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|  **Dated 2021** |
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| **(1) BIRMINGHAM CEREMONIES LIMITED****AND****(2) [SUPPLIER NAME]** |
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| **SUPPLY OF SERVICES AGREEMENT** |
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**SUPPLY OF SERVICES AGREEMENT**

**BETWEEN**

(1) **BIRMINGHAM CEREMONIES LIMITED** incorporated and registered in England and Wales with company number 13019853 whose registered office is at 6 Brindley Place, Birmingham B1 6JB, United Kingdom (the “Company”); and

(2) **[INSERT],** a company incorporated in England (No [INSERT]) and having its registered office at [INSERT] (the **“Supplier"**)

each a "**Party**" and together the "**Parties**"

**WHEREAS:**

A. The Commonwealth Games Federation owns and controls the Commonwealth Games and has granted Birmingham the right to host the Games, which are being planned, organised and delivered by the Organising Committee.

B. The Organising Committee has appointed the Company to produce the Ceremonies and the Company wishes to engage the Supplier to provide certain services relating to the Ceremonies.

**IT IS AGREED AS FOLLOWS:**

# Definitions and Interpretation

## In this Agreement capitalised words and expressions shall, unless the context otherwise requires, have the following meanings:

**Agreement** means this supplier agreement (including the Schedules);

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

**Ambush Marketing** means any activity, commercial or non-commercial, undertaken by a person, whether public or private, which may reasonably imply that the person is associated or affiliated with the Games or any event forming part thereof 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;

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

**Brief** means any brief for the delivery of the Services as set out at Schedule 2 (Services);

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

**Ceremonies** means the Opening and Closing Ceremonies of the Games and any activities associated with them including any part of them, any performance in or of them, all preparation, auditions, pre-production, rehearsals and other related activities;

**Commencement Date** has the meaning given in Schedule 1 (Commercial Terms) of this Agreement;

**Commercially Sensitive Information** means information of a commercially sensitive nature relating to: (a) the pricing of the Services; (b) details of the Supplier’s Intellectual Property Rights; and (c) the Supplier’s business and investment plans; which the Supplier has indicated to the Company that, if disclosed by the Company, would cause the Supplier significant commercial disadvantage or material financial loss;

1. **Company** has the meaning given at the front of this Agreement;
2. **Company IP** means all Intellectual Property Rights produced by the Supplier or any Connected Person in connection with the Ceremonies, including: (a) the Services and any Deliverables; (b) any other materials coming into existence in connection with the performance of the Agreement by the Supplier or its Connected Persons; and / or (c) any Confidential Information relating to or concerning the Company or any other Games Body, the Services or connected with the Games in any manner (directly or indirectly);
3. **Company Policies** means all the Company standards, codes of practice, operating principles, policies and procedures, including Venue and/or site rules and restrictions as notified by the Company to Supplier from time to time;
4. **Confidential Information** means the Agreement and all information which is secret or otherwise not publicly available (in both cases either in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, in all cases whether disclosed orally or in writing before or after the date of the Agreement;

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

"**Data Protection Legislation**" means all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) any legislation from time to time in force in the UK relating to privacy and/or processing of personal data including the Data Protection Act 2018 or any successor legislation (ii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (iii) any statutory codes of practice issued by the Information Commission in relation to such legislation and (where applicable in the UK or where a Party is directly obliged to comply with it irrespective of its location) (iv) the retained EU law version of the General Data Protection Regulation **(“UKGDPR**"): and (v) any statutory codes of practice issued by the Information Commissioner from time to time;

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

**EIRs** means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any central government body in relation to such Regulations;

**Fees** means the cost for the delivery of the Services, including any applicable rate cards as stated in Schedule 1 (Commercial Terms) of this Agreement;

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

**Force Majeure Event** has the meaning given in Clause 14 (Force Majeure);

**Games** means the XXII Commonwealth Games to be staged and hosted in Birmingham in 2022;

**Games Affiliate** means any sponsor of the Games, any service provider to the Company or the OC, Birmingham City Council, West Midlands Combined Authority, The Department for Digital, Culture, Media and Sport, the UK Government and any other Party with an interest in the operation, control and/or management of the OC;

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

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

**HMRC** means the Commissioners for Her Majesty's Revenue and Customs;

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

**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;

**IR35** means the off-payroll working rules including any relevant primary and secondary legislation and the published practice and guidance of HMRC as enacted, amended or made available from time to time;

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

**Pandemic** has the meaning given to it in Clause 14 (Pandemic);

**Personal Data** has the meaning given to it in the Data Protection Legislation**;**

**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;

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

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

**Services** means any work or services (including any instalment or any part of them) that the Supplier is to provide to the Company pursuant to this Agreement that are specified in Schedule 2 (Services) of this Agreement or supplied in the course of performing obligations under the Agreement;

**Specification** means any specification of the Services that is contained (or referred to) in Schedule 2 (Services);

**Supplier** has the meaning given at the front of this Agreement;

**Tax** means any tax, duty, levy, charge or impost in the nature of taxation wherever and whenever imposed including (without limitation) income tax and national insurance contributions;

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

**Term** means the duration of this Agreement as set out at the front of this Agreement; and

**Work Orders** means a work order made pursuant to this Agreement for the provision of Services relating to the brand of the Company.

