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| **THE BOARD OF TRUSTEES OF THE SCIENCE MUSEUM**The Science Museum Exhibition Road London SW7 2DD |
| **PROFESSIONAL SERVICES CONTRACT** |
| **PART 1: COMMERCIAL DETAILS** |
| **Contract Reference Number:** | [insert number] |
| **Date:** | [write in date once both parties have signed] 20[●] |
| **The Service Provider:**Address: | [insert details] |
| **Company No:** |
| Tel No: |
| E-mail: |  |
| **Qualifications and Memberships (if any):** | [insert details] or [if none, state n/a] |
| **Service Provider's Authorised Representative:** | [insert name and contact details] |
| **Museum's Authorised Representative:** | [insert name and contact details] |
| **The Services:** | [insert brief description]***As further detailed in the Service Specification at Schedule 1*** |
| **Commencement Date:** | [insert date] **or** [from the date of signature of this Contract] |
| **Term:** | From Commencement Date [until [insert date]] **or** [for a period of [insert time period] **or** [until satisfactory completion of the Services] |
| **Professional Services Fee:** | £[insert amount], **which shall be payable in accordance with the provisions of Schedule 2**  |
| **Equipment and Accommodation:** | [insert details] [*eg. A desk and computer with access to the internet and a telephone*] |
| **Key Personnel:** | [Delete this entire row if the Service Provider is an individual. If, however, the Service Provider is a company insert here the name(s) of the Service Provider's staff who will actually be performing the Services and that you want "bound in" to provide the Services on behalf of the Service Provider.] |
| **Special Conditions:** | [insert, if applicable on a case by case basis] |

**This Contract is subject to the Terms and Conditions which are attached as Part 2. Where there is any inconsistency between the terms set out in this Part 1 and the Terms and Conditions in Part 2, the terms in this Part 1 shall to the extent of such inconsistency prevail.**

**By signing below the parties hereby accept and agree the Terms and Conditions (which are set out in Part 2 of this Contract).**

SIGNED:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PRINT NAME:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

duly authorised to sign for and on behalf of **the Board of Trustees of the Science Museum**

SIGNED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_PRINT NAME:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

duly authorised to sign for and on behalf of **the** **Service Provider**

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| **PART 2: TERMS AND CONDITIONS** |

1. Definitions
	1. Unless the context otherwise states or requires: (i) the terms defined in the Part 1 shall have the meaning given to them there when used in these Terms and Conditions; and (ii) all other capitalised words used in these Terms and Conditions shall have the meanings set out below:

"**Background Intellectual Property**" Intellectual Property Rights existing prior to the date of this Contract or generated other than in the course of providing the Services which the Service Provider (or its licensors, as the case may be) makes available to the Museum in the course of providing the Services (whether as part of the Deliverables, or otherwise);

[“**Building Contract**” means the contract(s) to be executed by the Museum and the Contractor(s) for the carrying out and completion of the Project or parts of the Project, alongside the delivery of the Services, as detailed in Schedule 1;]

"**Contract**" the contract formed between the Service Provider and the Museum upon the Service Provider's acceptance of an Order and governed by these Terms and Conditions;

“**Contractor**” means such contractor(s) as may be appointed by the Museum from time to time in connection with the Project and includes, where the context so admits, the Contractor's employees, agents and sub-contractors;

**"Deliverables"** means the products of the Services including, as applicable, all works of authorship, documents, reports, data, databases, software, programs, methods, methodologies, technical and commercial information, results, designs, illustrations, artwork, diagrams, graphics, music, audio visual recordings, sound recordings and any other subject matter or materials, in whatever form or medium, due to be delivered to the Museum under this Contract, including those described and/or identified in the Service Specification;

**"Intellectual Property Rights"** or **"IPR"** means all patents, trade marks, trade names and domain names, service marks, rights to inventions, copyright and related rights, rights in get-up, rights in goodwill, unfair competition rights, rights in designs (whether held in physical or electronic format or otherwise howsoever), database rights, rights in confidential information (including Know How and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewal or extensions of, such rights and similar or equivalent rights or forms of protection in any part of the world;

**"ITT"** means the Museum's written invitation to tender for the Services, attached at Schedule 3;

**"Know How"** means unpatented technical information (including information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, test and trials, manufacturing processes, techniques, specifications and innovations) that is not in the public domain;

**"Milestone(s)"** means the milestone event(s) specified, identified or referred to in Schedule 2 the satisfactory and successful completion of which (determined in the Museum's reasonable discretion) will trigger payment of part or all (as the case may be) of the Professional Services Fee (and as further set out in Schedule 2);

**"Museum"** means the Board of Trustees of the Science Museum;

**“Project”** means [insert brief description];

**"Services"** means the services to be provided / performed by the Service Provider under this Contract, namely (a) those services described in Part 1 of this Contract and detailed in the Service Specification;

