**Appendix B: Acceptance of Tendering Conditions and Mandatory Undertaking**

**Queen Elizabeth Olympic Park, [Project Name]**

**CONFIRMATION OF ACCEPTANCE OF TENDERING CONDITIONS**

FROM: [INSERT NAME, ADDRESS AND CONTACT DETAILS OF TENDERER] (“Tenderer”)

TO: London Stadium 185

DATE: [INSERT]

Dear Sirs,

**Re: Procurement by LS185 (the Contracting Authority**) **of [Project Description]**

Pursuant to an Invitation to Tender (“ITT”) by the Contracting Authority to the Tenderer on [add date] we the undersigned undertake that we have read the terms of the ITT and agree to be bound by such terms and have submitted a Tender in accordance with the terms of the ITT.

Where capitalised terms are used in this undertaking they shall have the same meaning as given to such terms in the ITT unless otherwise expressly stated to the contrary in this undertaking. A reference to a person includes firms, partnerships, statutory and non-statutory entities and corporations and their successors and permitted assignees or transferees.

We the undersigned undertake as follows:

1. that we have not included any condition qualifying our Tender in any unauthorised manner or altered any aspect of the ITT in any way; and
2. to confirm that our Tender shall remain open for acceptance by the Contracting Authority for a period of 90 Working Days from the date of this undertaking and we shall not withdraw this Tender during this period; and
3. to execute the Contract in the form specified at Appendix C of the ITT. Unless and until a formal agreement is prepared and executed, we confirm that our Tender together with your acceptance thereof in writing shall constitute a binding contract between us; and
4. we have submitted a bona fide Tender, intended to be competitive and we have not fixed or adjusted our Prices by or under or in accordance with any agreement or arrangement with any other Tenderer.
5. we have not and we undertake that we will not do at any time before the hour and date specified for the return of the Tender in the ITT any of the following acts:
	* communicate to a person other than an appropriate member of the Contracting Authority our pricing information to be included in our Tender, except where the disclosure, in confidence, of such pricing information (or any component thereof) is necessary to obtain information/advice required for the preparation of the Tender; or
	* enter into any agreement or arrangement with (i) any other person resulting (whether directly or indirectly) in that person refraining from submitting a Tender or (ii) another Tenderer concerning any rates/fees submitted or to be submitted by that Tenderer in any Tender; or
	* offer to pay or give or agree to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender for the Works any act or thing of the sort described above.
6. to confirm that we have not colluded, and will not collude, with any other potential or actual Tenderer in relation to the ITT in any way; and
7. having made relevant and comprehensive enquiries of our organisation and all the organisations referred to in our Tender and our professional advisers, at the date of this undertaking we are aware of no Conflicts of Interest (whether professional or commercial) nor, to the best of our knowledge, is there likely to be any Conflict of Interest, should the Tenderer and the organisations referred to in our Tender be appointed as a Services provider; and
8. as soon as we become aware or ought to have become aware of any actual or potential Conflict of Interest which may impact on the Tenderer’s ability to perform the works, we shall notify the Contracting Authority in writing; and
9. we have not and will not undertake any activity, commercial or non-commercial, which makes or implies a direct or indirect association of the Tenderer with the Olympic Movement and its goods, services and activities generally, without the authorisation of the British Olympic Association or the International Olympic Committee (as appropriate), unless such action is expressly approved in writing prior to such action taking place by the Contracting Authority.

We accept and agree that the Contracting Authority will only consider our Tender on the basis of the above undertakings and we acknowledge that that the Contracting Authority will rely on the above undertakings. We the undersigned confirm that the above undertakings are true and accurate and reflect our honestly held beliefs at the date of this undertaking and if circumstances change such that the undertakings set out above can no longer be honoured by the Tenderer, we will immediately notify the Contracting Authority.

Signed ………………………………… on behalf of the Tenderer

(Director/Company Secretary)

Date……………………………………………….

Name (print) ……………............……………… Position…...........…........………..………

Signed ………………………………… on behalf of the Tenderer

(Director/Company Secretary)

Date……………………………………………….