## Reference to any statute or statutory provision shall include a reference to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated, or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision. The singular includes the plural and vice versa and any gender includes all genders. Clause headings are inserted for convenience only and shall not affect the construction of this Agreement. If there is any inconsistency or conflict between the any part of this Agreement the terms set out in the main body of this Agreement shall take precedence.

# APPOINTMENT OF SUPPLIER

## With effect from the Commencement Date, the Company appoints the Supplier to provide the Services in accordance with the timetable set out in Schedule 3 (Timetable).

## The terms and conditions of this Agreement apply to all purchases of Services by the Company to the exclusion of any terms and conditions submitted in any way by or on behalf of the Supplier or the Company.

## The Supplier shall provide the Services in accordance with the instructions and date(s) specified in Schedule 3 (Timetable) (or, to the extent that no date or timescale is specified, then within 14 days after the date of this Agreement or at such other time as the Company may approve in writing or reasonably request). Time is of the essence for delivery of the Services. The Supplier shall, and shall procure that the Supplier Personnel shall, (without further liability to the Company) devote such of their time, attention and ability to the Services (including any overtime or additional shifts required) as may be necessary to meet those timescales. If there is any likelihood that the Supplier or any Supplier Personnel will fail to provide any Services within the applicable timeline for performance, then, without prejudice to any of the Company’s other rights or remedies, the Supplier shall promptly give the Company advance notice of the nature and effects of the circumstances in question and a best estimate of the duration of such circumstances.

# FEES AND PAYMENT

## The Fees shall be payable in accordance with Schedule 1 (Commercial Terms) of this Agreement, and shall be inclusive of all taxes, duties, costs, expenses and charges (including charges for packaging, packing, insurance and delivery).

## The Supplier may only invoice the Company in accordance with the staged payments as set out in Schedule 1 (Commercial Terms), after the agreed stage has been completed to the Company's satisfaction in accordance with the Agreement. Invoices shall quote the Agreement, a valid Contract Number and Purchase Order number, details of the Services performed and which, if the Supplier is VAT-registered, are valid VAT invoices.

## Where the Supplier submits an invoice in accordance with Clause 3.2, the Company will consider and verify it in a timely fashion. Where the Company fails to comply with this Clause above and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 3.4 after a reasonable time has passed.

## The Company shall pay all invoices that the Company has determined are valid and undisputed and compliant in all respects with the Agreement and which relate to Services properly supplied in accordance with the Agreement within 30 days of the date of receipt.

## In the event that the Consultant has failed to provide any Services in accordance with this Agreement, the Company may withhold the Fees payable in connection with the Services and/or the period in which those Services were due.

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

## When the Supplier enters into a contract with any sub-contractor in respect of this Agreement the Supplier shall include in that contract provisions having the same effect as Clauses 3.4 and 3.5 of this Agreement.

## All sums payable under the Agreement are exclusive of VAT.

# QUALITY OF SERVICES AND APPROVALS

## The Supplier undertakes, represents and warrants to the Company that the Supplier shall in relation to the Services:

### co-operate with the Company, the Games Bodies and any third parties engaged to provide services to the Company, and comply with all reasonable instructions and guidelines of the Company;

### perform the Services with reasonable care and skill and use sufficient numbers of personnel who are suitably skilled and experienced in accordance with Good Industry Practice to perform the tasks assigned to them in accordance with the Agreement;

### ensure that the Services conform with all requirements set out in the Agreement, the Brief and the Specification;

### provide the Services without infringing the Intellectual Property Rights or other rights of any third party;

### provide any equipment, tools and vehicles and such other items as are required to provide the Services; and

### obtain and maintain all necessary licences and consents, and comply with all Applicable Laws, the Company Policies and Good Industry Practice and not do or omit to do anything which may cause the Company or any Games Bodies to lose any licence, authority, consent or permission.

# WORK ORDERS

## During the Term of this Agreement, the Parties may from time to time agree and execute Work Orders for additional Services.

## The Supplier shall be required to enter into a Work Order where requested by the Company. No Work Order shall be binding until it has been populated, agreed and signed by both Parties.

## The Parties shall discuss the content of the Work Order based on the Company's requirements, with both Parties acting reasonably and in good faith.

