



Legizlatura

XIV

Kategorija

ORAL

Mistoqsija Numru:

23706

Data:

27/11/2024

Seduta:

311 - 13/02/2025 04:00 PM

Seduta Interim:

-

Titlu:

Ftehim ta' Sponsorship bejn il-Ministeru għat-Turiżmu u l-Indafa Pubblika u klabb tal-futbol

L-Onorevoli RYAN CALLUS staqsa lill-Onorevoli IAN BORG (Deputat Prim Ministru u Ministru għall-Affarijiet Barranin u t-Turiżmu):

Jista' d-Deputat Prim Ministru jippubblika l-ftehim ta' sponsorship li sar bejn il-Ministeru għat-Turiżmu u l-Indafa Pubblika mal-klabb tal-football li d-dettalji dwaru qed jingħataw separatament?

Twegiba:

Ninforma lill-Onor. Interpellant li qed inpoġġi fuq il-Mejda tal-Kamra d-deċizzjoni maħruġa mill-Uffiċju tal-Information and Data Protection Commissioner dwar il-publikazzjoni taż-żewġ ftehimiet li kienu saru bejn l-MTA u l-klabb tal-football li d-dettalji dwaru ingħataw separatament, kif ukoll il-ftehimiet innifishom.

Dokumenti annessi mal-mistoqsija:



Dokumenti mqiegħda fuq il-Mejda tal-Kamra: PQ 23706 - IDPC Decision.pdf



PQ 23706 - Visit Malta Sponsorship Agreement 16 August 2019 Redacted version.pdf



PQ 23706 - Visit Malta Variation Agreement 21 March 2022 Redacted version.pdf

Dokumenti annessi mar-risposta:

L-añhar bidla: 13/2/2025 04:33:56 PM - PQ ID 388C133722EF7CBEC1258BE2005025A2

Information and Data Protection Commissioner

CDP/FOI/55/2022

Caroline Muscat

vs

Malta Tourism Authority

FREEDOM OF INFORMATION REQUEST

1. On the 9th August 2022, Ms Caroline Muscat (the “**applicant**”) made a request pursuant to the requirements set forth in article 6(1) of the Freedom of Information Act (the “**Act**”), Chapter 496 of the Laws of Malta, requesting the Malta Tourism Authority (the “**Public Authority**”) to provide an electronic copy of the following documents:

- “ – *Copy of all agreements signed with Manchester United*
- *Copy of all invoices paid in relation to these agreements until the time of reply to this FOI*
 - *List of members of delegation, including partners, accompanying Minister to Manchester during the visit in August 2022*
 - *List of persons given complimentary Man United football tickets as a result of the agreements with Man United.*”

2. On the 9th September 2022, the Public Authority provided the “[i]ist of members of delegation, including partners, accompanying Minister to Manchester during the visit in August 2022” and invoked the following exemptions in relation to the other requested documents (the “**requested documents**”):

- ‘*Copy of all agreements signed with Manchester United* –

- (a) *Article 31(2), in view of the confidentiality obligations in the Agreement itself, which would found an action by MTA's counterparty for breach of confidence;*
 - (b) *Article 32(1)(a) and (b) in view of the fact that if a copy of such information is sent to you, the Authority would disclose trade secrets and/or other information having commercial value that would be, or could be expected to be destroyed or diminished if the information were disclosed; and*
 - (c) *Article 38(c) and (d) in view of the fact that if a copy of such information is sent to you, it could reasonably be expected to have a substantial adverse effect on both (i) the proper and efficient conduct of the operations of the Authority and (ii) the conduct of negotiations (including commercial negotiations) by the Authority"*
- *Copy of all invoices paid in relation to these agreements until the time of reply to this FOI-*

Kindly note we are unable to meet your request as per Sub-paragraph (c) of article 32 of the FOI Act provides that a document is an exempt document if its disclosure would disclose information concerning a person in respect of his business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, being information the disclosure of which would, or could reasonably be expected, to unreasonably affect that person adversely in respect of his lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

- *List of persons given complimentary Man United football tickets as a result of the agreements with Man United.*

Kindly note that we are unable to meet your request as this falls outside the scope of the FOIA on the basis of Article 5(3)(a) which provides: The Act shall not apply to documents in so far as such documents contain personal data subject to the Data Protection Act."

3. On the 18th September 2022, the applicant addressed a complaint to the Public Authority through the Internal Complaints Procedure and requested the Public Authority to reconsider its

decision. On the 8th October 2022, the Public Authority reiterated its refusal and cited the following reasoning:

“(a) Article 31(2), in view of the confidentiality obligations in the Agreement itself, which would found an action by MTA’s counterparty for breach of confidence;

(b) Article 32(1)(a) & (b) in view of the fact that if a copy of such information is sent to you, the Authority would disclose trade secrets and/or other information having commercial value that would be, or could be expected to be destroyed or diminished if the information were disclosed; and

(c) Article 38(c) & (d) in view of the fact that if a copy of such information is sent to you, it could reasonably be expected to have a substantial adverse effect on both (i) the proper and efficient conduct of the operations of the Authority and (ii) the conduct of negotiations (including commercial negotiations) by the Authority”.

FOI APPLICATION

4. On the 9th October 2022, the applicant applied for a decision notice pursuant to article 23(1)(a) of the Act, requesting the Information and Data Protection Commissioner (the “**Commissioner**”) to decide if the Public Authority had dealt with the requirements of the Act. The applicant contended that *“this was a direct order without a call, paid by taxpayers funds, by a public entity, we feel that the agency is obliged to be transparent and accountable according to good governance rules”.*

Admissibility of the FOI Application

5. After having considered that the applicant is an eligible person in terms of article 2 of the Act and the nature and background of the FOI application, together with the procedural steps involved between the applicant and the Public Authority in the request for documents, the Commissioner deemed the FOI application made by the applicant as admissible for the purpose of article 23(2) of the Act.

INVESTIGATION

The Issuance of the Information Notice

6. As part of the investigation procedure, by means of an information notice dated the 11th October 2022, issued in terms of article 24(1)(a) of the Act, the Commissioner requested the Public Authority to provide information in relation to the FOI application for the purposes of enabling him to exercise his functions under the Act and to determine whether the Public Authority had complied with the requirements of the Act. In particular, the Commissioner requested the Public Authority to provide a copy of the requested documents and clearly:
 - a. explain which prejudice would, or could reasonably be expected to be suffered as a result of the disclosure of the requested documents in terms of the exemptions cited in the replies; and
 - b. explain which factors were taken into consideration when carrying out the public interest test as set forth in article 35 of the Act in relation to the exemptions invoked by the Public Authority pursuant to article 38(c) and (d) of the Act.

7. By means of an email dated the 10th January 2023, the Public Authority reproduced clause 10 of the Global Sponsorship Agreement and informed the Commissioner that the copies of the agreements could not be made available on the basis of the confidentiality clause contained in the said agreement. Notwithstanding this, the Commissioner reiterated his request to provide a copy of the requested documents pursuant to the information notice dated the 11th October 2022. The Public Authority informed the Commissioner that *“the Malta Tourism Authority has been constantly chasing personnel at Manchester United to seek (as per relative contract) their clearance, or otherwise”*.

