



## SUPPLY OF GOODS & SERVICES General Terms & Conditions

### 1 DEFINITIONS, INTERPRETATION

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

**Agreement** means the agreement comprising of the Authorizing Document, these General Terms & Conditions and any schedules or appendices;

**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;

**Applicable Laws** means all laws, rules, regulations and other requirements of relevant regulatory authorities which have the force of law together with any applicable requirements, safety standards, ethical norms or industry practices;

**Authorizing Document** means the Purchase Order issued by Arena or the Short Form Contract executed by Arena and the Supplier, as applicable;

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

**Commencement Date** has the meaning given in the Authorizing Document;

**Commercially Sensitive Information** means information of a commercially sensitive nature relating to: (a) the pricing of the Supplies; (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;

**Company** means the person named in this Agreement under the Authorizing Document as the purchaser of the Supplies;

**Company IP** means all Intellectual Property Rights produced by the Supplier or any Connected Person in connection with the Agreement, including: (a) the Supplies 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 the Services;

**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;

**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 Supplies, 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 any legislation from time to time in force in Thailand relating to privacy and/or processing of personal data;

**Deliverables** means all documents, products and materials developed by the Supplier or its



Connected Persons in relation to the Supplies (if any) in any form, including computer programs, data, reports and specifications (including drafts) including as set out in the Agreement;

**Delivery Address** means the location(s) where the Supplies are to be delivered, as specified in the Agreement (as applicable) or where not specified, the Company's official logistics warehouse, or as otherwise advised by the Company to the Supplier in writing within a reasonable time before such delivery;

**Delivery Date** means the delivery date(s) for the Supplies as set out in this Agreement or as otherwise specified by the Company in writing;

**Fees** means the cost for the delivery or provision of the Supplies, including any applicable rate cards as stated in the Authorizing Document of this Agreement or a Work Order;

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

**General Terms & Conditions** means these general terms and conditions stated herein, existing as of the date of the Authorizing Document;

**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;

**Goods** means those goods as may be set out in the Authorizing Document (Supplies);

**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;

**Notice to Proceed** means the notice to proceed (if any) set out in the Authorizing Document;

**Parties** means the Supplier and the Company;

**Party** means the Supplier or the Company;

**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;

**Purchase Order** means the offer issued by the Company to purchase the Supplies;

**Pre-Existing Materials** means all documents, information and materials provided by the Supplier relating to the Supplies which existed prior to the Commencement Date or which were created outside the scope of the Agreement, including the pre-existing materials specified in the Authorizing Document;

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

**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 Authorizing Document of this Agreement or supplied in the course of performing obligations under the Agreement;

**Short Form Contract** means the document setting out the particulars of the agreement and entitled



“Short Form Contract” executed by both the Company and the Supplier;

**Specification** means any specification of the Supplies that is contained (or referred to) in the Authorizing Document;

**Supplier** means the person named in this Agreement under the Authorizing Document as the supplier of the Supplies;

**Supplies** means the Goods and/or the Services;

**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;

**Term** means the duration of this Agreement as set out at in the Authorizing Document;

**VAT** means value added tax or other equivalent tax; and

**Work Orders** means a work order made pursuant to this Agreement for the provision of additional Supplies.

- 1.2 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.

## 2 APPOINTMENT OF SUPPLIER

- 2.1 With effect from the Commencement Date, the Company appoints the Supplier to

provide the Supplies (and any related and ancillary services) in accordance with the timetable set out in the Authorizing Document.

- 2.2 The terms and conditions of this Agreement apply to all purchases of Supplies by the Company or its Affiliates to the exclusion of any terms and conditions submitted in any way by or on behalf of the Supplier or the Company.

## 3 FEES AND PAYMENT

- 3.1 The Fees shall be payable in accordance with the Authorizing Document of this Agreement, and shall be inclusive of all taxes, duties, costs, expenses and charges (including charges for packaging, packing, insurance and delivery).
- 3.2 Where it is stated in the Authorizing Document that the Company and Supplier entered into a Notice to Proceed in relation to the Supplies prior to the date of this Agreement, the Supplier acknowledges that if, as of the date of this Agreement, the Company has made payments under the Notice to Proceed towards the Fees in respect of that portion of the Supplier carried out under the Notice to Proceed, then the Fees payable to the Supplier under this Agreement shall be reduced by the sums previously paid to the Supplier pursuant to the Notice to Proceed.
- 3.3 The Supplier may only invoice the Company in accordance with the staged payments as set out in the Authorizing Document, after the agreed stage has been completed to the Company's satisfaction in accordance with the Agreement, as applicable. Invoices shall quote the Agreement, a valid Authorizing Document number, details of the Supplies delivered and/or performed and which, if the Supplier is VAT-registered, are valid VAT invoices.



