



**Contract for the Provision**

**of**

**[Name of Contracted Services]**

**Name of Contractor : [Name of supplier]**

**Address of Contractor : [Address of supplier]**

**Date of Contract : [Date awarded]**

## CONDITIONS OF CONTRACT

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## CONDITIONS OF CONTRACT

### 1. DEFINITIONS

In these conditions:

- 1.1 "Background IPR" means any Contractor (i) patent(s), copyright(s), trademark(s), service mark(s), trade secret(s) and/or proprietary right(s); and (ii) methods and systems it uses to provide the Services, including without limitation, sampling, research, and methods of process or questioning, research products, sample or panel database(s), systems of analysis, questions or questionnaire forms (unless provided by Transport Focus), and completed questionnaires, as well as all computer software (including source code) or programs, models or systems, and analysis, used in Contractor's performance of the Services, whether or not such methodologies or software are patentable or copyrightable, and including for the avoidance of doubt any and all right, title and interest in any improvements, enhancements and adaptations of the Background IPR.
- 1.2 "Transport Focus" means the Passenger Council, established by Section 20 of Railways Act 2005 and subsequent amendments. Transport Focus is the operating name of the Passengers Council, which remains its legal name.
- 1.3 "Confidential Information" means all information or materials, whether technical or business, which is disclosed or provided by the party disclosing the information ("Disclosing Party") to the party receiving such information ("Receiving Party") during the term of this Agreement, which is of a confidential or proprietary nature, or designated as confidential by the other party, or which a reasonable person would believe should be treated as such, including but not limited to business plans, property, ways of doing business, business results or prospects, the terms and negotiations of the Agreement, proprietary software, and business records.
- 1.4 "The Contract" means the agreement concluded between Transport Focus and the Contractor including all these conditions, specifications, plans, drawings and other documents which are relevant to the Contract. In the case of any discrepancy among these documents these conditions shall prevail.
- 1.5 "The Contractor" means [name of supplier], of [address of supplier], who by the contract undertakes to render such Services for Transport Focus as is provided by the Contract.
- 1.6 "The Contract Manager" means [name of Transport Focus contract manager] or other person notified to the Contractor by Transport Focus.
- 1.7 "The Contract Price" as described in the Schedule of Requirement means the price exclusive of Value Added Tax, payable to the Contractor by Transport Focus under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract as set out in Schedule 4.

- 1.8 "Data Protection Legislation" means (i) the UK General Data Protection Regulations; (ii) the Data Protection Act 2018; (iii) all applicable Law about processing personal data and privacy and guidance issued by the Information Commissioner and other regulatory authority; and (iv) (to the extent that it applies) the EU General Data Protection Regulations (and in the event of conflict, the UK General Data Protection Regulations shall apply)
- 1.9 "Data protection impact assessment", "Controller", "Processor", "Data Subject", "Personal data", "Personal Data Breach", "Data Protection Officer" take the meaning give in the UK General Data Protection Regulations.
- 1.10 "Law" includes any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply;
- 1.11 "Loss of Property" includes damage to property, loss of profits and loss of use.
- 1.12 "Month" means calendar month unless otherwise defined.
- 1.13 "Personal Injury" includes sickness and death.
- 1.14 "Representatives" means, with respect to any Party, its affiliates and its and their officers, employees, legal advisers and accountants. We would obviously seek to ensure they maintained the confidentiality of that information and would be liable to Transport Focus to the extent they caused a breach of clause 21.
- 1.15 "Servant of Transport Focus or the Crown" includes persons (and the personal representative of any person) who are Servants of Transport Focus or the Crown when any relevant Personal Injury or Loss of Property occurred, even if he has ceased to be such before any payment in respect of the Personal Injury or Loss of Property is made, and, where they have ceased to be such by reason of their deaths, include their personal representative.
- 1.16 "The Services" means all Services which the Contractor is required to carry out under the Contract.
- 1.17 "The Specification" means the description and specification as detailed in the Schedule of Requirements at Schedule 1 or will be identified as the specification document or service provision requirements.
- 1.18 "Sub-Contractor" means any person, firm or company under the Contract to the Contractor to perform work or provide professional services and/or supply goods and

includes any other person or persons taken as a partner or director by such person, firm or company during the currency of the Contract and the surviving member or members of any such firm or company.

- 1.19 "Government Provision" means any Statutory Provision, warrant, order, scheme, regulations or conditions of service applicable to a Servant of Transport Focus providing for continuance of pay or the payment of sick pay, or any allowance to or for the benefit of Servants of Transport Focus, or their families or dependants, during or in respect of sickness, injury or disablement suffered by such Servants.
- 1.20 The headings of these Conditions shall not affect the interpretation thereof.
- 1.21 Any notice or other communication whatsoever which Transport Focus is required or authorised by the Contract to give or make to the Contractor shall, without prejudice to any other method of giving or making it, be sufficiently given or made if it is sent by post in a prepaid letter addressed to the Contractor by name at the last known place of abode or business of the Contractor and if the letter is not returned through the post undelivered that notice or communication shall be deemed for the purposes of the Contract to have been given or made at the time at which the letter would in the ordinary course of post be delivered.
- 1.22 The singular includes the plural and vice versa and will be neutral to include there/they wherever applicable.
- 1.23 Reference to any enactment, order, regulation or other similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.
- 1.24 Transport Focus and the Contractor acknowledge that for the purposes of the Data Protection Legislation Transport Focus is the Controller and the Contractor is the Processor.

