

## 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

### 1.1 Definitions

Airport	Liverpool John Lennon Airport
ATCSL	Air Traffic Control Services Limited (company number 08292814)
ATCSL Materials	has the meaning set out in clause 5.3.10
Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business
Commencement Date	has the meaning given in clause 2.2
Conditions	these terms and conditions as amended from time to time in accordance with clause 17.8
Contract	the contract between ATCSL and the Supplier for the supply of Goods and/or Services in accordance with these Conditions, the Order and any Goods Specification and/or Services Specification (if applicable)
Control	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly
Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Process and Processing	as defined in the Data Protection Legislation
Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018, and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data, and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party
Deliverables	all documents, products and 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 limit) drawings, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts)
Goods	the goods (or any part of them) set out in the Order, or as otherwise agreed between the parties in writing
Goods Specification	any specification for the Goods, including any related plans and drawings, that is agreed in writing by ATCSL and the Supplier

Intellectual Property Rights	patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world
Order	ATCSL's order for the supply of Goods and/or Services, as set out in the Supplier's quotation or ATCSL's purchase order form, as the case may be
Services	the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in any Service Specification and/or the Order Form, or as otherwise agreed between the parties in writing
Service Specification	the description or specification for Services agreed in writing by ATCSL and the Supplier
Software	any and all computer programs and computer software (of whatever type and in whatever form or media) installed on or supplied with Goods and/or Services by the Supplier and either necessary for its operation or otherwise referred to in the Order;
Supplier	the person or firm from whom ATCSL purchases the Goods and/or Services

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a party includes its successors and permitted assigns.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.5 Any words following the terms **including**, **include**, 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.

1.6 A reference to **writing** or **written** includes email.

**2. Basis of contract**

- 2.1 The Order constitutes an offer by ATCSL to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
  - 2.2.1 the Supplier issuing written acceptance of the Order; or
  - 2.2.2 any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (“**Commencement Date**”), and continue, in respect of Services, for the duration of the term as set out in the Order or otherwise agreed between the parties in writing.

- 2.3 These Conditions apply to the Contract 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.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

### **3. Supply of Goods**

- 3.1 The Supplier shall ensure that the Goods shall:
  - 3.1.1 correspond with their description and the Contract;
  - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by ATCSL, expressly or by implication, and in this respect ATCSL relies on the Supplier's skill and judgement;
  - 3.1.3 where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
  - 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling, delivery and use of the Goods.
- 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 the Contract in respect of the Goods.

### **4 Delivery of Goods**

- 4.1 The Supplier shall ensure that:
  - 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - 4.1.2 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.
- 4.2 The Supplier shall deliver the Goods:
  - 4.2.1 on the date specified in the Order or, if no such date is specified, then within the timeframe agreed between the parties;
  - 4.2.2 to ATCSL's premises or such other location as is set out in the Order or as instructed by ATCSL before delivery (“**Delivery Location**”); and
  - 4.2.3 during ATCSL's normal hours of business, or as otherwise instructed by ATCSL.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 The Supplier shall not deliver the Goods in instalments without ATCSL's prior written consent. Where it is agreed that the Goods are 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 ATCSL to the remedies set out in clause 6.1.
- 4.5 Risk in the Goods shall pass to ATCSL on completion of delivery. Title in the Goods shall pass to ATCSL on payment by ATCSL for the Goods.

- 4.6 The signature of any officer or employee of ATCSL given on any delivery note or similar documentation will be evidence only of the number of packages received. It is not evidence that the correct quantity has been delivered or that the Goods delivered are in good condition.
- 4.7 The Supplier shall comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Goods.

