

## PURCHASE ORDER CONDITIONS

### 1 TERMS OF AGREEMENT

- 1.1 These Conditions (and the annex hereto) apply to and form part of the Contract between the Supplier and the Customer for the purchase of the Deliverables pursuant to the terms of a Purchase Order. These terms and condition are to the exclusion of any other issued terms and conditions of purchase or supply unless otherwise stated to the contrary on the Purchase Order.
- 1.2 No terms or conditions endorsed on, delivered with, or contained in the Supplier's quotation, sales conditions, confirmation of order, specification or other document shall form part of the Contract even if the Supplier purports to condition its acceptance of the Purchase Order on the Customer's agreement to such different or additional terms.
- 1.3 Acceptance of a Purchase Order by the Supplier shall occur when it is expressly accepted by the Supplier (whether by electronic means or otherwise) or by any other conduct of the Supplier which the Customer reasonably considers is consistent with acceptance of the Purchase Order. Notwithstanding the foregoing, a Purchase Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. Upon such acceptance by the Supplier a Contract is formed in respect of the Purchase Order accepted.
- 1.4 Notwithstanding the foregoing, if a master agreement covering the procurement of the Deliverables (whether or not referenced or described in the Purchase Order) exists between the Supplier and the Customer (the "**Master Agreement**"), the terms of such Master Agreement shall govern the supply of the deliverables set out in such Purchase Order.
- 1.5 Where the Customer proposes a variation to the Contract, the parties shall negotiate in good faith any amendment to the applicable Purchase Order to incorporate such variation providing for an equitable adjustment to the price, time for performance or both. During the period of the negotiations, each Party shall continue to comply with its remaining obligations under the Contract.

### 2 DEFINITIONS

- 2.1 In these Conditions, the following definitions shall apply:

**"Acceptance Conditions"** means:

- (a) for Goods, the Goods and delivery note have been delivered to or at the location stated in the Purchase Order or as confirmed by the Customer in writing (the "**Location**"); and
- (b) for Services, the Services have been performed at the Location; and
- (c) all pre-delivery and post-delivery acceptance tests and inspections have been completed to the satisfaction of the Customer at its sole discretion; and
- (d) the Customer has notified to the Supplier in writing that the Deliverables have been delivered or performed (as the case may be) in full compliance with the Purchase Order and the terms and conditions of the Contract.

**"Bribery Laws"** means the Bribery Act 2010 and all applicable laws in connection with bribery or anti-corruption and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010.

**"Business Days"** means any day other than a Saturday, Sunday and any public, statutory or bank holiday.

**"Conditions"** means the Customer's terms and conditions of purchase set out in this document.

**“Confidential Information”** means any information concerning the Customer, GA Affiliates, and their respective commercial, financial or technical information, information whether relating to the Deliverables, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by the Customer (and / or GA Affiliates) in performing its obligations under, or otherwise pursuant to, the Contract and / or the Purchase Order.

**“Contract”** means the agreement between the Supplier and the Customer for the sale and purchase of the Deliverables set out or referenced in the Purchase Order which incorporates these Conditions, the annexure hereto, the Purchase Order and all of its schedules, attachments, annexures, and any statements of work.

**“Customer”** means the party named on the Purchase Order who issued the said Purchase Order to the Supplier to provide or procure the provision of the Deliverables.

**“Data Protection Terms”** shall mean those terms set out in the annex to these Conditions.

**“Deliverables”** means the Good or Services or both as the case may be and as stated in the Purchase Order.

**“Documentation”** means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Deliverables.

**“Delivery Date”** means the date or dates specified in the Purchase Order by which the Supplier is required to deliver / perform the Deliverables.

**“Force Majeure Event”** means an event or sequence of events beyond a Party’s reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; a national strike, lockout or boycott or other industrial action except strikes or other industrial disputes involving the Supplier’s or its suppliers’ workforce save that such event or sequence of events does not include a pandemic or endemic of which the Party seeking to rely on such term is aware (or ought to have been aware) at the date of this Agreement as being in existence or is likely to be in existence during the Term.

**“GA Affiliate”** means The Go-Ahead Group Ltd and any subsidiary of The Go-Ahead Group Ltd other than, for the purposes of these Conditions, the Customer.