## **2. LAW**

- 2.1 The Contract shall be considered as a contract made in England and Wales and subject to the law of England and Wales.

## **3. SERVICE**

- 3.1 Subject to the provisions of the Contract the Contractor agrees to provide the Services set out in the Schedule of requirement and in the Contractor's tender in consideration of the price paid as per clause 9.
- 3.2 The details of the requirements for Transport Focus will be laid out in the document which is referenced specification or service provision and will detail the actual

requirements, it may include additional information which will be provided by Transport Focus during the development of requirement process until this is finally agreed.

#### **4. DURATION OF CONTRACT**

- 4.1 The services shall be provided during the period [start date] to [end date] subject to Transport Focus's rights of earlier termination under the Conditions of this Contract, or subject to clause 39.

#### **5. POSSIBLE EXTENSION OF CONTRACT PERIOD**

- 5.1 Subject to satisfactory performance by the Contractor during the Contract Period, Transport Focus may wish to extend the Contract for a further period of twelve months. Transport Focus may approach the Contractor if it wishes to do so before the end of the Contract Period. The Conditions in the Contract apply throughout any such extended period.

#### **6. VARIATION OF CONTRACT**

- 6.1 Any variation of any provision of this Contract must be effected in writing issued by Transport Focus, and no purported variation by any other means shall bind Transport Focus.

#### **7. VARIATION OF REQUIREMENT**

- 7.1 Transport Focus reserves the right to vary the requirements of the Contract, as detailed in the Specification, should this at any time become necessary. In the event of any variation of the contractual requirement, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between Transport Focus and the Contractor.

#### **8. CONTRACTOR'S ORGANISATION**

- 8.1 All personnel deployed on the work relating to the Contract must have appropriate qualifications and competence and in all respects be acceptable to Transport Focus. Any additional personnel to be used with be made known to Transport Focus in advance as agreed.
- 8.2 The key personnel offered by the Contractor and accepted by Transport Focus to work on the Contract are shown in Schedule 2 to the contract (the “**Key Personnel**”).
- 8.3 The Contractor shall take all reasonable steps to avoid changes of Key Personnel assigned to and accepted for the work under the Contract except whenever changes are unavoidable or of a temporary nature caused by sickness etc. The Contractor shall give at least one month's notice to Transport Focus of proposals to change and Condition 8.1 and 8.2 shall apply to the replacement personnel.

- 8.4 The Contractor shall take the steps reasonably required by Transport Focus to prevent unauthorised persons being admitted to Transport Focus's premises. If Transport Focus gives the Contractor notice that any person is not to be admitted to or is to be removed from its premises or is not to become involved in (or removed from) the Services, the Contractor shall take all reasonable steps to comply with such notice.
- 8.5 The decision of Transport Focus as to whether any person is to be admitted to or is to be removed from involvement in the Services or as to the designation or approval of Key Personnel and as to whether the Contractor has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.
- 8.6 The Contractor shall bear the cost of any notice, instruction or decision of Transport Focus under this Condition.

## **9. PRICE**

- 9.1 The Contract Price described in the Schedule of Requirements is set out in Schedule 4.

## **10. PAYMENT**

- 10.1 Unless otherwise stated in this Contract payments shall be claimed as follows: Payment shall be made within 30 days of acceptance of invoices for work completed. If Transport Focus validly disputes any part of an invoice, it shall (i) pay the undisputed amount no later than the due date; and (ii) notify the Contractor within 14 days of its receipt of such notice, giving full details as to the nature of such dispute.

## **11. VALUE ADDED TAX**

- 11.1 Transport Focus shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the supply of goods and services provided in accordance with the Contract.
- 11.2 Any invoice or other request for payment of moneys due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Finance Act 1972.
- 11.3 The Contractor shall, if so requested by Transport Focus, furnish such information as may reasonably be required by Transport Focus as to the amount of Value Added Tax chargeable on the value of goods and services supplied in accordance with the Contract and payable by Transport Focus to the Contractor in addition to the Contract Price. Any overpayment by Transport Focus to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of (Condition 13 - Recovery of Sums Due).



- 11.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

## **12. RECOVERY OF SUMS DUE**

- 12.1 Whenever under the Contract any sums of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract or under any other Contract with Transport Focus or with any Department or office of Her Majesty's Government.

## **13. PAYMENT OF SUB-CONTRACTORS**

- 13.1 Where the Contractor enters a sub-contract with a supplier or contractor for the purpose of performing the contract, he shall cause a term to be included in such Sub-contract which requires payment to be made to the supplier or contractor within 30 days from receipt of the valid invoice as defined by the sub-contract requirements.

