



2019

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

and

(2) [CONTRACTOR]

CONTRACT FOR [] AT []

THIS AGREEMENT is dated _____ and made between:

- (1) **The Board of Trustees of National Museums and Galleries on Merseyside** of World Museum, William Brown Street, Liverpool, L3 8EN including its successors in title and assigns as permitted under the Conditions ("the **Employer**"); and
- (2) **[contractor]** (company number [_____]) whose registered office is [_____] ("the **Contractor**").

AGREEMENT:

The following documents shall together form the contract between the Employer and the Contractor:

- 1. this Agreement including the Recitals, Articles and Contract Particulars;
- 2. the Joint Contracts Tribunal Minor Works Building Contract 2016 as amended by the Schedule of Amendments and Additional Conditions set out in **Schedule 1** ("the **Conditions**"); and
- 3. the other Schedules to this Agreement.

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)
[CONTRACTOR]) Director
by a Director)
and by a Director/Secretary)
Director / Secretary

SCHEDULE 1

THE BOARD OF TRUSTEES OF NATIONAL MUSEUMS AND GALLERIES ON MERSEYSIDE

(EMPLOYER)

DEVELOPMENT AT [•]

JCT MINOR WORKS BUILDING CONTRACT 2016

SPECIAL CONDITIONS

Part 1

Amendments

The Articles, Conditions and Schedules are amended as follows and shall be construed accordingly:

Articles of Agreement

Arbitration

7 Delete.

Incorporation of Special Conditions

Add as Article 9:

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

Execution provisions

The Articles are to be executed as a deed.

Conditions

Definitions

1.1 In the definition of 'Conditions', add at the end 'and the Special Conditions annexed'.

Contracts (Rights of Third Parties) Act 1999

1.5 In line 1, after 'Contract' insert:

'but subject to clause 3.1 (Assignment),

Notices

1.6.3 Add as clause 1.6.3:

'Any notice, certificate or other communication (notice) to be given under section 4 (Payment) may, in addition to any other permitted method of service, be delivered by hand or sent electronically to the email address of the addressee, provided, if sent by email and not delivered by hand, a copy is sent on the same day to the addressee by pre-paid first class post. Any notice served in accordance with this clause 1.6.3 takes effect as being given and served:

- (a) if delivered by hand or sent by email by 4:00pm on a Business Day, on that day; but otherwise;
- (b) on the next Business Day.'

Consents and approvals

1.7.2 Delete: 'either Party's', substitute 'the Employer's'.

Contractor's obligations

2.1.2 At the end of clause 2.1.2, add:

'Subject to the foregoing, and subject to the Contract Documents, all materials and goods shall be new, and all materials, goods and workmanship shall be of a satisfactory quality.'

Contractor's responsibility for design

2.1.4 Add as clause 2.1.4:

'If any of the Contract Documents requires the Contractor to provide or procure any design, the Contractor warrants that in the preparation of such design there has been exercised and/or will be exercised all reasonable professional skill and care.'

Commencement and completion

2.2 In line 1, of clause 2.2 delete 'may'. Substitute 'shall'.

Damages for non-completion

2.8.2 Delete clause 2.8.2. Substitute:

'Subject to clause 2.8.3, the Employer may deduct the liquidated damages from any sum due to the Contractor under this Contract (provided a notice of deduction pursuant to clause 4.5 has been given) and may recoup any liquidated damages not so deducted from the Contractor as a debt.'

Defects

2.10 In line 4 of clause 2.10, after 'shall', insert 'without unreasonable or unnecessary delay, and in any event'.

2.10 At the end of clause 2.10, add:

'In the case of urgency the Architect/Contract Administrator may instruct the Contractor to make good any such matter within such period as the circumstances require.'

Assignment

3.1 Delete. Substitute:

'The Employer may assign its entire rights and benefit under this Contract to any person having or acquiring an interest in the Works; and the Employer's said rights and benefit may be charged and/or assigned by way of security and may be reassigned on redemption. The Contractor may not assign the benefit of this Contract without the written consent of the Employer.'

Person-in-Charge

3.2 Delete clause 3.2 and substitute:

'3.2.1 Before commencing the Works on site, the Contractor shall appoint a Person-in-Charge whose identity is to be approved in advance of appointment by the Architect/Contract Administrator in writing (such approval not to be unreasonably withheld or delayed). The Person-in-Charge shall be employed to act as the full time representative of the Contractor on the Site throughout the construction period. The Contractor shall not (save in circumstances which render it unavoidable) remove the Person-in-Charge without the written consent of the Architect/Contract Administrator, which consent shall not be unreasonably withheld or delayed. Any vacancy in the office of Person-in-Charge shall be filled by a person to the approval of the Architect/Contract Administrator as aforesaid.

