to the Interactives shall pass to NML at each payment stage as the Interactives develop in accordance with Schedule 4. .
- 5.6 The Producer agrees to work in good faith in a cooperative and collaborative manner and in a spirit of trust and respect with NML, its Contract Administrator and Project Manager the Hardware Suppliers and all contractors and suppliers involved in the Project. The Producer shall support collaborative behaviour and immediately address behaviour which is not collaborative.
- 5.7 The Producer acknowledges the importance of working in collaboration with the Hardware Suppliers, Contract Administrator and Project Manager, Technicians and NML and agrees to ensure the Interactives are successfully produced and installed on the Hardware in accordance with the Production Schedule and will ensure any of its employees and sub-contractors are aware of such fact and will comply with this provision.

## 6. **Fees and payment**

- 6.1 Subject to compliance by the Producer with the terms of this Agreement in all respects, NML shall pay the Producer the Fees in accordance with the Payment Schedule there being a retention of 2.5% of the Fees for a period of 12 months following Practical Completion.
- 6.2 The Producer shall at completion and approval of each stage of the Production Schedule where such stage relates to a stage of the Payment Schedule, submit an invoice to NML for the fee due for such stage in accordance with the Payment Schedule. All payments shall be made by NML following receipt of the relevant invoice from the Producer together with the



relevant Valuation Certificate, within 30 (thirty) days of the date of receipt. For avoidance of doubt, payments shall not be due until NML has received both the Valuation Certificate and the invoice in relation to the relevant stage of the Payment Schedule, and the 30 (thirty) days shall run from the date of the latest ones received.

6.3 Payment shall be made by cheque or BACS as preferred by NML.

## 7. **Responsibility of NML**

7.1 NML shall supply such guidelines that may reasonably be required by the Producer through its Project Manager and the Contract Administrator in relation to the content of the Interactives and shall co-operate reasonably with the Producer in the planning and installation of the Interactives.

7.2 All approvals and reasonable assistance to be provided by NML shall be done in a timely manner in order to not unduly prevent the Producer from complying with the Production Schedule.

## 8. **Copyright**

8.1 All copyright, design rights and any other intellectual property rights in the Interactives shall, subject to clause 8.5 and 8.7 belong to and vest in NML. The Producer assigns to NML all the copyright, including without limitation any performer's property rights, and design rights in and to the Interactives, including all rights of action in relation to such, and in the case of future copyright and design rights by way of present assignment of the future copyright and design rights in the Interactives, for the full period of copyright and design rights, throughout the world including any extensions or renewals.

8.2 The Producer confirms that it has obtained all consents required pursuant to Part II of the Copyright, Designs and Patents Act 1988 (the "Act") and all other laws now or in the future in force in any part of the world, which may be required by NML to exploit the Interactives and exhibit the Interactives in any and all media now known or developed in the future for the full duration of the rights. The Producer will at its own expense, procure that any third party shall promptly execute and deliver such documents, and perform such acts as may be required for the purpose of giving full effect to this Agreement.

8.3 The Producer irrevocably waives such moral rights in the Interactives which arise pursuant to sections 77-89 of the Act and any other similar legislation throughout the world as the Producer now has or may acquire in relation to the Interactives, to the extent it is permissible by law to do so.

8.4 The Producer confirms that all contributors and other persons whose names, likenesses or biographies appear in the Interactives or any material connected with it have consented to the use and exploitation of the Interactives throughout the world on any and all media. The Producer shall pay all equitable remuneration now or in the future payable in respect of the performer's rights and/or rental and lending rights in the Interactives.