**"Service Specification"** means the specification for the Services set out in Schedule 1;

**"Tender"** means the Supplier's written response to the Museum's ITT, attached at Schedule 4; and

**"Timetable"** means the timetable for delivery of the Services as set out in the Service Specification (if any).

* 1. In this Contract:
		1. Clause, sub-clause, Schedule and paragraph headings are inserted for convenience only and shall not affect the interpretation of this Contract. References to Clauses, sub-clauses Schedules and Annexes are to the clauses, schedules and annexes of this Contract;
		2. unless the context requires otherwise, words in the singular shall include the plural and *vice versa*;
		3. a reference to any party shall include that party’s successors and permitted assigns;
		4. any words following the terms "**including**", "**include**", "**in particular**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
		5. a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and shall include all subordinate legislation made from time to time under that statute or statutory provision.
1. Commencement and Term
	1. The Service Provider shall provide the Services in accordance with these Terms and Conditions, which shall apply to the Contract to the exclusion of all other terms and conditions (whether previously issued by the Museum or appearing on any documentation issued by the Service Provider). These Terms and Conditions can only be varied by prior express written agreement between the Museum and the Service Provider (each acting by their respective Authorised Representative (or a nominee of such representative)).
	2. The Service Provider acknowledges and agrees that the Museum will be entering into the Contract on the basis of the Tender submitted to the Museum and warrants that the Tender is accurate and complete in all material aspects and not misleading.
	3. If the Services are to be provided in phases or instalments (or similar), the Contract shall be treated as single and not severable. Failure to deliver any one phase or instalment in accordance with the Contract shall entitle the Museum to exercise the rights under Clause 14.
	4. The Service Provider hereby acknowledges that the Project is split into different stages and the Services set out in Schedule 1 relate to separate RIBA work stages. The Service Provider shall not proceed to the next RIBA work stage without written notice from the Museum to do so, and such notice is a condition precedent to the payment of the Professional Services Fee for that phase of the Services.
	5. This Contract shall be deemed to commence on the Commencement Date and shall continue for the Term, subject to earlier termination in accordance with Clause 14.
2. The Services
	1. The Service Provider shall perform the Services during the Term in accordance with the terms of this Contract.
	2. The Service Provider warrants and undertakes that it is entitled to enter into this Contract and that it shall ensure that the Services are performed at all times:
		1. in accordance with the Timetable (if applicable) and at times and places reasonably agreed by the Service Provider with the Museum;
		2. in compliance with (i) any requirements contained or otherwise specified in the ITT and (ii) the Museum's reasonable instructions from time to time;
		3. in accordance with the Service Provider's Tender;
		4. truthfully, accurately, loyally and in good faith towards the Museum;
		5. with due diligence, skill, care, in a professional, timely and workmanlike manner;
		6. such that the Deliverables are of a good quality, conform with the descriptions and specifications set out in the Service Specification, and are fit for any purpose expressly or impliedly made known to the Service Provider by the Museum;
		7. using suitably skilled and experienced personnel, in sufficient number to ensure that the Service Provider’s obligations are fulfilled;
		8. in accordance with all applicable laws, rules and regulations, and having obtained all necessary licenses and consents;
		9. without infringing the Intellectual Property Rights or other rights of any third party; and
		10. without doing (or omitting to do) any act or thing which would or might (in the reasonable opinion of the Museum) be expected to damage the reputation of the Museum.
	3. It is hereby acknowledged and agreed that the Museum shall be entitled to rely on all documents submitted by the Service Provider, its sub-contractors, staff and agents for the use of such documents in connection with the Project.
	4. The Service Provider warrants and represents that where copies of any reports and/or findings produced as a result of any investigations carried out in respect of the Project and/or details of any preliminary works carried out in respect of the Project have been given to the Service Provider, the Service Provider shall have full regard to such reports, findings and preliminary works when carrying out the Services.
	5. Where in the performance of the Services the Service Provider:
		1. has to exercise his discretion as between the Museum and the Contractor, the Service Provider shall do so properly and fairly; and
		2. seeks or is obliged to seek the Museum’s approval or agreement to any matter or thing, the giving or confirming of the same by the Museum shall not in any way derogate from the Service Provider’s obligations under this deed nor diminish extinguish exclude limit or modify any liability on the Service Provider’s part in respect of this Contract.
	6. If Key Personnel are identified in Part 1 the Service Provider agrees not to use or engage any other person to provide or perform the Services without the Museum's prior written approval.
	7. If the Service Provider is an individual (rather than a body corporate) and unable or unwilling to perform the Services personally for whatever reason the Service Provider may arrange at his/her own expense for another suitable person to perform the Services, subject to the Museum's express prior written approval to such arrangement and the Service Provider warranting that such other person is suitable (including experienced and qualified) to perform the Services. If so required, the Service Provider shall provide evidence to the Museum to demonstrate to the Museum's reasonable satisfaction the other person's suitability to perform the Services.