## Each Work Order shall set out, without limitation, the:

### full details of the Services to be provided by the Supplier;

### project Plan, including milestone dates for delivery and Acceptance of the Services;

### Services Specification; and

### Fees.

## Each Work Order shall be agreed pursuant to the terms of this Agreement and shall form part of this Agreement.

## All Services accepted under Work Orders shall form part of the Services under this Agreement.

# REMEDIES OF THE COMPANY

## Where there is any breach of the Supplier's warranty in Clause 4 (Quality of Services and Approvals) the Company may (as applicable and without liability to the Supplier arising out of such action and whether or not all or any part of the Services have been accepted by the Company):

### require the Supplier to prepare and submit to the Company for the Company's approval within such timeframes as the Company shall require, a remediation plan setting out how, and the timescales in which, the Supplier will remedy the relevant failure(s). The Supplier shall make such changes to the plan as the Company requires as a condition of such approval. Once the Company has approved the remediation plan in writing, the Supplier shall implement and comply with the remediation plan;

### require the Supplier, at the Supplier’s expense, within 5 days after receipt of notice from the Company or within 24 hours if during the period from 15 June 2022 to 15 August 2022 either: (i) to re-execute the Services; or (ii) to provide a full refund of the Fees (if paid);

### refuse to accept any further deliveries or performance of the Services;

### recover from the Supplier any expenditure reasonably incurred by the Company in obtaining substitute services from another supplier;

### carry out at the Supplier’s expense any work reasonably necessary to make the Services comply with the Agreement; and/or

### claim such damages as may have been incurred by the Company as a result of the Supplier's breach of the Agreement.

## Any remedy under the Agreement shall be without prejudice to any other right or remedy which has already accrued, or subsequently accrues, to the Company, unless expressly agreed otherwise.

## Where any amendments are required pursuant to Clause 6.1, no additional Fee shall be incurred for any such amendments unless approved, with the Company acting reasonably.

# INTELLECTUAL PROPERTY

## The Supplier acknowledges and agrees that that all Company IP is and shall be, as between the Supplier and the Company, the exclusive property of the Company and will vest in the Company on creation. To the extent necessary, the Supplier hereby assigns (by way of present and future assignment) absolutely all Company IP to the Company. To the extent that any Company IP does not vest in the Company either pursuant to this Agreement or otherwise under law, the Supplier shall hold such Company IP in trust for and always for the benefit of the Company. The Supplier agrees to execute all documents and do all other things required by the Company in order to perfect the Company’s title to the Company IP and to otherwise give effect to this Clause.

## The Supplier acknowledges and agrees that nothing in this Agreement or otherwise shall confer upon the Supplier and/or any Personnel any right, title or interest in or to any Protected Games Property.

## The Supplier agrees to:

### disclose all Company IP to the Company on creation;

### ensure that any Personnel assign all Company IP to the OC on creation and otherwise comply with this Clause 9; and

### execute all documents and do all other things required by the Company in order to perfect the Company’s title to the Company IP and to otherwise give effect to this Clause 9.

## To the extent required to enable the Company or its successors or assignees to utilise in full without restriction for whatever purpose they may so determine the Protected Games Property and to enjoy and receive the benefit of the Services, the Supplier hereby grants the OC and its successors and assignees a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-license) to use all Pre-Existing Materials. The Supplier undertakes to inform the Company in writing of any intention to use Pre-Existing Materials in connection with this Agreement (including the type and nature thereof, and the intended use to which they will be out) in good time prior to their use.

## The Supplier must not and must ensure that all Personnel do not (i) use any Protected Games Property in any manner without the prior written approval of the Company; and (ii) cause or permit anything which may challenge, damage, invalidate or endanger the Protected Games Property or assist or allow any other person to do so.

## The Supplier shall procure (as appropriate) from all Personnel an undertaking to waive and not to assert any and all moral rights that those persons may have, presently or in the future, in relation to any Services and/or Games IP as conferred to them under the Copyright, Designs and Patents Act 1988 or any similar legislation, including in such form as may be required by the Company or the OC.

## The Supplier hereby warrants that:

### use by the Company (and its licensees, assignees, successors and any other person authorised by any of them) of the Company IP or any other Intellectual Property Rights in the Services shall not infringe the Intellectual Property Rights of any third party;

### it has not, and shall not, grant or assign any rights of any nature in part or all of any Deliverables produced as part of the Services to any third party whatsoever in any part of the world;

### all Services will be original to the Supplier and that the Company is or shall be the sole and unencumbered owner of all the Company IP and that nothing in the Services (or any exploitation thereof by the Company) will infringe any right whatsoever of any third party; and

### the Supplier has all the applicable permissions and licenses and has fulfilled any other relevant requirements required to copy and provide to the Company any third party material in whatever format ("Third Party Material") provided as part of the Services and that any Third Party Material shall be appropriately flagged as such where not immediately identifiable.

## The Supplier hereby irrevocably and unconditionally waives any and all moral rights or any rights of a similar nature as it may have or acquired in the Services in perpetuity, and warrants and undertakes to procure that all persons engaged in the creation or production or other use of the Services have waived any and all moral rights on the same terms.

# LIABILITY

## Nothing in this Agreement shall limit or exclude either Party’s liability for fraud or fraudulent misrepresentation or for death or personal injury caused by negligence, or for any liability which cannot legally be excluded or limited.

## Nothing in this Agreement shall exclude or limit the Supplier's liability under Clause 17 (Confidentiality), Clause 18 (Freedom of Information and Transparency), Clause 15.2, or the indemnity at Clause 9 (Indemnity).

## Subject to Clause 8.2 and Clause 9.1, neither Party is liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Agreement for any indirect, special or consequential losses or damage, in each case howsoever arising.

