
First Greater Western Limited

and

**First Rail
Terms and Conditions for the Purchase of
Goods and Services**

THIS AGREEMENT is made on _____ 2021

BETWEEN

(1) **FIRST GREATER WESTERN LIMITED** (Company Number **[NUMBER]**) whose registered office is at **[ADDRESS]**;

(the “**Customer**”)

and

(2) **[XXX]** (Company Number **[NUMBER]**) whose registered office is at **[ADDRESS]**

(the “**Supplier**”).

AND INCORPORATES the following Schedules:

- 1 Purchase Order
- 2 The Specification for the Goods and Services
- 3 The Price and Payment Terms
- 4 Invoices
- 5 Warranty and Special Terms
- 6 Performance Levels and Quality
- 7 Liquidated Damages
- 8 Notices
- 9 Transparency in Supply Chains
- 10 Special Provisions for Rail
- 11 Data Protection Policy
- 12 Minimum Data Security Measures

WHEREAS:

- (A) The Customer wishes to enter into this agreement with the Supplier for the supply of Goods and Services for Customer Experience External Auditing
- (B) When the Customer places a Purchase Order with the Supplier in accordance with the terms of this Agreement, it will be entitled to be supplied by the Supplier upon and subject to the terms of this Agreement.
- (C) The Customer has undertaken a procurement process, for the supply of the Services. As a result of that procurement process, the Customer has awarded the contract to the Supplier.

NOW IT IS AGREED as follows:-

1 DEFINITIONS AND INTERPRETATION

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

“Aggregate Spend” means either:

- (a) the aggregate amount paid or payable to the Supplier in the preceding twelve (12) month period; or
- (b) when the Agreement has been in force for less than twelve (12) months, the aggregate calculated as follows: $52 \times (\text{Total amount paid or payable to date/Completed weeks of the Agreement (up to 52)})$

“Business Day” means a weekday (other than a Saturday, Sunday or public holiday in England) on which the banks are open for domestic business in the City of London;

“Commencement Date” means TBC;

“Confidential Information” means all information provided to either the Supplier or the Customer in confidence by or on behalf of the other in connection with this Agreement, whether in written or other form and whether before or after the date of this Agreement, (including without limitation the existence, and terms and conditions of this Agreement and the commercial and financial arrangements evidenced by this Agreement);

“Control” shall have the meaning given to it in section 1124 of the Corporation Tax Act 2010;

“Costs” shall have the meaning given to it in clause 0;

“COVID-19” means the virus so named by the World Health Organisation including any strains variants or mutations thereof;

“COVID-19 Risks and Impacts” means:

- (a) any risks of the Supplier being unable to carry out its obligations under this Agreement; and;
- (b) any adverse impact on the carrying out of the Supplier’s obligations under the Agreement,

in either case due to the COVID-19 Pandemic including, without limitation, any risk or impact associated with or pursuant to COVID-19-related restrictions, regulations or official recommendations by a relevant government authority, affecting the availability of labour generally or specific individuals, movement of people, goods or equipment, access to any facilities or places, availability of and/or transportation of goods, material, plant, equipment, worker supplies, quarantine and/or embargo;

“COVID 19 Pandemic” means the outbreak of COVID 19 which was declared a pandemic by the World Health Organisation on 11 March 2020 and any of its subsequent consequences;

“Data” has the meaning given in clause 22 (Data Protection and Security);

“Deliverables” means any goods, products or works arising from the provision of the Services;

“Delivery Profile” means the programme for the delivery of the Goods, as set out in Schedule 2 (Specification);

“Employee Liability Information” has the meaning in Regulation 11 of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“Employment Charges” means all outgoings in relation to each member of Staff including without limitation wages, bonus (even if not due and payable at that time but which is attributable in whole or in part to the period on or before the Transfer Date), holiday pay, PAYE, premiums, national insurance and pensions contributions and payments in respect of other emoluments.

“End Date” means the date of expiry or termination or cessation of the Services by the Supplier, which gives rise to any relevant transfer within the meaning of TUPE.

“Expiry Date” means tbc;

“FirstGroup Company” means any subsidiary or holding company of FirstGroup plc and any subsidiary of any such holding company (in each case from time to time) (and the terms **“subsidiary”** and **“holding company”** shall have the meanings given to them by section 1159 Companies Act 2006), and **“FirstGroup Companies”** shall be construed accordingly;

“Force Majeure Event” means any act, event or omission beyond the reasonable control of a party including, without limitation, war, riot, civil commotion, malicious damage, compliance with any law or governmental order rule regulation or direction or any overriding emergency procedures, accident, fire, flood, storm, and strikes or any industrial action by employees of any party other than the party relying on the Force Majeure Event, but shall not mean any event for which a contingency plan is or should be maintained under clause 19 (Force Majeure);

“Future Service Provider” means any person who provides Services, or services materially similar to the Services or any part(s) thereof to the Customer following the termination of this Agreement (whether by effluxion of time or otherwise) or the termination of the provision of any of the Services;

“Goods” means the products specified in Schedule 2 (Specification);

“Goods and Services Intellectual Property Rights” means the Intellectual Property Rights owned by or licensed to the Supplier in the Goods and the Deliverables including all get-up, packaging and associated materials.

“Industry Standards” means the rules and regulations including codes of practice and conduct in respect of the Goods and Services applicable from time to time relating to the performance of this Agreement;

“Intellectual Property Rights” means patents, designs, trademarks, service marks, trade names, logos, get-up, domain names, copyright (including rights in computer software), database rights, rights in performances, moral rights, confidential information, know-how and all other intellectual property or proprietary rights, whether registered or not including applications for registration and all similar forms of protection anywhere in the world;

“Purchase Order” means the Customer’s purchase order by which the Goods and Services are ordered on the terms of this Agreement, an example of which is set out at Schedule 1 (Purchase Order);

“Purchase Order Number” means the number specified in the Purchase Order;

“Screening Requirements” means that the person in question has provided bona fide documentary proof of an official nature evidencing: (i) their identity; (ii) their right to work in the United Kingdom; and (iii) any other matter that the Customer may reasonably notify to the Supplier from time to time;

"Services" means the services specified in Schedule 2 (Specification);

“Specification” means the specification for the Goods or Services set out in Schedule 2 (Specification);

“Supplier Induced Administration Costs” means those (both actual and internal) incurred by the Customer due to the Supplier’s non-compliance with Schedule 4 (Invoices);

“Supplier’s Staff” means any and all individuals engaged in the provision of the Goods and Services from time to time, whether they are employed or engaged by the Supplier or any other person;

“Transfer Date” means the date on which the Services will transfer to the Customer or Future Supplier in accordance with TUPE.

"Transferring Employees" means those employees whose contracts of employment will transfer to the Customer or any Future Supplier on the Transfer Date.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended;

“Warranty Period” means any warranty period for Goods and Services which is specified in Schedule 5 (Warranty and Special Terms). Where the start date of the warranty is not specified, that warranty shall be deemed to start from the date the relevant Goods and Services are accepted.

References to a clause, Schedule or paragraph are to a clause in this Agreement, a Schedule to this Agreement or a paragraph of such a Schedule.

The headings in this Agreement are for convenience only and shall not affect its interpretation.

The Schedules to this Agreement shall have the same effect as if contained in the body of the Agreement, and any reference to this Agreement shall include the Schedules.

Any reference in this Agreement to any statute shall include references to any statutory modification of it or any re-enactment that supersedes it from time to time, and to any regulation or subordinate legislation made under it (or under such a modification or re-enactment).

Reference to the plural shall include the singular and vice versa, and reference to one gender includes reference to all genders. Any reference to a person shall be to all legal persons of whatever kind and shall include incorporated and unincorporated persons.

This Agreement (including its Schedules) and any Purchase Orders made under it, constitute the entire agreement between the parties and supersede all prior agreements, understandings and arrangements between them, and representations by them, whether oral or written, which relate to the subject matter of this Agreement. No party has relied on any warranty or representation except as expressly referred to in this Agreement. This clause shall not exclude liability for any fraudulent or negligent misrepresentation made by either party. Any order acknowledgement and/or delivery note sent by the Supplier shall be confirmation of receipt of the Purchase Order.

In the event of a conflict between any provision of this Agreement (excluding the Schedules and Appendices) and the Schedules and the Appendices

- (i) subject to Clause 1.8(ii), the provisions of this Agreement shall prevail; and
- (ii) where the conflict is between the provisions of Schedule 11 (Data Protection Policy) and the provisions of this Agreement or another Schedule, the provisions of Schedule 11 (Data Protection Policy) shall prevail; and
- (iii) where the conflict is between the provisions of Schedule 10 (Special Provision for Rail) and the provisions of this Agreement or another Schedule, the provisions of Schedule 10 (Special Provisions for Rail) shall prevail.

2 STATUS OF THIS AGREEMENT AND PURCHASE ORDERS

The Supplier acknowledges that the Customer is entering into this Agreement as a supply agreement such that the Customer may order by means of a Purchase Order and the Supplier shall supply to such Customer Goods and Services in accordance with this Agreement.

Any Purchase Order placed with the Supplier will be subject to the terms of this Agreement (subject to variation in accordance with clause 8 (Variation)) to the exclusion of all other terms and conditions (including any terms and conditions which the Supplier purports to apply under any order acknowledgement and/or delivery note and/or other documentation).

In the event of any conflict or inconsistency between any part of this document and any Purchase Order made under it, the terms set out in this document shall prevail. Subject to this clause 0, a Purchase Order may include terms additional to the terms of this Agreement.

Where the Customer is an operator of franchised rail services in the UK (which includes where the Customer is party to an agreement with the Secretary of State regarding the provision amongst other things of rail passenger services), the provisions of Schedule 10 (Special Provisions for Rail) will apply.

3 DURATION

This Agreement shall come into force on the Commencement Date and shall continue in effect until terminated in accordance with its terms, or until the Expiry Date, whichever is sooner.

Subject to clause 0, the Customer may extend this Agreement by a further period of up to [two (2) years] at any time by giving the Supplier no less than three (3) months' notice in writing.

Any such notice given under clauses 0 shall set out the length of the extension required. In the event that an extended duration is required, then, unless otherwise agreed in writing by the parties, all of the terms of this Agreement shall remain in full force and effect, save that the definition of "Expiry Date" shall be amended to record the revised expiry date.

4 PURCHASE ORDERS

The Customer shall use the standard form Purchase Order template at Schedule 1 (Purchase Order) to raise all orders with the Supplier.

The Customer may submit Purchase Orders by paper or electronic means and the Supplier shall be capable of receiving Purchase Orders by both these means.

The Supplier shall not supply and the Customer shall not be obliged to pay for any Goods and Services that have not been ordered by the Customer on a duly authorised Purchase Order.

5 PROVISION OF WORKS

On receipt of a Purchase Order from the Customer:

- (a) the Supplier warrants that it shall provide the Services:
 - (i) promptly (and in any event in accordance with the provisions of clause 6 and the Purchase Order) and with all due skill, care and diligence and in accordance with generally recognised commercial practices and standards in the Supplier's industry, trade or profession;
 - (ii) in accordance with that Purchase Order, the Specification and any drawings, descriptions or samples provided by the Supplier;
 - (iii) using only appropriately experienced, qualified and trained personnel; and
 - (iv) in compliance with all laws and regulations applicable from time to time in the UK to the Services and the Deliverables and their use; and
- (b) the Supplier shall ensure that the Deliverables and all goods, materials, standards & techniques used in providing the Services are of satisfactory quality and free from defects in workmanship, installation and design; and
- (c) the Supplier warrants that all and any Goods delivered shall be:
 - (i) of satisfactory quality and free from defects in material, design or workmanship;
 - (ii) fit for the purpose for which the Goods are reasonably required. If the Supplier has any doubts as to the purpose for which the Customer requires the Goods, it must seek clarification from the Customer;
 - (iii) free of any third party lien, claim, title or interest; and
 - (iv) the sole property of the Supplier and that the Supplier has full and unrestricted right and authority to supply to the Customer under the terms of this Agreement.

The Customer's rights are in addition to the statutory conditions implied in favour of the Customer by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 and any other applicable statute in force from time to time.

Except where otherwise agreed in writing by the parties, the Supplier shall provide all personal protective equipment, tools and other equipment and facilities necessary for the performance of the Services ("**Supplier Equipment**") and shall provide all operating and support services necessary for carrying out the Services.

Save as otherwise expressly specified in the Purchase Order the Supplier warrants that the Goods and Services shall be new, and that each item and any component parts comprising the Goods and Services shall be new. Where the parties have agreed in the Purchase Order that the Supplier shall supply reconditioned Goods and Services, the Supplier warrants that such Goods and Services and their component parts shall perform as if they were new and in accordance with the terms of this Agreement unless otherwise expressly agreed in writing.

Where any appropriate International Standards or British Standard Specification or British Standard Code of Practice issued by the British Standards Institute is current at the date of the relevant Purchase Order, all the Goods and Services shall, unless otherwise agreed, be provided in accordance with the appropriate standards. Without prejudice to the generality of the foregoing, the Supplier must be able to demonstrate that it (a) holds, or is actively working towards, ISO

14001 accreditation, and/or (b) has in place internal initiatives that actively seek to materially improve environmental performance.

The Supplier shall comply, and shall ensure that its sub-contractors comply, with the Customer's Supplier Code of Conduct (as amended from time to time by the Customer) which is available from the FirstGroup plc website (www.firstgroupplc.com).

The Supplier warrants that it will only make substitutions of all or any part of the Goods and Services by prior written agreement with the Customer. The Supplier further warrants that if it substitutes equivalent services or goods for those Goods and Services listed in Schedule 2 (Specification), such substitution shall be of the same or better quality as the Services or Goods and shall be supplied at a price not exceeding the price of the Services or Goods and shall be deemed to be Services or Goods, as appropriate, for the purposes of the Agreement (and any Purchase Order made under it).

