



Glasgow 2014 Limited-Standard Terms of Procurement (Company)

1 Definitions

1.1 In this Contract:

Affiliate means any company or other entity which is at the relevant time a subsidiary or holding company of such person or a subsidiary of any such holding company (the words "subsidiary" and "holding company" having the meanings given in section 1159 and Schedule 6 of the Companies Act 2006);

Ambush Marketing means any advertising, communications or other activity undertaken by a person which may reasonably imply that the person is associated or affiliated with the Games, any Commonwealth Games Body, the Scottish Commonwealth Games Team, or any event organised by a Commonwealth Games Body 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 by the OC to refer to publicly;

Branding means brands, logos, trade marks, trade names or other representations (whether relating to the Supplies, the Supplier, a Connected Person or anyone or anything else);

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

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

CGF means the Commonwealth Games Federation of 2nd Floor, 138 Piccadilly, London W1J 7NR;

CGS means Commonwealth Games Council for Scotland Limited, a Company registered with Company number SC302375 and having its registered office at University of Stirling, Stirling, FK9 4LA, Scotland;

Commonwealth Games Associations or CGAs mean any sports body approved as a Commonwealth Games Association by the CGF in accordance with the Constitution of the CGF;

Commonwealth Games Body means the CGF, CGS, any CGA, the OC and any national or international organisation which organises or controls a sport included in the Commonwealth Games or which is responsible for sending a team to compete in the Commonwealth Games;

Completion Date means the completion date for the Services as set out in the Purchase Order;

Confidential Information means information (in any form whatsoever) that is confidential to the OC or to any third party to whom the OC owes a duty of confidentiality (including the provisions of the Order) and the terms of this Contract, but excluding Confidential Information which, at the time of its disclosure by the OC, is in the public domain otherwise than by breach of the terms of this Contract or law;

Connected Persons means any body 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 consisting of the Purchase Order, these Terms and any other documents specified in the Order or notified in writing by the OC to the Supplier in the Purchase Order;

Data Protection Legislation means the Data Protection Directive (95/46/EC) and any equivalent national laws;

Games means the XX Commonwealth Games to be held principally in Glasgow from 23rd July to 3rd August 2014;

Goods mean any goods, products, materials or items (including any instalment or any part of them) that are the subject of the Order or supplied in the course of providing the Services;

Indemnified Parties means the OC, and the CGF and the OC's and the CGF's Personnel;

Insolvency Event means the Supplier (a) enters into any arrangement with its creditors; or (b) is the subject of any process enforced against any part of its undertaking or assets; or (c) is unable to pay or has no reasonable prospect of being able to pay its debts within the meaning of sections 123, 267 and 268 of the Insolvency Act 1986 (as applicable); or (d) is the subject of, winding-up, bankruptcy or any other insolvency proceedings; or (e) has a receiver, manager, or administrator appointed over all or any part of its undertaking or assets; or (f) takes, suffers or is the subject of (or proposes to take or is threatened with) any similar or analogous action, event or proceedings in any jurisdiction; or (g) ceases, or threatens to cease, to carry on its business in the normal course;

Intellectual Property Rights means any and all copyright, database rights, rights in designs, trade marks, domain names, goodwill, patents, rights in confidential information and any other intellectual property 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 rights or forms of protection which now, or will in the future, subsist in any part of the world;

Key Personnel means the individuals specified (if any) by the OC on the Purchase Order to carry out the Services;

Losses means any liabilities, losses and damage, claims, actions, demands, costs, charges and expenses of any nature whatsoever, including any legal fees or other costs incurred by a person in enforcing its rights under this Contract;

Materials means all materials and Works (in whatever form, including text, visual materials, information and software), or part of the same, created by or for the Supplier as part of or in connection with the provision of the Supplies (excluding materials or works, or part of the same, comprising Intellectual Property Rights subsisting before the date of this Contract and developed independently of the Supplier's obligations under this Contract);

OC means Glasgow 2014 Limited a company established under the Companies Acts (No.SC325245) as the Organising Committee of the XX Commonwealth Games to be held in Glasgow in 2014 and having its registered office at 5th Floor, Monteith House, 11 George Square, Glasgow, G2 1DY;