## Subject to Clause 8.1 and Clause 8.2, each Party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Agreement shall in no circumstances exceed 100% of the Fees paid or payable (had the Agreement not been breached) under the Agreement.

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

# INDEMNITY

## In addition to any other remedy available to the Company, the Supplier shall indemnify, defend and hold harmless the Company and the Games Bodies, and their respective directors, officers and employees in full and on demand, from and against any and all direct or indirect liabilities, claims, demands, damages, losses or expenses (including reasonable legal and other professional adviser’s fees and disbursements), interest and penalties incurred by them howsoever arising whether wholly or in part, and whether or not such losses or the consequences were foreseeable at the date of the Agreement, resulting directly or indirectly from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the Agreement;

### any claim made against the Company or any Games Body for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services;

### any breach by the Supplier of its obligations under Clause 11 (Data Protection); Clause 17 (Confidentiality); Clause 20 (Modern Slavery); or Clause 21 (Corrupt Gifts or Payments).

# INSURANCE

The Supplier shall throughout the Term of this Agreement have and maintain in force at its own cost such insurance policies as are specified in Schedule 1 (Commercial terms) and shall on the written request of the Company from time to time allow the Company to inspect and/or provide the Company with copies of the full policy document for such policies and, on the renewal of each policy, the Supplier shall send a copy of the premium receipt to the Company when requested to do so in writing by the Company.

# DATA PROTECTION

## The Supplier shall comply with its obligations under the Data Protection Legislation.

## The Company will collect and process information relating to the Company in accordance with the Company’s Data Protection Policy.

## The Supplier shall, in relation to any Personal Data obtained by the Supplier under or in connection with this Agreement:

### use and Process the Personal Data only for the purpose of fulfilling its obligations under this Agreement;

### comply with the express instructions or directions of the Company from time to time in connection with the use of the Personal Data;

### not disclose or transfer the Personal Data to any third party or Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Client;

### keep the Personal Data confidential;

### ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data. Such technical and organisational measures will include as a minimum compliance with the Company's Data Protection and Cyber-Security Policies as supplied from time to time and such measures equivalent to either British Standard BS7799 or International Standards Organisation ISO 27002;

### not process or otherwise transfer any Personal Data outside of the UK without the Company’s prior written consent;

### assist the Company in responding to any data subject access request and with ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators;

### notify the Company without undue delay on becoming aware of a Personal Data breach or communication which relates to the Company’s or Supplier’s compliance with the Data Protection Legislation;

### at the written request of the Company, delete or return Personal Data and any copies thereof to the Company on termination of this Agreement unless required by the Data Protection Legislation to store the Personal Data; and

### maintain complete and accurate records and information to demonstrate compliance with this clause 11 and allow for audits by the Company or the Company’s designated auditor.

# TERM AND TERMINATION

## The Agreement shall continue (and subject to earlier termination in accordance with the Agreement) terminate as set out at the front of this Agreement.

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

### if the other party commits a material breach of the Agreement and (if such breach is capable of remedy) fails to remedy the breach within 14 days after receiving the non-defaulting party's request in writing to do so; or

### if the other party suffers any event or proceeding in respect of its insolvency or any similar state of affairs.

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

### if the Supplier or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010;

### commits any money laundering offences listed in the Public Contract Regulations 2015; or

### if the Company ceases to be responsible for the organisation of the Ceremonies for whatever reason (including if the Games are cancelled).

## Following termination of the Agreement:

### the Company’s sole liability in respect of the Services shall be to pay to the Supplier a fair and reasonable Fee for all Services provided to the satisfaction of the Company before the date of termination, provided that the Supplier submits a valid invoice for such Fees within 60 days after such date; and

### the Supplier shall deliver up to the Company, or otherwise dispose of at the Company’s direction, all Confidential Information of the Company, the Services and any other Protected Games Property (including data) in the possession or under the control of the Supplier, any Connected Person, or its or their Personnel.

## Termination of this Agreement for whatever reason shall not affect either party’s rights or remedies that have accrued prior to the date of termination.

## On the expiry or termination of the Agreement for any reason whatsoever:

### subject to Clause 12.4, the relationship of the parties shall cease save as (and to the extent) provide for in this Clause 12.6; and

### the provisions of Clauses 4 (Quality of Services and Approvals), 6 (Remedies of the Company), 7 (Intellectual Property) 8 (Liability), 9 (Indemnity), 11 (Data Protection), 15 (Taxation), 17 (Confidentiality), 18 (Freedom of Information and Transparency), 23 (Notices) and 24 (Governing Law and Jurisdiction) and any provision which expressly or by implication is intended to come into or remain in force on or after termination will continue in force and effect.

# FORCE MAJEURE

## For the purposes of this Clause, "**Force Majeure Event**" means an event beyond the reasonable control of the affected party including, act of God, fire, flood, abnormal weather conditions, war, riot, civil commotion, terrorism, but excluding, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services or any strikes or industrial dispute relating to the Supplier and/or the Connected Persons or the negligence of or the lack of funds of the Supplier and/or the Connected Persons.

