

1 Definitions

1.1 In these Terms:

Affiliate means (i) any company which is at the relevant time a subsidiary or holding company of a person 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), and (ii) any other entity which is at the relevant time a subsidiary or holding entity of a person or a subsidiary or holding entity of any such subsidiary or holding entity, with “subsidiary entity” meaning an entity which is controlled by the relevant person and “holding entity” meaning an entity controlling the relevant person;

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 Commonwealth Games Body, any Games team (including without limitation the Scottish 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 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 any Venue, unless such activity has been authorised by the OC;

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

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;

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 Games or which is responsible for sending a team to compete in the Games;

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 Purchase Order, the terms of the Contract and the Materials), 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 the Contract or law;

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 consisting of: (i) the Purchase Order and the Supplier Details Form; (ii) these Terms; (iii) the Supplier’s acceptance or deemed acceptance; (iv) any Specification; (v) any other documents notified in writing by the OC to the Supplier; and (vi) the policies and procedures of the OC, as notified to the Supplier from time to time;

Data Protection Legislation means any laws relating to the protection of personal data pertinent to the subject matter of the Contract and including any national laws made pursuant to Directive 95/46/EC;

Delivery Address means the location(s) where the Supplies are to be delivered, as specified in the Purchase Order or 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;

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 other tangible items (including any instalment or any part of them) that are specified in the Purchase Order or supplied in the course of performing obligations under the Contract;

Indemnified Parties means the OC and any Commonwealth Games Body and the OC’s and Commonwealth Games Bodies’ Personnel;

Insolvency Event means the Supplier or any Connected Person: (a) enters into any arrangement with its creditors in respect of debt; 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 or 268 of the Insolvency Act 1986 (as applicable); or (d) is the subject of winding-up, bankruptcy or any other similar proceedings; or (e) has a receiver, administrative 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;

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;

Key Personnel means the individuals specified (if any) by the OC on the Purchase Order to provide the Supplies;

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 pursuant to the Contract or otherwise;

Materials means all materials (in whatever form) including all artworks, items embodying OC Property, plans, concepts, embodiments or materials describing ideas, preliminary and final drafts, texts, drawings, sketches, performances, slides, photographs, negatives, videos, films, banners, signs, music, computer programming, software and multimedia materials and other associated materials, or other subject matter, created, developed or conceived by or on behalf of the Supplier or any Connected Person (and its and their Personnel) in connection with the provision of the Supplies and/or the performance of other obligations under the Contract, but excluding any materials or works wholly subsisting before the date of the Contract, developed independently of the Contract, and capable of reuse in connection with matters unrelated to the Games;

OC means Glasgow 2014 Limited a company established under the Companies Acts (registered number SC325245) as the Organising Committee of the Games and having its registered office at Commonwealth House, 32 Albion Street, Glasgow, G1 1LH;

OC Property means all Intellectual Property Rights of the OC or licensed to the OC in respect of the Games including, without limitation, any trade marks, copyright or design rights owned by the OC or the CGF, 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;

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;

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;

Service Credits means any service credits specified in the Purchase Order or otherwise in the Contract;

Service Levels means those standards of performance (if any) specified in the Purchase Order or otherwise in the Contract to be achieved by the Supplier in providing the Supplies;

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

Specification means the specification (if any) 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;

Terms means these standard terms and conditions; and

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, any venue from which the Games is managed, operated or controlled, any venue where a Commonwealth Games Body is accommodated, and any official training venue of the Games, and includes any construction site at which such venue is being constructed and any venue proposed to be used as such a venue.

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

- (a) a "term" is to a term of these Terms;
- (b) "including" or any similar word shall not limit the generality of any preceding words;
- (c) "parties" means the parties to the 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 or other similar entity (in each case whether or not having separate legal personality);
- (e) "writing" or "written" means a communication in the form of writing which may be in electronic form or hard copy form;
- (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 the Contract;
- (h) 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
- (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 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. That offer shall be accepted on 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 referenced in the Purchase Order) notwithstanding any contrary provisions in any such terms and conditions, and the Supplier hereby waives any right that it otherwise might have to rely on any other such terms and conditions.

2.3 No variation of the 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 the Contract security, police and background checks on the Supplier, the Connected Persons (and its and their Personnel). Subject to the rest of this term, the Supplier must ensure that it and its Connected Persons (and its and their Personnel) comply with the OC's accreditation and security procedures and policies as set out by the OC in its absolute discretion from time to time and provide all information and consents required by the OC. The Supplier acknowledges that if any of such persons refuse to comply with such security procedures or policies or provide such information or consents, the Supplier must withdraw such persons from any matter connected with the Contract and where necessary for the performance of obligations under the Contract, provide another suitably qualified person who is willing to so comply or provide such information or consent.

