

SECTION C1: GENERAL TERMS AND CONDITIONS

SCOPE OF CONTRACT TERMS & CONDITIONS

These **Section C1 General Terms and Conditions** will apply to the over-arching Consultancy Contract, for each of the 4 Lots, as detailed below;

- Lot 1 Bedfordshire, Cambridgeshire, Hertfordshire
- Lot 2 Essex
- Lot 3 Kent
- Lot 4 Norfolk & Suffolk

It is anticipated that each Lot above will be awarded to one Consultancy organisation, the 'Delivery Partner' and the Delivery Partner will deliver all Consultancy requirements between £50,000 and £250,000 in fee value.

Specific Consultancy project requirement details, once known, will be issued to the Delivery Partner. At the point of issue, the appropriate 'Call-off' Terms and Conditions for that project will be confirmed by the Authority.

These 'Call-off' terms will either take the form of;

- i) 7F Commercial Section C3 Call-off Terms & Conditions
OR
- ii) will be a specified JCT, NEC or other set of Terms & Conditions

GENERAL CONDITIONS OF CONTRACT

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1. Definitions & Interpretations

1.1. The following terms have the following meanings:

Acceptance means acceptance of the Goods and/or the Services by the Authority as notified to the Supplier or otherwise deemed to have occurred under the Sale of Goods Act 1979 provided that the Goods and/or the Services shall not be deemed accepted unless and until they have been delivered in accordance with all requirements of this Agreement and (where applicable) installed or assembled as required by the Particulars and made useable and after that the Authority has had a reasonable time to inspect them (and **Accept** and **Accepted** shall be construed accordingly);

Agreement means this agreement between the Authority and the Supplier comprising Vol 2 Statement of Requirements, Vol 3 Terms and Conditions (C1 General Terms and Conditions, C2 Specific Services Terms and Conditions, C3 Call-off Terms and Conditions) Vol 4 Tender Response Document and all associated Schedules.

Authority means the Party identified in Section A.1 (Particulars) of this Agreement as the Authority;

Authority Materials means all documents, reports, software, inventions, information, items, specifications, instructions, plans, data, drawings, databases, patterns, models, designs or any other materials in any form existing prior to the date of this Agreement and made available by the Authority to the Supplier for use under this Agreement in connection with the provision of the Goods and/or Services;

Break Notice Period means the period specified as such in Section A.1 (Particulars) of this Agreement;

Chief Constable means the Chief Constable of the police force for which the Authority is responsible;

Commencement Date means the date specified in Section A.1 (Particulars) of this Agreement for the start of any Goods/Services that are required to perform the Supplier's obligations under this Agreement;

Commercial Representatives means the commercial representative(s) of each Party for all commercial matters as named in Section A.1 (Particulars) of this Agreement;

Confidential Information means information or Data that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), including trade secrets, Intellectual Property Rights and know-how of either Party, information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, and all personal data and sensitive personal data within the meaning of the DPA 2018;

Contract Manager means the business operational person or persons (together with any duly authorised deputies) appointed by the Authority and authorised by the Chief Constable to act on behalf of the Authority in respect of this Agreement, or any replacement notified by the Authority to the Supplier from time to time;

Contract Period means the period from the Commencement Date to the Expiry Date or such earlier date of termination or partial termination of this Agreement;

Controller has the meaning given in the GDPR;

Data means any data, document or information however stored that is:

- communicated in writing, orally, electronically or by any other means by the Authority to the Supplier;
- obtained by the Supplier during the course of the Supplier providing the Goods and/or the Services; or
- compiled for the Authority by the Supplier during the course of the Supplier's provision of the Goods and/or the Services;

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

Data Protection Impact Assessment means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Data Protection Legislation means (i) the GDPR, the LED and any applicable national implementing Legislation as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Legislation about the processing of personal data and privacy;

Data Protection Officer has the meaning given in the GDPR;

Data Subject has the meaning given in the GDPR;

Data Subject Request a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

Default Notice means a notice served by the Authority on the Supplier following a remediable breach of this Agreement:

- (i) specifying that it is a formal Default Notice;
- (ii) giving reasonable details of the breach;
- (iii) specifying any reasonable period for rectification of the breach;
- (iv) stating that such breach is a breach which if not rectified may result in a termination of this Agreement;

Default Sums means the sums set out in the Particulars or as described in Clause 9.2.3.2;

Deliverables means 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 limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

DPA 2018 means the Data Protection Act 2018 or any successor or replacement legislation;

Effective Date means the date specified in the Particulars stipulating the timings as to when this Agreement became effective. If no date has been specified this shall be the latter of the dates that the Supplier and the Authority signs this Agreement;

Equalities Legislation means all Legislation which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, marital or civil partnership status, sexual orientation, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (“**Protected Characteristics**”) or temporary or part-time status in employment or otherwise or imposes positive duties relating to treatment of persons having any of the Protected Characteristics, including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, The Agency Workers Regulations 2010 and / or any preceding, successor or amending Legislation concerning the same and/or amending the Protected Characteristics;

Escalation Process means the process set out in paragraph 5 of Section B Schedule 2 (Contract Management) of this Agreement;

Expiry Date means the date specified in the Particulars for the expiry of this Agreement, or such amended date as may be amended pursuant to Clause 5 (Contract Period);

Extension Period means the extension period specified in the Particulars;

Financial Year means a period of twelve (12) consecutive months commencing on the 1 April of a calendar year and ending on 31 March of the following calendar year;

FOIA means the Freedom of Information Act 2000;

Force Majeure Event means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier's Personnel or any other failure in the Supplier's or a Subcontractor's supply chain;

GDPR means the EU General Data Protection Regulation 2016/679 or any successor or replacement legislation;

Goods means any such goods and associated documentation as are to be supplied by the Supplier (or by the Supplier's subcontractor) to the Authority pursuant to this Agreement and as described in the Particulars;

Information has the meaning given under section 84 of FOIA;

Intellectual Property Rights means any and all patents, trademarks, service marks, copyright, moral rights, rights in design, know-how, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

LED means the Law Enforcement Directive (Directive (EU) 2016/680);

Legislation means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

Losses means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

Management Information means any management information required, as may be set out in this Agreement or otherwise requested by the Authority;

Modern Slavery Legislation means all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including (but not limited to) the Modern Slavery Act 2015 (as amended from time to time);

MSA Offence means any activity, conduct, or practice constituting an offence under Modern Slavery Legislation, including without limitation under sections 1, 2, or 4 of the Modern Slavery Act 2015 (as amended from time to time);

Particulars means the form completed by the Authority detailing the particulars of this Agreement and the Specification and signed by the Authority and the Supplier set out in Section A.1 (Particulars) to this Agreement;

Party means, as the context dictates, the Authority or the Supplier, and **Parties** means both;

Performance Default means a breach by the Supplier of its obligations under this Agreement including, for the avoidance of doubt, a defect or omission in the provision of the Services;

Personal Data has the meaning given in the GDPR;

Personal Data Breach has the meaning given in the GDPR;

Price means the sum(s) set out in the Particulars payable by the Authority to the Supplier for the provision of the Goods and/or the Services under this Agreement;

Processor has the meaning given in the GDPR;

Protected Characteristics means as defined within the definition of Equalities Legislation;

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 the such measures adopted by it;

Request for Information has the meaning given to it in the FOIA;

Required Insurance Policies means those insurances listed in the Particulars;

Restructuring has the meaning given in Clause 31.1;

Schedule of Processing, Personal Data and Data Subjects means the Schedule of Processing, Personal Data and Data Subjects set out in the Particulars;

Services means the services (or any part of them) to be provided as specified in this Agreement as described in the Particulars including the production of any Deliverables and any planning, preliminary and preparatory work;

Specification means any specification for the Goods and/or the Services (including any related plans and/or drawings) that is detailed in the Particulars;