OC Property means all Games related Intellectual Property Rights of the OC including, without limitation, any trademarks, copyright or design rights owned by the OC, or the CGF, including any words, phrases, mascots, slogans, symbols or images used by the OC in relation to the Games and all rights conferred on the OC under agreement with the CGF;

Order means an order placed by the OC for the delivery of the Supplies in writing (including, for these purposes, by email), incorporating these Terms and as referred to in an applicable Purchase Order;

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;

Premises means the location(s) where the Supplies are to be delivered, as specified in the Order (or advised by the OC to the Supplier within a reasonable time before such delivery);

Protected Marks means any trade marks, trade names, registered design right, logos or other Intellectual Property Rights of any Commonwealth Games Body, including marks and designs relating to the Games, any Commonwealth Games Body, the words "Commonwealth Games", "Glasgow 2014", "Queen's Baton Relay" (and their plurals) and/or any other word(s), motto, symbol or representation relating to the Games;

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

Purchase Order means the document setting out the Order (which document shall be valid only if validly signed on behalf of the OC and bears a valid purchase order number) and such attachments (if any) to the same as may be agreed in writing by the OC;

Service Levels means those standards of performance (if any) incorporated in the Order to be achieved by the Supplier in providing the Supplies;

Services means any work or services (or any part of them) to be provided by the Supplier, as described in the Order;

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

Supplier means the person that is to provide the Supplies under this Contract, as specified in the Purchase Order and whose registered number, registered 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 in connection with the OC's first order for the purchase of goods and/or services from the Supplier;

Supplies means the Goods and/or the Services, as applicable according to the Order;

Terms means these standard terms and conditions of procurement for Goods and/or Services;

Venue means a venue (including any public area) at, in or through which an event (whether or not a sporting event) held as part of or in connection with the Games is to be held and any official training venue of the Games, and includes any construction site at which such venue is being constructed; and

Works means all written materials, artworks, copyright works, plans, concepts, ideas or other subject matter created, developed or conceived by or on behalf of the Supplier in the course of performing the Services and/or other obligations under the Contract which are related or connected with the activities of the OC and or the Games, including, without limitation, preliminary and final drafts, texts, drawings, sketches, performances, slides, photographs, negatives, videos, films, banners, signs, music, computer programming, computer software and multimedia materials or other associated materials.

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

- (a) a "clause" is to a clause of these Terms;
- (b) "including", other or any similar word shall not limit the generality of any preceding words;
- (c) "parties" means the parties to this Contract, and any reference to "party" shall be construed accordingly;
- (d) a "person" includes any individual, company, partnership, joint venture, association, organisation, trust, state or state agency (in each case whether or not having separate legal personality);
- (e) "writing" or "written" does not include email;
- (f) the singular includes the plural and vice versa, and use of any gender includes the other genders;
- (g) headings shall be disregarded in the interpretation of this Contract;
- (h) any document to which this 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; and
- (i) 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 this 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 with such obligation.

2 The Contract between the OC and the Supplier

2.1 The Order constitutes, but only if confirmed by a Purchase Order, an offer by the OC to purchase Supplies from the Supplier, which shall be deemed to have been accepted on the Supplier's either confirming its acceptance in writing duly signed by or on behalf of the Supplier or 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 so 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 to the exclusion of any terms and conditions submitted in any way by or on behalf of the Supplier despite any contrary provisions in such conditions, and the Supplier hereby waives any right that it otherwise might have to rely on any other terms and conditions.

2.3 No variation of this Contract shall have effect unless expressly agreed in writing and signed by the duly authorised representatives of the OC and the Supplier, and the OC shall not be liable for any charges or costs relating to any changes to the Supplies or additional Supplies unless such changes are so agreed.

2.4 The Supplier acknowledges that the OC may conduct at any time during the term of this Contract security, police and background checks on the Supplier and the Personnel. Subject to the rest of this clause, the Supplier must ensure that it and any Personnel comply with the OC security procedures as set out by the OC in its absolute discretion from time to time. The Supplier acknowledges that if any Personnel refuse to provide consent to the security procedures, the Supplier must withdraw the person, and where necessary for the provision of Services under this Contract, the Supplier must provide another suitably qualified applicant who is willing to provide consent as required by the OC.

