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**ARTS COUNCIL ENGLAND**

**YORK MUSIC HUB DELIVERY PARTNERSHIP AGREEMENT**  
**(the "Contract Particulars")**

[Empty box] (the "Contract Date")

**BETWEEN**

**YORK MUSIC HUB** of Hiscox Building, Peasholme Green, York, YO1 7PR ("**Music Hub**");

**and**

[Empty box] (the "Delivery Partner")

The Delivery Partner agrees to deliver the services as outlined below (the "**Services**") in accordance with these Contract Particulars and the attached conditions (the "**Conditions**");

Service(s) to be delivered	Funding allocation	Relevant time scales

Total funding allocation (the '**Price**'): [Empty box]

Signed by Music Hub: .....

Date: .....

Print Name: .....

Signed by the Delivery Partner: .....

Date: .....

Print Name: .....

## YORK MUSIC HUB DELIVERY PARTNERSHIP AGREEMENT

### CONDITIONS

#### 1. The Contract

- 1.1 The Contract Particulars constitutes an offer by the Music Hub to purchase the Services in accordance with the Specification (if any) and subject to the Conditions.
- 1.2 The Contract Particulars will lapse unless unconditionally accepted by the Delivery Partner within seven days of its date, either in writing or by commencement of supply of the Services.
- 1.3 The Conditions govern the Contract between the Music Hub and the Delivery Partner. No other conditions, whether introduced before or after the date of the Contract Date, shall have any relevance to this Contract. Nothing in this agreement shall be deemed to constitute a partnership between the Parties nor constitute any Party as the agent of the other Party.

#### 2. The Price

The Price shall be fixed.

#### 3. Delivery

- 3.1 The Delivery Partner shall indemnify the Music Hub in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Music Hub may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery of the Services to the extent that any such damage or injury is attributable to any act or omission of the Delivery Partner or any of his sub-contractors.

#### 4. Quality of Services

- 4.1 The Services shall be supplied in accordance with and for the duration specified in the Contract Particulars and the Specification (if any).
- 4.2 The Delivery Partner shall carry out the Services:
  - 4.2.1 in a proper, skilful and workmanlike manner with reasonable care and skill and in accordance with industry best practice; and
  - 4.2.2 in accordance with the Contract and the reasonable instructions of the Music Hub (including any policies specified by the Music Hub);
- 4.3 The Delivery Partner shall at all times make available sufficient personnel and all other resources as are required for the successful and timely completion of the Services.
- 4.4 The Services shall at all times be supplied by appropriately supervised, experienced, qualified, trained and competent personnel.
- 4.5 The Music Hub shall have the right to decide whether any person is not to become involved in or is to be removed from involvement in the performance of the Contract. Any such decision shall be final and conclusive.

**5. Safeguarding Children and Vulnerable Adults**

- 5.1 The parties acknowledge that the Delivery Partner is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of, and as defined in, the Safeguarding Vulnerable Groups Act 2006.
- 5.2 The Delivery Partner shall ensure that all individuals engaged in the provision of the Services are:
- 5.2.1 subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (DBS) including a check against the adults' barred list or the children's barred list, as appropriate; and
  - 5.2.2 the Delivery Partner shall monitor the level and validity of the checks under this condition 5.2 for each member of staff.
  - 5.2.3 The Delivery Partner warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Delivery Partner in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 5.3 The Delivery Partner shall immediately notify the Music Hub of any information that it reasonably requests to enable it to be satisfied that the obligations of this condition 5 have been met.
- 5.4 The Delivery Partner shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users/children/vulnerable adults.
- 5.5 The Delivery Partner shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

**6. Compliance with Law**

In carrying out its obligations under this Contract the Delivery Partner shall observe and perform all requirements made applicable to the supply of services under this Contract by Law.

**7. Indemnity and Insurance**

- 7.1 The Delivery Partner shall indemnify the Music Hub against all losses, damage, injury or expense, and injury to or death of any person, howsoever caused by or arising from, either directly or indirectly;
- 7.1.1 from the performance or non-performance by the Delivery Partner of its obligations under the Contract;
  - 7.1.2 from any acts or omissions by the Delivery Partner, the Delivery Partner's employees, agents or subcontractors including but not limited to a breach of the provisions of the Contract.
- 7.2 The Delivery Partner shall fully indemnify the Music Hub against any expenses arising from any alleged or actual infringement of any proprietary right including but (not limited to) patents, trademarks, copyrights, intellectual or any of the rights arising from this Contract.
- 7.3 The Delivery Partner shall maintain satisfactory insurance cover with a reputable insurer in respect of all liabilities, both statutory and contractual, arising from this Contract, to a minimum of £2m or such higher figure as the Music Hub may specify. The Delivery Partner shall produce evidence of such insurance and payment of the current premium to the Music Hub on request.
- 7.4 The Music Hub and its agents shall in no circumstances whatsoever be liable for:
- 7.4.1 any loss of profits, business, revenue, goodwill, or anticipated savings; or
  - 7.4.2 indirect or consequential loss, howsoever arising from this Contract.
- 7.5 Neither Party excludes or limits liability to the other Party for:

- 7.5.1 death or personal injury caused by its negligence; or
- 7.5.2 fraud or fraudulent misrepresentation; or
- 7.5.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
- 7.5.4 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

## **8. Payment**

- 8.1 Payment will be released in 3 stages:
  - 8.1.1 50% at the commencement of the Services
  - 8.1.2 25% half way through the delivery on completion of a short interim report and budget update
  - 8.1.3 25% on completion of the Services together with a full evaluation and budget report
- 8.2 Each payment stage must be invoiced.
- 8.3 The Music Hub shall not be responsible for any delays in payment arising from failure to comply with these invoicing instructions.
- 8.4 Payment by the Music Hub shall be without prejudice to any rights or remedies available to it under this Contract, or otherwise, and shall not constitute any binding admission by the Music Hub as to the satisfactory performance and completion of the Services by the Delivery Partner.
- 8.5 The Delivery Partner shall indemnify the Music Hub on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Music Hub at any time in respect of the Delivery Partner's failure to account for or to pay any VAT relating to payments made to the Delivery Partner under the Contract.

## **9. Recovery of Sums Due**

- 9.1 The Music Hub will insist on repayment or reduction of funds if:
  - 9.1.1 Services fail to commence within a reasonable period of the start date
  - 9.1.2 Services fail to commence at all
  - 9.1.3 Services are reduced
  - 9.1.4 Services fail to finish within a reasonable period after the completion date

## **10. Publicity**

The Delivery Partner shall use the York Music Hub and Arts Council logo on all publicity and acknowledge their support appropriately.

## **11. Termination**

- 11.1 The Music Hub may immediately terminate this Contract by written notice Delivery Partner if:
  - 11.1.1 the Delivery Partner is in breach of any of the provisions of this Contract;
  - 11.1.2 an insolvency event occurs in relation to the Delivery Partner (including, for the avoidance of doubt, the calling of any meeting of a party's creditor; the appointment of any receiver, administrator, or administrative receiver over all or any part of its assets or undertaking; the suspension or cessation of its business; any threat to suspend or cease its business; any threat to suspend or cease its business; the making of a winding-up or bankruptcy order; the convening of a meeting to pass a winding-up resolution; or it entering into liquidation)

- 11.1.3 if the Delivery Partner is an individual, he shall be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or ceases, or threatens to cease, to carry on business; or
- 11.1.4 if the Delivery Partner dies; or
- 11.1.5 the Delivery Partner is convicted of a criminal offence; or
- 11.1.6 for whatever reason, the Delivery Partner is bringing, or may bring, bad publicity or disrepute upon the Music Hub.

11.2 Termination of this Contract shall not prejudice or affect:

- 11.2.1 the rights or liabilities of the Parties which have accrued on or before termination; and
- 11.2.2 the continuance in force of any conditions of the Contract which expressly or by their implication survive termination of this Contract.

## **12. Health and Safety**

The Delivery Partner shall comply at all times with the requirements of the Health and Safety at Work etc. Act 1974 and all subsequent amendments thereto.

## **13. Data Protection**

The Delivery Partner shall comply in all respects with the provisions of the Data Protection Act 1998 (the "Act") and all subsequent and supporting legislation made pursuant thereto and will indemnify the Music Hub against all actions costs expenses claims proceedings and demands which may be brought or made against the Music Hub for breach of statutory duty under the Act which arises from the use disclosure or transfer of personal data by the Delivery Partner and its agents and/or sub-contractors.

## **14. Data**

The Music Hub may disclose any relevant term of this Contract in accordance with funding reporting requirements

## **15. Discrimination**

The Delivery Partner, its agents, employees or sub-contractors shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief or age or any other basis as defined by the Equalities Act 2010 and the Human Rights Act 1998 or by the Music Hub in writing from time to time.

## **16. Employment legislation**

The Delivery Partner shall comply with the provisions of all Acts of Parliament, statutory instruments and codes of practice relating to employment.

## **17. General**

### **17.1 Force majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

### **17.2 Assignment and other dealings**

17.2.1 The Music Hub may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

17.2.2 The Delivery Partner shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Music Hub.

### **17.3 Confidentiality**

- 17.3.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five (5) years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 17.3.2.
- 17.3.2 Each party may disclose the other party's confidential information:
  - 17.3.3 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 17.3; and
  - 17.3.4 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
  - 17.3.5 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

#### 17.4 **Entire agreement**

- 17.4.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 17.4.2 Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 17.4.3 Nothing in this clause shall limit or exclude any liability for fraud.

#### 17.5 **Variation**

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### 17.6 **Waiver**

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

#### 17.7 **Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

#### 17.8 **Notices**

- 17.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by fax to its main fax number or sent by email to the following address: [EMAIL].
- 17.8.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.

17.8.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**17.9 Third party rights**

17.9.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

17.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**17.10 Governing law**

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

**17.11 Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