## **14. INDEMNITIES & INSURANCE**

- 14.1 The Contractor shall effect and maintain insurance necessary to cover the Contractor for the risks faced under these Conditions with regard to fire damage, injury to persons and loss of or damage to property, which insurance may be limited in respect of any one claim (but shall not be limited in any other respect), provided that any such limit made under this Condition shall in any event be at least £5m.
- 14.2 The Contractor shall, whenever required by Transport Focus, produce to Transport Focus certificates signed on behalf of the Contractor's insurers stating that insurance complying with the requirements set out in Condition 14.1 is in force and the period for which it has been taken out.
- 14.3 If, for whatever reason, the Contractor fails to comply with clauses 14.1, or without the approval of Transport Focus obtains a different policy of insurance from that which he notified to Transport Focus at the time when he submitted his tender, Transport Focus may make alternative arrangements necessary to protect his interests and recover loss and damages from the Contractor.
- 14.4 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 14.5 The Contractor shall indemnify and keep indemnified Transport Focus against all actions, claims, demands, costs and expenses reasonably incurred by or made against Transport Focus in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or

wrongful act of the Contractor, his servants or agents to an amount equal to the Contract Sum. Nothing in this indemnity clause shall act to limit or otherwise affect Transport Focus's right to pursue other contractual remedies and the Parties note and acknowledge both the aggregate limit of liability in clause 14.6 and also the categories of claims which may not be limited or otherwise excluded by clause 14.7 herein.

Transport Focus shall: (i) notify the Contractor in writing of any claim ("**Claim**") against it in respect of which it wishes to rely on an indemnity (ii) allow the Contractor, at its own cost, to conduct all negotiations and proceedings and to settle the Claim, always provided that the Contractor shall obtain Transport Focus' prior approval of any settlement terms, such approval not to be unreasonably withheld; (iii) provide the Contractor with such reasonable assistance regarding the Claim as is required by the Contractor, subject to reimbursement by the Contractor of Transport Focus costs so incurred; and (iv) not, without prior consultation with the Contractor, make any admission relating to the Claim or attempt to settle it, provided that the Contractor considers and defends any Claim diligently, using competent counsel and in such a way as not to bring the reputation of Transport Focus into disrepute.

- 14.6 Subject to clause 14.7 the Contractor's entire liability to Transport Focus arising out of or in connection with this Agreement whether arising from contract, tort, negligence or otherwise shall be limited in aggregate to an amount equal to the Contract payments received by the Contractor from Transport Focus for the portion of the Service in question. The Contractor shall not be liable to Transport Focus for any (i) special, indirect or consequential loss or damage; (ii) pure economic loss, costs damages or charges; (iii) loss of profits; (iv) loss of revenue; (v) loss of contracts; and (vi) loss of business and/or goodwill, howsoever it arises out of or in connection with this Agreement.
- 14.7 Nothing in this Agreement excludes or limits the liability of the Contractor in respect of; (i) death or personal injury caused by its negligence (including negligence of its employees, agents or contractors); (ii) fraud and/or fraudulent misrepresentation; (iii) breach of data Protection Legislation, or (iv) liability which may not otherwise be limited or excluded under applicable law

## **15. ACCEPTANCE**

- 15.1 Transport Focus will inform the Contractor that the good/s or service/s have been formally accepted by Transport Focus. This may be done in writing, verbally or if Transport Focus does not inform the Contractor in a reasonable time period that there are any issues with good/s or service/s they will be deemed to have been accepted.

## **16. UNSATISFACTORY PERFORMANCE**

- 16.1 Should the Services or any portion thereof not be completed to the reasonable satisfaction of Transport Focus, or if in the reasonable opinion of Transport Focus progress made in the execution of the Service is unsatisfactory and unlikely to lead to

such completion, Transport Focus may without prejudice to any other remedies by at least 30 days' notice in writing to the Contractor determine the Contract either as respects the Services which have not been carried out in accordance with the Contract at the time of such determination or as respects all the Services to which the Contract relates other than those carried out in accordance with the Contract before that time, hereinafter called a relevant determination, provided that in such case Transport Focus pays that portion of the fees (as set out in the Contract) as represents all work carried out, expenses incurred and financial and other non-cancellable commitments entered into by the Contractor as at the date of determination of the relevant Service, such portion to be calculated by the Contractor at its sole discretion.

- 16.2 Where Transport Focus has determined the Contract under Condition 16.1 hereof and without prejudice as aforesaid Transport Focus may obtain all or any of the Services as respects which the Contract is so determined by arranging for those services to be carried out by alternative means.
- 16.3 In the event of the Contractor failing to carry out any Services in accordance with these Conditions, Transport Focus shall (without prejudice to any other remedy available) be entitled to deduct from any account rendered by the Contractor in respect of unsatisfactory Services such sum as Transport Focus (acting reasonably) considers appropriate and shall consult with the Contractor when determining such sum.
- 16.4 Transport Focus will inform the Contractor of unsatisfactory performance against the specification as soon as they issue/s have been identified by Transport Focus within a reasonable time period, which has given Transport Focus reasonable opportunity to identify the unsatisfactory performance.
- 16.5 Transport Focus will inform the Contractor in writing that performance was not as per the specification or stated requirement that Transport Focus laid out in the specification.

## **17. TERMINATION**

- 17.1 Transport Focus shall in addition to his powers under any other of these Conditions have power to terminate the Contract at any time by giving to the Contractor written notice, to expire at the end three months and upon the expiration of the notice the Contract shall be determined without prejudice to the rights of the parties accrued to the date of determination, but subject to the operation of the following provisions of this Condition.
- 17.2 In the event of such notice being given Transport Focus shall at any time before the expiration of the notice be entitled to exercise and shall as soon as be reasonably practicable within that period exercise such of the following powers as he considers expedient:

- to direct the Contractor, where work has not been commenced, to refrain from commencing work.
- to direct the Contractor to complete in accordance with the Contract all or any of the Services, or any part of component thereof, which shall be paid for at a fair and reasonable price.