The Issuance of the Enforcement Notice

8. On the 2nd May 2023, the Commissioner proceeded to issue an enforcement notice pursuant to article 25(1) of the Act, wherein the Public Authority was requested to provide him with the requested documents as specified in the information notice. This was subsequently followed by a meeting held on the 1st June 2023, where the Public Authority had made available copies of the agreements entered into between Manchester United Football Club Limited and the Government of the Republic of Malta and the Malta Tourism Authority. The Commissioner was also informed that the Public Authority does not hold a *‘[l]ist of persons given*

complimentary Man United football tickets as a result of the agreements with Man United’ or any other information that could meet the terms of the request of the applicant.

Written Submissions provided by the Public Authority

9. The Public Authority consulted the third party in relation to the disclosure of the agreements and submitted a letter prepared by the third party outlining the following salient points:

- a. that the Sponsorship Agreement constitutes highly confidential information and its disclosure to the public would be prejudicial to its commercial interests, specifically, the disclosure is likely to be damaging to the third party’s ability to legitimately exploit its commercial rights in the future; and
- b. that most of the commercial revenue¹ is generated from the commercial agreements with sponsors and therefore, the disclosure of confidential information pertaining to any of these commercial agreements is likely to harm relations with other partners or otherwise impact the third party’s ability to attract new partners and/or retain existing partners.

10. With reference to the “[1]ist of persons given complimentary Man United football tickets as a result of the agreements with Man United”, the Public Authority referred to the parliamentary questions 4149² and 5059³. The parliamentary questions are being reproduced hereunder:

Leġiżlazzjoni	XIV	Kategorija	ORAL
Idrologija Numru:	4149	Data:	17/11/2022
Sezzjoni:	00 - 23.11.2022 04:00 PM	Sezzjoni Interim:	
Titlu:	Viekkjara - Interim ma' Manchester United FC		

L-Onorevoli **DARREN CARABOTT** ssaqqa lill-Onorevoli **CLAYTON BARTOLO** (Ministru għall-Turizmu):
 Jista' l-Ministru jgħid x-benefiċċji qed jingħataw lilestipendjarji dawl li hemm bejn il-Manchester United FC u Visitalta, speċifikament jekk jistmexx jingħataw xi pakkett jew tnaqqis fil-prezz tal-bjetti tal-logġ-ib tal-imsejtna klubb?

Pwergħa:
 Nazfonna lill-Onor Interpellanti li l-forum tal-Manchester United jipprovdni għal numru ta' bjetti għal logġ-ib tal-kampjonat Premier u FA Cup li jingħataw għal Oħd Trafford. Dawn il-bjetti jingħataw salwa l-ATA twmpeta għall-izma, influwenzja, pteż-wwenara, u għatli tal-iv-jagħat, eperanza jostata u seganz-zatari ta' kull-ivrenu/ bazzannu bhala pteż-wwenara għall-pajjżna u salwa uwalbu l-koperazzjoni pteż-wwenara ta' Visitalta magħhom.

¹ The percentages covering the commercial revenue of the Manchester United Group for the years 2020, 2021 and 2022 were provided to the Commissioner.

²<https://pq.gov.mt/PQWeb.nsf/7561f7daddf0609ac1257d1800311f18/c1257d2e0046dfa1c12589030043a53f!OpenDocument>

³<https://pq.gov.mt/PQWeb.nsf/7561f7daddf0609ac1257d1800311f18/c1257d2e0046dfa1c125893900405a6f!OpenDocument>

Leġiżlatura	KT7	Kategorija	ORAL
Il-Iskrittura	3009	Data	10/01/2023
Redatta	76 - 18/01/2023 04:00 PM	Redatta Intern	-
Titlu	Valutazzjoni - Beħem mal Manchester United FC		

L-Onorevoli DAUREN CARABOTT staqsa lill-Onorevoli CLAYTON BAROLO (fil-mument għat-Turismu):
 B'referenza għat-tweġiba tal-mistoqsija parlamentari 4149, jista' l-Ministru japprovdi lista tal-ismijiet ta' dawn li hadu dawn il-bijetti tal-Manchester United, flimkien mas-sezzjoni li fha għew idkategorizzati bħala eleġibbli kwi maqal fl-istess risposta, u jkoll jekk taunex: ġurnalisti, influencers, prize-winners, agenti tal-riġgħat, operaturi turistiċi u organizzazzjoni ta' konferenzi barrani?

Tweġiba:
 Naziforma bill-Għor Interpellant li tui dawn l-ahhar fl-et smu tal-fiehm, il-bijetti nuzaw minn rappreżentanti ta' operaturi turistiċi barrani, prinċipalment min-Renju Unit Minbarra hekk, għadd ta' bijetti nuzaw ukoll f'mezzi ta' stazzjonijiet tar-radju Ingliż sabex jittellgħu bħala pteem għall-kompetizzjonijiet marbuta mal-gbejjer Malim.
 L-informazzjoni nutilba hija kummerċjalment sensitiva u għaldaqstant ma tuxax timpliqa Madanzakolli. l-Onor Interpellant, jekk ikoss il-btieġa, jingħata l-opportunità li jara ha personalment l-informazzjoni nutilba.

LEGAL ANALYSIS AND DECISION

General Considerations

11. The Commissioner acknowledges that the spirit and scope of the freedom of information legislation is to establish a right to information in order to promote added transparency and accountability in public authorities. The legislation reflects the fundamental premise that all information held by public authorities is in principle public, save for those documents that specifically fall within the exemptions provided for by law.

12. This has been supported by the jurisprudence of the Court of Appeal in the judgment ‘Din l-Art Helwa vs l-Awtorita’ tal-Ippjanar’⁴, which held that “[l]-Att dwar il-Liberta’ tal-Infommazzjoni hi ligi intiża biex tippovdi b’mod ampju iżda b’restrizzjonijiet ċari fl-istess ligi, sens ta’ trasparenza u kontabilita fid-deċizzjonijiet, ordnijiet jew direttivi fl-amministrazzjoni pubblika li wara kollox qiegħda hemm ghas-servizz tas-soċjeta.” Similarly, the Court of Appeal in the judgment ‘Allied Newspapers Limited vs Foundation for Medical Services’⁵ highlighted that the “legizlatur permezz tal-Kap. 496 jagħti tifsira legali u jipprovdi ċerti garanziji għat-twettiq fil-prattika tal-libertà tal-infommazzjoni bħala s-sisien tal-libertà fundamentali tal-espressjoni”.

⁴ Appeal Number 7/2019, decided on the 16th May 2019.
⁵ Appeal Number 11/2020 LM, decided on the 18th November 2020.

