

Terms of Trade

For the purchase of
Goods and/or
Services

Sport England



Sport England Terms and Conditions

1. Definitions and Interpretation

1.1 In this Contract the following terms shall have the following meanings:

"Anti-Bribery Requirements" has the meaning given to it in Clause 24.1.1;

"Authorised Service Recipient" means any employee, contractor, agent or representative of Sport England as notified to the Supplier;

"Change of Control" means a change in the identity of the person who has Control;

"Claim" means any liabilities, regulatory fines, losses, suits, claims, damages, costs and expenses including any legal fees;

"Confidential Information" means:

- (a) information, including all Personal Data, which (however it is conveyed) is provided by one party (the **"disclosing party"**) to the other (the **"receiving party"**) pursuant to or in anticipation of this Contract that relates to the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the disclosing party or:
 - (i) where the disclosing party is the Supplier, any other entity which it directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with; or
 - (ii) where Sport England is the disclosing party, any government department, non-departmental public body or assembly sponsored public body, non-ministerial department or executive agency with which Sport England or the Supplier interacts in connection with this Contract;
- (b) other information provided by the disclosing party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the receiving party's attention or into the receiving party's possession in connection with this Contract;
- (c) discussions, negotiations, and correspondence between a party or any of its directors, officers, employees, consultants or professional advisers and the other party or any of its directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and
- (d) information derived from any of the above;

"Contract" means the Order and the Supplier's acceptance of the Order;

"Contract Price" means the price payable by Sport England to the Supplier as specified in the Order;

"Control" means the right to control, directly or indirectly, the activities of a person, whether through ownership or the ability to control the voting powers of shares, the ability to control the board or management of such person or otherwise;

"Custom Materials" means the tailor-made Deliverables (including training documentation and reference manuals, training materials, and other materials in written or electronic form, and discoveries, designs, processes and other work) made or created by the Supplier and/or any member of the Supplier's Staff, during the course of or in connection with the provision of the Services;

"Data Breach" means unauthorised and unlawful processing of, accidental loss of, alteration, unauthorized disclosure or access, destruction of or damage to Personal Data;

"Data Processor" shall have the meaning given in the Data Protection Act 1998;

"Data Controller" shall have the meaning given in the Data Protection Act 1998;

"Deliverables" means the documents, products and materials developed or provided by the Supplier or its agents, sub-contractors and employees in relation to the Services;

"Environmental Information Regulations" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant government department in relation to such regulations;

"Equality Act" means the Equality Act 2010;

"FOIA" means the Freedom of Information Act 2000;

"Goods" means the goods to be bought by Sport England from the Supplier (including any parts of them) as set out in the Order;

"Insolvency Event" means where a person ceases or threatens to cease to carry on business, is found unable to pay its debts within the meaning of the Insolvency Act 1986 section 123, has an administrator, receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters any composition with creditors generally, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of any scheme for solvent amalgamation or solvent reconstruction) or undergoes any similar or equivalent process in any jurisdiction;

"Intellectual Property Rights" or **"IPR"** means copyright, patents, trade marks, service marks, design rights, topography rights, database rights, moral rights, rights of confidence, broadcast rights and trades or business names whether registrable or otherwise, (including applications for and the right to apply for registration of any such rights), and any similar rights in any country whether currently existing or created in the future, in each case for their full term, together with any renewals or extensions;

"Non-Custom Materials" means the pre-existing, independently developed, or third party goods and services (including pre-existing, independently developed, or third party prepared courses, training documentation and reference manuals, training materials and other materials in written or electronic form) provided to Sport England by the Supplier during the course of or in connection with the provision of the Services;

"Order" or **"Purchase Order"** means Sport England's written instruction to buy the Goods and/or Services incorporating these Terms and Conditions and any other written specification detailing the Supplier, the Goods, the Services, the Contract Price, and where appropriate any Special Conditions;

"Personal Data" shall have the meaning given in the Data Protection Act 1998;

"**Process**" shall have the meaning given in the Data Protection Act 1998 and "Processed" and "Processing" shall be construed accordingly;

"**Requests for Information**" a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

"**Safety Requirements**" means health, safety, fire and environmental requirements (whether legislative or otherwise), codes of practice, guidance and policy;

"**Services**" means the services to be provided by the Supplier under the Contract as set out in the Order;

"**Special Conditions**" means any amendments or additional conditions specified in the Order;

"**Sport England**" means the English Sports Council of 1st Floor, 21 Bloomsbury Street, London, WC1B 3HF;

"**Sport England Background IPR**" means IPR which is in existence prior to the effective date of this Contract and either owned by or licensed to Sport England;

"**Supplier**" means the person, firm or company identified as such in the Order;

"**Supplier's Staff**" means the personnel engaged by the Supplier to perform the Services; and

"**VAT**" means value added tax chargeable under English law for the time being and any similar additional tax.

