



Draft Standard Freelance Contract

This contract for provision of services is made on [date]

Between: **Birmingham Museums Trust** whose registered office is at:

**Birmingham Museums Limited. Registered Office: Birmingham Museum & Art Gallery,
Chamberlain Square, Birmingham B3 3DH. Company No: 07737797 Charity No:
1147014 VAT Reg No: 765 3574 02**

("the Client");

and

[Name of self-employed contractor] of [address] ("the Contractor").

1: Interpretation

1.1 In these Terms, the following definitions apply:

Contract: the contract between BMT and the Contractor for the supply of Services, which incorporates these Terms and the Project Specification.

Gender Neutrality: Any use of the male or female pronouns in this Agreement, whether "he," "she," "him," "her" or words or phrases to similar effect, shall have no significance in the interpretation and application of the terms, provisions and conditions of this Agreement, such use being solely for the sake of convenience.

BMT Materials: has the meaning set out in clause 2.8

Data Processing: any operations performed upon personal data (whether or not by automatic means), including collection, recording, organisation, storage, adaption, retrieval, consultation, use, erasure, disclosure or dissemination.

Deliverables: all documents, products and materials developed by the Contractor or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Intellectual Property Rights: all intellectual property rights anywhere in the world, including, but not limited to, copyright, trade-marks, service marks, trade, business and domain names, rights in designs, rights in computer software, database right, topography 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 for and renewals or extensions of such rights.

Project Specification: the description and specification for the Services attached to these Terms, which are included in and form part of the Contract.

Services: the services, including without limitation any Deliverables, to be provided by the Contractor under the Contract as set out in the Project Specification.

2: Supply of Services

2.1 The Contractor shall from the Commencement Date and for the duration of this Contract provide the Services to BMT in accordance with the terms of the Contract.

2.2 In providing the Services, the Contractor shall:

co-operate with BMT in all matters relating to the Services, and comply with all instructions of BMT

2.3 perform the Services with the best care, skill and diligence in accordance with best practice in the Contractor's industry, profession or trade;

2.4 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with this Contract;

2.5 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Project Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Contractor by BMT;

2.6 comply with all applicable laws and regulations, and observe all health and safety rules and regulations and any other security requirements that apply at any of BMT's premises;

2.7 follow any local, and otherwise specified, environmental procedures around waste management, minimising any pollution, the storage and disposal of harmful substances, and pollution incident reporting (oil, or chemical spills, etc)

2.8 hold all materials, equipment and data supplied by BMT to the Contractor (BMT Materials) in safe custody at its own risk, maintain BMT Materials in good condition until returned to BMT, and not dispose or use BMT Materials other than in accordance with BMT's written instructions or authorisation

2.9 the contractor shall be liable for and indemnify BMT against all losses, claims, expenses, costs and other liabilities incurred by BMT which are caused by the act, omission, breach or default of the Consultant; and hold appropriate public and employer's liability and professional indemnity insurance cover.

3: Commencement Date: [date]

Services: the [project/services] to be performed by the Contractor in the course of his/her appointment under this contract and which includes [details], together with such other related services as may from time to time be required by the Client.

4: Termination Date: [date] (the date on which the Contractor's appointment hereunder is terminated)

5: Appointment

With effect from the Commencement Date, the Contractor is appointed as a self-employed contractor to the Client [for a period of [number] [weeks/months/years] to carry out the Services, such services to be provided using reasonable skill and care.

6: Duties

During his/her/their appointment, the Contractor agrees:

- to devote such of his/her time, attention and skill to the business of the Client as shall, in the opinion of the Client, be necessary for the proper and timely performance of the Services [provided that the Contractor shall not be required to spend more than [number] hours per [week/month] in the performance of the Services/provided that the Contractor must devote not less than [number] hours per [week/month] in the performance of the Services];
- to carry out the Services in an expert and diligent manner and to provide his/her services to the best of his/her commercial, technical and creative skill;
- to the best of his/her ability, promptly and faithfully to comply with and observe all lawful, reasonable and proper requests that may from time to time be given to him/her by the Client;
- during his/her appointment, not to undertake any additional activities or accept any other engagements that lead or might lead to any conflict of interest between the Contractor and the best interests of the Client; and
- to keep the Client informed of progress on the Services and in particular to liaise with [name] in respect of the day-to-day performance of the Services.

