

Birmingham Organising Committee for the 2022 Commonwealth Games Ltd

PO Terms of Procurement for the purchase of goods and services

1 Definitions and Interpretation

1.1 In these terms and conditions ("Terms"):

Affiliate means in relation to the relevant company, any company which is at the relevant time a subsidiary or holding company of the relevant company or a subsidiary or holding company of any such subsidiary or holding company (the words "subsidiary" and "holding company" having the meanings given in section 1159 of the Companies Act 2006);

Ambush Marketing means any activity, commercial or non-commercial, undertaken by a person, whether public or private, which may reasonably imply that the person is associated or affiliated with the Games, any Games Body, any Team or any event organised by any of the above in a manner that the person is not so associated or affiliated or in a manner that the person may be associated or affiliated, but is not authorised or permitted to refer to publicly and "Ambush Marketing" shall include the display or distribution of advertising materials or products with the intention of gaining exposure for any brand in or within the vicinity of the Games venues, unless such activity has been authorised by the OC;

Applicable Laws means all laws, rules, regulations and other requirements of relevant regulatory authorities which have the force of law (including the Birmingham Commonwealth Games Act) together with any applicable requirements, safety standards, ethical norms or industry practices, in particular those relating to advertising, and including those of any Games Body, CGA or the CGF Constitution;

Business Day means a day (other than a Saturday or Sunday) on which banks are generally open for normal banking business in London;

Business Hours means 9.00 a.m. to 5.00 p.m. on a Business Day;

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: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;

CGE means Commonwealth Games England, a company registered with company number 01616941 and having its registered office at Holborn Tower, 5th Floor, Holborn Tower, 136-144 High Holborn, London, England, WC1V 6PL;

CGF means the Commonwealth Games Federation of Quadrant House, 55-58 Pall Mall, London, England, SW1Y 5JH;

CGF Constitution means the constitution of the CGF from time to time;

CGFP means the incorporated joint venture entity CGF Partnerships Ltd, a company established under the Companies Acts (registered number 10380178), having its registered office at Commonwealth House, 55 - 58 Pall Mall, London, United Kingdom, SW1Y 5JH, established between the Commonwealth Games Federation (CGF) and SPORTFIVE UK Ltd (registered number 03599986) to support the planning and delivery of the Commonwealth Games through expert consultants and lead the commercial programme for the Commonwealth Games;

Commercially Sensitive Information means information of a commercially sensitive nature relating to: (a) the pricing of the Supplies; (b) details of the Supplier's Intellectual Property Rights; and

(c) the Supplier's business and investment plans; which the Supplier has indicated to the OC that, if disclosed by the OC, would cause the Supplier significant commercial disadvantage or material financial loss;

Commonwealth Games Association or **CGA** means any sports body approved as a Commonwealth Games Association by the CGF in accordance with the CGF Constitution;

Confidential Information means the Contract and all information which is secret or otherwise not publicly available (in both cases either in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, in all cases whether disclosed orally or in writing before or after the date of the Contract;

Connected Persons means any person either directly or indirectly involved in providing the Supplies, including the Supplier's Affiliate(s) and any and all of the Supplier's and each such Affiliate's Personnel;

Contract means the contract between the OC and the Supplier formed in accordance with Clause 2.1 of these Terms and consisting of: (i) the Purchase Order and the Supplier Details Form; (ii) these Terms; (iii) the Supplier's acceptance or deemed acceptance; (iv) the Specification; (v) any other documents notified in writing by the OC to the Supplier; and (vi) the OC Policies;

Data Protection Legislation means all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including without limitation, (i) any legislation from time to time in force in the UK relating to privacy and/or processing of personal data including the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003, the Human Rights Act 1998 or any successor legislation (ii) any statutory codes of practice issued by the Information Commissioner's Office in relation to such legislation; and (for so long as and to the extent that the law of the European Union has legal effect in the UK); and (iii) the General Data Protection Regulation ((EU) 2016/679) and (iv) any other directly applicable European Union regulation relating to privacy;

Deliverables means all documents, products and materials developed by the Supplier or its Connected Persons in relation to the Services (if any) in any form, including computer programs, data, reports and specifications (including drafts) including as set out in the Purchase Order;

Delivery Address means the location(s) where the Supplies are to be delivered, as specified in the Purchase Order or where not specified, the official logistics warehouse, or as otherwise advised by the OC to the Supplier within a reasonable time before such delivery;

Delivery Date means the delivery date(s) for the Supplies as set out in the Purchase Order;

EIRs means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

Employment Liabilities means any costs, claims, demands, fines, or expenses (including reasonable legal and other professional expenses) and all losses, damages, compensation and other liabilities including those incurred by or attributed to any New Supplier or sub-contractor of the OC (which shall, for the avoidance of doubt, include any incurred as a result of an indemnity or warranty given, or to be given, by the OC to a New Supplier or sub-contractor);

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;

Force Majeure Event has the meaning given in Clause 20 (Force Majeure);

Games means the XXII Commonwealth Games which is intended to be staged and principally hosted in Birmingham in 2022, subject to the occurrence of a Force Majeure Event or restrictions due to a Pandemic;

"Games Body" means any of the CGF, CGFP, CGE, any Commonwealth Games Association, the OC and any national or international organisation which organises or controls a sport included in the Commonwealth Games, and **" Games Bodies"** shall mean all of the above;

Games IP means all Intellectual Property Rights produced by the Supplier or any Connected Person in connection with the Games, including: (a) the Deliverables; (b) any materials coming into existence in connection with the performance of the Contract by the Supplier or its Connected Persons; and / or (c) any Confidential Information relating to or concerning the OC or any other Games Body, the Services or connected with the Games in any manner (directly or indirectly);