1.2 In this Contract, unless the context otherwise requires or the contrary intention appears:

1.2.1 headings in this Contract shall not affect their interpretation;

1.2.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.3 a reference to writing or written includes faxes but not e-mail;

1.2.4 any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done;

1.2.5 references to Clauses are to the clauses of these Terms and Conditions of the Contract;

1.2.6 the singular includes the plural and vice versa, and reference to any gender includes the other genders;

1.2.7 references to this Contract or any other agreement or document are to this Contract or such other agreement or document as it may be validly varied, amended, supplemented, restated, renewed, novated or replaced from time to time; and

1.2.8 references to a party to this Contract include a reference to its successors and permitted assigns under this Contract.

- 1.3 If there is any conflict between the Clauses and the Special Conditions, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.3.1 the Special Conditions; and
 - 1.3.2 the Clauses of these Terms and Conditions.

2. Application of these Terms and Conditions

- 2.1 Subject to any variation under Clause 25, the terms of the Order shall prevail at all times over all other terms and conditions which the Supplier may purport to apply and to the extent any obligations hereunder have already been performed by either party, then such obligations shall for all purposes be deemed to have been performed in accordance with and subject to the provisions of the terms of the Order.
- 2.2 Each Order shall be deemed to be an offer by Sport England to buy the Goods and/or Services subject to these Terms and Conditions and no Order shall be accepted until the Supplier either expressly, by giving notice of acceptance, or impliedly, by fulfilling the Order in whole or in part, accepts the offer. The Supplier undertakes to deliver the Goods and/or Services in accordance with the Contract. The Supplier shall notify Sport England immediately if it becomes aware of any likely delay in providing the Goods and/or Services.

3. Services

- 3.1 The Supplier shall provide the Services and deliver the Deliverables to Sport England or to any Authorised Service Recipient.
- 3.2 The Supplier shall meet any performance dates specified in the Order.
- 3.3 The Supplier warrants and represents that:
 - 3.3.1 it has the experience, qualifications, staff and capability to and will perform the Services with reasonable care and skill to Sport England's satisfaction in accordance with best commercial practices and professional standards and these Terms and Conditions;
 - 3.3.2 it has the power to enter into and perform its obligations under the Contract, and its obligations under the Contract constitute its legal, valid and binding obligations enforceable in accordance with its terms;
 - 3.3.3 it has, will retain and will keep in force all titles, permits, licences, and certificates necessary for it to perform its obligations and duties under the Contract and shall comply with all applicable laws, rules and regulations relating to the Services including Sport England internal regulations and procedures; and
 - 3.3.4 Sport England's receipt, use or possession of the Services or Deliverables or any part of the same in accordance with the terms of the Contract shall not infringe any IPR of any third party.
- 3.4 The Supplier warrants that:
 - 3.4.1 the Services will conform with all descriptions and specifications provided to Sport England by the Supplier;
 - 3.4.2 the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force; and

3.4.3 it has, and will continue to have, full legal authority to Process the Personal Data and that it will only Process the Personal Data strictly in accordance with the terms of this Contract and for the purposes of performing its obligations and exercising its rights under this Contract.

3.5 The Supplier warrants that the Deliverables:

3.5.1 shall be Euro Compliant. "Euro Compliant" means that any software, hardware or firmware forming part of the Deliverables will be capable of:

- (a) performing all functions for more than one currency;
- (b) complying with all legal requirements now or hereafter (at the time of their becoming law) applicable to the Euro including, but without limitation, the rules on conversion and rounding set out in EC Regulation number 1103/97; and
- (c) displaying and printing and will (at the time of the enactment of law requiring it to be the case) incorporate in all relevant screen layouts all symbols and codes adopted by any government or any other European Union body or other regulatory authority in relation to the Euro.

