

PURCHASE ORDER TERMS AND CONDITIONS

GO AHEAD GROUP PLC AND ALL ITS OPERATING COMPANIES

THESE PURCHASE ORDER TERMS AND CONDITIONS MUST BE REFERENCED ON ANY PURCHASE ORDER ISSUED BY EITHER GO-AHEAD GROUP PLC AND/OR ANY OF ITS OPERATING COMPANIES WHETHER SUCH PURCHASE ORDER IS ISSUED MANUALLY OR ELECTRONICALLY.

THESE PURCHASE ORDER TERMS AND CONDITIONS MUST BE MADE AVAILABLE TO ANY SUPPLIER ON REQUEST.

1 INTERPRETATION

- 1.1 References to the Supplier and the Customer and/or Party shall include their respective directors, employees, servants, agents, subcontractor and permitted assigns;
- 1.2 Headings contained in this Agreement are for convenience or reference only and shall not affect its interpretation or construction;
- 1.3 Where appropriate, expressions shall be deemed to include the masculine, feminine or plural thereof;
- 1.4 References to Clauses are, unless otherwise provided, references to clauses of this Agreement;
- 1.5 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;
- 1.6 The Interpretation Act 1978 shall apply to this Agreement.

2. DEFINITIONS

For the purposes of this Agreement the following words or expressions shall have the following meanings set out against them unless the context otherwise requires:

"Agreement" means the terms and conditions contained herein;

"Background Intellectual Property" means any Intellectual Property owned by either Party before the coming into effect of this Agreement, together with all modifications and adaptations thereto, other than as a result of the performance by that Party of its obligations hereunder;

"Business Day" means any day (other than a Saturday) on which commercial banks are open for business in the City of London;

"Conditions of Safety" means the Customer Conditions of Safety available to the Supplier on request;

"Confidential Information" means all information (whether in writing or otherwise and in whatever form or on whatever medium held) and trade secrets relating to the business of either Party including all financial, marketing and technical information, ideas, concepts, technology, processes, knowledge and know-how together with all details of customers, suppliers, prices, discounts, margins, information relating to research and development, current trading performance and future business strategy and all other information of a like nature;

"Customer" means either Go-Ahead Group PLC or any operating company within Go-Ahead Group PLC and whose Customer name and/or trading name, registered office and/or trading address is detailed on the Purchase Order;

"Data" means any data created by the Supplier as a result of the performance of its obligations hereunder which such data, to the extent it relates to the business of the Customer shall be owned by the Customer;

"Default" means any act, omission, statement or negligence on the part of either Party, in connection with, or in relation to, the subject matter of this Agreement in respect of which the defaulting Party is liable to the non-defaulting Party whether in contract, warranty, tort (including negligence) by act or omission, breach of statutory duty or otherwise;

"Direct Losses" means all losses, damages, liabilities, costs (including without limitation reasonable legal and professional adviser's fees), charges, expenses, actions, proceedings, claims and demands to the extent directly, whether wholly or in part, resulting from any Default, but excluding Indirect Losses;

"Environmental Damage" means any material injury to living organisms or any contamination, destruction, pollution or impairment of the environment resulting from the discharge, emission, escape, or migration of any substance, energy, noise or vibration;

"Foreground Intellectual Property" means any Intellectual Property developed, created or arising during the course of this Agreement owned by either Party, together with all modifications and adaptations thereto, other than as a result of the performance by that Party of its obligations hereunder;

"Franchise Agreement" means an agreement between (i) the Department for Transport and (ii) any train operating company within Go-Ahead Group PLC as amended from time to time;

"Go Ahead Group PLC" means a company incorporated in England and Wales having its registered address at 41-45 Grey Street, Newcastle upon Tyne, Tyne and Wear NE1 6EE, registered number 2100855;

"Indirect Losses" means whether in contract, tort (including negligence) by act or omission, warranty, statutory duty or otherwise, any indirect and/or consequential losses including without limitation any loss of profits, loss of contract, loss of goodwill, loss of anticipated savings or the use of money and any special, exemplary and/or punitive damages;

"Intellectual Property" means patents, any extensions of the exclusivity granted in connection with patents, petty patents, utility models, registered designs, applications for any of the foregoing, the right to apply for any of the foregoing; copyrights, (including without limitation copyright in software), design rights, semi-conductor topography rights, moral rights, database rights, trade marks, service marks, applications for any of the foregoing, the right to apply for any of the foregoing; rights in trade names, business names, brand names, get-up and logos, rights in know-how, trade secrets and confidential information, data exclusivity rights, Data and all other forms of intellectual property right (having equivalent or similar effect to the foregoing) which may exist anywhere in the world;

"Liquidated Damages" means the genuine pre-estimate of the loss that the Customer may suffer in the event that the Supplier Non-Performs as such loss is set out in Clause 6;

"Party" means the Customer or the Supplier and the **Parties** means both of them;

"Price" means the prices to be charged by the Supplier to the Customer for the Services as detailed in the Purchase Order;