	8. The Service Provider shall obtain the prior written approval of the Museum before undertaking any work for a third party of an identical or similar nature to the Services, which may, because of the nature of the work involved, cause a conflict between such work and the Services to be provided under this Contract. If the Museum requests the Service Provider to undertake work which does or may, because of the nature of the work involved, cause a conflict with the work it is doing or has agreed to do for a third party, the Service Provider shall promptly disclose the conflict to the Museum and all other information reasonably requested by the Museum.
	9. The Museum shall be entitled to conduct regular reviews of the provision of the Services and/or the performance of this Contract and discuss the same with the Service Provider.
	10. Where the Services are due to be carried out at premises owned or controlled by the Museum:
		* 1. the Service Provider is deemed to have inspected the premises at which the Services are to be carried out;
			2. the Service Provider shall only be licensed to occupy such premises and does so by an office or appointment from the Museum (the purpose of which is to provide/perform the Services, in whole or in part);
			3. on completion of the Services, the Service Provider shall remove all plant, equipment, unused materials and rubbish and shall leave the premises in a neat and tidy condition; and
			4. the Museum may at any time during the provision of the Services order in writing the removal from the premises of any materials which, in the opinion of the Museum, are either hazardous or not in accordance with the Contract and the Service Provider shall immediately remove and replace the same to the Museum’s satisfaction.
	11. If instructed by the Museum, the Service Provider shall provide to the Museum names and addresses of any and all persons involved with the performance of this Contract, specifying the capacities in which they are so involved and giving such other information as the Museum may reasonably require. If the Museum gives the Service Provider notice that any person (including, if applicable, any key personnel) is not to be involved in the Contract, the Service Provider shall comply with such notice and shall replace such person removed with another suitably qualified person. The Service Provider shall take all steps required by the Museum to prevent unauthorised persons being admitted to the Museum's premises.
	12. The Service Provider shall keep, for 6 years after the Contract has been completed or terminated, full and accurate records of all employees involved in the Contract and all expenses claimed, hours worked and costs incurred by such employees in relation to the Contract. The Service Provider shall allow the Museum or the Museum's Authorised Representative access to the same at all reasonable times.
3. Tax Liabilities
	1. Where contracting in his/her individual capacity, the Service Provider meets the basic definition of self-employment in that:
		* 1. the Service Provider is in business on his/her own account and accepts full responsibility for its success and failure;
			2. the Service Provider does not work exclusively for the Museum;
			3. the Service Provider provides his/her own tools to provide and/or perform the Services;
			4. the Service Provider’s provision of the Services is on an ad hoc basis, and not necessarily recurring by nature; and
			5. the Service Provider has control over how and when he/she performs the Services, within overall deadlines and quality standards set by this Contract.
	2. The Service Provider agrees that the Service Provider is responsible for all Income Tax, National Insurance or other payments and liabilities in connection with the provision and/or performance of the Services.
	3. The Service Provider undertakes fully and promptly to indemnify the Museum at all times against any income tax, national insurance contributions, penalties, interest or other payments payable by the Museum to HM Revenue & Customs, the Department for Work and Pensions or any other governmental body as a result of or in connection with the Museum’s engagement of the Service Provider pursuant to this Contract. This indemnity shall survive the termination or expiry of this Contract.
4. Museum's Obligations
	1. The Museum shall provide the Service Provider:
		1. where necessary, with reasonable access at reasonable times to the Museum's premises, for the purpose of providing the Services;
		2. with the Equipment and Accommodation as may be detailed in the Order; and
		3. such information and cooperation as the Service Provider may reasonably request and the Museum considers reasonably necessary to enable the Service Provider to perform the Services.
5. The Professional Services Fee
	1. The Museum shall pay the Service Provider the Professional Services Fee, subject to the satisfactory performance of its obligations under this Contract and within the timescales set by the Museum.
	2. The Professional Services Fee is exclusive of VAT, and unless expressly stated otherwise in the Special Conditions shall be payable following satisfactory completion of each Milestone and in accordance with the Procedure laid out in Schedule 2.
	3. Without prejudice to any other right or remedy that it may have, if the Museum fails to pay any amount payable by it under this Contract, the Service Provider may charge the Museum interest on the overdue amount from the due date up to the date of actual payment, after as well as before judgment, at the rate of 3% per annum above the base rate for the time being of Barclays Bank plc. The Service Provider agrees that this is a substantial contractual remedy for late payment for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
6. Changes
	1. No change to this Contract or the Services supplied under it, shall be valid unless made in writing and signed by the parties (each acting by their respective Authorised Representative).
	2. The Service Provider shall not unreasonably withhold or delay agreement to any change required by the Museum, or the implementation thereof; nor shall the Service Provider impose unreasonable conditions (having regard to the other terms of this Contract) in implementing the change. Any revision to the Professional Services Fee for any Services to be provided under this Contract as a result of such a request shall (to the extent possible) be calculated using the same or equivalent method to that which was used to calculate the Professional Services Fee. No variation to the Professional Services Fee shall apply without the express prior written approval of the Museum.
7. Intellectual Property Rights
	1. Nothing in this Contract shall affect the ownership of Background Intellectual Property.