While the Contractor's method of working is entirely his/her own and he/she is not subject to the control of the Client, he/she shall nevertheless comply with any reasonable requests of the Client.

7: Delegation of work

The Client shall not be obliged to provide the Contractor with any work and the Contractor will not be obliged to accept or perform any work offered, unless and until the Client has requested and the Contractor has agreed to perform such work.

If the Contractor is unable at any time to perform the Services due to circumstances beyond his/her control, the Contractor may delegate performance of the Services to such suitably qualified and experienced personnel as he/she may from time to time deem appropriate. [This delegation will be subject to the Client's consent, which will not be unreasonably withheld.] [The Contractor must notify the Client if this power to delegate is exercised and provide details of the name and appropriate qualifications of the delegate.]

The Contractor must promptly notify the Client in the case of illness or accident that prevents the performance of the Services in accordance with this contract.

8: Fee

A fee of £[amount] per [hour/day/week/month] together with value added tax thereon (if applicable) shall be payable to the Contractor for the provision of the Services and such fee shall be payable [monthly] in arrears by the [number] day of the month immediately following the month in which the Services have been performed.

The Contractor shall submit an invoice to the Client on, or as soon as reasonably possible after, the last day of each month detailing the Services provided within that month and the fees due in respect thereof and where he/she is registered for value added tax shall show any value added tax separately on such invoices.

In the event that there are periods when there are no Services for the Contractor to perform, the Contractor shall not be paid a retainer for these periods. The fee is payable only in respect of Services actually provided.

9: Expenses

The Contractor shall be entitled to be reimbursed by the Client for all out-of-pocket expenses wholly, exclusively and properly incurred in the performance of the Services subject to the Contractor providing the Client with vouchers, receipts or other evidence of actual payment of such expenses and subject to the arrangement being specifically agreed in advance by the Client.

10: Office facilities

The Client will provide the Contractor with such office facilities, including the provision of secretarial support, as it shall deem necessary to enable the Contractor effectively to perform the Services, but as a general rule the Contractor is expected to provide and pay for his/her own tools, machinery, equipment, materials and support staff.

11: Intellectual Property Rights

- Retained Rights. Each party will retain all right, title, and interest in and to its own Pre-Existing Intellectual Property irrespective of any disclosure of such Pre-Existing Intellectual Property to the other party, subject to any licenses granted herein.
- Pre-Existing Intellectual Property. The contractor will not use any sub-contractor or third party Pre-Existing Intellectual Property in connection with this Contract unless the contractor has the right to use it for the Customer's benefit. If the contractor is not the owner of such Pre-Existing Intellectual Property, the contractor will obtain from the owner any rights as are necessary to enable the contractor to comply with this Contract. The contractor grants the Customer a non-exclusive, royalty-free, worldwide, perpetual and irrevocable license in contracted and third party Pre-Existing Intellectual Property, to the extent such Pre-Existing Intellectual Property is incorporated into any Deliverables, with the license including the right to make, have made, sell, use, reproduce, modify, adapt, display, distribute, make other versions of and disclose the property and to sublicense others to do these things.
- The contractor will not incorporate any materials from a third party, including Open Source or freeware, into any Deliverable unless (i) The contractor clearly identifies the specific elements of the Deliverable to contain third party materials, (ii) The contractor identifies the corresponding third party licenses and any restrictions on use thereof, and (ii) approval is given by Customer in writing. The contractor represents, warrants and covenants that they have complied and shall continue to comply with all third party licenses (including all open source licenses) associated with any software components that will be included in the Deliverables or any other materials supplied by contractor. The contractor shall indemnify the Customer against any losses and liability incurred by the Customer due to failure of the contractor to meet any of the requirements in any of the third party licenses.
- Ownership of Deliverables. Subject to the contractor and third party rights in Pre-Existing Intellectual Property, all Deliverables, whether complete or in progress, and all Intellectual Property Rights related thereto shall belong to Customer, and the contractor hereby assigns such rights to the Customer. The contractor agrees that the Customer will own all patents, inventor's certificates, utility models or other rights,

copyrights or trade secrets covering the Deliverables and will have full rights to use the Deliverables without claim on the part of the contractor for additional compensation and without challenge, opposition or interference by the contractor and the contractor will, and will cause each of their Personnel to, waive their respective moral rights therein. The contractor will sign any necessary documents and will otherwise assist Customer in securing, maintaining and defending copyrights or other rights to protect the Deliverables in any country.