Games Partner means any, some or all of the OC, CGF, CGE, CGFP, Department of Digital, Culture, Media and Sport (DCMS), Birmingham City Council (BCC), the West Midlands Combined Authority (WMCA), Transport for West Midlands (TfWM), and West Midlands Police;

Good Industry Practice means the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with all Applicable Laws engaged in the same type of undertaking as the Supplier;

Goods mean the goods (including any instalment or any part of them) which the Supplier is to provide to the OC pursuant to the Contract as specified in the Purchase Order;

Information means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

Insolvency Event means an event whereby a party: (a) suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; (b) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up or dissolution of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation); (c) has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets; (d) has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets; (e) calls a meeting, gives a notice, passes a resolution, makes an application or files documents, or an order is made, or any other steps are taken in respect of obtaining a moratorium or a moratorium is obtained for that party; (f) takes any steps in connection with proposing a reorganisation of the company (whether by voluntary arrangement, company voluntary arrangement, scheme of arrangement, compromise or arrangement or otherwise) or any such reorganisation is effected in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts; or (g) has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security; or (h) has any distress, execution or sequestration or other such process levied or enforced on any of its assets which is not discharged

within fourteen (14) days of it being levied; and/or (i) has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events set out at (a) – (g) above;

Intellectual Property Rights means any and all copyright, database rights, rights in designs, trade marks, domain names, goodwill or patents, rights in confidential information, and any other intellectual property or rights (including, where relevant, all extensions, reversions, revivals and renewals of the same), in each case whether registered or unregistered and including all applications (and rights to apply) for protection of such rights and all similar or equivalent property, rights or forms of protection which now, or will in the future, subsist in any part of the world;

New Supplier means any person that provides services in replacement of any of the Services whether those services are the same as or similar to any or all of the Services;

OC means Birmingham Organising Committee for the 2022 Commonwealth Games Ltd a company established under the Companies Acts (registered number 11120160) as the Organising Committee of the Games and having its registered office at One Brindley Place, Birmingham, B1 2JB);

OC Policies means all OC standards, codes of practice, operating principles, policies and procedures, including Venue and/or site rules and restrictions as notified by the OC to Supplier from time to time;

Pandemic has the meaning given to it in Clause 21;

Personnel means, in relation to a person, any and all officials, officers, trustees, members, directors, employees, consultants, advisers, agents, representatives, clients, contractors and sub-contractors of such person;

Price means the price of the Supplies stated in the Purchase Order;

Protected Games Property means all Games IP and all Intellectual Property Rights of the OC, any Games Body, or any Team;

Purchase Order means the document, incorporating these Terms, setting out the OC's order for Supplies (which document shall be valid only if issued on behalf of the OC by a duly authorised person and bearing a valid purchase order number) and such attachments (if any) to the same as may be agreed in writing by the OC;

Request for Information means a Request for Information under the FOIA or the EIRs;

Services means any work or services (including any instalment or any part of them) that the Supplier is to provide to the OC pursuant to the Contract that are specified in the Purchase Order or supplied in the course of performing obligations under the Contract;

Specification means the specification of the Supplies that is contained (or referred to) in the Purchase Order;

Supplier means the person that is to provide the Supplies under the Contract, as specified in the Purchase Order and whose address and other details have been provided to the OC in the Supplier Details Form;

Supplier Details Form means the OC's standard supplier details form as completed by the Supplier and provided to the OC;

Supplies means the Goods and/or the Services;

Team means any team of sports persons participating or due to participate in the Games;

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

Transparency Information has the meaning given in Clause 13.5; and

Venue means any location (including public areas, where applicable) at or in which the Games are taking place, at which a Games event

will be staged and/or where access is controlled by CGFP and/or the OC and/or a Games Partner and/or is subject to accreditation.

1.2 In the Contract, unless the context otherwise requires, any reference to:

- (a) "including" or any similar word shall not limit the generality of any preceding words;
- (b) "parties" means the parties to the Contract, and any reference to "party" shall be construed accordingly;
- (c) a "person" includes any individual, company, partnership, joint venture, association, organisation, trust, state or state agency or other similar entity (in each case whether or not having separate legal personality);
- (d) "writing" or "written" means a communication in the form of writing which may be in electronic form or hard copy form;
- (e) the singular includes the plural and vice versa, and use of any gender includes the other genders;
- (f) headings shall be disregarded in the interpretation of the Contract;
- (g) any document to which the Contract refers shall be construed as a reference to such document as amended, varied, supplemented, novated and/or replaced in any way from time to time (provided always that such amendment, variation, supplement, novation or replacement has been agreed by the OC in accordance with these Terms); and
- (h) a statute or statutory provision is a reference to that statute or statutory provision as amended, consolidated, replaced and/or re-enacted from time to time and includes any subordinate legislation from time to time in force made under it.

1.3 In the Contract, unless the context otherwise requires, an obligation imposed on the Supplier shall include an obligation on the Supplier to procure compliance by its Personnel and the Connected Persons (and their Personnel) with such obligation.

2 The Contract between the OC and the Supplier

2.1 The Purchase Order including the Terms constitutes an offer by the OC to purchase Supplies from the Supplier. The Contract shall come into effect upon the Supplier confirming its acceptance in writing or (if earlier) be deemed accepted on the Supplier providing (or beginning to provide) all or part of the Supplies, except that (unless otherwise notified by the OC in writing) such offer shall lapse unless it is not so accepted or deemed accepted within 14 days after the date of such offer.

2.2 The Terms shall apply to all purchases of Supplies by the OC and are deemed incorporated into the Contract to the exclusion of any terms and conditions submitted in any way by or on behalf of the Supplier (except where explicitly agreed otherwise by the OC in writing in the Purchase Order).