2.5 In the event that the Supplier or any Connected Persons (or any of its or their Personnel) require immigration permission to provide the Supplies in the United Kingdom, the Supplier must, or will procure that the Connected Person or Personnel must:

- (a) arrange all necessary visa documentation and satisfy all immigration conditions to enable them to provide the Supplies;
- (b) not 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 they have immigration permission to provide the Supplies;
- (d) notify the OC immediately of any change to their immigration status; and
- (e) notify the OC of any change in circumstances which may affect their right to perform obligations arising pursuant to the Contract in the United Kingdom.

2.6 The parties agree that any breach by the Supplier of term 2.5 shall be a material breach of the Contract which is not capable of remedy for the purposes of term 13.2(a).

3 Delivery

3.1 The Supplier shall deliver the Supplies to or at the Delivery Address from the Commencement Date through the Key Personnel (if any) in accordance with the

Contract (including the Specification) by the Delivery Date (or, if no Delivery Date is specified, within 14 days after the date of the issuing of the Purchase Order by the OC or such shorter period as may be reasonable in all the circumstances).

3.2 Time is of the essence for delivery of the Supplies and the performance by the Supplier of its obligations hereunder.

3.3 The Supplier shall ensure that:

- (a) any 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 pre-paid and accruing to the Supplier; and
- (d) all Goods are offloaded at its own risk at the Delivery Address as directed by the OC.

3.4 The OC shall not be obliged to carry out any work to enable delivery of Supplies to take place.

3.5 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 and/or operate the Supplies, and/or for the OC to receive the benefit of the Supplies.

3.6 The OC shall afford the Supplier such access to the Delivery Address and/or provide, without charge, such additional information, records and other materials in its possession as may reasonably be required by the Supplier to provide the Supplies.

3.7 The OC shall not be deemed to have accepted the Supplies until it has notified the Supplier in writing of its acceptance.

3.8 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.

3.9 The Supplier shall comply and shall ensure all Connected Persons (and its and their Personnel) comply with all applicable laws, regulations and requirements (including conditions of access, security and confidentiality requirements) applicable at any premises (including the Delivery Address) where the Contract is performed. The Supplier indemnifies and shall keep indemnified each Indemnified Party against any Losses incurred or suffered by such Indemnified Party as a result of or in connection with any breach of this term.

3.10 If the Supplies are or 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 this Contract or otherwise.

3.11 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 or any Service Level. 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. If the Supplier provides any such notification, and/or fails to achieve the provision of any Supplies or the performance of its obligations, by any Delivery Date, and/or fails to meet any Service Level(s) then 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 Supplies or perform the relevant obligations, within such timescale as is specified by the OC and at no additional cost to the OC and 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.

3.12 In the event the Supplier fails to comply with Term 3.11 either within the required timescale or otherwise:

- (a) the OC may procure and arrange such additional resources or the carrying out of required acts and things itself and/or through a third party to address that failure;
- (b) the Supplier shall be liable to the OC for all costs, expense, loss, damage or other liability incurred by the OC in connection therewith (including for the avoidance of doubt the value of the working time of OC staff reallocated to provide part of any additional resource;
- (c) the OC shall be entitled (at its election) to remove from the scope of the Contract any obligation of the Supplier (including any obligation to supply Supplies and any corresponding obligation of the OC (including any obligation to supply items to the Supplier, grant access or pay part(s) of the Price); and

- (d) the OC shall become entitled to any applicable Service Credit(s).

4 Title, risk and insurance

- 4.1 Unless provided otherwise in the Specification, 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 Goods shall pass to the OC once full payment has been made.
- 4.2 Unless provided otherwise in the Specification, risk in the Goods shall only pass to the OC upon acceptance of the Goods in accordance with the Contract, despite any earlier passing of title to the Goods.
- 4.3 Any property which the Supplier removes from the Delivery Address in performing the Contract shall be held at the risk of the Supplier.
- 4.4 The Supplier shall refrain from and ensure all Connected Persons (and its and their Personnel) refrain from causing any damage to any premises (including the Delivery Address) where the Contract is performed or any property within such premises. The Supplier indemnifies and shall keep indemnified each Indemnified Party against any Losses incurred or suffered by such Indemnified Party as a result of or in connection with any breach of this term.
- 4.5 The Supplier shall, without prejudice to its obligations under the Contract or otherwise at law, at its own cost effect and maintain for the term of the 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 in the form of the Supplies) and with a reputable insurer to cover all risks of and incidental to the Contract, including any risk in Goods before such risk passes under term 4.2 above, any risk in property removed as described in term 4.3, and any damage as described in term 4.4. The Supplier shall, on request, supply to the OC a brokers letter confirming such insurance cover.
- 4.6 The parties agree that any breach by the Supplier of term 4.5 shall be a material breach of the Contract which is not capable of remedy for the purposes of term 13.2(a).