The Supplier represents and warrants and it is a condition that all of its obligations hereunder shall be performed in compliance with all applicable laws, enactments, orders, regulations, standards and other similar instruments, and that it will obtain (or ensure that there have been obtained) all licences, consents and permits required to comply, and required for the Goods and Services to comply, with such laws, enactments, regulations, standards or other similar instruments.

The Supplier shall actively seek to identify and implement with the prior agreement of the Customer cost saving initiatives in respect of the Goods and Services or any related contract assigned to the Supplier. The Supplier shall detail to the Customer the nature of such savings and the effect that this will have on the cost of the Goods and Services, and if so agreed by the Customer, then the Supplier shall give the benefit of any such savings to the Customer by way of a corresponding reduction in the prices payable by the Customer for the Goods and Services or if otherwise agreed in writing between them, such savings shall be shared between them. Such savings shall include, but not be limited to, any productivity improvements or reduced labour or materials costs in all relevant supply chains.

The provisions of this clause 1 shall survive any performance, acceptance or payment pursuant to this Agreement and shall extend to any substituted or remedial services provided by the Supplier.

6 PERFORMANCE AND DELIVERY

The date for Goods and Services shall be that specified in the Purchase Order. Time shall be of the essence and the Supplier shall be responsible for any loss the Customer suffers because of late Goods and Services.

Delivery of any Goods and Services may only be made in instalments if specified in the Purchase Order.

Goods and Services shall be delivered in normal business hours to the Customer's places of business as specified in Schedule 2 (Specification) or such other place and/or time for delivery identified by the Customer prior to delivery. The Supplier must separately number all cases, packages or items. The Supplier shall submit an itemised packing list or delivery note on delivery showing the packing numbers and the Customer's Purchase Order Number.

The parties agree that electronic proof of delivery systems shall be used and any electronic records produced by such a system shall have the same effect and satisfy each party's contractual obligations, as if they were a hard copy delivery note.

The property and risk in the Goods shall remain with the Supplier until they are delivered in accordance with the terms of the Agreement and shall transfer to the Customer upon delivery in accordance with its terms. The Supplier shall be responsible for insuring the Goods in transit, during delivery, and unloading.

At the Customer's request, the Supplier shall disclose to the Customer data on the quantities, products, volumes-over-time and pricing and pricing histories of any Goods or Services previously supplied to the Customer. Such data shall be supplied to the Customer in industry-standard, itemised electronic format.

7 PRICE AND PAYMENT

Payment Terms

The due date for payment of invoices that meet the requirements of Schedule 4 (Invoices) shall be ninety (90) days from the latter of the following; invoice date, invoice receipt date or Goods and Services received date. For the avoidance of doubt, each of the parties hereby agrees and acknowledges that it enters into the payment terms set out in this clause 7 in good faith and on the basis of fair dealing.

Price

The price for the Goods and Services shall be as specified in Schedule 3 (Price and Payment Terms), unless the Supplier's standard charges for the Goods or Services are lower on the scheduled delivery date than the prices quoted in Schedule 3 (Price and Payment Terms). In this event, the Customer shall be entitled to purchase the Goods or Services at the lower price.

The Supplier warrants that the price quoted in Schedule 3 (Price and Payment Terms) for the Goods and/or Services is at least as low as the price at which the Supplier is currently selling to its most favoured customer the Goods and/or Services or comparable Goods and/or Services in substantially similar volumes on broadly similar terms and conditions.

The Supplier agrees that if at any time during the term of this Agreement it sells any Goods or Services to a comparable customer for less than the price then in force under this Agreement for those Goods or Services, it shall reduce the relevant price to match the lower price for so long as the lower price is available (but for no longer) and shall refund the Customer the difference between the price then in force under this Agreement and the lower price in respect of its purchases of the Goods and/or Services after the Supplier began charging the lower price.

The Supplier agrees to share information on all costs involved in providing the Goods and Services, on a fully open book basis. This will include, but not be limited to raw material costs, labour costs, overhead allocations, profit margins. The Customer may audit the Supplier's accounts from time to time and in accordance with clause 12 (Audits).

The Customer shall be entitled to set off any sums owed to it by the Supplier against the price of the Goods and Services. The Customer may at any time set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether any such liability is present or future, liquidated or unliquidated.

Invoicing

Unless otherwise specified in Schedule 3 (Price and Payment Terms) or Schedule 4 (Invoices), the Supplier shall invoice the Customer upon performance of the delivery of the Goods and completed performance of the Services. Each invoice must comply with and be issued in accordance with Schedule 4 (Invoices). The Customer reserves the right not to pay or to make a deduction in respect of costs incurred by the Customer in processing any invoice not submitted in accordance with this clause 7 or Schedule 4 (Invoices).

Where the Supplier fails to comply with this clause 7 or Schedule 4 (Invoices) and the Customer incurs Supplier Induced Administration Costs, the Customer shall be entitled to recover such costs from the Supplier, and may set off such costs in accordance with clause 0.

The Supplier shall issue the Customer with a regular monthly statement showing amounts due or payable in respect of outstanding invoices in accordance with Schedule 4 (Invoices).

8 VARIATION

No variation of any provision of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each party.

Notwithstanding clause 0, the Supplier hereby agrees to any variation to a Purchase Order which is made in writing by the Customer by an amended Purchase Order and refers to the Purchase Order Number.

9 ORDER CANCELLATION

The Customer shall have the right to cancel any Purchase Order (or part of any Purchase Order) for Goods stocked by the Supplier as standard, at any time prior to delivery, or Services, at any time prior to substantive performance of the Services, without incurring any charge. The Customer shall have no further liability to the Supplier in respect of that Purchase Order (or the part of the Purchase Order cancelled).

The Customer shall have the right to cancel any Purchase Order (or part of any Purchase Order) for non-standard Goods and Services and the Customer shall reimburse the Supplier's reasonable and properly incurred costs directly resulting from cancellation (provided that the Supplier shall take all reasonable steps to mitigate such costs). The Customer shall have no further liability to the Supplier in respect of that Purchase Order (or the part of the Purchase Order cancelled).

Without prejudice to clause 17(Termination), the Customer may terminate any Purchase Order made pursuant to the terms of this Agreement or any part of it immediately by giving notice in writing to the Supplier if the Customer terminates this Agreement in accordance with the provisions of clause 17 (Termination). The Customer shall have no further liability to the Supplier following termination of the Purchase Order for this reason.

Without prejudice to clause 17 (Termination), the Customer may terminate the Purchase Order or any part of it immediately by giving notice in writing to the Supplier if:

- (a) the Supplier fails to supply the Goods and Services or part of them within the delivery times specified in the Purchase Order, or the Customer reasonably believes at any time that the Supplier will not supply the Goods and Services or part of them within the delivery time; or
- (b) the Customer terminates the Agreement with the Supplier in accordance with the provisions of clause 17 (Termination),

and in each case Customer shall have no further liability to the Supplier following termination of the Purchase Order for these reasons.

Termination of an individual Purchase Order shall not affect the continuance of this Agreement or any other Purchase Order then in force.

10 ACCEPTANCE

Where Goods and Services supplied by the Supplier are defective or non-conforming for any reason (including non-conformance with the Specification), the Customer shall give notice to the Supplier of its rejection of the Goods and Services or part of them within a reasonable time of delivery or performance.

Without prejudice to any other remedies available to the Customer, the Customer shall have the option to require the Supplier to re-perform, repair or replace Goods and Services which are defective or non-conforming promptly and at no expense to the Customer, or to refund to the Customer the price for the defective Goods and Services (including any costs of delivery or transportation which were passed on to the Customer).

Re-performed, repaired and replaced Goods and Services shall be subject to the terms of this Agreement.

The Supplier acknowledges that a complete inspection of any Goods cannot be made on delivery and agrees that, by taking delivery of any Goods, the Customer is not agreeing that their delivery constitutes satisfactory performance of the Agreement and does not waive or relinquish any rights that it may have against the Supplier for failure to discharge its obligations under the Agreement.

11 INTELLECTUAL PROPERTY INDEMNITY

The Supplier hereby grants to the Customer a perpetual worldwide non-exclusive licence to use, sell, keep and/or import the Goods and Services and warrants that:

- (a) it or its licensors owns the Goods and Services Intellectual Property Rights;
- (b) it is free to grant to the Customer the licence of the Goods and Services Intellectual Property Rights given in this clause;
- (c) it is not aware of any circumstances which might endanger the validity of the Goods and Services Intellectual Property Rights and all renewal fees in respect of any registered Goods and Services Intellectual Property Rights have been paid in full; and
- (d) the Goods and Services do not infringe the rights of any third party.

The Supplier shall indemnify the Customer against any and all Costs that the Customer suffers or incurs directly or indirectly as a result of a claim that the Customer's use, possession or supply of the Goods and Services infringes the Goods and Services Intellectual Property Rights alleged to belong to a third party. This indemnity shall not extend to infringements resulting from:

- (e) any act or omission of the Customer whereby it is negligent or in wilful default or breach of this Agreement; or
- (f) modification of the Goods or Deliverables (as applicable) by the Customer or use of the Customer's parts, design or specifications where these have not been agreed in advance by the Supplier.

If any infringement referred to in clause 0 occurs or, in the Customer's opinion may occur, the Customer may require at its option and at the Supplier's expense, the Supplier to:

- (g) procure for the Customer the right to continue using the Goods or Deliverables (as applicable); or
- (h) modify the Goods or Deliverables (as applicable) so they become non-infringing, provided that any such modification shall not affect or restrict the ability of the Goods or Deliverables (as applicable) to perform in accordance with the warranties contained in this Agreement; or
- (i) replace all or part of the Goods or Deliverables (as applicable) with equipment of similar capabilities.

The Customer does not grant (either expressly or impliedly) any rights in the Customer's Intellectual Property Rights.

The provisions of this clause 11 shall survive termination of this Agreement, howsoever arising.

12 AUDITS

The Supplier shall conduct its own internal audit of its procedures to ensure compliance with its obligations under this Agreement and shall make the audit results available to the Customer. Such audits shall be conducted, at a minimum, annually.

The Supplier shall allow the Customer and any auditors of or other advisers to the Customer to access any of the Supplier's premises, personnel and relevant records as may be reasonably required in order to:

- (a) fulfil any legally enforceable request by any regulatory body; or
- (b) undertake verifications of the accuracy of the charges or identify suspected fraud; or
- (c) undertake verification that the Goods and/or Services are being provided and all obligations of the Supplier are being performed in accordance with this agreement (including, without limitation, the provisions of clauses 0 and 0).

The Customer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services by the Supplier and that, where possible, individual audits are co-ordinated with each other to minimise any disruption.

Subject to the Customer's obligations of confidentiality, the Supplier shall provide the Customer (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.

The Customer shall provide at least five (5) Business Days' notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.

The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 12, unless the audit identifies a material default by the Supplier, in which case the Supplier shall reimburse the Customer for all its reasonable costs incurred in the course of the audit.

If an audit identifies that:

- (d) the Supplier has failed to perform its obligations under this agreement, the parties shall work together to remedy the defect (if such defect is remediable), provided that, if the audit demonstrates that the Supplier is failing to comply with any of its obligations under this agreement then, without prejudice to the other rights and remedies of the Customer, the Supplier shall take the necessary steps to comply with its obligations at no additional cost to the Customer;
- (e) the Customer has overpaid any charges (including, without limitation, pursuant to the provisions of clause 0), the Supplier shall pay to the Customer the amount overpaid within ten (10) days from the date of receipt of an invoice or notice to do so.

13 SAFETY

The Supplier shall comply with all relevant safety and environmental legislation, regulations, and safety standards including without limitation any bylaws and any industry-specific safety regulations, and shall notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to this Agreement. The Supplier shall, and shall ensure that its employees, agents and sub-contractors (including couriers and delivery drivers) shall comply with the Customer's health and safety procedures and obey all reasonable instructions issued by the Customer's authorised personnel whilst on the Customer's premises.

The Supplier shall notify the Customer as soon as it becomes aware of any material health and safety hazards or issues which arise in relation to the Services (irrespective of whether or not they directly affect the Customer).

The Supplier shall and shall ensure that its employees, agents and sub-contractors shall comply with all Industry Standards from time to time applying to the performance of this Agreement, and

shall ensure that all members of the Supplier's Staff have been certified in accordance with the relevant Industry Standards.

The Supplier shall, prior to the commencement of this Agreement, provide the Customer with details of potential hazards and safety risks which may result from using, handling or storage of the Goods or Deliverables (as applicable) and shall provide any amendments which are made to these details as and when they are made.

14 PREMISES

Whenever the Supplier, or its employees, agents or sub-contractors, is on or is given access to the Customer's premises for the purposes of carrying out its obligations pursuant to this Agreement, the Supplier will, and will procure that its employees, agents or sub-contractors (as the case may be) will, comply with any security requirements and any reasonable instruction, policies and guidelines applicable at the time.

The Customer reserves, in its sole discretion, the right to refuse the Supplier, or its employees, agents or sub-contractors access to the Customer's premises. For the avoidance of doubt, such refusal from site does not preclude or relieve the Supplier from carrying out its obligations in accordance with this Agreement.

Supplier Equipment brought onto the Customer's premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss or damage to the Supplier Equipment.

The Supplier may not store Supplier Equipment on the Customer's premises without the prior consent of the Customer. The Supplier shall promptly and safely remove Supplier Equipment when it is not (or is no longer) required to carry out obligations pursuant to this Agreement.

The Supplier shall be responsible for the costs of making good any and all damage to the Customer's premises and any neighbouring premises of a third party cause by the Customer's Equipment.

15 LIABILITY

If the Supplier fails to provide the Goods or Services or any part thereof in accordance with in accordance with the terms of this Agreement (or any Purchase Order made hereunder) the Supplier shall indemnify the Customer in respect of the cost to the Customer of obtaining the Goods or Services or the relevant part thereof from an alternative source and any additional costs incurred by the Customer as a result of the disruption and any other consequences of the failure or delay. In addition, the Customer may deduct from moneys due or by way of a debt any costs due or amounts accrued to the Customer under clause 7 (Price and Payment).