2.3 The parties acknowledge and agree that, in entering into any Contract the OC:

- (a) does not give any form of exclusivity or volume guarantee in respect of the purchase of Supplies;

- (b) shall not at any time be prohibited or restricted from purchasing similar or equivalent goods and/or services from an alternative supplier which are the same as or similar to the Supplies to be supplied under this Agreement.

3 Supplier Requirements

3.1 The Supplier shall comply and shall ensure all Connected Persons (and its and their Personnel) comply with:

- (a) the OC Policies;
- (b) all Applicable Laws;
- (c) all visa and immigration requirements for entry and/or work in the United Kingdom; and
- (d) all conditions of access, security and confidentiality requirements applicable at any premises and any Venue where the Contract is performed, including any requirement of the OC to enter into an onsite personnel statement (in the form required by the OC).

4 Delivery of Goods

4.1 The Supplier shall deliver the Goods to the Delivery Address in accordance with the OC's delivery instructions, the Contract (including the Specification) on the Delivery Date (or, if no Delivery Date is specified, within 14 days after the date of issue of the Purchase Order by the OC or as otherwise required by the OC). The OC is not obliged to accept delivery of the Goods before the specified delivery time.

4.2 Time is of the essence for delivery of the Goods.

4.3 The Supplier shall ensure that:

- (a) the Goods are marked and delivered in accordance with the OC's instructions (including, if required by the OC, using the OC's official logistics partner from time to time) and any applicable regulations or requirements of any relevant carrier, and properly packed and secured so as to reach their destination in an undamaged condition;
- (b) each delivery of Goods is accompanied by a delivery note which shows the Purchase Order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered;
- (c) unless otherwise agreed by the OC in writing, all Goods shall be delivered to the Delivery Address during Business Hours with transportation charges and any other applicable delivery charges (including without limitation customs, import and export charges) pre-paid by the Supplier. The OC shall not be obligated to carry out any work or pay any sum other than the Price to enable delivery of the Goods to take place; and
- (d) all Goods are offloaded at the Supplier's own risk at the Delivery Address as directed by the OC.

4.4 The Supplier shall not deliver the Goods in instalments without the OC's prior written consent. If the OC agrees that the Goods are to be delivered by instalments, the Contract shall be treated as a single contract and not severable, and each instalment shall not under any circumstances constitute a separate contract on the terms of the Contract or otherwise.

4.5 The Supplier must immediately notify the OC in writing if it believes at any time that it is unlikely to be able to meet the

Delivery Date. The notice must contain detailed reasons for the anticipated delay or failure and the Supplier's best estimate of the expected delay or achievable level of service. Notification will not relieve the Supplier from any of its obligations under the Contract.

- 4.6 Where the circumstances set out in 4.5 above arise, then, without prejudice to the OC's other rights and remedies, the Supplier shall arrange all such additional resources and do all acts and things (which may include engaging with third parties) to deliver the relevant Goods within such timescales as may be specified by the OC and at no additional cost to the OC. The Supplier shall inform the OC on demand of such additional resource allocation made by it and/or any acts and things being carried out by it in order to remedy the relevant failure.
- 4.7 The Supplier shall on demand provide to the OC any information relating to the Supplies requested by the OC, in such form as is requested by the OC. The Supplier shall give the OC prior written notice of the delivery under the Contract of any element of the Supplies having a hazard to the health and safety of persons or property, identifying those hazards and giving full details of any precautions to be taken by the OC on the delivery of such Supplies and thereafter. The Supplier shall give the OC prior written notice of all requirements and restrictions imposed by governmental and other authorities or persons relating to the possession, use or onward supply of any Goods or other items supplied hereunder.

5 Acceptance of Goods

- 5.1 The OC shall not be deemed to have accepted the Goods until it has had a reasonable time to inspect them following delivery, or, in the case of a latent defect, until a reasonable time after the latent defect has become apparent.
- 5.2 The Supplier shall promptly keep the OC informed of any matter of which it is or reasonably should, as supplier of the Goods, be aware relating to the storage, transportation, handling, assembly or use of the Goods by the OC.

6 Title, Risk and Insurance

- 6.1 Title to Goods shall pass to the OC upon delivery of Goods to or at the Delivery Address, unless payment for Goods is made before delivery, in which case title to the Goods shall pass to the OC once full payment has been made.
- 6.2 Risk in the Goods shall pass to the OC on delivery of such Goods in accordance with the Contract, despite any earlier passing of title to the Goods.

7 Price and Payment

- 7.1 Unless otherwise agreed in writing by the OC, the Price shall be fixed and, subject to Clause 7.2, shall be inclusive of all taxes, duties, costs, expenses and charges (including charges for packaging, packing, insurance and delivery). The OC shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, in which event the Price shall be duly amended.
- 7.2 All sums payable under the Contract are exclusive of VAT.
- 7.3 The Supplier may only invoice the OC on or after delivery of the Goods or completion of the performance of the Services (or if staged payments have been agreed by the OC, after the agreed stage has been completed to the OC's satisfaction in accordance with the Contract). Invoices shall quote the respective Contract and Purchase Order number, details of the Supplies delivered and/or performed and which, if the Supplier is VAT-registered, are valid VAT invoices.

- 7.4 Where the Supplier submits an invoice in accordance with Clause 7.3, the OC will consider and verify it in a timely fashion. Where the OC fails to comply with this Clause above and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 7.5 after a reasonable time has passed.

- 7.5 The OC shall pay all invoices that the OC has determined are valid and undisputed and compliant in all respects with the Contract and which relate to Supplies properly made in accordance with the Contract within 30 days of the date of receipt.