Subcontractor means any contractor engaged by the Supplier in the provision of the Goods and/or the Services;

Sub-processor means any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement;

Supplemental Conditions means the terms and conditions set out in Section C.4 (Supplemental Conditions) (where used) of this Agreement;

Supplier means the Party identified in Section A.1 (Particulars) of this Agreement as the Supplier;

Supplier Materials means all documents, reports, software, inventions, information, items, specifications, instructions, plans, data, drawings, databases, patterns, models, designs or any other materials in any form existing prior to the date of this Agreement and made available by the Supplier to the Authority in connection with this Agreement;

Supplier's Account Manager means the person (together with any duly authorised deputies) appointed by the Supplier from time to time to act as a manager and the authorised representative of the Supplier in respect of this Agreement or any replacement person notified by the Supplier to the Authority;

Supplier's Personnel means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or any Subcontractor and/or Sub-processor engaged in the performance of its obligations under this Agreement;

Termination means termination or expiry of this Agreement;

Terms means the terms set out in this Section C.1 (General Conditions), Section C.2 (Conditions for Services) (where used), Section C.3 (Conditions for Goods) (where used), Section C.4 (Supplemental Conditions) (where used) and other documents or terms laid out in Section A (Particulars and Incorporation of Agreement);

Variation means an amendment to the terms of this Agreement, or an amendment, omission, change or modification to the Services or part of the Services, or a change in the way in which the Services are to be carried out, effected in accordance with Clause 6; **Vetting Procedure** means the Authority's Non-Police Personnel Vetting (NPPV) policy as may be amended from time to time, and for the purposes of this Agreement;

Working Days means any day Monday to Friday inclusive other than a day which is designated as a bank or public holiday in England; and

Working Hours means the Authority's normal hours of business which are between 08:30 and 17:00 on Working Days.

- 1.2. Unless the context requires otherwise, words in the singular shall include the plural and vice versa.
- 1.3. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.4. Words importing individuals shall be deemed also to include reference to incorporated and unincorporated associations and vice versa.
- 1.5. Headings are included for ease of reference only and shall not affect the construction of this Agreement.
- 1.6. Any reference to any Clause or Schedule or Appendix is, except where it is expressly stated otherwise, a reference to a clause of or schedule or appendix to the Terms. A reference to a paragraph is to the relevant paragraph of the Schedule in which it appears.
- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, consolidation, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8. The expressions "subsidiary" and "holding company" shall have the meanings set out in [section 1159 of the Companies Act 2006](#).
- 1.9. Any references to a "month" or "day" shall be to a calendar month or day respectively.
- 1.10. The Parties have had the opportunity to take legal advice and no term of this Agreement will be construed contra proferentem.
- 1.11. Words preceding "include", "includes" or "including" shall be construed without limitation by the words which follow those words.
- 1.12. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13. A reference to a person includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.14. In any case where the consent or approval of the Authority (or any officer of the Authority) is required or a notice is to be given by the Authority, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified by the Authority by notice in writing to the Supplier.

1.15. A reference to any indemnity in this Contract given by the Supplier to the Authority shall be construed as also being given to the Chief Constables of the Authority.

2. Authority structure

2.1. Essex Police, Kent Police, Bedfordshire Police, Cambridgeshire Police, Hertfordshire Police, Norfolk Police and Suffolk Police are collectively referred to as the Authority in this Agreement, and references to the Authority are to each of these Authority entities together.

2.2. The Parties agree that the rights and obligations of the Authority shall be subject to the following principles:

2.2.1. the rights of the Authority are collective as between the Authority entities;

2.2.2. any instruction, direction, permission, authorisation, consent, approval, sign-off, waiver, demand, change or agreement to be given by the Authority under this Agreement shall be provided by the Authority's Contract Manager / Commercial Representative on behalf of all the Authority entities and shall be binding upon all Authority entities;

2.2.3. if any issues arise with regard to the fulfilment of an Authority obligation under this Agreement, the Supplier shall raise the satisfaction of that obligation with the Authority's Contract Manager / Commercial Representative; and

2.2.4. any notice required to be given by the Supplier to the Authority under this Agreement shall be satisfied by giving notice to the 7 Force Director of Commercial Services.

