



Department for  
International Trade

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# **Agreement**

**For Business to Business (B2B) at The  
International Festival Forum (IFF) 2019**

**DN434052**

**September 2019**

# 1. Interpretation

1.1 In these terms and conditions:

Term	Description
“Agreement”	means the contract between (i) the Customer acting as part of the Crown and (ii) the Contractor constituted by the Contractor’s acceptance of the Award Letter;
“Award Letter”	means the letter from the Customer to the Contractor printed above these terms and conditions;
“Central Government Body”	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:  Government Department;  Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);  Non-Ministerial Department; or  Executive Agency;
“Charges”	means the charges for the Services as specified in the Award Letter;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Contractor”	means the person named as Contractor in the Award Letter;
“Customer”	means the person identified in the letterhead of the Award Letter;

<b>“FOIA”</b>	means the Freedom of Information Act 2000;
<b>“Force Majeure Event”</b>	means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor’s supply chain.
<b>“GDPR”</b>	means the General Data Protection Regulation Act 2018;
<b>“Information”</b>	has the meaning given under section 84 of the FOIA;
<b>“Party”</b>	the Contractor or the Customer (as appropriate) and “Parties” shall mean both of them;
<b>“Purchase Order Number”</b>	means the Customer’s unique number relating to the order for Goods to be supplied by the Contractor to the Customer in accordance with the terms of the Agreement;
<b>“Request for Information”</b>	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
<b>“Services”</b>	Means the services to be supplied by the Contractor to the Customer under the Agreement;
<b>“Specification”</b>	means the specification for the Services to be supplied by the Contractor to the Customer as specified in the Award Letter;
<b>“Staff”</b>	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Agreement;
<b>“Staff Vetting”</b>	means vetting procedures that accord with good industry practice or, where applicable, the Customer’s procedures for the vetting of

Procedures”	personnel as provided to the Contractor from time to time;
“Term”	Means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

- 1.2 In these terms and conditions, unless the context otherwise requires:
- 1.3 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.4 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.5 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.6 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.7 the word ‘including’ shall be understood as meaning ‘including without limitation’.

## **2. Basis of Agreement**

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Contractor on receipt by the Customer of a copy of the Award Letter countersigned by the Contractor within seven (7) days of the date of the Award Letter.

## **3. Supply of Services**

- 3.1 In consideration of the Customer’s agreement to pay the Charges, the Contractor shall supply the Services to the Customer subject to and in accordance with the terms and conditions of the Agreement.

- 3.2 In supplying the Services, the Contractor shall co-operate with the Customer in all matters relating to the supply of the Services and comply with all the Customer's instructions.
- 3.3 The Contractor shall supply the Services in accordance with the Specification.
- 3.4 The Contractor shall perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Contractor's industry, profession or trade; use Staff 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 the Agreement; and provide all equipment, tools and vehicles and other items as are required to provide the Services.

#### **4. Term**

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to six (6) months by giving not less than ten (10) Working Days' notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

#### **5. Charges, Payment and Recovery of Sums Due**

- 5.1 The Charges for the Services shall be as set out in the Appendix 2 and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Contractor shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Contractor, the Customer shall pay the Contractor the invoiced amounts no later than thirty (30) days after

verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.

- 5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:
- 5.9 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
- 5.10 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
- 5.11 In this clause 5.8, "sub-contract" means a contract between two or more Contractors, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.12 If any sum of money is recoverable from or payable by the Contractor under the Agreement (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Customer. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **6. Premises and equipment**

- 6.1 If necessary, the Customer shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Contractor or the Staff shall be at the Contractor's risk.
- 6.2 If the Contractor supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Contractor shall vacate the Customer's premises, remove the Contractor's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Contractor or any Staff, other than fair wear and tear.
- 6.3 If the Contractor supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Contractor shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Contractor's premises, the Contractor shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Contractor and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Contractor shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Customer is notified otherwise in writing within five (5) Working Days.

## **7. Staff and Key Personnel**

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Contractor:
- a. refuse admission to the relevant person(s) to the Customer's premises;
  - b. direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
  - c. require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,
  - d. and the Contractor shall comply with any such notice.
- 7.2 The Contractor shall:
- a. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
  - b. if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
  - c. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **8. Assignment and sub-contracting**

- 8.1 The Contractor shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be

responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

8.2 Where the Customer has consented to the placing of sub-contracts, the Contractor shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.

8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Agreement.

## **9. Intellectual Property Rights**

9.1 All Intellectual Property Rights in:

(a) the results; or

(b) any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Contractor by or on behalf of the Authority (together with the results, the "IP Materials")

shall vest in the Authority (save for Copyright and Database Rights which shall vest in Her Majesty the Queen) and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.