- 7.6 The OC shall accept and process for payment any electronic invoice submitted for payment by the Supplier where it complies with the standard on electronic invoicing. For the purposes of this Clause, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision ((EU) 2017/1870).

- 7.7 If any undisputed sum under the Contract is not paid when due, then, as a substantial remedy for late payment, that sum shall bear simple interest from the due date until actual payment at 2% per annum over the base rate from time to time of the Bank of England.

- 7.8 Should any sums payable by the OC be outstanding, the Supplier is not entitled to suspend deliveries of Supplies or the performance of any other obligation hereunder.

- 7.9 The OC may, upon reasonable prior written notice, set off any amount owed by the Supplier against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the OC.

- 7.10 When the Supplier enters into a contract with any sub-contractor the Supplier shall include in that contract:

- (a) provisions having the same effect as Clauses 7.4 and 7.5 of the Contract; and
- (b) a provision requiring the counterparty to that contract to include in any sub-contract which it awards in connection with the provision of the Supplies under the Contract, provisions having the same effect as Clauses 7.4 and 7.5 and this Clause 7.10.

8 Quality of Goods

- 8.1 The Supplier warrants, represents and undertakes that the Goods will:

- (a) be of satisfactory quality, design, material and workmanship;
- (b) be fit for any purpose held out by the Supplier or made known to the Supplier by or on behalf of the OC prior to or at the time when the Purchase Order was placed;
- (c) be free from defects and any third-party lien, charge, claim, title, interest or other encumbrance;
- (d) conform in all respects with the Contract, the Specification and any sample(s) approved in writing by the OC, the policies and procedures of the OC, and all laws, orders, regulations and by-laws that are applicable to the Supplies;
- (e) not breach the Intellectual Property Rights of any person nor cause the OC or any Commonwealth Games Body to breach the Intellectual Property Rights of any person; and

- (f) not contain anything that is offensive or harmful.
- 8.2 The Supplier shall use its best endeavours to transfer or assign to the OC or otherwise obtain for the benefit of the OC any guarantee, warranty or other confirmation of quality, title or fitness for purpose given by any manufacturer of the Goods in respect of the Goods (or part thereof) to the extent that the same is capable of such transfer or assignment to the OC or otherwise providing such benefit for the OC.
- 9 Provision of Services**
- 9.1 If the Contract is for or includes Services then, the Supplier undertakes, represents and warrants to the OC that the Supplier shall:
- (a) co-operate with the OC, the Games Bodies and any third parties engaged to provide services to the OC, and comply with all reasonable instructions and guidelines of the OC and all health and safety rules and regulations and any other security requirements that apply at any of the OC's premises including the Venues;
 - (b) perform the Services with reasonable care and skill and use sufficient numbers of personnel who are suitably skilled and experienced in accordance with Good Industry Practice to perform the tasks assigned to them in accordance with the Contract;
 - (c) ensure that the Services and any Deliverables conform with all requirements set out in the Contract and the Specification, and that any Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the OC, of satisfactory quality and free from defects in workmanship, installation and design;
 - (d) provide all equipment, tools and vehicles and such other items as are required to provide the Services; and
 - (e) obtain and maintain all necessary licences and consents, and comply with all Applicable Laws, OC Policies and Good Industry Practice and not do or omit to do anything which may cause the OC or any Games Bodies to lose any licence, authority, consent or permission.
- 9.2 The Services must be provided so as to meet the dates set out in the Contract, and if no such date the Services shall be performed as soon as practicable or as required by the OC.
- 10 Remedies of the OC**
- 10.1 Where there is any breach of the Supplier's warranty in Clause 8 (Quality of the Goods) or Clause 9 (Provision of Services) or the Goods or any instalment of the Goods are not delivered at the specified time the OC may (without liability to the Supplier arising out of such action and whether or not all or any part of the Supplies have been accepted by the OC);:
- (a) cancel the Contract (in whole or in part);
 - (b) reject the Goods (in whole or in part) and such Goods shall be at Supplier's cost and risk from the date of rejection;
 - (c) require the Supplier, at the Supplier's expense, within 5 days after receipt of notice from the OC or within 24 hours if during the Games either: (i) to repair the Goods or re-execute the Services; or (ii) to provide a full refund of the Price (if paid);
- (d) refuse to accept any further deliveries or performance of the Supplies;
 - (e) recover from the Supplier any expenditure reasonably incurred by the OC in obtaining substitute supplies from another supplier;
 - (f) carry out at the Supplier's expense any work reasonably necessary to make the Supplies comply with the Contract; and/or
 - (g) claim such damages as may have been incurred by the OC as a result of the Supplier's breach of Contract.
- 10.2 Any remedy under the Contract shall be without prejudice to any other right or remedy which has already accrued, or subsequently accrues, to the OC, unless expressly agreed otherwise.
- 10.3 If the OC exercises any right under Clause 10.1, the OC may at its absolute discretion require the Supplier to collect the relevant Goods forthwith or return the Goods to the Supplier at the Supplier's cost.
- 11 Intellectual Property**
- 11.1 The Supplier acknowledges and agrees that that all Intellectual Property Rights in the Protected Games Property is and shall be, as between the Supplier and the OC, the exclusive property of the OC and will vest in the OC on creation. To the extent necessary, the Supplier hereby assigns (by way of present and future assignment) absolutely all Protected Games Property to the OC. To the extent that any Protected Games Property does not vest in the OC either pursuant to the Contract or otherwise under law, the Supplier shall hold such Protected Games Property in trust for and always for the benefit of the OC.
- 11.2 The Supplier shall not and shall procure that the Connected Persons shall not use any Protected Games Property without the prior written consent of the OC.
- 11.3 The Supplier warrants that use by the OC (and its licensees, assignees, successors and any other person authorised by any of them) of the Games IP or any other Intellectual Property Rights in the Supplies shall not infringe the Intellectual Property Rights of any third party.
- 12 Data Protection**
- 12.1 The Supplier shall comply with its obligations under the Data Protection Legislation.
- 12.2 If the Supplier processes any Personal Data in respect of which the OC is the Data Controller, the Supplier shall enter into a data processing agreement with the OC in such form as the OC shall require (where "Data Controller" and "Personal Data" have the meanings given to them in Data Protection Legislation).
- 13 Confidentiality, Freedom of Information and Transparency**
- 13.1 Without prejudice to any confidentiality undertaking signed by or on behalf of the Supplier before the date of the Contract, each party shall (and, in respect of the Supplier, shall procure all Connected Persons (and its and their Personnel) shall):
- (a) treat all Confidential Information belonging to the other party (and in respect of the OC where it is the disclosing party, the Games Bodies) as strictly confidential;
 - (b) not disclose any Confidential Information of the other party to any person except: (i) to other Connected Persons or Personnel (if bound by