2.5 The Supplier agrees to provide promptly to the OC all information and consents of any Personnel requested by the OC in writing and which the OC acting reasonably, considers necessary to facilitate the carrying out of any probity and security checks.

2.6 In the event that any of the Supplier's Personnel or any Connected Persons require immigration permission to provide the Supplies in the United Kingdom, the Supplier must, or will procure that the Connected Persons must:

- (a) arrange all necessary visa documentation and satisfy all immigration conditions to enable such Personnel or Connected Persons to provide the Supplies;
- (b) not permit any such Personnel or Connected Persons to provide the Supplies to the OC until all necessary visa documentation and immigration conditions have been arranged to the satisfaction of the relevant United Kingdom authorities;
- (c) provide the OC with documentary evidence to prove that that any such Personnel or Connected Persons have immigration permission to provide the Supplies;
- (d) notify the OC immediately of any change to any such Personnel's or Connected Persons immigration status;
- (e) notify the OC of any change in circumstances which may affect such Personnel's or Connected Persons' right to provide the Supplies in the United Kingdom.

2.7 The parties agree that any breach by the Supplier of clause 2.6 shall be deemed to be a material breach of this Contract which is not capable of remedy for the purposes of clause 13.2(a).

3 Delivery

3.1 The Supplier shall deliver the Supplies to or at the Premises in accordance with the instructions and date(s) specified in the Order (or, if no date is specified, within 14 days after the date of the Order or such earlier time as may be reasonable in all the circumstances). Time is of the essence for delivery of the Supplies.

3.2 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 the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course; and
- (b) each delivery of Goods is accompanied by a delivery note which shows the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

3.3 Unless otherwise agreed by the OC in writing, all Goods shall be delivered to the Premises during Business Hours with transportation charges and any other applicable charges pre-paid by the Supplier. The OC shall not be obliged to carry out any work to enable delivery of Supplies to take place. Except where expressly agreed in writing to the contrary, the Supplier shall at its own cost provide all materials, parts, components and replacements and all computer programs needed to provide the Supplies. The Supplier shall off-load Goods at its own risk, as directed by the OC.

3.4 The OC shall afford the Supplier such access to the OC's premises and/or provide such additional information, records and other materials in its possession as may reasonably be required by the Supplier to provide the Supplies.

3.5 The OC shall not be deemed to have accepted the Goods until it has had a reasonable period of time to inspect them following delivery or, if later, within a reasonable period of time after any latent defect in them has become apparent.

3.6 The Supplier shall on demand provide to the OC, without charge, copies of the Materials, available technical data, safety data, technical bulletins and other appropriate information and material relating to the Supplies. The Supplier shall give the OC prior written notice of the delivery under this Contract of any Goods 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 Goods and their subsequent storage or handling. The Supplier shall notify the OC in writing of all requirements and restrictions imposed by governmental and other authorities or persons relating to the possession, use or onward supply of the Goods.

3.7 If this Contract requires the Supplier to perform any Services at the Premises, the Supplier shall comply with all applicable laws and governmental and works regulations and all reasonable conditions of access and other requirements (e.g. security and confidentiality requirements) imposed by the Premises' owner(s), and shall indemnify each Indemnified Party on demand against any Losses incurred or suffered by such Indemnified Party as a result of or in connection with any failure to do so.

3.8 If the Supplies are to be delivered by instalments, this Contract shall be treated as a single contract and not severable.

4 Title, risk and insurance

4.1 Title to the Goods shall pass to the OC upon delivery of the Goods, unless payment for the Goods is made before delivery, in which case title shall pass to the OC once full payment has been made.

4.2 Risk in the Goods shall only pass to the OC upon acceptance of the Goods in accordance with this Contract, despite any earlier passing of title to the Goods.

4.3 The Supplier shall accept risk in any property of the OC which the Supplier removes from the Premises in performing this Contract.