8.5 The Producer shall use its best endeavours, where using any Third Party Materials as part of the Deliverables, to obtain an assignment of such Third Party Materials. Where the Producer

is unable to obtain such assignment, it shall obtain all releases, permissions or licences in a form satisfactory to NML signed by all relevant persons in relation to all quotations, text, illustrations, pictures, sound recordings, films, performances and other material in which rights are controlled by third parties (such as picture libraries), as are required in order to enable NML to freely use and exploit the Interactives on any media and in any manner and at any location and Territory as notified by NML:

- (a) without any further payments during the period of the Project; or
- (b) if NML requires such licences and consents for such other longer period, the Producer shall use its best endeavours to obtain licences and consents at the Producer's cost; and
- (c) the Producer irrevocably confirms that the benefit of all assignments, licences, consents, releases and permissions obtained by the Producer shall extend to NML for the full period such rights referred to above. The Producer shall supply NML with copies of all such releases and agreements.

8.6 Where such rights and licences as referred to above are limited in time the Producer shall provide NML with full details of such licences, including information as to which materials the clearances relate to and the contact details of the third party licensor. Such information including that information to be supplied pursuant to clause 8.5, shall be provided in electronic format and clearly set out which materials are subject to restrictions, identifying where future clearances would be required and from whom.

8.7 In relation to the Software, where the Software is in existence prior to the date of this Agreement and has not been developed for the Interactives, the Producer grants a non-exclusive royalty-free, irrevocable, worldwide right and licence, with a right to sub-licence for use within the Interactives, to NML to use such Software in order to run the Interactives. For the avoidance of doubt, any part of the Software which has been developed pursuant to the work carried out by the Producer under this Agreement, shall belong to and vest in NML in accordance with clause 8.1.

8.8 The Producer shall execute all such documents and take all such further actions as NML may reasonably require, in order to vest the rights granted to NML under this clause 8, in NML.

8.9 NML shall be entitled to use the Producer's name or logo and in relation to any advertising or marketing and promotion of the Interactives and the Producer shall provide NML with all necessary information and images including any logos, photographs or other biographical material in relation to such promotion, including without limitation of the contributors and shall ensure it has permission to use such by NML.

8.10 The Producer shall not be entitled to use any images or make reference to the Interactives, the Project Brief, or Tender, without the prior written approval of NML.

## 9. **Producer warranties**

9.1 The Producer warrants that:

- (a) it is free to enter into and perform its obligations under this Agreement;

- (b) that the Interactives will function in all respects with the Project Brief and the Specification;
- (c) the use of the Interactives by NML shall not infringe the intellectual property rights of any third party;
- (d) the Interactives do not contain any defamatory material, innuendo, blasphemous or offensive materials which if published might confer on any person, firm or company a right of action or claim of damages against NML or expose NML to criminal proceedings;
- (e) the Producer will not pledge NML's credit or hold itself out as being entitled to do so, nor will the Producer do or say anything detrimental about NML or the Museum;
- (f) the Interactives shall be in first class condition and of first class technical quality suitable for the Project and use within the Museum and conform with the Specification;
- (g) the Interactives shall be delivered to NML free and clear of all recording, synchronisation, mechanical and/or distribution fees or payments of whatever nature;
- (h) the Interactives shall contain only those credits and notices approved by NML and shall when delivered comply with all contractual credit and other obligations to third parties, previously approved by NML, connected with it; and
- (i) prior to delivery of the Interactives it will have obtained all necessary rights, clearances, licences or consents for the full exploitation of the Interactives in accordance with this Agreement and shall pay all costs associated with obtaining such rights, clearances, licences or consents (subject to clause 8.5(b)).

9.2 The Producer indemnifies and holds harmless NML and shall keep it indemnified from and against all actions, proceedings, claims, demands and costs (including, without limitation, legal costs) awards and damages, howsoever arising, incurred by or awarded against NML as a result of or in connection with:

- (a) any breach or non-performance by the Producer of any of its warranties or other obligations under this Agreement; and
- (b) any alleged or actual infringement of any third party's intellectual property rights arising out of the use or supply of the Interactives (provided that this indemnity shall not apply to third party infringement of any materials supplied directly by NML to the Producer).