13. Moreover, the Court of Appeal in the judgment ‘Allied Newspapers Limited vs Projects Malta Ltd’⁶ made reference to the parliamentary debates in relation to the freedom of information legislation, which accentuate the spirit and scope of the legislation:

*“Fi kliem l-Onor. Prim Ministru meta kien qiegħed jippilota l-Att dwar il-Libertà tal-
Informazzjoni mill-Parlament: “il-prattika kienet li l-informazzjoni tibqa’ kunfidenzjali
sakemm ma jkunx hemm raġuni biex isir mod ieħor. ... Bil-proposta ta’ din il-liġi
qegħdin naqilbu din il-prattika kompletament ta’ taħt fuq, għax issa il-premessa li
qegħdin inressqu għall-konsiderazzjoni tal-Qorti hija premessa li tghid li l-
informazzjoni issa se tkun soġġetta li tiġi żvelata sakemm ma jkunx hemm raġuni valida
skont kriterji stabbiliti mil-liġi għaliex m’għandhiex tkun żvelata. ... It-trasparenza hija
wkoll mezz ewlieni biex tiżgura li l-korruzzjoni u l-abbuż ta’ poter ma jaqbdux għerug
u li jinkixfu u jinqerdu fejn ikunu preżenti.”*

Article 5(3)(a) of the Act

14. The Public Authority refused to provide the “[l]ist of persons given complimentary Man United football tickets as a result of the agreements with Man United” on the basis that this part of the request falls outside the scope of the Act. Within this context, the Public Authority cited article 5(3)(a) of the Act, which provides that the “Act shall not apply to documents in so far as such documents contain - (a) personal data subject to the Data Protection Act”.
15. During the course of the investigation, the Public Authority submitted that it does not hold a record of the names and surnames of those “persons given complimentary Man United football tickets as a result of the agreements with Man United”, and thus, the list requested by the applicant does not exist and there is no information which could meet the terms of the request.
16. However, the first reply provided by the Public Authority on the 9th September 2022 refers to article 5(3)(a) of the Act which provision could only be invoked if the document contains personal data pertaining to natural persons. In such case, it resulted that the document does not exist and there is no information held by the Public Authority that could effectively meet the terms of the request, and therefore, the reason cited by the Public Authority in its reply to the applicant is incorrect.

⁶ Appeal Number 33/2019LM, decided on the 2nd September 2020.

17. The Commissioner is disappointed to note that the Public Authority only came up with the actual circumstances related to the applicant's request for information and, on the strength of which, the decision should have been taken, during the course of his investigation. The Public Authority is duty-bound to carry out its functions in accordance with the law and therefore provide the applicant with all these facts, in a clear and unequivocal manner, together with the reasoning which it followed to reach its decision to refuse the FOI request in terms of the reasons for refusal as set forth in article 14(a) to (h) of the Act. This is absolutely necessary to enable the applicant to seek the review of the decision of the Public Authority and to exercise her right of review and appeal in the most effective manner.

Article 31(2) of the Act

18. The Public Authority cited article 31(2) of the Act as the reason to justify the refusal to provide a “[c]opy of all agreements signed with Manchester United”. For this reason, the Commissioner examined article 31(2) of the Act, which stipulates that “[a] document is an exempt document if its disclosure under this Act would found an action by a person (other than a public authority) for breach of confidence”.

19. The Commissioner examined the settled case-law⁷ of the Information and Data Protection Appeals Tribunal (the “Tribunal”) where it decided that a contract containing a confidentiality clause is not considered exempt according to article 31(2) of the Act. In fact, the Tribunal remarked that “*jekk fil-kuntratt tagħhom ma saritx tali klawsole li l-kuntratt huwa suġġett għal dan il-Kap u għal Kap 440 dwar l-Att dwar il-Protezzjoni u l-Privatezza tad-Data dik hija problema tal-PBS u mhux tal-Kummissarju jew ta' dan it-Tribunal*”.

20. The Commissioner has further taken into account the decision ‘Allied Newspapers Limited vs Foundation for Medical Services’⁸ of the Tribunal, which stated that “*l-confidentiality clauses hafna drabi magħrufa bħala gaggin clauses veru li jorbtu lil partijiet iżda vera wkoll li huma suġġetti għal Att dwar il-Libertà tal-Infommazzjoni u din tista’; tingħata jew bil-kunsens tal-parti, jew bil-liġi jew meta hemm dak li jissejjaħ overriding public interest*”. The Tribunal further remarked that “*kieku verament kien il-każ cioe li kull kuntratt ta’ kunfidenzjalità jirbaħ fuq l-interess pubbliku kieku din il-liġi tirrendi ruhha ineffettiva u ma hi tajba għal xejn*”.

⁷ Public Broadcasting Services Limited vs Il-Kummissarju għall-Infommazzjoni u l-Protezzjoni tad-Data, decided on the 12th July 2017; Allied Newspapers Limited vs Foundation for Medical Services, decided on the 30th January 2020.

⁸ Appeal Numru 9/2018, 30th January 2020.

21. Within this context, the Court of Appeal in the judgment ‘Allied Newspapers Limited vs Foundation for Medical Services’⁹ confirmed that:

“Il-Qorti tqis li huwa assolutament illoġiku u kontrasens li l-ewwel il-legiżlatur permezz tal-Kap. 496 jagħti tifsira legali u jipprovdi ċerti garanzji għat-tweqqif fil-prattika tal-libertà tal-informazzjoni bħala s-sisien tal-libertà fundamentali tal-espressjoni, u mbagħad entitajiet pubbliċi bħall-appellanta jippruvaw jiżgiċċaw mill-effetti tal-imsemmija legiżlazzjoni meta jidhlu f’kuntratti bi klawnsoli ta’ kunfidenzjalità, li jiġu interpretati mill-imsemmija entitajiet pubbliċi b’tali mod li jispiċċaw ma jikkonformawx mal-obbligi legali taħt l-imsemmija legiżlazzjoni. Il-fondazzjoni appellanta tippretendi li b’sempliċi klawnsola ta’ kunfidenzjalità f’kuntratt, tqiegħed lilha nnifisha ‘l fuq mill-liġi u teżenta lilha nnifisha mill-obbligi legali tagħha taħt il-Kap. 496. Biex tagħmel dan l-appellanta tintrepreta l-artikolu 31(2) tal-Kap. 496 b’mod li ma jirrispekkjax il-kelma u l-ispirtu tal-istess liġi.”

22. A recent decision ‘Rebecca Bonello Ghio vs Malta Film Commission’¹⁰ delivered by the Tribunal sheds further light on the interpretation of article 31(2) of the Act. The Tribunal sets forth the cumulative criteria that need to be fulfilled in order to deem a document exempt in terms of article 31(2) of the Act:

“Illi sabiex japplika dan l-artikolu 31(2) tal-Kap 496 jeħtieġ li s-segwenti kriterji jiġu sodisfatti:

- 1. l-awtorita tkun ottjeniet din l-informazzjoni minn persuna oħra;*
- 2. li l-iżvelar ta’ din l-informazzjoni jikkostitwixxi ksur ta’ kunfidenzjalita;*
- 3. persuna tista’ tibda proċeduri bil-qorti għal ksur ta’ kunfidenzjalita;*
- 4. li tali persuna għandha ċans qawwi li tiegħu raġun mill-qorti.*

Rigward rekwiżit numru (1), il-kontenut ta’ kuntratt bejn awtorita’ pubblika u persuna oħra generalment ma hux kunsidrat bħala informazzjoni ottenuta mill-Awtorita minn persuna oħra. Dan għaliex dak li jgħid il-kuntratt ikun ġie maqbul bejn iż-żewġ partijiet milli provdut minn parti lil parti l-oħra ...

⁹ Appeal Number 11/2020 LM, 18th November 2020.

¹⁰ Appeal Number FOI/19/2022, 6th July 2023.

Rigward rekwiżiti numru (2) sa numru (4) – dejjem gie ritenut li l-iżvelar ta' informazzjoni kummerċjali jikkostitwixxi ksur ta' kunfidenzjalita jekk dan iħalli impatt detrimental lil min ikun zvelha.”

