

C2C PURCHASING TERMS

1.1. **Definitions:** In each Agreement, unless otherwise stated:

"Agreement" means these conditions together with the relevant Order;

"Applicable Law" means the laws of England and Wales and of the European Union and any other laws or regulations, regulatory policies, guidelines or industry rules, which apply to the manufacture, labelling, packaging, storage, handling, delivery and supply of Goods and/or the provision of the Services;

"C2C" means the customer, Trenitalia c2c Limited, a company registered in England and Wales under company number 07897267 whose registered office is at 2nd Floor, Cutlers Court, 115 Houndsditch, London, EC3A 7BR;

"Change Control Process" means the process to recognise agreed variations outlined in clause 8;

"Confidential Information" means information of a confidential or sensitive nature concerning the business, affairs, customers, clients or suppliers of a party or of any member of its Group, including information relating to a party's operations, processes, plans, product information, know-how, Intellectual Property Rights and market opportunities (and, in the case of C2C, includes the terms of, and any information relating to, the Franchise Agreement);

"Customer Personal Data" means any personal data (as defined in the General Data Protection Regulation) in relation to which C2C or any member of C2C's Group is the controller, including any such personal data as may relate to the staff, customers or suppliers of C2C or any member of C2C's Group;

"Data Protection Legislation" means the Data Protection Act 2018, the General Data Protection Regulation, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to privacy and data protection, including where applicable the guidance and codes of practice issued by the UK Information Commissioner together with any successor or replacement to the foregoing (and where the terms **"personal data"**, **"process"** (and its derivatives), **"controller"**, **"processor"**, **"personal data breach"** and **"data subject"** are used in this Agreement, they shall have the meanings given to them in the General Data Protection Regulation);

"Delivery Date" means the date(s) for delivery of the Goods and/or Services as set out in the Order or, if no such date is specified, then within twenty eight (28) days of the date of the Order;

"Deliverable" means any documents, products or materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, plans, designs, pictures, computer programs, data, specifications and reports (including drafts);

"Direct Agreement" means the agreement entered into between the Secretary of State and the Supplier relating to the Agreement by C2C ;

"Franchise Agreement" means the franchise agreement dated 15th July 2014 entered into between the Secretary of State and C2C (as amended from time to time) relating to the Essex Thameside franchise;

"General Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of national persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 5/46/EC, as may be amended or replaced from time to time;

"Goods" means: (i) the goods specified in an Order; (ii) any goods agreed between the parties in writing from time to time; and/or (iii) any goods, equipment or materials obtained or acquired from or supplied by the Supplier as part of or incidental to the performance of this Agreement;

"Goods Price" means the price payable for the Goods as set out in the relevant Order;

"Group" means, in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company;

"Intellectual Property Rights" means all or any registered or unregistered intellectual property rights in any part of the world, including patents, design rights, copyrights, trade marks, database rights, topography rights, know-how, rights in inventions and ideas, and rights to confidence, together with any right to apply for any such intellectual

property rights and the benefit of any applications for any such intellectual property rights;

"Location" means the location(s) for delivery of the Goods and/or Services, as specified in the Order, or such other location as C2C may notify to the Supplier in writing from time to time;

"Order" means C2C's order for the supply of any Goods and/or Services, as set out in C2C's purchase order form or in C2C's written acceptance of the Supplier's quotation, as the case may be;

"Project IP" has the meaning given in clause 14.1(a);

"Secretary of State" means the Secretary of State for Transport, whose principal office is at 33 Horseferry Road, London SW1P 4DR;

"Service Price" means the price payable for the Services as set out in the relevant Order;

"Services" means: (i) any services specified in an Order; (ii) any services agreed between the parties in writing from time to time, and/or (iii) any services to be provided by the Supplier under or in performance of this Agreement, including the delivery, unloading, installation, repair of any Goods and the provision of any Deliverables;

"Specification" means the specification for the Goods and/or Services as set out in the Order or as otherwise agreed between the parties in writing from time to time;

"Supplier" means the company or person providing goods and/or services to C2C;

"Supplier's Personnel" means any employees, agents or subcontractors engaged by the Supplier in the performance of any obligations pursuant to this Agreement; and

"Working Day" means any day other than a Saturday or Sunday on which banks in London are open for business.

1.2. **Interpretation**

- (a) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established. A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- (b) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other gender.
- (c) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- (d) A reference to **writing** or **written** excludes fax and email.
- (e) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (f) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. TERMS OF THE CONTRACT

- 2.1. These conditions apply to the Agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. To the extent of any conflict between these conditions and the content of any Order, these conditions shall prevail.
- 2.3. An Order constitutes an offer by C2C to purchase the Goods and/or Services in accordance with these conditions.
- 2.4. An Order shall be deemed to be accepted on the earlier of:
 - (a) the Supplier issuing a written acceptance of the Order; and
 - (b) the Supplier doing any act consistent with fulfilling the Order,

at which point an Agreement shall come into existence.

2.5. The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these conditions.

2.6. In relation to the supply of Goods, Incoterms 2010 shall apply and to the extent of any conflict between the provisions of Incoterms 2010 and the provisions of this Agreement, the provisions of the Agreement shall prevail.

3. SUPPLY OF GOODS

3.1. The Supplier shall ensure that the Goods:

- (a) correspond with their description and any applicable Specification;
- (b) are of the highest quality design, manufacture, materials, workmanship and finish;
- (c) are fit for any purpose held out by the Supplier or made known to the Supplier by C2C, expressly or by implication, and in this respect C2C relies on the Supplier's skill and judgement;
- (d) where applicable, are free from defects in design, materials and workmanship and shall remain so for 12 months after delivery; and
- (e) comply with all Applicable Law.

3.2. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under this Agreement in respect of the Goods.

3.3. The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) if the Supplier requires C2C to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note (and any such packaging material shall only be returned at the cost of the Supplier).

3.4. The Supplier shall deliver the Goods:

- (a) on the Delivery Date;
- (b) DDP (the Location) (Incoterms 2010); and
- (c) during C2C's normal hours of business on a Working Day, or as instructed by C2C.

3.5. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Location.

3.6. Time for delivery of the Goods is of the essence of this Agreement.

3.7. If the Supplier:

- (a) delivers less than 95 per cent of the quantity of Goods ordered, C2C may reject the Goods; or
- (b) delivers more than 105 per cent of the quantity of Goods ordered, C2C may at its sole discretion reject the Goods or the excess Goods; and
- (c) any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and C2C accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

3.8. The Supplier shall not deliver the Goods in instalments without C2C's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle C2C to the remedies set out in clause 15.

3.9. Title and risk in the Goods shall pass to C2C on completion of delivery.

4. SUPPLY OF SERVICES

4.1. The Supplier agrees to provide to C2C and C2C agrees to purchase the Services on and subject to terms of this Agreement.

4.2. The Supplier warrants that it shall manage and complete the Services in accordance with the Specification and shall allocate sufficient resources to the Services to enable it to comply with this obligation. Any variation to the Services shall be documented and agreed pursuant to the provisions of clause 8.