**“Goods”** means tangible goods and Documentation.

**“Intellectual Property Rights”** means patents, any extensions of the exclusivity granted in connection with patents, petty patents, utility models, registered designs, applications for any of the foregoing, the right to apply for any of the foregoing; copyrights, (including without limitation copyright in software), design rights, semi-conductor topography rights, moral rights, database rights, trademarks, service marks, applications for any of the foregoing, the right to apply for any of the foregoing; rights (whether registered or not) in trade names, business names, brand names, get-up and logos, rights in know-how, trade secrets and confidential information, data exclusivity rights, data and all other forms of intellectual property right (having equivalent or similar effect to the foregoing) which may exist anywhere in the world.

**“Purchase Order”** means the order made by the Customer for the purchase of the Deliverables in the format presented by the Customer.

**“Services”** means the Services specified in the Purchase Order, and to be supplied by the Supplier to the Customer in accordance with the Contract.

“**Subcontractor**” means a third party performing Services or delivering the Goods for and on behalf of the Supplier, whether pursuant to a contract or otherwise.

“**Supplier**” shall mean the party named on the Purchase Order who is to provide, or procure the provision of, the Deliverables.

“**Supplier Personnel**” mean the Supplier’s employees, consultants, agents, independent contractors and Subcontractors.

“**Third Party Intellectual Property**” means the Intellectual Property Rights of a third party which the Supplier uses or incorporates into the Services or supplies as part of the Goods.

“**Warranty Period**” means a period of 24 months from the acceptance of the Deliverables.

2.2 In these Conditions, and unless the context otherwise requires:

2.2.1 a reference to the Contract includes these Conditions, the Purchase Order and their respective schedules, appendices and annexures (if any);

2.2.2 a reference to a “**Party**” means the Supplier or the Customer and includes that Party’s personal representatives, successor and permitted assigns and a reference to “**Parties**” means both of them and includes their respective representatives, successors and permitted assigns;

2.2.3 a reference to a ‘**person**’ includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;

2.2.4 words in the singular include the plural and vice versa;

2.2.5 a reference to “**writing**” or “**written**” includes email;

2.2.6 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time;

2.2.7 a reference to legislation includes all subordinate legislation made from time to time under that legislation.

### **3 DELIVERY AND PERFORMANCE**

3.1 Unless the Customer expressly instructs otherwise, the Supplier shall deliver all Goods and perform Services at the delivery address set forth in the Purchase Order (or such other address as notified to the Supplier by the Customer prior to the date of delivery of the Goods and / or, as the case may be, of performance of the Services) on the Delivery Date. Other than as set out in Condition 7.1.4, and marked as to the account of the Customer, the Seller assumes responsibility for all packaging, shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance.

3.2 Time of delivery or, as the case may be, performance is of the essence. The Supplier will immediately notify to the Customer if the Supplier’s timely performance under the Purchase Order is likely to be delayed and / or the Goods and / or Services will not be delivered by the Delivery Date. The Customer’s acceptance of such notice will not constitute the Customer’s waiver of any of the Customer’s rights or a variation to, or waiver of, the Supplier’s obligations. If the Supplier fails to deliver any of the Goods or perform any of the Services by the Delivery Date, the Customer may at its sole discretion, and without prejudice to any other right and remedy under these Conditions:

3.2.1 terminate the Contract;

- 3.2.2 purchase the same or similar Deliverables from another supplier without any liability to the Supplier in respect thereof;
  - 3.2.3 refuse to accept the delivery or, as the case may be, the performance of any more Deliverables under the Contract;
  - 3.2.4 recover from the Supplier all costs and losses resulting to the Customer from the failure in performance or, as the case may be, delivery including the amount by which the price payable by the Customer to acquire those Deliverables from another supplier exceeds the price payable under the Contract and any loss of profit; and
  - 3.2.5 all or any of the foregoing.
- 3.3 In the absence of any requirement made by the Customer, the Supplier shall preserve, pack, package, handle and insure the Goods so as to protect the Goods from loss or damage in accordance with best commercial practices.
- 3.4 The Goods shall not be delivered and the Services shall not be performed in instalments unless otherwise specified in the Purchase Order or agreed in writing by the Customer.
- 3.5 The Supplier shall include, with each delivery of Goods, a packing list identifying the relevant Purchase Order number, the Customer part number for each of the Goods (if applicable), a description and the quantity of each of the Goods, and the date of dispatch.
- 3.6 Where required by the Customer, the Supplier shall remove from the Customer's premises all packaging and temporary fixings necessary for the delivery of the Goods or performance of the Services and leave the delivery area and all of the Customer premises clear of waste.