4.4 The Supplier shall, without prejudice to its obligations under this Contract or otherwise at law, at its own cost effect and maintain for the term of this Contract (and thereafter in compliance with good industry practice and applicable laws) insurance in an adequate amount (as may reasonably be expected to be maintained by a competent supplier experienced in providing supplies equivalent to the Supplies) and with a reputable insurer to cover all risks of and incidental to this Contract, including any risk in the Goods before such risk passes under clause 4.2 above. The Supplier shall, on request, supply to the OC a copy of each insurance policy effected under this Contract.

5 Price and payment

5.1 The Price shall, unless otherwise agreed in writing by the OC, be in sterling and exclusive of VAT, but inclusive of all other taxes, duties, costs and charges (including charges for packaging, packing, insurance and delivery to the Premises). The OC shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier.

5.2 The OC shall pay all invoices that are in the OC's reasonable opinion valid, correct and compliant in all respects with this clause 5 within 20 days of the date of receipt of an invoice from the Supplier (or such greater and/or recurring period as the parties may agree in writing). This obligation shall be subject to any withholding obligations imposed on the OC by any authority having jurisdiction over this Contract. The OC reserves the right to deduct from any monies due or becoming due to the Supplier any monies due from the Supplier to the OC, whether in respect of the Order or otherwise.

5.3 Invoices may be rendered only after the Supplies have been correctly delivered in accordance with clause 3. The Supplier must issue invoices which quote the

respective Order number and which, if the Supplier is VAT-registered, are valid VAT invoices.

5.4 The Supplier shall be liable for payment of all tax and National Insurance contributions payable in the course of their business. The Supplier hereby undertakes to indemnify the OC in respect of any taxation, National Insurance or other costs, claims or liabilities (including legal costs) including any claims for unfair dismissal, breach of contract, discrimination, personal injury, by virtue of the fact that the Supplier is deemed to be an employee of the OC or by virtue of the fact that Personnel associated with the Supplier's or any Connected Persons businesses are deemed to be employees of the OC.

5.5 If any undisputed sum under this Contract is not paid when due, then, as a substantial remedy for late payment, that sum shall bear interest from the due date until actual payment at 3% per annum over the base rate from time to time of the Bank of England. Should any sums be outstanding, the Supplier is not entitled to suspend deliveries of Supplies. No payment shall be made for rejected Goods.

5.6 The OC may set off any amount it owes the Supplier under this Contract against any amount that the Supplier owes it under this Contract or under any other agreement or arrangement with it. However, the Supplier must not set off any amount the OC owes it under this Contract against any amount that it owes the OC under this Contract or under any other agreement or arrangement with the OC.

6 Quality

6.1 The Supplier warrants, represents and undertakes that the Supplies 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 in writing (including, for these purposes, email) at the time when the Order is 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 Order and any other reasonable instructions of the OC and the Specification (or sample approved in writing by the OC) and all laws, orders, regulations and bye-laws that are applicable to the Supplies;
- (e) be provided in a proper and efficient manner by appropriately qualified, trained and experienced personnel under proper management and supervision, with all due care, skill and diligence, in accordance with good industry practice and to such high standard of quality as it is reasonable for the OC to expect in all the circumstances from a competent supplier experienced in providing supplies equivalent to the Supplies;
- (f) be carried out by the Key Personnel (if any);
- (g) not contain anything that is offensive or harmful, nor bring (nor will the Supplier bring) the OC, any other Commonwealth Games Body or the Games into disrepute; and
- (h) meet the Service Levels (if any).

6.2 The OC's rights under this Contract are in addition to the statutory provisions implied in favour of the OC by the Sale of Goods Act 1979 and/or the Supply of Goods and Services Act 1982.

6.3 The Supplier shall comply with any procurement, equal-opportunity, diversity, environmental and sustainability policies of the OC that are notified by the OC to the Supplier from time to time or published on the OC's website from time to time.