23. Therefore, based on the first criteria established by the Tribunal, article 31(2) of the Act is intended to protect existing confidential information held by the third party, which is obtained by the public authority. This means that a contract which is agreed between the parties is not considered as information obtained by the Public Authority from another person, and therefore, article 31(2) of the Act would not apply.
24. In line with the case-law of the Tribunal and the Court of Appeal, a confidentiality clause contained in an agreement would not exonerate the Public Authority from complying with its obligations emanating from the Act. The Act is not intended to enable a public authority to make an agreement with another person and simply insert a clause in the agreement that the contents shall be treated as confidential, with the result that article 31(2) of the Act applies.
25. It must be borne in mind that the Public Authority is bound by the obligation of mandatory disclosure of the documentation that it holds, save for the exemptions provided by law which may justify non-disclosure in certain specific instances. It is in the Commissioner's judicious view that public authorities in general should adopt a horizontal standard practice to inform, *a priori*, the other party to a contract that such contract is subject to provisions of the national law governing the access to documents. The Tribunal further stated in the decision '*Rebecca Bonello Ghio vs Malta Film Commission*'¹¹ that:

“Dan it-Tribunal ma jistgħax ma josservax li f'Malta għad ma għandniex Code of practice rigward dan il-punt u wasal iż-żmien li dan isir u kif diġà jeżisti f'pajjiżi oħra sabiex dan il-Kodiċi jagħmilha ċara lil awtoritajiet pubbliċi u lil min jagħmel kuntratti mal-istess awtoritajiet li għandhom ikunu jafu dwar il-limitazzjoni tal-infurzar ta' klawnsoli kunfidenzjali u dan fid-dawl tal-Att dwar il-Libertà tal-Infurmazzjoni (Kap. 496 tal-Ligijiet ta' Malta).”

This therefore led the Commissioner to conclude that article 31(2) of the Act does not apply to the present case.

¹¹ *ibid.* 10

Article 32(1)(a) of the Act

26. The Public Authority cited article 32(1)(a) of the Act as one of its reasons to justify the refusal of the “[c]opy of all agreements signed with Manchester United” and the “[c]opy of all invoices paid in relation to these agreements until the time of reply to this FOP”. This provision states that a document is an exempt document if its disclosure under this Act would disclose trade secrets. However, the Act does not define ‘trade secret’.
27. For this purpose, the Commissioner examined the definition of ‘trade secret’ as held in article 2 of the Trade Secret Act (Cap. 589 of the Laws of Malta), which means:

“information which meets all of the following requirements:

(a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) it has commercial value because it is secret;

(c) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;”

28. Furthermore, the Commissioner considered the decision of ‘*Roberto Ragonesi vs Il-Kummissarju għall-Infommazzjoni u l-Protezzjoni tad-Data*’¹², wherein the Tribunal pointed out that:

“Fatturi li għandhom jiġu kkunsidrati meta wiehed jifli jekk l-infommazzjoni mitluba jammontaw għal trade secret jinkludu: the extent to which the information is known outside of the plaintiff’s business; the extent to it is known by employees and other involved in his business; the extent of measures taken by him to guard the secrecy of the information; the value of the information to him and to his contemporaries; the amount of effort or money expended by him

¹² Appeal Number 17/2013, decided on the 15th February 2018.

in developing the information; the ease of difficulty with which the information could be properly acquired or duplicated by others. (vide Ansell Rubber C Pty Ltd v Allied Rubber Industries Pty Ltd 91967) V.R. 373”.

29. The Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 defines ‘business secret’ as:

“In so far as disclosure of information about an undertaking’s business activity could result in a serious harm to the same undertaking, such information constitutes business secrets. Examples of information that may qualify as business secrets include: technical and/or financial information relating to an undertaking’s know-how, methods of assessing costs, production secrets and processes, supply sources, quantities produced and sold, market shares, customer and distributor lists, marketing plans, cost and price structure and sales strategy”.

30. Furthermore, the Commissioner noted the decision of the UK Tribunal of ‘Department of Health v Information Commissioner’¹³ which defined the concept of ‘trade secret’ within the context of the UK freedom of information legislation as follows:

“the concept of a “trade secret” was one that related to a particular kind and quality of information. As regards kind, it stated that “[t]he ordinary understanding of the phrase usually suggests something technical, unique and achieved with a degree of difficulty and investment.”

31. After assessing the circumstances of the case, the Commissioner concluded that the Public Authority did not manage to demonstrate how the contents of the agreements, or parts of the agreements, amount to a ‘trade secret’. Based on the foregoing considerations, the Commissioner established that the information contained in the requested documents do not constitute a ‘trade secret’ and, as a result, article 32(1)(a) of the Act does not apply.

¹³ Reference EA/2008/0074, decided on the 15th October 2009.

Article 32(1)(b) of the Act

32. The Public Authority cited article 32(1)(b) of the Act as another reason for not disclosing the requested documents to the applicant. Article 32(1)(b) of the Act provides that a document is exempt if its disclosure would disclose “*any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed*”. The reasoning behind this provision is that information that may not rise to the level of a trade secret, may also be deemed to be confidential on the basis of the commercial value of the information.
33. The Commissioner referred to the case-law of the UK Tribunal¹⁴, particularly, the case ‘University of Central Lancashire vs IC’ which provides that “[w]e respectfully agree with the approach adopted by this Tribunal in the Student Loans appeal at paragraph 42, namely that “commercial interests” is a term which deserves a broad interpretation which will depend largely on the particular context.”
34. The Commissioner noted that the information concerning the specific sponsorship rights granted, the terms on which they have granted and the financial terms, is considered to be commercially sensitive information in terms of article 32(1)(b) of the Act, which would be, or could reasonably be expected to be, destroyed or diminished if the information were to be disclosed. However, not all of the clauses contained in the agreements constitute commercially sensitive information, which ought to be protected from disclosure. The Commissioner emphasises that the Public Authority should carry out a thorough exercise in order to determine which clauses would fall under the exemptions held in the Act. The fact that certain clauses would fall under the umbrella of commercial sensitivity should not serve as a justification to refuse the request in full. This would in fact run counter to the letter and spirit of the Act which considers access to the document as the rule and its refusal as an exception thereto. Therefore, rather than applying article 32(1)(b) of the Act in a ‘blanket’ manner and treating the agreements as a whole, the Commissioner strongly recommends that the freedom of information officer should document the assessment carried out by the Public Authority in relation to the exemptions cited vis-à-vis each clause within the contract, with a view to identifying which clauses are exempt from disclosure. This would not only promote accountability but would also ensure that the decisions taken by the Public Authority are well-justified and well-reasoned.

¹⁴ Information Tribunal Appeal Number: EA/2009/0034, decided on the 8th December 2009, para. 31.

Article 32(1)(c)(i) of the Act

35. In the reply dated the 9th September 2022, the Public Authority cited article 32(1)(c)(i) of the Act, which provides that a document is exempt if its disclosure under the Act would disclose *“information (other than trade secrets or information to which paragraph (b) applies concerning a person in respect of his business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, being information: (i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs”*.
36. The first step in the application of article 32(1)(c)(i) of the Act requires the proper characterisation of the relevant information to ascertain whether the requested documentation concerns the “business or professional affairs” of a person or the “business, commercial or financial affairs of an organisation or undertaking”. Therefore, this exemption intends to protect the harm that a person, or an organisation, or an undertaking, would or could reasonably be expected to, unreasonably suffer, because of the disclosure of the requested documents.
37. For this reason, the Commissioner examined the submissions provided by the Public Authority, specifically, the fact that the Public Authority had consulted the other party to the Agreement in relation to this FOI request. In the case of ‘Derry City Council v Information Commissioner’¹⁵, the UK Tribunal held that when a public authority cites an exemption that the requested information would prejudice the commercial interests of a third party, the public authority should ask the third party for its views concerning the prejudice and not simply speculate. The UK Tribunal stated as follows:

“Although, therefore, we can imagine that an airline might well have good reasons to fear that the disclosure of its commercial contracts might prejudice its commercial interests, we are not prepared to speculate whether those fears may have any justification in relation to the specific facts of this case. In the absence of any evidence on the point, therefore, we are unable to conclude that Ryanair’s commercial interests would be likely to be prejudiced”.