## 10. Insurance

10.1 The Producer agrees to maintain in full force and effect at all times during the Term of this Agreement and for a period of 1 (one) year on expiry of the Term adequate insurance cover on a per occurrence basis, including without limitation coverage for contractual liability, product liability, property damage, personal injury liability and professional indemnity

insurance of at least £5 million (five million pounds) per claim. NML's interest must be noted on such insurance policies.

10.2 Copies of all insurance policy documentation described above shall be provided to NML on its request.

## 11. **Confidential Information**

11.1 Each party agrees to keep confidential and use solely for the purposes of this Agreement all Confidential Information obtained from the other pursuant to this Agreement and not disclose or divulge such Confidential Information or any part of it to any third party, without the other party's prior written consent, except to those of its employees or representatives who need to have access to such Confidential Information for the purposes of this Agreement. The recipient shall ensure that each of its employees or representatives are fully aware of and complies with the restrictions placed on the recipient pursuant to this Agreement.

11.2 The confidentiality obligation under clause 11.1 shall not extend to information which the receiving party can prove to the disclosing party's reasonable satisfaction:

- (a) was, at the time of disclosure by or on behalf of the recipient, public knowledge or subsequently becomes public knowledge other than through a breach of this Agreement; or
- (b) was already in the recipient's possession prior to disclosure, if the recipient informs the disclosing party that it was in its possession as soon as it becomes aware of the fact;
- (c) has been received from a third party who did not acquire it in confidence.

11.3 The obligations in this clause 11 shall continue notwithstanding termination of this Agreement.

## 12. **Term and Termination**

12.1 This Agreement shall commence on the Commencement Date and shall remain in force until the closure of the Project, unless terminated earlier in accordance with clause 12.2 (the "Term").

12.2 NML shall be entitled to terminate this Agreement at any time, without cause, on 10 (ten) days prior written notice. In the event of termination under this clause 12.2, NML shall pay (if not already paid) the Producer for all reasonable costs properly incurred by it at the date of termination and any commitment or penalties incurred by the Producer from suppliers as a result of the termination, provided it has had the agreement of NML for incurring such expense prior to such expenditure and it uses its reasonable endeavours to obtain a reimbursement of such sum from such suppliers but is unable to do so.

12.3 A party shall be entitled to terminate this Agreement forthwith by notice in writing to the other if:

- (a) the other party is in material breach of this Agreement;

- (b) the other makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or any other similar process or event, whether in the United Kingdom or otherwise; or
- (c) the other party ceases or threatens to cease to carry on business.

12.4 Each party's rights, liabilities and obligations under this Agreement shall cease upon this Agreement's termination or expiration. Each party's accrued rights and liabilities and the rights and obligations of each party that are expressly or by implication intended to come into force upon or, remain in force following, the termination or expiration of this Agreement (including without limitation under clauses 8, 9, 110, 11, 11 20, and 24) shall survive any termination or expiration of this Agreement.

12.5 Upon termination or expiry of this Agreement for any reason the Producer shall deliver to NML any and all work in progress, documents and any other materials relating to the Interactives (except for any technical production techniques that will not be required by NML to fully make use and exploit the Interactives) and subject to clause 12.6 shall certify it has no copies of such materials in its or any of its employees or sub-contractors possession.

12.6 After the closing date of the Project or termination of this Agreement (whichever shall first occur), the Producer shall not use any data provided by NML or pictures taken by the Producer or NML's photographer, in any promotional media such as websites, newspapers or magazines, nor shall it use such data or pictures and the images in internal academic publications, media, academic conferences and seminars as well as websites, for any commercial and/or non-commercial purposes without NML's prior written consent.

12.7 The Producer shall, within 3 (three) working days after the closing date of the Project or termination of this Agreement (whichever shall first occur), return any data provided by NML to NML. After all data is returned to NML, both parties shall check the condition of the data and images and co-sign a condition report to record their status.

12.8 For the purpose of clauses 12.6 and 12.7 data shall include (but not be limited to) any digital assets, use of images or audio visual presentations.

### 13. **Anti-Bribery**

The Producer shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption.