- 3.4 Where the Supplier submits an invoice in accordance with Clause 3.3, 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 3.5 after a reasonable time has passed.
- 3.5 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 Supplies properly made in accordance with the Agreement within 45 days of the date of receipt.
- 3.6 In the event that the Consultant has failed to provide any Supplies in accordance with this Agreement, the Company may withhold the Fees payable in connection with the Supplies and/or the period in which that Supply was due.
- 3.7 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.
- 3.8 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 3.5 and 3.6 of this Agreement.
- 3.9 All sums payable under the Agreement are exclusive of VAT.

#### **4 DELIVERY**

- 4.1 The Supplier shall deliver the Supplies in accordance with the instructions and date(s) specified in the Authorizing Document (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 Supplies. 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 Supplies (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 Supplies 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.
- 4.2 The Supplier shall ensure that:
- (a) any Goods are marked and delivered in accordance with the Company's instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course; and
  - (b) any delivery of Goods is accompanied by a delivery note which shows the Authorizing Document number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 4.3 Unless otherwise agreed by the Company in writing, all Goods shall be delivered to the Premises during business hours with transportation charges and any other applicable charges pre-paid by the Supplier. The Company shall not be obliged to carry out any work to enable delivery of Supplies to take place. The Supplier shall offload Goods at its own risk, as directed by the Company.



- 4.4 The Company and, if applicable, the Supplier shall inspect the Goods as soon as practicable following delivery and agree an inventory of the quality and quantity delivered. The Company shall not be liable for any damage found on such inspection. If the Company in its reasonable opinion considers any of the Goods to be in an unsuitable condition or of the wrong quantity either on delivery or subsequently, the Company shall notify the Supplier, which shall promptly arrange the repair, remedy, correction or replacement of such Goods within 24 hours following the time of the Company's so notifying the Supplier. If the Supplier has not fully repaired, remedied, corrected or replaced (as appropriate) such Goods by the expiry of such 24-hour period, the Company shall be entitled to enforce the Company's remedies under Clause 8 (Remedies).
- 4.5 Unless otherwise specified, the Supplier shall be responsible for installing, commissioning and decommissioning the Goods, as applicable.
- 4.6 The Company shall not be deemed to have accepted the Goods until it has had a reasonable period of time to inspect them following delivery or, if later, within a reasonable period of time after any latent defect in them has become apparent.
- 4.7 The Supplier shall give the Company prior written notice of the delivery under this Agreement of any Goods having a hazard to the health and safety of persons or property, identifying those hazards and giving full details of any precautions to be taken by the Company on the delivery of such Goods and their subsequent storage or handling. The Supplier shall notify the Company in writing of all requirements and restrictions imposed by governmental and other authorities or persons relating to the possession, use or onward supply of the Goods.

## 5 TITLE AND RISK

- 5.1 Where the Company is purchasing Goods:
- (a) title to the Goods shall pass to the Company upon the earlier of delivery or the first payment by the Company in respect of the Goods and the Supplier shall take all reasonable steps to pass title in such Goods to the Company, including, where requested, completing a vesting certificate; and
  - (b) risk in the Goods shall only pass to the Company upon delivery of the Goods in accordance with this Agreement.
- 5.2 Where the Company is hiring Goods:
- (a) title to the Goods indicated as being hired by the Company from the Supplier (**Hire Goods**) shall remain the property of the Supplier. The Company agrees to keep the Hire Goods free of any encumbrance and not to sell or otherwise deal with such Goods except in accordance with this Agreement. The Supplier shall supply all associated plant, tackle, tools and documentation necessary for commissioning, use and decommissioning of the Hire Goods as set out in this Agreement;
  - (b) the Supplier irrevocably permits the Company, its contractors and other persons authorised by the Company to use the Hire Goods in accordance with the manufacturer's instructions and recommendations during the hire period specified in this Agreement (**Hire Period**) and subject to this Agreement;
  - (c) the Supplier shall not be entitled to charge for: (i) damage or defect which is determined to pre-date the Company's use of the Hire Goods (whether or not identified during the course of the hand-over inspection); (ii) any modification of the Hire Goods which has been authorised by the Supplier; (iii) any damage resulting



from improper design or manufacture; (iv) any damage resulting from any action, omission or breach by the Supplier or by any of the Supplier Personnel; and/or (v) any other damage which is not notified by the Supplier to the Company by the date of the final settlement invoice (together, **Excluded Damage**); and

- (d) within 30 days after return of the Hire Goods to the Supplier, the Supplier shall deliver an invoice to the Company for the Supplier's actual, reasonable and substantiated costs to repair, remedy or correct damage other than Excluded Damage, on the same rates (if any) as in this Agreement;
- (e) the Company shall have no liability or responsibility whatsoever for: (i) any loss or damage to, and any charges or other payments to the Supplier for, any property of the Supplier (including any Hire Goods) which occurs after the date due for collection by Supplier; or (ii) theft or loss of Hire Goods not caused by the negligence of the Company.