	2. Where the Service Provider's Background Intellectual Property forms part of any Deliverables supplied to the Museum in the course of providing the Services the Service Provider hereby grants the Museum a non-exclusive, perpetual, irrevocable and royalty-free licence to use such Background Intellectual Property as part of such Deliverables and for such purposes as are necessary to allow the use and exploitation of the Deliverables (or any part thereof) by the Museum, its licensees, successors and assigns.
	3. Subject to Clause 8.1, the Deliverables, the Intellectual Property Rights therein and any other Intellectual Property Rights created, generated or developed by or on behalf of the Service Provider in the provision of the Services or otherwise in the performance of this Contract shall be owned by the Museum and, accordingly, the Service Provider hereby assigns to the Museum absolutely and with full title guarantee (by way of present and future assignment) any and all such Intellectual Property Rights.
	4. The Service Provider agrees that on request by the Museum (or on its behalf) and at the Museum's reasonable expense it shall execute and sign such documents and to do such things as may be required by the Museum to give effect to the assignment of rights under Clause 8.3 and ensure that the rights licensed or assigned to the Museum under this Clause 8 can be exercised, sub-licensed and otherwise used freely and unconditionally by the Museum.
	5. The Service Provider hereby irrevocably and unconditionally waives any and all moral rights or any rights of a similar nature as it may have or acquired in the Deliverables in perpetuity, and warrants and undertakes to procure that all persons engaged in the creation or production or other use of the Deliverables have waived any and all moral rights on the same terms.
	6. The Service Provider hereby warrants that:
		1. it has not, and shall not, grant or assign any rights of any nature in part or all of any Deliverable produced as part of the Services to any third party whatsoever in any part of the world;
		2. subject to the provisions of Clause 8.1, all Deliverables will be original to the Service Provider and that the Museum is or shall be the sole and unencumbered owner of all IPR in the Deliverables and that nothing in the Deliverables (or any exploitation thereof by the Museum) will infringe any right whatsoever of any third party; and
		3. the Service Provider has all the applicable permissions and licenses and has fulfilled any other relevant requirements required to copy and provide to the Museum any third party material in whatever format ("**Third Party Material**") provided as part of the Deliverables and that any Third Party Material shall be appropriately flagged as such where not immediately identifiable.
8. Freedom of Information Act 2000 ("FOIA")
	1. The Service Provider acknowledges that the Museum is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 ("**EIR**") and shall assist and cooperate with the Museum to enable the Museum to comply with its information disclosure obligations under the same.
	2. The Service Provider shall and shall ensure that its employees, agents, sub-contractors and any other representatives shall:
		1. transfer any request for Information (as defined in the FOIA) under the FOIA or the EIR (a "**Request for Information**") to the Museum as soon as practicable after receipt and in any event within two (2) business days of receiving a Request for Information;
		2. provide the Museum with a copy of all Information in its possession or power in the form that the Museum requires within five business days (or such other period as the Museum may specify) of the Museum requesting that Information; and
		3. provide all necessary assistance as reasonably requested by the Museum to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.
	3. The Museum shall be responsible for determining whether any Information:
		1. is exempt from disclosure in accordance with the provisions of FOIA or EIR; and/or
		2. is to be disclosed in response to a Request for Information.
	4. The Service Provider acknowledges that the Museum may be obliged under the FOIA or EIR to disclose Information, in some cases even where that Information is commercially sensitive provided that the Museum take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention as soon as practicable after any such disclosure.
9. Confidentiality
	1. Subject always to the provisions of Clause 9, in the event of either party ("**the Disclosing Party**") making available to the other ("**the Receiving Party**") confidential information relating to its business, technical or other activities in the course of providing the Services, the Receiving Party shall use its best endeavours to maintain the confidentiality of such information (to the extent that such information is within its control) and not use or disclose such confidential information except to the extent necessary to enable the performance of the Receiving Party's obligations under this Contract, or as otherwise permitted by this Clause 10.
	2. The Museum may disclose confidential information:
		1. to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Museum's obligations under this Contract or advising or assisting the Museum in any matter relating to the Contract; and
		2. as may be required by law, court order or any governmental or regulatory authority. The Museum will use all reasonable endeavours to consult the Service Provider whenever possible prior to providing such information.
	3. The obligations in Clause 10.1 shall not apply to data or information which the Receiving Party can clearly demonstrate:
		1. was known to the Receiving Party prior to disclosure by the Disclosing Party, or is independently developed or conceived by the Receiving Party; or
		2. was in or enters the public domain through no fault of the Receiving Party or breach by a third party of an obligation of confidence; or
		3. becomes available to the Receiving Party by an unconnected third party with the lawful right to make such a disclosure.
10. Transparency
	1. The Service Provider acknowledges that the United Kingdom Government's transparency agenda requires that certain Contracts (which may include this Contract) and tender documents are published on a designated, publicly searchable website.
	2. The Service Provider acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential information. The Museum shall be responsible for determining in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding any other term of this Contract, the Service Provider hereby gives consent for the Museum to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.