2.3. The Authority entities ("Co-obligors") shall be jointly and severally liable for their obligations under this Agreement.

2.4. The Supplier may take action against, or release or compromise the liability of, a Co-obligor, without affecting the liability of any other Co-obligor.

3. Warranties and Representations

3.1. Without prejudice to any other warranties expressed in this Agreement or implied by law the Supplier warrants and represents that:

3.1.1. it has full capacity and authority and all necessary consents, including where required the consent of its parent company, to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;

3.1.2. this Agreement shall be performed in compliance with all Legislation, applicable laws, enactments, orders, regulations and other similar instruments;

3.1.3. it shall discharge its obligations hereunder with all due skill, care and diligence and in accordance with good industry practice;

3.1.4. it owns, has obtained or shall obtain all the consents, licences, permits and approvals necessary for the Supplier to perform its duties under this Agreement and shall comply with the terms of any such consents, licences, permits and approvals at all times. The cost of such consents, licences, permits and approvals shall be borne solely by the Supplier; and

3.1.5. the Supplier is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement.

4. Status of Agreement

- 4.1.** Nothing in this Agreement shall be construed as or have the effect of creating a partnership, a contract of employment or a relationship of principal and agent between the Supplier or the Supplier's Personnel and the Authority.
- 4.2.** The Supplier shall not (and shall procure that the Supplier's Personnel do not) say or do anything that might lead any other person to believe that the Supplier or the Supplier's Personnel are acting as the partner, employee or agent of the Authority.
- 4.3.** The Supplier shall not (and shall procure that the Supplier's Personnel do not) hold themselves out as having authority to bind the Authority unless specifically permitted in writing by the Authority's Commercial Representative.

5. Contract Period

- 5.1.** In consideration of the Price the Supplier shall provide the Goods and/or the Services for the Contract Period.
- 5.2.** Subject to satisfactory performance, the Authority shall be entitled at its absolute discretion to extend the duration of the Contract Period by any number of periods up to an aggregate of the Extension Period, or as may be stated in the Particulars. The clauses in this Agreement will apply throughout any such extended period unless otherwise stated to the contrary.
- 5.3.** If the Authority wishes to exercise its right to extend part or all of this Agreement under Clause 5.2 it must serve on the Supplier notice in writing to that effect not less than three (3) months prior to the Expiry Date confirming the period of extension.

6. Amendments and Variations

- 6.1.** Subject to Clause 6.2, to take effect any amendment or Variation to this Agreement shall be only valid once agreed in writing by both the Authority's Contract Manager, the Commercial Representatives and the Supplier's Account Manager. Anything undertaken by the Supplier which is not authorised by this Agreement, or any agreed amendment thereto, shall be undertaken at the sole risk of the Supplier.
- 6.2.** Any amendment or Variation to this Agreement involving a change in rates or prices shall be agreed in writing between the Commercial Representatives of the Parties before it is agreed between the Parties pursuant to Clause 6.1 of this Agreement.

7. Price

- 7.1.** The Price is fixed for the Contract Period, and unless specifically stated in Supplemental Conditions, includes any extension of this Agreement.
- 7.2.** The Supplier shall be deemed to have satisfied itself before entering into this Agreement as to the accuracy and sufficiency of the Price which shall, except where expressly provided to the contrary, cover all the Supplier's obligations under this Agreement and the Supplier shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Price.
- 7.3.** The Contract Prices are the maximum that the Supplier may charge pursuant to any Call Off Agreement.
- 7.4.** The Supplier acknowledges and agrees that, subject to clause 6 (Amendments and Variations) , the Contract Prices cannot be increased during the Contract Period.