#### **4 INSPECTION AND ACCEPTANCE**

- 4.1 The Customer will not have accepted, nor be deemed to have accepted, the Deliverables until the Acceptance Conditions are fulfilled and the Customer has notified confirmation of such to the Supplier in writing.
- 4.2 Where the Acceptance Conditions are not fulfilled, the Customer may:
- 4.2.1 return the late or non-conforming Goods or, as the case may be, reject the late or non-performing Services, in each case for a full refund or credit (and which the Supplier shall pay or credit accordingly); or
  - 4.2.2 require the Supplier to replace the late or non-conforming Goods or, as the case may be, perform the late or non-performing Services; and / or
  - 4.2.3 repair itself, at the Supplier's expense, or require the Supplier to repair (at the Supplier's expense), the non-conforming Goods or complete itself (at the Supplier's expense), or require the Supplier to complete, the non-performing Services so that each requirement meets the requirements stated in the Contract.

In the alternative to sub-Conditions 4.2.1 to 4.2.3 inclusive, the Customer may accept the non-conforming Goods or the non-performing Services conditional on the Supplier providing a refund or credit in an amount the Customer reasonably determines to represent the diminished value of the non-conforming Deliverables. Notwithstanding the foregoing, any acceptance of late, defective or

incomplete Deliverables, or any payment made in respect thereof, shall not constitute a waiver or any of the Customer's rights and remedies hereunder.

- 4.3 The Customer's payment to the Supplier for Goods or Services prior to the Customer's timely rejection of such Goods or Services as non-conforming will not be deemed as acceptance by the Customer.
- 4.4 The Customer will hold any Goods or Services rejected under the Purchase Order at the Supplier's risk and expense, including storage charges, while awaiting the Supplier's returns shipping instructions. The Supplier will bear all return shipping charges, including without limitation, insurance charges the Customer incurs on the Supplier's behalf.
- 4.5 The Customer may inspect and test the Deliverables during performance, or during manufacture or processing prior to despatch, and the Supplier shall provide to the Customer access to and use of all facilities reasonably required. Any inspection or testing of the Deliverables shall not be deemed to be acceptance of the Deliverables or a waiver of any of the Customer's other rights and remedies, including its right to reject

## **5 RISK AND TITLE**

- 5.1 Risk of loss for any Deliverables shall not pass to the Customer until acceptance in accordance with Condition 4.
- 5.2 Title in any Deliverables shall pass to the Customer upon the date of the Purchase Order.
- 5.3 Where the Supplier provides maintenance or repair services on the Customer's goods (including but not limited to the Goods), the Supplier shall identify such goods as property of the Customer and hereby agrees that title to such goods shall remain with the Customer at all times but risk of loss in such goods shall remain with the Supplier whilst the Customer's goods are in its possession.

## **6 PRICE**

- 6.1 Unless otherwise specified in the Purchase Order, the price for the Goods and/or Services includes all taxes and other charges such as freight and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges. Notwithstanding the foregoing, no increase in the price may be made by the Supplier after the Purchase Order is placed by the Customer.
- 6.2 All prices are fixed.

## **7 INVOICES**

- 7.1 The Supplier shall invoice the Customer for (a) the Goods upon completion of the delivery of the Goods or, if later, the Customer's acceptance of the Goods; or (b) Services on or after completion of performance of the Services or, if later, the completion of the Acceptance Conditions. Each invoice shall include the following information:
- 7.1.1 a reference to the Purchase Order (and its number) or the relevant Master Agreement number (if any);
- 7.1.2 a detailed description of the delivered Goods and, where performed, the Services, including the date of delivery and/or period of Services to which the invoice relates and the relevant quantity;
- 7.1.3 an individual reference number for the Customer to quote with remittance of payment; and

7.1.4 the price relating to the Goods and/or Services, broken down to reflect the same price components set out in the Purchase Order and such that any taxes and other charges are separately identifiable from the price.

7.2 The Supplier shall, promptly and upon request, provide the Customer with all relevant records to calculate and verify the amount set out in any invoice.

7.3 The Customer may withhold approval and / or money due to the Supplier under the Contract if the Goods or, as the case may be, the Services (and, in each case, any part of them) are defective. The withholding of such approval and / or money does not absolve the Supplier from its obligations under this Purchase Order.