### 14. **Severance**

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-

provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

15. **Waiver**

15.1 The remedies available to the parties under this Agreement shall be without prejudice to any other rights, either at common law or under statute, which either may have against the other.

15.2 The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to this Agreement does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect either party's right later to enforce or exercise it nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

16. **Status**

Nothing in this Agreement shall be deemed to place the parties in the relationship of employer-employee, principal agent, partners or joint venture.

17. **Notice**

Any notice or written communication required or permitted to be served on or given to either party under this Agreement shall be delivered by hand or sent by recorded delivery mail to the other party at its address set out above or to such other address which it has previously notified to the sending party and shall be deemed to have been given when actually received or, if sent by recorded delivery mail and returned marked "gone away" or to the like effect, on return of such recorded delivery mail.

18. **Assignment**

18.1 This Agreement is personal to the parties and neither party may assign, transfer, sub-contract or otherwise part with this Agreement or any right or obligation under it without the prior written consent of the other. If NML does permit the Producer to sub-contract the Producer shall at all times remain liable to NML for the performance of all its duties and obligations under this Agreement.

19. **Force Majeure**

Neither party shall be deemed to be in breach of this Agreement or otherwise liable to the other party for any failure or delay in performing its obligations under this Agreement if prevented from doing so by Force Majeure and shall be entitled to a reasonable extension of time for performing its obligations.

20. **Entire Agreement**

This Agreement contains all the terms agreed by the parties relating to the subject matter of this Agreement and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing, and no representation undertaking or promise shall be taken to have been given or been implied from anything said or written in negotiations

between the parties prior to this Agreement except as set out in this Agreement. Each party acknowledges that it has not been induced to enter into this Agreement by any representation or warranty other than those contained or referred to in this Agreement and irrevocably and unconditionally waives any right it may have to claim damages for and/or to rescind this Agreement as a result of any misrepresentation whether or not contained in this Agreement unless such misrepresentation was made fraudulently.

21. **Variation**

No variation or amendment to this Agreement shall be effective unless in writing signed by authorised representatives of the parties. Any changes to the Project Brief or Specification shall be dealt with under the Change Control Procedure set out in Schedule 5 in accordance with a Change Request.

22. **Third Party Rights**

Nothing in this Agreement shall confer any right or benefit upon any person who is not a party to it whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

23. **FIA**

NML is subject to the provisions of the Freedom of Information Act 2000 ("**FIA**"). The FIA obliges NML to release certain information to third parties on written request, unless an exemption applies. The parties agree that all information relating to this Agreement shall be released to third parties in accordance with FIA.

24. **Jurisdiction**

The construction, validity and performance of this Agreement is governed by the law of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction.

## SCHEDULE 1

### Project Brief



D1 -  
Introduction.docx



D2 - Work (Mapped  
Projection).docx



D3 -MV  
Derbyshire.docx



D4 - Campaigning &  
Environment.docx



D5 - Life on  
Board.docx



D6 - Life on  
Board.docx



D7 - Life on  
Board.docx



D8 - Liners & Leisure  
(Mapped Projection).c



D9 - Gertrude  
Walker.docx



## **SCHEDULE 2**

### **General Scope of Work**

#### **1. General Requirements**

NML will co-ordinate and direct the Producer in the development and execution of the Interactives and no other instructions or directions by whomsoever they are given shall have any effect or validity for the purposes of the Agreement.

The Producer shall provide everything necessary for the execution and completion of the works, in accordance with the Agreement, drawings, Project Brief, Specification, images, film footage, guidelines and/or instructions issued.

The Producer will ensure that the works are compatible with light levels, acoustic needs and other site arrangements, and that picture quality and audio tracks take due note of the levels and conditions of same. Where necessary the Producer should allow liaison with other contractors or consultants to achieve this point.

Due note should be paid of all graphic styles, colour palettes and typographic guidelines created by the Client Designer. Any aspect of the works must follow these guidelines and allowances should be made for such.