Name (print) ……………............……………… Position…...........…........………..………

**MANDATORY UNDERTAKING**

Company Name – <<Insert Registered Name of the Tenderer>>

When you have completed your response to this ITT, please ensure that: -

* You have **answered** all appropriate questions by the Contracting Authority’s; and
* You have **enclosed** all documents requested; and
* You have **completed** the **red text entries** required in this Mandatory Undertaking; and
* You have **read**, **signed** (for the Tenderer and all Relevant Companies), **returned** an electronic copy of this Mandatory Undertaking to the Contracting Authority **before the** **Deadline for the Receipt of Application**.
	1. **Authority of Main Contact**

I/We confirm that the representative named in the response to this ITT is authorised to act as the contact point on behalf of this Tenderer and all its Relevant Companies in dealings with the Contracting Authority during the Procurement, as set out in this ITT.

* 1. **Disclaimers**

I/We confirm that I/we have read and accept the disclaimers set out in Section 1.5 of Volume 0 of the ITT.

* 1. **Accuracy of response**

I/We certify that the information supplied is accurate to the best of my/our knowledge. I/We understand and accept that false information could result in exclusion from this procurement process.

I/We certify that I/we have made no alterations to the questions asked. I/we understand that if it is found that alterations, whether by addition, omission or substitution and whether made purposefully or not, have been made to the questions that I/we may be excluded from further consideration for any Contract to which this procurement process relates.

I/We undertake to notify the Contracting Authority as soon as practicable of any changes to any of the information given in response to this ITT that may arise during the Procurement.

* 1. **Gifts and inducements**

I/We also understand that it is a criminal offence, punishable by imprisonment, to give or offer any gift or consideration whatsoever as an inducement or reward to any servant of a Public Body. I/We also understand that any such action will empower the

Contracting Authority to cancel any contract currently in force and will result in exclusion from this procurement process.

I/We confirm that we have made careful enquiry of our respective organisations and are satisfied that no criminal offence and no offer of a gift, consideration, inducement and/or reward to any servant of the Contracting Authority or anyone acting on the Contracting Authority’s behalf has been made in connection with this or any other Contracting Authority procurement.

* 1. **Canvassing and solicitation**

I/We confirm that I/we have not canvassed or solicited any officer or employee of the Contracting Authority or anyone acting on behalf of the Contracting Authority in connection with this pre-qualification process and that no person employed by me/us or acting in my/our behalf has done any such act.

I/We further hereby undertake that I/we will not in the future canvass or solicit any officer or employee of the Contracting Authority or anyone acting on behalf of the Contracting Authority in connection with this pre-qualification process and that no person employed by me/us or acting in my/our behalf will do any such act.

* 1. **Bribery**

I/We undertake that I/we will not offer or agree to pay or give, or pay or give any sum of money, inducement of valuable consideration directly or indirectly to any person or have done so or cause or have caused to be done in relation to any other response to this pre-qualification process any such act or omission.

* 1. **Collusion**

I/We undertake that I/we will not enter into any agreement or arrangement with any other person that he/she shall refrain from participating in this pre-qualification process.

I/We also undertake that I/we will not at any time discuss with any other person any aspect of our response, and as evidenced below have procured this same undertaking from the Relevant Companies.

* 1. **Eligibility to engage in a public contract**

I/We confirm that none of the grounds set out in regulation 57 of the PCR apply, other than those declared in response to questions as required by the ITT and in the form required by Contracting Authority.

* 1. **Conflicts of Interest**

Having made comprehensive enquiries of our organisation (including the Relevant Companies) we are not aware of any actual or potential conflict of interest, whether professional, commercial or other conflict of interest nor to the best of our knowledge is there likely to be a conflict of interest should the Tenderer or any Relevant Company be invited to enter into a contract with the Contracting Authority in relation to the Project.

