Imagineear General Terms and Conditions

1. DEFINITIONS

1.1 For the purposes of these General Terms and Conditions, the capitalised words and expressions will have the following meanings assigned to them below. Except as the context otherwise requires, words defined in the singular will have the corresponding meaning in the plural and vice versa and the masculine gender will include the feminine and vice versa. Where specific details relating to project terms, locations, term, appointed project managers, fees, or other particulars are required for the proper implementation of the Agreement, such information shall be as set forth in the Imagineear Services Agreement provided to the Client. Each annex and schedule forms an integral part of the Agreement and governs the particular services or Equipment provided to the Client.

Affiliate	Any Party, any entity controlling, controlled by, or under common control with such a Party.
Agreement	The Imagineear Services Agreement , which supersedes and replaces any previous agreements between the Parties, including these General Terms and Conditions and all applicable Annexes and Schedules.
Applicable Requirements	Any existing or future law, or any licence, consent, permit, authorisation, requirement, direction or agreement of any local authority, statutory undertaker, or other competent body, governing agency or authority, which is applicable to the performance of the Agreement or which may be affected by the performance of the Agreement.
Business Day	Any day excluding weekends and public holidays in the relevant territories.
Client Materials	Any materials provided to Imagineear by Client in connection with the performance of Imagineear's duties hereunder, including but not limited to images, maps, plans, and documentary audio, video or other materials, but excluding any Imagineear Materials.
Client Site	The location at which Client provides the Multimedia Experience to Visitors, in this case the museum, stadium or site at the address specified in the Agreement.
Commencement Date	The date on which the Multimedia Experience was first offered to Visitors at the Client Site, as defined in the Agreement.
Confidential Information	All information, whether technical or commercial (including all specifications, drawings and designs disclosed pursuant to discussions between the Parties whether orally, digitally or in hard copy), where the information is identified as confidential at the time of disclosure or ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.
Damaged Equipment	Equipment that is damaged or in need of repair during the Term requiring, for example, a replacement shell or screen.
Defective Equipment	Any Equipment that is found to be faulty on delivery.
Delivery Dates	One or more of the Equipment Delivery Date, the IWA Delivery Date and the Native App Delivery Date.
Device	The portable electronic devices described in Schedule 1 to the Agreement and provided by Imagineear to Client for the purpose of delivering the Multimedia Experience, and/or other services, to Visitors.

Equipment	Any equipment provided by Imagineear to Client on the basis of the Agreement, including but not limited to the Devices, headsets, SmartChargers™, ConnectBoxes™ and any anchors, cables or wires used to operate the Devices and recharging units as supplied by Imagineear to Client and as specified in the Agreement.
Equipment Delivery Date	The date by which any Equipment will be installed at the Client Site, currently agreed to be twelve weeks from receipt and acceptance of Client Materials by Imagineear, subject to all reasonable endeavours being made by Imagineear.
Imagineear Delivery Site	The Blomfield Rooms, Fulham Palace, Bishop's Avenue, London SW6 6EA, or as specified in the Agreement.
Imagineear Materials	Any content assets created or provided by Imagineear in the course of performing services hereunder, including but not limited to scripts, story-boards and any interviews and narration whether included or not in the Multimedia Experience, but excluding Client Materials.
Imagineear Personnel	Any personnel employed or engaged by Imagineear who, at any time, is involved in the provision of the Operational Services.
Imagineear Software	All software owned and licensed by Imagineear as of the Effective Date.
Imagineear Web App (IWA)	A progressive web application hosted on TourBuilderPlus™ and accessible to Visitors online via personal mobile devices.
IP Rights	All patents, copyrights, trademarks, service marks, trade names, rights in designs and inventions, database rights, know-how, rights in software, business and company names, internet domain names and email addresses and trade secrets, whether or not any of these is registered and including applications for registration of any of the foregoing, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing anywhere in the world.
IWA Delivery Date	The date by which any IWA will be completed and accessible to view, for example by Visitors, currently agreed to be twelve weeks from receipt and acceptance of Client Materials by Imagineear, subject to all reasonable endeavours being made by Imagineear.
Labour Costs	All costs associated with the labour used in the provision of the services as described in Annex 5 including, without limitation, salaries, benefits, accrued holiday and relevant taxes, and any costs, expenses damages, awards of compensations relating to the termination of employment or engagement of any of Imagineear's Personnel or in respect of any claims made by them to a court or tribunal.
Lease Term	This period between the Equipment Delivery Date and the acceptance of the Equipment returned to the Imagineear Delivery Site in accordance with Annex 2.
Multimedia Experience	Content that guides Visitors through the Client Site, designed in accordance with Client branding guidelines, and programmed in TourBuilder™ on the TourBuilderPlus™ platform.
Native App Delivery Date	The date by which any Android or iOS native app will be completed and accessible to download, for example by Visitors.
Normal Working Hours	Means Monday to Friday inclusive, from 9am to 6pm, on all days except bank holidays in the relevant territories.
Operational Services	The supply of digital guides to Visitors during the Term as described in Annex 5.
Production Schedule	The production schedule in respect of the services provided which is approved by Client and is included in Annex 1, detailing the responsibilities of the Parties, the steps of the production process to be taken and the dates by which each step must be completed.