5 Price and payment

- 5.1 The Price shall, unless otherwise agreed in writing by the OC, is specified and shall be paid in pounds sterling and exclusive of VAT, but inclusive of all other taxes, duties, costs 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.
- 5.2 The OC shall pay all invoices that are in the OC's reasonable opinion valid, correct 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 (or such other period as the parties may agree in writing). No invoices shall be dated prior to their date of actual submission to the OC. This obligation shall be subject to any withholding obligations imposed on the OC by any authority having jurisdiction over the OC and/or the Contract.
- 5.3 Invoices may be rendered only after the Supplies have been correctly delivered in accordance with the Contract. The Supplier must issue invoices which quote the respective Purchase 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, social security, pension and national insurance contributions, and all other employee emoluments payable as a result of the performance of the Contract to any Personnel and the meeting of all other costs, claims or liabilities, including legal costs and including any claims for unfair dismissal, breach of contract, discrimination, personal injury, whether arising by virtue of the fact that any Personnel are deemed to be an employee of the OC or otherwise, and shall ensure all Connected Persons are similarly bound. The Supplier indemnifies and shall keep indemnified each Indemnified Party against any Losses incurred or suffered by such Indemnified Party as a result of or in connection with any breach of this term.
- 5.5 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 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 or the performance of any other obligation hereunder. No payment shall be made for rejected Supplies or Supplies which do not accord with the Contract.
- 5.6 The OC may set off any amount it owes the Supplier under the Contract against any amount that the Supplier owes it under the Contract or under any other agreement or arrangement with it and/or against any amount of or claim for damages due to or made by the Supplier against the OC whether under the Contract or in respect of any other matter, claim or thing. However, the Supplier must not set off any amount the OC owes it under the Contract against any amount that it owes the OC under the Contract or under any other agreement or arrangement with the OC, or in respect of any other matter, claim or thing.

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 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, and any sample(s) approved in writing by the OC, the policies and procedures of the OC, and all laws, orders, regulations and bye-laws that are applicable to the Supplies;
- (e) be provided by the Key Personnel (if any);
- (f) be provided in a proper and efficient manner 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 in the context of an event of the standing of the Games;
- (g) 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
- (h) not contain anything that is offensive or harmful.
- 6.2 The Supplier shall not and shall ensure that all Connected Persons (and its and their Personnel do not) bring the OC, any other Commonwealth Games Body or the Games into disrepute.
- 6.3 The Supplier shall ensure that in the performance of obligations hereunder and the supply of the Supplies all Service Levels (if any) are met or exceeded.
- 6.4 The OC's rights under the 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.
- 6.5 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 The Supplier hereby unconditionally and irrevocably:
- (a) assigns (by way of present and future assignment) to the OC absolutely, free from any liens, charges or encumbrances whatsoever, all right, title and interest (whether vested, contingent or future) in and to all Intellectual Property Rights in and/or relating to the Materials absolutely and throughout the world for the full period during which such Intellectual Property 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 access to any Intellectual Property Rights other than those assigned to the OC under term 7.1(a) are required for the OC (or its nominees) to use or receive the benefit of the Supplies, grants to the OC a royalty-free, non-exclusive and perpetual licence to access such Intellectual Property Rights, together with such right to sub-license, transfer, novate or assign such licence for such purposes as the OC reasonably requires; and
- (c) waives and undertakes not to assert and shall procure that all Connected Persons (and its and their Personnel) 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;
- (d) consents and undertakes to procure consent from the persons referred to in (c) that any Commonwealth Games Body (or their licensees or assignees) may carry out any and all acts which may infringe their moral rights but for the waiver in term 7.1(c).
- 7.2 The Supplier acknowledges and agrees that the OC (or CGF, if appropriate) is the owner of all rights in and relating to the Games and the OC Property and that the Supplier shall neither acquire nor claim any title to the OC Property, whether pursuant to the Contract or otherwise. 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 enforceability or validity of, or title to, the OC Property.
- 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 term 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 the Contract;
- (b) only process personal data (as defined in the Data Protection Legislation) in accordance with the 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 or on behalf of the Supplier before the date of the Contract, the Supplier shall and shall procure all Connected Persons (and its and their Personnel) shall:

- (a) treat all Confidential Information as strictly confidential;
- (b) not disclose any Confidential Information 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 to fulfil the Supplier's obligations under the Contract.