¹⁵ Information Tribunal Appeal Number: EA/2006/0014, decided on the 11th December 2006, para.24.

38. In the present case, the Commissioner was presented with an explanation as to how the third party would be expected to suffer prejudice and what kind of prejudice it would be expected to reasonably suffer as a result of the disclosure of the requested documents. The third party submitted the percentages of the commercial revenue generated for the years 2020, 2021 and 2022, which most of this revenue is generated from commercial agreements with sponsors, and explained how the disclosure of confidential information pertaining to any of the agreements would, or could impact its total revenue. The third party pointed out how the disclosure of the requested documents could specifically undermine its commercial interest by explaining that the disclosure would be prejudicial to its relationship with existing partners and is likely to be damaging to its ability to legitimately exploit its commercial rights in the future.

39. After assessing the foregoing considerations, the Commissioner concluded that the disclosure of the sponsorship rights, the terms on which they have been granted and the financial terms would, or could reasonably be expected to have a material adverse impact on the third party, and therefore, this specific information is exempt in terms of article 32(1)(c)(i) of the Act.

Article 38(c) and (d) of the Act

40. The Public Authority cited article 38(c) and (d) of the Act in its replies to the applicant. Article 38 states that a document is deemed to be exempt if its disclosure would, or could reasonably be expected to “*have a substantial adverse effect on the proper and efficient conduct of the operations of a public authority*” and “*have a substantial adverse effect on the conduct of negotiations (including commercial and industrial negotiations) by or on behalf of the Government or another public authority*”. Given that article 38 of the Act is a qualified exemption, by means of the information notice dated the 11th October 2022, the Commissioner specifically requested the Public Authority to indicate which factors were taken into consideration when carrying out the public interest test as set forth in article 35 of the Act. Within this context, the Commissioner examined section 14.9 of the ‘Code of Practice for Public Authorities’, which guides the public authorities as to how they should conduct the public interest test in connection with article 38(c) and (d) of the Act:

“14.9 In considering whether the public interest in non-disclosure outweighs that in disclosure in relation to article 38(c) and (d), it shall be assessed whether:

- a) *the scenarios referred to in relation to article 36 apply; or*
- b) *whether any third party would stand to unduly benefit from the disclosure of the document; or,*
- c) *whether the disclosure of the document would hinder the effective enforcement of any applicable legislation by the Public Authority concerned”.*

41. However, the Public Authority failed to provide any information or attempt to explain how the disclosure of the requested documents would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Public Authority or the conduct of negotiations by or on behalf of the Government or another public authority.

42. Given that the Public Authority completely disregarded article 38(c) and (d) of the Act in its submissions and failed to substantiate its reasoning during the course of the investigation, the Commissioner did not have any information which would enable him to determine if the exemptions cited in the replies of the Public Authority apply to the present case. The Commissioner reiterates that the Public Authority should not cite exemptions without a careful assessment or a justified reason.

On the basis of the foregoing considerations, pursuant to article 23(3)(b) of the Act, the Commissioner is hereby serving a decision notice and deciding that the refusal of the Public Authority to provide:

- **“[c]opy of all agreements signed with Manchester United” is partially justified in terms of article 32(1)(b) and article 32(1)(c)(i) of the Act in relation to the sponsorship rights granted, the terms on which they have been granted and the financial terms;**
- **“[c]opy of all invoices paid in relation to these agreements until the time of reply to this FOI” is justified in terms of article 32(1)(b) and article 32(1)(c)(i) of the Act.**

Furthermore, the “[l]ist of persons given complimentary Man United football tickets as a result of the agreements with Man United” does not exist and there is no information held by the Public Authority which could effectively meet the terms of the request, and therefore, the reason cited in terms of article 5(3)(a) and article 14(a) of the Act is incorrect.

Pursuant to article 23(4)(b) of the Act, the Public Authority failed to comply with the requirements of Part II, in particular, with article 15(1)(a) thereof, as it did not provide the applicant with the appropriate and suitable reasons to enable the applicant to understand the refusal of parts of her request in terms of article 14(a) to (h). The Commissioner rebukes the Public Authority on the manner how the applicant's request was handled and emphasises on the requirements incumbent of public authorities to provide applicants with clear and correct reasons when refusing requests for information.

By virtue of article 23(4)(a) of the Act, the Public Authority is hereby being ordered to provide the applicant with an electronic copy of the 'Global Sponsorship Agreement' and the 'Variation Agreement in respect of Global Sponsorship Agreement' after redacting the clauses in relation to the sponsorship rights granted, the terms on which they have been granted, and the financial terms of the agreements.

The redacted agreements shall be provided within twenty (20) working days from the date of receipt of this decision notice and the Commissioner shall be informed of the action taken immediately thereafter.

Ian
DEGUARA
(Authenticati
on)

Digitally signed
by Ian DEGUARA
(Authentication)
Date: 2023.11.17
10:18:44 +01'00'

Ian Deguara
Information and Data Protection Commissioner

Right of Appeal

In terms of article 39(1) of the Act, “[w]here a decision notice has been served, the applicant or the public authority may appeal to the Tribunal against the notice within twenty working days”.

An appeal to the Information and Data Protection Appeals Tribunal shall be made in writing and addressed to:

The Secretary, Information and Data Protection Appeals Tribunal
158, Merchants Street, Valletta.

Dated

16 August

2019

MANCHESTER UNITED FOOTBALL CLUB LIMITED

and

THE GOVERNMENT OF THE REPUBLIC OF MALTA

and

MALTA TOURISM AUTHORITY

GLOBAL SPONSORSHIP AGREEMENT



Contents

Clause/Section

1. Grant of Rights	3
2. Sponsorship Rights	4
3. Exclusivity.....	14
4. Exercise of Sponsorship Rights	15
5. Financial Provisions	17
6. Term and Termination	18
7. Intellectual Property Rights & Data	20
8. Warranties, Indemnities and Liability	22
9. Force Majeure	24
10. Confidentiality & Announcements	24
11. Notices	25
12. General.....	26

Schedules

Schedule 1 MU Materials.....	31
Schedule 2 Definitions and Interpretation.....	36

THIS AGREEMENT is made on

16 AUGUST

2019

BETWEEN:

- (1) **MANCHESTER UNITED FOOTBALL CLUB LIMITED** (a company registered in England and Wales number 95489) whose registered office is at Sir Matt Busby Way, Old Trafford, Manchester M16 0RA ("MU");
- (2) **THE GOVERNMENT OF THE REPUBLIC OF MALTA** whose principal address is at 233 Republic Street, Valletta VLT 1116, Malta ("the Government"); and
- (3) **MALTA TOURISM AUTHORITY** (an authority established by law in Malta (Cap. 409 of Laws of Malta)) whose head office is at Building SCM01, Level 3, Smart City Ricasoli SCM 1001, Kalkara, Malta ("MTA").