The Supplier shall be responsible for and shall indemnify and keep indemnified the Customer, its employees and agents, and third parties from and against any and all actions, claims, proceedings, losses, liabilities, damages, penalties, fines, judgments, costs, charges and expenses (including legal fees and expenses) of whatever kind and nature including those relating to:

- (a) the death of or injury to any person;
- (b) the loss or destruction of or damage to any property (including, without limitation, consequential damage to the Customer's land, fixtures and fittings affixed to that land and the cost of rectifying such consequential damage, caused by a Goods and Services in accordance with the terms of this Agreement or any Purchase Order made hereunder); and
- (c) any other loss, costs or damages whatsoever incurred (including, without limitation, direct financial loss, and any claims from third parties arising in connection with the performance or non-performance of this Agreement or any Purchase Order made hereunder)

(together known as “**Costs**”) whether such Costs arise as a result of the negligence, breach of Agreement or any Purchase Order made hereunder or breach of statutory duty by the Supplier, its employees or agents, save to the extent that such Costs are caused by the negligent act or omission of the Customer, its employees or agents.

Nothing in this Agreement shall limit the either party's liability to the other for death or injury resulting from negligence, for fraud or fraudulent misrepresentation, or for any matter, liability for which the parties cannot legally limit or exclude or attempt to limit or attempt to exclude.

Subject to clause 0, in each year of the term of this Agreement the Supplier's liability for Costs in respect of the Customer shall be limited to the greater of £3m (three million pounds sterling) or 150% of the Aggregate Spend.

Subject to clause 0, in each year of the term of this Agreement the aggregate liability of the Customer under this Agreement shall in no event exceed the value of all payments by the Customer to the Supplier under this Agreement in the twelve (12) months preceding the date of the breach giving rise to liability.

The limitation on and exclusions of liability set out in clause 15.4 shall not apply to the indemnity given under this Agreement in clause 15.2 in so far as it relates to a breach by the Supplier of clause 22 (Data Protection and Security).

The provisions of this clause 15 shall survive termination of this Agreement, however arising.

16 INSURANCE

Without prejudice to its obligations to indemnify the Customer, the Supplier shall maintain:

- (a) Employers' Liability Insurance in an amount not less than £5 million for any occurrence or series of occurrences arising out of any one event arising out of the performance of its obligations under this Agreement; and
- (b) Public Liability Insurance (including Products Liability) in an amount not less than £5 million for any occurrence or series of occurrences arising out of any one event arising out of the performance of its obligations under this Agreement; and
- (c) Professional Indemnity Insurance in an amount not less than £5 million for any occurrence or series of occurrences arising out of any one event arising out of the performance of its obligations under this Agreement.

The Supplier shall produce such evidence as the Customer may reasonably require that the insurances referred to in this clause 16 have been taken out and are in force at all material times.

If the Supplier fails to procure or maintain the insurances referred to in this clause 16 the Customer may procure such insurances on behalf of the Supplier at the Supplier's expense.

17 TERMINATION

This Agreement shall expire on the Expiry Date unless terminated or extended in accordance with its terms.

The Customer may terminate this Agreement:

- (a) on no less than three (3) months' notice in writing to the Supplier; or
- (b) as otherwise set out in this Agreement; or
- (c) in the event of a change of Control of the Supplier; or

- (d) the Supplier breaches clause 22 (Data Protection and Security) or the Data Protection Legislation or the Customer exercises its rights pursuant to paragraph 1.4 of Schedule 11 (Data Protection Policy).

Either party (“**Party A**”) may terminate this Agreement immediately on or at any time after the occurrence of any of the following events:

- (e) a material or persistent breach by the other party of any of its obligations under this Agreement which (if the breach is capable of remedy) the other party has failed to remedy within four (4) weeks after the receipt of notice in writing giving particulars of the breach and the action required of the other party to remedy such breach;
- (f) an order is made or resolution is passed for (or any other formal step is taken with a view to commencing) the administration, winding up, moratorium, bankruptcy or dissolution or its entry into a voluntary arrangement under section 1 of the Insolvency Act 1986 (as amended) of the other party (except for the purposes of an amalgamation or reconstruction, the terms of which have been previously notified to and approved by Party A);
- (g) the other party makes any arrangement or composition with its creditors generally (except for the purposes of an amalgamation or reconstruction, the terms of which have been previously notified to and approved by Party A);
- (h) any distress, execution, sequestration or other process is levied or enforced or sued out or upon or against the whole or any material part of the assets of the other party and the same is not discharged within thirty (30) days;
- (i) any encumbrancer takes possession or an administrative or other receiver or manager is appointed of the whole or any material part of the assets of the other party and is not removed or discharged within thirty (30) days in any such case;
- (j) the other party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (k) with immediate effect by notice in writing to the other party in the event of a breach, or reasonably suspected breach, of clause 20 (Anti-Bribery and Anti-Facilitation of Tax Evasion) by the other party; or
- (l) with immediate effect by notice in writing to the Supplier in the event the Supplier is in breach of clause **Error! Reference source not found.** (Anti-Bribery and Anti-Facilitation of Tax Evasion).

In the event that the Customer receives an (unsolicited) challenge in writing to the award of this Agreement to the Supplier (whether by another bidder or a regulatory body or any other person) then provided such challenge is not spurious (in the opinion of the Customer) the Customer may terminate this Agreement with no penalty to the Customer.

The Customer and the Supplier shall cease to be under further obligation under this Agreement following its termination provided that termination shall not affect the accrued rights and obligations of the Customer and the Supplier at the date of termination or terms of this Agreement expressed or clearly intended to remain in force after termination.

The provisions of this clause 17 shall survive termination of this Agreement, however arising.

On termination of this Agreement the Supplier shall make arrangements to deliver to the Customer all such correspondence, documents, data and other property remaining in its possession or under its control relating to or in connection with this Agreement as soon as

practicable and in any event, no later than ninety (90) days from the date of termination and will certify that all such items have been so delivered and that no such items remain in its possession.

The Customer may terminate any Purchase Order placed by it under this Agreement in any of the circumstances provided for in clauses 0 (a) to (c), 0 (a) to (i) and 0 in the circumstances provided for in those clauses, whether or not the Customer or the Supplier has elected to terminate this Agreement. On termination of any Purchase Order pursuant to this clause 0 the provisions of clauses (l) and 0 shall apply as if all reference therein to 'this Agreement' were to that Purchase Order.

18 HANDOVER AND EXIT

On the expiry or termination of this Agreement or any Purchase Order made under it (in whole or in part), the Supplier shall continue to supply the expired or terminated Services (the "**Exit Services**") at Customer's request for a maximum of three (3) months from the date of expiry, termination or removal (such period being determined by Customer in its absolute discretion following consultation with Supplier) (the "**Exit Period**").

Each of the Exit Services shall be supplied on the same terms as the equivalent Services (including as to performance levels and charges) and this Agreement shall continue in full force and effect for the duration of any Exit Period, and each of the Exit Services shall be deemed to be Services for that purpose. The Exit Services shall be provided at no additional cost to Customer, with the only payments required for such services being the charges payable pursuant to this Agreement.

In addition:

- (a) the Supplier shall provide to Customer all assistance requested by Customer to facilitate the orderly transfer of all or part of the Services back to the Customer or to enable a Future Service Provider to take over the provision of all or part of the Services in respect of the relevant Purchase Order or this Agreement (as applicable), until the end of the Exit Period;
- (b) the Supplier shall grant to the Customer and to any Future Service Provider access to all data, information, and Goods and Services Intellectual Property Rights (including continuance of the licence granted under clause 11 during the Exit Period) which are required to perform the Services (or part of them) or to which the Customer is entitled under this Agreement;
- (c) the Supplier shall not do, or omit to do, anything which may adversely affect the orderly transfer of responsibility for the provision of the Services to a Future Service Provider or the Customer, as the case may be; and
- (d) The Supplier shall comply with any provisions relating to exit or termination as set out in paragraph 1.10 of Schedule 11 (Data Protection Policy).

19 FORCE MAJEURE

If either the Customer or the Supplier is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event (the "**Affected Party**") then (subject to the remaining provisions of this clause 19):

- (a) the Affected Party's obligations under this Agreement shall be suspended for so long as the Force Majeure Event continues and to the extent that that party is so prevented, hindered or delayed;
- (b) as soon as reasonably possible after commencement of the Force Majeure Event that the Affected Party shall notify the other party in writing of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event and the effect of the Force Majeure Event on its ability to perform its obligations under this Agreement;

- (c) the Affected Party shall use all reasonable efforts to mitigate the effect of the Force Majeure Event upon the performance of its obligations under this Agreement;
- (d) the Supplier shall take reasonable steps to find a solution by which the Supplier's obligation under this Agreement can be performed despite the Force Majeure Event;
- (e) as soon as reasonably possible after the cessation of the Force Majeure Event the Affected Party shall notify the other party in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under this Agreement;
- (f) the corresponding obligations of the other party will be suspended, and its time for performance of such obligations (including payment) extended, to the same extent as those of the Affected Party pursuant to clause 19.1(a).

If the Force Majeure Event continues for more than twenty-eight (28) days after the commencement of the Force Majeure Event either party may terminate this Agreement by giving not less than seven (7) days' notice in writing to the other party.

The Supplier shall maintain and provide the Customer with a copy of a contingency plan which shall detail the processes and arrangements that the Supplier shall follow to ensure:

- (a) continuity of the Services following any failure or disruption of any element of the Services; and
- (b) the recovery of the Services if one or more events occur (including reasonably foreseeable events linked to the COVID-19 pandemic) which, either separately or cumulatively, mean that:
 - (i) the whole of the Services; or
 - (ii) a material part of the Services;
 are likely to be unavailable, or are in fact unavailable, for a continuous period of five (5) days.
- (c) performance of any of its other obligations under this Agreement.

The Supplier warrants that:

- (a) the Delivery Profile reflects all known reasonably foreseeable COVID-19 Risks and Impacts as at the Commencement Date; and
- (b) the Delivery Profile can be achieved after implementing the current recommended COVID-19 working practices of the government of the United Kingdom in place as at the Commencement Date (whether such working practices apply to the present COVID-19 alert level in England or a different alert level).

The Supplier and the Customer agree that the reasonably foreseeable COVID-19 Risks and Impacts as at the Commencement Date are not a Force Majeure Event.

If having complied with its obligations under clause 19, the Supplier still considers that COVID-19 Risks and Impacts are likely to delay Delivery or cause other delays to the Customer the parties shall at the earliest opportunity negotiate in good faith to extend Delivery or other milestone deadlines (as appropriate).

20 ANTI-BRIBERY AND ANTI- FACILITATION OF TAX EVASION

Neither party shall, and shall procure that no party acting on its behalf shall, offer or give or agree to give any employee, agent or other person acting on behalf of the other party, or any third party, any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or having done or having refrained from doing an act in relation to the obtaining or performance of this or any other contract with the other party or showing or refraining from showing favour or disfavour to any person or organisation in relation to this or any such contract.

Without prejudice to the generality of the foregoing, the Customer and the Supplier shall:

- (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including, without limitation, the Bribery Act 2010 (“**Relevant Requirements**”);
- (b) have and shall maintain in place throughout the term of this Agreement policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
- (c) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement.

2. The Supplier shall:

- (a) not engage in any activity, practice or conduct which would constitute either:
 - (i) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
 - (ii) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
- (b) have and shall maintain in place throughout the term of this agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier) and to ensure compliance with clause 20.3(a);
- (c) promptly report to the Customer any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017;
- (d) within three (3) months of the date of this Agreement, and annually thereafter, certify to the Customer in writing signed by an officer of the Supplier, compliance with this clause 20.3 by the Supplier and all persons associated with it under clause 20.4. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.

The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 20 (“**Relevant Terms**”). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

For the purpose of this clause 20:

- (a) the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with the Bribery Act 2010 (and any guidance issued under section 9 of that Act). Without prejudice to the

generality of the foregoing, a person associated with either party includes but is not limited to any subcontractor of that party.

- (b) the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017 and a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

21 ANTI-SLAVERY

In performing its obligations under the Agreement, the Supplier shall and shall ensure that each of its subcontractors shall comply with all applicable laws, statutes, regulations and codes from time to time in force relating to modern slavery and human trafficking, including but not limited to the Modern Slavery Act 2015.

The Supplier shall comply with the terms of Schedule 9 of this Agreement following receipt of written notification from the Customer (which may be given by email, by post or by hand) that the Supplier is required to do so.

22 DATA PROTECTION AND SECURITY

The Supplier shall at all times comply with Schedule 11 (Data Protection Policy) and Schedule 12 (Minimum Data Security Measures).

23 SERVICE CREDITS

Should the Supplier fail to meet the required performance levels and quality standards set out in Schedule 5 (Performance Levels and Quality) of this Agreement, then the Customer shall be entitled to a reduction in the fees payable in respect of those Goods and Services for which the Supplier has failed to meet the required standard(s). This service credit shall be applicable for each and every occurrence of a failure to meet the required standard(s) and is a genuine pre-estimate of loss and is in no way punitive.

Any liquidated damages payable pursuant to Schedule 7 (Liquidated Damages) shall be payable on demand monthly in arrears.

24 CONFIDENTIALITY

Neither party shall, either during the period of this Agreement or at any subsequent time, disclose to any other person any Confidential Information disclosed to it by the other party, in writing or orally, whether before or after the date of this Agreement other than:

- (a) to that party's employees, sub-contractors, professional advisers and agents insofar as is necessary for the performance of its obligations under this Agreement; or
- (b) with the prior written consent of the other party; or
- (c) as required by law or the requirements of any recognised stock exchange, listing authority or other regulatory authority; or
- (d) where at the date of this Agreement or at any time after the date of this Agreement such information comes into the public domain other than through breach of this Agreement; or
- (e) insofar as such information comes lawfully into the possession of the party disclosing the information from a third party.