3.5.2 shall not contain any computer code:

- (a) designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetically disruptions or distortions, the operation of the Services, or any of Sport England's other associated software, firmware, hardware, computer system or network (sometimes referred to as "viruses" or "worms");
- (b) that would disable the Services or impair in any way its operation based on the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral (sometimes referred to as "time bombs", "time locks", or "drop dead" devices); or
- (c) that would permit the Supplier or others to access the Services to cause such disablement or impairment (sometimes referred to as "traps", "access codes" or "trap door" devices), or any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations; and

3.5.3 shall perform in accordance with any relevant specification and/or documentation.

4. Goods

4.1 The Supplier shall ensure that any Goods shall:

- 4.1.1 correspond with their description and any applicable specification agreed between the parties;
- 4.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Sport England, expressly or by implication, and in this respect Sport England relies on the Supplier's skill and judgment;

- 4.1.3 where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
- 4.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 4.2 At any time prior to delivery to Sport England of the Goods, Sport England shall have the right to inspect and test the Goods at all times.
- 4.3 If the results of any inspection or testing pursuant to Clause 4.2 cause Sport England to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications supplied or advised by Sport England to the Supplier, Sport England shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition Sport England shall have the right to require and witness further testing and inspection.
- 4.4 The Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 4.5 Except as otherwise agreed in writing prior to performance of the Contract, the Supplier shall obtain for Sport England all necessary consents, licences, permissions and/or clearances from third parties (including, but not limited to IPRs) with respect to the use of the Goods by Sport England.
- 4.6 If any of the Goods fail to comply with the provisions set out in this Clause 4, Sport England shall be entitled to the remedies set out in Clause 11.

5. Delivery of Goods

- 5.1 The Supplier shall ensure that any Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition and kept in a suitable and secure manner.
- 5.2 The date for delivery shall be specified in the Order, or if no such date is specified, then delivery shall take place within 28 days of the Order. Delivery shall be deemed to be completed when the Goods have been unloaded at the location specified by Sport England and such delivery has been received by a duly authorised agent, employee or location representative of Sport England.
- 5.3 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows an Order number, the date of the Order, the number of packages and contents and, in the case of part delivery, the outstanding balance of Goods remaining to be delivered.
- 5.4 Subject to Clause 4.4, the Goods and Deliverables shall remain at the Supplier's own risk and expense until delivered to Sport England. Ownership of the Goods shall vest in Sport England absolutely upon the earlier of their delivery or when Sport England makes payment (whether in full or in part) for the Goods and/or Services.
- 5.5 If the Goods are not delivered on the due date then, without prejudice to the other rights which it may have, Sport England shall be entitled to the remedies set out in Clause 11.
- 5.6 The Supplier shall not deliver the Goods in instalments without Sport England's prior written consent.

6. Fees and Payment

- 6.1 Sport England shall pay to the Supplier the Contract Price exclusive of VAT (which if applicable shall be applied at the appropriate rate) subject to and in accordance with Clauses 6.2, 6.3, 6.4 and 6.5 below.
- 6.2 The Supplier shall invoice Sport England in accordance with, and at the regularity specified in the Order in respect of the Contract Price. The Supplier shall submit invoices to the address specified in the Order and each invoice shall quote the relevant Order number.
- 6.3 Subject to Clause 6.4, Sport England shall pay such sums as are due by 30 days from receipt of the Supplier's invoice, provided that the invoice quotes a valid Purchase Order number and is sent to the address advised on such Purchase Order.
- 6.4 Sport England reserves the right to withhold payment to the extent that the Services have not been provided in accordance with the Contract and shall notify the Supplier accordingly giving reasons for such withholding. Sport England shall only be entitled to withhold that amount indicated as in dispute.
- 6.5 Without prejudice to any other right or remedy, Sport England reserves the right to set off any amount owing at any time from the Supplier to Sport England against any amount payable by Sport England to the Supplier under this contract or any other contract.
- 6.6 Subject to Clause 6.4, if Sport England fails to make an undisputed payment in accordance with Clause 6.2 the Supplier shall be entitled to charge interest from the date specified for payment upon the unpaid amount of the principal sum at the rate of 2 per cent per annum above the Bank of England base rate in force at the time of such failure to make payment until payment of the principal sum is made in full provided that:
- 6.6.1 the Supplier has given written notice to Sport England that the amount has not been paid, specifying:
- (a) the total amount of interest owed at the date of the notice, and, if the principal sum has not been paid, the daily rate at which the interest will continue to accrue;
 - (b) the invoice or invoices to which the interest relates; and
 - (c) the addressee to whom and address to which payment should be made; and
- 6.6.2 in the event that any sum is agreed between the parties or found to be due to the Supplier following the withholding of payment referred to in Clause 6.4 above, Sport England will pay interest on that sum in accordance with Clause 6.6 above from the date on which Sport England should have paid that sum.
- 6.7 Other than where specifically agreed in the Contract, Sport England shall not be obliged to pay any time or materials charges or expenses to the Supplier in addition to the Contract Price in respect of costs which the Supplier may have incurred in the performance of the Contract. Where the Contract does provide that Sport England shall/may reimburse the Supplier Sport England shall only make such payment to the Supplier if the following conditions are met:
- 6.7.1 the expenses have been reasonably, properly and necessarily incurred by the Supplier in the performance of the Contract;