8. Payment

- 8.1.** In consideration of the performance of the Supplier's obligations under this Agreement by the Supplier, the Authority shall pay the Price.
- 8.2.** All rates and prices are exclusive of Value Added Tax (VAT). If appropriate, VAT will be added at the relevant rate and will be shown as a separate net item on each invoice submitted.
- 8.3.** Except where otherwise provided in this Agreement, the amount payable to the Supplier for the performance of this Agreement shall be inclusive of all costs, including but not limited to staff, facilities, equipment, materials and all other expenses incurred by the Supplier in discharging its obligations under this Agreement.
- 8.4.** Invoices shall be submitted to the invoice address specified in this Agreement or otherwise instructed by the Contract Manager in writing.
- 8.5.** The Supplier shall submit to the Authority such records as the Authority may reasonably require to enable the Authority to verify the information and the amounts referred to in that invoice.
- 8.6.** To the extent that the Price:
- 8.6.1. is a fixed sum it shall be payable to the Supplier on either completion of the Services or on successful delivery of the Goods;
 - 8.6.2. is an annual sum it shall accrue on a daily basis and shall be payable to the Supplier monthly in arrears;
 - 8.6.3. is payable by reference to:
 - (a) a schedule of rates; and/or
 - (b) the quantity of Services provided during any given period,it shall be paid on receipt of a correct invoice which specifies the relevant rate(s) and the quantity of Services provided during the period(s) to which the invoice relates.
- 8.7.** Upon receipt of a valid and correct invoice, the Authority shall make payment of the Price or the invoiced portion of the Price within 30 calendar days.
- 8.8.** In respect of Services, the Supplier shall submit a single, fully itemised invoice for the Services undertaken during that period to which the invoice relates unless this Agreement specifies payment is due upon Acceptance of the Services or Deliverables, in which case the Supplier shall submit a single, fully itemised invoice after Acceptance of the Services or Deliverables.
- 8.9.** In respect of Goods the Supplier shall submit a single, fully itemised invoice for the Goods or any specified or agreed instalment of the Goods.
- 8.10.** All payments must be invoiced and made in pounds sterling.
- 8.11.** The Authority may withhold or delay payment of any invoice where it disputes the invoice or where the Goods and/or the Services referred to in it have not been provided in accordance with this Agreement.
- 8.12.** Without prejudice to the Authority's other rights and remedies wherever any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Agreement or under any other agreement or contract with the Authority.

- 8.13.** Where the Supplier enters into a sub-contract for the purpose of performing its obligations under this Agreement, it shall cause a term to be included in such sub-contract which requires payment to be made by the Supplier to the Subcontractor within a specified period not exceeding 30 calendar days from receipt of a valid and undisputed invoice as defined by the sub-contract.
- 8.14.** The Supplier shall ensure that all sub-contracts shall contain a provision requiring the Subcontractor to include a clause to the same effect as clause 8.13 above in any contracts the Subcontractor enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.
- 8.15.** In performing its obligations under this Agreement, the Supplier is prohibited from taking or seeking to take advantage of any particular taxation regime (including the use of any offshore tax haven) which will or may enable the Supplier to avoid liability for any taxation in the United Kingdom. In the event that the Supplier or the Supplier's Personnel or anyone acting on the Supplier's behalf (with or without its knowledge) breaches this Clause, the Authority reserves the right to terminate this Agreement by notice in writing with immediate effect and recover from the Supplier any loss resulting from such termination including the administrative costs of re-tendering the requirement and any difference in the rates or prices which the Authority may have to pay to a new contractor where such rates or prices are higher than the rates or prices payable under this Agreement.
- 8.16.** The Supplier shall not suspend the supply of the Goods and/or Services unless the Supplier is entitled to terminate the Agreement under clause 24.4 for failure to pay an undisputed sum. Interest shall be payable at an annual rate of 4% above the Bank of England base rate from time to time in force and the Parties agree that this clause constitutes a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).
- 8.17.** In any event, all invoices must be provided to the Authority within 90 days of completion of delivery of the relevant Goods and/or Services to which the invoice relates. Invoices delivered after the expiry of this period shall be invalid and the Authority shall have no liability in respect of such invoices.
- 8.18.** With effect from 18 April 2020, the Authority shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 8.19.** For the purposes of Clause 8.18, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