The party disclosing the Confidential Information shall procure that the person to whom the Confidential Information is disclosed is made aware of the obligations of confidentiality under this Agreement and complies with those obligations as if it were a party to this Agreement.

No public announcement, communication or circular (other than to the extent required by law, regulation or rule made by any recognised stock exchange, listing authority or other regulatory authority) concerning the arrangements referred to in this Agreement shall be made or despatched by either party without the prior written consent of the other party.

The provisions of this clause 24 shall survive termination of this Agreement, however arising.

25 ALCOHOL AND DRUGS POLICY

The Customer, in meeting its obligation under the Transport and Works Act 1992, operates an Alcohol and Drugs Policy. It is supported by related Codes of Practice, Guidelines and readily available educational materials. A copy of the Policy Statement and code of conduct is available on request.

The Supplier and its employees, agents and sub-contractors shall not:

- (a) report or endeavour to report for duty having just consumed alcohol or under the influence of drugs;
- (b) report for duty in an unfit state due to the use of alcohol or drugs;
- (c) be in possession of drugs or alcohol in any of the Customer's premises; or
- (d) consume alcohol or drugs whilst at any time on duty.

The Customer will not tolerate any departure from these rules and will take appropriate action in the event of any infringement.

A program of screening has been put in place. This includes procedures to:

- (a) deter the use of drugs; and
- (b) detect the use of alcohol and drugs where abnormalities of behaviour require prompt managerial intervention (which may include a request for screening).

If the Supplier, its employees agents or sub-contractors infringe the Customer's Policy on Alcohol and Drugs the offender will not be considered for work by the Customer at the Customer's premises at any future date.

26 DISPUTE RESOLUTION

The parties shall attempt in good faith to negotiate the settlement to any claim or dispute arising between them out of or in connection with this Agreement.

If the parties fail to resolve the claim or dispute within fourteen (14) days of the start of negotiations under clause 0, then the claim or dispute must be referred to the senior executives of both the Customer and the Supplier who will, within seven (7) days of such referral meet to seek to resolve the claim or dispute within seven (7) days of that meeting by negotiation in good faith.

If the parties fail to resolve the claim or dispute in accordance with the procedures at clauses 0 and 0, then the parties will, in good faith, seek to resolve that dispute through mediation under the auspices of the Centre for Dispute Resolution.

The mediator and the procedure to be followed in the mediation shall be agreed between the parties within fifteen (15) days of one party requesting mediation, failing which the mediator shall be appointed by the Centre for Dispute Resolution and the procedure established by him.

The costs and fees associated with the mediation shall be borne equally by the parties.

If the dispute has not been resolved within thirty (30) days of the appointment of a mediator, or if either party refuses to agree to mediation or withdraws from the mediation, then the dispute may be referred to litigation and the parties will be free to pursue their remedies without further reference to this clause 26.

No party shall refer a dispute (including without limitation any dispute about payment) to litigation without first following the procedure in this clause 26.

27 TUPE

The Supplier will be responsible for any income tax, national insurance contributions and/or social security charges or similar statutory payments in relation to all the Supplier's Staff and will ensure that they are deducted and/or paid to the relevant authorities and/or the Supplier's Staff (as the case may be).

The Supplier shall provide to the Customer, at any time upon the Customer's demand, any and all Employee Liability Information ("**ELI**") sufficient to prepare a Transfer under TUPE. Demand for such ELI shall not imply that a Transfer is to take place.

Notwithstanding the provisions of this clause 27, the Customer and the Supplier acknowledge and agree with each other that the provision of Services or delivery of the Services, or any part of them, are not intended to create an "employer-employee" relationship between any person providing the Services to the Customer whether under contract or otherwise. The Supplier shall indemnify and keep indemnified the Customer against any Costs which it may suffer as a result of a claim brought, whether during the Term or after, by a Supplier's employee or any other person who in connection with this Agreement purports to be an employee against the Customer for whatever reason and howsoever arising (including any claim under TUPE).

For the avoidance of doubt, the Supplier shall ensure that there shall be a sufficient number of staff to cover periods of holiday, sickness or other absence and anticipated and actual peaks in demand that may arise in accordance with the provision of the Services.

The Supplier shall ensure that staff who are engaged in the provision of the Services:

- (a) have all necessary permits and/or entitlements to work in England and may do so legally at all times when they are employed or engaged in providing the Services; and
- (b) are suitably qualified, adequately trained and capable of carrying out their role in performing the Services.

27.6 The Customer reserves the right to object (but not unreasonably or vexatiously) to any individual whom it considers unsuitable to work in the provision of the Services and to instruct the Supplier to remove that individual from work in or about the provision of the Services. The Supplier shall immediately comply with any such instruction and as soon as reasonably practicable afterwards provide a suitable substitute.

Employment Indemnities

27.7 The Supplier shall indemnify the Customer and any Future Service Provider against all and any costs, expenses, liabilities, damages and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise or be made against the Customer, and/or any Future Service Provider by virtue of the operation of TUPE in connection with the termination or expiry of this Agreement or the termination of the provision of any of the Services by or in respect of any person who is or was employed or engaged in the provision of Services at any time, including without limitation, all Employment Charges prior to the Transfer Date.

- 27.8 The Supplier shall pay and discharge all Employment Charges in respect of the Transferring Employees for the period up to and including the Transfer Date and the Customer or the Future Supplier shall assume responsibility for the same from the Transfer Date.
- 27.9 The Supplier shall be liable for and indemnify and keep indemnified the Customer and any Future Supplier against any failure to meet and discharge all remuneration, benefits, entitlements and outgoings for the Transferring Employees in connection with the provision of the Services, including without limitation, all Employment Charges prior to the Transfer Date.
- 27.10 The Supplier shall indemnify the Customer (both for itself and any Future Supplier) in full for and against all costs, claims, liabilities and expenses (including reasonable legal expenses and other professional fees together with VAT) incurred or suffered by the Customer and/or any Future Supplier arising from or in connection with the Transferring Employees' employment or termination of employment:
- (a) any claim or demand by any Transferring Employee or a trade union or other body or person representing a Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising directly or indirectly from any act, fault or omission of the Supplier on or before the Transfer Date;
 - (b) any failure by the Supplier to comply with its obligations under Regulations 11 and 13 of TUPE, or any award of compensation under Regulation 15 of TUPE, save where such failure arises from the failure of the Customer and/or any Future Supplier to comply with its duties under Regulation 13 of TUPE;
 - (c) the Supplier's failure to perform and discharge any of its obligations, in relation to the Transferring Employees;
 - (d) any act or omission by the Supplier on or before the Transfer Date or any other matter, event or circumstance occurring on or before the Transfer Date;
 - (e) all and any claims in respect of all Employment Charges in relation to the Transferring Employees payable in respect of any period on or before the Transfer Date;
 - (f) any claim or demand made by or in respect of any person employed or formerly employed by the Supplier other than a Transferring Employee for which it is alleged the Customer or Future Supplier may be liable by virtue of this agreement and/or TUPE; and
 - (g) any redundancy payment and notice pay for service which was accrued during the period of the Transferring Employee's employment with the Supplier prior to the Transfer Date.
- 27.11 If TUPE applies to transfer the employment of any person employed by the Supplier to the Customer or any Future Supplier then if the Customer or any Future Supplier serve notice terminating the employment of such persons within 180 days after the date of such transfer, the Supplier shall indemnify the Customer (for itself and any Future Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the Customer is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.
- 27.12 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and/or employee representatives in relation to any relevant transfer will be fulfilled.

Unexpected Employees

27.13 If any individual who is not agreed to be a Transferring Employee or whose name is not included in the final list of Transferring Employees (an **Unexpected Employee**) asserts that TUPE applies on termination or expiry of this Agreement to transfer the employment of such individual from the Supplier to the Customer or to a Future Supplier, then:

- (a) the Customer will, or will use reasonable endeavours to ensure that any Future Supplier will notify the Supplier that such assertion within 14 days of becoming aware of such assertion or claim to enable the Supplier to, if it wishes, make an offer in writing to employ the Unexpected Employee under a new contract to take effect on the termination referred to below at paragraph (ii); and
- (b) upon an offer being made pursuant to paragraph (i) (or at any time after the expiry of 14 days from the notification given in accordance with paragraph (i) if the offer is not made) but in any event within 45 days of the assertion or claim, the Customer or the Future Supplier, as applicable, may give notice to terminate the employment of the Unexpected Employee. The Customer shall (and shall use reasonable endeavours to procure that the Future Supplier shall) use reasonable endeavours to minimise termination costs and shall not, in any event, incur any greater termination costs or make any larger termination payment than those which would have been incurred or made by the Supplier acting reasonably in the period immediately before the alleged transfer (unless it is required by applicable law to do so, for example because the Unexpected Employee has accrued additional continuous service); and
- (c) provided that (A) such notice of termination is given no later than 90 days from the assertion or claim and (B) the Customer or the Future Supplier, as applicable complies with its obligations as set out in paragraphs (i) and (ii) above the Unexpected Employee shall be treated as a Transferring Employee and the Supplier shall indemnify the Customer or the Future Supplier, as applicable, and keep the Customer or the Future Supplier indemnified against the costs of employing and terminating the employment of the Unexpected Employee, including, without limitation, redundancy payment and notice pay.]

28 ASSIGNMENT, NOVATION AND SUB-CONTRACTING

The Supplier may not assign any of its rights or the benefit of all or part of this Agreement or transfer, delegate or sub-contract any of its duties or obligations without the prior written consent of the Customer.

The Customer may at any time by written notice to the Supplier on one or more occasion assign all or part of its rights and/or transfer all or part of its obligations under this Agreement.

Furthermore, the Customer may novate the whole or any part of any Purchase Order made pursuant to this Agreement to any other body which substantially performs any of the functions that previously had been performed by the Customer, and, in the case of any such novation, the Supplier agrees to enter into a novation agreement with the Customer and the successor entity in a form reasonably required by the Customer.

If the Supplier sub-contracts all or any part of its obligations under this Agreement to a third party, the Supplier shall remain liable for all of its obligations under this Agreement. The Supplier shall at all times be responsible for the acts and omissions of any sub-contractor, its employees and agents and shall ensure that the sub-contractor, its employees and agents are fully apprised of all safety procedures.

29 AGENCY

If the Supplier uses an agent to perform all or any part of its obligations under this Agreement, the Supplier shall remain liable for all of its obligations under this Agreement. The Supplier shall at all times be responsible for the acts and omissions of any agent, its employees and sub-contractors and shall ensure that the agent, its employees and sub-contractors are fully apprised of all safety procedures.

30 NO EXCLUSIVITY

The Customer does not undertake to purchase any goods or services exclusively from the Supplier and does not undertake to purchase any minimum quantities or place any minimum orders from or with the Supplier.

31 DOCUMENTATION

The Supplier shall provide to the Customer appropriate documentation relating to the Goods, Deliverables and Services identified in Schedule 2 (Specification). The documentation shall provide full details of the Goods and Services including, without limitation Goods and Services.

32 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties do not intend that any term of this Agreement or any Purchase Order should be enforceable by any third party as provided by the Contracts (Rights of Third Parties) Act 1999 or otherwise, except:

- (a) the Secretary of State, who may rely on and enforce any terms of this Agreement or any Purchase Order which confer rights on him;
- (b) where such third party is an assignee or rights under the Agreement or any Purchase Order and such assignment is in accordance with the terms and conditions of this Agreement.

33 COUNTERPARTS

This Agreement may be executed in one or more counterparts each signed by one or more parties and such counterparts shall constitute one instrument. This agreement is deemed to be in writing and the use of an electronic signature is deemed to be a signature.

Transmission of a signed counterpart of this agreement or the executed signature page of a counterpart of this agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

34 NOTICES

Any notice or other communication under or in connection with this Agreement shall be given in accordance with the provisions of Schedule 8 (Notices).

35 WAIVER

Any waiver by the Customer of any term or condition of this Agreement or of any breach by the Supplier may be terminated by the Customer at any time and shall not prevent the Customer from enforcing any term of this Agreement or from acting on that or any subsequent breach.

The failure or delay by any party in any one or more instances to exercise any right or to insist on the strict performance or observance of any one or more provision of this Agreement shall not operate as a waiver of, or preclude any further exercise or enforcement of (as the case may be) or other exercise or enforcement by such party of that or any other right or provision.

36 NO PARTNERSHIP OR AGENCY

Nothing in this Agreement shall be deemed to create or constitute a partnership, agency relationship, or joint venture between the parties. Neither party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.

37 SEVERANCE

If any provision of this Agreement is or at any time becomes illegal, invalid or unenforceable under any enactment or rule of law it shall to that extent be deemed not to form part of this Agreement but (except to that extent in the case of that provision) it and all other provisions of this Agreement shall continue in full force and effect and their validity, legality and enforceability shall not be thereby affected or impaired and the parties shall negotiate in good faith and in a reasonable manner to agree the terms of a mutually acceptable and satisfactory alternative for that provision. If the parties are unable to agree any replacement provision within thirty (30) days of one party notifying the other of its belief that a provision maybe invalid, illegal or unenforceable then the negotiations shall be referred to mediation in accordance with clause 26 (Assignment, Novation and Sub-Contracting).

38 GOVERNING LAW

This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

The provisions of this clause 38 shall survive termination of this Agreement, however arising.