"Purchase Order" means the form or document (electronic or otherwise) used by the Customer to order the Services from the Supplier;

"Relevant Legislation" means any Act of Parliament, order, regulation and bylaw made with statutory authority, provision of common law or other binding law, or requirement of any authorisation, licence, permission, consent, permit, code of practice, rule or guidance of any competent authority (including any court, inspectorate, agency public or statutory person or the like) relevant to the provision of the Services, as the same may be amended, redacted and/or re-enacted from time to time;

"Services" means the provision by the Supplier of goods and/or services to the Customer in accordance with the Purchase Order and this Agreement and shall include a twelve (12) month warranty period;

"Service Credits" means the genuine pre-estimate of loss that the Customer may suffer in the event that the Supplier Fails to perform any service level agreement agreed between the Customer and the Supplier as such loss is set out in Clause 6;

"Services Intellectual Property" means any Intellectual Property developed, created or arising as a result of the performance of this Agreement by the Supplier which such Intellectual Property shall vest in and be owned by the Customer;

"Specification" means the specification in accordance with which the Services are to be supplied, as detailed in the Purchase Order;

"Supplier" means the person who has agreed to supply the Services in accordance with this Agreement and trading name, registered office and/or trading address is detailed on the Purchase

Order;

“Third Party Losses” means all losses, damages, liabilities, costs (including without limitation reasonable legal and professional adviser’s fees), charges, expenses, actions, proceedings, claims and demands to the extent, whether wholly or in part, resulting from any Default, successfully made against, or incurred by, sustained by or levied against the Non-Defaulting Party, including Indirect Losses in relation thereto.

3. PRIORITY OF AGREEMENT

3.1 In the event of any conflict between this Agreement and any other contract negotiated by and entered into between the Parties for the provision of the Services, the provisions of that other contract shall prevail.

3.2 In the event that the Supplier submits its terms and conditions to the Customer and any other contract is not negotiated by and entered into between the Parties this Agreement shall take precedence to and prevail over any Supplier terms and conditions.

3.3 For the avoidance of doubt in the absence of any other contract negotiated by and entered into between the Parties, the Customer does not accept any terms and conditions of the Supplier whether submitted to the Customer before or after the Purchase Order and in such circumstances the Supplier agrees that the terms and conditions referenced on the Purchase Order of the Customer shall prevail over any Supplier terms and conditions.

4. SUPPLIER OBLIGATIONS

4.1 General

The Customer appoints the Supplier to provide the Services to the Customer and the Supplier agrees to provide the Services to the Customer in accordance with the Purchase Order and this Agreement.

4.2 Duty of Care

4.2.1 The Supplier shall using all due skill, care and diligence, provide the Services to the Customer reasonably to be expected from a supplier of the same and/or similar Services, and in accordance with:

4.2.1.1 the terms and conditions of this Agreement;

4.2.1.2 all Relevant Legislation;

4.2.1.3 the Customer’s directions, rules and corporate policies.

4.2.2 The Supplier shall provide the Services in a safe manner and free from any unreasonable or avoidable risk to any person’s health and well-being and in an economic and efficient manner.

4.2.3 The Supplier shall comply with all reasonable requests of the Customer and shall use all reasonable endeavours to promote the interests of the Customer in performing its obligations under this Agreement.

4.3 Delivery

4.3.1 The Supplier shall deliver the Services in accordance with this Agreement and any instructions contained in the Purchase Order. The Customer shall be under no obligation to accept or pay for Services delivered in excess or in advance of those covered by such instructions.

4.3.2 Advice of despatch of Services shall be sent separately to the Customer on the day of despatch giving the Purchase Order reference number as appropriate, a description of the Services, number of packages, the method of despatch, intended place of delivery and such other particulars as may be appropriate.

4.3.3 The Customer may on written notice to the Supplier cancel or vary a Purchase Order at any time prior to the delivery date.

4.4 Alcohol and Drugs Policy

4.4.1 The Supplier shall ensure that no directors, employees, servants, agents, or subcontractors of the Supplier shall at any time during the performance of its obligations hereunder:

4.2.1.1 attend the premises of the Customer having just consumed alcohol or be under the influence of illegal drugs;

4.2.1.2 attend the premises of the Customer in an unfit state due to the use of alcohol or illegal drugs;

4.2.1.3 be in possession of alcohol or illegal drugs;

4.2.1.4 consume alcohol or illegal drugs whilst at the premises of the Customer and/or during the performance of the Services.

4.3 The Supplier shall comply in full with all alcohol and drugs policies, rules or procedures of the Customer available upon request.