9.2 The Contractor hereby assigns:

(a) to the Authority, with full title guarantee, all Intellectual Property Rights (save for Copyright and Database Rights) which may subsist in the IP Materials prepared in accordance with clauses 9.1(a) and (b). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor; and

(b) to Her Majesty the Queen, with full title guarantee, all Copyright and Database Rights which may subsist in the IP Materials prepared in accordance with clauses 9.1 (a) and (b)

and shall execute all documents and do all acts as are necessary to execute these assignments.

9.3 The Contractor shall:

(a) waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract;

(b) ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Contractor or to any other third party supplying goods and/or services to the Authority ("Indemnified Persons");

(c) not infringe any Intellectual Property Rights of any third party in supplying the Services; and

(d) during and after the Contract Period, indemnify and keep indemnified the Authority and the Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause 9.3, except to the extent that any such claim results directly from:

i) items or materials based upon designs supplied by the Authority; or

ii) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

9.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority.

9.5 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority, the Contractor or Indemnified Person) arising from the performance of the Contractor's obligations under the Contract ("Third Party IP Claim"), provided that the Contractor shall at all times:

(a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;

(b) take due and proper account of the interests of the Authority; and

(c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

9.6 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third-Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Authority under this clause 9.6 in

relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses 9.3(d) i) and ii).

- 9.7 The Authority shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- 9.8 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and any relevant Indemnified Person, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clause 9.3(b) use its best endeavours to:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or

(b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority

and if the Contractor is unable to comply with clauses 9.8(a) or (b) within twenty (20) Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract immediately by notice to the Contractor.

- 9.9 The Contractor grants to the Authority and, if requested by the Authority, to a Replacement Contractor, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority (or the Replacement Contractor) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

## **10. Governance and Records**

- 10.1 The Contractor shall:
- a. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
  - b. submit progress reports to the Customer at the times and in the format specified by the Customer.
- 10.2 The Contractor shall keep and maintain until six (6) years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Contractor shall on request afford the

Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

## **11. Confidentiality, Transparency and Publicity**

11.1 Subject to clause b, each Party shall:

- a. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- b. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

- a. where disclosure is required by applicable law or by a court of competent jurisdiction;
- b. to its auditors or for the purposes of regulatory requirements;
- c. on a confidential basis, to its professional advisers;
- d. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- e. where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Agreement provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause shall observe the Contractor's confidentiality obligations under the Agreement; and

11.3 where the receiving Party is the Customer:

- a. on a confidential basis to the employees, agents, consultants and contractors of the Customer;
- b. on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
- c. to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- d. in accordance with clause 02.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

- 11.4 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Contractor hereby gives its consent for the Customer to publish the Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.5 The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

## **12. Freedom of Information**

- 12.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
- 12.1.2 transfer to the Customer all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- 12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 12.2 The Contractor acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Goods (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these

circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure

- 12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Goods is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

## **13. Protection and Security of Data**

- 13.1 The Contractor shall, and shall procure that all Staff shall, comply with any notification requirements under the GDPR and both Parties shall duly observe all their obligations under the GDPR which arise in connection with the Agreement.
- 13.2 When handling Customer data, the Contractor shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Contractor from time to time.

## **14. Liability**

- 14.1 Neither party shall be responsible for any injury, loss, damage, cost or expense suffered by the other party if and to the extent that it is caused by the negligence or wilful misconduct of such party or by breach by such party of its obligations under the Agreement.
- 14.2 Subject always to clauses 14.3 and 14.4:
- 14.2.1 the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Contractor; and
- 14.2.2 the aggregate liability of the Customer in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to the Charges paid or payable to the Contractor;
- 14.2.3 and except in the case of claims arising against the Contractor under clauses 9.4 and 18.3, in no event shall either party be liable to the other for any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Contractor's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited

## **15. Force Majeure**

15.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party 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 two months, either Party may terminate the Agreement by written notice to the other Party.

15.2 The Authority does not accept that EU exit is either a force majeure event or a frustration event, as the likely consequences of this process have been widely aired in public for some time, all suppliers have had ample time to plan for continuation of service and performance of contracts will still be possible in most cases.

## **16. Termination**

16.1 The Customer may terminate the Agreement at any time by notice in writing to the Contractor to take effect on any date falling at least 1 month (or, if the Agreement is less than three (3) months in duration, at least ten (10) Working Days) later than the date of service of the relevant notice.