## **5 Supply of Services**

- 5.1 The Supplier shall from the Commencement Date and for the duration of the Contract supply the Services to ATCSL in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or that ATCSL notifies to the Supplier, and time is of the essence in relation to any of those performance dates.
- 5.3 In providing the Services, the Supplier shall:
  - 5.3.1 co-operate with ATCSL in all matters relating to the Services, and comply with all instructions of ATCSL;
  - 5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - 5.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract with no unnecessary or unreasonable disruption to ATCSL's business;
  - 5.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that ATCSL expressly or impliedly makes known to the Supplier;
  - 5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - 5.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to ATCSL, will be free from defects in workmanship, installation and design;
  - 5.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
  - 5.3.8 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;
  - 5.3.9 observe all health and safety rules and regulations and security requirements that apply at any of ATCSL's premises, and notify ATCSL as soon as it becomes aware of any health and safety hazards which arise in relation to the Services or which are otherwise observed by the Supplier;
  - 5.3.10 hold all materials, equipment and tools, drawings, specifications, records, documents and data supplied by ATCSL to the Supplier ("**ATCSL Materials**") in safe custody at its own risk, maintain ATCSL Materials in good condition until returned to ATCSL, and not dispose or use ATCSL Materials other than in accordance with ATCSL's written instructions or authorisation;
  - 5.3.11 not do or omit to do anything which may cause ATCSL to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that ATCSL may rely or act on the Services.
- 5.4 The Supplier shall prepare such reports and provide such information in relation to the Services as ATCSL may reasonably require.

5.5 The Supplier shall appoint, or at the written request of ATCSL replace without delay, a manager, who will have authority under the Contract to bind the Supplier on all matters relating to the Services.

## **6 ATCSL remedies**

6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, ATCSL shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

- 6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 6.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- 6.1.3 to recover from the Supplier any costs incurred by ATCSL in obtaining substitute goods and/or services from a third party;
- 6.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
- 6.1.5 to claim damages for any additional costs, loss or expenses incurred by ATCSL which are in any way attributable to the Supplier's failure to meet such dates.

6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, ATCSL shall have one or more of the following rights, whether or not it has accepted the Goods:

- 6.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 6.2.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- 6.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 6.2.5 to recover from the Supplier any expenditure incurred by ATCSL in obtaining substitute goods from a third party; and
- 6.2.6 to claim damages for any additional costs, loss or expenses incurred by ATCSL arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

6.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

6.4 ATCSL's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

## **7 Charges and payment**

7.1 The price for the Goods:

- 7.1.1 shall be the price set out in the Order, or if no price is quoted, the price agreed between the parties in writing; and
- 7.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by ATCSL.

7.2 The charges for the Services shall be set out in the Order, or if no price is quoted, the price agreed between the parties in writing, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by ATCSL, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 7.3 In respect of the Goods, the Supplier shall invoice ATCSL on or at any time after completion of delivery, and in respect of Services, the Supplier shall invoice ATCSL on completion of the Services, unless otherwise set out in the Order or agreed between the parties in writing. Each invoice shall include such supporting information required by ATCSL to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 7.4 In consideration of the supply of Goods and/or Services by the Supplier, ATCSL shall pay the invoiced amounts within 60 days of the date of the invoice to a bank account nominated in writing by the Supplier.
- 7.5 All amounts payable by ATCSL under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to ATCSL, ATCSL shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 7.6 If ATCSL fails to make a payment due to the Supplier under the Contract by the due date, then ATCSL shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.7 ATCSL may at any time, without notice to the Supplier, set off any liability of the Supplier to ATCSL against any liability of ATCSL to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by ATCSL of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## **8 Intellectual property rights and Software licence**

- 8.1 The Supplier grants to ATCSL, or shall procure the direct grant to ATCSL of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to:
- 8.1.1 copy and modify the Deliverables (excluding ATCSL Materials) for the purpose of receiving and using the Services and the Deliverables; and
- 8.1.2 use, transfer and otherwise exploit all pre-existing Intellectual Property Rights and Intellectual Property Rights created after the Commencement Date of the Supplier and any third parties which ATCSL may require in order to benefit from the Goods and/or Services.
- 8.2 The Supplier assigns (including by way of an assignment of future Intellectual Property Rights) to ATCSL, with full title guarantee and free from any third party rights, all bespoke Intellectual Property Rights (meaning Intellectual Property Rights developed in accordance with or as a result of the Contract by the Supplier (or a third party) for ATCSL) created in accordance with a Goods Specification and/or Services Specification. The Supplier shall ensure that its employees, contractors, consultants and agents waive all moral rights they might have in such bespoke Intellectual Property Rights. The Supplier shall execute, and shall procure that any employees, contractors, consultants and agents execute, such documents and do such things as ATCSL may consider reasonably necessary to give effect to this clause.
- 8.3 All ATCSL Materials are the exclusive property of ATCSL.
- 8.4 With respect to any Software required for the Goods and/or Services, the Supplier grants to ATCSL, or shall procure the direct grant to ATCSL of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use such Software with the relevant Goods and/or Services, and, in the event of ATCSL reselling the Goods and/or Services, the

Supplier authorises ATCSL to grant an equivalent licence to use the Software to any person purchasing the Goods and/or Services from ATCSL.