- equivalent obligations of confidentiality) that reasonably need to know the same in connection with the performance of obligations under the Contract; or (ii) if required to be disclosed by Applicable Law or order of a court of competent jurisdiction; and
- (c) not use Confidential Information for any purpose whatsoever other than for the proper performance of the Contract.
- 13.2 Upon termination of the Contract (or earlier if requested by the OC), the Supplier shall ensure that all items or materials containing Confidential Information belong to the OC (or the Games Bodies) in the possession or control of the Supplier and/or the Connected Persons and/or its or their Personnel are destroyed or (at the OC's option) returned to the OC, and that all such Confidential Information stored electronically, digitally or magnetically is erased.
- 13.3 The OC may disclose Confidential Information of the Supplier:-
- on a confidential basis to any Central Government Body for any proper purpose of the OC or of the relevant Central Government Body;
 - to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - to the extent that the OC (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - on a confidential basis to the CGFP or a professional adviser, consultant, supplier or other person engaged by any of the entities described in this Clause 13.3 (including any benchmarking organisation) for any purpose relating to or connected with the Contract;
- 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 OC under this Clause 13 (Confidentiality, Freedom of Information and Transparency).
- 13.4 If requested by the OC, the Supplier shall procure that each of the Connected Persons that has access to Confidential Information of the OC shall execute a confidentiality undertaking in a form required by the OC, and the Supplier shall promptly deliver each such executed undertaking to the OC.
- 13.5 The Supplier acknowledges that the OC is subject to the requirements of the FOIA and the EIRs and that the content of the Contract, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the OC and Commercially Sensitive Information (together the **"Transparency Information"**) are not Confidential Information.
- 13.6 Notwithstanding any other provision of the Contract, the Supplier hereby gives its consent for the OC to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted).
- 13.7 If the OC believes that publication of any element of the Transparency Information would be contrary to the public interest, the OC shall be entitled to exclude such information from publication.
- 13.8 The Supplier agrees that any Information it holds that is reasonably relevant to or that arises from the provision of the Supplies shall be provided to the OC on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The OC may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information and Confidential Information) publish such Information.
- 13.9 The Supplier shall (and shall procure that its sub-contractors (if any) shall:
- provide all necessary assistance and cooperation as reasonably requested by the OC to enable the OC to comply with its obligations under the FOIA and EIRs;
 - transfer to the OC all Requests for Information relating to the Contract, the Supplies, any Games Body that it receives as soon as practicable and in any event within two (2) Business Days of receipt;
 - provide the OC with a copy of all Information held on behalf of the OC which is requested in a Request for Information and which is in its possession or control in the form that the OC requires within five (5) Business Days (or such other period as the OC may reasonably specify) of the OC's request for such Information; and
 - not respond directly to a Request for Information addressed to the OC without the approval of the OC.
- 13.10 The Supplier acknowledges that the OC may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The OC shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract)) the OC shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is except from disclosure in accordance with the FOIA and EIRs.
- 13.11 For the avoidance of doubt, the OC shall not be bound by any duty of confidentiality in respect of any gifts or gratuities offered or provided to or by the OC. The Supplier acknowledges that the OC are permitted to make all or any details of any gift or gratuity offered or accepted publicly available without first consulting with the Supplier.
- ## 14 No Marketing Rights
- 14.1 The Supplier agrees that, notwithstanding the terms of the Contract and any other rights and obligations it has under the Contract, it shall not, and must not authorise, permit, or allow or purport to authorise or permit any other person including any Connected Person:
- to in any way reproduce or use any Protected Games Property without the express prior written consent of the OC, and then only strictly in accordance with the terms of such consent;
 - represent, promote or advertise, directly or indirectly, that the Supplier or its products or services (or those of any Connected Person) are in any way associated with the Games, any Games Body or any Team, or that any product or service provided has been endorsed or approved

by any Games Body or any Team, including by publishing or issuing any statement (factual or otherwise) about the Games or the provision of products or services in respect of the Games, to a Games Body or to a Team, without the prior written approval of the OC;

- (c) undertake any form of Ambush Marketing (but notwithstanding the foregoing the Supplier shall cooperate (and shall procure that all Connected Persons cooperate) with the OC in its endeavours to minimise Ambush Marketing activities;
- (d) cause to be done, or permit anyone reasonably within the Supplier's control to do, anything which might damage or endanger the validity or distinctiveness of, or the goodwill in, any Protected Games Property;
- (e) do anything which would have an adverse effect on or embarrass any Games Body, Team, or any Games Partner; or
- (f) hold itself out as an agent or representative of any Games Body, Team or any Games Partner unless otherwise agreed in writing; or
- (g) contact any Games Body, Team or Games Partner in relation to any marketing activities relating to the Games or any matters contemplated by this Agreement.