4.3. The Supplier shall supply the Services on the Delivery Date. Time for supply of the Services is of the essence of this Agreement. C2C shall be entitled in its absolute discretion, on giving written notice to the Supplier, to defer supply of the Services to a later date or dates without any liability for storage or other charges.

4.4. The Services shall be provided at the Location.

5. SUPPLIER OBLIGATIONS

5.1. The Supplier shall:

- (a) supply the Goods and perform the Services in accordance with all Applicable Law and ensure that all Supplier's Personnel comply with Applicable Law;
- (b) co-operate with C2C in all matters relating to this Agreement;
- (c) provide C2C with such information and assistance as C2C may reasonably require to enable C2C to comply with its own legal obligations (including pursuant to the requirements of the Health and Safety at Work Act 1974, the Transport and Works Act 1992 and any other Applicable Law);
- (d) on or before provision of the Services, supply such documents and information as C2C may from time to time request in relation to the Goods and/or Services, including: delivery and advice notes; certificates of conformity; instructions as to handling, storage, use, care, maintenance and safety; warning labels dealing with any hazards or threats to safety; drawings and designs; and maintenance manuals;
- (e) obey, and shall ensure that the Supplier's Personnel shall obey, all reasonable instructions of C2C in connection with the provision of the Goods and/or Services;
- (f) comply with any C2C policies and procedures advised to the Supplier;
- (g) observe, and ensure that the Supplier's Personnel observe, all health and safety rules and regulations and any other reasonable security requirements that apply at the Location or any of C2C's other premises where applicable (and C2C reserves the right to refuse the Supplier's Personnel access to its premises or any part thereof, which access shall only be given to the extent necessary for the performance of the Services);
- (h) notify C2C as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services;
- (i) provide regular updates to C2C regarding the provision of the Services (in particular advising of any actual or anticipated delays) and supply to C2C all information and/or progress reports relating to the Services as C2C may reasonably require;
- (j) provide all equipment and other facilities necessary for the performance of its obligations pursuant to this Agreement, including all equipment, tools, consumable materials, protective clothing and other facilities necessary for the provision of the Goods and/or Services;
- (k) before the date on which any Services are to start, obtain, and at all times maintain during the term of this Agreement, all necessary licences and consents and comply with all relevant legislation in relation to the Services;
- (l) not permit any of the Supplier's Personnel to endeavour to supply any of the Services and/or to access the Location:
 - i. having just consumed, or being under the influence of, alcohol or drugs;
 - ii. when in possession of prohibited drugs; or

- iii. whilst consuming alcohol or drugs;
- (m) subject to C2C's prior written approval, appoint or, at C2C's request, replace without delay:
 - i. the Supplier's manager in respect of the Services, who shall have authority under this Agreement contractually to bind the Supplier on all matters relating to the Goods and/or Services; and
 - ii. Key Personnel, who shall be suitably skilled, experienced and qualified to carry out specific elements of the Services;
- (n) subject to clause 5.1(m), ensure that the same person acts as the Supplier's manager throughout the term of this Agreement;
- (o) procure the availability of the Supplier's Personnel, including any manager and/or Key Personnel, to provide the Services during the term of this Agreement;
- (p) not make any changes to the Supplier's manager or any Key Personnel without C2C's prior written approval (such approval not to be unreasonably withheld or delayed); and
- (q) ensure that it provides a sufficient number of Supplier's Personnel to provide the Services, all of whom shall:
 - i. perform the Services using suitably qualified, careful, experienced, skilled and competent persons in the duties required of them and must ensure that every such person is properly trained and instructed and carries out the Services with regard to: the task that person has to perform; all relevant provisions of this Agreement; fire risks and fire precautions; the requirements of the Health and Safety at Work Act 1974 and other relevant legislation and codes of practice;
 - ii. have the requisite level of qualifications and experience that might reasonably be expected given the nature of the Services; and
 - iii. use reasonable skill and care in the performance of the Services.

5.2. The Supplier acknowledges and agrees that:

- (a) C2C is entering into this Agreement on the basis of the description of the Goods and/or Services in the Specification, which is accurate and complete in all material respects, and is not misleading; and
- (b) if it considers that C2C is not, or may not, be complying with any of C2C's obligations, it shall only be entitled to rely on this as relieving the Supplier's performance under this Agreement:
 - i. to the extent that it restricts or precludes performance of the Services by the Supplier; and
 - ii. if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details of the same to C2C in writing.

5.3. The Supplier shall permit C2C, and any person nominated by it for this purpose, to have such access on demand to the premises, personnel, systems, books and records of the Supplier, and any supplier or subcontractor of the Supplier, to ensure compliance with the provisions of this Agreement. If any audit carried out by C2C reveals any material non-compliance, C2C shall notify the Supplier in writing of the same as soon as reasonably practicable and the Supplier shall, at its own expense and as soon as reasonably practicable, rectify such non-compliance. C2C, at its sole discretion, shall be entitled, immediately and without liability, upon notice of any such non-compliance to suspend its obligations under this Agreement unless and until the Supplier has rectified such non-compliance to the satisfaction of C2C. If the Supplier fails to rectify such non-compliance within sixty days of receipt of the notice of non-compliance, C2C shall be entitled to treat such non-compliance as a breach not capable of remedy and may terminate this Agreement in accordance with clause 19.2.

6. C2C'S OBLIGATIONS

C2C shall:

- (a) provide all reasonable co-operation to the Supplier in all matters relating to the Goods and/or Services;

- (b) provide access to its premises (including the Location), data and such facilities as may reasonably be requested by the Supplier and agreed with C2C in advance, for the purposes of providing the Goods and/or Services;

- (c) provide, in a timely manner, such information as the Supplier may reasonably request, and C2C considers reasonably necessary, in order to supply the Goods and/or carry out the Services;

- (d) inform the Supplier of all health and safety rules and regulations and any other security requirements that apply at any of C2C's premises relevant to the provision of the Goods and/or Services.

7. ACCEPTANCE

Goods

7.1. C2C shall have the right to inspect and test the Goods at any time before delivery. C2C's authorised representatives and any customer or other person to whom C2C is to transfer ownership of or permit use of the Goods may attend and observe testing of the Goods.

7.2. If following such inspection or testing C2C considers that the Goods do not comply, or are unlikely to comply, with the Supplier's undertakings at clause 3.1, C2C shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

Services

7.3. C2C's representatives shall be entitled to inspect and monitor at any reasonable time all work being performed by the Supplier or any of the Supplier's Personnel under this Agreement, and all facilities connected with the supply of the Services, and the Supplier shall procure that C2C can exercise this right against any of the Supplier's Personnel.

7.4. If any Services comprise works to be undertaken at C2C's premises (including the installation of any Goods), the Services shall not be accepted unless and until any applicable acceptance tests have been satisfied in full.