SIGNED by)
for and on)
behalf of)
FIRST GREATER WESTERN LTD)
)

SIGNED by)
for and on)
behalf of)
[XXX])
)

Schedule 1

Purchase Order

1 STANDARD FORM PURCHASE ORDER

Purchase Order

Vendor:
ACME SUPPLIES LTD
32, BROAD STREET
ANYTOWN
XX23 8ZZ

Ship To:
First H & D Weymouth Depot
Edward Street
Weymouth
Dorset
DT4 7DP

PO Information

PO Number 6270/2099999
Order Date 31.07.2007
Currency GBP
Contact No. 0117 3736421
Delivery Date 06.08.2007

Page 1 of 1

Invoice To:

First Somerset & Avon
PO Box No. 10417
Exchequer House
3 Exchequer Row
Aberdeen, AB11 5YA

Item	Material/Description	Quantity	Unit	Net Price	Net Amount
0010	Vendor Part No: XX999S Shoe Brake Relined Rear XX999S Our Part Number: 199999	2	PAC	12.98	25.96
Total Net Amount					25.96

TERMS AND CONDITIONS

All goods and services are to be supplied in accordance with our Terms and Conditions of Purchase and Site Regulations (where appropriate), copies of which are available on request.

SIGNATURE _____ DATE _____

First Hampshire & Dorset registered in England
Registered No: 01889120
Registered Office: 228 Portwood Road, Southampton, SO17 2BE, United Kingdom

Schedule 2

The Specification for the Goods and Services

1 THE SPECIFICATION

A description and the Specification of the Goods will be set out in this Schedule

Delivery Profile

2 TRANSFER OF WARRANTIES

Notwithstanding any other provisions of this Schedule, where the Supplier supplies Goods under this Agreement and is not the original manufacturer of the Goods (the "Manufacturer") then to the extent permitted in law, the Supplier hereby assigns the benefit of all and any of the Manufacturer's warranties in respect of the Goods to the Customer. If any such transfer is ineffective then, if the Customer so requests, the Supplier shall do all such acts and execute all such documents as are necessary and required by the Customer in order to assign the benefit of the Manufacturer's warranties in respect of the Goods to the Customer and shall use reasonable endeavours to procure that the Manufacturer does the same.

Schedule 3

The Price and Payment Terms

1 THE PRICE

The Price for the Goods and Services is **TBC**, subject to the payment terms below.

2 THE PAYMENT TERMS

The Supplier shall be entitled to charge interest on any undisputed overdue payment at the rate of 2% per annum above the base rate of Royal Bank of Scotland then prevailing, such interest being charged from the date on which the Supplier notifies the Customer of the overdue payment until payment of the amount due has been made.

All amounts payable by one party to another party under this Agreement are deemed to be exclusive of VAT. If an amount so payable constitutes consideration for a taxable or deemed taxable supply by such other party to the first party, the first party shall on demand and upon receipt of an appropriate VAT invoice pay in addition the amount of VAT properly chargeable by such other party in respect of the taxable or deemed taxable supply in question.

Where under this Agreement one party has agreed to reimburse or indemnify another party in respect of any payment made or cost incurred by such other party then the first party shall also reimburse the VAT paid by such other party which forms part of its payment made or cost incurred to the extent that such VAT is not available for credit (whether by way of set-off or repayment) for such other party or a member of a VAT group of which such party is a member (a "**VAT Group Member**") under sections 24-26 (inclusive) of the Value Added Tax Act 1994 or any regulations made thereunder or under any similar or equivalent legislation replacing or introduced in addition to the same.

The price for the Goods and Services shall be inclusive of any delivery costs and insurance costs, unless stated to the contrary in the relevant Purchase Order

Schedule 4

Invoices

1 INVOICE INFORMATION

1. The following information must be included on **all** invoices from the Supplier to the Customer:

(a) **First Purchase Order Number** – the Supplier must have a Purchase Order, issued by the Customer or a FirstGroup Company, for all Goods and Services supplied to the Customer.

(i) The Purchase Order Number must be stated in full (four digits/seven digits) on the invoice to the Customer.

(ii) There must be only one Purchase Order Number on each invoice.

Invoices that reference more than one Purchase Order Number will cause delays in processing and may require a credit note to be raised.

(b) **Supplier Delivery Note Number** – the Supplier's delivery note number must be quoted on all invoices to the Customer. If the Supplier does not use delivery notes, a despatch note number or other similar reference number must be quoted instead.

(c) **Supplier Sales Order Number** – if delivery notes are not used, the Supplier must also quote the sales order number on all invoices to the Customer.

Please ensure that invoices are checked for accuracy prior to being sent.

All invoices must be sent to First Shared Services (FSS) at the following address:

[Name of FirstGroup Company which issued PO]
PO Box 7544
Royal Mail Sorting Office
Crucible Road
Corby
NN17 5ZZ

In addition, the Supplier must have the capability to invoice the Customer on an electronic basis, and the Supplier must provide a monthly softcopy electronic invoice statement detailing the invoices raised by the invoice number, invoice value, and corresponding Purchase Order Number. This statement should also detail any unallocated payments the Supplier may have received. The email address is fgr@a-ip.co.uk. Please quote the Purchase Order Number as part of the "subject" of the email. Please submit only one invoice per pdf although multiple invoices may be submitted at the same time.

The Supplier will also notify the Customer of the correct escalation path within the Supplier's business for rapid resolution of payment issues, for example, from Credit Controller to Financial Director.

The Supplier may direct any questions to the Customer's Customer Support Team on 01224 303 400 (option 1) or Email AP.Queries@FirstGroup.com.

Schedule 5

Special Terms

WARRANTY

1. Where any Goods or Deliverables develop faults during the Warranty Period stated in Schedule 2, the Customer may:
 - (a) return the Goods or Deliverables to the Supplier and the Supplier shall repair or replace (at the Customer's option) such Goods or Deliverables, free of charge and free of all costs of delivery and packaging, and in accordance with the terms of this Agreement; and
 - (b) request that the Supplier attend the Customer's maintenance depot, national distribution centre or other place of business, to repair or replace (at the Customer's option) such Goods or Deliverables and the Supplier shall repair or replace such Goods or Deliverables free of charge and free of all costs of delivery and packaging, and in accordance with the terms of this Agreement.

In addition to the repair or replacement of all and any faulty or defective Goods or Deliverables, the Customer reserves and shall have the right to claim:

- (c) all labour costs incurred in the removal of faulty Goods or Deliverables and the fitting of repaired or replacement Goods or Deliverables (at the standard skilled local labour rate at the time of the defect, multiplied by the standard time for that work);
- (d) the cost of any temporary replacement necessitated by reason for the faulty or defective Goods or Deliverables; and
- (e) all administrative costs involved in processing the warranty claim.

The parties hereby agree these types of loss represent the actual losses that may be suffered or incurred by the Customer as a result of the fault in the Goods or Deliverables, but agree that this list is not exhaustive and shall not limit or prevent the Customer from making any other claim it may have in law in respect of any faulty or defective Goods or Deliverables.

The Supplier shall ensure that all warranty claims are settled within 28 days of the date the claim is notified in writing (either by post or electronically) by the Customer to the Supplier.

Upon termination or expiry of this Agreement, the Supplier shall, if the Customer so requires, assign to the Customer the benefit of any unexpired supplier's or manufacturer's warranties (other than those of the Supplier) relating to any Goods or Deliverables, title to which has passed to the Customer, to the extent that the benefit of such warranties can be so assigned.

Schedule 6

Performance Levels and Quality

1 PERFORMANCE LEVELS AND QUALITY

The Supplier shall be responsible for examining its own procedures and results, self-assessment, reporting and improvement of performance. The Supplier shall on the Customer's request provide details of this process and shall provide to the Customer formal reports of performance levels by measurement of the Supplier's actual performance against a set of performance targets known as Key Performance Indicators ("**KPIs**"), as set out below.

Key Performance Indicators:

Failure to meet any of the KPIs will result in a reduction in the price in relation to that part of the Services, or termination of this Agreement immediately on notice in writing, in accordance with the table below (* denotes instances where the Customer will have the option to terminate):

Months in which KPI not achieved	Deduction per KPI (as % of price)
One month in any 6 months	<i>TBC</i>
2 or 3 months in any 6 months	<i>TBC</i>
4 or 5 months in any 6 months	<i>TBC</i>
6 or more months in any 12 months	<i>TBC</i>

Schedule 7

Liquidated Damages

1 LIQUIDATED DAMAGES

[If the Supplier fails to meet the performance levels set out in Schedule 5 and/or the Specification [or the milestones set out in the Purchase Order] then the Customer shall be entitled to the sum of:

- (a) £● for every [minute/hour/day of delay or £● for every ●% below the specified performance level up to a maximum of £●.
- (b) £● for every *cancellation/total failure to perform the Works*.

These damages shall be applicable for each and every occurrence, and are a genuine pre-estimate of the Customer's loss and are in no way punitive.

Schedule 8

Notices

1 NOTICES

Each notice or other communication to be given under this Agreement shall be given in writing in English and, unless otherwise provided, shall be made by hand or letter. For the avoidance of doubt and without prejudice to the remainder of this Schedule, unless otherwise agreed, notice shall not be validly served by e-mail but this shall not prohibit the parties from corresponding by email or the Customer from submitting Purchase Orders electronically.

Any notice or other communication to be given by one party to another under this Agreement shall (unless one party has by no less than 5 Business Days' notice to the other party specified another address) be given to that other party at the address set out below:

- (a) FIRST GREATER WESTERN LIMITED:

Attention:

- (b) Supplier:

ADDRESS

Attention: Any notice or other communication given by any party shall be deemed to have been received:

- (a) in the case of a notice given by hand, at the time of day of actual delivery; and
(b) if posted, by 10am on the second Business Day following the day on which it was despatched by first class mail postage prepaid,

provided that a notice given in accordance with the above but received on a day which is not a Business Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Business Day.

Schedule 9

Transparency in Supply Chains

BACKGROUND

- (A) FirstGroup supports the Government's aim to remove slavery and human trafficking from supply chains and wherever it is found.
- (B) FirstGroup cannot achieve this aim without the cooperation of its suppliers.
- (C) Clause 54 of the Modern Slavery Act 2015 requires all FirstGroup companies with a total turnover greater than £36 million to prepare a 'Slavery and Human Trafficking Statement' for each financial year outlining the steps which FirstGroup is taking to ensure that slavery and human trafficking is not taking place in any of its supply chains.
- (D) FirstGroup requires each of its suppliers to provide an annual statement in the prescribed format to assist it with this aim.

1 COMPLIANCE WITH LAWS AND POLICIES

In performing its obligations under the Agreement, the Supplier shall and shall ensure that each of its subcontractors shall comply with all applicable laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015. The Supplier shall not use, or allow its subcontractors to use, child or slave labour.

2 REPORTING OBLIGATIONS

The Supplier shall provide the Customer with a completed statement in the form attached at Annex 1 (a "**Transparency in Supply Chains Statement**"):

- (a) within six (6) months of any written notification given under clause 0; and
- (b) on or before **1 December** of each year of this Agreement following any written notification given under clause 0.

If the Supplier fails to provide a Transparency in Supply Chains Statement within the time stipulated in paragraph 1.1 above, the Customer shall have the right to request that a Transparency in Supply Chains Statement be provided.

The Customer may terminate this Agreement without any further liability to the Supplier:

- (c) If the Supplier fails to comply with a request given pursuant to paragraph 1.2 within 6 weeks of the date of that request; or
- (d) If the Supplier makes any negligent or fraudulent misrepresentation (or any negligent or fraudulent misstatement) in a Transparency in Supply Chains Statement.

The Supplier represents and warrants that:

- (e) its responses to the Transparency in Supply Chains Statement are complete and accurate; and
- (f) neither the Supplier nor any of its officers, employees or other persons associated with it:
 - (i) has been convicted of any offence involving child labour, slavery and human trafficking; and

- (ii) having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with child labour, slavery or human trafficking.

The Supplier shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no child labour, slavery or human trafficking in its supply chains.

The Supplier shall allow the Customer access at all reasonable times upon reasonable prior notice to the Supplier's premises to permit the Customer to conduct its own review for the purpose of verifying that information contain in any Transparency in Supply Chains Statement is accurate provided that the rights granted by this clause shall be used for that purpose only.

The Supplier shall notify the Customer as soon as it becomes aware of:

- (g) any breach, or potential breach, of the Modern Slavery Act 2015 by the Supplier, its officers, employees or other persons associated with it; or
- (h) any actual or suspected child labour, slavery or human trafficking in a supply chain which has a connection with this Agreement.

Annex 1

ANNUAL TRANSPARENCY IN SUPPLY CHAINS (SLAVERY OR HUMAN TRAFFICKING) STATEMENT

Company:(Your company's name in block capitals)

- | | Yes | No |
|---|--------------------------|--------------------------|
| 1 Is the Company subject to the requirement to produce annual slavery and human trafficking statement / report under section 54 of the Modern Slavery Act 2015?
<i>(if yes please attach a copy)</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 Does the Company have an Anti-Slavery policy?
<i>(if yes please attach a copy)</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 Does the Company provide training to staff on Slavery or Human Trafficking Offences? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 Is the Company or any subsidiary of your organisation established in a jurisdiction which might reasonably be considered to be a "high risk" jurisdiction in relation to Slavery or Human Trafficking Offences (whether or not they are offences in that jurisdiction)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5 In the last 3 years have any of the following been investigated in relation to or been found to have aided in or committed or otherwise been involved in any Slavery or Human Trafficking Offence: | | |
| (a) the Company? | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) a Related Company? | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) any employee of the Company (to the best of your knowledge and belief)? | <input type="checkbox"/> | <input type="checkbox"/> |
| (d) any member of your supply chain (to the best of your knowledge and belief)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6 Have any steps been taken to verify the accuracy of your answers to question 5? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7 Is there any other information about your organisation relevant to the prevention of Slavery or Human Trafficking Offences which you wish to include in this statement? | <input type="checkbox"/> | <input type="checkbox"/> |

If your answer to any of these questions is "yes" then please provide details in an attached document

For the purposes of making this statement a "Slavery or Human Trafficking Offence" is conduct that constitutes any of the following:

- The offences of slavery, servitude and forced or compulsory labour and human trafficking in sections 1, 2 or 4 of the Modern Slavery Act 2015
- The offences of slavery, servitude and forced or compulsory labour and human trafficking in sections 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.
- The traffic in prostitution offence under section 22 of the Criminal Justice (Scotland) Act 2003.
- The trafficking for exploitation under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.
- The offences of slavery, servitude and forced or compulsory labour under section 47 of the Criminal Justice and Licensing (Scotland) Act 2010.
- Conduct that would constitute an offence in a part of the UK under any of the above provisions if the conduct took place in that part of the UK.
- Any other offence specified in Section 54(12) of the Modern Slavery Act 2015

A "Related Company " means any subsidiary or holding company of the Company and any subsidiary of any such holding company (in each case from time to time) (and the terms "subsidiary" and "holding company" shall have the meanings given to them by section 1159 Companies Act 2006).