## A party will not be in breach of the Agreement nor liable for any failure or delay in performance of any obligations under the Agreement (and the date for performance of the obligations affected will be extended accordingly) as a result of a Force Majeure Event, provided that such Party complies with the obligations set out in this Clause 13 (Force Majeure). Save as provided in Clause 13.4, a Force Majeure Event will not entitle either party to terminate the Agreement.

## The party affected by the Force Majeure Event ("**Affected Party**") shall immediately notify the other in writing of the matters constituting the Force Majeure Event and shall keep that party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure Event continues.

## The Affected Party shall take all reasonable steps available to it to minimise its effects on the performance of its obligations under this Agreement.

## If the Force Majeure Event continues for longer than fifteen days the Company may, whilst the Force Majeure Event continues immediately terminate the Agreement by notice in writing to the Supplier, on a date to be specified in that notice.

# PANDEMIC

For the purposes of this Clause "**Pandemic**" means a widespread national outbreak of infectious disease (including the disease known as coronavirus disease (COVID-19)) as determined by the World Health Organisation.

## The Parties recognise that:

### a Pandemic and its effects may delay or prevent the performance by either party of some or all of its obligations under the Agreement; and

### the rights set out in this Clause 14 (Pandemic) should only be exercised by the relevant party in good faith, in extreme circumstances and where the relevant adverse effects of the Pandemic have materially changed from the circumstances during the time of the tender process for this Agreement and at the date of this Agreement.

## In such circumstances, the relevant party shall take all reasonable steps to mitigate any existing or reasonably foreseeable adverse effects of the Pandemic upon the performance of its obligations provided in this Agreement.

## If, despite such steps as provided by Clause 14.2, the relevant party's performance of its obligations under this Agreement is and continues to be adversely affected, the relevant party shall advise the other party in writing of such adversely affected obligation(s), providing reasonable evidence for the same. Provided that the affected party continues to discharge its obligations in Clause 14.2 and further to such notification, if the affected party is able to demonstrate to the other (both parties acting reasonably and in good faith) that it is being, has been or will be prevented from performing its obligations under this Agreement as a result of the Pandemic, then for so long as such adverse effect continues:

### the affected party shall not be deemed to be in breach of this Agreement nor otherwise liable for late or non-performance of an obligation under this Agreement, where and to the extent that it fails to perform any such obligation(s) under this Agreement due to the effects of the Pandemic; and

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

## Where the timing of the Games changes and/or preparations for the Games are delayed as a result of a Pandemic and its effects, the Company may review the timeline for delivery or performance of the Services and any date ("**Key Date**") which is set out or defined in this Agreement which is relevant to the delivery or performance of the Services including but not limited to:

### the Commencement Date;

### any milestone dates for performance or delivery of the Services set out in or agreed pursuant to this Agreement.

## Subject to Clause 14.6, the Company may in its sole discretion, as a result of any changes to Key Dates which arise out of the Company's review under Clause 14.4, and subject to giving the Supplier at least 1 months' written notice:

### extend the Term by a period of up to 12 months from the date of expiry of the Agreement;

### revise any dates for payment of the Fees which are set out in Schedule 3 (Fees) provided that such dates shall only be revised as is reasonably necessary to address any delays to Key Dates resulting from the Pandemic.

## In the event that the Company exercises its discretion under Clause 14.5 to extend the Term, the parties shall consider what consequential amendments are needed including, without limitation, any variations to any service levels, milestone dates for performance or delivery of Services under the Agreement, any increase or decrease in the Fees (with any increase in the Fees being limited to the relevant increase in the Consumer Fees Index) and any changes to the business continuity arrangements.

## In the event that the Games are cancelled or postponed as a result of the adverse effects of a Pandemic, then the Company shall be entitled to terminate this Agreement on the grounds that such termination is a termination by reason of unresolved Force Majeure Event in accordance with Clause 14.4. Upon termination of this Agreement following any cancellation of the Games, the Company shall pay the Supplier for any Services properly provided by the Supplier in accordance with this Agreement up to the date of termination but shall have no further liability to the Supplier.

## The Supplier acknowledges that the adverse effects of a Pandemic may result in the Company needing to omit or remove work from the Agreement. For the avoidance of doubt, the Supplier shall not in any circumstances be entitled to recover or otherwise make a claim against the Company in respect of loss of profit or loss of opportunity in respect of any commensurate reduction in the Fees.

# TAXATION

## The Supplier shall be fully responsible for and shall indemnify the Company for and in respect of any Tax (howsoever arising or assessed) and any other liability, deduction, contribution, assessment or claim arising from or made in connection with this Agreement, the provision of any Services pursuant to this Agreement or any payment or benefit received by any person engaged by the Supplier to perform the Services or any of them.

## The Supplier shall further indemnify the Company against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Company in connection with or in consequence of any such liability, deduction, contribution, assessment or claim.

## The Supplier shall use all reasonable endeavours to avoid engaging any person who is not subject to full deduction of Tax as an employee or deemed employee under PAYE on the payroll of the Supplier or a tax compliant agency or umbrella company ("**IR35 Worker**") for the provision of any of the Services.