7.5. The parties shall follow the procedures for determining acceptance of Services as C2C may notify to the Supplier in writing once the Services are underway and certain requirements have become apparent. No provision of law deeming when acceptance of the Services is to have taken place shall apply.

7.6. Any acceptance by C2C of Services not in conformity with this Agreement shall be without prejudice to any rights C2C may have against the Supplier, whether in respect of those Services or any other Services supplied under this Agreement, and C2C shall not be considered to have agreed that the Services supplied were supplied in accordance with the requirements of this Agreement.

General

7.7. C2C's acceptance of Goods or Services will be deemed to take place once C2C has had a reasonable length of time to inspect such Goods or Services. No inspection, report or testing, or the failure of C2C to carry out or request any such inspection, report or testing, shall constitute C2C's acceptance of any Goods or Services, or relieve Supplier of any of its obligations under this Agreement, or impair any rights or remedies of C2C (under this Agreement or at law).

8. CHANGE CONTROL

8.1. If either C2C and/or the Supplier wish to change the scope or execution of the Services, it shall submit written details of the requested change to the other (a "Change Request"). Upon receipt of a Change Request, or when submitting a Change Request itself, the Supplier shall, within a reasonable time (and in any event not more than ten Working Days after receipt of any Change Request from C2C), provide a written estimate to C2C of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the Service Price arising from the change;
- (c) any other impact of the change on this Agreement; and
- (d) where the change requested impacts on the Supplier's Intellectual Property Rights, or Intellectual Property Rights belonging to a third party used to provide the Services, the extent of any such impact.

- 8.2. Unless both parties consent to a Change Request pursuant to clause 8.3 prior to any stated date for expiry of the Change Request, there shall be no change to the Services.
- 8.3. If both parties consent to the terms of a Change Request, it shall be signed by the authorised representatives of both parties, whereupon it shall become binding on the parties.
- 8.4. Any administrative costs incurred by either party in proposing or processing any Change Request shall be borne solely by that party.
- 8.5. Any change to the Supplier's services and operations which are necessary to comply with changes in Applicable Law shall be made at the Supplier's cost and with prior written notice to C2C of such changes. Where such changes are necessary to comply with Applicable Law that is relevant only to C2C (rather than other clients of the Supplier), then the parties shall bear the costs of any such change equally.
- 9. TRADING STANDARD**
- 9.1. The Supplier will maintain and operate an ethical trading policy in respect of any sub-contracting and outsourcing of any of its obligations pursuant to this Agreement.
- 9.2. The Supplier shall, and shall procure that the Supplier's Personnel shall, comply at all times with Applicable Law in respect of child labour. In any event, the Supplier will not, and will procure that the Supplier's Personnel will not, engage any person below the age of 14.
- 9.3. Without prejudice to the obligation to ensure compliance with Applicable Law at clause 5.1(a), the Supplier shall, and shall procure that the Supplier's Personnel shall, address the following in the provision of the Goods and/or Services:
- Management of waste: implement a comprehensive waste management policy to ensure waste is minimised and items recycled wherever practicable;
 - Paper and packaging: put in place a recycling policy to minimise the undue and unnecessary use of materials;
 - Conservation: establish a programme to monitor the environmental impact of its activities on, inter alia, deforestation, flora and fauna and productive land; and
 - Energy Consumption: ensure all manufacture and delivery processes, including the use of heating, ventilation, lighting, IT systems and transportation are to the extent reasonably possible based on the most efficient energy use and minimise the output of harmful emissions.
- 9.4. If applicable, the Supplier shall be registered with the Rail Industry Safety Qualification Scheme (RISQS), and (if required by RISQS) audited by, RISQS for the supply of the Services detailed in this Agreement. The Supplier shall maintain its registrations and audit status for the duration of this Agreement. C2C may by immediate written notice terminate this Agreement if the Supplier is in breach of this clause.
- 10. BRIBERY AND CORRUPTION**
- 10.1. The Supplier shall at all times:
- without prejudice to the generality of clause 5.1(a), comply with all laws and regulations and codes of practice, guidelines and standards issued by any governmental or regulatory authority that are applicable to the Supplier in its provision of the Goods and/or Services, or that are applicable to C2C in its receipt of the Goods and/or Services, relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("**Anti-Bribery Requirements**");
 - not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - without prejudice to the generality of clause 5.1(f), comply with C2C's policies relating to ethics, anti-bribery and anti-corruption as communicated to the Supplier by C2C from time to time ("**Anti-Bribery Policies**");
 - have and shall maintain in place its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Anti-Bribery Requirements, the Anti-Bribery Policies and clause 10.1(b) and will enforce them where appropriate; and
- (e) promptly report to C2C any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Agreement.
- 10.2. The Supplier shall ensure that any person associated with the Supplier who is providing goods or 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 10 ("**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 C2C for any breach by such persons of any of the Relevant Terms.
- 10.3. For the purpose of the foregoing provisions of this clause 10, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 10, a person associated with the Supplier includes all the Supplier's Personnel.
- 10.4. The Supplier shall at all times:
- without prejudice to the generality of clause 5.1(a), comply with all Applicable Law relating to modern slavery and human trafficking including the Modern Slavery Act 2015 ("**Anti-Slavery Requirements**");
 - without prejudice to the generality of clause 5.1(f), comply with C2C's policies relating to anti-slavery as communicated to the Supplier by C2C from time to time ("**Anti-Slavery Policies**");
 - have and maintain due diligence, audit and reporting procedures for its own suppliers, permitted subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains; and
 - promptly report to C2C any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.
- 10.5. The Supplier shall notify C2C as soon as it becomes aware of:
- any contravention, or potential contravention, of the Anti-Bribery Requirements or the Anti-Slavery Requirements; and
 - any breach, or potential breach, of the Anti-Bribery Policies or the Anti-Slavery Policies.
- 10.6. The Supplier warrants that as at the date of this Agreement:
- neither the Supplier nor any of its officers, employees or any other persons associated with it:
 - has been convicted of any offence involving bribery, corruption, slavery or human trafficking;
 - 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 bribery, corruption, slavery or human trafficking;
 - it conducts its business in a manner that is consistent with the Anti-Bribery Policies and the Anti-Slavery Policies.
- 10.7. Upon request by C2C, the Supplier shall certify to C2C in writing signed by an officer of the Supplier that it has complied with this clause 10. The Supplier shall provide such supporting evidence of compliance as C2C may reasonably request.
- 10.8. Breach of this clause 10 by the Supplier shall be deemed a breach not capable of remedy and C2C may, in the event of such breach, terminate this Agreement in accordance with clause 19.2.
- 11. PERFORMANCE**
- 11.1. The Supplier and C2C shall hold meetings at intervals to be agreed, at the Location, or any other location that the parties may agree from time to time, between agreed attendees to discuss the ongoing supply of Goods and delivery of the Services.
- 11.2. Without prejudice to the generality of clause 5.1(f), when exercising any rights of access to the Location or any other premises of C2C,

the Supplier shall, and shall procure the Supplier's Personnel shall, comply with all rules, procedures, instructions and policies of C2C from time to time in relation to the premises (including in relation to opening times, fire, health and safety, environment, security and access), and it shall be the responsibility of the Supplier to obtain copies of the latest version of any such requirements from C2C. The Supplier shall ensure it keeps and leaves those parts of the Location or any other premises of C2C which it enters on to clean and tidy.