[The Company warrants] [and] [I individually warrant] (delete as applicable) that the information contained in this Transparency in Supply Chains Statement is true and accurate

Name:
For and on behalf of the Company

Date

Schedule 10

Special Provisions for Rail

1 KEY CONTRACTS AND DIRECT AGREEMENTS

1. In this Schedule:
 - (a) **"Key Contract"** means any Purchase Order or any other agreement between the Customer and the Supplier where the Customer is an Operator and which is designated by the Secretary of State to be a 'Key Contract' in accordance with a Rail Services Agreement but excluding any such agreement once it ceases to be designated as a Key Contract;
 - (b) **"Operator"** means the Customer which is a party to a Rail Services Agreement;
 - (c) **"Rail Services"** means all and any of the services to be performed by the Operator under a Rail Services Agreement;
 - (d) **"Rail Services Agreement"** means any agreement entered into between the Customer and the Secretary of State regarding the provision amongst other things of rail passenger services;
 - (e) **"Screening Requirements"** means the person in question has provided bona fide documentary proof of an official nature evidencing: (i) their identity; (ii) their right to work in the United Kingdom; and (iii) any other matter that the Customer may reasonably notify to the Supplier from time to time;
 - (f) **"Secretary of State"** means the Secretary of State for Transport, whose principal address is at 33 Horseferry Road, London SW1P 4DR (or any successor body who takes on all or a part of the functions of the Secretary of State for Transport to secure the provision of rail services in Great Britain).
2. The Supplier acknowledges that where the Customer is an Operator this Schedule shall apply.
3. It is acknowledged that the Customer, where required to do so by the Secretary of State, may require that the Agreement, and/or any Purchase Order made under it, is approved by the Secretary of State (in relation to the Operator only). The Supplier further acknowledges that the Operator may be required to notify the Secretary of State that it intends to enter into a Purchase Order in accordance with the terms of this Agreement and the Operator may require on notice to the Supplier that any provisions of its Rail Services Agreement relevant to this Purchase Order will apply for the purposes of any Purchase Order entered into by an Operator.
4. The Supplier acknowledges that any agreement or Purchase Order to be entered into by an Operator may be designated as a Key Contract by the Secretary of State and, in such circumstances (unless otherwise specified by the Operator), an Operator may not enter into an agreement or Purchase Order unless the Supplier has first entered into a direct agreement with the Secretary of State ("**Direct Agreement**").
5. In the circumstances set out in paragraph 3 of this Schedule, at the request of an Operator, the Supplier shall use best endeavours to enter into a Direct Agreement with the Secretary of State on a basis acceptable to the Secretary of State, which addresses circumstances including:
 - (a) breach, termination or expiry of this Agreement or a Purchase Order made under it;
 - (b) termination or expiry of the Rail Services Agreement; and

- (c) the making of a railway administration order in respect of the Operator.
- 6. The Supplier shall indemnify the Operator in respect of any Losses which become payable by the Operator to the Secretary of State as a result of any breach by the Supplier of the terms of the relevant Direct Agreement.
- 7. If and to the extent the Secretary of State claims indemnity under the Rail Services Agreement against the Customer in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Rail Services which is caused or contributed to by the Supplier, the Supplier shall on demand hold the Customer fully indemnified and protected against such claim.
- 8. The Supplier acknowledges that an Operator will require the prior consent of the Secretary of State to undertake any variation to a Key Contract and shall be obliged to comply with the reasonable instructions of the Secretary of State in the replacement or termination of any such Key Contracts. The Supplier shall assist and co-operate with the Customer, any applicable Operator and any reasonable instructions of the Secretary of State in such regards. Without prejudice to the foregoing, if the Rail Services Agreement terminates for whatever reason, the Supplier shall, if so directed by the Secretary of State, terminate this Agreement and any Purchase Orders made under it between the Operator and the Supplier, in accordance with the terms of the Direct Agreement.
- 9. In addition to the right of novation provided for in clause 0, the Supplier further acknowledges that where the Customer is an Operator, on termination of its Rail Services Agreement, the Agreement and/or applicable Purchase Order made under it may be transferred by a statutory transfer scheme to a successor operator. The Supplier shall provide the Goods and/or Services in a manner such that a successor operator would be able to take over the Goods and/or Services immediately at any time.
- 10. In addition to the rights of termination provided for in clauses 9 and 17 and paragraph 1.8 and paragraph 10.2, the Supplier further acknowledges that where the Customer is an Operator, the Operator may terminate the Purchase Order and the terms of this Agreement insofar as they apply between the Operator and the Supplier by giving less than three (3) months' notice to the Supplier, but only where required to ensure that the obligations of the parties cease at the end date of the Operator's Rail Services Agreement or at such time thereafter as specified by the Operator in such notice in circumstances where this Agreement or any Purchase Order made under it are not transferred, assigned or novated to a successor operator.
- 11. Where this Agreement and any Purchase Orders are terminated in any of the circumstances as contemplated in this paragraph 1, then save as expressly agreed in writing between the Supplier and the Customer and approved by the Secretary of State, the Supplier (including its agents, suppliers and sub-contractors) shall not be entitled to any costs, losses or other payment or compensation in connection with such early termination and the Customer shall have no further liability to the Supplier, save in respect of payment of any element of the Price due at the date of termination of this Agreement or the Purchase Order (as applicable) in respect of goods and/or services supplied to the Customer before termination.

2 FREEDOM OF INFORMATION AND OTHER INFORMATION REQUESTS

- 1. The Supplier acknowledges that the Secretary of State is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and shall assist and cooperate with the Customer and the Secretary of State to enable the Secretary of State to comply with those requirements. The Supplier shall:
 - (a) transfer to the Customer and the Secretary of State any Requests for Information received by the Supplier (or its agents or subcontractors) as soon as practicable and in any event within two Weekdays of receiving any such Request for Information;

- (b) provide the Secretary of State with a copy of all information in its (or their) possession or power in the form that the Secretary of State requires within five Weekdays of the Secretary of State's request (or within such other period as the Secretary of State may specify);
- (c) provide all necessary assistance as reasonably requested by the Secretary of State to enable the Secretary of State to respond to any Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or regulation 5 of the Environmental Information Regulations as applicable;
- (d) not respond directly to any Request for Information unless expressly authorised to do so by the Secretary of State; and
- (e) acknowledge that notwithstanding any provision to the contrary in the Rail Services Agreement or the Purchase Order the Secretary of State may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning the Supplier and/or its agents and subcontractors:
 - (i) in certain circumstances without consulting the Operator or Supplier (or its agents and/or subcontractors where applicable); or
 - (ii) following consultation with the Operator or Supplier and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

noting that the Secretary of State has indicated that the Secretary of State will where applicable in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give advance notice or failing that to draw the disclosure to attention after any such disclosure.

- 2. Where the Customer is required by the Secretary of State under the Rail Services Agreement or by the Office of Rail and Road to provide any information relating to the Supplier and its performance of this Agreement and any Purchase Order, the Supplier shall promptly cooperate with the Customer to provide the information concerned.

3 CONFIDENTIALITY

- 1. Notwithstanding the provisions of clause 24, the Supplier acknowledges that the Customer may disclose confidential information in relation to any Purchase Order and this Agreement to the Secretary of State, who may then make use of it in accordance with the Rail Services Agreement, and to the Office of Rail and Road.

4 EQUALITY AND DIVERSITY

- 4.1 The Supplier shall perform its obligations under this Agreement in accordance with:
 - (a) all applicable equality law (whether in relation to age, disability, gender reassignment, marriage or civil partnership status, pregnancy or maternity, race, religion or belief, sex or sexual orientation (each a "**Relevant Protected Characteristic**")); and
 - (b) the Supplier confirms that it has a suitable diversity and inclusion policy, that it complies with such policy and that it shall make such policy available to Customer on request.
- 4.2 The Supplier shall take all reasonable steps to secure the observance of paragraph 4.1 above by its employees, agents, representatives, contractors and consultants engaged in connection with the provision of the Goods and Services.

5 ZERO HOURS

1. The Supplier shall ensure that no employee it provides under the Purchase Order to work on the Rail Services is employed on zero hours contract terms. For these purposes, zero hours contract terms means where the Supplier is not committed to offer the employee any minimum working hours and/or the employee is not obliged to accept any work offered.

6 PRE-EMPLOYMENT SCREENING

1. The Supplier shall:
 - (a) verify and procure that each of its permitted sub-contractors (if any) verifies that each person engaged by it or on its behalf in respect of the performance of the Agreed Services satisfies the Screening Requirements prior to permitting any such person to be deployed towards the performance of the Agreed Services;
 - (b) confirm in writing to the Customer and procure that each of its permitted sub-contractors (if any) confirms in writing to the Customer prior to commencing performance of any part of the Services, and thereafter on the dates falling every six (6) calendar months after the date of this Agreement or more frequently as may be notified by the Customer to the Supplier from time to time, that all persons engaged by it or on its behalf who are deployed towards the performance of the Services satisfy the Screening Requirements;
 - (c) only deploy and procure that each of its permitted sub-contractors (if any) only deploys persons towards the performance of the Agreed Services who satisfy the Screening Requirements; and
 - (d) promptly provide to the Customer and procure that each of its permitted sub-contractors (if any) promptly provides to the Customer all documentary evidence that the Customer may reasonably request from time to time to allow the Customer to verify that paragraphs 7.1(a) to 7.1(c) have been and are being complied with.

7 NETWORK INFORMATION SECURITY REPORTING

- 7.1 The Supplier shall notify the Customer promptly, and no later than forty eight (48) hours of becoming aware, of any security risks, breaches, incidents or potential incidents which represent a material threat to the confidentiality, integrity or availability of the Service or of the Customer Confidential Information processed by the Supplier. The Supplier shall follow a Cyber Security Incident Management Process (the “**Process**”) based on the Information Security Forum Standard of Good Practice, which shall include: Incident Breach Reporting, Incident Management for Operations, Service Recovery, and Root Cause Analysis. The Process shall have relevant actions for notifying internal/external stakeholders and regulatory bodies within the permitted timescales. This Process shall also require the Supplier to assist the Customer in the preparation of the Customer’s notices to the Department for Transport, including in the event of any interruption to train services, as per the Network and Information Systems Regulations 2018. The Supplier shall comply with the Secretary of State’s latest cyber incident reporting guidance, including use of the NCSC Cyber-Security Information Sharing Partnership.
- 7.2 For the purposes of paragraph 8.1, “Incident Breach Reporting”, “Incident Management for Operations”, “Service Recovery” and “Root Cause Analysis” have the meaning in the Information Security Forum Standard of Good Practice 2020.

8. INTELLECTUAL PROPERTY

1. Notwithstanding and in addition to the provisions of clause 11, this paragraph 9 shall have effect.
2. In this paragraph 8:
 - (a) “**Background IP**” means all Intellectual Property Rights owned by or licensed to the Supplier that exists as at the date of this Agreement and/or which are created or developed by the Supplier or its licensors during the term of this Agreement (or any Purchase Order) independently of this Agreement (or any Purchase Order) and separately from the performance or receipt of Rail Services or any obligations under the Rail Services Agreement;
 - (b) “**Continuity Licence**” has the meaning given to it in paragraph 9.3;
 - (c) “**Embedded Background IP**” means any Background IP that is embedded in, or is an integral part of and/or is required for the use of any Foreground IP;
 - (d) “**Foreground IP**” means Intellectual Property Rights created or devised by or on behalf of the Supplier under this Agreement or a Purchase Order for or on behalf of the Operator in connection with the Operator’s activities (i) in carrying out the Rail Services; (ii) in carrying out any activities in relation to the network which are connected with, ancillary to, or intended to benefit from the Rail Services; and/or (iii) in the course of performing any obligations under the Rail Services Agreement;
 - (e) “**Relevant IPR**” has the meaning given to it in paragraph 9.3;
 - (f) “**Royalty Free Period**” means 6 months;
 - (g) “**Successor Operator**” means a train operator succeeding or intended by the Secretary of State to succeed the Operator in the provision or operation of all or any of the Rail Services including, where the context so admits, the Operator where it is to continue to provide or operate Rail Services following termination of an existing Rail Services Agreement;

The Supplier grants to the Customer a non-exclusive licence (with the right to sub-licence to any Successor Operator and the Secretary of State) to use the Intellectual Property Rights in the Goods and Services (“**Relevant IPR**”) solely for the provision and operation of the Rail Services and not for any other purpose (including its marketing or exploitation for any other purpose) (the “**Continuity Licence**”).

The Continuity Licence shall commence on expiry or termination of the Rail Services Agreement and continue for such period as the Customer may determine to be reasonably necessary for the purpose of allowing continuity of the provision of the Rail Services and be royalty free for the Royalty Free Period.

The Customer may in its reasonable discretion extend the Royalty Free Period (but shall only do so if and to the extent the Secretary of State exercises its equivalent right under the Rail Services Agreement).

If the duration of the Continuity Licence extends beyond the Royalty Free Period (as it may be extended under paragraph 9.5), the Supplier shall be entitled to payment of a reasonable royalty on the terms of paragraphs 9.7 to 9.9 (inclusive) of this Schedule.

The royalty will be calculated on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of the Relevant IPR.

