

APPENDIX C - BTA1993 – DPS – COMMERCIAL PARTNERSHIPS & RELATED SERVICES – STANDARD TERMS & CONDITIONS FOR SERVICES (LOT 6 ONLY)

THIS AGREEMENT is made effective the **XX** day of **XX**
("Effective Date")

BETWEEN:

BRITISH TOURIST AUTHORITY, a statutory body incorporated under the Development of Tourism Act 1969 of 3 Grosvenor Gardens, Victoria, London SW1W 0BD
("BTA");

AND

[] incorporated in [] with
registration number [] with its registered office at []
(the "Contractor")

WHEREAS:

BTA wishes to engage the Contractor and the Contractor wishes to be engaged by BTA to provide the services (as further described in Appendix 1) on the standard terms & conditions for services set out in this Agreement, the DPS Agreement and Call-Off Agreement.

IT IS AGREED as follows:

1. Term

- 1.1. Subject to clause 9 below, this Agreement shall be effective from and including the Effective Date and shall continue until and including [] (“**Initial Term**”).
- 1.2. It is expressly agreed that this Agreement shall supersede and replace any previous agreement between the parties to the like effect and that any such earlier agreement is terminated from the above Effective Date AND THAT entering into this Agreement shall be consideration from each party to the other for forgoing any rights that party may otherwise have had in consequence of the said termination.

2. Engagement

- 2.1. BTA engages the Contractor and the Contractor agrees that it shall during the Term of this Agreement provide the Services (as defined below) set out in Appendix 1 attached to this Agreement by (where they are so specified) the dates specified therein (the “**Services**”). With respect to the provision of Services and any associated milestone dates and/or timelines for delivery, time shall be of the essence in this Agreement.
- 2.2. In the event of any conflict between any contractor proposal or documentation included as part of Appendix 1 and BTA’s Brief in Appendix 2, BTA’s Brief shall prevail unless otherwise agreed in writing by BTA.

3. Performance of Services

- 3.1. The Contractor shall use its specialist expertise to perform the Services and shall perform the Services with all due skill and diligence and in accordance with the terms of this Agreement.
- 3.2. The Contractor shall take account of the requirements made known to it by BTA from time to time and shall use all reasonable endeavours to promote the best interests of BTA in performing the Services.

- 3.3. The Contractor shall advise BTA immediately of any problems or difficulties encountered by the Contractor in performing the Services under this Agreement.
- 3.4. The Contractor accepts that from time to time it will be necessary to attend BTA offices to discuss the progress of the Services and/or review and evaluate the performance of the Contractor in supplying the Services. Such review and/or evaluation meetings shall be determined by the reasonable agreement of the parties.
- 3.5. In performing the Services at places other than BTA offices, the Contractor shall provide its own equipment and materials and warrants that such equipment and materials shall be fit for the intended purposes. On occasions where the Contractor works at BTA offices, the Contractor is free to make its own arrangements as to equipment and materials although BTA shall make appropriate resources available.
- 3.6. The Contractor acknowledges that BTA reserves the right to amend its requirements in relation to the Services at any time after discussion with the Contractor in which case the Contractor shall comply with BTA's reasonable requests and in the event that such amendments by BTA might reasonably be expected to cause the Fee to increase or decrease then the Contractor shall obtain BTA's written approval prior to acting upon BTA's amended requirements.
- 3.7. The Contractor's personnel responsible for the provision of the Services are listed in Appendix 1 of this Agreement. The Contractor shall use all reasonable efforts to ensure continuity of staffing. Any replacement personnel shall be of equivalent experience, skill and ability.
- 3.8. The Contractor warrants that it complies with the Equality Act 2010 all other equal opportunities legislation and codes of practice and undertakes to monitor its employment procedures and practice in these areas on a regular basis and at BTA's request to provide the results of such monitoring to BTA. The Contractor further undertakes to include an express statement in any

advertisements for personnel to perform the Services that applications are invited from all ethnic groups.

