

DATED

2022

THE TRUSTEES OF THE NATIONAL HERITAGE  
MEMORIAL FUND

- and -

NORTH SOMERSET DISTRICT COUNCIL

-and-

THE BOARD OF TRUSTEES OF THE  
ROYAL NATIONAL LIFEBOAT INSTITUTION

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CONTRACT

relating to  
Cultural Assets Fund Grant  
MF-21-00081 Back from the Brink  
Birbeck Pier, Weston Super Mere

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following its acquisition and/or conservation and/or preservation.

"Acquisition" means, unless otherwise agreed with NHMF in writing in advance, the acquisition of (in the case of real property) an unencumbered freehold or long leasehold interest and/or (in the case of chattels) an absolute and indefeasible interest.

"DCMS" the Department for Digital, Culture, Media and Sport of 100 Parliament Street, London SW1A 2BQ

"the Estimated Amount" means the sum of **Nine Million One Hundred and Sixty Three Thousand Six Hundred and Forty Three Pounds (£9,163,643)** being the amount the Grantee is expected to spend on completing the Approved Purposes.

"the Grant" means the sum of **Three Million Five Hundred and Fifty Thousand Pounds (£3,550,000)** as reduced (if at all) in accordance with Clause 8.

"the Grant Expiry Date" means **31<sup>st</sup> December 2023**.

"the Grant Funded Percentage" means **38.74%** being the percentage of the Estimated Amount intended to be met from the Grant calculated using the formula:

$$\frac{\text{Grant}}{\text{Estimated Amount}} \times 100$$

"the Property" means the property referred to in the Application and briefly described as **Birnbeck Pier, Weston-Super-Mare, Somerset** and which (for the avoidance of doubt) includes all property acquired, conserved, restored or otherwise funded by the Grant.

"Working Day" means any day that is not a Saturday, Sunday, or a public or bank holiday in the United Kingdom.

2. Unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing one gender include all other genders;
- (c) clause headings are for reference only and shall not be taken into consideration in their interpretation;

- (d) references to persons shall be deemed to include references to natural persons, firms, partnerships, companies, corporations, associations, foundations and trusts (in each case whether or not having separate legal personality);
- (e) references to 'Clauses' and 'Schedules' are references to clauses of and schedules to this Contract and references to the 'parties' or a 'party' are references to the parties or a party to this Contract; and
- (f) references to statutes shall include the statute as amended, varied, supplemented, consolidated or re-enacted from time to time and any delegated legislation made under it.

### **Achieving the Approved Purposes**

3. NHMF will pay the Grant to the Grantee in accordance with the schedule specified in the Application or as otherwise agreed by NHMF in writing prior to the date of this Contract.
4. The Grantee will apply the Grant solely for the Approved Purposes and thereafter will use the Property or allow it to be used only for the Approved Usage.
5. In carrying out the Approved Purposes the Grantee will:-
  - 5.1 meet the requirements set out in the CAF Application Guidance, Receiving a Grant guidance and the requirements NHMF provides to the Grantee about acknowledging the Grant and any other guidance published on NHMF's website which is relevant to the Approved Purposes; and
  - 5.2 follow all relevant legislation and regulations that apply. The Grantee must have appropriate policies and procedures in place and act in accordance with them at all times to ensure compliance with any relevant law government requirement and best practice including but not limited to subsidy control, data protection, freedom of information, equal opportunities, employment law, harrassment and bullying and safeguarding vulnerable people.
6. The Grantee must not commence the Approved Purposes without the prior approval of NHMF.
7. The Grantee will use the Grant for the Approved Purposes by the Grant Expiry Date. Any amounts which have not been drawn down will cease to be available on the Grant Expiry Date.
8. The Grantee will complete the Approved Purposes for no more than the Estimated Amount. In the event that the Grantee completes the Approved Purposes for less than the Estimated Amount, the sum specified as the Grant in Clause 1 shall be reduced as follows:  
  
[Amount spent on completing the Approved Purposes] x Grant Funded Percentage
9. The Grantee will ensure that members of the public have appropriate access to view the Property and that no member of the public is unreasonably denied access to the Property. Details of the arrangements for public access will be made available on demand to NHMF.