Term	The term of the Agreement as defined in section 12.
TourBuilder™	Proprietary Imagineear software, incorporated within TourBuilderPlus™ and used to construct Multimedia Experiences.
TourBuilderPlus™	Proprietary Imagineear programming environment built around TourBuilder™ and accessible online, which is used to assemble, view, edit and publish Multimedia Experiences to various screens including Imagineear Devices, IWAs and native apps.
Trading Hours	The hours during which the Operational Services will be provided by Imagineear Personnel as described in Annex 5.
Visitor	Any visitor to the Client Site during normal opening hours who enters with a valid entrance ticket.

2. Platform Licence

2.1 Subject to the Agreement, Imagineear hereby agrees to licence TourBuilder™ and TourBuilderPlus™ to Client for the duration of the Term.

2.2 This licence will include the publication, hosting, maintenance and distribution of the Multimedia Experience to personal mobile devices, Imagineear Devices and other screens, as agreed between the Parties.

2.3 This licence will cover up to one hundred thousand (100,000) app downloads per annum of 100MB each. For app sizes or download volumes greater than these, further charges may apply.

3. Other Services And Deliverables

3.1 Imagineear will provide additional services to Client as agreed between the Parties in the applicable annexes to the Agreement:

- **a** Annex 1: production services for the creation of the Multimedia Experience;
- **b** Annex 2: lease and maintenance of Equipment;
- **c** Annex 3: publication of an IWA version of the Multimedia Experience; and
- **d** Annex 4: publication of one or more native app versions of the Multimedia Experience.

3.2 Both parties will appoint a project manager to streamline all communication between the Parties, as agreed between the Parties in the Agreement.

3.3 The Client and the Imagineear Project Managers will speak prior to the Delivery Dates and thereafter at intervals of between three and no more than six months, to evaluate, plan ahead and optimise the provision of multimedia services on Client Site.

4. Financial Terms

4.1 Parties agree that the Client will pay to Imagineear as follows:

- **a** Any applicable monthly fixed TourBuilderPlus™ platform licence fee as detailed in the Agreement;
- **b** Any applicable content fee, as set out in Annex 1 to the Agreement;
- **c** Any applicable equipment lease and maintenance fee, as set out in Annex 2 to the Agreement;
- **d** Any applicable IWA fees, as set out in Annex 3 to the Agreement; and
- **e** Any applicable native app fees, as set out in Annex 4 to the Agreement.

4.2 The monthly fixed fee will be invoiced quarterly, or as agreed in the Agreement, in advance for the subsequent three month period.

4.3 All figures referred to in the Agreement will exclude any VAT or any other tax or duty that may be payable thereon. Imagineear invoices are payable within fourteen days.

5. IP Rights

5.1 All right, title, and interest in and to the Client Materials, together with all IP Rights associated therewith, are and will be owned exclusively by Client and its licensors.

5.2 Client hereby grants Imagineear a fully-paid, non-exclusive, worldwide licence to use Client Materials for the creation of the Multimedia Experience for the duration of the Term at the Client Site.

5.3 All right, title, and interest in and to the Imagineear Materials, together with all IP Rights associated therewith, are and will be owned exclusively by Imagineear and its licensors.

5.4 Imagineear hereby grants Client a fully-paid, non-exclusive, worldwide licence to use Imagineear

Materials for the creation of the Multimedia Experience for the duration of the Term.

5.5 All right, title, and interest in and to Imagineear Equipment and Software employed in the provision of the Multimedia Experience to Visitors, together with all IP Rights associated therewith, are and will be owned exclusively by Imagineear and its licensors.

5.6 Client understands that it holds no rights in, and none have been conferred to it with regard to, the Equipment or any IP Rights in the Equipment by way of the execution or performance of the Agreement.