4.4 If the Customer has any reason to suspect that any person referred to in Clause 4.2.1. of the Supplier is in breach of Clause 4.2.1. the Customer shall demand that such person is immediately tested for alcohol and/or illegal drugs, at the sole cost of the Supplier. The Customer may request the immediate removal and replacement of such person for the purposes of this Agreement. The Customer shall not be liable to the Supplier in anyway whatsoever in relation to the consequences of such removal and the Supplier shall indemnify the Customer against any losses, damages and/or expenses that the Customer may incur in the event that the person so removed brings any claim whatsoever against the Customer. The Supplier shall immediately provide replacement personnel. Any such replacement personnel by the Supplier shall be to the minimum disruption of the Suppliers obligations

4.5 Health and Safety

4.5.1 The Supplier undertakes that its directors, employees, servants, agents, or subcontractor shall at all times comply with all health and safety requirements relating to the carrying out of the Services under this Agreement including any Relevant Legislation and Conditions of Safety including at the Customer's premises.

4.5.2 The Supplier shall conform to all relevant environmental standards, guidelines and codes of practice and shall take all practical steps while performing the Services under this Agreement to minimise any risk to the environment.

4.6 Spares Support

The Purchase Order is submitted by the Customer to the Supplier on the understanding that spare parts and identical replacements for the Services shall be available to the Customer for a period of five years from the date of the Purchase Order and that prior to the Services being made obsolete, at least twelve (12) months written notice shall be given to the Company.

4.7 Manufacturing Changes

The Supplier shall advise the Customer in writing of all proposed changes in the Specification or method of construction of the Services. In the event of the Customer accepting the change, written approval shall be sent to the Supplier.

5. PAYMENT

5.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay to the Supplier the Price as detailed in the Purchase Order. The Price shall be inclusive of all costs of packaging, shipping, carriage, insurance and delivery costs to the Locations, and any duties, imposts or levies other than Value Added Tax ("**VAT**").

5.2 For the avoidance of doubt, the Supplier expressly acknowledges that it shall not be entitled to payment for the supply of any Services unless the Price applicable is detailed in the Purchase Order.

5.3 The Supplier warrants that during the term of this Agreement the Price for the supply of the Services are at least as low as the price at which the Supplier is currently selling the Services or similar services in the same or similar quantity under similar terms and circumstances and value to its most favoured customer within the United Kingdom.

5.4 The Price shall not be varied by reason of any rise or fall in the cost of materials, labour, currency fluctuations or transport or for any other reason.

5.5 All sums payable by the Customer to the Supplier shall (except where specifically provided) be paid no later than the end of the month following the month in which the invoice was received and (except where otherwise stated) shall be exclusive of VAT which shall be added by the Supplier at the prevailing rate.

5.6 The Supplier shall submit invoices to the Customer as detailed in the Purchase Order.

5.7 The Customer shall be liable to pay VAT provided it is charged by the Supplier in accordance with all applicable tax laws. The Supplier acknowledges that it is solely responsible for payment of income tax and or any other taxes, charges, levies, fees or duties imposed by any governmental authority whether charged to the Customer/Supplier or otherwise, including without limitation all import and customs duties and taxes. The Customer shall withhold or deduct any amount of tax or any other taxes, charges, levies, fees, or duties imposed by any governmental authority from the amount of any invoice if required by law. The Customer shall satisfy its obligations to the Supplier by paying the balance on the invoice to the Supplier net of any such withholding or deduction.

5.8 Where the Customer disputes any invoice or any item in any invoice presented by the Supplier, the Customer shall upon receipt of such invoice notify its objections in writing to the Supplier within (30) thirty days of receipt of the invoice.

5.9 The Supplier shall contact the Customer within ten (10) days of receipt of the objection to endeavour to resolve any such dispute.

5.10 The Customer shall not be obliged to settle any invoice prior to resolution of the dispute but shall pay the Supplier (if applicable) immediately after the dispute has been resolved, unless otherwise agreed in writing.

6. PERFORMANCE AND DEFAULT

6.1 Liquidated Damages/Service Credits for Non-Performance of Services

6.1.1 If the Services (or a part thereof) are delayed by the Supplier ("**Non-Performance**") and this causes the Customer to suffer loss, the Supplier shall, if requested by the Customer, pay to the Customer a sum by way of Liquidated Damages equivalent to 1% of the Price specified in the Purchase Order (or on the appropriate proportion of that Price in respect of part of the Services) for each week (or part thereof) that the Non-Performance continues to the actual date that performance is recovered, up to a maximum of 15%. Such Liquidated Damages shall be in full and final satisfaction of the Supplier's liability for Liquidated Damages save that such payment of Liquidated Damages shall be without prejudice to any other right and/or remedy that the Customer may have against the Supplier under this Agreement or otherwise.

6.1.2 If the Services (or a part thereof) are not performed in accordance with the duty of care and cannot be used commercially and/or efficiently or at all by the Customer and/or in breach of any service level agreement agreed between the Customer and the Supplier ("**Failure**") and this causes the Customer to suffer loss, the Supplier shall, if requested by the Customer, pay to the Customer a sum by way of Service Credits equivalent to 1% of the Price specified in the Purchase Order (or on the appropriate proportion of that Price in respect of part of the Services) for each week (or part thereof) that the non-performance continues to the actual date that performance is recovered, up to a maximum of 15%. Such Service Credits shall be in full satisfaction of the Supplier's liability for Failure save that such payment of Service Credits shall be without prejudice to any other right and/or remedy that the Customer may have against the Supplier under this Agreement or otherwise.