## The Supplier shall maintain records of any IR35 Worker, including records of any payment or benefit provided to or for the benefit of the IR35 Worker, copies of all status determination statements and any correspondence relating thereto and the Supplier shall provide copies of such records to the Company on demand.

## The Supplier shall (and shall procure that its associated persons shall) not engage in any activity, practice or conduct which would constitute either a UK tax evasion facilitation offence or a foreign tax evasion facilitation offence for the purposes of Criminal Finances Act 2017 and shall have and maintain throughout the Term of this Agreement such policies and procedures as are reasonable to prevent the facilitation of tax evasion by another person, as required by Criminal Finances Act 2017.

## The Supplier shall on demand provide to the Company details of the reasonable prevention measures it has taken to prevent the commission of an offence pursuant to Criminal Finances Act 2017 and shall promptly report to the Company any request or demand from a third party to facilitate the evasion of tax in connection with the performance of this Agreement.

# NO MARKETING RIGHTS

## The Supplier agrees that, notwithstanding the terms of the Agreement and any other rights and obligations it has under the Agreement, it shall not, and must not authorise, permit, or allow or purport to authorise or permit any other person including any Connected Person:

### to in any way reproduce or use any Protected Games Property without the express prior written consent of the Company, and then only strictly in accordance with the terms of such consent;

### represent, promote or advertise, directly or indirectly, that the Supplier or its products or services (or those of any Connected Person) are in any way associated with the Games, any Games Body or any Team, or that any product or service provided has been endorsed or approved by any Games Body or any Team, including by publishing or issuing any statement (factual or otherwise) about the Games, any Games Body or any Team or the provision of products or services in respect of the Games, any Games Body or any Team, without the prior written approval of the Company;

### undertake any form of Ambush Marketing (but notwithstanding the foregoing the Supplier shall cooperate (and shall procure that all Connected Persons cooperate) with the Company in its endeavours to minimise Ambush Marketing activities;

### do anything which would have an adverse effect on or embarrass any Games Body, Team, or any Games Affiliate; or

### hold itself out as an agent or representative of any Games Body, Team or any Games Affiliate unless otherwise agreed in writing; or

### cause to be done, or permit anyone reasonably within the Supplier’s control to do, anything which might damage or endanger the validity or distinctiveness of, or the goodwill in, any Protected Games Property.

## The Supplier shall:

### promptly notify the Company if it becomes aware of any actual or suspected Ambush Marketing activities of other persons including any third party; and

### use its best endeavours to ensure that persons with whom it deals or who act on its behalf do not engage in Ambush Marketing.

# CONFIDENTIALITY

## Without prejudice to any confidentiality undertaking signed by or on behalf of the Supplier before the date of the Agreement, each party shall (and, in respect of the Supplier, shall procure all Connected Persons (and its and their Personnel) shall):

### treat all Confidential Information belonging to the other party (and in respect of the Company where it is the disclosing party, the Games Bodies) as strictly confidential;

### not disclose any Confidential Information of the other party to any person except: (i) to other Connected Persons or Personnel (if bound by equivalent obligations of confidentiality) that reasonably need to know the same in connection with the performance of obligations under the Agreement; or (ii) if required to be disclosed by Applicable Law or order of a court of competent jurisdiction; and

### not use Confidential Information for any purpose whatsoever other than for the proper performance of the Agreement.

## Upon termination of the Agreement (or earlier if requested by the Company), the Supplier shall ensure that all items or materials containing Confidential Information belong to the Company (or the Games Bodies) in the possession or control of the Supplier and/or the Connected Persons and/or its or their Personnel are destroyed or (at the Company’s option) returned to the Company, and that all such Confidential Information stored electronically, digitally or magnetically is erased.

## The Company may disclose Confidential Information of the Supplier:

### on a confidential basis to any Games Body for any proper purpose of the Company or of the relevant Games Body;

### to the extent that the Company (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

### on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in this Clause 17.3 (including any benchmarking organisation) for any purpose relating to or connected with the Agreement;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Company under this Clause 17 (Confidentiality).

## If requested by the Company, the Supplier shall procure that each of the Connected Persons that has access to Confidential Information of the Company shall execute a confidentiality undertaking in a form required by the Company, and the Supplier shall promptly deliver each such executed undertaking to the Company.

## For the avoidance of doubt, the Company shall not be bound by any duty of confidentiality in respect of any gifts or gratuities offered or provided to or by the Company. The Supplier acknowledges that the Company are permitted to make all or any details of any gift or gratuity offered or accepted publicly available without first consulting with the Supplier.

# FREEDOM OF INFORMATION AND TRANSPARENCY

## The Supplier acknowledges that the OC is subject to the requirements of the FOIA and the EIRs and that the Company has certain obligations to the OC relating to the FOIA and the EIRs.