7 Intellectual property

7.1 In consideration of payment of the Price, the Supplier hereby unconditionally and irrevocably:

- (a) grants and assigns to the OC absolutely free from any liens, charges or encumbrances all and whole its entire right, title and interest (whether vested, contingent or future), including all Intellectual Property Rights, present and (to the extent permitted by law) future, in and to the Materials and to hold the same to the OC absolutely and throughout the world for the full period during which such rights subsist (including all renewals, revivals, reversions and extensions of the same) and thereafter (to the fullest extent possible) in perpetuity;
- (b) to the extent that Intellectual Property Rights other than those assigned to the OC under clause 7.1(a) are required for the OC's use of the Supplies, grants (or, to the extent not owned or controlled by the Supplier, shall, where reasonably practicable, procure the unconditional, irrevocable grant in writing by the relevant third-party rights-holder(s) to the OC of) a royalty-free, non-exclusive and perpetual licence (or, where applicable, authorised sub-licence) to use, reproduce, maintain and modify such rights, together with the right to sub-licence, transfer, novate or assign such licence (or sub-licence) to the CGF and/or the OC's nominee at no cost to the OC; and
- (c) waives and undertakes not to assert, and shall procure that all Connected Persons involved in the creation or production of the Materials shall (in writing) unconditionally and irrevocably waive and undertake not to assert, to the extent permitted by law, any moral rights or similar rights or other non-transferable rights that it or they may have in the Materials under any and all laws now or in future in force in any part of the world.

7.2 The Supplier acknowledges that the OC (or CGF, if appropriate) is the owner of all rights in and relating to the Games, the OC Property and that the Supplier shall neither acquire nor claim any title to the Protected Marks or the goodwill attaching to them. The Supplier shall not at any time do or suffer to be done any act or thing which is likely in any way to prejudice the validity of or title to such Protected Marks.

7.3 The Supplier shall execute and do (and/or procure the execution and doing of) all such documents and all such acts as the OC may reasonably require to give effect to this clause 7.

8 Data protection

8.1 The Supplier shall:

- (a) at all times comply with the Data Protection Legislation in the performance of its obligations under this Contract;
- (b) only process personal data (as defined in the Data Protection Legislation) in accordance with this Contract and the instructions of the OC;
- (c) in relation to its processing of any personal data transferred to the Supplier by the OC (or collected or generated by the Supplier on the OC's behalf), ensure that appropriate technical and organisational measures are taken against unlawful processing and/or accidental loss of such personal data;
- (d) promptly notify the OC on receipt of any subject access request requiring the release of such personal data and co-operate with the OC promptly in responding to any such subject access request within such reasonable timescales as may be specified by the OC; and
- (e) not cause any such personal data to be transferred outside the European Economic Area without the OC's prior written consent, and in accordance with any terms that the OC may impose on such transfer.

9 Confidentiality and Freedom of Information

9.1 Without prejudice to any confidentiality undertaking signed by on or behalf of the Supplier before the date of the Contract, the Supplier shall:

- (a) treat Confidential Information as strictly confidential;
- (b) not disclose Confidential Information to any third party except: (i) to Connected Persons (if bound by equivalent obligations of confidentiality) that reasonably need to know the same in connection with the Supplier's obligations under this Contract; or (ii) if required to be disclosed by applicable law or order of a court of competent jurisdiction or other competent authority; and
- (c) not use Confidential Information for any purpose whatsoever other than to fulfil the Supplier's obligations under this Contract.

9.2 Upon expiry or termination of this Contract (or earlier if requested by the OC), the Supplier shall ensure that all hard copies of Confidential Information in the possession of the Supplier and/or the Connected Persons are destroyed or (at the OC's option) returned to the OC, and that all Confidential Information stored electronically, digitally or magnetically outside of the OC's offices (including that held by Connected Persons) is erased.

9.3 If requested by the OC, the Supplier shall, and shall procure that each of the Connected Persons that has access to Confidential Information shall, execute a confidentiality undertaking in the OC's standard form from time to time, and the Supplier shall promptly deliver each such executed undertaking to the OC.

9.4 The OC is not bound by the Freedom of Information (Scotland) Act 2002 (FOISA). However, if the OC receives a request under Section 1 of the FOISA (or, if applicable, a request under the Environmental Information (Scotland) Regulations 2004), which includes any Confidential Information, the OC may (at its discretion) opt to disclose certain information as it sees fit in the circumstances.

9.5 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 the OC. The Supplier acknowledges that the OC is permitted to make all or any details of any gift or gratuity offered or accepted publicly available without first consulting with the Supplier.