11. Insurance
	1. The Service Provider undertakes to maintain at its own cost an insurance policy with a reputable insurance company to cover full liability in respect of any act, omission or default for which it may become liable in the course of and as a result of the provision of Services including (without limitation):
		1. public and product liability insurance of not less than £10,000,000 (ten million pounds);
		2. employers' liability insurance of not less than £10,000,000 (ten million pounds); and
		3. professional indemnity insurance of not less than £5,000,000 (five million pounds).
12. Indemnity and recoverability of losses, etc.
	1. The Service Provider shall indemnify and hold the Museum harmless from all claims and all direct liabilities, costs, proceedings, damages and expenses awarded against, or incurred or paid by, the Museum as a result of or in connection with any claim made against the Museum in respect of any liability, loss, damage, injury, cost or expense sustained by the Museum's employees or agents, or by any third party, to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services by the Service Provider (or its agents, representatives or subcontractors) or as a consequence of a breach or negligent performance or failure or delay in performance of this Contract by the Service Provider (or its agents, representatives or subcontractors).
	2. For the avoidance of doubt the following types of costs, expenses, liabilities and losses shall (without limitation) be recoverable by the Museum as a direct loss where such costs, expenses, liabilities and losses are incurred as a result of a breach by the Service Provider of its obligations under this Contract (or other negligent act or omission on the part of the Service Provider, its agents, representatives and subcontractors):
		1. additional operational and administrative costs and expenses;
		2. wasted expenditure or charges rendered unnecessary and incurred by the Museum;
		3. any additional cost of procuring and implementing replacement services;
		4. loss of anticipated savings or any loss of profits, business opportunity, revenue or goodwill; and
		5. any costs incurred by the Museum in extending any pre-existing licences and/or contracts due to the Service Provider's failure to deliver the Services (or any of them) on time.
13. Termination and suspension
	1. The Museum will have the right to terminate this Contract with immediate effect upon written notice if:
		1. the Service Provider commits a material or persistent breach of this Contract and (in the case of a material breach which is capable of remedy) fails to remedy that breach within thirty (30) days of being notified in writing of the breach; or
		2. an order is made or a resolution is passed for the winding up of the Service Provider, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Service Provider; or
		3. an order is made for the appointment of an administrator to manage the affairs, business and/or property of the Service Provider, or documents are filed for the appointment of an administrator for such purposes, or notice of intention to appoint an administrator for such purposes is given by the Museum or other third party; or
		4. a receiver is appointed over any of the Service Provider’s assets or undertaking, or if circumstances arise which entitle a court or a creditor to appoint a receiver or manager in respect of any part of the Service Provider’s undertaking or assets; or
		5. the Service Provider makes any arrangement or composition with its creditors , or makes an application to a court for the protection of its creditors in any way, or (if a natural person, including as a sole trader) becomes bankrupt, or if the Service Provider ceases to trade or threatens to cease to trade or is otherwise unable to pay its debts as they fall due; or
		6. the Service Provider takes or suffers any similar or analogous action to those referred to in sub-clause 14.1.2 to 14.1.5 (inclusive) in any jurisdiction; or
		7. there is a change of control of the Service Provider. "Control" for these purposes shall be as defined in Section 1124 of the Corporation Tax Act 2010.
	2. In addition to the Museum's rights under Clause 14.1, the Museum may terminate this Contract for any reason on a minimum of thirty (30) days' prior written notice to the Service Provider served at any time.
	3. Without prejudice to any other rights or remedies which the Museum may have, whether under this Contract, the law or otherwise, by giving written notice to the Service Provider from time to time and at any time, the Museum may require the Service Provider to suspend the performance of all or any of the Services with immediate effect. If the Museum has not required the Service Provider to resume the performance of the suspended Services within [12 months] from the date of the notice to suspend performance, either party may terminate this Contract with immediate effect by giving written notice to the other party.
	4. If the Museum has required the Service Provider to suspend the performance of all or any of the Services under clause 14.3, by giving written notice to the Service Provider, at any time within [12 months] from the date of the notice to suspend performance the Museum may require the Service Provider to resume the performance of the suspended Services. If this happens, the Service Provider shall resume the performance of the suspended Services in accordance with this Contract as soon as reasonably practicable, and any payment made under clause 16.2 shall be deemed to be a payment on account of any sum to be paid to the Service Provider under this Contract.
14. Suspension by the Service Provider
	1. The Service Provider may suspend the performance of all or any of the Services and its other obligations under this Contract by giving at least 30 days’ written notice to the Museum of its intention to do so stating the grounds on which it intends to suspend its performance, if the Museum:
		1. does not pay in full to the Service Provider any sum due to it under this Contract by the final date for payment; and
		2. has not given to the Service Provider a notice complying with paragraph 6 of section C, Schedule 2.