## **8 PAYMENT**

8.1 The Customer shall pay to the Supplier the price stated in the Purchase Order within 30 days of the date of receipt of the invoice issued by the Supplier in accordance with Condition 7.

8.2 Without prejudice to any other remedy, the Customer shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier whether under these Conditions or otherwise.

8.3 Time of payment is not of the essence. Where sums due under the Contract are not paid in full by the due date, to compensate the Supplier for all loss from the Customer's breach, the Customer shall pay on the sum overdue interest (before and after judgment) on a daily basis until payment in full at the rate of 1.5 per cent per annum above the Official Bank Rate from time to time of the Bank of England. The Supplier acknowledges that this is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

8.4 The Customer shall pay any properly accountable value added tax which is set out in the invoice at the time that it makes the payment under this Condition 8.

## **9 REPRESENTATIONS AND WARRANTIES**

9.1 At all times, the Supplier represents and warrants that it:

9.1.1 understands the Customer's business and needs;

9.1.2 has the full power to enter into the Contract and to perform its obligations under the Contract;

9.1.3 has all consents, licences and authorisations necessary to deliver and perform the Deliverables;

9.1.4 shall observe, and ensure that the Supplier Personnel will observe, all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises including the Location;

9.1.5 shall ensure that the Supplier Personnel use reasonable skill and care in the delivery and performance of the Deliverables;

9.1.6 shall conduct such tests, including pre-delivery and post-delivery acceptance tests and inspections, in relation to the Deliverables prior to delivery or performance as the Customer may require at its reasonable discretion;

9.1.7 shall ensure the Deliverables, and the Customer's use of the Deliverables, do not and will not (in

each case on a full indemnity basis) infringe any Third Party Intellectual Property Rights, right of publicity or privacy, or any other proprietary rights, whether contractual, statutory or common law;

- 9.1.8 shall ensure the Deliverables conform to the description, specifications and service levels set out in the Purchase Order and are suitable for the intended use;
- 9.1.9 shall ensure the Deliverables comply with all applicable quality standards and, to the extent not covered by the foregoing, all applicable legislation;
- 9.1.10 shall ensure the Goods are of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- 9.1.11 shall ensure that the Services are supplied with the reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982 (Part II, section 13);
- 9.1.12 shall ensure that any media on which the results of the Services are supplied are free from defects in material and workmanship and are of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- 9.1.13 without prejudice to the foregoing, comply with all applicable laws and standards; and
- 9.1.14 the Goods are free from defects in design, material and workmanship.
- 9.2 The Customer warrants and represents to the Supplier that it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order.
- 9.3 In the event that the Supplier does not comply with the representations and warranties set out in Conditions 9.1.7 to 9.1.14 (all inclusive), at the Customer's option, the Supplier shall promptly remedy, repair, replace, correct, reperform or refund the price of any such Deliverables provided that the Customer serves a written notice to the Supplier within the Warranty Period that some or all of the Deliverables do not comply with Condition 9.1.7 to 9.1.14 (all inclusive).
- 9.4 The Customer's rights under these Conditions are in addition to, and do not exclude or modify, the rights and conditions contained in sections 12 to 16 inclusive of the Supply of Goods and Services Act 1982, and sections 13 to 15 inclusive of the Sale of Goods Act 1979.
- 9.5 Where the Supplier is not the original equipment manufacturer ("**OEM**") of the Goods it hereby assigns the benefit of all and any OEM warranty(ies) granted by the OEM in respect of such Goods to the Customer, or, if such transfer and assignment is deemed ineffective, the Supplier shall take all such acts and execute all and any documents required (and shall use all reasonable endeavours to procure that the OEM does the same at no cost to the Customer unless otherwise agreed by the Customer (acting reasonably)) in order to assign the benefit of all and any OEM warranty(ies) in respect of the Goods to the Customer within ten (10) Business Days of a request to do so by the Customer. In the event that such OEM warranty(ies) are not capable of transfer or assignment, the Supplier shall notify to the Customer the same prior to supplying the Goods and the Customer shall have the right to reject the Goods and shall require the Supplier to procure the supply of such replacement goods which will permit the Customer to be a beneficiary of any warranty(ies) thereunder.
- 9.6 All Intellectual Property Rights attached to the Goods and / or the Services delivered and / or performed by the Supplier will belong to the Customer other than those Intellectual Property Rights which are owned by or licensed to the Supplier before the earlier of the Delivery Date and the date that the Supplier agreed to provide the Goods and / or perform the Services. Notwithstanding the foregoing, the

Supplier shall take all such actions and execute all such documents to vest title into the name of the Customer in respect of the Customer Intellectual Property Rights unless otherwise agreed.