14.2 The Supplier shall:

- (a) promptly notify the OC if it becomes aware of any actual or suspected Ambush Marketing activities of other persons including any third party; and
- (b) subject to Clause 14.1, use its best endeavours to ensure that persons with whom it deals or who act on its behalf do not engage in Ambush Marketing.

15 Liability

15.1 Nothing in the Contract shall limit or exclude either party's liability for fraud or fraudulent misrepresentation or for death or personal injury caused by negligence, or for any liability which cannot legally be excluded or limited.

15.2 Nothing in the Contract shall exclude or limit the Supplier's liability under the indemnity at Clause 16 (Indemnity).

15.3 Subject to Clause 15.1 and Clause 15.2, neither party is liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Contract for any indirect, special or consequential losses or damage, in each case howsoever arising.

15.4 Subject to Clause 15.1 and Clause 15.2, each party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Contract shall in no circumstances exceed 120% of the Price paid or payable (had the Contract not been breached) under the Contract.

15.5 The Supplier agrees that it shall only be entitled to enforce any claim it has under or connection with the Contract against the OC and no other Games Body.

16 Indemnity

In addition to any other remedy available to the OC, the Supplier shall indemnify, defend and hold harmless the OC and the Games Bodies, and their respective directors, officers and employees in full and on demand, from and against any and all direct or indirect liabilities, claims,

demands, damages, losses or expenses (including reasonable legal and other professional adviser's fees and disbursements), interest and penalties incurred by them howsoever arising whether wholly or in part, and whether or not such losses or the consequences were foreseeable at the date of the Contract, resulting directly or indirectly from any claim made against the OC or any Games Body for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of Goods, or receipt, use or supply of the Services.

17 Insurance

The Supplier shall at its own cost effect and keep in place with reputable insurers such insurance policies as are appropriate and adequate having regard to its obligations and liabilities under the Contract. The Supplier shall provide the OC copies of such policies (and evidence of payment of the relevant premiums) on the OC's written request.

18 Termination and cancellation

18.1 The Contract shall automatically terminate on:

- (a) the completion of the final delivery of Supplies ordered under it; or
- (b) on 31 December 2022 (or such date as the parties may agree in writing),

whichever is the earlier.

18.2 Either party may, without prejudice to its other rights or remedies, terminate the Contract with immediate effect without incurring any liability to the other party by giving notice in writing to the other party at any time:

- (a) if the other party commits a material breach of the Contract and (if such breach is capable of remedy) fails to remedy the breach within 14 days after receiving the non-defaulting party's request in writing to do so;
- (b) if the other party is subject to an Insolvency Event;

18.3 The OC may, without prejudice to its other rights or remedies, terminate the Contract with immediate effect without any incurring any liability to the Supplier by giving notice in writing to the Supplier at any time:

- (a) if the Supplier or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010;
- (b) commits any money laundering offences listed in the Public Contract Regulations 2015; or
- (c) if the OC ceases to be responsible for the organisation of the Games for whatever reason (including if the CGF withdraws the right to host the Games from the OC or if the Games are cancelled).

18.4 The OC, for any reason, may without liability to the Supplier, cancel a Contract in respect of all or part only of the Supplies at any time by giving the Supplier at least 7 days' notice in writing.

18.5 Following either: (i) termination of the Contract; or (ii) the supply of all or any part of the Supplies as set out in Clause 18.4:

- (a) the OC may, at the Supplier's risk and expense, return any Goods which have been delivered, on the basis that a full refund for Goods so returned shall promptly be paid by the Supplier;