10. Notwithstanding the provisions of Clauses 9, 21 and 23:
- (a) where the Property consists of or includes an object or a collection of objects, the Grantee may lend that part of the Property to other public museums or galleries for periods not exceeding three months or such longer periods as NHMF may approve in writing in advance;
  - (b) where the Property consists of or includes real property, the Grantee may lease or let that part of the Property for purposes which are consistent with the Approved Usage and for such periods as NHMF may approve in writing in advance, provided that any leases or lets must always be at a full market rent and the rental income must always be used for the purpose of carrying out the Approved Purposes, funding the use of the Property for the Approved Usage or generally for the benefit of the Property.

### **Subsidy Control**

11. The Grantee acknowledges that the Grant comes from public funds. The Grantee must continue throughout the Approved Purposes to ensure the Grant is compatible with state aid and subsidy control law meaning:
- (a) the law embodied in Articles 107-109 of section 2, Title VII of the Common Rules on Competition, Taxation and Approximation of Laws of the Treaty on the Functioning of the European Union; or
  - (b) any domestic law which replaces such state aid law following the UK's exit from the European Union such as the principles set out in Chapter 3 (Subsidies) of Title XI (Level Playing Field) of the Trade and Cooperation Agreement, the World Trade Organisation Agreement on Subsidies & Countervailing Measures, the Northern Ireland Protocol and any other World Trade Organisation or Free Trade Agreement that applies to the Approved Purposes.
12. The Grantee must maintain appropriate records of compliance with the state aid and subsidy laws and must take all reasonable steps to assist NHMF to comply with any requirements and respond to any subsidy control challenge or investigation(s) instigated by the European Commission (or its domestic successor) into the Grant or any equivalent regulatory body as the case may be.
13. In the event that the Grant is deemed to be unapprovable state aid or subsidy, this constitutes a breach of this Contract and the Grantee will be required to repay the entire Grant without delay together with compound interest from the date on which the unlawful aid was at the Grantee's disposal until the date of its recovery.

### **Project monitoring**

14. The Grantee will allow NHMF (or any persons duly authorised by it) to have such access to the Property as it may require in order to satisfy itself that the Grantee has complied or is complying properly with the terms and conditions hereof. Where NHMF (or any persons duly authorised by it) makes any recommendations regarding such matters the Grantee shall take such reasonable steps as may be necessary to comply with the recommendations.
15. The Grantee will maintain full and accurate records in respect of the Grant, the Property, the Approved Purposes (and their fulfilment) and the Approved Usage and

shall ensure that such records and financial or other information as NHMF may from time to time require are readily available for inspection by NHMF and other authorised persons (including but not limited to the Department for Culture, Media and Sport, the Comptroller and the Auditor General or their successors).

16. NHMF may require the Grantee to provide proof that it has taken action to reduce the risk of fraud. At NHMF's request, the Grantee shall permit NHMF to examine its accounting processes and procedures to assess the effectiveness of the Grantee's anti-fraud measures.
17. Without prejudice to the generality of Clause 15 above the Grantee will undertake ongoing evaluation reporting, and produce a final evaluation report at the end of the Approved Purposes.
18. The Grantee will co-operate with NHMF and DCMS in its evaluation of the Grant and its impact on the CAF programme.
19. The Grantee shall comply with such additional requirements as may be specified by NHMF in writing prior to the date of this Contract in order to enable NHMF to monitor the Grantee's compliance with the terms and conditions of this Contract.