4. Warranty

- 4.1. The Contractor represents and warrants that:
- 4.1.1. it has the right, power and authority to enter into this Agreement and grant to BTA the rights (if any) contemplated in this Agreement and to perform the Services;
 - 4.1.2. it understands BTA's business and needs;
 - 4.1.3. the Services shall be performed in accordance with Best Industry Practice;
 - 4.1.4. the Services performed and the deliverables supplied shall comply with all applicable Laws;
 - 4.1.5. subject to clause 3.6 (above) the Services performed and deliverables supplied shall conform in all material respects as set out in Appendix 1 and Appendix 2 of this Agreement; and
 - 4.1.6. the Services performed and deliverables supplied shall not infringe the Intellectual Property Rights (as defined in clause 7 (below) of any third party.
- 4.2. Without limiting any other remedies to which it may be entitled, BTA may reject any Services or deliverables that do not comply with clause 4.1 and the Contractor shall, at BTA's option, promptly remedy, re-perform or refund the Fees of any such Services or deliverables.
- 4.3. The provisions of this Agreement and the corresponding Order shall apply to any Services and related deliverables that are remedied, re-performed or redelivered pursuant to clause 4.2.
- 4.4. The provisions of this clause 4 are in addition to, and are not exclusive of, any other rights and remedies to which BTA may be entitled,

5. Payment of Fees

- 5.1. In consideration of the Contractor carrying out the Services, BTA agrees to pay the Contractor the Fees (the "**Fees**") in the installment(s) set out in Appendix 1.
- 5.2. The Contractor shall provide BTA with a valid and correctly submitted VAT invoice in respect of each instalment of the Fees and unless BTA otherwise

agrees, BTA shall subject to clause 5.4 below, settle payment of the invoice within thirty (30) days of receipt of a valid and correctly submitted invoice.

- 5.3. The Contractor shall be responsible for all policies of insurance concerning the provision of the Services including professional indemnity, public liability and employer's liability insurance. Contractor shall upon request by BTA provide documentary evidence that it has all necessary insurance coverage in place in respect of the scope and value of Services being provided.
- 5.4. BTA shall have the right to withhold payment of the whole or any part of any invoice which is the subject of a bona fide dispute provided that BTA shall pay any undisputed invoiced amounts in accordance with clause 5.1 above.
- 5.5. The Fee is:
 - 5.5.1. fixed; and
 - 5.5.2. inclusive of all costs associated with the performance of the Services, so that BTA shall not be obliged to make any payments whatsoever other than the Fee and no other expenses shall be payable by BTA without the prior written approval of BTA.

6. **Non-Competition**

The Contractor shall not be concerned in, or provide services for any other person, firm or company during the Term of this Agreement where such person, firm or company shall be concerned in a business or activity which is in the reasonable opinion of BTA in competition or conflict with that of BTA, without BTA's prior written consent.

7. **Intellectual Property Rights**

- 7.1. The Contractor, as beneficial owner hereby assigns to BTA absolutely all of its existing and future Intellectual Property Rights and all other rights of whatsoever nature in all of the work product, deliverables and outputs arising from the provision of the Services by the Contractor in connection with this Agreement.

- 7.2. The Contractor undertakes to procure the assignment absolutely to BTA of all existing and future Intellectual Property Rights and all other rights of whatsoever nature in all of the work created by the Contractor's agents, sub-contractors, employees and/or any other person in connection with the provision of the Services.
- 7.3. The Contractor undertakes to waive or procure the waiver of all moral rights in all of the work created in connection with the Services.
- 7.4. Neither party to this Agreement shall use the name, trademarks, service marks, logos or other proprietary marks of the other party without the other party's prior written consent (such consent not to be unreasonably withheld or delayed). Where such consent has been given, usage shall be in strict accordance with the consenting party's instructions and/or brand usage guidelines, as may be issued from time to time. Upon termination or expiry of this Agreement each party agrees that it will immediately cease its authorised usage of the other party's name, trademarks, service marks, logo or other proprietary marks on all of its sales and/or marketing channels, web properties and all other digital platforms.
- 7.5. **"Intellectual Property Rights"** means copyright, patents, rights in inventions, rights in confidential information, Know-how, trade secrets, trademarks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, mask works, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing;

8. Ownership of BTA Material and Equipment

Any material or equipment provided by BTA to the Contractor for the performance of the Services will remain the property of BTA and the copyright in such material will remain vested in BTA and the Contractor agrees that it shall return all such material and equipment in good condition to BTA on demand or upon the termination or expiry of this Agreement.