Where audio tracks are used, consideration must be given for the separation of voice-over and background music or effects tracks in order that balance of sound can be undertaken onsite.

The Producer will provide a Producer/Project Manager responsible for the co-ordination, liaison and development of the works who will effectively supervise the execution of the works. The Producer will not remove such person from the works without the prior written approval of the Client and if approval given the Producer will be responsible for replacing such person/s with person/s of equivalent competence.

The Producer will be responsible for all narrative elements which will be developed in discussion with NML. The approvals as described in this document will be the minimum number of meetings that the Producer will attend, and allowance should be made for additional attendance at design co-ordination meetings with NML and other contractors.

The Producer to provide outline storyboards/visuals and offline test Interactives /media for NML approval.

The Producer to include for all expenses (eg travel, presentation materials etc).

The Producer will work with NML staff to install all software and related hardware, ensuring that everything is fully commissioned. The Producer will work to ensure compatibility between Software and Hardware.

#### **2. Copyright Requirements, External Footage and Image Suppliers**

Unless stated otherwise by NML, the Producer will be responsible for sourcing and procuring all content and please refer to clause 8.1 of this Agreement with regard to copyright.

### 3. Web Specification Requirements

NML may wish to use video clips of the audio-visual on its website.

For web pages, NML would want a maximum width of 830 pixels (if left hand navigation retained) or 1170 pixels wide.

4. NML will require all formatted media, HTML, source files and associated digital assets. Images, audio, text, video and other content used in the feature should be cleared for use for the duration of the temporary exhibition.

### 5. Formal Approvals and Sign Off

Work stage	Presentation/sign off	Notes
Mobilisation	<ul style="list-style-type: none"> <li>Contractor/Client creative workshop</li> </ul>	<ul style="list-style-type: none"> <li>Initial meeting to review client brief and tender response</li> </ul>
Work stage 1 <b>Concept Design</b>	<ul style="list-style-type: none"> <li>Presentation of developed concept to the Client</li> <li>Amends following Client feedback</li> </ul>	<ul style="list-style-type: none"> <li>Storyboarding</li> <li>Review of client assets</li> <li>Asset sourcing</li> </ul>
Work stage 2 <b>Detailed Design</b>	<ul style="list-style-type: none"> <li>Review of detailed design</li> <li>Amends following Client feedback</li> </ul>	<ul style="list-style-type: none"> <li>Development of story lines</li> <li>Special effects</li> <li>Visual content refined</li> <li>Narrative developed</li> <li>Technical design developed in line with software</li> </ul>
Work stage 3 <b>Final Design Sign-off</b>	<ul style="list-style-type: none"> <li>Presentation of completed final design</li> <li>Amends following Client feedback</li> </ul>	<ul style="list-style-type: none"> <li>To include design for Hardware and Software</li> </ul>
Work stage 4 <b>First Edits Preview</b>	<ul style="list-style-type: none"> <li>Presentation of first edits offline</li> </ul>	
Work stage 5 <b>Final Edits Preview and Sign-off</b>	<ul style="list-style-type: none"> <li>Presentation of final edits for sign off (Final preview)</li> </ul>	
Work stage 6	<ul style="list-style-type: none"> <li>Review of Software with test</li> </ul>	

<b>Review and Testing</b>	equipment <ul style="list-style-type: none"> <li>• Onsite review and testing of Hardware and Software</li> </ul>	
Work stage 7 <b>Onsite Final Sign-off</b>	<ul style="list-style-type: none"> <li>• Robustness testing (4 week snagging period) and final onsite sign off</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Final sign-off onsite</i></li> </ul>