- 11.3. Without prejudice to C2C's rights pursuant to clause 5.3, the Supplier shall keep separate and detailed records documenting performance of its obligations pursuant to this Agreement, costs incurred in relation to the Services and any other information, data and documents relating to or relevant to the Services. The Supplier shall provide C2C with a copy of such records on request (in electronic spreadsheet format unless C2C requests otherwise) for the purposes of monitoring the Supplier's compliance with the terms of this Agreement and investigating any disputes or enquiries.

12. PRICE

- 12.1. In consideration of the supply of Goods and/or provision of Services in accordance with the terms of this Agreement, C2C shall pay: (i) the Goods Price; and/or (ii) the Service Price respectively.
- 12.2. The Supplier shall not be entitled to increase either the Goods Price or the Service Price without C2C's prior written approval.
- 12.3. The Goods Price comprises the full cost of supplying the Goods, including all costs of manufacturing and packaging, packing, loading, transport, insurance in transit, all customs, duties and other taxes payable in respect of any Goods and unloading of the Goods. The Service Price comprises the full cost of providing the Services, including all costs of labour (including the installation of any Goods, if applicable), travel, subsistence, accommodation, insurance and overheads in relation to provision of the Services. C2C shall not be liable to pay any charges in addition to the Goods Price or Service Price unless approved by C2C in writing in advance.
- 12.4. All amounts payable by C2C under this Agreement are exclusive of value added tax, which C2C will pay in addition, where applicable, at the rate in force at the time of payment.

13. PAYMENT TERMS

- 13.1. C2C shall only be obliged to pay any amount due pursuant to this Agreement when the Supplier has issued an invoice for such amounts in accordance with clause 13.2.
- 13.2. All invoices shall specify C2C's Order number and full details of the relevant Goods and/or Services, including description, quantity, price and, where applicable, value added tax.
- 13.3. The Supplier shall not be entitled to issue an invoice in respect of this Agreement, and C2C shall not be liable to make payment, until: (i) the Goods and/or Services to which such amounts relate have been supplied in accordance with this Agreement; and (ii) where applicable, any milestones set out in the Specification have been achieved.
- 13.4. C2C will pay any amounts due pursuant to this Agreement within forty five days after its receipt from the Supplier of an invoice compliant with clauses 13.2 and 13.3.
- 13.5. Payment by C2C of any amount payable by it pursuant to this Agreement shall not constitute C2C's acceptance of any Goods or Services or constitute a waiver in respect of any of C2C's rights.
- 13.6. C2C may set off against any amount owed to the Supplier under this Agreement, any amount payable by the Supplier to C2C pursuant to this Agreement, including amounts payable by the Supplier under any indemnity. Any exercise by C2C of its rights under this clause shall not limit or affect any other rights or remedies available to it.
- 13.7. If any amounts payable under this Agreement are not paid by the due date, the party liable to pay such amounts shall, in addition, pay interest whether before or after judgment, in accordance with this clause, calculated from (and including) the due date to (but excluding) the date of payment. Interest on such amounts shall be calculated on a daily basis at a rate of 4 per cent per annum above the base rate of the Bank of England from time to time.
- 13.8. In relation to payments disputed in good faith, interest under clause 13.7 shall be payable only after the dispute is resolved, on sums found or agreed to be due, from three Working Days after the dispute is resolved until payment.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1. The Supplier warrants to C2C that:
- (a) it is the sole legal and beneficial owner of all Intellectual Property Rights in any Goods and in all products of the Services, including any Deliverable ("Project IP");
 - (b) all Project IP is free from any charges, liens or encumbrances;
 - (c) it has the right to assign the Project IP in accordance with clause 14.2;
 - (d) the use of the Goods and/or Services will not infringe the Intellectual Property Rights of any third party; and
 - (e) in relation to any licence of the Project IP pursuant to clause 14.3 or otherwise, it has the right to grant that licence, and that the exercise of such licence will not infringe the Intellectual Property Rights of any third party.
- 14.2. Subject to clause 14.3, all Project IP is hereby assigned by the Supplier (by way of present and future assignment) to C2C and the Supplier shall do all things and render all such assistance as may be reasonably required by C2C in order to vest such rights in C2C.
- 14.3. To the extent that any Project IP is owned by a third party and cannot be assigned pursuant to clause 14.2, the Supplier grants to C2C (or shall procure the grant of) an irrevocable, perpetual, transferable, worldwide, royalty-free, non-exclusive licence, with right to grant sub-licences, in respect of the Project IP. Pursuant to such licence(s), C2C shall be permitted to copy; edit; use; and reproduce the Project IP for the purposes of obtaining the full benefit of and making full use of the Goods and/or Services.
- 14.4. The Supplier shall obtain waivers of any moral rights in any Goods and/or in all products of the Services (including any Deliverable) to which any individual is now or may at any future time be entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

15. REMEDIES

- 15.1. Defective Goods or Services: If at any time C2C discovers that any Goods and/or Services do not comply with the requirements of this Agreement, C2C shall be entitled, at its option, to exercise any one or more of the following remedies in relation to such Goods and/or Services (and all other Goods or Services known or likely to be affected by the same problem):
- (a) to require the Supplier promptly to supply additional Services and/or replace the Goods with Services and Goods, as the case may be, conforming to the provisions of this Agreement;
 - (b) to require the Supplier within five Working Days of being requested to do so to rectify or repair the Services or Goods at Supplier's risk and expense, or reimburse C2C's costs (including any costs relating to dismantling and/or re-assembling any Goods and/or ancillary site works) incurred in: (i) undertaking such rectification or repairs; and/or (ii) obtaining alternative services or goods from a third party;
 - (c) if a substantial part of the Goods cannot be repaired or replaced or used, or the Services do not materially comply with the provisions of this Agreement, to reject the Goods and/or Services and require the Supplier promptly to repay any amount of the Goods Price and/or Service Price, as applicable, already paid, less an equitable amount to reflect C2C's usage of the Goods and/or C2C having had any benefit of the Services;
 - (d) to claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that are not in conformity with the terms of this Agreement.
- 15.2. The terms of this Agreement shall apply to any repaired or replacement Goods or Services provided by the Supplier.
- 15.3. The Supplier shall meet, and time is of the essence as to, any Delivery Date. If the Supplier fails to do so, C2C may (without prejudice to any other rights it may have):
- (a) terminate this Agreement in whole or in part without liability to the Supplier;
 - (b) refuse to accept any subsequent delivery of Goods or performance of Services which the Supplier attempts to make;

- (c) purchase substitute goods and/or services elsewhere and reclaim from the Supplier the costs for procuring those new goods or services;
 - (d) hold the Supplier accountable for any loss and additional costs incurred; and
 - (e) have all sums previously paid by C2C to the Supplier pursuant to this Agreement refunded by the Supplier, less an equitable amount to reflect C2C's usage of the Goods and/or C2C having had any benefit of the Services.
- 15.4. Where either party is or ought reasonably to be aware that any Goods are defective in such a way that a reasonable supplier would conclude they should be subject to a recall or that customers should be notified of the defect, each party shall notify the other without delay. The Supplier shall promptly and thoroughly investigate the alleged defect and report to C2C on its findings. The Supplier shall, pursuant to clause 16, pay C2C's costs, expenses and losses resulting from the conduct of a product recall and issue of a customer notice of a defect except to the extent that any such defect or alleged defect is proven to be due to C2C's acts or omissions.