	(b) the OC's sole liability in respect of the Supplies shall be to pay to the Supplier a fair and reasonable price for all Supplies provided to the satisfaction of the OC before the date of termination, provided that the Supplier submits a valid invoice for such price within 60 days after such date; and		
	(c) the Supplier shall deliver up to the OC, or otherwise dispose of at the OC's direction, all Confidential Information of the OC, Deliverables and any other Protected Games Property (including data) in the possession or under the control of the Supplier, any Connected Person, or its or their Personnel.		
18.6	In the event of a termination of the Contract by the OC in accordance with Clause 18.2 or Clause 18.3, the Supplier shall not be entitled to any payment for the Supplies and the OC shall have the right to reclaim any monies already paid by the OC to the Supplier for the Supplies.	20.1	A party will not be in breach of the Contract nor liable for any failure or delay in performance of any obligations under the Contract (and the date for performance of the obligations affected will be extended accordingly) as a result of a Force Majeure Event, provided that such Party complies with the obligations set out in this Clause 20.19 (Force Majeure) Save as provided in Clause 20.4, a Force Majeure Event will not entitle either party to terminate the Contract.
18.7	Termination of the Contract for whatever reason shall not affect either party's rights or remedies that have accrued prior to the date of termination.	20.2	The party affected by the Force Majeure Event (" Affected Party ") shall immediately notify the other in writing of the matters constituting the Force Majeure Event and shall keep that party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure Event continues.
18.8	On the expiry or termination of the Contract for any reason whatsoever,	20.3	The Affected Party shall take all reasonable steps available to it to minimise its effects on the performance of its obligations under this Agreement.
(a)	Subject to Clause 18.7, the relationship of the parties shall cease save as (and to the extent) provide for in this Clause 18.8;	20.4	If the Force Majeure Event continues for longer than fifteen days the OC may, whilst the Force Majeure Event continues immediately terminate the Contract by notice in writing to the Supplier, on a date to be specified in that notice.
(b)	the provisions of Clauses 1, 8 (Quality of Goods), 9 (Provision of Services), 10 (Remedies of the OC), 11 (Intellectual Property) 12 (Data Protection), 13 (Confidentiality, Freedom of Information and Transparency), 15 (Liability), 18.5, 18.6, 18.7, 18.8, 19 (TUPE), 24 (Notices) to 27 (Governing Law and Jurisdiction (inclusive) and any provision which expressly or by implication is intended to come into or remain in force on or after termination will continue in force and effect.	21	Pandemic For the purposes of this Clause " Pandemic " means a widespread national outbreak of infectious disease (including the disease known as coronavirus disease (COVID-19)) as determined by the World Health Organisation.
19	TUPE	21.1	The Parties recognise that:
19.1	It is the parties' intention that neither the commencement nor the termination of the Contract or of any of the Services will give rise to a relevant transfer pursuant to the Transfer Regulations.	(a)	a Pandemic and its effects may delay or prevent the performance by either party of some or all of its obligations under this Contract; and
19.2	In addition to any other remedy available to the OC, the Supplier shall indemnify, defend and hold harmless the OC, the Games Bodies and any New Supplier and their respective directors, officers and employees in full and on demand, from and against any and all Employment Liabilities howsoever arising whether wholly or in part arising directly or indirectly foreseeable or not, which are or which may be incurred, suffered or paid by the OC, any of the Games Bodies or any New Supplier in relation to any individual who claims that their employment or liabilities in connection with their employment transfer to the OC, any of the Games Bodies or a New Supplier under the Transfer Regulations including any Employment Liabilities relating to the termination of employment of any such individual.	(b)	the rights set out in this Clause 21 (Pandemic) should only be exercised by the relevant party in good faith, in extreme circumstances and where the relevant adverse effects of the Pandemic have materially changed from the circumstances during the time of the order or quotation process for the Contract and at the date of the Contract.
20	Force Majeure	21.2	In such circumstances, the relevant party shall take all reasonable steps to mitigate any existing or reasonably foreseeable adverse effects of the Pandemic upon the performance of its obligations provided in the Contract.
	For the purposes of this Clause, " Force Majeure Event " means an event beyond the reasonable control of the affected party including, act of God, fire, flood, abnormal weather conditions, war, riot, civil commotion, terrorism, but excluding, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services or any strikes or industrial dispute relating to the Supplier and/or	21.3	If, despite such steps as provided by Clause 21.2, the relevant party's performance of its obligations under the Contract is and continues to be adversely affected, the relevant party shall advise the other party in writing of such adversely affected obligation(s), providing reasonable evidence for the same. Provided that the affected party continues to discharge its obligations in Clause 21.2 and further to such notification, if the affected party is able to demonstrate to the other (both parties acting reasonably and in good faith) that it is being, has been or will be prevented from performing its obligations under the Contract as a result of the Pandemic, then for so long as such adverse effect continues:
		(a)	the affected party shall not be deemed to be in breach of the Contract nor otherwise liable for late or non-performance of an obligation under the Contract, where and to the extent that it fails to perform any such obligation(s) under the Contract due to the effects of the Pandemic; and

- (b) the parties shall then work together in good faith to consider how (if at all) any such adverse effects on the performance of the Contract are to be addressed in the Contract.

21.4 In the event that the Games are cancelled or postponed as a result of the adverse effects of a Pandemic, then the OC shall be entitled to terminate the Contract on the grounds that such termination is a termination by reason of unresolved Force Majeure Event in accordance with Clause 20.4. Upon termination of the Contract following any cancellation of the Games, the OC shall pay the Supplier for any Supplies properly provided by the Supplier in accordance with the Contract up to the date of termination but shall have no further liability to the Supplier.

22 Compliance

22.1 Prevention of Modern Slavery

- (a) In performing its obligations under this Contract, the Supplier:
 - (i) shall ensure that it, its officers, employees, sub-contractors and other persons associated with it, complies with the Modern Slavery Act 2015 and any anti-slavery and human trafficking policy that the OC has in place from time to time;
 - (ii) represents and warrants that, at the date of the Contract, neither the Supplier nor any of its Personnel:
 - (A) has been convicted of any offence involving slavery and human trafficking anywhere in the world; and/or
 - (B) is or has been notified that it may be subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking;
 - (iii) shall maintain a complete set of records of all documentation and materials provided to the OC in connection with the Contract and shall implement procedures for its own Personnel, suppliers, sub-contractors, and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains. The Supplier shall make records available for the OC upon reasonable request; and
 - (iv) shall notify the OC as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.

- (b) The Supplier shall immediately notify the OC as soon as it becomes aware of a breach of any of the requirements of Clause 22.1(a).

22.2 Bribery Offences

- (a) The Supplier undertakes that it:
 - (i) has not committed an offence under Sections 1, 2, 6 or 7 of the Bribery Act 2010 (a "**Bribery Offence**");
 - (ii) has not been formally notified that it is subject to an investigation relating to alleged Bribery Offences or prosecution under the Bribery Act 2010;
 - (iii) is not aware of any circumstances that could give rise to an investigation relating to an alleged Bribery Offence or prosecution under the Bribery Act 2010; and
 - (iv) will cooperate to the fullest extent with the OC and/or any authorities in any investigation into suspected or alleged Bribery Offences and assist the OC in complying with any requests from relevant authorities.
- (b) The Supplier agrees that it:
 - (i) has in place, and shall maintain until termination of the Contract, adequate documented procedures designed to prevent persons associated with the Supplier (including an employee, sub-contractor or agent or other third party working on behalf of the Supplier or any Supplier Affiliate) (an "**Associated Person**") from committing a Bribery Offence (including the provision of anti-bribery and anti-corruption training);
 - (ii) shall comply with the Bribery Act 2010 and shall not, and shall procure that no Associated Person shall, commit any Bribery Offence or any act which would constitute a Bribery Offence;
 - (iii) shall not do or permit anything to be done which would cause the OC, any Games Body or any of its or their employees, sub-contractors or agents to commit a Bribery Offence or incur any liability in relation to the Bribery Act; and
 - (iv) shall notify the OC immediately in writing if it becomes aware or has reason to believe that it has, or any of its Associated Persons have, breached or potentially breached any of the Supplier's obligations under this Clause 22.2. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.