- No Rights to Customer Intellectual Property. Except for the limited license to use materials provided by Customer as may be necessary in order for the contractor to perform Services under this Contract, The contractor is granted no right, title, or interest in any Customer Intellectual Property.

12: Conflict of Interest

The contractor represents that its execution and performance of this Contract does not conflict with or breach any contractual, fiduciary or other duty or obligation to which the contractor is bound. The contractor shall not accept any work from the Customer or work from any other business organisations or entities which would create an actual or potential conflict of interest for the contractor or which is detrimental to the Customer's business interests.

13: Confidentiality

The Contractor hereby agrees that during the course of his/her appointment under this contract he/she is likely to obtain knowledge and shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise and of trade secrets and other confidential information with regard to the business and financial affairs of the Client and those of the Client's clients, customers and suppliers, details of which are not in the public domain ("Confidential Information"), including in particular [specify relevant matters], and accordingly the Contractor hereby undertakes to and covenants with the Client that:

- he/she shall not at any time after the Termination Date use or procure the use of the name of the Client in connection with his/her own or any other name in any way calculated to suggest that he/she continues to be connected with the business of the Client or in any way hold himself/herself out as having such connection;
- he/she shall not use the Confidential Information other than during the continuance of this contract and in connection with the provision of the Services; and
- he/she shall not at any time after the date of this contract (save as required by law) disclose or divulge to any person other than to officers or employees of the Client whose province it is to know the same any Confidential Information and he/she shall use his/her best endeavours to prevent the publication or disclosure of any Confidential Information by any other person.

The restrictions set out above shall cease to apply to information or knowledge that comes into the public domain otherwise than by reason of the default of the Contractor.

14: Delivery up of documents

Upon the expiration or termination of his/her appointment under this contract for whatsoever cause or otherwise on request, the Contractor shall forthwith deliver up to the Client or its authorised representative all keys and any swipe card, credit cards, computer hardware or software, books, documents, account records and any other documents or papers which

may be in his/her possession, custody or control and which are the property of the Client or which otherwise relate in any way to the business or affairs of the Client and no copies of the same or any part thereof shall be retained by him/her. He/she shall then (if required by the Client) make a declaration that the whole of the provisions of this clause have been complied with.

15: Termination

Either party shall have the right at any time to terminate this contract by giving not less than [number] [weeks'/months'] notice in writing to the other party.

In addition, the Client shall have the right to terminate this contract at any time by summary notice without any payment in lieu in the event of the Contractor:

- being in material or persistent breach of any of the terms of this contract;
- having a bankruptcy order made against him/her or making any arrangement with his/her creditors or having an interim order made against him/her;
- being convicted of any criminal offence other than a minor driving offence under the Road Traffic Acts;
- persistently and wilfully neglecting or becoming incapable for any reason of efficiently performing the Services, including a failure to remedy any fault in work produced within a reasonable period of time of being notified of that fault; or
- doing any action manifestly prejudicial to the interests of the Client or which may, in the opinion of the Client, bring it into disrepute;

and the Contractor shall have no claim against the Client in respect of the termination of his/her appointment for any of the reasons specified above.

16: Tax liabilities

The Client and the Contractor declare and confirm that it is the intention of the parties that the Contractor shall have the status of a self-employed person and shall be responsible for all income tax liabilities and national insurance or similar contributions in respect of his/her fees and accordingly the Contractor hereby agrees to indemnify the Client in respect of any claims that may be made by the relevant authorities against the Client in respect of income tax and national insurance or similar contributions relating to the Contractor's services under this contract.