17.3 Delayed performance, as opposed to events that materially alter contractual obligations generally do not amount to the frustration of a contract. If the delay is particularly long or has a serious effect on contractual obligations (such as missing an event), the impact on the obligations might be sufficient to amount to frustration.

17.4 Where a breach of contract has occurred due to unsatisfactory performance Transport Focus will seek the appropriate damages to cover any costs, which were not reasonably foreseeable at the point the contract was created.

17.5 Transport Focus will also include in the specification or the provision of requirements a damages clause, which lays out, if known at the time the potential losses to Transport Focus that could be caused by breach of contract due to the Contractor's unsatisfactory performance.

## **18. TERMINATION ON CHANGE OF CONTROL OR BANKRUPTCY**

18.1 Transport Focus may terminate the Contract by written notice having immediate effect if:

- (i) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract, or
- (ii) where the Contractor is an individual or a firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or
- (iii) where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

18.2 Transport Focus may only exercise its right under Condition 18.1(i) within 6 months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify Transport Focus immediately when any change of control occurs.

## **19. INTELLECTUAL PROPERTY RIGHTS**

- 19.1 The Contractor shall at all times retain sole and exclusive ownership rights in all the Background IPR. For the avoidance of doubt (and notwithstanding any other provision set out in this Agreement), the Contractor shall own all right, title and interest in any improvements, enhancements and adaptations of the Background IPR. The Contractor hereby grants to Transport Focus a non-exclusive right and licence to use and in connection with such use, to copy and distribute any Background IPR (as may be included in any Deliverables). Transport Focus may not reverse engineer any of Background IPR in any manner, nor may Transport Focus modify or reuse any Background IPR in any manner not specifically set out in this Agreement or the Contract. Transport Focus may not sub-licence any rights to use the Background IPR for or to any third party.

Subject to clause 19.1, the rights of third parties and to any rights of the Contractor and Transport Focus arising otherwise than by virtue of the Contract, all rights in the results of work undertaken by or on behalf of the Contractor for the purposes of the Contract, including any data, reports, servicing schedules, drawings, specifications, designs, inventions or other material produced or acquired in the course of such work and copyright therein shall vest in and be the property of Transport Focus, who reserves the right to determine whether the result of the work shall be published and, if so, on what conditions; and the Contractor shall ensure where necessary that he secures the right to effect such vesting.

## **20. PATENTS**

- 20.1 All royalties, licence fees or similar expenses for the supply or use of any invention, process, drawing, model, plan or information in connection with the Contract shall be deemed to have been included in the Contract Price. The Contractor shall indemnify Transport Focus from and against all claims and proceedings, which may be made or brought against Transport Focus, and any damages, cost and expenses incurred by Transport Focus in respect of such supply or use.

## **21. OFFICIAL SECRETS ACTS AND CONFIDENTIALITY**

- 21.1 The Contractor's attention is drawn to the provisions of the Official Secrets Acts, 1911 to 1989. The Contractor shall take all reasonable steps by display of notices or by other appropriate means to ensure that all persons employed on any work in connection with the Contract have notice that these statutory provisions apply to them and will continue so to apply after the completion or earlier determination of the Contract.

The Receiving Party will not, at any time during this Agreement and for a period of two years after its termination, disclose or permit a disclosure to a third party of the Disclosing Party's Confidential Information without the prior written consent of

Disclosing Party and will use Confidential Information only in connection with performance of the Agreement.

Each party may disclose the other party's Confidential Information to its Representatives who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each party shall ensure that its Representatives to whom it discloses the other party's Confidential Information comply with this clause, and as may be required by law, court order or any governmental or regulatory authority.

Unless the Contractor has provided its prior written approval, Transport Focus shall maintain the confidentiality of all Deliverables provided by the Contractor to Transport Focus pursuant to this Agreement. In the event Transport Focus proposes to use information from a Deliverable in connection with any advertising or promotional copy, the Contractor shall have the right to review and approve such advertising material or promotional copy to ensure that the claims made in such materials are adequately supported by the data obtained in connection with such Deliverable. Transport Focus may not refer to the Contractor in any marketing and/or publicity materials released by Transport Focus without the Contractor's prior written consent.

Transport Focus shall not without the prior written approval of the Contractor, use any of the substantive data, information or reports collected or derived from the Services whilst identifying the Contractor as the source of such data, information or reports. Transport Focus shall not use any of the Deliverables; (i) for the purpose of supporting litigation that exists or is contemplated by Transport Focus at the time it engages the Contractor for the pertinent Services, (ii) for supporting comparative advertising claims, (iii) for resale or syndication, (iv) for distribution to any media outlet in support of external public relations efforts, including news articles, interviews, press releases and events, (v) in any misleading or illegal manner, or (vi) in a manner which would adversely impact upon the reputation or goodwill of the Contractor.

The provisions of this clause shall survive any termination or expiration of this Agreement.