3.2.2 Any instructions given to the Person-in-Charge by the Architect/Contract Administrator shall be deemed to have been issued to the Contractor.'

Provisional sums

3.7 In line 1 of clause 3.7 delete 'shall' and substitute 'may'.

Interim payments - dates and certificates

4.3 In the last sentence, delete '14 days' and substitute '21 days'.

Contractor's applications and payment notices

4.4.1 In line 3 before 'the Architect/Contract Administrator' insert 'the Employer, with a copy to'.

4.4.2.2 In line 3 before 'the Architect/Contract Administrator' insert 'the Employer, with a copy to'.

Payments – amount and notices

4.5.4 Delete the last sentence and substitute:

'Where a pay less notice is given, the payment to be made on or before the final date for payment shall be the sum stated in it as due.'

Final certificate and final payment

4.8.3 Delete '14 days' and substitute '21 days'.

Contractor's liability – personal injury or death

5.1 In line 3, after 'Works', add:

'or the performance of the Contractor's obligations under clause 2.10 (Defects)'.

Contractor's liability – loss, injury or damage to property

5.2 In line 5, after 'Works', add:

'or the performance of the Contractor's obligations under clause 2.10 (Defects)'.

Evidence of insurance

5.5 Add at the end of clause 5.5:

'The Employer and the Contractor shall each comply with the terms and conditions of the Works Insurance Policy to be complied with on its part, and neither the Employer nor the Contractor shall by an act or neglect cause such insurance to be void or voidable or entitle the insurer to refuse any claim (in whole or in part) in respect of any risk or amount for which such policy is expressed to provide indemnity.'

Loss or damage to existing structures – right of termination

5.7 Delete. Substitute:

'If there is a material loss of or damage to any existing structure, the Employer shall be under no obligation to reinstate that structure, and the Employer may, if it is just and equitable, terminate the Contractor's employment under this Contract by notice given to the Contractor within 28 days of the occurrence of that loss or damage. If such notice is given, then:

- .1 unless with seven days of receiving the notice (or such longer period as may be agreed) the Contractor invokes as dispute resolution procedure of this Contract to determine whether the termination is just and equitable, it shall be deemed to be so;
- .2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 6.11 (except clause 6.11.2.3) shall apply.'

Termination – Default by the Contractor

6.4.1.4 Add as clause 6.4.1.4:

'or commits any other breach of this Contract having or which may have consequences sufficiently serious to justify determination of the Contractor's employment,'

Insolvency of Contractor

6.5.1 Delete and substitute:

'If the Contractor is or becomes insolvent, the Contractor shall so notify the Employer forthwith and either Party may at any time by notice to the other, terminate the Contractor's employment under this Contract.'

6.5.2 In line 1, delete 'the Employer' and substitute 'either Party.'

6.5.2.2 In line 2, delete 'suspended' and substitute 'terminated'.

Consequences of termination

6.7.4 Add at the end of clause 6.7.4:

'Provided that:

- .1 if the Employer elects not to procure the completion of the Works, then the amount to be allowed under clause 6.7.3.3 shall be the portion of the Contract Sum earned by the Contractor; and
- .2 if the Employer procures the completion of the outstanding Works for less than the Employer would have had to pay the Contractor to complete the outstanding Works then for the purposes of this clause 6.7.4 the Employer shall be deemed to have paid the same amount to procure the completion of the outstanding Works under clause 6.7.1 as the Employer would have had to pay the Contractor to complete the outstanding Works under this Contract.'

Default by Employer

6.8.1.1A Add as clause 6.8.1.1A:

'fails to comply with the decision of an adjudicator appointed under clause 7.2 requiring the Employer to pay any amount to the Contractor (except to the extent that the court has granted relief from enforcement of the adjudicator's decision, subject to the Employer's compliance with any condition attaching to such relief); or'.

Insolvency of Employer

6.9.1 In line 1, after 'notice to the Employer', insert:

'or the Employer may by notice to the Contractor'

6.9.2 Add after end of clause 6.9.2:

'and an extension of time for completion shall be given under clause 2.7 equal to the period of suspension'.

Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations

6.10.1.3 Delete 'occasioned by any risk covered by the Works Insurance Policy or by an Excepted Risk'.

Adjudication

7.2 Add at the end of clause 7.2:

'and provided that:

- .1 the Adjudicator shall have power to determine more than one dispute at the same time, and if requested to do so by either Party shall determine any matter raised by such

Party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to him; and

.2 at the same time as he gives any decision, the Adjudicator shall give reasons for the decision in writing.'