If the Supplier and the Customer are unable to agree the royalty, the Customer shall be entitled to submit the dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require for the corresponding dispute under the Rail Services Agreement (and the Supplier shall co-operate with the Customer, and provide such representations, submissions, information and other assistance as the Customer may reasonable require in connection with the corresponding dispute under the Rail Services Agreement).

Payment of the royalty will become due to the Supplier upon receipt by the Customer of the corresponding payment from a Successor Operator or the Secretary of State (and in no other circumstances). The Customer agrees to make a demand of the royalty from the Successor Operator or the Secretary of State (as applicable) when due.

The Supplier shall have the right to end the Continuity Licence on notice to the Customer on material breach of the Continuity Licence by the Successor Operator or the Secretary of State.

The Supplier warrants to the Customer that, to the best of the Supplier's knowledge and belief, the Supplier owns the Relevant IPR or has the right to license the Relevant IPR and the licensing of the Relevant IPR and the subsequent use of the Relevant IPR will not infringe any third party Intellectual Property Rights. The Supplier indemnifies the Customer against all Losses suffered by the Customer (together with any losses suffered by a Successor Operator or the Secretary of State and for which the Customer is responsible for under or in accordance with the Rail Services Agreement and/or any sub-licence by the Customer of the Relevant IPR) as a result of any claim that the Relevant IPR infringes the rights of any third party.

The Supplier acknowledges that the Secretary of State has the right to reasonably determine the form of any sub-licence of the Relevant IPR to a Successor Operator or the Secretary of State. The Customer shall notify the Supplier if any amendments are required to the provisions of this paragraph 9 as a result of any such determination by the Secretary of State and the Supplier shall accept such amendments and agree a variation to the Agreement or any Purchase Order to the extent necessary to enable the Customer to comply with the Secretary of State's determination.

Paragraphs 9.14 and 9.15 apply if any Foreground IP arises in or as a result of the provision of the Goods and/or Services.

All Foreground IP shall, upon its creation, automatically vest in the Customer and the Supplier hereby assigns, by way of present and future assignment, all Foreground IP to the Customer with full title guarantee. The Supplier shall, at its own cost, take such steps as are necessary to give full effect to the provisions of this paragraph 9.14.

The Supplier hereby grants to the Customer a non-exclusive, perpetual, royalty-free, paid up licence (with the right to sub-licence to a Successor Operator and the Secretary of State (including the right for the Secretary of State to sub-sub-licence to a Successor Operator)) to use and copy the Embedded Background IP for any purpose related to the provision of rail services on the United Kingdom heavy rail network.

8 LONG TERM CONTRACTS RELATING TO BUSINESS PLAN COMMITMENTS

The Supplier acknowledges that the Customer has entered into this Agreement and/or may enter into Purchase Order(s) to fulfil the requirements of the Customer's periodic business plan commitments (each a "**Business Plan Commitment**") in its business plan under a Rail Services Agreement ("**Business Plan**"), which typically commence on 1 April and end on the immediately following 31 March (each a "**Business Plan Year**").

Without prejudice to the other rights of the Customer under this Agreement, the Customer shall have the right to terminate this Agreement and/or any Purchase Order:

- (a) at the end of a Business Plan Year by giving not less than 14 days' notice in writing to the Supplier if the relevant Business Plan Commitment is not included in the Business Plan for any subsequent Business Plan Year; and
- (b) upon expiry or termination of the Rail Services Agreement.

If the Customer exercises its rights under paragraph 10.2, then save as expressly agreed in writing between the Supplier and the Customer and approved by the Secretary of State the Supplier (including its agents, suppliers and sub-contractors) shall not be entitled to any costs, losses or other payment or compensation in connection with such early termination and the Customer shall have no further liability to the Supplier, save in respect of payment of any element of the Price due at the date of termination of this Agreement or the Purchase Order (as applicable) in respect of goods and/or services supplied to the Customer before termination.

9 Additional Obligations in respect of Business Employees

This Paragraph 11 shall apply if any person engaged in the provision of the Goods and/or Services is a Business Employee.

In this paragraph 11:

- (a) **“Business Employee”** means any employee of the Supplier or the Supplier’s supply chain engaged in the provision of Rail Services or services which are in support of or ancillary to the Rail Services whose contract of employment would (subject to the exercise of such person’s right to object to the transfer) be transferred to a Successor Operator following the expiry or termination of the Rail Services Agreement by operation of law (including TUPE) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred;
- (b) **“CCTV Guidance”** means the Rail Delivery Group’s *“National Rail & Underground Closed Circuit Television (CCTV)”* guidance, the British Transport Police’s *“Output Requirements from Video Systems”* guidance, Home Office’s *“Surveillance Camera Code of Practice June 2013”*, each as updated from time to time and any other guidance reasonably required by the Secretary of State;
- (c) **“Regulated Qualifications Framework”** means the Regulated Qualifications Framework introduced by Ofqual on 1 October 2015 as located at the date of this Agreement at <https://www.gov.uk/find-a-regulatedqualification>;
- (d) **“Reporting Period”** means each railway industry reporting period of 28 days, the first such period in any railway year ordinarily commencing on 1 April, provided that the first and/or last such period may be a period of less than 28 days; and
- (e) **“Standard Occupational Classification Codes”** means the codes published in the Standard Occupational Classification 2010 as provided by the Office for National Statistics which can be found at: <https://www.ons.gov.uk/methodology/classificationsandstandards/standardoccupationalclassificationsoc/soc2010/soc2010volume2thestructureandcodingindex>.

Apprenticeships

- (f) The Supplier shall keep accurate and complete records of the Apprenticeships (and the training provided to apprentices) offered by the Supplier in delivering the Rail Services. In particular, in relation to each Reporting Period the Supplier shall record:
 - (i) the number of new Apprenticeships created, continuing and concluding in that Reporting Period;
 - (ii) the date of commencement and conclusion of each Apprenticeship; and
 - (iii) in relation to each Business Employee that commences an Apprenticeship in such Reporting Period:

- (A) the level of such Apprenticeship as described in the Regulated Qualifications Framework;
- (B) the skills category (as described in the Standard Occupational Classification Codes) within which such Apprenticeship falls;
- (C) the month and year of birth of that Business Employee;
- (D) the current occupation of that Business Employee;
- (E) the gender of that Business Employee (except in relation to those Business Employees who do not permit disclosure);
- (F) whether that Business Employee is of BAME origin (except in relation to those Business Employees who do not permit disclosure);
- (G) the postcode of the location at which that Business Employee is principally employed at; and
- (H) the first half of that Business Employee's residential postcode.

- (g) The Supplier shall provide the information specified in paragraph 0 to the Customer on request.

Enhanced Disability Awareness Training

- (h) The Supplier shall cooperate with the Customer to identify whether any Business Employees are in customer facing roles for the purpose of the Rail Services Contract.
- (i) If the Supplier or the Customer identify any Business Employees that are in customer facing roles:
- (j) the Supplier shall deliver enhanced disability awareness training courses (in accordance with a programme and specification agreed with, or reasonably determined by, the Customer) to those Business Employees that are in customer facing roles.

CCTV

The Supplier shall ensure that any body worn video equipment used by any Business Employee, and any system associated with it, shall comply with the CCTV Guidance.

Access Rights

The Supplier shall grant to the Customer or its nominee such access to the Business Employees and records and shall provide such information to the Customer or its nominee in respect of the Business Employees, in each case, as are necessary to enable the Customer to comply with the audit requirements and re-letting provisions under and in respect of a Rail Services Agreement. The Customer and the Supplier shall each cooperate in respect of such records and information to achieve compliance with applicable data protection requirements.

Schedule 11: Data Protection Policy

Controller to Processor Terms

<u>CRM Data</u> Please indicate if the Supplier is processing CRM Data	Yes <input type="checkbox"/> No <input type="checkbox"/>
<u>Operator Employee Data</u> Please indicate if the Supplier is processing Operator Employee Data	Yes <input type="checkbox"/> No <input type="checkbox"/>

1

Terms and expressions used in this Schedule 11 and not defined in the Agreement or this Schedule have the meaning assigned to them in applicable Data Protection Legislation. With respect to the Parties' rights and obligations under this Agreement, the Parties agree that Customer is the Data Controller and that Supplier is the Data Processor. Appendix A to this Schedule sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Data and categories of data subject.

In this Agreement:

“**Commissioner**” means the Information Commissioner (see Article 4(A3), UK GDPR and section 114, Data Protection Act 2018).

“**CRM Data**” means personal data, personal data having the same meaning as assigned to it under the Data Protection Legislation, (including any or all of name, address, e-mail address and ticket purchasing history, credit and debit card details) collected by or on behalf of a Operator relating to persons travelling on or purchasing tickets for travel on the services for the carriage of passengers by railway which are governed by the relevant Rail Services Agreement;

“**Data Protection Legislation**” means all applicable data protection and privacy legislation in force from time to time, including (but not limited to), for the periods in which they are in force, the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended, the UK GDPR and all applicable Laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Commissioner, in each case as amended or substituted from time to time);

“**Data**” means personal data comprised in Customer data and any other personal data provided to Supplier by or on behalf of the Customer; and

"Operator Employee Data" means personal data, personal data having the same meaning as assigned to it under the Data Protection Legislation collected by or on behalf of an Operator relating to any employee of the Operator or any other person engaged wholly or predominantly in connection with the Rail Services provided by the Operator;

"Personal Data Breach" shall have the meaning given in the Data Protection Legislation and shall mean any actual or suspected, threatened or 'near miss' incident of unauthorised or unlawful processing, loss or destruction of, or damage to, Data.

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018

Compliance with Data Protection Legislation

1. The Supplier agrees to comply, and to procure that its permitted (in accordance with paragraph 1.7) subcontractors comply, with all Data Protection Legislation in relation to any personal data processed relating to or originating from Customer, its employees or customers. This Schedule is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
2. The Supplier shall notify the Customer in writing immediately upon becoming aware that it is or is likely to become unable to comply with its obligations regarding the processing of Data under this Agreement or the Data Protection Legislation. Following notification, the Customer shall be entitled, in its absolute discretion, to terminate this Agreement on written notice. Customer may, in addition to or instead of terminating this Agreement, require Supplier to undertake one or more of the following:
 - (i) immediately take such remedial action as is required to ensure compliance with the Agreement and/or the Data Protection Legislation and prevent or remedy any breach;
 - (ii) provide such information as is reasonably required by Customer in respect of the incident leading to such notification; and/or
 - (iii) cease to process the Data, return all materials containing the Data and delete all copies.

Security of processing Data

3. Without limiting paragraph 1.3, Supplier agrees to:
 - (A) have in place appropriate technical and organisational measures against the unauthorised or unlawful processing of Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction

or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures, and against accidental loss or destruction of, or damage to, such Data including by:

- (i) taking reasonable steps to ensure the reliability of any Supplier personnel who have access to any Data;
- (ii) ensuring that only authorised Supplier personnel have access to Data and that any persons authorised to have access to Data will respect and maintain all due confidentiality; and
- (iii) ensuring a level of security that reflects the level of harm, damage and/or distress that might be suffered by the data subject to whom the Data relates in the event of a breach of the measures as set out herein,

and provide, on Customer's request, a written description of the technical and organisational methods employed by Supplier for processing of Data (within the timescales reasonably required by Customer);

- (B) restore the Data at its own expense if any Data is lost or corrupted as a result of any act or omission of Supplier or any of its subcontractors and reimburse Customer in full in respect of any time and expenses incurred or accrued by Customer in restoring or assisting in the restoration of the Data;
- (C) process the Data only on behalf of Customer, only for the purpose(s) as defined by Customer and only in accordance with the documented written instructions received from Customer (including those set out in the Appendix A to this Schedule) from time to time;
- (D) promptly notify Customer if it:
 - (i) receives from a data subject to whom Data relates a request for, or notice of, the exercise of that person's rights under the Data Protection Legislation to access such Data or prevent certain processing;
 - (ii) receives any complaint from, or request for or notice of, any investigation or assessment by the Commissioner in respect of any processing of Data (including, without limitation, any information, enforcement, assessment or monetary penalty notice, or any warning that such a notice may be issued), save to the extent that such notification is prohibited by the Data Protection Legislation or the Commissioner; or
 - (iii) becomes aware of a Personal Data Breach,

and, together with such notice, provide to Customer a copy of any such request or notice and reasonable details of the circumstances giving rise to that request

or notice of the unauthorised or unlawful processing, loss or destruction of, or damage to, the Data (as the case may be);

- (E) assist the Customer in ensuring compliance with its obligations under the Data Protection Legislation including (but not limited to) with respect to impact assessments and consultations with supervisory authorities or regulators;
- (F) immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation;
- (G) promptly provide to Customer such information, co-operation and assistance as Customer may from time to time reasonably require to enable it to comply with its obligations under the Data Protection Legislation as a Data Controller in respect of any Data (including, without limitation, to comply with any request or notice referred to at paragraph 1.5(D)); and
- (H) maintain complete and accurate records and information to demonstrate its compliance with this Schedule and provide Customer and its representative(s) on reasonable notice, and the Commissioner on such notice as may be requested by the Commissioner in accordance with the Data Protection Legislation, with such access to its premises, personnel and records (including, without limitation, for the purposes of making copies of those records) as Customer and/or the Commissioner may reasonably require in order to inspect Supplier's activities with respect to the processing of the Data and audit its compliance with this Schedule and the Data Protection Legislation. The Supplier acknowledges and agrees that this right of access and inspection is in addition to the Customer's rights under Clause 16.

4. Supplier shall not transfer, or direct the transfer of, Data outside the United Kingdom or the European Economic Area ("**EEA**") without the prior written consent of the Customer and, where Customer consents to such transfer (including pursuant to paragraph 1.9(C)), Supplier shall:

- (A) ensure that the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- (B) ensure the data subject has enforceable rights and effective legal remedies;
- (C) comply with the obligations of a Data Controller in relation to transfers outside of the United Kingdom under the Data Protection Legislation by providing an adequate level of protection to any Data that is transferred; and
- (D) comply with any reasonable instructions notified to it by Customer and, upon Customer's request, Supplier will enter into, and procure that each relevant sub-contractor enters into, an agreement with the Customer on the appropriate then

current standard contractual clauses for the cross-border transfer of personal data as approved by the Commissioner.