In this Agreement: (i) the Government and MTA are together referred to as the "Partner"; (ii) the Partner and MU are each individually referred to as a party; and (iii) the Partner and MU are together referred to as the parties.

WHEREAS:

- (A) The Partner wishes to enter into an agreement to exercise certain promotional, advertising and marketing rights relating to Manchester United; and
- (B) MU is prepared to enter into an agreement with the Partner for such rights on the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1. Grant of Rights

- 1.1. Subject to the terms of this Agreement, MU hereby grants to the Partner the Sponsorship Rights for exercise during the Term for the Permitted Purpose and with respect to Partner Brands.

Relationship of the Parties

- 1.2. All rights granted by MU to the Partner pursuant to this Agreement are for the benefit of the Government and MTA together (on a joint basis) and not granted to each of the Government and MTA separately. For the avoidance of doubt, the exercise by either the Government or MTA of any right pursuant to this Agreement shall be considered to have been the exercise of that right by both the Government and MTA.
- 1.3. In relation to any obligation of MU under this Agreement, MU shall be deemed to have fulfilled such obligation if it does so in respect of either the Government or MTA and MU shall not be required to fulfil that obligation in respect of both the Government and MTA.
- 1.4. The Government and MTA shall be jointly and severally liable to MU for: (i) the performance of any obligation of the Partner pursuant to this Agreement; and/or (ii) any liability of the Partner arising under this Agreement (including any losses, costs, damages or claims suffered by MU as a result of a breach by the Partner of this Agreement and/or any indemnity liability).
- 1.5. Without prejudice to the generality of Clauses 1.2 to 1.4 inclusive:
 - (a) the Government and MTA shall be jointly and severally liable to MU to pay any sums due to MU pursuant to this Agreement;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. Force Majeure

9.1. Notwithstanding any other provision of this Agreement, a party shall not be in breach of this Agreement if performance of any of its obligations (other than an obligation to make any payment) under this Agreement is prevented or delayed (in full or in part) due to a Force Majeure Event. If a Force Majeure Event occurs, the relevant affected party shall: (i) inform the other parties in writing as soon as reasonably practical of the impact of the Force Majeure Event; and (ii) take reasonable steps to comply with the terms of this Agreement as fully and promptly as possible. This Clause 9.1 shall not affect the Partner's obligations to pay any monetary amounts payable under this Agreement.

10. Confidentiality & Announcements

10.1. Each of MU and the Partner undertakes to the other that:

- (a) it shall treat as confidential: (i) the contents (including the financial details) of this Agreement; (ii) the negotiations relating to this Agreement; (iii) any agreements or documents executed by the parties in connection with this Agreement; and (iv) all information relating in any manner to the business and/or affairs of the other which may be communicated to it or which is otherwise obtained by it, in each case, under or in connection with this Agreement. For the purpose of the foregoing, the business and/or affairs of each MU and the Partner shall include the business and/or affairs of its Associates and, in the case of Manchester United Football Club Limited shall also include the business and/or affairs of MU Foundation and/or any MU Partner; and
- (b) it shall not use, or disclose to any person, any of the information referred to in Clause 10.1(a) except as follows:
 - (i) each of MU and the Partner may use and/or disclose such information: (1) to the extent required to implement this Agreement; (2) where necessary to enable or facilitate the enforcement of this Agreement; (3) as required by Applicable Laws; and/or (4) as agreed by the other in this Agreement or otherwise in writing;
 - (ii) each of MU and the Partner may disclose such information: (1) to its professional advisors, directors and/or employees; (2) to its Associates and/or their respective professional advisors, directors and/or employees; and/or (3) in the case of disclosure by Manchester United Football Club Limited, to MU Foundation and/or its professional advisors, directors and/or employees); provided in each case that if any third party to which such

information is disclosed fails to comply with the terms of this Clause 10 then the disclosing party shall be liable for such failure as if such failure were committed by the disclosing party; and/or

(iii) MU may disclose such information pursuant to any disclosure process, procedure or obligation under United States securities laws, or the listing rules of the New York Stock Exchange or any other securities exchange on which the capital stock of MU may be listed from time to time. For the avoidance of doubt, pursuant to Clause 12.8, the foregoing references to "MU" are deemed to include its Associates.

10.2. Clause 10.1 shall not apply to any information which: (i) is in the public domain other than by default of the recipient party; (ii) is obtained by the recipient party from a bona fide third party having no restraint on its free right of disposal of such information; or (iii) has already been independently generated by the recipient party.

10.3. Subject to Clause 10.4, neither MU nor the Partner shall make any announcement and/or press release in connection with this Agreement at any time during or after the Term (including any announcement and/or press release with respect to the commencement, expiry and/or termination of this Agreement) without the prior written approval of the other (not to be unreasonably withheld, conditioned or delayed). The Partner acknowledges that MU shall not give its approval for any announcement and/or press release prior to receipt by MU of the first fixed payment in accordance with Clause 5.1.

10.4. Notwithstanding Clause 10.3, MU may make any announcements as are required by Applicable Laws and/or pursuant to any disclosure obligations under United States securities laws, or the listing rules of the New York Stock Exchange or any other securities exchange on which the capital stock of MU may be listed from time to time. For the avoidance of doubt, pursuant to Clause 12.8, the foregoing references to "MU" are deemed to include its Associates.

10.5. Without prejudice to the generality of Clause 6.6, the obligations set out in this Clause 10 shall continue without limit in time after the termination or expiry of this Agreement.

11. Notices

11.1. All notices to be given under this Agreement shall be in writing in English and sent by recorded delivery mail or courier to the address(es) set out below and marked for the attention of the addressee(s) set out below (or to such other address(es) and/or addressee(s) as the party concerned shall from time to time designate by notice pursuant hereto).

If to MU: Manchester United Football Club Limited
Sir Matt Busby Way
Old Trafford
Manchester M16 0RA
England

For the attention of: [REDACTED]

with a copy to be sent to the same address for the attention of [REDACTED]

If to Partner: Malta Tourism Authority
Building SCM01
Level 3
SmartCity Ricasoli
SCM 1001
Kalkara
Malta

For the attention of: [REDACTED]

with a copy to be sent to:

The Government of the Republic of Malta
233 Republic Street
Valletta VLT 1116
Malta

For the attention of: [REDACTED]

- 11.2. Any such notice shall be deemed given: (i) at the time when a representative of the recipient party signs to confirm receipt of the relevant delivery by recorded delivery mail or courier (as the case may be); or (ii) if returned to sender marked 'unknown', 'gone away' or similar, on return of the notice to the sender (provided that the notice has been sent to the correct address).

12. General

Preservation of rights

- 12.1. The failure to exercise or a delay in exercising a right or remedy provided by this Agreement or by any Applicable Law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver (whether express or implied) by one of the parties of any provision of this Agreement or of any breach or default by any other party of any provision of this Agreement: (i) shall not constitute a waiver of, or prevent the waiving party from subsequently enforcing, any other provision, breach or default; (ii) shall not constitute a continuing waiver; and (iii) shall not affect the other terms of this Agreement. No waiver shall be effective unless specifically made in writing and signed by a duly authorised officer of the party granting such waiver. The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by any Applicable Law.