- 9.7 The Parties acknowledge that the factual arrangement between them dictates the role of each Party in respect of the Data Protection Laws. Notwithstanding the foregoing, the Parties agree that where the Customer is a Controller and the Supplier is a Processor for the purposes of processing Personal Data pursuant to the Contract then such processing shall be undertaken pursuant to the Data Protection Terms. The Supplier shall, and shall ensure that its sub processors and each of the Supplier Personnel will, Process such Personal Data in accordance with the Data Protection Terms. The Supplier shall perform all its obligations under the Data Protection Terms at no cost to the Customer. This Condition 9.7 shall survive termination or expiry of the Contract for any reason and howsoever arising.

## **10 ASSIGNMENT AND SUBCONTRACTING**

- 10.1 The Supplier may not assign any of its rights or delegate any of its obligations under the Contract without the Customer's prior written consent.
- 10.2 If the Customer consents to the use of a Subcontractor to perform its obligations in respect of the Deliverables, the Supplier shall: (i) guarantee, and will remain liable for, the performance of all subcontracted obligations as primary obligor; (ii) indemnify the Customer against any and all Claims (as defined in Condition 13 (Indemnification) below), subject to the limitations in Condition 13 (Indemnification), incurred by the Customer or any third party and caused by the acts and omissions of the Subcontractors (and any person so engaged by such Subcontractor); and (iii) make all payments to its Subcontractors which arise out of the Purchase Order. If the Supplier fails to pay a Subcontractor in a timely fashion for the Supplier's obligations under the Contract, the Customer will have the right, but not the obligation, to pay to the Subcontractor the proper amounts due to the Supplier and offset any amount due to the Supplier by the amount paid to the Subcontractor. The Supplier will defend, indemnify and hold the Customer harmless for all damages and costs of any kind, without limitation, incurred by the Customer and caused by the Supplier's failure to pay a Subcontractor.
- 10.3 To the extent allowed by applicable law, no person who is not a party to (other than as stated in) the Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

## **11 TERMINATION**

- 11.1 The Customer may terminate the Contract, at any time and for any reason, by giving no fewer than ten (10) Business Days prior written notice to the Supplier. The Customer may further terminate the Contract at any time by giving written notice to the Supplier if:
- 11.1.1 the Supplier commits a material breach of the Contract and such breach is not remediable;
  - 11.1.2 the Supplier commits a material breach of the Contract which is not remedied within five Business Days (or such other reasonable time the Customer so decides) of receiving written notice of such breach; or
  - 11.1.3 any consent, licence or authorisation held by the Supplier is revoked or modified such that the Supplier is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled; or
  - 11.1.4 either Party is prevented from performing its obligations for a continuous period exceeding twenty Business Days due to a Force Majeure Event.
- 11.2 Upon receipt of notice of such termination, the Supplier will inform the Customer of the extent to which



it has completed performance as of the date of the notice and the Supplier will collect and deliver to the Customer whatever Goods or Services then exists. Other than where Conditions 11.3 and / or 11.4 apply, the Customer will pay to the Supplier for all Goods delivered and accepted as well as what the Customer deems (acting reasonably) to be a quantum meruit amount for all Services performed and accepted through the effective date of the termination provided that the Customer will not be obligated to pay any more than the payment that would have become due had the Supplier completed and the Customer had accepted the Goods and / or, as the case may be, the Services. The Customer will have no further payment obligation in connection with any termination.

- 11.3 The Customer may terminate the Contract at any time by giving notice in writing to the Supplier if the Supplier:
- 11.3.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 11.3.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Customer reasonably believes that to be the case;
  - 11.3.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 11.3.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
  - 11.3.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
  - 11.3.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
  - 11.3.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 11.3.8 has a resolution passed for its winding up;
  - 11.3.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - 11.3.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven calendar days of that procedure being commenced;
  - 11.3.11 has a freezing order made against it;
  - 11.3.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
  - 11.3.13 is subject to any events or circumstances analogous to those in sub-Conditions 11.3.1 to 11.3.12 (inclusive) in any jurisdiction.
- 11.4 Termination or expiry of the Contract shall not affect any accrued rights and liability of the Customer at any time up to the date of termination.