5.7 Client will not remove, deface or alter any Imagineear marks, logos, model numbers, serial numbers, labels, copyright notices, or any indications of IP Rights on, and will not affix any other trademarks, trade names, model designations, labels or other external graphic or textual component to, any Equipment, Imagineear Materials, IWA or native apps without Imagineear's prior written consent.

6. Confidentiality

6.1 Client hereby agrees that the Confidential Information, including but not limited to all details concerning the terms and conditions of the Agreement will remain confidential, will be used solely as necessary to fulfil or enforce its obligations under the Agreement, and will not be used or disclosed directly or indirectly to any third party other than as necessary to fulfil or enforce its obligations, except as otherwise required by valid court order.

6.2 Confidential information will not include any information which:

- **a** Was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party;
- **b** Becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party;
- **c** Is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure;
- **d** Is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality;
- **e** Is independently developed by the receiving party without the use of any confidential information of the disclosing party; or
- **f** Is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure so that the disclosing party may seek an appropriate remedy to prevent the disclosure or waive compliance with the provisions of the Agreement preventing the disclosure, and assistance in obtaining an order protecting the information from public disclosure.

7. Data Protection

7.1 Imagineear is committed to protecting our clients' privacy and takes every precaution with personal information, only ever using it in accordance with the Data Protection Act 2018 and the UK General Data Protection Regulation.

7.2 By signing the Agreement, both Parties explicitly agree that the other Party may retain personal data such as name, address, phone number and email address for named individuals on the Agreement. All such data will be kept securely and used primarily to enable each Party to contact the other Party in the carrying out of obligations envisaged in the Agreement.

7.3 Further details regarding the legal basis of processing and use of personal data are outlined in Imagineear's privacy policy, which forms part of this Agreement. The policy is available upon request or can be found on Imagineear's website.

7.4 In accordance with UK legislation, Imagineear is registered with the UK Information Commissioner under the reference ZA130648.

8. Non-Solicitation

8.1 During the Term and for a period of one (1) year thereafter, Client will not, without Imagineear's prior written consent, solicit, induce, entice or procure or cause to be solicited, induced, enticed or procured, any employee, consultant or subcontractor of Imagineear, directly or indirectly, for the purpose of hiring or engaging such employee, consultant or subcontract, and/or causing such employee, consultant or subcontractor to terminate his or her relationship with Imagineear.

9. Representations And Warranties

9.1 Each Party warrants that they have the full power to enter into and perform the Agreement and to make the grant of rights contained herein.

9.2 Imagineear warrants that any Equipment and Content provided in accordance with the Agreement does not infringe upon or violate any rights of any third party, including without limitation any rights of privacy, publicity, trademarks, service marks, or copyrights.

9.3 Imagineear warrants that its Equipment will conform to the specification found in Schedule 1 to the Agreement, to be of satisfactory quality and fit for any purpose for which they have been held out.

9.4 As of the date of their inclusion in any Multimedia Experience, Client warrants that all Client Materials are free of and unencumbered by any third party copyrights.

9.5 Except to the extent Client Materials are supplied by Client, Imagineear warrants that all work created or performed hereunder, whether created alone or in collaboration with others, will be wholly original with Imagineear and will not infringe upon or violate any rights of any third party.

9.6 Imagineear agrees that it will effect and maintain for the duration of the Term appropriate insurance policies in respect of the provision of the services with reputable insurers, including the following insurances:

- **a** Employer's liability insurance or similar insurance(s) in accordance with any laws which may be applicable of at least ten million pounds (£10,000,000) for any one occurrence or the amount required by applicable law, whichever is higher; and
- **b** Public and products liability insurance, and property insurance in the amount of at least ten million pounds (£10,000,000) for any one occurrence.

10. Indemnity And Liability

10.1 Client agrees to insure at its own expense against theft and the loss of and irreparable damage caused to any Equipment at Client Site during the Lease Term.

10.2 Each Party will indemnify and hold harmless the other Party, its Affiliates, and their respective trustees, officers, employees, and agents from and against any damages, liabilities, costs and expenses, including but not limited to reasonable legal fees, arising out of or relating to any claim by a third party that, if true as alleged, would constitute a material breach of the indemnifying Party's representations, warranties, or obligations under the Agreement, provided that the indemnified Party will give the indemnifying Party prompt written notice of any such claim and will provide the indemnifying Party with all reasonable information and assistance.