	2. If the Service Provider suspends the performance of all or any of the Services or its other obligations under this Contract in accordance with clause 15.1 the Museum shall pay to the Service provider a reasonable sum in respect of the direct costs and expenses necessarily and properly incurred by the Service Provider as a result of its suspension of its performance, and this payment shall be the Service Provider’s sole remedy for its suspension of its performance.
	3. If for any reason, the Service Provider’s suspension of its performance in accordance with clause 15.1 continues for more than three months, or results in the termination of the Service Provider’s appointment under this Contract, the Service Provider shall comply with clause 16.1.
15. Consequences of termination and suspension
	1. If the Service Provider’s appointment under this Contract is terminated under clauses 14.2 or 14.3, or the performance of all or any of the Services is suspended under clause 14.3, the Service Provider shall immediately bring to an end the performance of the Services in as economical and orderly a manner as possible, and the Service Provider shall deliver to the Museum the Deliverables in the possession or under the control of the Service Provider relating to the Services or this Contract. The Service Provider relinquishes any lien on the Deliverables to which it may be entitled otherwise.
	2. If the Service Provider’s appointment is terminated under clauses 14.2 or 14.3, or the performance of the Services is suspended under clause 14.3, subject to any abatement, deduction, set-off or withholding which the Museum is entitled to make whether under the terms of this Contract, the law or otherwise, the Museum shall pay to the Service Provider a fair and reasonable proportion of the Professional Services Fee, equal to the proportion of the Services performed by the Service Provider up to the date of the termination or suspension, less the amount of any payments of the Professional Services Fee which the Museum has made previously to the Service Provider. If the amount of any payments of the Professional Services Fee made previously exceeds this fair and reasonable proportion, the Service Provider shall pay the amount of this excess to the Museum within 14 days of the termination or suspension.
	3. If the Service Provider’s appointment is terminated under clause 14.3, the Museum shall pay to the Service Provider a reasonable sum in respect of direct costs and expenses necessarily and properly incurred by the Service Provider as a result of the termination of this Contract, except insofar as the termination is due to any act, failure to act, breach of this Contract or of statutory duty or tort including, but not limited to, the negligence of the Service Provider.
	4. Any payment under clauses 16.2 or 16.3 shall be the Consultant’s sole remedy for the termination of this Contract or the suspension of the performance of all or any of the Services under clause 14.3.
	5. Notwithstanding any other provision of this Contract, if the Service Provider’s appointment under this Contract is terminated, or the performance of all or any of the Services or the Service Provider’s other obligations under this Contract is suspended, the Museum shall not be liable to the Service Provider for any direct or indirect loss of profit, loss of contract, loss of opportunity or for any indirect costs, expenses, liabilities or losses of any nature arising out of or in connection with the termination or suspension.
	6. Subject to clauses 15.2, 16.4 and 16.5, any termination of this Contract, or any suspension of the performance of all or any of the Services or the Service Provider’s other obligations under this Contract, shall be without prejudice to the accrued rights and remedies of both parties in respect of any act, failure to act, breach of this Contract or of statutory duty or tort including, but not limited to, negligence of the other prior to the termination or suspension.
	7. The provisions of this Contract shall bind both parties insofar as, and for as long as, may be necessary to give effect to their respective rights and obligations under it.
16. Dispute Resolution
	1. If a dispute arises out of or in connection with this Contract the parties will, following a written request from one party to the other, attempt in good faith to resolve the dispute:
		1. through discussions between Robyn Dodsworth and the Tim Cutter failing which;
		2. through discussions between the Museum's Commercial Director and the Service Provider's Director.
	2. In the event that any dispute arising out of or in connection with this Contract cannot be settled between the parties at the meetings described in Clauses 16.1 above or within thirty (30) calendar days of receipt of the initial request, the parties agree to attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator and place of mediation shall be nominated by CEDR Solve.
	3. Neither party may commence any court proceedings in relation to any dispute arising out of this Contract until it has attempted to settle the dispute by mediation, and either the mediation has terminated or the other party has failed to participate in the mediation, and provided in any event that the right to issue proceedings is not prejudiced by a delay.
	4. Nothing in this Clause 17 shall prevent either party from seeking from any court of competent jurisdiction an interim order restraining the other from doing any act, or compelling the other to do any act.
	5. With the exception of any rights of the Museum to withhold payment of the Professional Services Fee where it has *bona fide* grounds for doing so, the obligations of the parties shall not cease, or be suspended or delayed by the reference of any dispute to mediation pursuant to this Clause.
	6. Notwithstanding any other provision of this Contract, either party may refer any dispute or difference under this Contract to adjudication by a person agreed between the parties or, if not agreed, appointed on the application of either party to the President or Vice-President of the Royal Institution of Chartered Surveyors in accordance with Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998, as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011.
17. Regulatory
	1. In performing the Service Provider’s obligations under this Contract, the Service Provider shall:
		1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015;
		2. comply with any anti-slavery policy or statement made available to it by the Museum throughout the term of this Contract;
		3. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
		4. ensure that each of the Service Provider’s subcontractors and suppliers shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015.