* 1. **No Marketing Rights**

I/We have not and will not do any of the following and we will procure that our subcontractors, agents, advisors and/or representations do not do any of the following:

* Make a public statement or communicate in any form with the media in connection with this Procurement without first obtaining the prior written consent of the Contracting Authority;
* Use any trademarks, logos or other intellectual property rights associated with the Games, QEOP or the Stakeholders;
* Represent that the Tenderer or any Relevant Company is directly or indirectly associated in any way with the Games, the Contracting Authority or that its or their respective products and/or services are in any way endorsed by any Stakeholders; or
* Engage in any form of ambush marketing or marketing which creates or implies or refers to an association between the Tenderer, the Relevant Companies and or the Games;

unless such action is expressly approved in writing by the Contracting Authority prior to such action taking place.

* 1. **Confidentiality**

I/We undertake to execute and be bound by the terms of the Confidentiality Undertaking attached to this ITT.

I/We acknowledge that the Contracting Authority may in its discretion publish the content of this ITT and any other documents issued by the Contracting Authority as part of this procurement process, including the full terms of any contract entered into as a result of this procurement process, to the general public.

* 1. **Warranty**

We accept and agree that the Contracting Authority will only consider our Tender on the basis of this Mandatory Undertaking and we acknowledge that the Contracting Authority will rely on this Mandatory Undertaking. We the undersigned confirm that the Mandatory Undertaking is true and accurate and reflects our honestly held beliefs at the date of this Undertaking and if circumstances change such that the undertakings set out in this Mandatory Undertaking can no longer be honoured by any of us, we will immediately notify the Contracting Authority.

Signature: <<insert your signature>>

Name: <<insert full name of signatory>>

Title: <<insert job title of signatory>>

For and on behalf of (Tenderer)

Signature: <<insert your signature>>

Name: <<insert full name of signatory>>

Title: <<insert job title of signatory>>

For and on behalf of (Relevant Company)

Signature: <<insert your signature>>

Name: <<insert full name of signatory>>

Title: <<insert job title of signatory>>

For and on behalf of (Relevant Company)

Signature: <<insert your signature>>

Name: <<insert full name of signatory>>

Title: <<insert job title of signatory>>

For and on behalf of (Relevant Company)

**Conflicts of Interest**

For the purposes of this contract a “Conflict of Interest” is:

* A situation where there is an actual or potential conflict between the financial, professional or personal interests of the Tenderer and those of the Contracting Authority;
* Circumstances in which such a conflict may be perceived to exist by a reasonable member of the general public;
* Having any other conflict which you believe could have a real, potential or perceived impact on the ability to undertake the role of Contractor objectively and without prejudice.

Tenderers must consider, based on their knowledge of all the circumstances and reasonable enquiries, whether their tender or, if successful, their selection, might give rise to a Conflict of Interest which could affect interests of the Contracting Authority or the Service Provider’s performance of the contract.

If any conflict of interest is identified please provide full details, including a statement of how it would be resolved. In the first instance, please limit your response to two sides of A4 (arial 11). If none, please state “None”.

**For the avoidance of doubt, the Contracting Authority reserves the right to reject and not to consider a Tender which includes a Conflict of Interest which in the Contracting Authority ‘s reasonable view cannot be effectively remedied by other, less intrusive, measures.**

Please upload your statements on the Procurement Portal as part of your Tender submission.

# Appendix B1: Grounds for Exclusion

**Grounds for mandatory exclusion**

As per PCR 2015, Tenderers can be excluded from the procurement process based on the following mandatory exclusion criteria.

If in the last five years any member (Directors or partner or any other person who has powers of representation, decision or control) of the Tenderer or any of the Relevant Companies has been convicted of the following offences:

|  |
| --- |
| 1. conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime;
 |
| 1. corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;
 |
| 1. the common law offence of bribery;
 |
| 1. bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010; or section 113 of the Representation of the People Act 1983;
 |
| 1. any of the following offences, where the offence relates to fraud affecting the European Communities’ financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities:
 |
| (i) the offence of cheating the Revenue; |
| (ii) the offence of conspiracy to defraud; |
| (iii) fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978; |
| (iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006; |
| (v) fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994; |
| (vi) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993; |
| (vii) destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969; |
| (viii) fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006; or |
| (ix) the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act; |
| 1. any offence listed—
 |
| (i) in section 41 of the Counter Terrorism Act 2008; or |
| (ii) in Schedule 2 to that Act where the court has determined that there is a terrorist connection; |
| 1. any offence under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by subparagraph (f);
 |
| 1. money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002;
 |
| 1. an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996;
 |
| 1. an offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004;
 |
| 1. an offence under section 59A of the Sexual Offences Act 2003;
 |
| 1. an offence under section 71 of the Coroners and Justice Act 2009
 |
| 1. an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994; or
 |
| 1. any other offence within the meaning of Article 57(1) of the Public Contracts Directive—
 |
| (i) as defined by the law of any jurisdiction outside England and Wales and Northern Ireland; or |
| (ii) created, after the day on which these Regulations were made, in the law of England and Wales or Northern Ireland. |