10.3 Under no circumstances whatsoever will either Party be liable to the other Party for any special, indirect, incidental, consequential or punitive damages of any kind or nature whatsoever, arising out of or in any way relating to the Agreement, the Equipment, or the services to be provided by Imagineear, including but not limited to lost goodwill or lost profits, and whether arising out of breach of warranty, breach of contract, tort (including negligence), strict liability, or otherwise, even if advised of the possibility of such damages or if such damages could have been reasonably foreseen.

10.4 In no event will either Party's aggregate liability with respect to the Agreement exceed the total fees and reimbursements paid or payable under the Agreement.

10.5 Notwithstanding any other provision of the Agreement, neither Party excludes or limits its liability to the other for:

- **a** Fraud;
- **b** Death or personal injury caused by its negligence;
- **c** Claims related to a material breach of confidentiality or for infringement or misappropriation of its IP Rights; or
- **d** Any other liability which cannot lawfully be limited or excluded.

11. Marketing

11.1 Imagineear may state publicly that it has worked with Client but any press release or details shall be agreed by the Parties, such agreement not to be unreasonably withheld, conditioned or delayed by Client and subject always to the provisions of Sections 6 (Confidentiality), 7 (Data Protection) and 8 (Non-solicitation).

11.2 The Parties agree that Imagineear staff and a reasonable number of Imagineear guests if accompanied by a current Imagineear staff member may receive the Multimedia Experience free of charge, such visits to be agreed with Client in advance.

11.3 If a suitable Wi-Fi router is installed at the Client Site, Imagineear will provide relevant data and statistics generated by use of the Devices and/or IWA free of charge.

12. Term And Termination

12.1 The Term of the Agreement commences on the Effective Date and unless terminated for cause according to this Section 12 will end on the date specified in the Agreement (the "Initial Term").

12.2 Upon expiry of the Initial Term, the Agreement will renew for an additional twenty-four (24) month period (the "Renewal Term"), and will continue to do so unless terminated by either Party at least six (6) months before the expiry of the Initial or Renewal Term in force at that time, or as otherwise agreed in the Agreement.

12.3 If Client wishes to cancel the Agreement for any reason, other than set out in paragraph 12.2 or 12.4, Client will be liable to pay Imagineear all outstanding fees due for the remainder of the Initial or Renewal Term in force at that time.

12.4 In the event that a Party is in default, the other Party may, upon written notice terminate the Agreement. Such default occurs if:

a A Party is in breach of any of its obligations under the Agreement which is not cured within twenty (20) Business Days after receipt of a written notice of such breach by the other Party (or, in the case of non-payment of any of the fees or expenses within ten (10) Business Days after receipt of such written notice); or

b A Party is in material breach of any of its obligations in Sections 5 (IP Rights), 6 (Confidentiality), 7 (Data Protection) and/or Section 8 (Non-Solicitation); or

c A Party files a voluntary application in bankruptcy or administration, is the subject of an involuntary application in bankruptcy or administration that is not discharged within thirty (30) Business Days, or applies for or permits the appointment of a receiver, administrator or trustee for its assets.

12.5 Upon expiration or termination of the Agreement for any reason outlined in this Section 12:

a All of Imagineear's remaining obligations (but none of Client's outstanding payment obligations up to the point of termination) will terminate.

b Imagineear's consent to Client's possession of the Equipment will terminate. Client will re-pack the Equipment in original Imagineear packaging materials within five (5) Business Days of Termination and inform Imagineear that the Equipment is ready for collection by Imagineear. Client will not interfere with or use the Equipment and will cooperate with Imagineear in surrendering possession of all Equipment to Imagineear; and

c The following sections, together with all definitions and any provisions that by their nature or terms should survive termination, will survive: 5 (IP Rights), 6 (Confidentiality), 8 (Non-solicitation), 10 (Indemnity and Liability), and 13 (Miscellaneous).

12.6 Termination of the Agreement will be without prejudice to the rights and obligations of the Parties accrued up to the date of termination.

13. MISCELLANEOUS

13.1 **Beneficiaries**. The agreement set out in the Agreement is made for the benefit of the Parties and is not intended to benefit, or be enforceable by, any other person, save for an Affiliate.

13.2 **Entire Agreement**. The Agreement constitutes the entire agreement between the Parties regarding its subject matter and supersedes and replaces any and all prior agreements, understandings or arrangements between the Parties, whether oral or in writing, with respect to the same. No representation, undertaking or promise will be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to the Agreement except as expressly stated in the Agreement.