#### **Property**

20. The Grantee will carry out the Approved Purposes and maintain the Property in good repair and condition in line with current best practice in heritage conservation and to a standard that is appropriate for property of importance to the national heritage. If the Property is to be displayed as part of the Approved Usage, the Property will at all times be displayed in conditions recommended by the International Institute for Conservation of Historic and Artistic Works or such other body as NHMF may designate from time to time.
21. The Grantee will retain the Property in its ownership and possession and will not sell pledge charge or otherwise encumber the Property or any part of it or any interest therein (or take any steps to do so) without the prior approval of NHMF whose approval if given may be given subject to such terms and conditions as it in its sole discretion thinks fit. Such terms and conditions may include (but are not limited to):
  - (a) the payment to NHMF of a proportion of the net proceeds of any disposal relating to the Property;
  - (b) the disposal relating to the Property being at full market value.
22. NHMF reserves the right to take security over the Property or the Grantee's undertaking at its option. If NHMF exercises its rights under this Clause 22, the Grant (or any part of it which has not been disbursed) will not be disbursed until the documents needed to create the security have been completed to NHMF's satisfaction.
23. The Grantee will keep any objects or fixtures that form part of the Property in a physically secure and appropriate environment, and will effect and maintain full and effective insurance cover for the Property for its full reinstatement value against loss or damage. The Grantee will inform NHMF within five (5) working days of any loss or significant damage to the Property.

24. In the event of any sums being received by the Grantee as a result of such insurance cover referred to in Clause 23 above the Grantee will apply the sums in the repair or replacement of the Property. If the Grantee does not apply such sums in the repair or replacement of the Property within a reasonable period of time (as determined by NHMF) the Grantee will pay to NHMF the Grant Funded Percentage of the sums received.

### **Capital works**

25. If the Approved Purposes include capital works ("Works") the Grantee agrees to provide to NHMF prior to the commencement of such Works in such form as NHMF requires:
- (a) confirmation that it is the freehold or long leasehold owner of the Property or has an absolute and indefeasible interest in the Property to which the Works relate and that the Property may be employed for the Approved Usage following completion of the Works;
  - (b) evidence that the Grantee has received any necessary landlord's consent, planning permission, listed building consent and building regulations consent or other necessary consents required for the Works; and
  - (c) where third party contractors ("Contractors") will undertake all or part of the Works, evidence that an appropriate competitive tender process has been undertaken in respect of the Works or that costs have otherwise been market tested to confirm value for money.
26. The Grantee will use (and will procure that any Contractors use) building or other professionals who are fully qualified members of an approved professional body, have all necessary professional indemnity insurance cover and are otherwise qualified to carry out the Works to a standard that is appropriate for property of importance to the national heritage.
27. The Grantee understands and accepts:
- (a) that NHMF will make payments against interim certificates issued pursuant to the relevant building contract or other appropriate invoices;
  - (b) that NHMF will keep at least 10% of the part of the Grant to be used for the Works until NHMF receives the certificate of practical completion in respect of the Works or the relevant part of the Works; and
  - (c) that if the Grantee wants to make significant changes to the scope of the Works, the Grantee must get NHMF's permission in writing before going ahead and must supply NHMF with copies of the items referred to in Clause 25 (b) duly updated.

### **Publicity and acknowledgement**

28. Prior to the public announcement of the Grant by NHMF, the Grantee shall not issue any public statement, press release or other publicity in relation to the Grant or which refers to NHMF other than in a form approved in advance by NHMF.

29. Following the announcement of the Grant by NHMF, the Grantee shall publicly acknowledge the assistance provided by NHMF in such form as is approved by NHMF.
30. NHMF may make public the purpose and amount of the Grant in whatever way it shall think fit.
31. Within six (6) months of receiving the Grant, the Grantee must also provide NHMF with digital images in electronic format or hard-copy photographs or transparencies of the Property. The Grantee must give NHMF the right to use those it provides NHMF with at any time, including putting them into a digital format and altering them. The Grantee must get all the permissions required for it and NHMF to make use of them before it uses them or sends them to NHMF.