### SCHEDULE 3

#### Delivery Schedule for Interactives

<b>Phase</b>	<b>Activity</b>	<b>Output and sign-off</b>	<b>Deadline</b>
Mobilisation	Contract start-up meeting and creative meeting	Creative approach confirmed with the client	21 August 2019
Stage 1 Concept Design	Concept update and review with client week Technical approach and design review with client	Client sign off on concept design and technical design / approach	Friday 6 September 2019
Stage 2 Scheme/Detail design and Sign-off	Review of storyboards for content and review detailed technical spec/design	Client sign-off on full storyboard and detailed technical design/spec	Friday 4 October 2019
Stage 3 First Edits Preview	Client team to review first edits on all digital interactive material and provide comments, week of 11 – 15 November 2019	Client team to provide feedback on all first edits off all digital interactives	Friday 15 November 2019
Stage 4 Final Edits Preview and sign-off	Client team to review final edits on all digital interactive material and sign-off, week of 16 - 20 December 2019	Final client sign off on all digital interactive material	Friday 20 December 2019

<p>Stage 5 -</p> <p>Final Version of AV software content provided to client and signed-off</p>	<p>Final Version of AV software content to be provided to client and signed-off week of 13 -17 January</p>	<p>Client to sign-off final version</p>	<p>Friday 17 January 2020</p>
<p>Stage 6 –</p> <p>Final AV Software content handover to AV Hardware contractor</p>	<p>Software Contractor to handover over final version of Software content to AV Hardware contractor</p>	<p>Handover</p>	<p>Monday 20 January 2020</p>

## SCHEDULE 4

### Payment Schedule for Interactives

TOTAL COST £ [       ] plus VAT

Agreed outputs	Percentage payment	Payment date
Final concept design and technical design approach	10%	13 September 2019
Final detail design/storyboards and technical design spec	20%	11 October 2019
Completed first edited preview of all Audio Visual interactives	20%	18 November 2019
Completed final version of all Audio Visual interactives	20%	6 January 2020
Final Version of AV software content provided to NML and signed-off (Practical Completion)	27.5%	27 January 2020
Retention to be held for 12 months as per this Agreement, clause 6.1...	2.5%	End of January 2021

## SCHEDULE 5

### NML Change Control Procedure

This document sets out the proposed process to be implemented on the project to identify and raise potential changes early in the process to eliminate the un-necessary and un-controlled growth of the project cost and to avoid potential delays to the project.

#### 1 The Change Control Process

##### 1.1 Definitions

- “Instruction” means, an instruction issued by NML its Project Manager or Contracts Administrator.
- “NML” means The Board of Trustees of National Museums and Galleries on Merseyside.
- “Project Manager” means NML's appointed project manager.
- “Project Team” means NML, the Professional Team (including any Architect, Principal Designer, Structural Engineer and Quantity Surveyor), the Principal Contractor and any sub-consultants/sub-contractors.

##### 1.2 Introduction

The greatest risk for increased costs, disruption and programme delay revolve around change. It is recognised that some change(s) will be necessary and it is imperative that the process of change is managed so as to control the project within NML's financial constraints. The Project Team are therefore required to:

- Implement and adopt the change control process. This process ensures that the cost and Interactives affects are clearly understood and approved prior to changes being implemented.
- Link the change control process to contingency management. This will ensure that where change threatens the project budget, compensatory savings are secured.
- Apply the process throughout the construction stage of the Project.

##### 1.3 Overview

The Change Control process will be managed by NML with the support of the Project Team.

No change will be implemented by the Design team or the Producer unless written authorisation has been obtained from the Client through this process.

Change for the purpose of this process is defined as follows:

“Any movement or development in terms of design, Specification, workmanship or construction method from the approved design and defined by the Contract and the drawings and Specification listed therein.”

Effective change control requires input from all members of the Project Team and it is important to ensure that all members of the Team are fully aware of their responsibilities and are committed to implement the process.

#### 1.4 Process

Changes can be originated by any organisation within the Project Team. One person from each organisation shall be nominated as their 'Change Originator' and will be responsible for all aspects of complying with process.

The project must be closely monitored in order that any changes, from whatever source, are identified.