9. Termination

9.1. BTA shall have the right to terminate this Agreement at any time during the Term by serving 30 days' prior written notice to the Contractor.

9.2. BTA may immediately terminate this Agreement in the event that the Contractor:

9.2.1. is in breach of any material term of this Agreement and fails to remedy such breaches as notified in writing by BTA within the cure or remedy period specified by BTA;

9.2.2. is unable to pay its debts or enters into compulsory or voluntary liquidation other than a voluntary liquidation followed by a solvent reconstruction or compounds or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases permanently for any reason to carry on business or takes or suffers any similar action which in BTA's opinion means that the Contractor may be unable to pay its debts; or

9.2.3. neglects or fails to discharge the Services or fails to perform the Services in a satisfactory manner including without limitation where Contractor has persistently breached its obligations under this Agreement.

9.3. Upon expiry or termination of this Agreement howsoever caused:

9.3.1. the Contractor shall return immediately to BTA any material which is BTA property;

9.3.2. all copyright in any material as referred to under clause 7 above shall immediately pass to BTA and the Contractor shall execute any documents as BTA requires in order to give effect to this; and

9.3.3. BTA shall only be liable to pay the Contractor that part of the Fee that is owing as at the date of the expiry or termination of this Agreement in respect of Services delivered to the reasonable satisfaction of BTA.

10. Confidentiality and Data Protection

10.1. The Contractor shall treat as strictly confidential and shall not release to any third party any and all information either resulting from the provision of the Services to BTA under the terms of this Agreement or provided to the Contractor by BTA unless such information is already in the public domain. This provision shall survive termination or expiry of this Agreement.

10.2. Each party agrees that, in the performance of their respective obligations under this Agreement, it shall comply with all applicable Data Protection laws including without limitation:

10.2.1. the GDPR;

10.2.2. the Data Protection Act 2018;

10.2.3. any laws which implement or supplement any such laws;

10.2.4. any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and

10.2.5. all guidance, guidelines and codes of practice issued by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws (in each case whether or not legally binding);

“**GDPR**” means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time)

11. Liability

11.1. The Contractor agrees to indemnify and keep indemnified BTA against claims or damage incurred or suffered by BTA by reason of, or arising out of, the willful default or negligent acts or omissions of the Contractor, its employees, agents or subcontractors in the performance of any of the obligations expressed to be assumed by it in this Agreement.

- 11.2. Without prejudice to the generality of clause 11.1 above the Contractor undertakes to BTA, in supplying the Services and in all activities relating to this Agreement that it will comply with all applicable laws, regulations and enactments at local, national and supra-national level (including without limitation data protection and health and safety legislation).
- 11.3. The Contractor undertakes to use its reasonable endeavours to identify to BTA any breaches or potential breaches of applicable legislation (including without limitation data protection) on the part of BTA in the sphere of those of BTA's operations with which the Contractor is concerned.
- 11.4. Notwithstanding any contrary provision in this Agreement, neither Party limits or excludes its liability in respect of:
- 11.4.1. death or personal injury caused by its negligence;
 - 11.4.2. fraud; or
 - 11.4.3. any other statutory or other liability which cannot be excluded under applicable law.
- 11.5. Except with respect to indemnification obligations and breach of the confidentiality and/or data protection provisions, as set forth above, in no event shall either party or permitted assigns, or their respective directors, officers, employees or agents, be liable for any indirect, punitive, incidental, special or consequential damages, including loss of profits, arising out of or in connection with this Agreement, whether based in contract, tort, strict liability or other theory, even if advised of such possibility. The foregoing is subject to, and to the extent permitted by, applicable law.

12. Sub-Contracting & Assignment

- 12.1. The Contractor shall have the right to delegate the provision of the Services under this Agreement PROVIDED THAT it has first obtained BTA's written approval to do so. If Contractor is permitted by BTA to engage the services of subcontractors and/or agents to assist Contractor with the fulfillment of the Services contracted for under this Agreement, Contractor shall contractually

obligate such permitted subcontractor and/or agent to supply its services in accordance with the terms and conditions of this Agreement.

- 12.2. The Contractor may not transfer or assign any of its rights under this Agreement, without the prior written consent of BTA.