#### **Grant payment and repayment**

32. Prior to acquiring the Property the Grantee shall secure to the satisfaction of NHMF all the additional funding required to complete the Approved Purposes.
33. Payment of the Grant is subject to the necessary funds being available when payment falls due. The Grantee agrees and accepts that payments of the Grant can only be made to the extent that NHMF continues to operate under the National Heritage Act 1980 (as amended from time to time) and has available funds. NHMF will not be liable for any losses or costs (including but not limited to bank charges) if for any reason it does not make a payment or payments of any portion of the Grant on the date(s) agreed with the Grantee.
34. No Grant shall be paid unless and until NHMF is satisfied that such payment will be used for proper expenditure in accordance with this Contract and that the Grant is being spent in proportion to any other funds the Grantee has received or is due to receive from other sources.
35. The Grantee acknowledges that the Grant is the total amount of funds NHMF will provide and will not be increased as the result of any overspend by the Grantee or for any other reason.
36. Any part of the Grant that has been paid over to the Grantee shall be held, pending its application, for the Approved Purposes and subject thereto in trust for NHMF absolutely.
37. Should any part of the Grant that has been paid over to the Grantee remain unspent upon completion of the Approved Purposes, the Grantee shall ensure that the unspent monies are returned to NHMF or, if agreed in writing in advance with NHMF, applied in funding the use of the Property for the Approved Usage or generally for the benefit of the Property.
38. Such part of the Grant as has been paid to the Grantee shall forthwith become repayable by the Grantee to NHMF if:
  - (a) subject to Clause 39, the Grantee breaches any of the terms and conditions set out in this Contract; or
  - (b) the Grantee fails to comply with UK subsidy control requirements; or



- (c) the Grantee receives funding for the Approved Purposes or a specific element of the Approved Purposes from a Government department or arms-length body that duplicates the Grant; or
  - (d) the Grantee receives an insurance payment for any costs that were included in the Grant; or
  - (e) the Grantee brings NHMF, DCMS, Historic England, The National Archives or the Culture Recovery Fund for Heritage, into disrepute through its actions or omissions; or
  - (f) the Grantee's action or inaction puts public funds at risk; or
  - (g) the Grantee ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved; or
  - (h) the Grantee becomes insolvent, or is declared bankrupt, or is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
  - (i) the Grantee has acted fraudulently or negligently in any material matter in connection with the Application, the Grant, the Property or the Approved Purposes; or
  - (j) any competent authority directs the repayment of the Grant; or
  - (k) there is a significant change in the Grantee's status, including but not limited to the loss of charitable status.
39. In the event of breach of any of the terms and conditions set out in this Contract, it shall be for NHMF, acting reasonably:
- (a) to determine whether the breach is capable of remedy;
  - (b) if the breach is considered by NHMF to be capable of remedy, to notify the Grantee of the period within which the breach must be remedied to avoid the Grant becoming repayable in accordance with Clause 38.
40. If the Grantee receives monies ("Monies") in connection with any breach of the terms and conditions set out in this Contract and the Grant Funded Percentage of the Monies exceeds the amount which would be repayable to NHMF in accordance with Clause 38, NHMF shall be entitled to require repayment of the Grant Funded Percentage of the Monies.
41. The Grantee shall notify NHMF of any breach of any of the terms and conditions set out in this Contract as soon as reasonably possible after the breach occurs. Failure to notify in accordance with this Clause 41 shall constitute a continuing breach of the terms and conditions of this Contract, such that NHMF's cause of action for breach shall accrue at the point of notification. Accordingly, the limitation period for NHMF bringing a claim in respect of such a cause of action shall not commence until the date on which NHMF is notified of the breach.

### **Freedom of information**

42. The Grantee acknowledges that NHMF is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 and shall assist and co-operate with NHMF (at the Grantee's expense) to enable NHMF to comply with these information disclosure requirements.

#### **Data protection**

43. The Grantee shall (and shall procure that any of its staff involved in connection with the activities under this Contract shall) comply with any notification requirements under the Data Protection legislation and both parties will duly observe all obligations under the General Data Protection Regulations and Data Protection Act 2018 which arise in connection with this Contract.