## **9 Liability and indemnity**

- 9.1 Nothing in the Contract shall limit or exclude either party's liability for:
- 9.1.1 death or personal injury caused by its negligence;
  - 9.1.2 fraud or fraudulent misrepresentation; or
  - 9.1.3 any indemnity given by a party set out in these Conditions;
  - 9.1.4 any other liability which cannot be limited or excluded by applicable law.
- 9.2 Subject to clause 9.1 and except as set out otherwise in these Conditions, neither party shall be liable to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 9.2.1 loss of profits;
  - 9.2.2 loss of sales or business;
  - 9.2.3 loss of agreements or contracts;
  - 9.2.4 loss of anticipated savings;
  - 9.2.5 loss of or damage to goodwill; or
  - 9.2.6 any indirect or consequential loss.
- 9.3 ATCSL's total liability to the Supplier whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the lower of:
- 9.3.1 £50,000;
  - 9.3.2 the price paid by ATCSL under the Order.
- 9.4 The Supplier shall indemnify ATCSL against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by ATCSL arising out of or in connection with:
- 9.4.1 any claim made against ATCSL for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding ATCSL Materials);
  - 9.4.2 any claim made against ATCSL by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and
  - 9.4.3 any claim made against ATCSL by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.
- 9.5 This clause 9 shall survive termination of the Contract.

## **10 Insurance**

- 10.1 During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company:
- 10.1.1 comprehensive general liability insurance including public liability and products liability insurance of not less than £10,000,000 for within the Airport terminal and £50,000,000

for within the airside security fence, or in either case such sum as is required by ATCSL's insurers such sum to be advised to the Supplier in writing from time to time, and in each case for any one claim or incident but in the aggregate with regard to product liability;

10.1.2 employers liability of not less than £10,000,000 for any one claim or incident;

10.1.3 professional indemnity of not less than £10,000,000 for any one claim or incident;

10.1.4 motor vehicle insurance of not less than £50,000,000 (or such sum as is required by ATCSL's insurers such sum to be advised to the Supplier in writing from time to time) if the Supplier is granted vehicular access to areas of the Airport controlled by Air Traffic Control or within the airside security fence, for any one occurrence;

10.1.5 any other insurance required by law.

10.2 The Supplier shall, on ATCSL's request, produce both the insurance certificate giving details of cover, and the receipt for the current year's premium in respect of each insurance.

## **11 Confidentiality**

11.1 Each party undertakes that it shall not at any time during the Contract and for a period of 5 years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.

11.2 Each party may disclose the other party's confidential information:

11.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 11; and

11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **12 Termination**

12.1 Without affecting any other right or remedy available to it, ATCSL may terminate the Contract:

12.1.1 with immediate effect by giving written notice to the Supplier if:

12.1.1.1 there is a change of Control of the Supplier; or

12.1.1.2 the Supplier's financial position deteriorates to such an extent that in ATCSL's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

12.1.1.3 the Supplier commits a breach of clauses 4.7 and/or 5.3.8,

12.1.2 for convenience by giving the Supplier 30 days' written notice.

12.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

12.2.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a reasonable period (depending on the breach) as determined by the other party and notified in writing to the defaulting party;

12.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order



of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

12.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

### **13 Consequences of termination**

13.1 On termination of the Contract, the Supplier shall:

13.1.1 immediately deliver to ATCSL all Deliverables whether or not then complete, and return all ATCSL Materials. If the Supplier fails to do so, then ATCSL may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;

13.1.2 provide such assistance to ATCSL as ATCSL may require so as to enable an efficient transition of service delivery to ATCSL or a replacement provider.

13.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

### **14 Force majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from wars, strikes (excluding strikes by a party's own workforce), uprisings, civil unrest, terrorism or threat of terrorism, boycotts, hurricanes, storms, earthquakes, flooding and the interruption or loss of the supply of any public or other service. If the period of delay or non-performance continues for 4 weeks, the party not affected may immediately terminate the Contract by giving written notice to the affected party.