On the Disclosing Party's request, the Receiving Party will return promptly any Confidential Information and delete it from electronic storage, and delete or destroy all extracts or analyses that reflect any Confidential Information except as it may be required for archival or compliance purposes,

- 21.2 The Contractor shall not remove from Transport Focus's premises any classified or privacy marked material without Transport Focus's express agreement. The Contractor must keep any such material so removed under conditions approved by Transport Focus for the housing of such classified or privacy marked material.
- 21.3 A basic guide to the Official Secrets Act 1989 is available on request from Transport Focus.

## **22. PROVISION OF EQUIPMENT**

- 22.1 Any equipment provided by Transport Focus for the purpose of the Contract shall remain the property of Transport Focus and shall only be used for the purpose of carrying out this Contract; to be returned promptly to Transport Focus on expiry or termination of the Contract. The Contractor will reimburse Transport Focus for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the actions of the employee or agent of the Contractor. Equipment supplied by Transport Focus shall be deemed to be in good condition when received by or on behalf of the Contractor, unless Transport Focus is notified otherwise in writing within seven days.

## **23. OCCUPATION OF TRANSPORT FOCUS'S PREMISES**

- 23.1 Any land or premises (including temporary buildings) made available to the Contractor by Transport Focus in connection with the Contract shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purposes of performing the Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion or determination of the Contract. Any utilities required by the Contractor shall be subject to the charges set out elsewhere in the Contract.

## **24. TRANSFER, SUB-LETTING AND SUBCONTRACTING**

- 24.1 The Contractor shall not give, bargain, sell, assign, sub-let, sub-contract or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof without the previous consent in writing of Transport Focus.

## **25. NOVATION**

- 25.1 Neither party shall, without the prior written consent of the other (not to be unreasonably withheld or delayed) assign, novate or transfer, all or any of its rights or obligations under this Agreement, save that either party may assign, novate or transfer to any of its respective affiliates, or successor in business, provided that such affiliate or successor agrees in writing to be bound by all terms and conditions of this Agreement.
- 25.2 Notwithstanding the provisions of Clause 25.1 above, Transport Focus acknowledges and agrees that the Contractor may subcontract one or more portions of the execution of the Services to be performed hereunder, to its affiliates or to a third party or third parties, without prior advance notice to, or consent from, Transport Focus. The Contractor shall use all reasonable efforts to ensure that the quality of the Services and Deliverables supplied by any sub-contractor are substantially equal to those the Contractor would normally provide or supply and will otherwise materially conform to



the terms of this Agreement. The Contractor shall be responsible for the performances of such Services and solely responsible for payments due to such third party.

- 25.3 If the Contractor is in the process of going through a merger or being acquired by another organisation or during the contract is merging or get acquired by another organisation, who is not mentioned in this contract then Transport Focus will reserve the right to terminate this contract with 30 days written notice.

## **26. CORRUPT GIFTS, HOSPITALITY AND PAYMENTS OF COMMISSION**

26.1 The Contractor shall not:

- (i) Offer to give or agree to any person in the service of Transport Focus or the Crown any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract for Transport Focus or the Crown or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for Transport Focus or the Crown;
- (ii) Enter into this or any other contract with Transport Focus or any Government Department in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the representative of Transport Focus.
- (iii) Offer hospitality to a person in the service of Transport Focus or the crown as an inducement or reward for doing or forbearing any contract awarded by Transport Focus

26.2 Any breach by the Contractor of the condition contained in Condition 26.1 or commission of an offence by the Contractor under the Prevention of Corruption Acts 1889 to 1910 in relation to this or any other contract for Transport Focus or the Crown shall entitle Transport Focus to determine the Contract and recover from the Contractor the amount of any loss resulting from such determination and/or to recover from the Contractor the amount of value of any such gift, consideration, or commission.

26.3 In Condition 26.2, references to the Contractor include anyone employed by him or acting on his behalf (whether with or without his knowledge).

26.4 Where the Contract has been determined under Condition 26.2 the powers given by Condition 15 - Unsatisfactory Performance shall apply as if there has been a failure in performance.

26.5 In any dispute, difference or question arising in respect of:

- (i) The interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under Condition 26.2 in respect of any loss resulting from such determination of the Contract); or
- (ii) The right of Transport Focus to determine the Contract; or



(iii) The amount of value of any such gift, consideration, or commission.

The decision of Transport Focus shall be final and conclusive.

## **27. DIVERSITY**

- 27.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equal Opportunity Act 2010 or any statutory modification or re-enactment thereof relating to discrimination in employment.
- 27.2 The Contractor will also adhere to the requirements of Transport Focus's diversity standards and expectations for the areas that the contractor will be performing activities for Transport Focus
- 27.3 The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

## **28. CORPORATE SOCIAL RESPONSIBILITY**

- 28.1 Transport Focus is committed to supporting the Government's initiative on the environment. The Contractor must give due regard to environmental considerations throughout the carrying out of the Contract, including the use of materials that are or can be recycled and materials that are proven to be environmentally safe.
- 28.2 The Contractor will incorporate the following areas into their CSR policies or ensure they have adequate policies to cover these areas:
- The development of robust CSR policies and ethical codes
  - Location in relation to the buyer
  - Evidence of responsible and ethical labour policies and practices
  - Evidence of, and commitment to, conformance to relevant legislation and regulations
  - Compliance with International Labour Organisation standards
  - Evidence of ethical trading policies and practices
  - Compliance with Fair Trade standards, or membership of the Ethical Trading Initiative
  - Commitment to transparency and improvement, in collaboration with the buyer