## The Supplier shall (and shall procure that its sub-contractors (if any) shall:

### provide all necessary assistance and cooperation as reasonably requested by the Company to enable the Company to comply with its obligations to the OC under the FOIA and EIRs;

### transfer to the Company all Requests for Information relating to the Agreement, the Services, any Games Affiliate or any Games Body that it receives as soon as practicable and in any event within two (2) Business Days of receipt; and

### not respond directly to a Request for Information addressed to the Company without the approval of the Company.

## The Supplier acknowledges that the Company may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Company shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of the Functions of Public Authorities under part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Agreement)) the Company shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is except from disclosure in accordance with the FOIA and EIRs.

# Equality AND SOCIAL VALUE

## The Supplier shall and shall procure that all Connected Persons and all of its and their Personnel shall at all times comply with all Applicable Laws, including all United Kingdom legislation relating to all forms of discrimination including (without limitation): the Equality Act 2010; and/or any statutory modifications or re-enactments thereof relating to discrimination in employment.

## The Supplier acknowledges the importance of creating social value in the West Midlands region for the 2022 occurrence of the Games and agrees to perform the Services in a manner that adheres to the principles and outputs set out in the Social Values Charter issued by the OC and the related Action Plans issued by the Company, to the extent reasonably applicable.

## The Consultant shall, to the extent applicable, record the following:

### Transportation and travel mileage, as requested by the Company;

### Energy Consumption (as requested by the Company) including adhering to power management guidelines as provided by the Company; and

### Waste management (including adhering to the Waste Management Guidelines provided by the Company) and working in partnership with the Company on the responsible disposal of all assets and goods built for the Ceremonies.

# MODERN SLAVERY

## In performing its obligations under this Agreement, the Supplier:

### shall ensure that it and its Personnel comply with the Modern Slavery Act 2015 and any anti-slavery and human trafficking policy that the Company has in place from time to time;

### represents and warrants that, at the date of the Agreement, neither the Supplier nor any of its Personnel:

#### has been convicted of any offence involving slavery and human trafficking anywhere in the world; and/or

#### is or has been notified that it may be subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking;

### shall maintain a complete set of records of all documentation and materials provided to the Company in connection with the Agreement and shall implement procedures for its own Personnel, suppliers, sub-contractors, and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains. The Supplier shall make records available for the Company upon reasonable request;

### shall notify the Company as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Agreement; and

### shall indemnify the Company against any losses, liabilities, damages, costs (including, but not limited to, legal fees) and expenses incurred by, or awarded against, the Agreement as a result of any breach by the Supplier of the Modern Slavery Act 2015.

## The Supplier shall immediately notify the Company as soon as it becomes aware of a breach of any of the requirements of Clause 20.1(a).

## The Company may terminate this Agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach or suspected breach of Clauses 20.1 or 20.2.

## Any breach by the Supplier of Clauses 20.1, 20.2, 20.3 or 20.4 shall be deemed a material breach of this Agreement which is incapable of remedy.

# CORRUPT GIFTS OR PAYMENTS

## The Supplier undertakes that it:

### has not committed an offence under Sections 1, 2, 6 or 7 of the Bribery Act 2010 (a "**Bribery Offence**");

### has not been formally notified that it is subject to an investigation relating to alleged Bribery Offences or prosecution under the Bribery Act 2010;

### is not aware of any circumstances that could give rise to an investigation relating to an alleged Bribery Offence or prosecution under the Bribery Act 2010; and

### will cooperate to the fullest extent with the Company and/or any authorities in any investigation into suspected or alleged Bribery Offences and assist the Company in complying with any requests from relevant authorities.

## The Supplier agrees that it:

### has in place, and shall maintain until termination of the Agreement, adequate documented procedures designed to prevent persons associated with the Supplier (including an employee, sub-contractor or agent or other third party working on behalf of the Supplier or any Supplier Affiliate) (an "**Associated Person**") from committing a Bribery Offence (including the provision of anti-bribery and anti-corruption training);

### shall comply with the Bribery Act 2010 and shall not, and shall procure that no Associated Person shall, commit any Bribery Offence or any act which would constitute a Bribery Offence;

### shall not do or permit anything to be done which would cause the Company, any Games Body or any of its or their employees, sub-contractors or agents to commit a Bribery Offence or incur any liability in relation to the Bribery Act; and

### shall notify the Company immediately in writing if it becomes aware or has reason to believe that it has, or any of its Associated Persons have, breached or potentially breached any of the Supplier’s obligations under this Clause 21.2. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier’s obligations.

# AUDIT AND PROVISION OF INFORMATION

## The Supplier shall maintain complete and accurate books and records relating to this Agreement until 31 August 2023.  The Supplier shall allow the Company and/or its agents to access, inspect and audit the Supplier’s records, accounts and other relevant information and premises (including the making and removal of copy documents) at reasonable times on reasonable prior notice, save that the Company shall be permitted to audit the Supplier at any time without notice where the purpose of the audit is to verify the Supplier's compliance with Clause 20.1 (Prevention of Modern Slavery), to the extent this is reasonably required for the purpose of verifying the Supplier’s compliance with its obligations under the Agreement (including under Clause 21 (Compliance)). Where such access, inspection or audit is required by a governmental authority or regulator, the Supplier shall allow such inspection or audit at any time and there shall be no limit to the number of such inspections or audits that can be undertaken.