Arbitration

7.3 Delete.

Sch 1 Delete schedule 1 (Arbitration).

Schedule 2: Fluctuations

10.2.1 Delete.

Part 2
Additional Conditions

The following additional conditions shall have effect:

A1. Project meetings

From time to time on reasonable written notice the Architect/Contract Administrator may convene such periodic or ad hoc site meetings as are reasonably necessary for the conduct and management of any matters relating to the Works. Such meetings shall be attended by the Person-in-Charge and by such other representatives of the Contractor and/or suppliers as are appropriate in the circumstances, and may be attended by representatives of the Employer and/or any of the Employer's consultants.

A2. Operations on site

A2.1 On or before the Date for the Commencement of the Works, the Contractor shall provide to the Architect/Contract Administrator a programme for the carrying out of the Works, and if and whenever there is any material delay to the Works, the Contractor shall provide to the Architect/Contract Administrator a revised programme for the carrying out of the Works.

A2.2 The Contractor shall provide to the Architect/Contract Administrator if and as the Architect/Contract Administrator requests in writing, details of the Contractor's proposals for the means of access to the site during the construction period, vehicle parking facilities on site, loading and unloading areas for materials, site compounds, temporary warning and direction signs on adjacent highways and any other similar information as to the Contractor's working arrangements. If necessary the Contractor shall amend such details to obtain the approval of the local planning authority or other relevant public authority having jurisdiction with respect to the Works.

A2.3 The Contractor shall be wholly responsible for the design, adequacy, stability and safety of all temporary works required in and about the construction of the Works, save insofar as it is provided in any Contract Document that the design of any temporary works is to be provided by any member of the Employer's design team, in which case the Contractor shall not be responsible for the production or the adequacy of such design.

A2.4 In and about the execution of the Works the Contractor shall maintain and not cause any interference to any support enjoyed by any adjoining land or any structures, other than any structures which are to be demolished as part of the Works.

A2.5 The Contractor shall:

- (a) carry out the Works in such a manner as not to cause any trespass or actionable nuisance and as to cause as little noise, interference, inconvenience or disturbance to the public or to the owners and occupiers of adjoining property as is reasonably practicable; and
- (b) make good or meet the cost of making good of all damage caused to roads, footpaths and property adjoining the site and to any services, arising from the carrying out of the Works.

A3. As-built data and energy performance

- A3.1 At or before practical completion of the Works or any section, the Contractor shall provide to the Employer an energy performance certificate and a recommendation report for the Works or section, in conformity with regulation 29, Building Regulations 2010.
- A3.2 Within four weeks after practical completion of the whole of the Works, the Contractor shall without charge provide to the Architect/Contract Administrator three copies of all such as-built or final issue drawings, specifications and other details and service manuals as are specified in the Contract Documents.

A4. Confidentiality

- A4.1 Save with the Employer's prior written approval or as is reasonably necessary to enable the Contractor to perform its obligations under this Contract, the Contractor shall treat all information relating to this Contract and/or the Works as confidential.
- A4.2 The Contractor may not without the prior written approval of the Employer use or authorise the use of any photograph or drawing or other depiction of the Works or any part of the Works for publicity purposes or in any annual report or accounts or otherwise for any purpose other than in connection with the performance of the Contractor's obligations under this Contract.
- A4.3 The Contractor shall ensure that any sub-contract and any appointment of a consultant entered into by the Contractor for the purposes of the Works contains the provisions in clauses A4.1 and A4.2 (mutatis mutandis) and shall take all reasonable steps to ensure that such provisions are enforced.

A5. Interpretation

- A5.1 In the case of any inconsistency between these Special Conditions and any other term of this Contract the Special Conditions shall prevail. In the case of any inconsistency between the Conditions and any other term of this Contract (except these Special Conditions) the Conditions shall prevail.

SCHEDULE 2



This document sets out the proposed process to be implemented on the project to identify and raise potential changes early in the construction 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, where the building contract is in the traditional form, an instruction issued by the Architect; or, if the building contract is in a design and build form, an instruction issued by the Employer’s Agent.
- “NML” means The Board of Trustees of National Museums and Galleries on Merseyside.
- “Project Manager” means Client/Consultant.
- “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 programme 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 the Client/Consultant with the support of the Project Team.