Severability

- 12.2. If any of the terms, conditions and/or provisions of this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent under the law of any jurisdiction, such term(s), condition(s) and/or provision(s) shall, to that extent, be severed from the remaining terms, conditions and/or provisions which shall continue to be valid to the fullest extent permitted by Applicable Laws. With respect to the invalid term(s), condition(s) and/or provision(s), the parties shall use all reasonable efforts to agree an amendment to the same to make it valid and legal reflecting as much as possible the parties' original intent.

Relationship of the Parties

- 12.3. This Agreement does not make any party the agent of the other or create a partnership, joint venture or similar relationship between the parties and no party shall have the power to nor shall it purport to obligate or bind the other in any manner whatsoever. The parties are in all respects independent contractors.

Assignability, Sub-Licensing and Sub-Contracting

- 12.4. Subject to Clause 12.5, the Partner shall not without the prior written approval of MU (which approval shall be in MU's absolute discretion) assign, novate, charge, hold in trust, sub-license and/or sub-contract: (i) this Agreement; (ii) the benefit and/or burden of this Agreement or any of its provisions; or (iii) any of the Partner's rights and/or obligations under this Agreement.

- 12.5. Notwithstanding Clause 12.4: (i) the Partner may (without the further prior written approval of MU) use third party contractors to support it with respect to its exercise of the Sponsorship Rights; and (ii) any of the Sponsorship Rights may (without the further prior written approval of MU) be exercised by any Associate of the Partner ("Partner Associate") for and on behalf of the Partner in accordance with the terms of this Agreement; provided always that:
- (a) the Partner shall remain fully liable for the performance of all its obligations under this Agreement and shall, in addition, ensure that each such third party contractor and Partner Associate complies fully with the relevant terms of this Agreement as if party hereto in place of the Partner;
 - (b) the Partner shall be fully liable for the acts and omissions of each such third party contractor and Partner Associate;
 - (c) the Partner shall take such action as is required to ensure the compliance of each such third party contractor and Partner Associate with the relevant terms of this Agreement and/or to remedy any failure in this respect;
 - (d) the Partner shall ensure that no such third party contractor associates itself with Manchester United or publicises its involvement in supporting the Partner to exercise the Sponsorship Rights. Without limitation the Partner shall ensure that no such third party contractor shall have any branding or corporate identification on any materials or packaging which it produces for the Partner (except to the extent required by Applicable Laws);
 - (e) the exercise of any Sponsorship Rights by a Partner Associate shall be conditional upon that Partner Associate being an Associate of the Partner at the time that such Sponsorship Rights are being exercised; and
 - (f) for the avoidance of doubt, this Clause 12.5 shall not be interpreted as: (i) granting any additional rights; (ii) granting any additional inventory for any Sponsorship Rights in respect of a defined inventory (for example, Digital Boards or tickets); or (iii) amending or altering the Permitted Purpose, or altering the brands in relation to which any of the Sponsorship Rights can be exercised.
- 12.6. Manchester United Football Club Limited may (without the further prior written consent of the Partner): (i) sub-contract any of its obligations under this Agreement to any person (provided that Manchester United Football Club Limited shall still remain fully liable for the performance of all its obligations under this Agreement); and/or (ii) assign any of its rights under this Agreement (including any right of action against the Partner) to an Associate. Further, the Partner shall not unreasonably refuse any request from MU to novate this Agreement to an Associate of MU.

Third Party Rights

- 12.7. Except where expressly provided under this Agreement, a person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement.
- 12.8. Manchester United Football Club Limited is entering into this Agreement for itself and for the benefit of its Associates, each of which shall have the benefit of and shall be entitled to rely on and enforce the terms of this Agreement. Associates of Manchester United Football Club Limited shall not be considered to be third parties for the purposes of this Agreement and, subject to Clause 12.9, references to "MU" in this Agreement shall be deemed to include such Associates. Without prejudice to the foregoing, Manchester United Football Club Limited and its Associates shall not, by virtue of this Clause 12.8, be entitled to any element of "double recovery" and accordingly neither Manchester United Football Club Limited nor any of its Associates shall be entitled to bring a claim against the Partner under or in connection with this Agreement in respect of any loss or damage which Manchester United Football Club

Limited or any Associate of Manchester United Football Club Limited has already recovered from the Partner.

- 12.9. Notwithstanding Clause 12.8: (i) this Agreement may be varied by Manchester United Football Club Limited from time to time or terminated by Manchester United Football Club Limited in accordance with its terms without the consent of any Associate and sections 2(1)(a) to (c) of the Contracts (Rights of Third Parties) Act 1999 do not apply to this Agreement; (ii) any consents, approvals or notices to be issued under this Agreement only require to be issued by Manchester United Football Club Limited and not by any Associate; and (iii) the Partner shall only be entitled to enforce the terms of this Agreement against Manchester United Football Club Limited and/or make any claim in relation thereto against Manchester United Football Club Limited (and not against any Associate).

Entire Agreement

12.10. Each party acknowledges and agrees that:

- (a) this Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, undertakings, representations, warranties and/or arrangements of any nature whatsoever (whether or not in writing) relating thereto;
- (b) in entering into this Agreement, it does not rely on, and waives all rights and/or remedies that might otherwise be available to it but for this Clause 12.10(b) in respect of, any statement, representation, warranty or understanding (in each case whether expressed or implied and/or whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement;
- (c) except as required by statute, no terms shall be implied (whether by custom, usage or otherwise) into this Agreement;
- (d) nothing in Clauses 12.10(a) or 12.10(b) limits or excludes any liability for fraud; and
- (e) any amendment to this Agreement must be in writing, expressed to amend this Agreement and signed by authorised representatives of each party.

Further Assurance

12.11. Each party shall (and shall use its reasonable endeavours to ensure that any necessary third party acting on its behalf or in its place shall) execute such further documents and do all such acts as are necessary to give full effect to this Agreement. The costs of executing such documents and doing such acts shall be borne by the party requiring the same except where: (i) such costs are nominal costs; (ii) such execution or act is required due to a breach of this Agreement by the party required to execute the document and/or do the act in question in which case that party shall pay the costs; or (iii) otherwise stated in this Agreement.

Costs and Expenses

12.12. Each party shall pay its own costs relating to the negotiation, preparation and execution of this Agreement.

12.13. Except where otherwise expressly stated in this Agreement, the Partner shall be responsible for all costs and expenses in respect of its exercise of any Sponsorship Rights.

Language

12.14. The language of this Agreement and the transactions envisaged by it is English and all notices, demands, requests, statements, certificates or other documents or communications

must be in English unless otherwise agreed in writing. If this Agreement or any other related documents are translated into another language, the English version shall prevail.

- 12.15. The Partner shall provide MU with English translations of all materials submitted to MU for approval pursuant to this Agreement if such materials are not already in English. The Partner acknowledges and accepts that MU shall be under no obligation to grant its approval in the absence of such translations.

Service

- 12.16. The Partner hereby appoints the Malta High Commissioner of the Malta High Commission, Malta House, 36-38 Piccadilly, Mayfair, London W1J 0LE ("the Service Agent") to be its agent to accept service of proceedings commenced by MU and agrees:

- (a) that proceedings duly issued and served on the Service Agent shall be validly served as if they had been served on the Partner itself notwithstanding any failure or delay by the Service Agent in bringing such proceedings to the attention of the Partner;
- (b) that the appointment of and/or service of proceedings on the Service Agent shall not affect MU's right to serve proceedings in any other way or on any other person; and
- (c) not to argue that proceedings served in accordance with this Clause 12.16 have not been validly served. Without prejudice to the generality of the foregoing, the Partner agrees not to argue in any court in which MU seeks to enforce any judgment obtained in proceedings served pursuant to this Clause 12.16 that proceedings so served were not validly served.