10 No marketing rights

10.1 In recognition of the international and historical significance of the Games, the Supplier agrees to respect and comply with the provisions of the CGF Constitution (copies of which can be obtained from the OC on request) and shall not, and shall procure that none of the Connected Persons shall, knowingly participate in, facilitate or encourage any Ambush Marketing of the Games or act in any way which could harm the Glasgow 2014 Commonwealth Games or CGF brands, trade marks or other proprietary rights or those of the sponsors of the Commonwealth Games.

10.2 Further, the Supplier shall, by this Contract, have no right to use any of the OC's trade marks, logos or other Intellectual Property Rights (including, without limitation, the names "Glasgow 2014" and "the OC") and shall not, and shall procure that none of the Connected Persons shall, represent (directly or indirectly) that any Supplies provided by the Supplier have been endorsed or approved by the OC or any other Commonwealth Games Body, or that the Supplier, such Connected Persons or the Supplier's or such Connected Persons' products or services are in any way associated with the OC, the other Commonwealth Games Bodies or the Games (whether before, during or after the Games), including by publishing or issuing any statement (factual or otherwise) about the Games or the Supplier's provision of Supplies to the OC.

10.3 The OC will have the sole responsibility for making or approving any press release or any public announcement relating to this Contract.

10.4 Notwithstanding any other provision in this Contract, the Supplier will ensure that neither itself nor any Personnel give any interviews or assistance to any communications media entity in relation to any story concerning the Games, this Contract or the affairs of the OC or any Commonwealth Games Body without the prior written approval of the OC. The Supplier acknowledges and agrees that it will direct all media enquires that it receives relating to the Games, this Contract

or the affairs of the OC or any Commonwealth Games Body to the OC in the first instance unless otherwise agreed between the parties in writing.

- 10.5 Unless expressly instructed otherwise by the OC, the Supplier shall deliver the Supplies with no Branding and shall follow any further instructions of the OC in relation to any Branding that is agreed to appear in, on or in relation to the Supplies.
- 10.6 The Supplier acknowledges that all Venues must be clean of all advertising, marketing and other branded materials, other than any materials approved in writing by the OC.
- 10.7 If any individual Connected Person attends a Venue in a capacity other than as a spectator, the Supplier shall procure that such Connected Person shall follow the instructions of the OC in relation to his or her appearance and/or clothing and shall abide by the conditions of any Games accreditation granted to him or her.
- 10.8 The OC (and, after its dissolution, an appropriate Commonwealth Games Body) shall have the right to enforce the provisions of clauses 9 and 10, and the Supplier acknowledges that the provisions of such clauses are of such importance to the OC that damages may not be an adequate remedy for breach, and that interim interdict or interdict (or local equivalent) may be a more appropriate remedy.

11 Remedies of the OC

11.1 If the Supplier fails, in any material respect, to provide the Supplies (or any substantial part of them) in accordance with any of the provisions of this Contract or otherwise to comply with this Contract, the OC may, without prejudice to its other rights or remedies (and whether or not all or any part of the Supplies have been accepted by the OC):

- (a) rescind this Contract (in whole or in part);
- (b) reject the Supplies (in whole or in part) and, where possible, either: (i) return the Goods to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Supplies so returned (including the cost of any such return) shall be promptly paid by the Supplier, the OC not being obliged to return to the Supplier any packaging or packing materials for such Goods; or (ii) request (orally, in writing or by email) that the Supplier collect the Goods at the first reasonable opportunity, failing which the OC may dispose of them at its discretion and recover any reasonable costs of disposal from the Supplier;
- (c) give the Supplier the opportunity, at the Supplier's expense, within 10 days after receipt of notice from the OC either: (i) to remedy any remediable defect in the Supplies; or (ii) to deliver replacement Supplies and/or to carry out any other necessary work to ensure that the provisions of this Contract are fulfilled;
- (d) refuse to accept any further deliveries of the Supplies, but without any liability to the Supplier;
- (e) recover from the Supplier any expenditure reasonably incurred by the OC in obtaining the equivalent supplies in substitution from another supplier;
- (f) carry out at the Supplier's expense any work reasonably necessary to make the Supplies comply with this Contract; and/or
- (g) claim for Losses incurred in consequence of the Supplier's breach of this Contract.