No change will be implemented by the Design team or the Contractor 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:

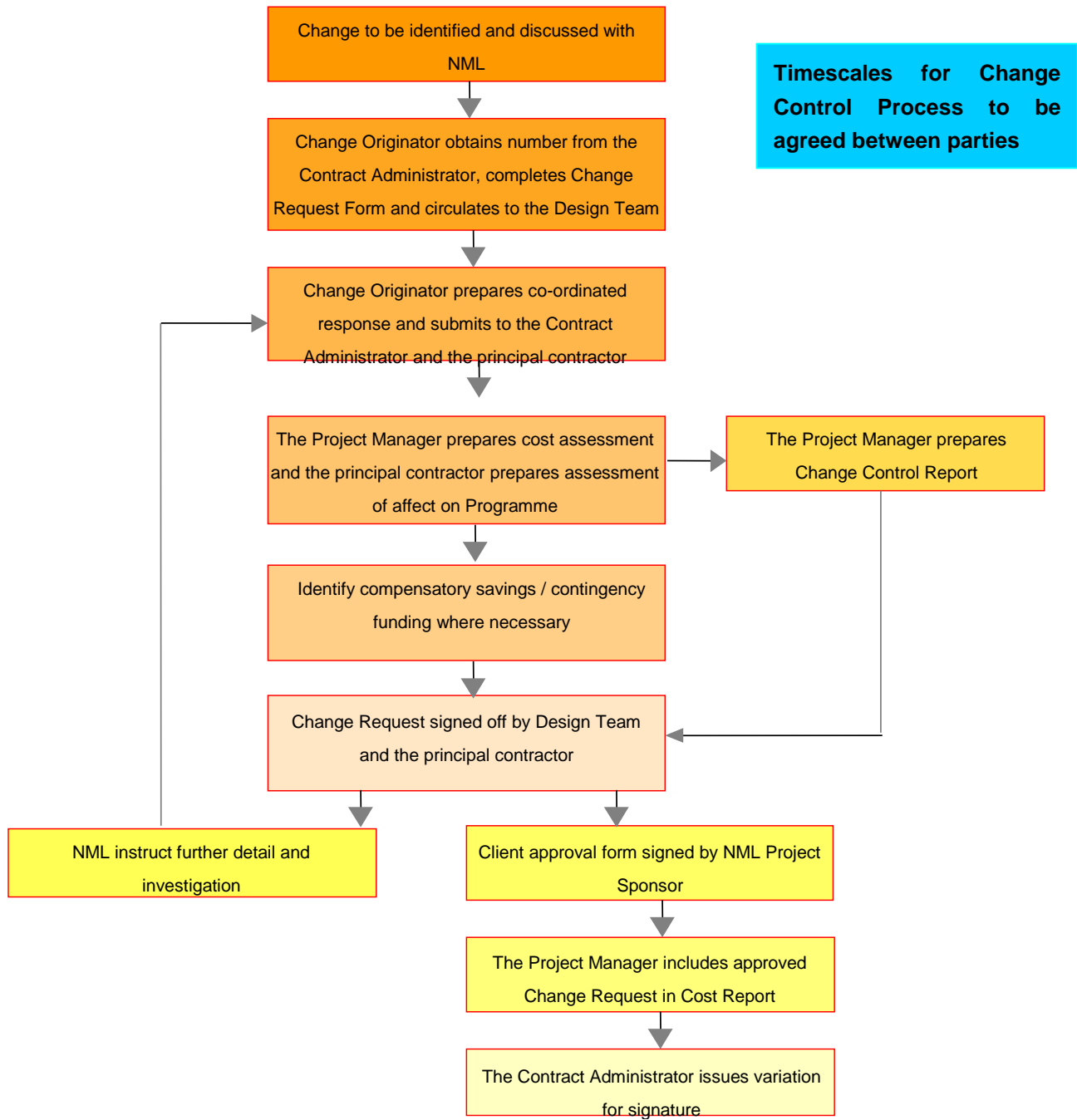
1. The Change Originator should firstly discuss the proposed change with NML in order to gain their approval that the change is to be considered further. It is however essential that the flow of information is not obstructed and it is the responsibility of all of the relevant parties to ensure that the 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 the Client/Cunliffes.
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 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, contract administrator and the principal contractor will undertake an assessment of the likely commercial impact and affect on programme. Once again the contract administrator 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/Consultants.
7. The Change Request is then signed off by the contract administrator 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	
Effect to:	
Programme	
Resources	
Construction Cost	Omit Add

Net Add	_____ 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	
Signed	Project Sponsor
.....	Date
.....