## **29. DISPUTE RESOLUTION**

- 29.1 All disputes' differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of Transport Focus is under the Contract to be final and conclusive and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall follow the following procedures:

Negotiation between Transport Focus and the Contractor, if the parties cannot come to a reasonable agreement without 30 days of the dispute occurring then the process will move to the next stage of Mediation, a mediator which is mutually acceptable to both parties will be appointed (arrangements will be made by Transport Focus) and the parties will enter into the mediation process. If the mediation process does not have a reasonable agreement for the parties, then the parties will move to the arbitration process. The arbitration of two persons, one to be appointed by Transport Focus and one to be appointed by the Contractor or their umpire, in accordance with the provisions of the Arbitration Act 1979 or any statutory modification or re-enactment thereof for the time being enforced.

### **30. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 30.1 A person who is not a party to this Contract shall have no rights under the Contracts (Rights of third Parties) Act 1999 to enforce any term of this Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise then pursuant to that Act.

### **31. CONTRACTOR'S PROPERTY**

- 31.1 All property of the Contractor while at the Premises shall be at the risk of the Contractor and Transport Focus shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby except where any such loss or damage was caused or contributed to by any act, neglect or default of any Servant of Transport Focus or the Crown at the Premises acting in the course of his employment. Transport Focus shall accept liability to the extent to which such loss or damage is so caused or contributed to as aforesaid.

### **32. DISCLOSURE OF INFORMATION**

- 32.1 The Contractor shall take every precaution to ensure that information about the Contract, or arising from or connected with the Contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. No information regarding the Services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Contractor except with prior written permission of Transport Focus to whom any press or other enquiry or any such matter should be referred.
- 32.2 The Contractor shall not communicate with representatives of the general or technical press, radio, television or other communications media unless specifically granted permission to do so in writing by Transport Focus.

### **33. DATA PROTECTION**

- 33.1 The Contractor is authorised to process Personal Data as set out in Schedule 5.

- 33.2 The Contractor shall provide all reasonable assistance to Transport Focus in the preparation of any data protection Impact Assessment prior to commencing any processing.
- 33.3 In relation to any Personal Data processed in connection with the Contract the Contractor shall:
- (i) process that Personal Data in accordance with Schedule 5, unless the Contractor is required to do otherwise by law.
  - (ii) ensure that it has in place appropriate measure in place to protect against unauthorised access to Personal Data or loss of Personal Data
  - (iii) ensure that their staff do not process that Personal Data except in accordance with the Contract.
  - (iv) ensure they do not transfer Personal Data outside the UK or the European Economic Area unless they have prior written consent from Transport Focus
  - (v) delete or return Personal data to Transport Focus on termination of the Contract unless the Contractor is required by law to retain the Personal Data
- 33.4 The Contractor shall notify Transport Focus immediately if it:
- (i) receives a request to their Personal data from, or on behalf of, a Data Subject
  - (ii) receives a request to rectify, block or erase any Personal Data
  - (iii) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract.
  - (iv) becomes aware of unauthorised access to Personal Data or the loss of Personal Data
- 33.5 The Contractor shall provide Transport Focus with full assistance in relation to obligations under the Data Protection Legislation and any complaint or request made under clause 33.4 and insofar as possible within the timescales reasonably required by Transport Focus.

#### **34. USE OF DOCUMENTS, INFORMATION ETC**

- 34.1 Except with the consent in writing of Transport Focus, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far only as may be necessary for the purposes of the Contract.
- 34.2 Except with the consent in writing of Transport Focus the Contractor shall not make use of the Contract or information issued or furnished by or on behalf of Transport Focus otherwise than for the purpose of the Contract.

- 34.3 Any specifications, plans, drawings, or any other documents issued by or on behalf of Transport Focus for the purposes of the Contract remain the property of Transport Focus and must be returned on completion of the Contract.
- 34.4 In the event of any inconsistency or conflict between this Condition and Condition 21 - Official Secrets Act the provisions of Condition 21 shall prevail.

### **35. FREEDOM OF INFORMATION**

- 35.1 The Contractor acknowledges that Transport Focus is subject to the requirements of the freedom of Information Act (FOIA) and the Environmental Information Regulations and shall assist and cooperate with Transport Focus (at the Contractor's expense) to enable Transport Focus to comply with these information disclosure requirements.

### **36. CONFLICTS OF INTEREST**

- 36.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractors placed in a position where there is or may be an actual conflict, or potential conflict, between the pecuniary or personal interests of Transport Focus under the provisions of the Contract. The Contractor will disclose to Transport Focus full particulars of any such conflict interest which may arise.
- 36.2 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.

### **37. FRAUD**

- 37.1 The Contractor shall safeguard Transport Focus's funding of the Contract against fraud generally and, in particular, fraud on the part of Staff, or the Contractors directors and suppliers. The Contractor shall notify Transport Focus immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

### **38. CONTRACT MANAGEMENT**

- 38.1 The Contractor shall comply with any reasonable guidance or guidelines issued by the Contract Manager from time to time in connection with the Contract.
- 38.2 The Contractor shall address any enquiries about procedural, contractual or other matters in connection with the provision of the Services in writing to the Contract Manager.
- 38.3 Transport Focus reserves the right to call contract meetings. These shall be attended by the Contractor; the Contract Manager and any other person Transport Focus wishes to attend.