11.2 Any remedy under this 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.

11.3 The Supplier agrees that its exclusive remedy for Losses in respect of this Contract shall be against the OC and no other Commonwealth Games Body.

12 Liability

12.1 Subject to the limitations of liability set out in clause 12.4, the Supplier shall indemnify the OC upon demand against all Losses incurred by the OC and arising directly out of any breach on the part of the Supplier of their obligations to the OC under and in terms of this Contract or from any act of negligence, omission, default or breach of statutory duty on the part of the Supplier in relation to the Supplies to the OC and in respect of which the OC suffers loss as referred to under this clause 12.1.

12.2 Subject to the limitation of liability set out in clause 12.4, the Supplier shall indemnify the OC upon demand against all Losses which the OC incurs arising out of any claim at the instance of a third party of whatever nature against the OC for infringement of copyright, trade or service name or mark or other Intellectual Property Rights arising from acts of the Supplier provided that:-

- (a) the OC shall promptly notify the Supplier in writing of any alleged infringement of which it has notice and shall make no voluntary admissions without the consent of the Supplier and assist the Supplier as much as possible at the Supplier's cost;
- (b) the OC shall not, except where necessary to protect its rights, incur any cost or expense without the Supplier's prior written consent.

12.3 Nothing in this Contract shall limit or exclude any party's liability for fraud or for death or personal injury caused by negligence, or to the extent otherwise not permitted by law.

12.4 Notwithstanding any other provision of this Contract, but subject to clause 12.3 above, neither party shall be liable to the other party arising out of or in connection with this Contract and/or the provision of (or any delay in providing or failure to provide) the Supplies for any indirect or consequential loss or damage, in each case howsoever caused or arising.

12.5 The terms "howsoever caused or arising" as used in clause 12.4 shall be construed widely to cover all causes and actions giving rise to liability, including but not limited to (i) whether arising by reason of any misrepresentation (whether made prior to and/or in this Contract), negligence, breach of statutory duty, other tort, breach of contract, restitution or otherwise and (ii) whether caused by any total or partial failure or delay in the supply of the Services.

13 Expiry, termination and cancellation

13.1 This Contract shall expire on: (a) the completion of the final delivery of Supplies ordered under it; or (b) on 31 December 2014 (or such later date as the parties may agree in writing), whichever is the earlier.

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

- (a) if the Supplier commits a material breach of this Contract and (if such breach is capable of remedy) fails to remedy the breach within 7 days (or such other period as the OC may reasonably specify in the circumstances) after receiving the OC's request in writing to do so; or
- (b) if the Supplier commits repeated breaches (not being individually material) of this Contract, the cumulative effect of which constitutes a material breach and/or is sufficient to justify the reasonable inference that the Supplier would continue to deliver a sub-standard service in relation to a material provision of this Contract; or
- (c) if the Supplier suffers an Insolvency Event; or
- (d) if any Personnel that are involved in the performance of the Supplies fail for any reason to pass security vetting undertaken by the OC from time to time during the term of this Contract in accordance with clauses 2.4 and 2.5 and a substitute member of the Personnel also fails the same security vetting checks.

13.3 The OC, for any reason, may cancel an Order in respect of all or part only of the Supplies at any time by giving the Supplier at least 7 days' notice.

13.4 The OC may cancel any Order in respect of all or part only of the Supplies, defer the date of delivery and/or payment in respect of any Supplies ordered or reduce the volume or scale of any Supplies ordered if the Supplier's performance of this Contract is prevented or delayed for more than 7 days (before 1 May 2014) or 24 hours (on or after 1 May 2014) due to acts, events, omissions or accidents which are beyond the reasonable control of either party.

13.5 Following termination or expiry of this Contract, or cancellation of the whole or part of any Order for the reasons outlined in clauses 13.2 (c) or (d):

- (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 the Goods so returned shall promptly be paid by the Supplier;
- (b) the OC's sole liability in respect of Services shall be to pay to the Supplier a fair and reasonable price for all Services performed to the satisfaction of the OC before the date of expiry, termination or cancellation, 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 Materials and any other the OC property (including data) that may be in the Supplier's or any Connected Person's possession (and/or the Supplier shall procure such delivery up or disposal).