6.1.3 The Customer may set off against any sum due to the Supplier under this Agreement the amount of any Liquidated Damages and/or the amount of any Service Credits under this Agreement or any other agreement that the Customer may have with the Supplier.

7. SHORTAGE, REJECTION, WARRANTY CLAIM

7.1 In the event that the Supplier performs and/or provides the Services short of those required in the Services Specification and/or the Service Level Agreement and/or this Agreement, or corrective action is required, or the Services are defective following use and/or installation ("**Claim**"), without prejudice to any other rights or remedies which the Customer may have against the Supplier under this Agreement or otherwise, the Supplier shall at its sole cost and expense, replace the shortfall or replace, re-perform, repair, rectify and/or re-provide the Services on receipt of a written Claim ("**Claim Notice**"). The Customer however, has in its sole and absolute discretion, the right to suspend the performance and/or provision of the Services (or any part thereof) by the Supplier and/or procure that any third party shall perform and/or provide the Services relevant to the Claim and recover the costs thereof from the Supplier in addition to the payment of any Liquidated Damages and/or Service Credits.

7.2 Any Services the subject of a valid Claim shall be subject to a new warranty period of twelve (12) months.

8. TITLE AND RISK

Risk in the provision and/or performance of the Services shall be vested in the Supplier. Title in the Services shall vest in the Customer on due payment.

9. INDEMNITY, LIABILITY & REMEDIES

9.1 Notwithstanding any other provision of this Agreement, neither Party excludes or limits liability for:

9.1.1 death or personal injury to any person or property damage (including actual or alleged breach of IP) to any third party to the extent that such injury results from Default;

9.1.2 any breach of undertaking as to title, quiet possession, and freedom from encumbrance implied by law; and/or

9.1.3 fraudulent misrepresentation.

9.2 Except as expressly provided for in Clause 9.1, the total liability of a Party to the other shall not exceed the applicable financial limit for each category of liability specified in Clause 9.3 below.

9.3 Except as expressly provided in Clause 9.1, the total liability of each Party to the other under this Agreement for Default shall not exceed:

9.3.1 in respect of liability for Direct Losses to tangible property (including real property) the sum of £5,000,000.00 million (five million pounds sterling) for each event or series of connected events; and

9.3.2 in respect of all other Direct Losses, 125% of the Price payable and/or paid to the Supplier in accordance with this Agreement.

9.4 Each Party agrees to hold harmless and fully and effectively indemnify the other Party, its directors, employees, servants, agents and sub-contractors, in full and on demand, and keep the same so indemnified, from and against all Third Party Losses which are sustained by the other Party, its directors, employees, servants, agents and sub-contractors, as a result of any Default, whether or not such Third Party Losses or the consequences thereof were foreseeable at the commencement date. The indemnity provided under this Clause 9.4 shall be unlimited.

9.5 The Supplier shall be liable to the Customer in the event of any fraudulent activity of the Supplier, which such liability shall include any loss of revenue to the Customer. For the purpose of this Clause, only loss of revenue shall be Direct Loss.

9.6 For the purposes of Clause 9.3, neither Party shall be liable to the other for any Indirect Loss.

9.7 The liability and indemnity contained in Clauses 9.3 and 9.4 shall not extend to any Direct Losses or Third Party Losses:

9.7.1 to the extent caused by Default or wilful misconduct of the other Party, its directors, employees, servants, agents and subcontractors;

9.7.2 to the extent caused by any Default of the other Party of the terms of this Agreement;

9.8 The Supplier shall agree to hold harmless and fully and effectively indemnify the Customer, its directors, employees, servants, agents and sub-contractors, in full and on demand, and keep the same so indemnified against all losses, damages, liabilities, costs (including without limitation reasonable legal and professional advisers fees) charges expenses, actions, proceedings, claims and demands whether wholly or in part, including without limitation any Third Party Losses, resulting from any Environmental Damage which exists as a result of the activities of the Supplier, its directors, employees, servants, agents and sub-contractors.

9.9 For the avoidance of doubt, Liquidated Damages and/or Service Credits are payable in addition to any liability and/or indemnity provided for in this Clause 9.

9.10 Nothing in this Agreement shall alleviate either Party to mitigate against its losses.

10. INSURANCE

10.1 Without prejudice to any rights or remedies which the Customer may have under this Agreement or otherwise, the Supplier shall (at the Supplier's sole cost and expense) maintain in full

force and effect such insurance as is necessary to cover the Supplier's potential liabilities (including, without limitation, any professional indemnity insurance, product liability insurance, public liability insurance and/or employer's liability insurance) arising out of or in connection with this Agreement in each case to a minimum level of £5,000,000.00 million per occurrence.