6.7.2 the expenses do not exceed those which a Sport England employee of comparable qualifications and position would have been entitled to incur under applicable Sport England staff expense policy guidelines; and

6.7.3 the Supplier has supplied Sport England with proper supporting evidence.

6.8 Where the Supplier is VAT registered the Supplier shall recover VAT on any expenditure incurred in the normal course of its business and shall specify only the net amount of such expenditure in the invoice to Sport England prior to adding VAT thereto at the appropriate rate.

7. Intellectual Property Rights

7.1 Any IPR and other rights which may exist in any Custom Material shall automatically vest in Sport England upon creation. The Supplier hereby assigns to Sport England as beneficial owner with full title guarantee free from all encumbrances or (as appropriate) will procure the assignment by any of its employees, agents and sub-contractors, all IPR and other rights in the Custom Material.

7.2 The Supplier shall, at its own cost, do everything necessary to assist Sport England in enforcing or protecting any such IPR or other rights in the Custom Material referred to in Clause 7.1, including executing such documents as may be necessary to substantiate, document and protect the rights of Sport England in respect of such IPR.

7.3 Sport England grants to the Supplier a fully paid-up, non-exclusive, non-transferable licence during the term of the Contract to copy and modify the Custom Material only to the extent necessary and for the purpose of:

7.3.1 providing the Services to Sport England; and

7.3.2 performing the Supplier's other obligations under this Contract,

and for no other purpose whatsoever.

7.4 The Supplier hereby grants to Sport England and its officers, directors, employees, agents and sub-contractors a world-wide, non-exclusive, perpetual, royalty free and irrevocable license to use, reproduce, display, perform, prepare derivative works and distribute copies of Non-Custom Materials for its internal purposes and in the ordinary course of its business in so far as such Non-Custom Materials are incorporated into any Custom Materials or are necessary for the use of the Custom Materials. The Supplier and its licensors shall retain all right, title and interest in IPR in any Non-Custom Materials.

7.5 Sport England and its licensors shall retain all right, title and interest in any Sport England Background IPR. Neither the Supplier nor any member of the Supplier's Staff will make any use of Sport England Background IPR except as necessary for the proper provision of the Services and with the prior written consent of Sport England.

8. Intellectual Property Right Indemnity

8.1 The Supplier shall defend, hold harmless and indemnify Sport England, its respective officers, directors, employees agents and sub-contractors against all Claims resulting from, arising out of, or in any way connected with its use or possession of the Services, Goods, Deliverables or Custom Materials or any part of the same provided by the Supplier in accordance with the Contract where such possession or use infringes or is alleged to infringe any IPR or contractual rights of any third party or breaches or is

alleged to breach any statute or statutory obligation or constitutes or is alleged to constitute a tort actionable by a third party.

- 8.2 In the event that Sport England becomes actually aware of a Claim of the type described in 8.1, the parties shall act in accordance with the provisions of Clause 13.2.
- 8.3 In the event that Sport England's use of the Services, Custom Materials or the Deliverables or any part of the Services, Custom Materials or the Deliverables in accordance with the Contract infringes the IPR or contractual rights of a third party or breaches any statute or statutory obligation or constitutes a tort upon a third party, the Supplier shall, at its own expense:
- 8.3.1 procure the right for Sport England to continue using the Services, Custom Materials or Deliverables or any part of the same;
- 8.3.2 make or procure on Sport England's behalf such alterations, modifications, adjustments or substitutions to all or any part or parts of Services, Custom Materials or Deliverables that the same become non-infringing without incurring a diminution in performance or function; or
- 8.3.3 substitute a non-infringing version of the infringing Services, Custom Materials or Deliverables or the relevant infringing part of the same with versions of equal or better performance as determined by Sport England in its sole discretion.
- 8.4 Notwithstanding other rights and remedies available to Sport England, in the event that the Supplier is unable to provide any of the alternatives set out in Clause 8.3 within a reasonable time, Sport England may, at its sole option, terminate the Contract immediately whereby the Supplier shall promptly refund to Sport England any prepaid charges or fees relating to the same.