13.6 In the event of a termination of this Contract in accordance with clauses 13.2 (a) or (b), 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 to the date of termination.

13.7 Expiry or termination of this Contract for whatever reason shall not affect either party's rights or remedies that have accrued prior to the date of termination, nor the coming into force or the continuance in force of any provision of this Contract which expressly or by implication is intended to come into or continue in force by or after expiry or termination, including clauses 1, 4.4, 5.4, 6, 7, 8, 9, 10, 11, 12, 13.5, 13.6, 13.7, 14, 15, 16 and 17.

14 Notices

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

- (a) in the case of the Supplier, the Supplier's address or fax number specified on the Supplier Details Form; or
- (b) in the case of the OC: Legal Department, 5th Floor, Monteith House, 11 George Square, Glasgow, G2 1DY or +44 (0) 141 287 2014 (marked, in either case, for the urgent attention of the OC's Company Secretary); or
- (c) such other address or fax number as the recipient may designate in accordance with this clause.

14.2 A notice shall be deemed to have been received:

- (a) if delivered by hand, at the time of delivery;
- (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); and
- (c) if transmitted by fax, at the time of successful transmission,

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

15 General Conditions

- 15.1 The Supplier may not, without the OC's prior written approval, assign, charge or otherwise dispose of all or any part of the benefit of this Contract or sub-contract any or all of its obligations under it. The Supplier shall provide the OC with reasonable details of any approved sub-contractors and shall remain solely liable to the OC for the performance of the Supplier's obligations under this Contract. Nothing in this Contract shall restrict the OC from assigning, charging, novating or otherwise disposing of this Contract (or any part of it).
- 15.2 This Contract contains the entire agreement of the parties in relation to the Supplies. Each party acknowledges that, in entering into this Contract, it is not relying on any representation or other assurance except as expressly set out or referred to in this Contract, provided that nothing in this Contract shall limit or exclude any liability for fraud.
- 15.3 No breach of any provision of this 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 this Contract shall operate as a waiver of that or any other right or remedy.
- 15.4 If a provision of this Contract is, becomes or is found to be illegal, invalid or unenforceable (in whole or in part), the legality, validity and enforceability of the remainder of this Contract shall not be affected.
- 15.5 Nothing in this Contract constitutes a partnership, relationship of agency or contract of employment between the parties.
- 15.6 Other than pursuant to clause 10.8, this Contract shall not create any rights that shall be enforceable by anyone other than the parties to this Contract.
- 15.7 This Contract shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the OC on behalf of the OC or as the case may be by or on behalf of the Supplier.
- 15.8 Neither the Supplier nor the OC shall be liable for failure to perform its obligations under this Contract if such failure results from any acts or events beyond its reasonable control including but not limited to governmental actions, war, fire, flood or any disaster or industrial dispute, but excluding, in the case of the Supplier, any Personnel or materials shortages, any industrial dispute relating to the Supplier or its Personnel, any delay or failure in the Supplier's supply chain or any difficulties Supplier may have with its financing.
- 15.9 The Supplier shall (and shall procure that all Connected Persons) at all times comply with all United Kingdom legislation relating to all forms of discrimination including (without limitation): the Sex Discrimination Act 1975; the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000); the Disability Discrimination Act 1995; and/or any statutory modifications or re-enactments thereof relating to discrimination in employment.
- 15.10 The Supplier shall not offer or give, or agree to give, to any employee or representative of the OC any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other agreement with the OC or for showing or refraining from showing favour or disfavour to any person in relation to this or any such agreement. The attention of the Supplier is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916 and the Bribery Act 2010.

16 Dispute Resolution

The parties shall use reasonable endeavours to resolve any dispute or claim arising in connection with this Contract (including any dispute regarding pre-contractual negotiations, the existence, validity or termination of this Contract or the consequences of non-existence or invalidity of this 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 this Contract has already been terminated, the parties shall continue to perform their obligations under this Contract regardless of the nature of the Dispute.

17 Governing Law

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