10.2 All insurance policies maintained by the Supplier hereunder shall be underwritten by a reputable insurance company and shall by their terms confer the benefits set out in this Agreement on the Customer. The Supplier shall not do anything to invalidate such policies of insurance and shall at all times preserve the Customer's entitlement under such policies.

10.3 The Supplier shall immediately deliver to the Customer evidence of any and all endorsements subsequently issued which amend coverage or policy limits. The Supplier shall, on request from the Customer at any time, provide the Customer with evidence of insurance in respect of all insurance cover maintained hereunder.

11. TERMINATION

11.1 Either Party may terminate this Agreement immediately upon written notice:

11.1.1 if there is a Default which is incapable of remedy; or

11.1.2 if there is a Default which is capable of remedy but which has not been remedied within ten (10) Business Days of written notice to remedy, specifying the Default and requiring the same to be remedied; or

11.1.3 there are a series of Non-Performance, Failure or other defaults which taken together amount to a Default which is incapable of remedy; or

11.1.4 there are a series of Non-Performance, Failure or other defaults which taken together amount to a Default which is capable of remedy but which has not been remedied within ten (10) Business Days of written Notice to remedy, specifying the Default and requiring the same to be remedied.

11.2 Either Party may terminate this Agreement immediately upon written notice to the other in the event of the other Party:

11.2.1 making or offering to make any arrangement or composition with or for the benefit of its creditors;

11.2.2 ceasing to carry on business or suspending all or substantially all of its operations (other than temporarily by reason of a strike) or suspending payment of its debts or becoming unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986);

11.2.3 being presented with a petition or resolution for the making of an administration order, winding-up, or dissolution of itself (other than for the purposes of a bona fide reconstruction or scheme of solvent amalgamation (and not set aside within 14 days of presentation) or passed;

11.2.4 having a liquidator, receiver, administrator, administrative receiver or encumbrancer take possession of or being appointed over the whole or any part of its undertaking or assets;

11.3 This Agreement shall remain in full force and effect during the period between the service of a notice to terminate by either Party and the effective date of termination.

11.4 This Agreement shall automatically terminate in the event of the termination of the Franchise Agreement of the Customer either by expiration or earlier in accordance with its terms.

11.5 The Customer may terminate this Agreement at anytime on fourteen (14) Business Days written notice to the Supplier.

12. CONSEQUENCES OF TERMINATION

12.1 Any expiry or valid termination of this Agreement shall be without liability on the part of the Party terminating and shall not affect any accrued rights or liabilities of the Parties hereunder or claims which one Party may have against another for antecedent breach.

12.2 Upon termination of this Agreement for whatever reason each Party shall return forthwith to the other any and all property (and copies thereof), including IP on any media belonging to the other or which is received from any third party and in its possession or under its control and that Party shall

confirm in writing to the other that it has complied in all respects with this Clause 12.2 if requested to do so by the other.

12.3 For the purposes of this Agreement, a "**Successor Supplier Contract**" is a contract whereby as a consequence of termination or expiration of this Agreement a successor supplier contracts with the Customer to provide the Services or any part thereof or any similar services to the Customer; and a "**Successor Supplier**" is the supplier contracting with the Customer under that Successor Supplier Contract.

12.4 The Supplier shall, if requested to do so by the Customer, for a period to be agreed between the Parties from the date of termination of this Agreement, provide such ongoing services, support and assistance as may be reasonably necessary to ensure the smooth handover of the Services to the Customer or the Successor Supplier. The Supplier's reasonable fees for such ongoing services, support and assistance shall be agreed in advance and in writing between the parties. For avoidance of doubt this period ("**Handover Period**") shall be limited to six months from the date of termination.

12.5 During the Handover Period the Supplier shall grant the Customer and the Successor Supplier access to all relevant data, information and IP.

12.6 In the event of the termination of the Agreement, the Supplier shall provide the Customer with full and complete Data, data and information relating to the Services. The Supplier shall endeavour to deliver such Data, data, information and IP in a manner or format which can be used by the Customer for future use.

13. WARRANTIES

13.1 Each Party warrants to the other that:

13.1.1 it has full power and authority to execute, deliver and perform its obligations under this Agreement;

13.1.2 there are no existing agreements or arrangements with third parties the terms of which prevent it from entering into this Agreement or would materially impede the performance by it of its obligations under this Agreement; and

13.1.3 it is not and nor are any of its directors a party to any litigation, proceedings or disputes which shall have a material adverse effect upon its ability to perform its obligations under this Agreement.

13.2 The Supplier warrants (as a condition) that it shall using all due skill, care and diligence, provide the Services to the Customer reasonably to be expected from a supplier of the same and/or similar Services, and in accordance with:

13.2.1 this Agreement;

13.2.2 all Relevant Legislation;

13.2.3 the Customer's directions, rules and corporate policies.

13.3 The Supplier warrants to the Customer that all personnel involved in relation to the Services shall be suitably skilled, trained and competent for the task(s) assigned to them.