9. Security and Access

- 9.1 The Supplier shall obtain from Sport England identity cards or entry permits and shall ensure that the Supplier's Staff display these whilst on Sport England premises. The Supplier shall return these cards and/or entry permits to Sport England upon termination or expiry of the Contract.
- 9.2 Sport England may request and shall be supplied with identification of the Supplier's Staff and may conduct random security checks, including checking the possessions and vehicle(s) of the Supplier and the Supplier's Staff, whilst on Sport England premises.
- 9.3 Sport England shall at its discretion give to the Supplier by prior arrangement such access to Sport England premises and such general Sport England facilities (for example, catering and sanitary) at Sport England premises as the Supplier may reasonably require to fulfil its obligations under the Contract.
- 9.4 The Supplier shall upon the request of Sport England grant Sport England such access to the Supplier's premises or such other premises as Sport England may reasonably require for inspection of any Deliverables and/or Sport England equipment and materials provided under the Contract or for any other reason connected with the performance of the Contract.

10. Health and Safety

- 10.1 The Supplier shall comply with all current relevant Safety Requirements including but not limited to those issued by the Health and Safety Executive, the Home Office and those issued by Sport England and notified in writing to the Supplier.

- 10.2 Sport England and the Supplier may agree in writing Safety Requirements in addition to or different from those specified in Clause 10.1.
- 10.3 Without prejudice to its obligations under Clause 10.1 above, the Supplier shall:
- 10.3.1 upon the request of Sport England, submit and fully co-operate with any safety vetting process required by Sport England and provide a written statement of the Supplier's own Safety Requirements; and
 - 10.3.2 assess reasonably foreseeable risks to health and safety (including fire) that may affect Sport England or any third party arising out of or in any way connected with the performance of the Contract, and provide a copy of such assessment to Sport England upon reasonable request, and promptly take all reasonable steps to eliminate or adequately control such risks and shall notify and co-operate with Sport England accordingly.
- 10.4 Sport England shall notify the Supplier of risks to health and safety which are reasonably foreseeable to Sport England and which may affect the Supplier or Sport England arising out of or in any way connected with the activities of Sport England in connection with the Contract, and the Supplier shall have due regard to these.

11. Remedies

- 11.1 Without prejudice to any other right or remedy which Sport England may have, if any Goods and/or Services are not supplied by the applicable date, Sport England shall be entitled to one or more of the following remedies at its discretion:
- 11.1.1 where the Goods and/or Services are not provided within 14 days following the applicable date, Sport England may terminate the Contract with immediate effect by giving written notice to the Supplier and where Sport England has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and/or
 - 11.1.2 to claim damages for any additional costs, loss or expenses incurred by Sport England which are in any way attributable to the Supplier's failure to meet such dates.
- 11.2 If the Supplier has delivered Goods that do not comply with the requirements set out in Clause 4.1, then, without limiting its other rights or remedies, Sport England shall be entitled to one or more of the following rights, whether or not it has accepted the Goods:
- 11.2.1 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier and the Supplier shall repay the price of the rejected Goods in full to Sport England (whether or not Sport England has previously required the Supplier to repair or replace the rejected Goods);
 - 11.2.2 at any point during the twelve months following delivery of the Goods, to require the Supplier to either remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled; and/or
 - 11.2.3 to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.
- 11.3 Sport England's rights and remedies under this Clause 11 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description,

quality, fitness for purpose and correspondence with sample implied into these terms by the Sale of Goods Act 1979.

12. Termination

12.1 In respect of the supply of Services, Sport England may terminate the Contract for any reason by providing 15 days prior written notice to the Supplier.

12.2 Sport England shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract immediately if:

12.2.1 the Supplier commits a material breach of any of the provisions of the Contract and:

(a) the breach is capable of remedy and the Supplier fails to remedy the breach within 30 days (or such shorter period as may be reasonable) of receipt of a written notice specifying the breach and requiring its remedy (in which case Sport England reserves the right to remedy the breach and recover the costs of such breach from the Supplier and terminate the Contract in accordance with this Clause 12); or

(b) the breach is not capable of remedy;

12.2.2 the Supplier undergoes a Change of Control; or

12.2.3 the Supplier undergoes an Insolvency Event.