16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Contractor with immediate effect if the Contractor:

16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

16.2.2 repeated breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

- 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;
- 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
- 16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;
- 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or
- 16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 16.3 The Contractor shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Contractor may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 16.6 Upon termination or expiry of the Agreement, the Contractor shall:
- 16.6.1 give all reasonable assistance to the Customer and any incoming Contractor of the Services; and
- 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **17. Compliance**

- 17.1 The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Contractor in the performance of its obligations under the Agreement.
- 17.2 The Contractor shall:
- 17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
  - 17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 17.3 The Contractor shall:
- 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Contractor from time to time; and
  - 17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.
- 17.4 The Contractor shall supply the Services in accordance with the Customer's environmental policy as provided to the Contractor from time to time.
- 17.5 The Contractor shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
- 17.6 the Official Secrets Acts 1911 to 1989; and
  - 17.7 section 182 of the Finance Act 1989

## **18. Prevention of Fraud and Corruption**

- 18.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

- 18.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 18.3 If the Contractor or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
- 18.3.1 terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
- 18.3.2 recover in full from the Contractor any other loss sustained by the Customer in consequence of any breach of this clause.

## **19. Dispute Resolution**

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **20. General**

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy under this Agreement shall be confirmed in writing. Non-escalated breach of the contract shall not constitute a waiver of any right or remedy of the Authority under this Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **21. Notices**

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

21.3 Notices under clauses 15 **Error! Reference source not found.** (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

## **22. Governing Law and Jurisdiction**

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

## **Appendix 1: Specification of Requirement**

### **1. About the Department for International Trade**

- 1.1 The Department for International Trade (DIT) was created in July 2016 and is responsible for promoting British trade across the world and ensuring the UK takes advantage of the huge opportunities open to the UK.
- 1.2 DIT's responsibilities include those of the former UK Trade & Investment in helping UK based companies succeed in the global economy. The Department also helps overseas companies bring their high-quality investment to the UK's dynamic economy which is acknowledged as Europe's best place from which to succeed in global business.
- 1.3 The Department offers expertise and contacts through its extensive network in the UK and diplomatic offices around the world. The organisation provides companies with the tools they require to be competitive on the world stage.
- 1.4 The Department has a regionally-based delivery network providing support for exporters and foreign investors. The delivery of export support is through nine (9) regionally-structured contracts within England. DIT funds these contractors on an annual basis and around three hundred (300) private sector International Trade Advisers are employed by the contractors to assist a specified minimum number of new exporters (including companies who have not exported in the previous twelve (12) months) to achieve export success.

### **2. The Requirement**

- 2.1 The International Live Music Conference (ILMC) as parent company of the International Festival Forum (IFF) are required to provide the following at the event hosted on 24<sup>th</sup>-26<sup>th</sup> September 2019:
  - Provision of a B-2-B service in the form of dedicated pre-arranged meetings for UK agents to pitch to overseas bookers
  - A Delegate app to enable UK music companies to book meetings with overseas festival bookers
  - A lounge area for companies to hold their meetings, and to facilitate networking during the event
- 2.2 The provision of this requirement will, on behalf of DIT, promote the United Kingdom (UK) across European live music businesses and result in a forecasted export win of over ten (10) million pounds.

### **3. Deliverables**

3.1 By engaging with this event, ILMC will deliver:

3.1.1 Music is GREAT services:

- IFF website banner and mobile app logo placement
- Logo on cover of conference guides – eight hundred (800)
- Screen branding around all venues
- Two (2) Delegate passes
- Branding on signage outside and inside venues
- Three hundred (300) words (half page) in partner section of the guide
- Logo placement on stage banners - all live rooms
- Logo on IFF stationery
- Logo placement on regular IFF email mailers to over one thousand five hundred (1,500) festival professionals and over five hundred (500) agents
- Mailing carrier sheets advance edition of IQ Magazine – three thousand five hundred (3,500) per issue
- One (1) full page advert in the conference guide

3.1.2 Music is GREAT Lounge

- Room hire
- Lounge signage
- Set up and on-site management

3.1.3 DIT/Music is GREAT Delegate Portal

- Portal development
- DIT/Music is GREAT Listing
- Delegate list integration
- Management pre/post IFF
- Branding/artwork

3.1.4 Spend Meeting Sessions

- Branding/artwork
- Meeting Refreshments
- Room hire
- Pre/post admin
- On site hosting (both days)
- Reporting

## 4. Contract Governance and Performance Management

4.1 Contract performance meetings will be held either by phone or face-to-face, with dates and attendees to be agreed by both parties.

Metric	KPI	What information is required to measure this KPI?	How will the KPI be measured?	Red	Amber	Green
Contract management	Regular performance update meetings/calls	A log of contact is to be created	The log will be checked on completion of the project	Calls not taking place on a regular basis, resulting in cancellation due to non-availability of the supplier.	Infrequency of calls due to supplier non-availability resulting in re-scheduling.	Calls held on time with satisfactory outcome.

## Appendix 2 – Payment

Payment will be made as follows and upon receipt of invoices setting out the services provided and approved by the Authority, as stated within section 5 of this Contract.

Requirement	Total Charges (£) ex VAT
Music is GREAT services	██████████
Music is GREAT lounge	██████████
DIT/Music is GREAT Delegate Portal	██████████
Spend Meeting Sessions	██████████
<b>TOTAL COST</b>	<b>£20,990.00</b>