16. SUPPLIER'S INDEMNITY

The Supplier shall indemnify, keep indemnified and hold harmless C2C from and against all losses (including loss of profits, interruption of business, depletion of goodwill and similar losses), costs, fines, liabilities, damages and expenses (including legal and other professional fees and expenses), howsoever caused, awarded against, or incurred or paid by, C2C as a result of or in connection with:

- (a) any liability for personal injury or death;
- (b) any claim made against C2C in respect of any liability, loss, damage, injury, cost or expense sustained by C2C's employees or agents or by any customer or third party;
- (c) any claim, enquiry or fine raised against C2C by the Secretary of State or any other rail industry body or any regulator;
- (d) any liability, loss, damage, cost or expense arising from any breach by the Supplier or the Supplier's Personnel of any Applicable Law;
- (e) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of C2C's use or supply of any Goods or any products of the Services;
- (f) any loss of or damage to property;
- (g) any loss of profit, bargain, business, revenue, contract, use or goodwill, or any liability for any person for any of those losses,

in each case where caused by, relating to or arising from any breach, negligent performance or failure or delay in performance of this Agreement by the Supplier or anyone acting on the Supplier's behalf. In the event of any such claim, C2C shall take reasonable steps to mitigate any liabilities, costs, proceedings, damages and expenses.

17. INSURANCE

- 17.1. The Supplier shall have in place (and shall ensure that any subcontractors have in place), for the duration of this Agreement and for a period of 12 months thereafter, at least the following insurance cover or, where greater, any insurance cover imposed by Applicable Law:
- (a) Public Liability Insurance with cover of not less than £5 million per occurrence;
 - (b) Employer's Liability Insurance with cover of not less than £10 million per occurrence;
 - (c) Professional Indemnity Insurance with cover of not less than £10 million per claim (to be maintained for six years from the termination or expiry of this Agreement);
 - (d) Product Liability Insurance with cover of not less than £10 million per occurrence; and
 - (e) should the Services comprise any building works, all risks insurance, covering the Supplier's Personnel, with a scope of level of cover to C2C's reasonable satisfaction in light of the relevant circumstances.

- 17.2. All insurance shall be maintained with a member of the Association of British Insurers or with Lloyds' underwriters and shall, unless otherwise stated, be for such amount as is prudent in all the circumstances. The Supplier shall do nothing to invalidate any insurance policy or to prejudice C2C's entitlement under it and shall notify C2C if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

- 17.3. The Supplier shall on request provide to C2C copies of all policies and other documents evidencing the insurance to be maintained pursuant to clause 17.1 and evidence of payment of the most recent premium due in respect of such insurance.

- 17.4. If the Supplier fails or is unable to maintain insurance in accordance with clause 17.1, or fails to provide evidence that it has paid the current year's premiums in accordance with clause 17.3, C2C may, so far as it is able to do so, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover from the Supplier, pursuant to clause 16, all reasonable costs and expenses it incurs in doing so.

- 17.5. To the extent permitted by law, all proceeds of insurances shall be used to discharge the claim or liability to which the proceeds relate.

18. LIMITATION OF LIABILITY

- 18.1. Nothing in this Agreement:

- (a) shall limit or exclude either party's liability for:
 - i. death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - ii. fraud or fraudulent misrepresentation;
 - iii. any other liability to the extent that it cannot be limited or excluded by Applicable Law; or
- (b) shall limit or exclude the Supplier's liability under any indemnity.

- 18.2. Subject to clause 18.1:

- (a) the Supplier's liability to C2C, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with this Agreement shall:
 - i. not include any liability for any indirect or consequential loss arising under or in connection with this Agreement; and
 - ii. be limited per claim or series of related claims to the greater of: (i) £5,000,000; and (ii) 300% of the Goods Price and/or Service Price applicable to the Goods and/or Services giving rise to the claim; and
- (b) C2C's total liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with this Agreement shall:
 - i. not include any liability for loss of revenue; cost of capital; loss of profit; loss of business reputation; loss of contract or loss of opportunity; or for any indirect, special, incidental or consequential loss or damage; and
 - ii. be limited per claim or series of related claims to 25% of the Goods Price and/or Service Price applicable to the Goods and/or Services giving rise to the claim.

- 18.3. Notwithstanding clause 18.2(a)i, the losses for which the Supplier assumes responsibility and which shall (subject to clause 18.2(a)ii) be recoverable by C2C include:

- (a) sums paid by C2C to the Supplier pursuant to this Agreement, in respect of any Goods and/or Services not provided in accordance with the terms of this Agreement;
- (b) wasted expenditure;
- (c) additional costs of procuring and implementing replacements for, or alternatives to, the Goods and/or Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
- (d) losses incurred by C2C arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, Supplier's Personnel, regulator or customer of C2C) against C2C caused by the act or omission of the Supplier;

(e) anticipated savings.

18.4. No amount awarded or agreed to be paid under any indemnities shall count towards the cap on the Supplier's liability under clause 18.2(a)ii.

19. TERMINATION RIGHTS

19.1. C2C shall be entitled to cancel this Agreement in whole or in part at any time, without any liability for any loss or damage whatsoever except as provided in this clause. Upon such cancellation C2C shall cease to be bound to pay that part of the Goods Price or Service Price which relates to the Goods and/or Services that have not been supplied or delivered, but will pay for expenses and work in progress incurred wholly, exclusively and reasonably for the purposes of this Agreement to the extent to which the same would otherwise be an unavoidable loss to the Supplier due to C2C's cancellation. The Supplier shall take all reasonable steps to mitigate its loss. The Supplier shall submit its claim within two months of cancellation for such expenses and work in progress and C2C shall not be liable for claims submitted beyond this deadline. Payment shall be made in accordance with the provisions of clause 13, following which C2C shall be entitled to take possession of, and the Supplier shall yield up to C2C, such of the Goods, Deliverables and other elements of work in progress pursuant to this Agreement that have been paid for by C2C and/or that the Supplier no longer wishes to retain.

19.2. C2C may at any time by notice in writing immediately terminate this Agreement without compensation to the Supplier if the Supplier is in material or persistent breach of this Agreement and (if that breach can be remedied) fails to remedy such material or persistent breach within fourteen days of written notice requiring it to do so. For the avoidance of doubt, any breach of clauses 5.1(a), 9.1, 9.2, 10, 14, 20 or 21 shall be deemed not capable of remedy.