13.4 The Supplier warrants (as conditions) that:

13.4.1 the Supplier is able to provide the Services;

13.4.2 to the best of the Supplier's knowledge and belief, the Customer's use and receipt of the Services shall not infringe any IP of any third party;

13.4.3 the Supplier has the full capacity and authority to grant any licences to the Customer as required for the purpose of the Services;

13.4.4 the Supplier shall provide the Services in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner;

13.4.5 the Services shall be of satisfactory quality and fit for all purposes for which such Services are commonly supplied;

13.4.6 the Services shall be free from defects in design, material and workmanship;

13.4.7 spare parts and identical replacements for the Services shall be available to the Customer for a period of five (5) years from the date of the Purchase Order;

13.4.8 the Services shall fully correspond with the Specification.

13.9 The Supplier warrants (as a condition) that the Services supplied under the Purchase Order shall not be defective for the duration of twelve (12) months with effect from the date of provision of the Services.

14. CONFIDENTIALITY

14.1 Subject to Clauses 14.2 and 14.3 below:

14.1.1 except with the prior written consent of the other Party, neither Party shall use any Confidential Information of the other Party or any part thereof other than in the performance of its obligations under these this Agreement;

14.1.2 except with the prior written consent of the other Party, neither Party shall disclose any Confidential Information or any part thereof to any third party other than an employee or authorised agent of such party and then only to the extent that such disclosure is necessary for the performance of its obligations under this Agreement in which case the disclosing Party shall take all reasonable steps to ensure the Confidential Information is treated as confidential by the person to whom it is disclosed; and

14.1.3 in protecting the Confidential Information each Party shall employ a standard of care which shall be no less than the standard of care it employs in protecting its own Confidential Information.

14.2 The provisions of Clause 14.1 shall not apply to any information which:

14.2.1 is or becomes public knowledge other than by breach of this Clause 14;

14.2.2 is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party;

14.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

14.2.4 is independently developed without access to the Confidential Information;

14.2.5 is required to be disclosed pursuant to a court order or other legal or regulatory obligation;

14.2.6 in the case of the Customer, the disclosure of information to the Department for Transport or its successors;

14.2.7 in the case of the Customer, the disclosure of information including any Purchase Order, charges and pricing to any either of its holding company and/or any subsidiary company as such term is defined in the Companies Act, 2006.

14.3 Where disclosure of Confidential Information is required by law, or by a court of competent jurisdiction, or by a governmental or regulatory authority the disclosing Party shall use all reasonable endeavours to ensure that the person to whom such information is disclosed is informed of its confidential nature and that it should not be disclosed.

14.4 Nothing in this Clause shall be deemed or construed to prevent the Customer from disclosing any Confidential Information obtained from the Supplier to any consultant, supplier, potential investor or finance Customer (for the purpose of considering potential investments or financing and to enable ongoing reporting) or other person engaged by the Customer in connection herewith, provided that the Customer shall have obtained from the consultant, supplier, potential investor, finance Customer or other person a signed confidentiality undertaking on substantially the same terms as are contained in this Clause 14 and such entity is not engaged in the provision of the Services or part of a group of companies engaged in such business.

14.5 The Supplier shall ensure that its servants, agents and subcontractors are bound by the requirements of this Clause 14.

15 INTELLECTUAL PROPERTY RIGHTS

15.1 The Supplier grants to the Customer a non-exclusive, non-transferable, royalty free licence to use the Background IP and Foreground IP owned by the Supplier solely for the purpose of providing the Services to the Customer in accordance with this Agreement which such licence shall expire

simultaneous with the termination of this Agreement for whatever reason.

15.2 The Customer grants to the Supplier a non-exclusive, non-transferable, royalty free licence to use the Background IP and Foreground IP owned by the Customer and the Services IP solely for the purpose of providing the Services to the Customer in accordance with this Agreement which such licence shall expire simultaneous with the termination of this Agreement for whatever reason.

15.3 The Supplier shall promptly do all the acts and execute or arrange for the doing or execution of each necessary act or all documents as the Customer may require to perfect the Customer's title to the Services IP.

15.4 Except as expressly provided herein, nothing in this Agreement shall grant or be deemed to grant to either Party any right, title or interest in the other Party's IP and except as expressly stated in this Agreement, neither Party shall have any right to use the other Party's trade marks, service marks or logos without the prior written consent of the other Party.

16. NOTICES

16.1 All notices under this Agreement shall be in writing and shall be sent by first class post, or by facsimile to the address of the respective Party as set out below or such address that may be given in writing from time to time by either Party. Such notices shall be deemed to have been delivered on the second working day following its despatch:

- (i) In the case of the Customer to the address stated on the Purchase Order;
- (ii) In the case of the Supplier to the address stated on the Purchase Order;

or to such other address and/or facsimile number as otherwise specified by the Customer and/or the Supplier (as the case may be) from time to time (in accordance with the provisions of this Clause 16).