5.3 While in the Supplier's or any Supplier Personnel's possession or control, the Supplier shall accept risk in any Company Property and such Company Property shall be kept clearly identifiable as the Company's property, shall be fully insured by the Supplier, shall be safely stored apart from other property, shall be used solely for the purpose of performing this Agreement and shall be returned to the Company immediately on the Company's written demand.

5.4 The Company reserves the right to require the Supplier to enter into commitments entitling the Company to take possession of the Goods when the Company considers there is a risk of Supplier financial distress.

## 6 QUALITY OF SUPPLIES AND APPROVALS

6.1 The Supplier undertakes, represents and warrants to the Company that the Supplier shall in relation to the Supplies:

- (a) co-operate with the Company and any third parties engaged to provide services to the Company, and comply with all reasonable instructions and guidelines of the Company;
- (b) 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;
- (c) ensure that the Supplies conform with all requirements set out in the Agreement and the Specification, and that any Goods shall be fit for any purpose expressly or impliedly made known to the Supplier by the Company, of satisfactory quality and free from defects in workmanship, installation and design;
- (d) provide the Supplies without infringing the Intellectual Property Rights or other rights of any third party;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Supplies; and
- (f) obtain and maintain all necessary licences and consents, and comply with all Applicable Laws, the Company Policies and Good Industry Practice.

## 7 WORK ORDERS

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



7.2 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.

7.3 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.

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

- (a) full details of the Supplies to be provided by the Supplier;
- (b) project Plan, including milestone dates for delivery and Acceptance of the Supplies;
- (c) Supplies Specification; and
- (d) Fees.

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

7.6 All Supplies accepted under Work Orders shall form part of the Supplies under this Agreement.

## **8 REMEDIES OF THE COMPANY**

8.1 Where there is any breach of the Supplier's warranty in Clause 6 (Quality of Supplies 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 Supplies have been accepted by the Company):

- (a) 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;

- (b) require the Supplier, at the Supplier's expense, within 5 days after receipt of notice from the Company either: (i) to re-execute the Supplies; or (ii) to provide a full refund of the Fees (if paid);
- (c) refuse to accept any further deliveries or performance of the Supplies;
- (d) recover from the Supplier any expenditure reasonably incurred by the Company in obtaining substitute supplies from another supplier;
- (e) carry out at the Supplier's expense any work reasonably necessary to make the Supplies comply with the Agreement; and/or
- (f) claim such damages as may have been incurred by the Company as a result of the Supplier's breach of the Agreement.

8.2 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.

8.3 If the Company exercises any right under Clause 8.1 in respect of Goods, the Company may at its absolute discretion require the Supplier to collect the relevant Goods forthwith or return the Goods to the Supplier at the Supplier's cost.

8.4 Where any amendments are required pursuant to Clause 8.1, no additional Fee shall be incurred for any such amendments unless approved, with the Company acting reasonably.



8.5 Subject to liquidated damages being provided for in the Authorizing Document, in the event the Supplier delays completion and/or delivery of the whole or any part of the Supplies (with reference to the relevant timeframe set out under the Authorizing Document, or in the absence of a clear timeframe, by the date reasonably requested by the Company to the Supplier in writing) without the extension of time being approved by the Company in writing (including as part of Work Orders), then the Company shall be entitled to liquidated damages in the amount stated in the Authorizing Document for each day that elapses between the required time for completion and the actual date of completion as certified by the Company, up to the maximum amount as set out in the Authorizing Document. The Supplier expressly agrees that this is a true and reasonable pre-estimate of the damages that shall be suffered by the Company as a result of the Supplier's default. The Company may, without prejudice to any other rights or methods of recovery, deduct the amount of such liquidated damages or damages from any monies due or to become due to the Supplier.

## **9 INTELLECTUAL PROPERTY**

9.1 The Supplier acknowledges and agrees 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.

9.2 The Supplier agrees to:

- (a) disclose all Company IP to the Company on creation;
- (b) ensure that any Personnel assign all Company IP to the Company on creation and otherwise comply with this Clause 9; and
- (c) 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.