19.3. C2C may at any time by notice in writing immediately terminate this Agreement upon the occurrence of any of the following events:

- (a) the Supplier enters into any composition or arrangement for the benefit of its creditors;
- (b) the Supplier, being an individual, becomes bankrupt or has a receiving order or administration order made against him;
- (c) the Supplier becomes insolvent or appears to be unable to pay a debt or to have no reasonable prospect of paying a debt (within the meaning of Section 268 of the Insolvency Act 1986) or being a company, appears unable to pay its debts (within the meaning of Section 123 of that Act);
- (d) the presentation of a petition for the appointment of a receiver, administrative receiver or administrator over the Supplier or any notice of intention to appoint an administrator is given;
- (e) on the appointment of an administrative receiver or administrator in respect of the whole or any part of the Supplier's undertaking or assets;
- (f) the giving of any notice of a resolution for the winding-up of the Supplier (other than for a members' voluntary winding-up of a solvent company for the purpose of a bona fide reconstruction); or
- (g) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 19.3(a) to (e) (inclusive).

19.4. C2C may at any time by notice in writing immediately terminate this Agreement if:

- (a) the Franchise Agreement is terminated or expires;
- (b) the Supplier has failed to enter into the Direct Agreement or any agreement intended to have the same effect; or
- (c) there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010).

19.5. On any termination or cancellation of this Agreement:

- (a) all rights, authorities and obligations of the parties under this Agreement shall cease but without prejudice to any accrued rights or remedies of either party;
- (b) the Supplier shall immediately deliver to C2C:

- i. all copies of information and data provided by C2C to the Supplier for the purposes of this Agreement, irretrievably delete such information and data from its systems and certify to C2C that it has not retained any copies of such information or data, except for one copy which the Supplier may use for audit purposes only and subject always to the confidentiality obligations in clause 20 and the data protection obligations in clause 21; and

- ii. all equipment, materials and property belonging to C2C supplied to it or to any of the Supplier's Personnel in connection with this Agreement;

(c) if the Supplier fails to fulfil its obligations under clause 19.5(b), C2C may enter the Supplier's premises (or any premises used by the Supplier) and take possession of any items that should have been returned pursuant to that clause (and until they have been returned or repossessed the Supplier shall be solely responsible for the safe-keeping of such items and materials); and

(d) any rights or obligations expressly or impliedly intended to come into effect on or continue after expiry or termination shall not be affected, including this clause 19.5, and clause 14 (Intellectual Property Rights), clause 15 (Remedies), clause 16 (Supplier's Indemnity), clause 17 (Insurance), clause 18 (Limitation of Liability), clause 20 (Confidentiality), clause 21 (Customer Personal Data), clause 22 (Freedom of Information), clause 23 (Step-in Rights), clause 24 (Third Party Rights), clause 25.6 (Conflict), clause 25.12 (TUPE) and clause 25.14 (Governing Law and Jurisdiction).

20. CONFIDENTIALITY

20.1. Each party undertakes that it shall not at any time during this Agreement and for a period of two years after its termination or expiry disclose to any person any Confidential Information, except as permitted by clause 20.2.

20.2. Each party may disclose the other party's Confidential Information:

(a) to its employees, officers, agents, consultants or subcontractors ("Representatives") who need to know such information for the purposes of carrying out the party's obligations pursuant to this Agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 20 as though they were a party to this Agreement (and the disclosing party shall remain responsible for any breach of the confidentiality obligations set out in this clause by its Representatives); and

(b) as may be required by Applicable Law, a court of competent jurisdiction or any governmental or regulatory authority.

20.3. Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations pursuant to the Agreement.

20.4. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party or to be implied from this Agreement. In particular, no licence is hereby granted directly or indirectly under any Intellectual Property Right held, made, obtained or licensable by either party now or in the future.

21. CUSTOMER PERSONAL DATA

21.1. Each party shall at all times comply with its obligations under the Data Protection Legislation in the course of performing its obligations under this Agreement.

21.2. Without prejudice to the generality of clause 21.1, the Supplier shall (and shall procure that the Supplier's Personnel shall) comply with the Data Protection Legislation in respect of its processing of all personal data (including, but not limited to, Customer Personal Data) in the course of performing its obligations under this Agreement, including by:

(a) ensuring that such personal data is processed fairly and lawfully in accordance with the Data Protection Legislation;

(b) ensuring that such personal data is obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose/those purposes in accordance with the Data Protection Legislation; and