16.2 In the absence of evidence of earlier receipt, a notice or other communication is deemed given:

16.2.1 if delivered personally, when left at the address referred to in Clause 16.1

16.2.2 if sent by first class registered post, two (2) Business Days after the day of posting it; and

16.2.3 if sent by facsimile, three (3) hours after completion of its transmission if transmitted before 14:00 on any Business Day and otherwise by 11:00 on the next Business Day.

16.3 In proving the giving of notice it shall be sufficient to prove that the notice was left or that the envelope containing such notice was properly addressed and posted by first class registered post or that the facsimile was transmitted.

17. PUBLICITY

The Parties to this Agreement shall not without first obtaining the written consent of the other (such consent not to be unreasonably withheld or delayed), in any manner either advertise or publish the fact that the Supplier has been contracted to supply Services to the Customer.

18. DATA PROTECTION ACT

18.1 The Parties to this Agreement shall at all times comply with the provisions and obligations imposed by the **Data Protection Act 1998** and the Data Protection Principles together with any subsequent re-enactment or amendment thereof in storing and processing personal data.

18.2 In the event that any data and/or Data defined as personal data within the meaning of the Act and Principles referred to in Clause 18.1 is to be transferred and for whatever reason held and/or processed in the United States of America the Supplier agrees, warrants and undertakes to hold and process the same in accordance with any agreement entered into between the United States and the European Union and any amendment thereto.

18.3 The Supplier shall afford to the Customer all reasonable rights of audit that the Customer shall require to ensure that Clause 18.1 and 18.2 is being adhered to by the Supplier and in the event that non compliance exists shall ensure future compliance based on timelines and actions as required by the Customer.

19. WAIVER

No delay, neglect or indulgence on the part of either Party in enforcing against the other Party any of

this Agreement shall either be, or be deemed to be, a waiver or in anyway prejudice any right of that Party under this Agreement and no single or partial exercise of any right or remedy shall preclude or restrict the further exercise or enforcement of any such right or remedy. No waiver by a Party shall be valid unless in writing and signed by a duly authorised representative of the Party giving the waiver.

20. SEVERABILITY

If any term or provision of this Agreement is held to be illegal or unenforceable by any body or authority of competent jurisdiction, in whole or in part, under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of such term or provision and of this Agreement shall not be affected. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

21. VARIATION

No variation to this Agreement shall be effective unless agreed by the Parties and accepted in writing by a statutory director of the Customer and an authorised representative of the Supplier.

22. DISPUTE RESOLUTION

22.1 Any question or difference which may arise concerning the construction, meaning or effect of any part of this Agreement, or any dispute arising out of or in connection with this Agreement (both situations being referred to as "Dispute" in this Clause 22) shall in the first instance be referred to a meeting of the first management level of the Parties for discussion and resolution. If the Dispute is not resolved at that level within three (3) Business Days of that meeting, the Dispute shall be referred to the second management level of the Parties who must meet within three (3) Business Days (or such other period as may be agreed) of the referral to attempt to resolve the Dispute. If the Dispute is not resolved at the second level, the Parties may exercise their rights under this Agreement.

22.2 Each Party shall use their reasonable endeavours to reach an amicable resolution via the dispute resolution procedure described in Clause 22.1. The specific format for resolution shall be left to the reasonable discretion of the relevant management level, but may include the preparation and submission of statements of fact or position.

22.3 Neither Party may initiate any legal action until the procedure described in Clause 22.1 has been completed, except where any Party has good cause to do so to avoid damage to its business or to protect or preserve any right(s) of action it may have.

22.4 Whilst this dispute resolution is being followed, the parties shall be obliged to continue, as far as reasonably practicable in view of any dispute, to fulfil their respective obligations under this Agreement.

23. SURVIVAL

23.1 The rights and obligations of the Parties contained herein, which by their nature extend beyond termination, shall survive and continue after expiration or termination of this Agreement and shall bind the Parties and their successors and assignees.

23.2 The indemnity and liability provisions contained in this Agreement shall remain in effect and shall survive the termination of this Agreement for whatever reason.

23.3 Any professional indemnity insurance shall remain in force for a period of six (6) years following the termination of this Agreement.

23.4 The provisions of Clause 14 (Confidentiality) shall survive the expiry or termination of this Agreement or a period of three (3) years.

24. ASSIGNMENT

24.1 This Agreement is personal to the Parties. Accordingly, no Party shall, without the prior written consent of the other not to be unreasonably withheld or delayed:

24.1.1 assign, transfer or in any way deal with the legal, beneficial or other interest arising in respect of any of its rights or obligations under this Agreement;

24.1.2 hold on trust all or any of its rights under this Agreement, or do anything which permits or may permit all or any of its rights under these this Agreement to comprise or be deemed to comprise trust property or to be exercised by or for the benefit of any third party; or

24.1.3 purport to do any of the above.

25. THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. No person who is not a Party to this Agreement (including any employee, director, servant, agent, or subcontractor of either Party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any of this Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Parties which agreement must refer to this Clause.