#### **General**

44. The Grantee shall follow a whistleblowing process to report if the dignity, safety, security and well-being of end-users is not met.
45. The Grantee shall behave ethically by following the 7 principles of public life and make sustainable choices to reduce the Approved Purposes' impact on the environment.
46. The Grantee shall follow the government Code of Conduct that sets out standards of behaviour for people or organisations that receive government grants.
47. The Grantee shall comply with all relevant Government Covid-19 regulations.
48. The Grantee shall take all such steps and execute such documents as may be necessary to fulfil its obligations under this Contract and to vest in NHMF any rights granted to it under this Contract.
49. Where the Grantee is comprised of more than one person, any liability of the Grantee arising under this Contract is the joint and several liability of each such person.
50. The Grantee may not, without the prior written consent of NHMF, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Contract or, except as contemplated as part of the Approved Purposes or the Approved Usage, transfer or pay to any other person any part of the Grant.
51. The Grantee must tell NHMF in writing as soon as possible of any investigation concerning its organisation, trustees, directors, employees or volunteers carried out by the Police, Charity Commission, H M Revenue & Customs or any other regulatory body.
52. The Grantee must tell NHMF in writing as soon as possible if any legal claims are made or threatened that would adversely affect the Approved Purposes and Approved Usage (including any claims made against members of the Grantee's governing body or employees).
53. NHMF's staff, Trustees and advisers cannot give the Grantee professional advice and cannot be held responsible for any action the Grantee takes, any action the Grantee fails to take, or for the Grantee's debts or liabilities. The Grantee will be fully

responsible for every part of the Approved Purposes and Approved Usage, its organisation and the decisions about it.

54. NHMF reserves the right to introduce at any time new requirements, guidance and/or special conditions and to amend these terms and conditions.
55. No variation of this Contract shall be effective unless it is in writing and signed by the parties.
56. No failure or delay by either party to exercise any right or remedy under this Contract shall be construed as a waiver of any other right or remedy.
57. All notices and other communications in relation to this Contract (including any approvals or consents required from NHMF) shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and if mailed all such communications shall be deemed to have been given and received on the second Working Day following such mailing.
58. This Contract shall not create any partnership or joint venture between NHMF and the Grantee, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.
59. Under the terms of the Contracts (Rights of Third Parties) Act 1999 the parties intend that no term of this Contract may be enforced by a third party.
60. The terms of this Contract shall survive in perpetuity unless otherwise agreed in writing between the parties.
61. This Contract shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

**AS WITNESS** the hands of the parties hereto on the date first before written

Appendix One

**Special Conditions**

**1. Cost Plan**

Prior to commencing the Works the Grantee shall prepare a detailed cost plan for carrying out the Approved Purposes in a format which has been agreed in advance by NHMF and shall submit the same to NHMF for Approval which Approval shall not be unreasonably withheld or delayed. Thereafter the Grantee shall spend the Grant and other funds provided for the Approved Purposes only in accordance with the Approved cost plan ("the Cost Plan"). The Grantee must obtain prior written approval for any changes in expenditure which are not in accordance with the details of the Cost Plan and in particular for movement of funds between the various elements of the Cost Plan.

2. The documents required to be submitted or provided to NHMF under Clause 25 (Capital Works) of this Contract and Special Condition 1 above are required to be submitted or provided by the Grantee only for NHMF's own purposes in connection with the Grant and NHMF's approval or acceptance of such documents cannot be taken as approval or acceptance for any other purpose.

3. NHMF shall not make any payments of instalments of the Grant until the documents required to be prepared in accordance with Clause 25 (Capital Works) and Special Condition 1 have been prepared and Approved by NHMF.

4. Without prejudice to the generality of Clause 14 (Project Monitoring) the Grantee shall take account of any representations which NHMF may make with regard to the carrying out of the Approved Purposes including the development design, the Cost Plan and the matters referred to in Clauses 25, 26 and 27.

**5. Restriction on Title**

(a) Within 28 days of the date of Permission to Start, North Somerset [District] Council must apply to the Land Registry for a restriction to be entered using the following wording:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the Trustees of the National Heritage Memorial Fund of Mezzanine Floor (North) International House, 1 St Katharine's Way, London E1W 1UN or their conveyancer".

(b) North Somerset [District] Council must arrange for updated Office Copies to be submitted to NHMF as soon as the restriction has been registered at HM Land Registry with.

.....  
For and on behalf of the Trustees of the

National Heritage Memorial Fund

.....  
For and on behalf of North Somerset District Council  
(please sign)

.....  
(please print)

.....  
For and on behalf of The Board of Trustees of  
the Royal National Lifeboat Institution

(please sign)

.....  
(please print)