13. Notices

- 13.1. All notices or other communications given under or in connection with this Agreement shall be in writing and shall be addressed as provided in clause 13.2 below, and if so addressed, shall be deemed to have been duly given if:

13.1.1. by hand delivery, upon that delivery to the other party;

13.1.2. sent by personal delivery, upon delivery at the address of the relevant party;

13.1.3. sent by first class post, two working days after the date of posting; and

13.1.4. sent by facsimile or e-mail, when dispatch is confirmed.

- 13.2. The relevant addressee and address of each party for the purposes of this Agreement are:

13.2.1. if to: British Tourist Authority

3 Grosvenor Gardens
Victoria
London SW1W 0BD

Marked for the attention of the Legal Department

13.2.2. if to: []

[]

14. Bribery

14.1. The Contractor warrants that he has not, and will not:

14.1.1. offer, promise or give a financial or other advantage to a BTA officer employee, contractor, consultant, agent or any third party in order to induce or reward improper performance by that person in connection with the Services; or

14.1.2. request, agree to receive or accept a financial or other advantage from a BTA officer, employee, contractor, consultant, agent or any third party intending improper performance by the Contractor or another person in connection with the Services.

14.2. "Improper performance" shall have the meaning set out in the Bribery Act 2010.

15. Modern Slavery Act 2015

14.1 The Contractor warrants that he shall, and that he shall procure that any of his permitted subcontractors shall, comply with the Modern Slavery Act 2015 in connection with the Services.

14.2 The Contractor shall notify BTA as soon as he becomes aware of any actual or suspected slavery or human trafficking in a supply chain, which relates to the Services.

16. Anti-tax evasion facilitation

16.1. Each Party warrants, represents and undertakes that it will:

16.1.1. not engage in any activity, practice or conduct which would constitute either: (i) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or (ii) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017 (each a "**Facilitation Offence**");

16.1.2. where reasonably required to do so, establish, maintain and enforce its own anti-Facilitation Offence policies and procedures as are reasonable to prevent the occurrence of a Facilitation Offence by it and

its associated persons and to ensure compliance with clause 16.1.1 above;

16.1.3. carry out periodic assessments of the risk of one or more of it and its associated persons committing a Facilitation Offence; and

16.1.4. notify the other in writing if it has reason to believe that it has received a request or demand from a third party which could constitute a Facilitation offence in connection with the performance of its obligations under this Agreement.

17. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of England and the parties shall submit to the exclusive jurisdiction of the English Courts.

18. General

18.1. This Agreement constitutes the whole agreement between the Contractor and BTA and no further variation shall be effective unless it is in writing and signed by each of the parties.

18.2. Subject to clause 9 above, this Agreement shall remain in full effect in so far as any obligations on the part of either of the parties remain to be performed or observed.

18.3. The parties acknowledge that the Contractor is not an employee, partner or agent of BTA and this document shall not be construed as a contract of employment, partnership or agency agreement between the parties.

18.4. The headings in this Agreement shall not affect its interpretation.

18.5. The Appendices hereto shall be an integral part of this Agreement.

18.6. If any provision or term of this Agreement or any part thereof shall become or be declared illegal or unenforceable for any reason whatsoever, such terms or

provisions shall be severable from this Agreement and shall be deemed to be deleted from this Agreement.

- 18.7. No failure or delay on the part of either party to execute any right or remedy under this Agreement shall be construed or operated as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be.
- 18.8. In the event of this Agreement being rendered impossible of performance by any Party for any reason beyond its reasonable control including war, invasion, act of foreign enemy, hostilities whether war be declared or not, civil war or strife, rebellion, acts of terrorism or threats of acts of terrorism, strikes, lock-outs or other industrial disputes, acts of God, acts of governments or other prevailing authorities or defaults of third parties) (collectively "**Force Majeure**") then such non-performance shall be deemed not to constitute a breach of this Agreement.
- 18.9. No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 18.10. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one and the same agreement.

The parties have duly executed this Agreement the day and year first before written

Executed by BRITISH TOURIST AUTHORITY acting by (print name)....., Authorised Officer	(signature)..... Authorised Officer
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Executed by [] acting by (print name), Director	(signature)..... Director
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APPENDIX 1
Services and Fees

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APPENDIX 2
BTA's Brief

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