## 12 CONFIDENTIAL INFORMATION AND PUBLICITY

- 12.1 The Supplier shall keep confidential all Confidential Information of the Customer and of any GA Affiliate of the Customer and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 12.1.1 subject to Condition 12.4, any information which was in the public domain at the date of the Contract;
  - 12.1.2 subject to Condition 12.4, any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
  - 12.1.3 subject to Condition 12.4, any information which is independently developed by the Supplier without using information supplied by the Customer or by any GA Affiliate; or
  - 12.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 12.2 This clause shall remain in force for a period of five years after termination of the Contract.
- 12.3 Subject to Condition 12.4, the Supplier shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 12.4 To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use is in compliance with and does not conflict with the provisions of clause 9.7.

## 13 INDEMNIFICATION

- 13.1 For the purposes of this Condition 13, a “**Claim**” is any claim, demand, loss, damage, liability, cost and expense (including professional fees and costs as incurred) which are brought against, or incurred or suffered by, one Party (the “**Indemnified Party**”) for which the other Party (the “**Indemnifying Party**”) is be obligated to defend, indemnify and hold harmless the other Indemnified Party.
- 13.2 The Supplier shall defend, indemnify and hold the Customer harmless from and against any and all Claims arising out of or in connection with any (i) act or omission of the Supplier (including its Subcontractors) in the delivery and performance of the Deliverables; and / or (ii) any infringement of a Third Party Intellectual Property Rights or any other rights; and / or (iii) any breach of Condition 9.7.
- 13.3 An Indemnifying Party will indemnify and hold the Indemnified Party harmless from and against any and all Claims, as incurred, arising out of any negligent or wilful acts or omissions of the Indemnifying Party which results in personal injury (including death) or, subject to Condition 13, damage to tangible property (not including lost or damaged data).
- 13.4 The Indemnified Party will provide to the Indemnifying Party a prompt written notice of the Claim and, to the extent appropriate in the opinion of the Indemnified Party, permit the Indemnifying Party to control the defence, settlement, adjustment, or compromise of any Claim. The Indemnified Party may employ counsel at its own expense to assist it with respect to any Claim. The Indemnified Party will have no authority to settle any Claim on the Indemnifying Party’s behalf.
- 13.5 If a third party enjoins or interferes with the Customer’s use of any Goods or Services then, in addition to the Supplier’s obligations under Condition 13.2, the Supplier will use its best efforts to:

- 13.5.1 obtain any licenses necessary to permit the Customer to continue to use the Goods or Services;
  - 13.5.2 replace or modify the Goods or Services as necessary to permit the Customer to continue to use of the Goods or Services; or if Conditions 13.5.1 and 13.5.2 are not commercially reasonable, then
  - 13.5.3 promptly refund to the Customer the amount paid for any Goods or Services for which a third party enjoins or interferes with the Customer's use of Goods or Services.
- 13.6 Nothing in this Condition 13 shall limit any other remedy of the parties.

## **14 LIABILITY**

- 14.1 Notwithstanding anything else in the Contract, the Customer will not be liable to the Supplier with respect to the subject matter of the Contract under contract, tort (including negligence), strict liability or other legal or equitable theory for any amounts in excess of the amount the Customer set out on the Contract, the breach of which has given rise to such liability.
- 14.2 In no event will the Customer be liable to the Supplier for any incidental, indirect, special, consequential damages or loss of profits arising out of, or in connection with, the Contract, whether or not the Customer was advised of the possibility of such damage.
- 14.3 Nothing in the Contract limits either Party's liability for death or personal injury caused by negligence; fraud or fraudulent misrepresentation; and other losses which cannot be excluded or limited by law; and any losses caused by the wilful misconduct of a Party.
- 14.4 Subject to Condition 14.3, the Customer's total liability shall not exceed the price paid by the Customer to the Supplier pursuant to the terms of the Contract at the time the liability arises.

## **15 INSURANCE**

The Supplier shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom insuring the Services and any of the Customer's materials in the Supplier's possession against the usual risks, including accident, fire and theft, for their full replacement value until the risk in them passes to the Customer, and insuring against all other risks that a prudent Supplier should consider reasonable. On request, the Supplier shall supply reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Supplier shall on request assign to the Customer the benefit of such insurance.