12.3 Either party shall have the right at any time by giving notice in writing to the other party to terminate the Contract immediately if the continued performance by one or both of the parties' obligations under this Contract is prevented by reason of any acts, events, omissions or accidents beyond the reasonable control of Sport England or the Supplier, including strikes, lockouts or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

12.4 Sport England may only terminate the Contract for a Change of Control pursuant to Clause 12.2.2 within the 6 months following the Change of Control.

12.5 The Supplier may terminate this Contract only if Sport England is in material breach of its obligation to pay undisputed fees which are due to the Supplier from Sport England under the Contract following its receipt of a valid invoice in accordance with Clause 6 by giving Sport England at least 90 days' written notice specifying the breach and requiring its remedy.

12.6 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of Sport England accrued prior to termination.

12.7 The following Clauses of this Contract together with all other provisions of this Contract which are intended to have effect following any expiry or termination of this Contract, shall survive expiry or termination of this Contract to the extent permissible by law: Clause 1 (Definitions and Interpretation), Clause 7 (Intellectual Property Rights), Clause 8 (Intellectual Property Right Indemnity), Clauses 11.2 and 11.3 (Remedies), Clause 12 (Termination), Clause 13 (Indemnities), Clause 14 (Liability), Clause 15 (Insurance), Clause 17 (Confidential Information) and Clause 27 (General).

12.8 Upon termination or expiry of the Contract, the Supplier shall promptly deliver up to Sport England at the Supplier's own risk and expense the whole or any part of any

Deliverables owned by Sport England, and any Sport England equipment and/or materials, identity cards or entry permits provided or used under the Contract. Sport England shall be deemed to have irrevocably all powers and authority to enter the Supplier's premises or any other premises to recover and remove such items and recover any costs incurred by Sport England in doing so from the Supplier.

13. Indemnities

13.1 The Supplier shall defend, hold harmless and indemnify Sport England, its officers, directors, employees, agents and sub-contractors against all Claims resulting from, arising out of, or connected with:

13.1.1 any breach by the Supplier of its obligations under Clauses 3.4.2, 16 and 17;

13.1.2 any breach by the Supplier of the warranty in Clause 22.1.2; and

13.1.3 the Supplier's, or any of the Supplier's Staff or any sub-contractor's breach of the Bribery Act 2010.

13.2 Sport England shall give notice in writing to the Supplier of any Claims as soon as reasonably practicable after becoming actually aware of the same and the Supplier shall be given control of such Claim. In the event that the Supplier fails to appoint legal counsel within 10 days after Sport England has notified the Supplier of any such claim, or the legal counsel appointed by the Supplier is in Sport England's reasonable judgement not suitably qualified to represent Sport England, Sport England shall have the right to select and appoint alternative legal counsel and the reasonable cost and expense of the same shall be paid by the Supplier.

14. Liability

14.1 Neither party limits or excludes its liability in respect of:

14.1.1 any death or personal injury caused by its negligence;

14.1.2 any fraud or fraudulent misrepresentation; or

14.1.3 any statutory or other liability which cannot be excluded under applicable law.

14.2 Subject to Clauses 14.1, 14.4 and 14.5, the Supplier's total liability arising under or in connection with this Contract or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence) in contract, tort or otherwise shall be limited to the greater of:

14.2.1 £1,000,000; and

14.2.2 150% of the Contract Price.

14.3 Subject to Clauses 14.1, 14.4 and 14.5, Sport England's total liability arising under or in connection with this Contract or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence) in contract, tort or otherwise shall be limited to 100% of the Contract Price.

14.4 Neither party shall be liable to the other for any indirect or consequential loss arising out of or in connection with this Contract or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence).

14.5 Neither party shall be liable to the other for:

14.5.1 any loss of anticipated savings (whether direct or indirect);

14.5.2 any account of profits (whether a direct or indirect loss); or

14.5.3 any loss of profit or loss of revenue (whether direct or indirect),

arising out of or in connection with this Contract or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence).

14.6 The parties agree that each of Clauses 14.1, 14.2, 14.3, 14.4 and 14.5 are separate and independent terms of this Contract.

15. Insurance

15.1 The Supplier shall arrange and maintain with a reputable insurer adequate public liability insurance, product liability insurance, professional indemnity insurance and employers' liability insurance to cover the liabilities that may arise under or in connection with the Contract and with scope of cover appropriate to the Goods and Services provided under the Contract, for a period of 6 years from the date of this Contract.