- 38.4 Transport Focus will develop and use a range of key performance indicators to review the Contractor performance against the agreed specification or provision of requirements. These will include as examples:
- Delivery against agreed timescales
  - Quality performance
  - Responsiveness
  - Price compared with market prices.
- 38.5 Transport Focus will engage in quarterly reviews with the Contractor to ensure that performance of the Contract is being delivered and that no issues however minor are impacting on Transport Focus because of the Contractor's performance.
- 38.6 If because of poor performance of the Contractor the clauses in 16.1, 16.2, 16.3, 16.4, and 16.5 may become applicable.

## **39. EFFECT OF EXPIRY OR TERMINATION**

- 39.1 On expiry or termination of this Contract however arising, the Consultant shall, at no cost to Transport Focus, promptly provide such assistance and comply with such timetable as Transport Focus may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services. Transport Focus shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after expiry or other termination of this Contract.
- 39.2 The Contractor shall do such other reasonable acts or things as may be necessary or desirable to enable Transport Focus to accomplish an orderly and prompt transfer of responsibility for the provision of the Services.
- 39.3 The Contractor undertakes that he shall not knowingly do or omit to do anything which may adversely affect the ability of Transport Focus to ensure an orderly transfer of responsibility of the Services.

## **40. CONTRACT CAPACITY**

- 40.1 It is implied whoever signs this contract on the behalf of your organisation has the legal capacity to do so.

## **41. SALES OF GOODS ACT 1979**

- 41.1 All aspects of the Sales of Goods Act 1979 will apply to this contract.

## **42. SUPPLY OF GOODS AND SERVICES ACT 1982**

- 42.1 All aspects of the Supply of Goods and Services Act 1982 will apply to this contract.

#### **43. PASSAGE OF TITLE**

- 43.1 Ownership of the goods or service will pass at the point all sums outstanding have been paid or unless otherwise stated in the terms of the Contract.

#### **44. TRANSFER AND UNDERTAKINGS (PROTECTION OF EMPLOYMENT)**

- 44.1 Where the transfer of undertaking (protection of employment) regulations 2006 apply in respect of the award of the Contract the undertaking concerned (or any part of the undertaking) shall transfer to the Contractor on the commencement of the Contract. For 6 months before the Contract expires the Contractor shall give Transport Focus all the relevant employee details necessary for TUPE. The Contractor shall allow Transport Focus to use the information for the purposes of TUPE and of re-tendering. The Contractor shall co-operate with the tendering of the Contract by allowing the body to whom the new contract is awarded (the transferee) to communicate with and meet the affected employee/s and their representatives.
- 44.2 The Contractor agrees to indemnify Transport Focus fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs, and all liabilities whatsoever in any way connected with or arising from or relating to the provision of the information above.
- 44.3 The Contractor agrees to indemnify Transport Focus against all actions, proceedings, claims, expenses, awards, costs and all liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee, on any date upon which the Contract is terminated and/or transferred to any third parties arising out of their employment or termination whether such claim or claims arise before or after the relevant transfer date.

#### **45. PUBLICITY**

- 45.1 Neither party shall without written consent of the other (the giving of consent shall be at the sole discretion of that party) advertise, publicly announce or provide to any other person information relating to the existence or detail of the Contract or use the other parties name in any format for any promotion, publicity or marketing purposes.

#### **46. WAIVER**

- 46.1 Any failure by Transport Focus to insist at any time upon the performance of any of the terms, provisions or undertakings of the Contractor contained in the Contract or exercise the rights thereunder shall not constitute or be constructed as a waiver thereof or relinquishment of Transport Focus's rights to require the future performance of any such term, provision or undertaking but the obligation of the Contractor with regard to the same shall continue in full force and effect.

#### **47. CHANGE CONTROL**

47.1 Neither party to this agreement can make any changes to any part of the agreement without written confirmation and agreement from both parties.

#### **48. TRANSPORT FOCUS RE-STRUCTURE**

48.1 If at any time during the period of the Contract Transport Focus has an internal re-structure it will inform the Contractor in a situation where the Contractor may be affected. Transport Focus will make the Contractor aware of any potential changes that will impact on any area of the Contract.

#### **49. DISASTER RECOVERY**

49.1 The Contractor will ensure that it has a disaster recovery process in place and that this process is up to date. Transport Focus will not accept any liability for a contractor's failure due to an event outside its control which could have been reasonably foreseen and prevented by an adequate disaster recovery procedure.

#### **50. CLOSURE**

50.1 Transport Focus will provide in writing an end of contract notice and report to the Contractor to inform them that the Contract has formally been ended.

THIS CONTRACT IS WITNESSED AND AUTHORISED BY:

Signed by: \_\_\_\_\_

Signed by: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

On behalf of Transport Focus

On behalf of (Insert Contractor's details)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Schedule 1**  
**Schedule of Requirements**

[Service specification included with tender (if any)]



Schedule 2  
Key personnel offered by the Contractor

Name	Job Title

**Schedule 3**  
**The Contractor's tender**

[Tender from Contractor (if any)]

## **Schedule 4**

### **Pricing Schedule**

The price set out in this Schedule is [firm, i.e. not subject to escalation or fixed and subject to variation based upon the criteria set out in this schedule].