### **15 TUPE**

15.1 For the purposes of this clause 15 the following words and phrases shall have the following meanings:

Employee Liabilities

all claims, actions, proceedings, orders, demands, complaints, investigations and any compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including (without limit):

- redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- unfair, wrongful or constructive dismissal compensation;
- compensation for discrimination;
- compensation for less favourable treatment of part time workers or fixed term employees;
- outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance

- contributions;
- employment claims whether in tort, contract, statute or otherwise;
- any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body, and of implementing any requirements which may arise from such investigation; and
- any such liabilities incurred as a result of ATCSL terminating or amending a Returning Employee's terms of employment following termination or expiry of the Contract

Employment Regulations     the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time

Returning Employees        the Supplier's employees who transfer to ATCSL or a replacement provider as a consequence of termination or expiry of the Contract

- 15.2 In the event that the Employment Regulations apply on termination or expiry of the Contract:
- 15.2.1 the Supplier shall indemnify ATCSL (and any replacement service provider) and keep ATCSL (and any replacement service provider) indemnified from and against all Employee Liabilities and claims, costs, expenses or liabilities, including without limitation all legal expenses and other professional fees (together with VAT thereon) whatsoever and howsoever arising incurred or suffered by ATCSL (and any replacement service provider) as a result, directly or indirectly, of any claim relating to any Returning Employee in respect of, or in any way relating to, any period prior to the expiry or termination of the Contract;
- 15.2.2 the Supplier shall comply with its obligations under Regulation 13 of the Employment Regulations;
- 15.2.3 the Supplier shall promptly respond to all reasonable requests for the provision of information in respect of any of the Returning Employees in accordance with Regulation 11 of the Employment Regulations; and
- 15.2.4 all salaries and emoluments, including without limitation tax and national insurance payments and contributions, and contributions to retirement benefit schemes and pensions, shall be borne by the Supplier up to the date of termination or expiry of the Contract.

**16 Data protection**

- 16.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 16 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 16.2 The parties acknowledge that where the Supplier Processes Personal Data on behalf of ATCSL, ATCSL is the Controller and the Supplier is the Processor.
- 16.3 Without prejudice to the generality of clause 16.1, the Supplier shall, in relation to any Personal Data Processed in connection with the performance by the Supplier of its obligations under the Contract:
- 16.3.1 Process that Personal Data only on the documented written instructions of ATCSL unless the Supplier is required by applicable laws to otherwise Process that Personal

Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for Processing Personal Data, the Supplier shall promptly notify ATCSL of this before performing the Processing required by the applicable laws unless those applicable laws prohibit the Supplier from so notifying ATCSL;

- 16.3.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by ATCSL, to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - 16.3.3 ensure that all personnel who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential; and
  - 16.3.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of ATCSL has been obtained and the following conditions are fulfilled:
    - 16.3.4.1 ATCSL or the Supplier has provided appropriate safeguards in relation to the transfer;
    - 16.3.4.2 the Data Subject has enforceable rights and effective legal remedies;
    - 16.3.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - 16.3.4.4 the Supplier complies with reasonable instructions notified to it in advance by ATCSL with respect to the Processing of the Personal Data;
  - 16.3.5 assist ATCSL in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 16.3.6 notify ATCSL without undue delay on becoming aware of a Personal Data breach;
  - 16.3.7 at the written direction of ATCSL, delete or return Personal Data and copies thereof to ATCSL on termination of the Contract unless required by applicable law to store the Personal Data; and
  - 16.3.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 16, and allow for audits by ATCSL or ATCSL's designated auditor and immediately inform ATCSL if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 16.4 ATCSL does not consent to the Supplier appointing any third party processor of Personal Data under the Contract.

## **17 General**

- 17.1 ATCSL may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract. The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of ATCSL.
- 17.2 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or recorded delivery post at the Administration Office, Liverpool John Lennon Airport, Speke Hall Avenue, Speke, Liverpool

L24 1YD for ATCSL and its registered office address for the Supplier (if a company) or its principal place of business (in any other case). A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt; if sent by recorded post at 9.00 am on the second Business Day after posting. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

- 17.3 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.4 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 17.6 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 17.7 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 17.8 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 17.9 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.