The process for Change Control can be summarised as follows:

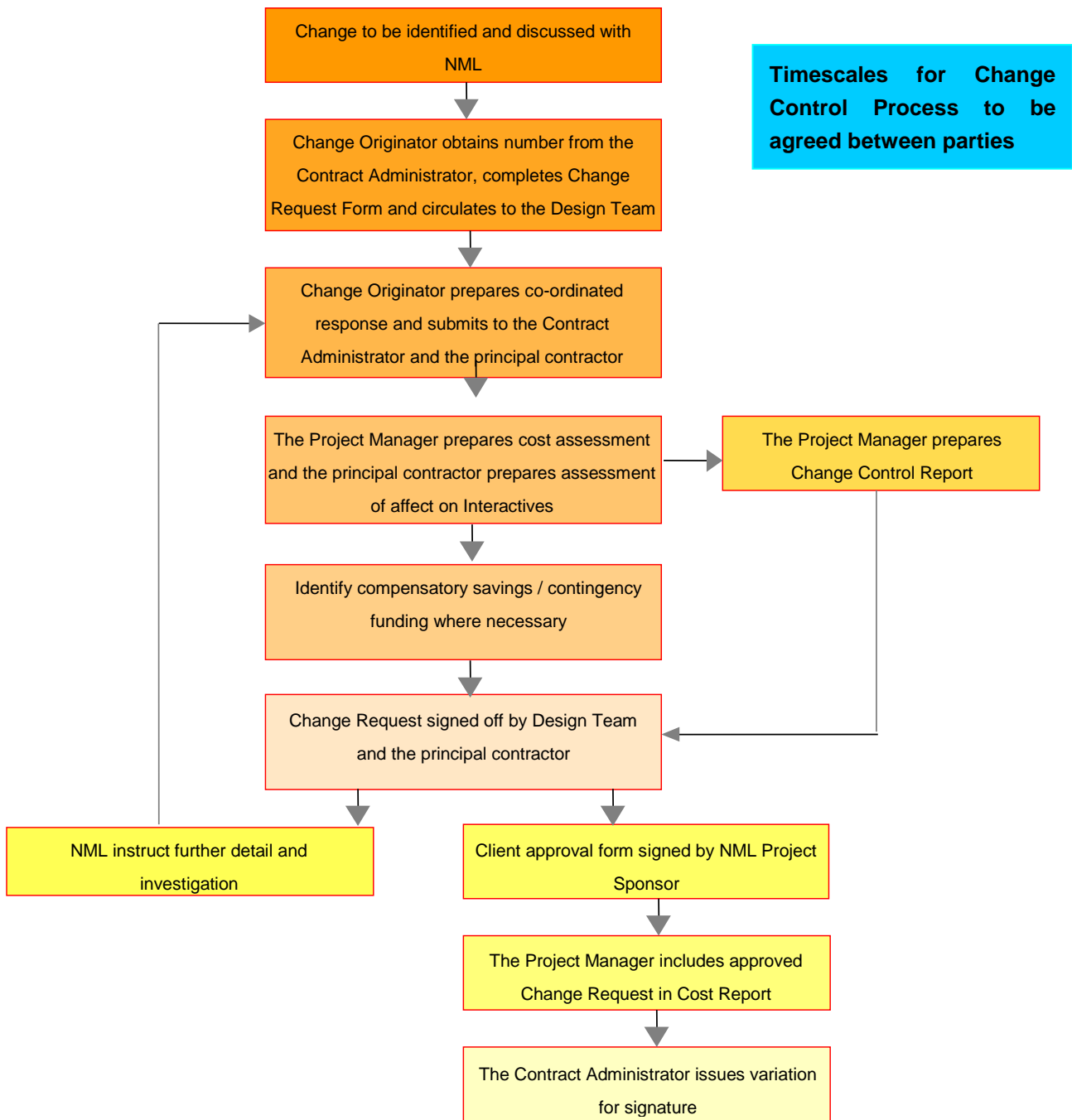
1. The Change Originator should firstly discuss the proposed change with NML in order to gain its approval that the change is to be considered further. It is however essential that the flow of information is not obstructed and it is the responsibility of all of the relevant parties to ensure that the momentum of the process is maintained
2. The Change Originator must obtain a number for his Change Request. Numbers will be issued in sequence by NML.
3. On the issued Change Request form, the Change Originator is required to complete, Originator (name & company), date, Description (of change) and Reason (for change).
4. The Change Originator then indicates in the distribution box those organisations that are to receive and comment on the proposed change. He then circulates this form for comment and facilitates appraisal by each of the recipients of the Change Request. The Change Originator then prepares a co-ordinated response from all relevant parties for submission to NML or the Contract Administrator and the principal contractor, indicating a description of the proposed change, the reason for the change and the implications of the change, in the boxes provided. It is essential at this point that all of the effects of the change whether direct or in direct are identified. This information must be supplemented by drawings and other attachments as required.
5. Once submitted, NML and the principal contractor will undertake an assessment of the likely commercial impact and affect on programme. Once again NML and the principal contractor must consider both the direct and the indirect effect of the change. (Through the process outlined above cost and time assessments are based on the full co-ordinated implications of the change).
6. The cost and programme implications are indicated in the boxes provided and the source of funding the change i.e. contingency, VE or compensatory saving will be indicated by Contractor/Consultant / NML. All proposed changes will be included in the Change Control Report prepared by the Client.
7. The Change Request is then signed off by NML and the principal contractor for approval by NML.