9.2 Upon termination of the Contract (or earlier if requested by the OC), the Supplier shall ensure that all items or materials containing Confidential Information 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.

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 a form required by the OC, 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 or the Environmental Information (Scotland) Regulations 2004. However, if the OC receives a request under Section 1 of the Freedom of Information (Scotland) Act 2002 or, if applicable, a request under the Environmental Information (Scotland) Regulations 2004, which relates to any information of the Supplier, any Connected Person, or any of its (or their) Personnel, the OC may (at its discretion) opt to disclose the 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 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 publically available without first consulting with the Supplier.

10 No marketing rights

10.1 The Supplier agrees that, notwithstanding the terms of the Contract and any other rights and obligations it has under the Contract that it shall not and shall procure that any Connected Person or any of its or their Personnel shall not, and must not authorise, permit, or allow or purport to authorise or permit any other person to:

- (a) in any way reproduce or use any OC Property (including, without limitation, references, indicia or images prescribed under the Glasgow Commonwealth Games Act 2008) or the Intellectual Property Rights of any of the Commonwealth Games Bodies, without the express prior written consent of the OC (as agent for the Commonwealth Games Body or Bodies which is or are the rights holder), and then only strictly in accordance with the terms of such consent and in any event only to the extent necessary to enable the Supplier to provide the Supplies in accordance with the Contract;
- (b) represent, promote or advertise, directly or indirectly, that the Supplier or the Supplies are in any way associated with the OC, the Games and/or any Commonwealth Games Body or that the Supplies have been endorsed or approved by any Commonwealth Games Body, including by publishing or issuing any statement (factual or otherwise) about the OC, the Games or the Supplier's provision of the Supplies to the OC, the Games and/or a Commonwealth Games Body, except with the OC's approval in writing;
- (c) undertake any form of Ambush Marketing and shall cooperate with the OC in its endeavours to minimise any Ambush Marketing activities;
- (d) cause to be done, or permit anyone reasonably within its or their control to do, anything which might damage or endanger the validity or distinctiveness of, or the goodwill in, any Intellectual Property Rights of the OC and/or any Commonwealth Games Body;
- (e) wilfully or recklessly do anything that would in the reasonable opinion of the OC bring the OC and/or any Commonwealth Games Body or any official supporter or sponsor of the Games into disrepute or which would otherwise cause material detriment to the good standing and reputation of the OC or any Commonwealth Games Body or any official supporter or sponsor of the Games;
- (f) hold itself out as an agent or representative of the OC and/or any Commonwealth Games Body or any participant in the Games unless otherwise agreed in writing; or
- (g) contact any sponsor or licensee of any Commonwealth Games Body in relation to any marketing activities or related matters contemplated by the Contract.

10.2 The Supplier hereby acknowledges and agrees:

- (a) where required by the OC, to put in place a written agreement with any Connected Person or any of its or their Personnel requiring the same to comply with the provisions of this term 10;
- (b) to promptly notify the OC if it becomes aware of any suspected Ambush Marketing activities of other parties.

10.3 The Supplier acknowledges and agrees (except as otherwise provided for in the Contract) that all Venues must be clean of all advertising, marketing and other

Branded materials, other than such materials approved by the OC, and, subject to the provisions of the Contract, that the Supplies (including without limitation any Goods, materials, structures, plant or equipment) supplied under the Contract which will be used in any Venues shall be provided free of all Branding.

10.4 Without prejudice to the obligations set out in term 10.3 and excluding any equipment and/or hardware provided by the OC to the Supplier, unless the approval in writing of the OC is first obtained, the Supplier shall ensure, and procure that any Connected Person and any of its or their Personnel ensure, that:

- (a) no promotional or advertising signage of any kind is affixed to any marquee, tent, or other temporary construction, including but not limited to any portacabins, trucks, trailers or other vehicles owned, operated or brought on to any Venue by the Supplier or any Connected Person or any of its or their Personnel;
- (b) only reasonable Branding (as agreed between the parties) is affixed onto, or displayed on, any uniform of any Personnel working at any Venue at any time and uniforms will be approved in writing in advance by the OC in accordance with the OC's commercial policy on sponsor and supplier uniform branding; and
- (c) other than as permitted by the Contract, no goods are bought, sold, advertised or promoted on or at any Venue by or on behalf of the Supplier or any Connected Person or any of its or their Personnel at any time during the term of the Contract.

10.5 The parties agree that any breach by the Supplier of this term 10 shall be a material breach of the Contract which is not capable of remedy for the purposes of term 13.2(a). The Supplier acknowledges 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. The provisions of this term 10 shall survive the expiry or earlier termination of the Contract.