## Schedule 5

### Processing of Personal Data authorised to undertaken by the Contractor.

1. The Contractor shall protect the rights of Data Subjects and duly observe all its obligations under the Data Protection Legislation which arise in connection with the provision of the Services and the Agreements.
2. Insofar as the Contractor Processes Personal Data for Transport Focus as a Data Processor, the Contractor shall:
  - 2.1 process the Personal Data solely on the documented instructions of Transport Focus for the purposes of providing the Services;
  - 2.2 process only the types of Personal Data, relating to the categories of Data Subjects, and in the manner required to deliver the Services in the manner agreed by the Parties;
  - 2.3 take all Protective Measures including those required by Article 32 of the UK GDPR to ensure the security of the Personal Data;
  - 2.4 take all reasonable steps to ensure the reliability and integrity of any the Contractor's Personnel who may have access to the Personal Data, and to ensure their treatment of the Personal Data as confidential. The steps required by this paragraph 2.4 shall include (but not be limited to) ensuring that all the Contractor's Personnel handling Personal Data:
    - 2.4.1 have their access to Personal Data limited to that which is strictly necessary for their role in the performance of the Services;
    - 2.4.2 have undertaken and regularly (at least yearly) undertake appropriate information governance training; and
  - 2.5 not permit any third party to Process the Personal Data ("**Sub-Processor**") without the prior written consent of Transport Focus, such consent to be conditional upon fulfilling the conditions referred to in Article 28 (2) and (4) of the UK GDPR;
  - 2.6 confirm in writing that it has conducted adequate due diligence on any proposed Sub-Processor to ensure that it is capable of providing the level of protection for Personal Data required by this Schedule 5 including sufficient guarantees to implement all Protective Measures in such a manner that all Processing provided by the Sub-Processor shall comply with Data Protection Legislation and the terms of this Schedule 5 and provides evidence of such due diligence on request to Transport Focus or a Supervisory Authority;
  - 2.7 remain fully liable for all acts or omissions of any Sub-Processor; and
  - 2.8 not Process or transfer the Personal Data outside the UK and European Economic Area, whether in accordance with UK GDPR Article 46, without:
    - (i) Transport Focus's prior written consent, such consent to be given or withheld at Transport Focus's absolute discretion; and (ii) ensuring the Data Subject has enforceable rights and effective legal remedies;
  - 2.9 notify Transport Focus immediately if it:

- 2.9.1 receives a data subject access request (or purported data subject access request);
  - 2.9.2 receives a request to rectify, block or erase any Personal Data;
  - 2.9.3 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Data Protection Legislation;
  - 2.9.4 receives any communication from the Information Commissioner's Office (ICO) or any other regulatory authority in connection with Personal Data processed under the Agreements;
  - 2.9.5 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation; or
  - 2.9.6 becomes aware of a Personal Data Breach threatened Personal Data Breach or suspected Personal Data Breach, such notice to be addressed to Transport Focus's Data Protection Officer and include all information required by Transport Focus to comply with its obligations under the Data Protection Legislation
  - 2.10 include the provision of further information to Transport Focus in phases, as details become available following a notification under clause 2.90;
  - 2.11 provide Transport Focus with full assistance in relation to any obligations under Data Protection Legislation and any complaint, communication or request made under clause 2.90 (and insofar as possible within the timescales reasonably required by Transport Focus);
  - 2.12 provide any assistance reasonably requested by Transport Focus in relation to all preparation of any Data Protection Impact Assessment prior to commencing any processing; and
  - 2.13 maintain complete and accurate records and information to demonstrate its compliance with this clause 2;
  - 2.14 maintain all records required by Article 30 (2) of the UK GDPR;
  - 2.15 provide any assistance reasonably requested by Transport Focus in relation to: (i) any communication received under clause 2.9 above, as well as any equivalent communication received by Transport Focus directly; and (ii) any Personal Data Breach, including by taking any appropriate technical and organisational measures directed by Transport Focus;
  - 2.16 notify Transport Focus immediately if it considers that any of Transport Focus's instructions infringe the Data Protection Legislation; and
  - 2.17 cease Processing the Personal Data immediately upon the termination or expiry of the relevant Agreement and at the Transport Focus's option either return, or securely delete the Personal Data.
3. Nothing within this Letter or the Agreements shall relieve the Contractor of its own direct responsibilities and liabilities under the UK GDPR.

4. Transport Focus and the Contractor agree to take account of any guidance issued by the Information Commissioner's Office
5. For the purpose of this Schedule 5:

**"Data Protection Legislation"** means (i) the UK General Data Protection Regulations; (ii) the Data Protection Act 2018; (iii) all applicable Law about processing personal data and privacy and guidance issued by the Information Commissioner and other regulatory authority; and (iv) (to the extent that it applies) the EU General Data Protection Regulations (and in the even of conflict, the UK General Data Protection Regulations shall apply)

**"Data protection impact assessment", "Data Controller", "Data Processor", "Data Subject", "Personal data", "Personal Data Breach", "Data Protection Officer"** take the meaning give in UK GDPR.

**"Protective Measures"** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;

**"Contractor's Personnel"** means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor engaged in the performance of its obligations under the Agreements;

**"UK GDPR"** has the meaning set out in section3(10) of the Data Protection Act 2018, supplemented by section 205(4)