17: Data Processing

The Consultant shall process any Data it receives from BMT solely for the purpose of delivering the project set out in Schedule 1 and for no other purpose except with the express written consent of BMT. The Consultant shall (and shall ensure that any of its staff involved in the provision of the Services) comply with any requirements under data protection legislation, including but not limited to the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018.

The contractor upon conclusion of the Contract will that all personal data provided in the delivery of the contract (e.g. contact lists) must be deleted. Contractors will need to confirm in writing that they have done this upon completion of the contract.

18: Warranties The Contractor warrants to the Client that:

- by entering into this contract he/she will not be in breach of any obligations to or agreements with any third party;
- he/she will take out and maintain throughout the term of this contract adequate insurance in respect of public liability insurance coverage to protect himself/herself against any liabilities arising out of this contract and shall produce, on request, a copy of the insurance policy certificate for inspection by the Client; and
- he/she will take out and maintain throughout the term of this contract adequate employer's liability insurance coverage (minimum £5 million cover) to protect himself/herself against any liabilities arising out of this contract in respect of all and any workers he/she utilises to carry out the Services and shall produce, on request, a copy of the insurance policy certificate for inspection by the Client.

19: No employment

Nothing in this contract shall render or be deemed to render the Contractor an employee or agent of the Client and the Contractor hereby agrees that he/she is a self-employed independent contractor and not an employee or agent of the Client. This contract does not create any mutuality of obligation between the Contractor and the Client.

The Contractor does not qualify for any company benefits from the Client.

20: Force majeure

If either party to this contract is prevented or delayed in the performance of any of their respective obligations under this contract by "force majeure", then such party shall be excused from performance for so long as such cause or delay shall continue.

For the purposes of this contract, "force majeure" shall be deemed to be any cause affecting the performance of this contract arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of either party and shall include, but not be limited to:

- strikes, lockouts or other industrial action;
- civil commotion, riot, act of terrorism, war threat or preparation for war;
- fire, explosion, storm, flood, earthquake, subsidence, epidemic, bad weather or other natural physical disaster;
- impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; and
- political interference with the normal operations.

21: Entire agreement

This contract contains the entire agreement and understanding of the parties relating to the subject matter of this contract and extinguishes all previous agreements between the parties relating to the subject matter hereof.

22: Survival of causes of action The termination of this contract howsoever occurring shall not affect the rights and liabilities of the parties already accrued at such time nor affect the continuance in force of such of its provisions as are expressed as or capable of having effect after such termination.

23: Waiver

The failure of any party to insist upon strict performance of any provision of this contract or the failure of any party to exercise any right or remedy to which he/she is entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations under this contract.

No waiver of any of the provisions of this contract shall be effective unless it is expressly stated to be such and signed by all the parties to this contract.

24: DBS –Disclosure and Barring Service

Where a contractor is required to undertake a Disclosure and Barring Service Check (DBS) - which will be defined by their commissioned role, the Contractor is required to self-fund their required DBS check. Contract workers will be encouraged also to obtain an Update Service registration with the DBS Bureau which will allow BMT to ensure Safeguarding measures are maintained where a Contractor may work across multiple sites, or hold multiple forms of employment

25: Safeguarding

Our safeguarding procedures and policy sets out the expectations of BMT for all staff, contractors or volunteers who work for or represent the organisation in their contact with children, young people and vulnerable adults.

A copy of BMT's Safeguarding Policy & Procedures will be made available to all Contract Workers.

26: Severability

If any provision of this contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this contract shall continue in full force and effect as if this agreement had been signed with the invalid, illegal or unenforceable provision eliminated.

27: Notices

Any notice to be given pursuant to the terms of this contract shall be in writing and shall be delivered by hand or sent by post to the address of the addressee as set out in this contract or such other address (being in Great Britain) as the addressee may from time to time have notified for the purpose of this clause, or sent by facsimile transmission to the addressee's fax number as from time to time notified.

28: Law and jurisdiction

This contract is governed by the laws of [England and Wales/Scotland/Northern Ireland] and the parties submit to the jurisdiction of the courts of [England and Wales/Scotland/Northern Ireland].

Signed:

Print Name [BMT Representative]

Signed:

Print Name [Name of contractor]