22.3 Equality

The Supplier shall and shall procure that all Connected Persons and all of its and their Personnel shall at all times comply with all Applicable Laws, including all United Kingdom legislation relating to all forms of discrimination including (without limitation): the Equality Act 2010; and/or

any statutory modifications or re-enactments thereof relating to discrimination in employment.

- 22.4 Any breach by the Supplier of Clauses 22.1, 22.2 or 22.3 shall be deemed a material breach of the Contract which is incapable of remedy.

23 Audit and Provision of Information

- 23.1 The Supplier shall allow the OC and/or its agents to access, inspect and audit the Supplier's records, accounts and other relevant information and premises (including the making and removal of copy documents) at reasonable times on reasonable prior notice to the extent this is reasonably required for the purpose of verifying the Supplier's compliance with its obligations under the Contract (including under Clause 22 (Compliance)). Where such access, inspection or audit is required by a governmental authority or regulator, the Supplier shall allow such inspection or audit at any time and there shall be no limit to the number of such inspections or audits that can be undertaken.

- 23.2 The OC shall pay the auditor's reasonable costs and otherwise bear its own costs in connection with the audit or inspection, unless the records show that the Supplier has been overcharged by 5% or more or the Supplier is in material breach of the Contract, in which case the reasonable cost of the audit shall be borne by the Supplier.

- 23.3 When conducting audits, the OC shall comply with the Supplier's reasonable directions in order to minimise disruption to the Supplier's business and to safeguard the confidentiality of the Supplier's other Confidential Information and that of the Supplier's other customers.

24 Notices

- 24.1 Any notice to be given under the Contract shall be in writing, in English and signed by or on behalf of the party giving it and shall be served by hand or registered post (or, if posted to or from the United Kingdom, an internationally recognised courier service) to:

- (a) in the case of the Supplier, the Supplier's address specified on the Purchase Order;
- (b) in the case of the OC: the registered office of the OC (marked, in either case, for the urgent attention of the OC's Chief Executive with a copy to Head of Legal); or
- (c) such other address as the recipient may designate in accordance with this Clause.

- 24.2 A notice shall be deemed to have been received:

- (a) if delivered by hand, at the time of delivery; and
- (b) if sent by registered post, 48 hours after posting (or, if sent by an internationally recognised courier service, 48 hours from the date of delivery to the courier service);

provided that, where receipt occurs outside Business Hours, notice shall be deemed to have been received at the start of Business Hours on the next following Business Day.

25 General

- 25.1 The Supplier may not, without the OC's prior written approval, assign, novate, transfer, sublicense, subcontract, charge or otherwise deal in the Contract or any of its rights or obligations arising pursuant to the Contract (in whole or in part). Where any such approval is granted the Supplier shall remain liable to the OC for the performance of all obligations (except for the OC's) under the Contract. Nothing in the Contract shall restrict the OC from assigning,

novating, transferring, sublicensing, subcontracting, charging or otherwise dealing in the Contract or its rights or obligations under it (in whole or in part) as it sees fit in its sole discretion from time to time.

- 25.2 The Contract contains the entire agreement of the parties in relation to the subject matter hereof. Each party acknowledges that, in entering into the Contract, it is not relying on any representation or other assurance except as expressly set out or referred to in the Contract, provided that nothing in the Contract shall limit or exclude any liability for fraud or fraudulent misrepresentation.

- 25.3 All warranties, conditions, terms and representations not set out in the Contract whether implied by statute or otherwise are excluded to the extent permitted by law.

- 25.4 No breach of any provision of the Contract shall be waived or discharged except with the express written consent of the parties. No failure to exercise or delay in exercising any right or remedy under the Contract shall operate as a waiver of that or any other right or remedy.

- 25.5 If a provision of the Contract is, becomes or is found to be illegal, invalid or unenforceable (in whole or in part), such provision shall be deemed severed, and the legality, validity and enforceability of the remainder of the Contract shall not be affected.

- 25.6 Nothing in the Contract constitutes a partnership, relationship of agency or contract of employment between the parties.

- 25.7 The Contract shall be enforceable against the Supplier by all Games Bodies. Otherwise, the Contract shall not be enforceable (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) by anyone other than the parties to the Contract.

- 25.8 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

The Contract shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representatives of the parties.

26 Dispute Resolution

The parties shall use reasonable endeavours to resolve any dispute or claim arising in connection with the Contract (including any dispute regarding pre-contractual negotiations, the existence, validity or termination of the Contract or the consequences of non-existence or invalidity of the Contract) ("Dispute") by prompt discussion in good faith at a managerial level appropriate to the Dispute. Such discussion shall not be a pre-condition to the commencement of legal proceedings before any court. Unless the Contract has already been terminated, the parties shall continue to perform their obligations under the Contract regardless of the nature of the Dispute. The Supplier shall continue to provide the Supplies in accordance with the Contract (unless the OC requests in writing that the Supplier does not do so) without delay or disruption while a dispute or disagreement is being resolved

27 Governing Law and Jurisdiction

The Contract and any non-contractual obligations arising out of or in connection with the Contract and any Dispute shall be governed by, and construed in accordance with, the law of England and Wales. Each party irrevocably submits for all purposes in connection with the Contract any Dispute to the exclusive jurisdiction of the courts of England.