	2. The Service Provider shall notify the Museum in writing as soon as the Service Provider becomes aware of any breach, or potential breach of Clause 18.1.
	3. The Service Provider shall act in accordance with the requirements of the Health and Safety at Work etc Act 1974 (“**HSWA**”) and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to personnel working at the Museum in the performance of its obligations under the Contract. The Service Provider shall ensure that its health and safety policy statement (as required by HSWA) is made available to the Museum on request. The Service Provider acknowledges that it is required to review, and then for the term comply with, the “*SMG Health and Safety Information Pack*” (which it hereby acknowledges receipt of) and that it shall enter into the Museum’s Health and Safety Agreement (which is deemed to form part of this Contract) prior to commencement of the Services. The Museum shall provide a health and safety induction for the Service Provider prior to the commencement of the Services and the Service Provider agrees that it shall comply with the instructions set out in this induction.
	4. If applicable, both parties shall comply fully with their respective duties under the Construction (Design and Management) Regulations 2015 (“**the CDM Regulations**”).  For the avoidance of doubt, the Museum shall be the “*Client*” and the Service Provider shall be the “*Principal Designer*” for the purpose of the CDM Regulations.  In the event that the Service Provider appoints a contractor to assist in the delivery of the Services, the Service Provider shall be the “Principal Contractor” for the purposes of the CDM Regulations and shall ensure that the said contractor complies fully with his/her obligations under the CDM Regulations (in his/her capacity as a “*Contracto*r” under the CDM Regulations).
18. Force Majeure
	1. Neither party shall have any liability under or be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than three weeks, either party may terminate this Contract by written notice to the other party.
19. General
	1. Assignment and sub-contracting. The Service Provider may not assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under or pursuant to this Contract, or sub-contract the performance of any of its obligations under or pursuant to this Contract without the express prior written consent of the Museum. The Service Provider will not be relieved of any of its obligations and/or duties under this Contract by virtue of the Museum agreeing in writing to the sub-contracting of any or all of its obligations and/or duties under the Contract.
	2. Discrimination. The Service Provider shall not discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Service Provider shall not discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other applicable relevant or equivalent legislation or regulation, or any statutory modification or re-enactment of the same.
	3. Anti-Bribery. The Service Provider shall not, in the performance of its obligations under this Contract, act in a manner that constitutes a breach of applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010. The Service Provider shall comply with any policy or procedure governing anti-bribery imposed by the Museum and warrants that in providing the Services will not induce or improperly reward any third party, including any public official, to act improperly. For the purposes of this Clause, to act improperly shall be interpreted in accordance with the Bribery Act 2010. The Museum shall be entitled to terminate this Contract immediately and to recover from the Service Provider the amount of any loss resulting from a breach of this Clause.
	4. Notices. Any notice to be given by one party to the other under, or in connection with, this Contract shall be in writing and signed by or on behalf of the party giving it. It shall be served by sending it by pre-paid recorded delivery, special delivery or registered post, to the relevant address as shown in Part 1 (or as otherwise notified by that party to the other). Any notice so served shall be deemed to have been duly given on the second (2nd) business day following the date of posting.
	5. Severability. If any provision (or part of a provision) of this Contract is held to be invalid or unenforceable, then such provision (or relevant part, as the case may be) shall (so far as invalid or unenforceable) be given no effect and shall be deemed not to be included in this Contract but without invalidating any of the remaining provisions (or remaining part of any provision) of this Contract.
	6. Waivers. No failure or delay by any party in exercising any right or remedy provided by law under or pursuant to this Contract shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time.
	7. Variation. No amendment or variation of this Contract shall be valid unless it is in writing and signed by or on behalf of duly authorised representatives of each of the parties.
	8. Entire Contract. This Contract sets out the entire agreement and understanding between the parties in respect of the Services and supersedes any previous arrangement, understanding or agreement between the parties relating to the Services.
	9. Relationship of the parties. Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, authorise a party to act as the agent of the other, or authorise any party to make or enter into any commitments for or on behalf of the other party except as expressly provided in this Contract.
	10. Further Assurances. Each party shall (and shall procure that any necessary third parties shall), at the other party's cost, do all such acts and execute all such documents in a form satisfactory to the other party as the other party may from time to time request in order to carry out the purposes and intent of this Contract.
	11. Priority. If there is any inconsistency between any of the provisions of Part 1, these Terms and Conditions and any schedules or annexes to this Contract the following order of priority shall prevail to the extent of any such conflict: (a) Part 1, (b) these Terms and Conditions and (c) and any schedules or annexes.
	12. Third Party Rights. No person other than a party to this Contract shall have any rights to enforce any term of this Contract (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).
	13. Governing Law. This Contract and the relationship between the parties shall be governed by, and interpreted in accordance with the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English courts.
20. Scope of Services