26. AGENCY OR PARTNERSHIP

Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the Parties hereto or constitute any Party as agent for another for any purpose whatsoever and no Party shall have the authority or power to bind any other Party or to contract in the name of or create a liability of any other in any way or for any purpose.

27. FORCE MAJEURE

27.1 If during the term of this Agreement either Party is delayed or hindered in or prevented from performing any or all of its obligations hereunder for any reason whatsoever outside the reasonable control of that Party, save that any employee disputes including strikes, lock outs, work to rule, unrest shall be deemed to be within the reasonable control of the Supplier (other than such matters within the reasonable control of the Customer), including, wars or threat of war, acts of terrorism, riots, civil commotion, requisition, insurrection, compliance with any law, order, rule, regulation or direction made by governmental, parliamentary or local authority, epidemics, fire, storm, explosion, accident, tempest, flood, power failure, embargoes and Acts of God (each a "**Force Majeure Event**"), then that Party shall in consequence not be in Default to the other Party and at its option may upon giving notice to the other Party, partially or wholly suspend provision of the Services during the continuance of such Force Majeure Event and, where necessary, dates relevant to the performance of the Services, shall be correspondingly extended.

27.2 The Party prevented from performing any or all of its obligations under this Agreement due to a Force Majeure Event shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations.

27.3 If any Force Majeure Event prevents either Party (the "**Affected Party**") from providing any or all of its obligations pursuant to this Agreement for a continuous period in excess of ten (10) days or twenty five (25) days in aggregate in any period of three (3) months, then the other Party shall be entitled to terminate this Agreement by giving not less than five (5) Business Days' notice in writing to the Affected Party.

27.4 For the avoidance of doubt the Supplier shall not be entitled to payment for any Services during the period of the Force Majeure Event.

28. TRADING STANDARDS

28.1 The Supplier shall maintain and operate an ethical trading policy in respect of the provision of the Services under or in connection with this Agreement, and in respect of any goods, works, services or materials which it purchases from others to carry out its obligations.

28.2 The Supplier shall and shall procure that its servants, agents, suppliers and subcontractor comply at all times in the provision and manufacture, repair, replacement and provision of goods and/or services to the Supplier with the local, national, European and any international laws or regulations applicable to such suppliers or sub contractors in respect of child labour. In any event the Supplier shall not and shall procure that any of its servants, agents, suppliers or subcontractor shall not employ any person below the age of (14) fourteen in the provision of the goods and/or services including without limitation for the purposes of force labour.

28.3 The Supplier shall and shall procure that its servants, agents, suppliers and subcontractor comply at all times in the provision and manufacture, repair, replacement and provision of the goods and/or services with the local, national, European and any international laws or regulations applicable to such servants, agents, suppliers or subcontractor in respect of forced labour. For the purposes of this Agreement forced labour includes all forms of slavery or practice similar to slavery, serfdom or compulsory labour.

28.4 The Supplier shall not discriminate against any person on the grounds of race, creed, gender, material status, religion, sexual orientation or age within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Acts 1978 and 1986 and the Disability Discrimination Act 1995 all as the same may be amended and/or replaced from time to time.

28.5 The Supplier shall comply with laws relating to minimum wage and working hours relating to its employees, servants, agents and subcontractor, and shall seek to procure that its suppliers and sub contractors adhere to law relating to minimum wage and working hours applicable to their employees and/or any persons retained by them.

29. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

29.1 The Supplier and any directors, employees, servants, agents and subcontractor acting for and on behalf of the Supplier shall not:

29.1.1 offer or give or agree to give any person connected with the Customer any gift or consideration of any kind whatsoever as an inducement or reward for doing, for forbearing to do or for having done any act or thing in relation to the obtaining, execution, showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other agreement with the Customer; or

29.1.2 enter into this Agreement or any other agreement with the Customer where commission has been paid or shall be agreed to be paid either for or on behalf of the Customer unless such commission has been disclosed in writing to and been approved in advance by the Customer.

30. ENTIRE AGREEMENT AND UNDERSTANDING

30.1 This Agreement constitutes the entire agreement and understanding of the Parties and any and all other previous agreements, arrangements and understandings (whether written or oral) between the Parties with regard to the subject matter of this Agreement are hereby excluded.

30.2 Each Party acknowledges and agrees that in entering into this Agreement it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether Party to this Agreement or not) other than as expressly set out in this Agreement.

31. COSTS

Each Party shall bear all costs incurred by it in connection with the preparation, negotiation and entry into this Agreement and any documents to be entered into pursuant to it.

32. CONFLICT OF INTEREST

On appointment and throughout the duration of this Agreement, the Supplier shall advise the Customer if it considers that the continued performance of the Services shall result in a conflict of interest with its other work. In the event of such a conflict the Customer shall be entitled to terminate the Agreement.

33. LAW

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and each of the Parties irrevocably submits to the exclusive jurisdiction of the Courts of England and Wales.