16. Data Protection

16.1 The Supplier shall and shall ensure that all of its officers, employees, agents and sub-contractors comply and continue to comply in all respects with all current data protection legislation, including the Data Protection Act 1998.

16.2 If in the reasonable opinion of Sport England, as a result of entering into the Contract, the Supplier becomes a Data Processor and Sport England a Data Controller as defined in the Data Protection Act 1998, then the Supplier shall:

16.2.1 process Personal Data in accordance with the eight Data Protection Principles and, in particular, in order to comply with the Seventh Data Protection Principle, shall, and shall procure that its sub-contractors and any other person within the control of the Supplier, shall:

- (a) process the Personal Data only for the purpose of providing the Goods and/or Services and in accordance with Sport England's lawful instructions and will not (i) assume any responsibility for determining the purposes for which and the manner in which the Personal Data is processed or (ii) process the Personal Data for its own purposes; and
- (b) take and have in place such technical and organisational security measures against Data Breaches as may be required, having regard to the state of technological development and the cost of any measures, to ensure a level of security appropriate to the harm that might result from such processing, loss, alteration, disclosure, access destruction or damage and the nature of the data to be protected; and

16.2.2 only sub-contract processing of Personal Data under this Contract to a third party provided that:

- (a) the Supplier obtains the prior written consent of Sport England to any such sub-contracting;
- (b) the Supplier flows down its obligations under this Clause 16 to protect the Personal Data in full to any sub-contractor it appoints, such that the data processing terms of the sub-contract are no less onerous than the data processing terms set out in this Clause 16; and

- (c) the Supplier will remain fully liable to Sport England for the acts, errors and omissions of any sub-contractor it appoints to process the Personal Data.

17. Confidential Information

- 17.1 Subject to Clause 17.2, each party shall treat all Confidential Information as strictly confidential and shall not disclose Confidential Information to any person.
- 17.2 A party may disclose Confidential Information if and to the extent:
 - 17.2.1 subject to Clause 18, it is required to be disclosed in accordance with the FOIA;
 - 17.2.2 it is required by law or order of the courts or by any securities exchange or regulatory or governmental body to which such party is subject, wherever situated (whether or not the requirement for information has the force of law);
 - 17.2.3 it is disclosed on a necessary basis to the insurers, professional advisers, auditors and bankers of such party;
 - 17.2.4 the Confidential Information has come into the public domain other than by a breach of any obligation of confidentiality; or
 - 17.2.5 with the prior written approval of the other party.
- 17.3 The restrictions contained in this Clause 17 shall continue to apply after the termination or expiry of this Contract (however arising).

18. Freedom of Information

- 18.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information.
- 18.2 The Supplier acknowledges that Sport England is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with Sport England to enable Sport England to comply with its information disclosure obligations.
- 18.3 The Supplier shall and shall procure that any of its sub-contractors involved in the provision of the Goods and/or Services shall:
 - 18.3.1 transfer to Sport England all Requests for Information that it receives as soon as practicable and in any event within 2 working days of receiving a Request for Information;
 - 18.3.2 provide Sport England with a copy of all information in its possession or power, in the form that Sport England requires within 5 working days (or such other period as Sport England may specify) of Sport England's request; and
 - 18.3.3 provide all necessary assistance as reasonably requested by Sport England to enable Sport England to respond to the Request for Information within the time for compliance in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 18.4 Where the Supplier considers that any information it has provided to Sport England is exempt from disclosure under the FOIA, it must tell Sport England and refer to the relevant exemption and give reasons why it is so exempt.

- 18.5 Notwithstanding Clause 18.4, Sport England shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.
- 18.6 Notwithstanding any other term of this Contract, the Supplier hereby gives his consent for Sport England to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the contract, to the general public.
- 18.7 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by Sport England.

19. Assignment and Sub-contracting

- 19.1 The Supplier shall not without the prior written consent of Sport England assign or sub-contract any of its rights or obligations under the Contract to any third party.
- 19.2 The Supplier shall remain fully responsible and liable to Sport England for all acts and omissions of its sub-contractors.

20. Information Provision

- 20.1 If requested by Sport England, the Supplier shall provide evidence of compliance with any of its obligations under the Contract.