The Service Provider shall carry out the Services in accordance with the Museum’s reasonable instructions provided from time to time and in accordance with any applicable Timetable notified to the Service Provider by the Museum. This shall include the following currently applicable deadlines:

RIBA Stage 2 completion: [insert details] 20[●]

RIBA Stage 3 completion: [insert details] 20[●]

RIBA Stage 4 completion: [insert details] 20[●]

RIBA Stage 5 completion: [insert details] 20[●]

RIBA Stage 6 completion: [insert details] 20[●]

1. Professional Services Fee

A. Details of Professional Services Fee

The Professional Services Fee is £[insert amount] including all costs, disbursements and expenses, but excluding VAT which will be charged at the prevailing rate, [save that, subject to the prior written approval of the Museum, any travel expenses incurred by the Service Provider for travel outside of Greater London for the purpose of the delivery of the Services shall be payable in addition to the Professional Services Fee].

The Professional Services Fee is fixed for the scope and programme outlined in the tender documents. Increase of resource to meet this scope and programme will not attract additional fee.

Subject to the prior written approval of the Museum, where additional services are delivered by the Service Provider, the following rates shall be used to calculate such additional services:

|  |  |  |
| --- | --- | --- |
|  | **£ / Hour** | **£ / Day** |
| **Director** | £ | £ |
| **Senior Engineer** | £ | £ |
| **Design Engineer** | £ | £ |
| **BIM Technician** | £ | £ |

B. Milestones / Payment Schedule

The Service Provider shall be entitled to invoice the Museum in the instalments set out below on the satisfactory completion of the following stages, such invoice to include any fee for agreed changes under clause 7:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **RIBA Stage 1** | **RIBA Stage 2** | **RIBA Stage 3** | **RIBA Stage 4** | **RIBA Stage 5** | **RIBA Stage 6** | **Total** |
| **Fee** | £ | £ | £ | £ | £ | £ | £ |

C. Procedure

1. When giving the Museum an invoice under section B of this Schedule, the Service Provider shall also give the Museum the supporting documents and information that the Museum reasonably requires to enable it to evaluate the invoice. The invoice and the supporting documents and information (if any) shall specify the sum that the Service Provider considers will be due on the payment due date for that instalment of the Professional Services Fee, and the basis on which that sum has been calculated.
2. The payment due date will be 30 days after the date on which the Museum receives the invoice.
3. No later than five days after the payment due date, the Museum shall give notice to the Service Provider of the sum, which may be zero, that the Museum considers was due on the payment due date in respect of that instalment and of the basis on which that sum has been calculated.
4. The final date for payment of a sum set out in an invoice will be 15 days after the payment due date.
5. Subject to paragraph 7, and unless the Museum has given a notice under paragraph 6, the Museum shall pay the Service Provider:
	1. the sum set out in the Museum notice given under paragraph 3; or
	2. if the Museum has not given a notice under paragraph 6, the sum set out in the Service Provider’s invoice given under section B of this Schedule,

(“**Notified Sum**”), on or before the final date for payment of the invoice.

1. Not fewer than five days before the final date for payment of the Notified Sum (“**Prescribed Period**”), the Museum may give the Service Provider notice that it intends to pay less than the Notified Sum. The notice shall specify:
	1. the sum that the Museum considers is due on the date the notice is given; and
	2. the basis on which the sum has been calculated.
2. Notwithstanding paragraphs 5 and 6, if the Service Provider becomes Insolvent after the Prescribed Period, the Museum need not pay the Service Provider the Notified Sum or any sum.

ITT

**Schedule 4**

Tender