- (c) obtaining and maintaining all appropriate registrations and notifications as may be required under the Data Protection Legislation.
- 21.3. Wherever, in the performance of its obligations under this Agreement, the Supplier processes any personal data (including, but not limited to, Customer Personal Data), the parties acknowledge and agree that:
- (a) C2C (or the relevant member of C2C's Group) shall be the controller in respect of that personal data ("**C2C Controller**");
 - (b) the Supplier shall be the processor in respect of that personal data;
 - (c) nothing in this Agreement shall relieve the Supplier of its own obligations as processor under the Data Protection Legislation;
 - (d) as between the Supplier and C2C, C2C shall be the sole owner of that personal data, together with all copyright, database rights and other Intellectual Property Rights therein; and
 - (e) details of the processing shall be as follows:
 1. the subject matter and duration of processing shall be the provision of the Goods and/or Services for the term of this Agreement;
 2. the nature and purpose of processing shall be that the Supplier, acting as a processor, will, depending on the scope of its engagement, process personal data to (i) provide the Goods and/or Services; (ii) comply with its statutory and regulatory obligations; and (iii) maintain accounts and records, which will involve, among other things, the collection, storage, analysis and disclosure of personal data that the Supplier receives from the relevant C2C Controller in accordance with this Agreement;
 3. the personal data processed shall concern the following categories of data: names, addresses, email addresses, details of transactions or similar dealings with the Customer and/or Supplier, images and phone numbers;
 4. the personal data processed concern the following categories of data subjects: the relevant C2C Controller's employees, agents and representatives who order, deal with or use the Goods and/or Services and end-users of the Goods and/or Services; and
 5. the obligations and rights of the relevant C2C Controller are set out in the Agreement.
- 21.4. Wherever, in the performance of its obligations under this Agreement, the Supplier processes any personal data (including, but not limited to, Customer Personal Data), the Supplier agrees in relation to such personal data:
- (a) that it shall (and shall procure that the Supplier's Personnel shall) only process that personal data that is required to be processed: (i) to the extent necessary to enable performance of those obligations and then only for the purposes specified by C2C; (ii) only in accordance with the specific written instructions of C2C, save to the extent such instructions infringe Data Protection Legislation, in which case the Supplier shall immediately notify the relevant C2C Controller; or (iii) as required by any regulator or applicable law (in which case the Supplier shall inform the relevant C2C Controller of such legal requirement before processing; unless prevented from doing so by applicable law);
 - (b) that it shall implement and at all times have in place appropriate technical and organisational measures to ensure that that personal data is kept secure and to protect against the unauthorised or unlawful access to, or processing of, that personal data and against accidental loss or destruction of, or damage to, that personal data, and that such measures shall:
 1. reflect the level of harm, damage and/or distress that might be suffered by the data subject to whom the personal data relates in the event of a breach of the such measures; and
 2. ensure that only authorised personnel and agents have access to such personal data and that any persons authorised to have access to, or process, such personal data have committed themselves to confidentiality and shall procure that they will respect and maintain all due confidentiality accordingly;
 - (c) that it shall at all times to take all reasonable steps to ensure the reliability of the Supplier's Personnel who have access to such personal data and to ensure that such persons are aware of the Supplier's obligations in relation to such personal data and have undergone training in data protection and the care and handling of personal data and shall comply with such other reasonable measures as are stipulated by C2C from time to time during the term of this Agreement;
 - (d) that it shall not cause or permit any such personal data to be transferred outside the European Economic Area (as defined in the Data Protection Legislation or otherwise as appropriate) without the prior written consent of C2C, and it shall be a precondition of such consent that the Supplier first enters into the Standard Contractual Clauses for Data Processors established in Third Countries pursuant to the Commission Decision (2010/87/EU) of 5 February 2010 under EU Directive (95/46/EC) or any similarly required Standard or Model Contractual Clauses contained in the Data Protection Legislation;
 - (e) that it shall not, and shall procure that the Supplier's Personnel shall not, do or omit to do anything which causes C2C or any member of C2C's Group to contravene or breach any of their obligations under the Data Protection Legislation or the terms or conditions of any of its/their registrations, notifications or authorisations that may be in place in connection with the Data Protection Legislation;
 - (f) to treat such personal data as Confidential Information of C2C in accordance with clause 21 and in any event for the duration of the processing of such personal data by or on behalf of it;
 - (g) that clause 25.10 shall apply in relation to any subcontracting to a processor to process or assist in the processing of any such personal data (including, but not limited to, Customer Personal Data) and that a written contract shall be in place between the Supplier and any such other processor, which is on the same or substantially similar terms to, and in any event contains data protection obligations no less onerous than those set out in, this Agreement;
 - (h) that the obligations under clause 19.5(b) shall apply in relation to any such personal data once the processing under the Agreement is complete (save to the extent that retention of copies is required by applicable law and provided that a copy of any such personal data may not otherwise be kept for audit purposes) and that it shall provide written confirmation of compliance with these obligations to C2C upon request; and
 - (i) that clause 5.3 shall apply in relation to the Supplier's obligations under this clause 21.
- 21.5. Wherever, in the performance of its obligations under this Agreement, the Supplier processes any personal data (including, but not limited to, Customer Personal Data), the Supplier shall further ensure that it:
- (a) notifies the relevant C2C Controller in writing at dpo@c2craill.net promptly (and in any event, within 24 hours of becoming aware) of any actual or suspected, threatened or 'near-miss' personal data breach in relation to such personal data or any other incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to such personal data or other breach of its obligations in clause 21.4 (a "**Security Breach**") giving detailed reasons for the Security Breach and, at no additional cost to C2C or any member of C2C's Group take steps to mitigate the risk and provide full cooperation and any assistance that may reasonably be required by the relevant C2C Controller; including without limitation providing the relevant C2C Controller with the following information as soon as it becomes available:
 1. a description of the nature of the Security Breach, including where possible the categories and approximate number of data subjects and personal data records concerned;
 2. the name and contact details of the Supplier contact from whom more information can be obtained;
 3. a description of the likely consequences of the Security Breach; and
 4. a description of the measures taken or proposed to be taken to address the Security Breach, including, where appropriate, measures to mitigate its possible adverse effects;
 - (b) restores the availability and access to such personal data in a timely manner in the event of a physical or technical incident, at no additional cost to any member of C2C's Group;

- (c) does not make any public statements or issue any other notice to the affected data subjects and/or the relevant regulators in connection with a Security Breach without the relevant C2C Controller's prior written consent;
- (d) maintains a record of its processing activities and promptly provides the relevant C2C Controller on request with all reasonable information, assistance and co-operation in relation to its use of such personal data, including (without limitation) as is reasonably necessary for the C2C Controller to demonstrate compliance with its obligations pursuant to Data Protection Legislation and shall permit that C2C Controller or any other person appointed by it to carry out an audit to ascertain the Supplier's compliance with this clause 21 or its obligations under the Data Protection Legislation, including permitting access to its premises and personnel to the relevant C2C Controller or another party acting on its behalf; and
- (e) unless prohibited at law or by a regulator, notifies the relevant C2C Controller immediately at dpo@c2craill.net if it receives any request, allegation, complaint or communication from data subjects, regulators or any other law enforcement body which relate to the processing of such personal data ("**Personal Data Communication**"), and pass the Personal Data Communication to the relevant C2C Controller so that it can respond. Unless a regulator requests in writing to engage directly with the Supplier or the parties (acting reasonably) mutually agree that the Supplier shall handle a Personal Data Communication itself, the parties agree that the relevant C2C Controller shall be responsible for all communications or correspondence in relation to a Personal Data Communication. The Supplier shall, at no additional cost, promptly provide the relevant C2C Controller with any co-operation and assistance it may reasonably require to enable it to respond to a Personal Data Communication, including without limitation by promptly providing details of any such personal data held by the Supplier in relation to the relevant data subject.

21.6. The Supplier shall indemnify, defend and hold harmless C2C and any relevant member of C2C's Group from and against all and any losses, claims, liabilities, costs, charges, expenses, awards and damages of any kind (including any interest, fines, legal and other professional fees and expenses), irrespective of whether they were reasonably foreseeable or avoidable, regardless of whether based in strict liability, wilful or intentional misconduct, or ordinary or gross negligence of the Supplier or otherwise, which it/they may suffer or incur (whether directly or indirectly) as a result or as a consequence of, or arising out of or in connection with, any claim relating to any breach by the Supplier of any of its obligations set out in this clause 21.

22. FREEDOM OF INFORMATION

22.1. The Supplier acknowledges that the Secretary of State is subject to the requirements of the Freedom of Information Act 2000 ("**FOIA**") and the Environmental Information Regulations 2004 ("**EIR**") and accordingly the Supplier agrees, with and for the benefit of both C2C and the Secretary of State, that it shall:

- (a) assist and co-operate with the Secretary of State to enable the Secretary of State to comply with his information disclosure obligations under FOIA and EIR;
- (b) transfer to the Secretary of State any request for information or apparent request for information made under FOIA or EIR (a "**Request for Information**") received by it as soon as practicable and in any event within two working days of receiving any such Request for Information;
- (c) provide the Secretary of State with a copy of all information in its possession or power in the form that the Secretary of State requires within five working days of the Secretary of State's request (or within such other period as he may specify);
- (d) provide all necessary assistance as reasonably requested by the Secretary of State to enable him to respond to any Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR (as applicable); and
- (e) shall not respond directly to any Request for Information unless expressly authorised to do so by the Secretary of State.