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

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

# NOTICES

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

### in the case of the Supplier, the Supplier’s address specified at the front of this Agreement;

### in the case of the Company: the registered office of the Company (marked, in either case, for the urgent attention of the Company's Business Affairs Director); or

### such other address as the recipient may designate in accordance with this Clause.

## A notice shall be deemed to have been received:

### if delivered by hand, at the time of delivery; and

### 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 a notice deemed to have been received on a day which is not a Business Day, or after 17.00 hours in the place of receipt, shall instead be deemed to have been received on the next Business Day at 09.30 hours in the place of receipt.

# GENERAL

## No breach of any provision of the Agreement 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 Agreement shall operate as a waiver of that or any other right or remedy.

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

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

## No terms, obligations, representations, promises or conditions, oral or written, express or implied, have been made or relied upon by either Party other than those expressly contained in this Agreement. For the avoidance of doubt, each Party irrevocably waives any right it may have to seek a remedy for and any rights it may have to claim damages and/or to rescind this Agreement in respect of:

### any misrepresentation which has not become a term of this Agreement; or

### any breach of warranty or undertaking (other than those expressly contained in this Agreement), whether express or implied, statutory or otherwise,

unless such misrepresentation, warranty or undertaking was made fraudulently.

## The Supplier may not, without the Company’s prior written approval, assign, novate, transfer, sublicence, subcontract, charge or otherwise deal in this Agreement or any of its rights or obligations arising pursuant to this Agreement (in whole or in part). Where any such approval is granted the Supplier shall remain liable to the Company for the performance of all obligations (except for the Company’s) under this Agreement. Nothing in this Agreement shall restrict the Company from assigning, novating, transferring, sublicensing, subcontracting, charging or otherwise dealing in this Agreement or its rights or obligations under it (in whole or in part) as it sees fit in its sole discretion from time to time.

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

## If a provision of this Agreement 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 this Agreement shall not be affected.

## Nothing in this Agreement constitutes a partnership, relationship of agency or contract of employment between the parties.

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

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

## This Agreement may be entered into in the form of two (2) or more counterparts, each executed by one or more of the Parties (but taken together executed by all), and provided that all the Parties shall so enter into the Agreement, each of the executed counterparts, when duly exchanged or delivered, shall be deemed to be an original but, taken together, they shall constitute one instrument.

## The parties shall use reasonable endeavours to resolve any dispute or claim arising in connection with this Agreement (including any dispute regarding pre-contractual negotiations, the existence, validity or termination of this Agreement or the consequences of non-existence or invalidity of this Agreement) (“**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 Agreement has already been terminated, the parties shall continue to perform their obligations under this Agreement regardless of the nature of the Dispute. The Supplier shall continue to provide the Services in accordance with this Agreement (unless the Company requests in writing that the Supplier does not do so) without delay or disruption while a dispute or disagreement is being resolved.

# GOVERNING LAW AND JURISDICTION

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

|  |  |
| --- | --- |
| Signed by [                                                  ]for and on behalf of**Birmingham Ceremonies Limited** | )))…………………………………………………. |
| Signed by Will Hutchinsonfor and on behalf of**Birmingham Ceremonies Limited** | )))…………………………………………………. |
| Signed by **[Name of Authorised Signatory]**duly authorised for and on behalf of**[Supplier]** | )))…………………………………………………. |

**SCHEDULE 1
COMMERCIAL TERMS**

**GENERAL**

|  |  |  |
| --- | --- | --- |
| **NO.** | **ITEM** | **INFORMATION** |
|  | **Commencement Date:** | *[Insert Date] or [the date of this Agreement where it will commence on date of signature]* |
|  | **Term:** | *[Insert Term if known]* OR [*Commencement Date until the earlier of: (i) the completion of all of the Services as set out in this Commercial Terms Schedule; or (ii) 31 Dec 2022 (or such alternative date as the Parties, acting reasonably, may agree in writing).]* |
|  | **Insurance** | **Public Liability Insurance** – [                ] for each and every incident]**Professional Indemnity Insurance** – [                ] for each and every incident] |
|  | **Addresses** | **Company**4th Floor, 93 Newman Street, London W1T 3EZ, United Kingdom**Supplier**[INSERT ADDRESS] |

**FEES**

The Fee shall be payable to the Supplier by the Company in instalments as follows:

|  |  |  |
| --- | --- | --- |
|  | **AMOUNT** | **DATE FOR INVOICE SUBMISSION** |
|  | UK£ |   |
|  | UK£  |   |
|  | UK£  |   |
|  | UK£  |   |
|  | UK£  |    |

Each invoice shall be payable in accordance with Clause 4 (Fees and Payment) of this Agreement.

SCHEDULE 2

1. [Services]

***ANY KEY PERSONNEL TO BE LISTED ?***

SCHEDULE 3

TIMETABLE FOR PROVISION OF THE SERVICES

[***Drafting note –*** ***Set out (or attach a copy of) the timetable for provision of the Services.*** ]