9.3 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 and to enjoy and receive the benefit of the Services, the Supplier hereby grants the Company and its successors and assignees a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-licence) 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 put) in good time prior to their use.

9.4 The Supplier hereby warrants that:

- (a) 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 Supplies shall not infringe the Intellectual Property Rights of any third party;
- (b) it has not, and shall not, grant or assign any rights of any nature in part or all of any Goods produced as part of the





Supplies to any third party whatsoever in any part of the world;

- (c) all Supplies 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 Supplies (or any exploitation thereof by the Company) will infringe any right whatsoever of any third party; and
- (d) 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 Supplies and that any Third Party Material shall be appropriately flagged as such where not immediately identifiable.

9.5 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 Supplies in perpetuity, and warrants and undertakes to procure that all persons engaged in the creation or production or other use of the Supplies have waived any and all moral rights on the same terms.

## 10 LIABILITY

- 10.1 Nothing in this Agreement shall limit or exclude either Party's liability for fraud or fraudulent misrepresentation or for death or personal injury or third-party property damage caused by negligence, or for any liability which cannot legally be excluded or limited.
- 10.2 Nothing in this Agreement shall exclude or limit the Supplier's liability under Clause 17 (Confidentiality), or the indemnity at Clause 11 (Indemnity).

10.3 Subject to Clause 10.2 and Clause 11.1, 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.

10.4 Subject to Clause 10.1 and Clause 10.2, 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.

## 11 INDEMNITY

11.1 In addition to any other remedy available to the Company, the Supplier shall indemnify, defend and hold harmless the Company, 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:

- (a) any claim against the Company for injury, death or property damage arising out of the Supplier's negligence or wilful misconduct;
- (b) any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the



manufacture, supply or use of Goods, or receipt, use or supply of the Services;

- (c) any breach by the Supplier of its obligations under Clause 13 (Data Protection); Clause 17 (Confidentiality); Clause 19 (Modern Slavery); or Clause 20 (Corrupt Gifts or Payments).

## 12 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 the Authorizing Document 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.

## 13 DATA PROTECTION

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

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

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

- (a) use and Process the Personal Data only for the purpose of fulfilling its obligations under this Agreement;
- (b) comply with the express instructions or directions of the Company from time to time in connection with the use of the Personal Data;
- (c) 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 Company;

- (d) keep the Personal Data confidential;
- (e) 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;
- (f) not process or otherwise transfer any Personal Data outside of the Thailand without the Company's prior written consent;
- (g) 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;
- (h) 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;
- (i) 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
- (j) maintain complete and accurate records and information to demonstrate compliance with this clause 13 and allow for audits by the Company or the Company's designated auditor.



## 14 TERM AND TERMINATION

- 14.1 The Agreement shall continue (and subject to earlier termination in accordance with the Agreement) until expiry as set out at the front of this Agreement.
- 14.2 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:
- (a) 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
  - (b) if the other Party suffers any event or proceeding in respect of its insolvency or any similar state of affairs.
- 14.3 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:
- (a) if the Supplier or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010 or other Applicable Laws; or
  - (b) commits any money laundering offences.
- 14.4 Following termination of the Agreement:
- (a) the Company's sole liability in respect of the Supplies shall be to pay to the Supplier a fair and reasonable Fee for all Supplies 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
  - (b) the Supplier shall deliver up to the Company, or otherwise dispose of at the Company's direction, all Confidential Information of the Company in the possession or under the control of the Supplier, any Connected Person, or its or their Personnel.
- 14.5 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.
- 14.6 On the expiry or termination of the Agreement for any reason whatsoever:
- (a) subject to Clause 14.4, the relationship of the Parties shall cease save as (and to the extent) provide for in this Clause 14.6; and
  - (b) the provisions of Clauses 6 (Quality of Supplies and Approvals), 8 (Remedies of the Company), 9 (Intellectual Property) 10 (Liability), 11 (Indemnity), 13 (Data Protection), 16 (Taxation), 17 (Confidentiality), 22 (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.

## 15 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.



- 15.1 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 15 (Force Majeure). Save as provided in Clause 15.4, a Force Majeure Event will not entitle either Party to terminate the Agreement.
- 15.2 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.
- 15.3 The Affected Party shall take all reasonable steps available to it to minimise its effects on the performance of its obligations under this Agreement.
- 15.4 If the Force Majeure Event continues for longer than 15 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.