## **16 COMPLIANCE WITH LAWS**

- 16.1 The Supplier represents and warrants that it will comply with all applicable local and national laws and regulations pertaining to its performance of its obligations under the Contract.
- 16.2 Without prejudice to Condition 16.1, the Supplier undertakes, warrants and represents that:
  - 16.2.1 it shall, and it shall ensure that its Supplier Personnel and any and all Subcontractors acting on behalf of the Supplier will, comply with all provisions of the Modern Slavery Act 2015 and, notwithstanding the foregoing, develop and provide to the Customer an anti-slavery policy, which is at least equivalent to the Customer's anti-slavery policy (which shall be provided to the Supplier on request);
  - 16.2.2 it shall implement a system of training for its employees and suppliers and Subcontractors to ensure compliance with its own anti-slavery policy;

- 16.2.3 it is not aware of any circumstance within its supply chain which could give rise to an investigation relating to an offence or prosecution under the Modern Slavery Act 2015;
- 16.2.4 it shall, and shall ensure that its Supplier Personnel and any and all Subcontractors acting on behalf of the Supplier will, not commit, cause, facilitate or contribute to the commission of any person (including the Customer) (a) an offence under sections 45 and 46 of the Criminal Finances Act 2017 (“CFA”); (b) a UK Tax Evasion Offence (as construed in accordance with the CFA); or (c) a Foreign Tax Evasion Offence (as construed in accordance with the CFA), in each case, in connection with the performance of the Contract; and
- 16.2.5 it shall, and shall ensure that its Supplier Personnel and any and all Subcontractors acting on behalf of the Supplier will, comply with all Bribery Laws and ensure that adequate procedures to prevent bribery are in place.

## **17 GENERAL**

- 17.1 Any notice to be given under the Contract will be in writing and addressed to the Party at the address stated in the Purchase Order. Notices will be deemed given and effective (i) if personally delivered, upon delivery; (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by electronic mail, at such time as the Party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail, within two Business Days of sending.
- 17.2 If there is a conflict between the terms contained in these Conditions and the terms of the Purchase Order, schedules, appendices or annexes to the Contract, the terms of these Conditions shall prevail to the extent of the conflict.
- 17.3 If any court of competent jurisdiction holds that any provision of the Contract is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of the Purchase Order will not be affected or impaired, and all remaining terms of the Contract remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the parties.
- 17.4 A party’s election not to insist on strict performance of any requirement of the Contract will not operate or be construed to waive any future omission or breach, or any other provision of the Contract.
- 17.5 The Customer shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier under the Contract or under any other contract which the Customer has with the Supplier. The Supplier shall pay all sums that it owes to the Customer under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 17.6 The Parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the Parties shall have, nor shall represent that they have, any authority to make any commitments on the other Party’s behalf.
- 17.7 The Supplier recognises that any breach or threatened breach of the Contract may cause the Customer irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Customer, the Supplier acknowledges and agrees that the Customer is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 17.8 No failure, delay or omission by the Customer in exercising any right, power or remedy provided by law

or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy. No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Customer shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Customer.

17.9 The Supplier shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

## **18 GOVERNING LAW**

18.1 The validity, interpretation, and performance of this Contract (and any matter arising out of the same) will subject to, and construed in accordance with, the laws of England and Wales.

18.2 The Parties irrevocably submit to the exclusive jurisdiction of the High Court of England in respect of any claim (whether contractual or non-contractual) arising out of or in connection with this Contract.

18.3 Notwithstanding the foregoing, either Party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such Party's Intellectual Property Rights or other proprietary rights.

## ANNEX - DATA PROTECTION TERMS

**1. DATA PROTECTION**

1.1 For the purposes of this Section 1:

- 1.1.1 “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with, a Party from time to time during the term of this Agreement;
- 1.1.2 the terms “**Controller**”, “**Data Subject**”, “**Personal Data**”, “**Personal Data Breach**”, “**Processing**” and “**Processor**” shall have the meanings given to them in the GDPR, and “**Process**” and “**Processed**” shall be construed accordingly; and
- 1.1.3 “**Data Protection Laws**” means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (each as amended, consolidated or re-enacted from time to time) which relates to data protection to which a Party is subject, including the Data Protection Act 2018, the UK GDPR and the GDPR (known as the “**GDPR**” as the context requires) ; and (b) any code of practice or guidance published by the ICO and/or European Data Protection Board from time to time (as applicable) ;
- 1.1.4 “**EU GDPR**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation);
- 1.1.5 “**UK GDPR**” means EU GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