22.2. The Supplier further acknowledges that:

- (a) the Secretary of State may be obliged under FOIA and/or EIR and any related code of practice or other guidance to disclose information concerning the Supplier and/or this Agreement in certain circumstances without consulting the Supplier or otherwise following consultation with the Supplier and having

taken its views into account, provided always that where applicable the Secretary of State shall in accordance with the provisions of FOIA and/or EIR take reasonable steps where appropriate to give the Supplier advance notice or failing that to draw disclosure to the Supplier's attention after any such disclosure; and

- (b) the Secretary of State shall be responsible for determining in his absolute discretion whether any information relating to the Supplier and/or this Agreement is exempt from disclosure in accordance with the provisions of FOIA and/or EIR as applicable.

23. STEP IN RIGHTS

- 23.1. C2C may by notice in writing to the Supplier appoint a management team from C2C and/or a third party (a "**Substitute Provider**") to provide or manage the Services or any part of the Services ("**Step-in Right**") where: (i) there is a material breach of this Agreement; or (ii) C2C (acting reasonably) believes it is necessary to ensure compliance with Applicable Law.
- 23.2. While a Substitute Provider is providing any element of the Services pursuant to clause 23.1, C2C shall not be obliged to pay the Supplier for that element of the Services in relation to which it has exercised the Step-in Right.
- 23.3. If the costs incurred by C2C as a result of the exercise of its Step-in Right (the "**Step-in Costs**") are greater than the sums that C2C would have been liable to pay the Supplier in respect of the relevant Services if it had not exercised its Step-in Right (the "**Original Costs**"), the Supplier shall be liable to reimburse C2C, pursuant to clause 16, the difference between the Original Costs and the Step-In Costs.
- 23.4. If C2C serves a notice of termination of this Agreement for any reason, C2C's rights pursuant to this clause 21 will continue for the duration of such notice period.

24. THIRD PARTY RIGHTS

- 24.1. Subject to clause 24.2, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of it.
- 24.2. C2C and any member of its Group may rely on and enforce any terms of this Agreement which confer rights on it/them.
- 24.3. The parties may vary, terminate or rescind this Agreement without the consent of any third party who has the right to rely on and enforce provisions of the same, but without prejudice to any other restrictions on the parties' rights to vary, terminate or rescind this Agreement.

25. MISCELLANEOUS

- 25.1. **Entire Agreement:** Each Agreement, and any documents incorporated into it by reference, constitutes the entire agreement between the Supplier and C2C for the supply of the relevant Goods and/or Services and replaces any previous agreements, whether written or oral, relating to its subject matter. The Supplier acknowledges that in entering into an Agreement it does not rely upon and shall have no remedy in respect of any statement, warranty or representation of C2C or any other person relating to such Agreement (other than fraudulent misrepresentations) unless it is in writing and forms part of this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in an Agreement. Nothing in this clause shall limit or exclude any liability for fraud.
- 25.2. **Force Majeure:** Neither party shall be in breach of an Agreement nor liable for delay in performing, or failure to perform, any of its obligations under an Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for a period of four weeks, C2C may terminate such Agreement by giving seven days' written notice to the Supplier.
- 25.3. **No Announcements:** The Supplier shall not, without C2C's prior written consent, use C2C's name or otherwise hold itself out as associated with C2C in any advertising or publicity material or in any other manner.
- 25.4. **Notices:** Notices under this Agreement shall be in writing and sent to the other party at its address stated in this Agreement, or such

other address as a party may have notified to the other party in writing pursuant to this clause with not less than five Working Days' notice. Notices shall be considered to be received: if sent by hand, courier or recorded delivery, on delivery; if sent by post, on the second Working Day following the day of posting if to an address in the UK, and the seventh Working Day if to an address outside the UK.

25.5. Variation: No variation of an Agreement shall be valid unless it is in writing and signed by an authorised person on behalf of each party and stated clearly to be a variation to such Agreement.

25.6. Conflict: The parties agree and acknowledge that, where a Direct Agreement applies, the provisions of the Direct Agreement shall take precedence over the main Agreement in the event of any conflict.

25.7. Waiver: The failure or delay by a party in exercising any right, power, privilege or remedy provided by an Agreement or by law shall not constitute a waiver thereof, nor of any other right, power, privilege or remedy. No single or partial exercise of any such right, power, privilege or remedy shall preclude any further exercise thereof or the exercise of any other right, power, privilege or remedy. No waiver of a party's rights under an Agreement shall be effective unless in writing signed by an authorised person on behalf of that party. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of a party's rights in relation to different circumstances or the recurrence of similar circumstances.

25.8. Rights Cumulative: The rights of C2C under an Agreement are in addition to any other rights which it may have at law and the exercise of any rights under an Agreement shall be without prejudice to such other rights C2C may have.

25.9. Assignment: The Supplier shall not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement. C2C may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that it gives prior written notice of such dealing to the Supplier.

25.10. Sub-contracting: The Supplier shall not be entitled to subcontract the performance of this Agreement, or any part of it, to any person without the prior written consent of C2C. The Supplier shall not be relieved of its obligations under this Agreement by sub-contracting to any person. All acts and omissions of any subcontractors of the Supplier shall be deemed to be acts and omissions of the Supplier.

25.11. Severability: Each of the provisions of this Agreement shall be separate and severable. Should any provision or part-provision be held to be invalid or unenforceable, it shall be deemed severed from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect and be amended to the minimum extent possible to give valid effect to the intentions of the parties under the severed provision.

25.12. TUPE: The Supplier shall be responsible for and shall indemnify and keep indemnified C2C from and against, all and any costs, losses, claims, expenses, damages, demands, actions and liabilities arising out of or in connection with any claim which arises or is alleged to arise by reason of the operation of, and/or for failure to inform and consult under, the Transfer of Undertakings (Protection of Employment) Regulations 2006.

25.13. Dispute Resolution:

(a) If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

i. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the project manager of C2C and the project manager of the Supplier shall attempt in good faith to resolve the Dispute;

ii. if the parties' project managers are for any reason unable to resolve the Dispute within fourteen days of service of the Dispute Notice, the Dispute shall be referred to a Director of each party, who shall attempt in good faith to resolve it; and

iii. if the parties' Directors are for any reason unable to resolve the Dispute within fourteen days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than twenty one days after the date of the ADR notice.

(b) No party may commence any court proceedings pursuant to clause 25.14 in relation to the whole or part of the Dispute until twenty eight days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

(c) If the Dispute is not resolved within twenty eight days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiry of the said period of twenty eight days, or the mediation terminates within such period, the Dispute shall be finally resolved by the courts of England pursuant to clause 25.14.

25.14. Governing Law and Jurisdiction: This Agreement, and any contractual and non-contractual matters in relation to it or arising from it, shall be governed by the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.