Football Laws

- 12.17. The Partner hereby acknowledges and agrees that: (i) under certain Football Laws, MU may be entitled to vote either for or against a proposed Football Law as a member of a league, organisation and/or other body; (ii) when deciding how to vote MU may be required and/or under a duty to take into account factors outside of this Agreement; (iii) the grant and exercise of the Sponsorship Rights are subject to and conditional upon such proposed Football Law if passed (irrespective of the way in which MU has voted on the same); and (iv) MU shall be bound by the result of any such vote irrespective of the manner in which it casts or fails to cast its vote.

Definitions and Interpretation

- 12.18. This Agreement shall be interpreted in accordance with the provisions of Schedule 2 and the capitalised terms used in this Agreement shall have the meanings given to them in Schedule 2.

Counterpart

- 12.19. This Agreement may be executed in one or more counterparts which taken together shall constitute one and the same agreement. Each party (including any duly authorised representative of a party) may enter into this Agreement by executing such a counterpart. For the avoidance of doubt, facsimile signatures or electronic copies of signatures shall be valid and binding to the same extent as the original signatures.

Governing Law and Jurisdiction

- 12.20. This Agreement, and any non-contractual obligations arising out of or in connection with it, is governed by English law.
- 12.21. Any dispute, controversy or claim arising out of or relating to this Agreement, including the breach, termination or invalidity thereof and any dispute relating to any non-contractual

obligations arising out of or in connection with it (a "Dispute"), shall be referred to and finally settled by arbitration in accordance with the United Nations Commission on International Trade Law ("UNCITRAL") Arbitration Rules. The parties agree that: (i) there shall only be one arbitrator, and if the parties are unable to select an arbitrator within 30 days of receipt of a request for arbitration, an arbitrator shall be appointed by the International Chamber of Commerce ("ICC"); (ii) the seat or legal place of arbitration shall be in Geneva; (iii) the arbitral proceedings shall take place in Geneva; and (iv) the language to be used in the arbitral proceedings shall be English. If there is any conflict between the provisions of this Clause 12.21 and the UNCITRAL Arbitration Rules, the provisions of this Clause 12.21 shall take precedence to the extent of such conflict.

12.22. Notwithstanding Clause 12.21, nothing in this Agreement will prevent any party from taking proceedings in respect of a Dispute against the other in any other court of competent jurisdiction in order to: (i) obtain temporary, interim or injunctive relief; (ii) protect or enforce its Intellectual Property Rights; and/or (iii) enforce the decision and/or judgement of any arbitration carried out pursuant to this Clause 12.21.

IN WITNESS whereof this Agreement has been signed by the duly authorised representatives of the parties on the day and year first before written.

SIGNED for and on behalf of
MANCHESTER UNITED FOOTBALL CLUB LIMITED
by the following duly authorised signatory:

.....
Signature

.....
Name

.....
Position



Signature

.....
Name

.....
Position



Signature

Name

.....
Position

SIGNED for and on behalf of
MANCHESTER UNITED FOOTBALL CLUB LIMITED
by the following duly authorised signatory:

Signature

Name

Position

SIGNED for and on behalf of
MALTA TOURISM AUTHORITY
by the following duly authorised signatory:

.....
Signature

.....
Name

.....
Position

SIGNED for and on behalf of
THE GOVERNMENT OF THE REPUBLIC OF MALTA
by the following duly authorised signatory:

.....
Signature

.....
Name

.....
Position

Dated 21 March 2022

MANCHESTER UNITED FOOTBALL CLUB LIMITED

and

THE GOVERNMENT OF THE REPUBLIC OF MALTA

and

MALTA TOURISM AUTHORITY

**VARIATION AGREEMENT IN RESPECT OF
GLOBAL SPONSORSHIP AGREEMENT**



THIS AGREEMENT is made

21 March

2022

BETWEEN:

- (1) **MANCHESTER UNITED FOOTBALL CLUB LIMITED** (a company registered in England and Wales number 95489) whose registered office is at Sir Matt Busby Way, Old Trafford, Manchester M16 0RA ("MU");
- (2) **THE GOVERNMENT OF THE REPUBLIC OF MALTA** whose principal address is at 233 Republic Street, Valletta VLT 1116, Malta ("the Government"); and
- (3) **MALTA TOURISM AUTHORITY** (an authority established by law in Malta (Cap. 409 of Laws of Malta)) whose head office is at Building SCM01, Level 3, Smart City Ricasoli SCM 1001, Kalkara, Malta ("MTA").

For the avoidance of doubt, in this variation agreement (this "Variation Agreement"): (i) the Government and MTA are together referred to as the "Partner"; (ii) the Partner and MU are each individually referred to as a party; and (iii) the Partner and MU are together referred to as the parties.

WHEREAS:

- (A) MU and the Partner entered into a global sponsorship agreement dated 16 August 2019 (the "Existing Agreement").
- (B) The parties have now agreed to vary the Existing Agreement in the manner and to the extent set out in this Variation Agreement with effect from the date on which this Variation Agreement has been signed by authorised representatives of each party (the "Effective Date").

IT IS AGREED as follows:

1. Consideration

- 1.1. In consideration of mutual promises and obligations set out in this Variation Agreement (including the additional fees payable by the Partner in respect of the extended Term pursuant to Clause 4), MU and the Partner agree that with effect from the Effective Date the Existing Agreement shall be amended in accordance with the terms of this Variation Agreement.

2. Condition Precedent

- 2.1. With the exception of this Clause 2 (Condition Precedent), Clause 11 (Definitions and Interpretation) and Clause 12 (General) (each of which shall come into and remain in full force and effect upon the Effective Date, notwithstanding the provisions of this Clause 2), it shall be a condition precedent of the terms of this Variation Agreement coming into force that the Premier League provides its approval of this Variation Agreement in accordance with Football Laws (the "Condition Precedent").
- 2.2. The Partner acknowledges that pursuant to Clause 10 of the Existing Agreement, MU is entitled to submit a copy of this Variation Agreement (and details of the circumstances of the parties entering into this Variation Agreement) to the Premier League as part of the process of seeking such approval.
- 2.3. MU shall inform the Partner promptly upon the Premier League providing its approval of this Variation Agreement.

Visit Malta - Variation Agreement (Final+1)

**SIGNED for and on behalf of
MANCHESTER UNITED FOOTBALL CLUB LIMITED**
by the following duly authorised signatory:

.....
Signature

.....
Name

.....
Position

[Redacted Signature]

Signature

.....
Name

.....
Position

[Redacted Name]

[Redacted Signature]

Signature

.....
Name

.....
Position

[Redacted Name]

Visit Malta - Variation Agreement (Final+1)

**SIGNED for and on behalf of
MANCHESTER UNITED FOOTBALL CLUB LIMITED**
by the following duly authorised signatory:

[Redacted Signature]

Signature

[Redacted Name]

.....
Name

[Redacted Position]

.....
Position

**SIGNED for and on behalf of
MALTA TOURISM AUTHORITY**
by the following duly authorised signatory:

.....
Signature

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Name

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Position

**SIGNED for and on behalf of
THE GOVERNMENT OF THE REPUBLIC OF MALTA**
by the following duly authorised signatory:

.....
Signature

.....
Name

.....
Position