1.2 In relation to any Personal Data that the Supplier Processes on the Customer's behalf pursuant to this Agreement, the Supplier shall:

- 1.2.1 use, access or otherwise Process the Personal Data only in accordance with the Customer's instructions;
- 1.2.2 take appropriate technical and organisational measures which are sufficient to comply with at least the obligations placed on the Customer by the requirements regarding the security of the Personal Data, as set out in the Data Protection Laws;
- 1.2.3 carry out and assist with a transfer risk assessment as reasonably required by Customer;
- 1.2.4 not transfer any Personal Data outside the European Economic Area without the Customer's prior written consent;
- 1.2.5 hereby enter into and agree to be bound by the Controller to Processor Standard Contractual Clauses (“**C2P SCCs**”), which are hereby incorporated by reference, on its own behalf and on behalf of each Supplier Affiliate and ensure that each complies with the obligations of a “data importer” under the C2P SCCs.

The C2P SCCs shall apply to the extent Personal Data is transferred to the Supplier or its Affiliate based in a country which is not deemed by the ICO to provide adequate level of data protection. The Supplier agrees to comply with Data Protection Laws and the provisions on onward transfers under the C2P SCCs in relation to any transfer of Personal Data from the Supplier to any Affiliate or sub-processor.

The Parties agree to amend or enter into new C2P SCCs without delay if requested by the Customer;

- 1.2.6 on the Customer's request, allow the Customer or the ICO to audit the Supplier's compliance with this Section 1;
- 1.2.7 take all reasonable steps to ensure the reliability and integrity of any of the Supplier's Personnel and Subcontractors and their employees, consultants, contractors and agents who will have access to any Personal Data (collectively, the "**Personnel**"), and ensure that each member of Personnel shall have entered into an appropriate contractual agreement that requires them to keep the Personal Data confidential;
- 1.2.8 not sub-contract any Processing of the Personal Data without the Customer's prior written consent;
- 1.2.9 comply with the obligations imposed upon a Processor under the Data Protection Laws, and use all reasonable endeavours to assist the Customer to comply with the requirements of the Data Protection Laws (including the obligations pursuant to Articles 32 to 36 of the GDPR (inclusive));
- 1.2.10 on termination or expiry of this Agreement, return to the Customer all copies of the Personal Data, except to the extent the Supplier is required to retain copies by any law of the UK or European Union (or the law of one of the Member States of the European Union) ("**Applicable EU Law**");
- 1.2.11 notify the Customer promptly (and in any event within forty-eight (48) hours) following the Supplier's receipt of any actual or purported request or notice or complaint from (or on behalf of) a Data Subject exercising their rights under the Data Protection Laws (a "**Data Subject Request**") or any correspondence or communication (whether written or verbal) from the UK Information Commissioner's Office ("**ICO Correspondence**"), and shall: (i) not disclose any Personal Data in response to any Data Subject Request or ICO Correspondence without the Customer's prior written consent; and (ii) provide the Customer with all reasonable co-operation and assistance required by the Customer in relation to any such Data Subject Request or ICO Correspondence;
- 1.2.12 notify to the Customer immediately (and in any event, within twenty-four (24) hours) using the address: [servicedesk@go-ahead.com](mailto:servicedesk@go-ahead.com) and any other such address as may be advised to the Supplier for this purpose throughout the Term, if the Supplier:
  - (a) becomes aware of any: (i) Personal Data Breach; (ii) Processing of the Personal Data in a manner not expressly permitted by this Section 1; or (iii) breach of the Data Protection Laws, whether committed by the Supplier, its Personnel or Subcontractors;
  - (b) is required by any UK or Applicable EU Law to act other than in accordance with any of the Customer's instructions given under Section 1.2.1, provided the Supplier is not prohibited by law from so notifying us; or
  - (c) considers, in its opinion (acting reasonably), that any of the Customer's instructions under Section 1.2.1 infringe any of the Data Protection Laws; and
- 1.2.13 certify each month that no law enforcement or government request for access to Personal Data has been received by the Supplier, its Affiliates or sub-processor, and if received, challenge such request and exhaust all available remedies where there is a ground to do so.