21. Equal Opportunities Requirements

- 21.1 The Supplier shall:
- 21.1.1 comply with all current relevant anti-discriminatory legislation (including all legislation relating to race relations, equal pay, fair employment and disabled persons employment and the minimum wage);
 - 21.1.2 at Sport England's option, where the Supplier employs more than 100 individuals and its registered office is in the United Kingdom, the Supplier shall provide a written statement of the Supplier's equal opportunities policy and an adequate explanation of how the policy will be effected over time upon written request from Sport England;
 - 21.1.3 use all reasonable endeavours to adhere to the current relevant codes of practice published by the Equality and Human Rights Commission, the Department for Work and Pensions and the Equality Commission for Northern Ireland.

22. Disability Discrimination

- 22.1 Where the Supplier provides Goods or Deliverables directly to the public or a section of the public under this Contract and is therefore a "provider of services" for the purposes of Part III of the Equality Act, the Supplier, with respect to the Goods and/or Deliverables:
- 22.1.1 shall comply with all the relevant provisions of the Equality Act; and
 - 22.1.2 warrants that the Deliverables shall comply with the Equality Act at no additional expense to disabled persons or Sport England.

23. Prevention of Corruption and Fraud

- 23.1 The Supplier shall not offer or give, or agree to give, to Sport England or any other public body or any person employed by or on behalf of Sport England or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with Sport England or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- 23.2 The Supplier warrants that it has not paid commission or agreed to pay commission to Sport England or any other public body or any person employed by or on behalf of Sport England or any other public body in connection with the Contract.
- 23.3 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by its officers (including its shareholders, members and directors), employees, agents, suppliers and sub-contractors in connection with receipt of monies from Sport England.
- 23.4 If the Supplier, its officers (including its shareholders, members and directors), employees, agents, suppliers and sub-contractors or anyone acting on behalf of the Supplier engages in conduct prohibited by Clauses 23.1 and 23.3 Sport England may terminate the Contract.

24. Anti-Bribery

- 24.1 The Supplier undertakes to Sport England that it:
- 24.1.1 will fully comply with, and will procure that all sub-contractors and the Supplier's Staff fully comply with:
- (a) the Bribery Act 2010; and
 - (b) Sport England's fraud and anti-bribery policy so far as it relates to the Supplier (as amended from time to time).
- (the "**Anti-Bribery Requirements**"); and
- 24.1.2 will not do, or omit to do, any act that will cause Sport England to be in breach of the Anti Bribery Requirements.

25. Variation

- 25.1 No variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by both parties.

26. Notices

- 26.1 Any notice required to be given pursuant to the Contract shall be in writing, addressed to:
- 26.1.1 where such notice is sent by the Supplier, the nominated individual as notified by Sport England to the Supplier from time to time or in the absence of Sport England nominating such an individual, Sport England's Head of Legal Services; or
- 26.1.2 an authorised official of the Supplier (as notified by the Supplier to Sport England) where such notice is sent by Sport England.

26.2 Notices shall be sent either by hand, by prepaid recorded delivery or registered post or by prepaid first class post to the relevant address specified in the Order, or by fax confirmed by first class post to Sport England or the Supplier at the relevant address specified in the Order, and any such notice shall be deemed to have been received by the addressee at the time of delivery or, in the case of prepaid first class post, two days after posting.

27. General

27.1 The failure of either party to exercise or enforce any right conferred upon it by the Contract shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement of any such right at any time(s) thereafter, as a waiver of another or constitute a continuing waiver. Each right or remedy of a party under this Contract is without prejudice to any other right or remedy of that party under this Contract or at law.

27.2 Nothing in the Contract shall be deemed to constitute either party as the agent of the other or create a partnership or joint venture between the parties and the Supplier shall have no power to bind Sport England or to contract in the name of or create a liability against Sport England in any matter whatsoever.

27.3 If any provision of this Contract is declared by any competent court or body to be illegal, invalid or unenforceable under the law of any jurisdiction, or if any enactment is passed that renders any provision of this Contract illegal, invalid or unenforceable under the law of any jurisdiction this shall not affect or impair the legality, validity or enforceability of the remaining provisions of this Contract.

27.4 Without prejudice to the rights of either party in respect of actions relating to fraud (including fraudulent misrepresentation) the Contract and any appendices and any documents referred to therein constitutes the entire understanding between the parties with respect to the subject matter and supersedes all prior agreements, negotiations and discussions between the parties relating thereto.

27.5 This Contract does not create or infer any rights under the Contracts (Rights of Third Parties) Act 1999 which are enforceable by any person who is not a party to the Contract.

27.6 This Contract and any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.