**Non-payment of taxes**

A Tenderer may be excluded from the procurement process if has it been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the Tenderer is established (if outside the UK), that your Tender is in breach of obligations related to the payment of tax or social security contributions.

Grounds for discretionary exclusion – Part 1

The Contracting Authority may exclude a Tenderer if any of the following situations set out in paragraphs (a) to (i) have applied or currently apply to the Tenderer or any Relevant Companies:

|  |
| --- |
| 1. has violated applicable obligations referred to in Regulation 56 (2) of the Public Contracts Regulations 2015 in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Public Contracts Directive as amended from time to time;
 |
| 1. is bankrupt or is the subject of insolvency or winding-up proceedings, where your assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;
 |
| 1. is guilty of grave professional misconduct, which renders its integrity questionable;
 |
| 1. has entered into agreements with other economic operators aimed at distorting competition;
 |
| 1. has a conflict of interest within the meaning of Regulation 24 of the Public Contracts Regulations 2015 that cannot be effectively remedied by other, less intrusive, measures;
 |
| 1. has a prior involvement in the preparation of the procurement procedure that has resulted in a distortion of competition, as referred to in the Regulation 41, that cannot be remedied by other, less intrusive, measures;
 |
| 1. has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions;
 |
| 1. has—

(i) been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or(ii) withheld such information or is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015; or |
|  | has undertaken to – (aa) unduly influence the decision-making process of the Contracting Authority, or |
| (bb) obtain confidential information that may confer upon your organisation undue advantages in the procurement procedure; or |
| 1. has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.
 |

Grounds for discretionary exclusion – Part 2

**NOT USED**

Conflicts of interest

In accordance with paragraph (e) above, the Contracting Authority may exclude the Tenderer if there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Tenderer to inform the Contracting Authority, detailing the conflict. Provided that it has been carried out in a transparent manner, routine pre-market engagement carried out by the Contracting Authority should not represent a conflict of interest for the Tenderer.

Taking Account of Tenderer’s Past Performance

In accordance with paragraph (g) above, the Contracting Authority may assess the past performance of a Tenderer (through a Certificate of Performance provided by a Customer or other means of evidence). The Contracting Authority may take into account any failure to discharge obligations under the previous principal relevant contracts of the Tenderer completing this ITT. The Contracting Authority may also assess whether specified minimum standards for reliability for such contracts are met.

In addition, the Contracting Authority may re-assess reliability based on past performance at key stages in the procurement process (i.e. tender evaluation, contract award stage, etc.). Suppliers may also be asked to update the evidence they provide in this section to reflect more recent performance on new or existing contracts (or to confirm that nothing has changed).

‘Self-cleaning’

Any Tenderer that answers ‘Yes’ to criteria set out above in relation to the grounds for mandatory and discretionary exclusion should provide sufficient evidence that provides a summary of the circumstances and any remedial action that has taken place subsequently and effectively “self-cleans” the situation referred to in that question. The Tenderer has to demonstrate it has taken such remedial action, to the satisfaction of the Contracting Authority in each case.

If such evidence is considered by the Contracting Authority (whose decision will be final) as sufficient, the Tenderer concerned shall be allowed to continue in the procurement process.

In order for the evidence referred to above to be sufficient, the Tenderer shall, as a minimum, prove that it has;

• paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;

• clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and

• taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the Tenderer shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered by the Contracting Authority to be insufficient, the Tenderer shall be given a statement of the reasons for that decision.