13.3 **No Agency**. The Parties are independent contractors, and nothing contained in the Agreement will be deemed or construed by the Parties, or by any third person, to create an agency, partnership, joint venture, franchise, fiduciary, or employment relationship or any other association between the Parties.

13.4 **Assignment**. The Agreement will inure to the benefit of and be binding upon Imagineear's successors and assigns and Imagineear will have the right to pledge, hypothecate, create a security interest in, assign or otherwise transfer any or all of its rights and obligations under the Agreement, including the right to create a security interest in the revenues to be derived by Imagineear pursuant to the Agreement. Client may not, except upon written consent from Imagineear, assign or transfer their rights or obligations under the Agreement to an Affiliate or to any individual or entity acquiring all or part of Client's business or undertaking.

13.5 **Interpretation**. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it. References to including and include(s) mean respectively including without limitation and include(s) without limitation. Writing or written includes fax and email.

13.6 **Severability**. If any provision of the Agreement is held by an arbitrator or court of competent jurisdiction to be invalid or unenforceable, the remaining portions of the Agreement will remain in full force and effect, and such arbitrator or court will be empowered to modify such provision to the minimum extent necessary to render it enforceable while effectuating insofar as possible the basic purposes of such provision.

13.7 **Counterparts**. The Agreement may be executed in any number of facsimile or original counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

13.8 **Engagement**. If for any reason a signed copy of the Agreement is not received, but engagement continues as implied by the terms of the Agreement, the terms shall still apply in full to the relationship between the Parties.

13.9 **Price Adjustment.** Imagineear reserves the right to adjust all recurring payment amounts in the Agreement on an annual basis to account for inflation. Any adjustment will be made on the basis of and can be increased up to the UK Consumer Prices Index (CPI) for the relevant financial year. There will be no decrease in the payment amounts in the event of deflation.

By way of example,

Recurring Payment × CPI = Adjusted Recurring Payment

e.g. £400 × 3.8% = £415.20

13.10 **Variation, Waiver**. The Agreement contains all the agreements of the Parties. No addition to, variation of, exclusion or attempted exclusion of any term of the Agreement will be binding on either Party unless in writing and signed by a duly authorised representative of each Party. A waiver of any right under the Agreement is only effective if it is in writing, and it applies only to the Party to whom the waiver is addressed and the circumstances for which it is given. No waiver will be implied by taking or failing to take any other action. No waiver by a Party of any default will constitute a waiver of future or subsequent default. Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

13.11 **Notices**. Any notice given under the Agreement will be sent for the attention of the person, and to the address or email given in this paragraph 13.11 and will be delivered personally or sent by pre-paid first-class post, recorded delivery or registered post, or by email, such notice to take effect three (3) Business Days from the notice being received. The addresses for service of notice are:

Imagineear	The Blomfield Rooms, Fulham Palace, Bishop's Avenue, London SW6 6EA FAO: **Ziv Kushnir, COO** Email: zivkushnir@imagineear.com
Client	As agreed in the Agreement.

13.12 **Force Majeure**. Neither Party will be liable for any act, omission, failure, or delay to fulfil its obligations under the Agreement resulting from any cause beyond its reasonable control, including but not limited to, acts of God, strikes, threats or acts of terrorism, lockouts, riots, acts of war, epidemics or pandemics, fire, communication line failures, power failures, earthquakes or any event or circumstance beyond the reasonable control of a Party. In the aftermath of any power failure or loss of electricity to the Equipment, Imagineear does not guarantee the Equipment will work. In the event of Force Majeure affecting Imagineear or Client, the Party who is unable to fulfil its obligations will immediately notify the other in writing of the reasons for its failure to fulfil its obligations and the effect of the failure and use all reasonable endeavours to avoid or remove the cause and perform its obligations as soon as possible.

In the event that the services provided for in the Agreement are suspended due to force majeure circumstances, the Parties hereby agree that the Term will be extended by at least the length of the suspension of services.

13.13 **Injunctive Relief**. Each Party agrees that, notwithstanding anything herein to the contrary, a Party may seek to enforce its rights with respect to the protection of such Party's IP Rights or confidential information through equitable relief, including but not limited to an immediate injunction, in a court of competent jurisdiction, and each Party waives any argument that the other Party has an adequate remedy at law.

13.14 **Dispute Resolution.** Any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which are deemed to be incorporated by reference into this paragraph. The number of arbitrators shall be three and the seat of arbitration shall be London. The language to be used in the arbitral proceedings shall be English and the governing law of the contract shall be English law.