Subcontracting

5. The Supplier shall:
- (A) not allow any subcontractors to have access to, receive or process Data without obtaining prior written consent from Customer (such consent to be at Customer's sole discretion);
 - (B) where Customer gives consent pursuant to paragraph 1.7(A), the Supplier shall ensure that each subcontractor enters into a written agreement undertaking to Supplier (and where requested by Customer, to Customer) in equivalent terms to the undertakings contemplated to be given by Supplier to Customer and described in this Schedule. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any permitted subcontractor.

Notification of breaches or the exercising of rights by data subjects

6. The Supplier shall notify Customer without undue delay upon:
- (A) becoming aware of a Personal Data Breach; and
 - (B) receipt of:
 - (i) a request from a data subject (as that term is understood by reference to the Data Protection Legislation) to have access to that person's personal data; or
 - (ii) a complaint or request relating to Customer's obligations and/or the rights of a data subject under Data Protection Legislation; or
 - (iii) any other communication relating directly or indirectly to the processing of any personal data in connection with this Agreement; and
- in each case, (for the matters set out in (A) and (B) above), the Supplier shall promptly provide such information and assistance as is reasonably required by Customer in order for Customer to react and respond in accordance with its obligations under, and within the timeframes specified by, the Data Protection Legislation.

Special provisions applicable to the processing of CRM Data and Operator Employee Data

7. If the Supplier is processing CRM Data or Operator Employee Data then in addition to the foregoing paragraphs of this Schedule, the following shall also apply:

- (A) the Supplier shall in addition to paragraph 1.4(A) ensure that any Supplier personnel who have access to any CRM Data or any Operator Employee Data are aware of the obligations of Customer and Supplier (as appropriate) in relation to the same;
- (B) the Supplier acknowledges and agrees that if there is a Personal Data Breach relating specifically to CRM Data and/or Operator Employee Data by the Customer, by the Supplier or by any of its sub-processors, the Customer shall promptly notify the Secretary of State (the parties hereby acknowledges that whilst the Secretary of State is not Data Controller in respect of the CRM Data nor Operator Employee Data, the Secretary of State's legitimate interests given its duties under the Data Protection Legislation may be affected in the event of a Personal Data Breach and as such the Secretary of State wishes to be notified of the same);
- (C) in relation to paragraph 1.5, if the Supplier is processing CRM Data, the Supplier shall not transfer, or direct the transfer of, Data outside the UK or the EEA without the prior written consent of the Customer provided that the Customer shall not give any such consent without the prior written permission of the Secretary of State.

Expiry or termination of the Agreement

- 8. If this Agreement terminates or otherwise expires in accordance with its terms, and at any time on the request of Customer, either return the Data in the format requested by Customer (and destroy all remaining copies), or destroy all of the Data (including all copies of it), in either case immediately and confirm in writing that it has complied with this obligation.

Schedule 11: Data Protection Policy

Each party shall at all times comply with this Schedule 11 (*Data Protection Policy*).

1 Terms and expressions used in this Schedule 11 and not defined in the Agreement or this Schedule have the meaning assigned to them in applicable Data Protection Legislation. With respect to the parties' rights and obligations under this Agreement, the parties agree that each party is an independent Data Controller.

2 In this Schedule:

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time, including (but not limited to), for the periods in which they are in force, the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), , the UK GDPR and all applicable UK laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Commissioner, in each case as amended or substituted from time to time);

"Personal Data Breach" shall have the meaning given in the Data Protection Legislation and shall mean any actual or suspected, threatened or 'near miss' incident of unauthorised or unlawful processing, loss or destruction of, or damage to, Data; and

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

3 Compliance with Data Protection Legislation

3.1 The parties acknowledge and agree that to enable each party to carry out its obligations under this Agreement, the Parties will each be required to share certain business contact information (including but not limited to names, work email addresses, work contact telephone numbers) ("**Business Contact Information**") of Customer Personnel and Supplier Personnel engaged in the delivery and receipt of the Services. Each party agrees that it shall not share with the other party any Personal Data other than Business Contact Information without first agreeing any changes required to this Agreement to allow for the sharing of additional personal data.

3.2 Notwithstanding the general obligations in paragraph 3.1 in respect of the parties rights and obligations under this Agreement, each party acknowledges and agrees that it is an independent Controller in respect of the Business Contact Information for the purposes of this Agreement.

- 3.3 Each party agrees to comply, and to procure that its subcontractors comply, with:
- (1) all Data Protection Legislation in relation to such Business Contact Information;
 - (2) any notification and registration requirements under the Data Protection Legislation; and
 - (3) to the extent applicable, duly observe all their obligations under the Data Protection Legislation which arise in connection with this Agreement.
- 3.4 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- (1) consult with the other party about any notices given to their respective personnel in relation to the Business Contact Information;
 - (2) promptly inform the other party about the receipt of any Data Subject access request to the extent it relates to that party's personnel;
 - (3) provide the other party with reasonable assistance in complying with any Data Subject access request;
 - (4) assist the other party, at the cost of the other party, in responding to any request from a Data Subject to whom Business Contact Information relates, and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (5) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation where such breach affects the Business Contact Information of the other party;
 - (6) at the written direction of the other party, delete or return the Business Contact Information of the other party on termination or expiry of this Agreement unless required to retain such data by applicable law;
 - (7) only use the Business Contact Information as strictly necessary for the purposes of performing its obligations under this Agreement; and
 - (8) not transfer any Business Contact Information outside the UK or European Economic Area without the prior written consent of the other party.

Schedule 12

Minimum Security Measures (including ON-TRAIN additional schedule)

The Supplier shall as applicable:

1) On or before the Commencement Date provide a copy of the Supplier's information security policy (and such policy shall include as a minimum an information security breach procedure, details of encryption used and security access controls with regards to user credentials used by its staff) to the Customer and shall update and maintain and abide by such policy throughout the duration of the Agreement and shall provide to the Customer updated versions as and when the same are created;

2) If Supplier is not ISO 27001 certified, the Supplier adheres to the principles of ISO 27001 and shall provide the Services, and, where provided, the Goods in accordance with such standard at all times;

3) If any subcontractors are used in the delivery of the Services, including the storage and transmission of the Customers Data, the Supplier shall ensure that such subcontractors adhere to the terms of this Agreement in respect of the obligations to be performed by them as if they were signatories hereto;

4) Conduct security testing of its information technology systems used to provide the Services, including, and not limited to:

(a) penetration testing at least once per year or whenever significant changes or updates are made to relevant software components in each contract year during the Term:

(b) vulnerability scanning of all in scope systems using industry approved vulnerability detection systems at least once per calendar month in each contract year during the term:

(c) shall provide a copy of the results from vulnerability and penetration testing promptly upon testing completion; and

(d) shall remediate all vulnerabilities discovered focusing efforts on the highest criticality within a reasonable timeframe to mitigate further exposure.

5) Ensure that all hardware assets supplied and managed by the Supplier in or to support the provision of the Services which are in any way connected to the Customer's information technology hardware or network

(a) must always be on a supportable operating system which does not exceed the supplier's end of life;

(b) are listed in an asset register (to be maintained and updated throughout the term of the Agreement, such updates to occur as a minimum every three (3) months);

(c) **where relevant** are virus and malware protected in accordance with good Industry Standards and practice (to be maintained and updated throughout the term of the Agreement and such updates to occur as a minimum monthly); the virus and malware system must provide a centrally managed anti-virus regime, ensuring that the devices have the latest updates. The deployment of updates should be automated and typically occur every night or every 24 hours as a minimum. KPI = 95% of devices with AV updates <= 7 days old and;

(d) make sure all operating systems (including but not limited to Microsoft, Linux and variants of Android and Apple iOS) devices must be updated with security and critical updates within 30 days of release (to be reported throughout the term of the Agreement and such reports to occur as a minimum monthly). Be able to apply out of band patches (exceptional) for any devices as soon as reasonable possible.

6) Respond promptly to any questions, enquiries or questionnaires issued by the Customer regarding the Supplier's general approach to, and handling of information security and data protection issues and/or the Supplier's compliance with the relevant legislation and good [Industry Standards] and practice in relation to the same;

7) Where the Supplier holds Data on behalf of the Customer:

(a) back up such Data no fewer than once every 24 hours, or sooner if required by good Industry Standard and practice, to a secure location.

(b) ensure that at least three (3) generations of back up are retained at any time.

(c) store backed up Data on appropriate, secure and correctly labelled media; and

(d) ensure that media used for back up purposes is disposed of in a secure manner when no longer required.

8) Maintain logging and monitoring information in accordance with ISO 27001 requirements for the provided Services and to facilitate access to data for Customer security compliance programme.

9) On the Commencement Date of the Agreement, where the Supplier provides a customer facing service or service that stores and/or processes personal data, the Supplier will make available system and security logs to be ingested into FirstGroup's security information and event management (SIEM) tool and work with any Industry Standard third party to ensure system and security logs are correctly received.

10) Where the Supplier procures or provides systems for the processing of card holder data, they must ensure that PCI DSS requirements will be met. The Supplier must be able to demonstrate ongoing compliance for the systems during the term of the Agreement.

11) The Supplier shall notify FirstGroup of any incidents, breaches or near misses relating to the provision of the Services within 24 hours. Relevant notifications should include as a minimum contracted systems and communication systems in use.

ON-TRAIN – additional schedule

The following ON-TRAIN additional schedule shall apply if the Services are provided on the Customer's trains ("ON-Train"):

- 1) ON-TRAIN. Suppliers should adhere to the principles of the Key Train Requirement document (published by Rail Delivery Group [Codes of Practice & Guidance Notes | Rail Delivery Group](#) and currently in Version 6.0 dated November 2020), and shall provide the Services, and, where provided, the Goods in accordance with such requirements.
- 2) ON-TRAIN. The Supplier should undertake a security-informed risk assessment on the Service provided which:
 - a) identifies threats, vulnerabilities and impact;
 - b) analyses likelihood and consequences; and
 - c) ultimately evaluates risks against risk appetite and demonstrates the adequacy of the assessment process and suitability of the techniques employed.

The Supplier should document and implement one or more cybersecurity policies for applicable systems, which will address the risks that have been identified.

3) ON-TRAIN. The Supplier should undertake full systems and software identification / classification & impact assessment for cyber threats and record sufficient information about identified systems to allow effective assessment of system vulnerability.

4) ON-TRAIN. Suppliers shall ensure that the system architecture and design for services provided meets Industry Standard and best practice including network, device, and physical security, with relevant segregation from other services and critical systems as there is an increased risk of cyber-attacks if passengers are permitted access to a network used for train systems.

5) ON -TRAIN. Suppliers shall ensure where feasible Open Source Software ("OSS") be used for non-safety critical systems that collect, process or store data. OSS has a variety of benefits including cost reduction, software customization, collaboration and innovation, good security, risk reduction and market penetration.

6) ON- TRAIN. Suppliers shall follow Secure Development Practices to ensure secure product development is integrated into the System Development Life Cycle ("SDLC") to reduce the security risks of the Goods provided.

7) ON- TRAIN. Suppliers shall provide obsolescence management for the design life of the rolling stock and should include all rolling stock-related hardware, software and firmware.

8) Conduct security testing of its information technology systems used to provide the Services, (as detailed in clause 4 of the Minimum Security Measures). In addition, the Supplier shall for ON-TRAIN:

- a) ON-TRAIN. it is recommended that the Supplier provide the following:
 - i) prior to contract award (to help the Customer understand the Supplier Service capabilities);
 - ii) post contract award but prior to product delivery; and
 - iii) post product delivery annually or whenever significant changes or updates are made to the Services or technology.

9) Ensure that all hardware assets supplied and managed by the Supplier in or to support the provision of the Services which are in any way connected to the Customer's information technology hardware or network (as detailed in clause 5 – Minimum Security Measures). In addition, the Supplier shall for ON-TRAIN:

- a) ON-TRAIN. Ensure that access onto the systems for management is remotely and locally locked down to only authorised personal and systems ports visible shall be closed or plugged to hide possible connection points.
- b) ON-TRAIN. Ensure that the physical and cyber security features, including but not limited to authentication, encryption, access control, event and communication logging, monitoring, and alarming to protect the device and configuration computer from unauthorised modification or use.
- c) ON-TRAIN. Ensure clear identification of the physical and cyber security features and the methodology(ies) for maintaining the features, including the methods to change settings from the Supplier configured or manufacturer default conditions.
- d) ON-TRAIN. Verify that the addition of security features does not adversely affect connectivity, latency, bandwidth, response time, and throughput, when connected to existing equipment.
- e) ON-TRAIN. Provide assurance that all software components that are not required for the operation and maintenance of the device have been removed or disabled and provision of documentation on what has been removed and / or disabled.
- f) ON-TRAIN. Provide clear and written verification documentation that the safety system is certified after incorporating the security devices.

The following definitions shall apply to this Schedule:

“Open Source Software” means computer software that is released under a license in which the copyright holder grants users the rights to use, study, change, and distribute the software and its source code to anyone and for any purpose. Open-source software may be developed in a collaborative public manner.

“PCI DSS” means the Payment Card Industry Data Security Standard which is a security standard for protecting credit card transactions.

“Secure Development Practices” are described in the ISO27001 framework and controls can be referenced in the OWASP (open web application security project). An alternative good source of information is the NCSC website [Secure development and deployment guidance - NCSC.GOV.UK](https://www.ncsc.gov.uk/guidance/secure-development-and-deployment-guidance)

“System Development Life Cycle” means a process that standardises security best practices across a range of products and/or applications. It captures industry-standard security activities, packaging them so they may be easily implemented.