**NO CHANGES SHOULD BE ACTIONED UNTIL THIS FORMAL PROCESS IS COMPLETED AND WRITTEN APPROVAL IS ATTAINED FROM THE PROJECT SPONSOR OR, IN THEIR ABSENCE, A FORMALLY DELEGATED NAMED PARTY.**

8. The Change Control Status Report will be presented along with the Change Request Forms at formal monthly meetings, or more regularly as required.
9. The Change and its consequential impact, will be discussed and challenged at that meeting, agreed, revised or rejected by NML and if necessary, resubmitted at a subsequent stage.
10. If the Change is approved, the Change Request Form is signed by NML and an Contract Administrator Instruction can then be raised referenced back to the approved Change Control Form. Funds can only be drawn from the appropriate source once approval of the change is given.
11. Only in agreement with NML will Change Proposals be considered and approved outside of the formal Change Control meeting

## Change Control Process



**CHANGE CONTROL FORM**

**REQUEST FOR CHANGE**

Change Nr

Date Raised:	Date Response Required:		
Proposed Change:			
Proposed by: Architect/Client/Principal Contractor/Other			
<b>Effect to:</b>			
Programme			
Resources			
<b>Construction Cost</b>	<b>Omit      Add</b>		
<b>Net Add</b>	_____ ex VAT		
Design Fee:	<input style="width: 50px; height: 15px;" type="text"/>		
Architect Comments: See justification above			
Signed	For		
.....	Date		
.....	.....		
Contractor's Comments: None			
Signed	For		
.....	Date		
.....	.....		
Cost Managers Comments: The costs are considered fair and reasonable			
Signed	For		
.....	Date		
.....	.....		
Client's Comments:			
Change APPROVED by National Museums Liverpool			
<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="padding: 2px 10px;">Yes</td> <td style="padding: 2px 10px;">No</td> </tr> </table>		Yes	No
Yes	No		
Signed	Project Sponsor		
.....	Date		
.....	.....		

**SIGNATURE PAGE**

**IN WITNESS** whereof the parties have executed this Agreement as a deed and is intended to be and is delivered on the date first above written

**THE COMMON SEAL** of )  
**THE BOARD OF TRUSTEES OF** )  
**NATIONAL MUSEUMS AND** )  
**GALLERIES ON MERSEYSIDE OF** )  
**WORLD MUSEUM** )  
was affixed to this Deed authenticated )  
by: )

Signature of Trustee .....

Print name of Trustee .....

**EXECUTED** as a deed )  
for and on behalf of )  
**[REDACTED] LTD** )  
by a Director )  
and by a Director/Secretary )

.....

Director

.....

Director / Secretary