11 Remedies of the OC

11.1 If the Supplier fails, in any material respect, to provide the Supplies (or any part of them) in accordance with any of the provisions of the Contract or otherwise to comply with the 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 the Contract (in whole or in part);
- (b) reject the Supplies (in whole or in part) and, where possible, either: (i) return any 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) require that the Supplier collect the Goods at the first available opportunity, and receive from the Supplier a refund of any sums paid therefor, failing which the OC may dispose of them at its discretion and be reimbursed for any costs of such disposal by 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 the Contract are fulfilled;
- (d) refuse to accept any further deliveries of the Supplies, 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 the Contract; and/or
- (g) be reimbursed in full for all Losses incurred in consequence of the Supplier's breach of the Contract.

11.2 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.

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

12 Liability

12.1 The Supplier indemnifies and shall keep indemnified each Indemnified Party against any Losses arising out of any breach by the Supplier of its obligations under and in terms of the Contract or from any act of negligence, omission, default or breach of statutory duty on the part of the Supplier, any Connected Person or its or their Personnel.

12.2 Nothing in the 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.

12.3 Notwithstanding any other provision of the Contract, but subject to term 12.2 above, the OC shall not have any liability to the Supplier arising out of or in connection with the Contract for any indirect, secondary or consequential Losses, in each case howsoever caused or arising.

12.4 The terms "howsoever caused or arising" as used in term 12.3 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 the Contract), negligence, breach of statutory duty, other delict, breach of contract, restitution or otherwise and (ii) whether caused by any total or partial failure or delay in the supply of the Services.

12.5 Subject to term 12.2 the OC's total liability to the Supplier in respect of all Losses arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price paid under the Contract.

13 Termination and cancellation

13.1 The Contract shall automatically terminate on: (a) the completion of the final delivery of Supplies ordered under it; or (b) on 31 December 2014 (or such 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 the 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 the 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;
- (b) if the Supplier commits repeated breaches (not being individually material) of the 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 the Contract;
- (c) if the Supplier suffers an Insolvency Event; or
- (d) if the Supplier or any Connected Persons (or any of its or their Personnel) fail for any reason to satisfy any requirement made in accordance with terms 2.4 and 2.5.

13.3 The OC, for any reason, may without liability to the Supplier cancel a Purchase 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 terminate the Contract or the supply of all or part of the Supplies, defer the date of delivery thereof and/or payment in respect thereof, and/or reduce the volume or scale of any Supplies ordered if the Supplier's performance of the 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 either: (i) termination of the Contract; or (ii) the supply of all or any part of the Supplies as set out in term 13.3:

- (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 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, Materials and any other OC Property (including data) in the possession or under the control of the Supplier, any Connected Person, or its or their Personnel.

13.6 In the event of a termination of the Contract in accordance with terms 13.2, 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.

13.7 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, nor the coming into force or the continuance in force of any provision of the Contract which expressly or by implication is intended to come into or continue in force by or after expiry or termination, including terms 1, 4.5, 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 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: Legal Department, Commonwealth House, 32 Albion Street, Glasgow, G1 1LH (marked, in either case, for the urgent attention of the OC's Company Secretary); or
- (c) such other address as the recipient may designate in accordance with this term.

14.2 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.

15 General Conditions

15.1 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.

15.2 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.

15.3 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.

15.4 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.

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

15.6 The Contract shall be enforceable against the Supplier by all Commonwealth Games Bodies. Otherwise, the Contract shall not be enforceable by anyone other than the parties to the Contract.

15.7 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.

15.8 Neither the Supplier nor the OC shall be liable for failure to perform its obligations under the 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 materials shortages, shortages of Personnel of it or any Connected Person, any industrial dispute relating to the Supplier or any Connected Person, 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 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 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.

15.11 While in any Venue, the Supplier shall (and shall ensure that all Personnel and any Connected Persons shall):

- (a) follow all instructions of the OC and any relevant security personnel at all times;
- (b) not make, record, transmit, broadcast, reproduce, use or display any images of or at the Games and/or any Venue or any images of any participants present or situated at any Venue.
- (c) where requested by the OC, supply all information required in relation to the Supplier's use of radio communications at any Venue, including relevant frequencies; and
- (d) use only the access roads, parking and loading bays at the Venues as are notified to them by the OC from time to time and no others and to comply with any master delivery schedule relevant to the Venues.

16 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.

17 Governing Law

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 Scotland. Each party irrevocably submits for all purposes in connection with the Contract any Dispute to the exclusive jurisdiction of the courts of Scotland.