## 16 TAXATION

- 16.1 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 Supplies pursuant to this Agreement or any payment or benefit received by any person engaged by the Supplier to perform the Supplies or any of them.
- 16.2 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.

- 16.3 The Supplier shall (and shall procure that its associated persons shall) not engage in any activity, practice or conduct which would constitute either a Thailand tax evasion facilitation offence or a foreign tax evasion facilitation offence 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.

## 17 CONFIDENTIALITY

- 17.1 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):
- (a) treat all Confidential Information belonging to the other Party as strictly confidential;
  - (b) 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
  - (c) not use Confidential Information for any purpose whatsoever other than for the proper performance of the Agreement.
- 17.2 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 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.

17.3 The Company may disclose Confidential Information of the Supplier:

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

17.4 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.

17.5 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.

## 18 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 legislation relating to all forms of discrimination and/or any statutory modifications or re-enactments thereof relating to discrimination in employment.

## 19 MODERN SLAVERY

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

- (a) shall ensure that it and its Personnel comply with the Applicable Laws related to modern slavery and any anti-slavery and human trafficking policy that the Company has in place from time to time;
- (b) represents and warrants that, at the date of the Agreement, neither the Supplier nor any of its Personnel:
  - (i) has been convicted of any offence involving slavery and human trafficking anywhere in the world; and/or
  - (ii) 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;
- (c) 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;

- (d) 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
- (e) 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 Applicable Laws related to modern slavery.

19.2 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).

19.3 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 this Clauses 19.

19.4 Any breach by the Supplier of this Clauses 19 shall be deemed a material breach of this Agreement which is incapable of remedy.

## 20 CORRUPT GIFTS OR PAYMENTS

20.1 The Supplier undertakes that it:

- (a) has not committed an offence under Applicable Laws (a "**Bribery Offence**");
- (b) has not been formally notified that it is subject to an investigation relating to alleged Bribery Offences or prosecution under Applicable Laws;
- (c) is not aware of any circumstances that could give rise to an investigation relating to an alleged Bribery Offence

or prosecution under Applicable Laws; and

- (d) 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.

20.2 The Supplier agrees that it:

- (a) 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);
- (b) shall comply with Applicable Laws and shall not, and shall procure that no Associated Person shall, commit any Bribery Offence or any act which would constitute a Bribery Offence;
- (c) shall not do or permit anything to be done which would cause the Company or any of its employees, sub-contractors or agents to commit a Bribery Offence or incur any liability in relation to the Bribery Act; and
- (d) 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.

## 21 AUDIT AND PROVISION OF INFORMATION



- 21.1 The Supplier shall maintain complete and accurate books and records relating to this Agreement for a period of 2 years subsequent to its termination. The Supplier shall allow the Company and/or its agents to access, inspect and audit the Supplier's records, accounts and other relevant information relating to this Agreement 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 19 (Equality and Social Value)). 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.
- 21.2 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.
- 21.3 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.

## 22 NOTICES

- 22.1 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 to:
- (a) in the case of the Supplier, the Supplier's address or email specified at the front of this Agreement;
  - (b) in the case of the Company, the Company's address or email specified at the front of this Agreement; or
  - (c) such other address as the recipient may designate in accordance with this Clause.
- 22.2 A notice shall be deemed to have been received:
- (a) if delivered by hand, at the time of delivery; and
  - (b) if sent by registered post, 48 hours after posting (or, if sent by an internationally recognised courier service, 48 hours from the date of delivery to the courier service);

provided that 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.

## 23 GENERAL

- 23.1 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.
- 23.2 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.

23.3 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.

23.4 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:

- (a) any misrepresentation which has not become a term of this Agreement; or
- (b) 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.

23.5 The Supplier may not, without the Company's prior written approval, assign, novate, transfer, sublicense, 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.

23.6 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.

23.7 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.

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

23.9 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.

23.10 The Agreement shall not be enforceable by anyone other than the parties to this Agreement.

23.11 This Agreement may be entered into in the form of 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.

## **24 GOVERNING LAW AND JURISDICTION**

24.1 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 Thailand. Each party irrevocably submits for all purposes in connection with this Agreement any dispute to the exclusive jurisdiction of the courts of Bangkok.

24.2 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) 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 Supplies 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.



*The foregoing terms and conditions represent AESG (Thailand) Limited's (Company No. 0105566111814) (the "Company") general terms and conditions applicable to any Purchase Order or any Short Form Contract wherein these general terms and conditions are specifically incorporated by reference to "Arena's General Terms and Conditions for Thailand Supply of Goods and Services" available <https://arenagroup.com/terms-conditions-of-supply>.*

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