9. Performance Monitoring

- 9.1.** The Supplier is responsible for correcting any Performance Default including any drawn to its attention in a written notice from the Authority.
- 9.2.** Without prejudice to the generality of Clause 9.1, in the event of a Performance Default the Authority shall be entitled to:
- 9.2.1. issue a Default Notice to the Supplier specifying the Performance Default and, in the event that such Performance Default is capable of remedy, the Supplier shall effect a remedy within 10 days or otherwise specifying a reasonable period within which the Supplier shall effect a remedy;
 - 9.2.2. withhold payment of the Price (or any instalment of the Price) until the Performance Default is remedied;
 - 9.2.3. subject to clause 9.3, deduct Default Sums at any time in respect of the Performance Default. The amount of the Default Sums will be:
 - 9.2.3.1. where the Performance Default is set out in the Particulars, the corresponding Default Sum for each day or part thereof during which the Performance Default occurs or continues; or

9.2.3.2. where the Performance Default is not set out in the Particulars, an amount equivalent to any costs reasonably incurred by the Authority in rectifying the Performance Default or procuring the rectification of the Performance Default by a third party together with any reasonable administration costs.

9.3. The parties confirm that the Default Sums referred to in clause 9.2.3.1 and set out in the Particulars:

9.3.1.1. are reasonable and proportionate to protect the Authority's legitimate interest in performance; and

9.3.1.2. are without prejudice to the right of the Authority to claim damages arising out of the Performance Default provided that any amounts already paid by the Supplier in the form of Default Sums for the same breach shall be deducted from the Authority's damages claim.

9.4. In the case of a Performance Default which is capable of remedy the Supplier shall remedy such Performance Default at no cost to the Authority and within the period specified in the Default Notice or, if no such timescale is stipulated, as soon as possible.

9.5. If the Supplier fails to remedy a Performance Default within the time specified in the Default Notice, or, if no such timescale is stipulated, within a reasonable period, the Authority shall be entitled to remedy or to instruct a third party to remedy the Performance Default (if such default is capable of remedy by the Authority or a third party). Such remedy may include, but shall not be limited to, purchasing other goods or services which are the same or similar to the Goods or Services to be supplied by the Supplier pursuant to this Agreement. In circumstances where the Authority remedies or instructs a third party to remedy the Performance Default, it shall be entitled to recover the costs of the same plus any reasonable administration costs from the Supplier.

9.6. The Supplier shall also perform all its obligations under all and any Call Off Agreements procured under this contract:

9.6.1. in accordance with the requirements of this Contract;

9.6.2. in accordance with the terms and conditions of the respective Call Off Agreements.

9.7. The Supplier shall draw any conflict in the application of any of the requirements of Clauses 9.6.1 and 9.6.2 to the attention of the Authority and shall comply with the Authority's decision on the resolution of any such conflict.

9.8. The provisions of this Clause 9 are without prejudice to any other right or remedy available to the Authority under this Agreement or at law.

10. Indemnities

10.1. Subject to Clause 10.2 and without prejudice to any rights or remedies of the Authority, the Supplier shall indemnify the Authority, and keep it indemnified, from and against any and all losses, costs, expenses, damages, claims, demands or proceedings whatsoever and howsoever to the extent arising directly (but not indirectly or consequentially) whether in contract, tort (including negligence), under statute, in common law or otherwise out of the act, default, negligence, breach of contract, breach of statute or statutory duty by the Supplier or any of its employees or agents acting within the course of their employment or any of its Subcontractors and their employees or agents.

10.2. The Supplier's liability under Clause 10.1 is limited as follows:

10.2.1. in accordance with Clause 10.6: unlimited;

10.2.2. in accordance with Clause 10.7: unlimited;

10.2.3. in respect of any matters for which the Supplier is required to hold insurance: the value of the relevant insurance; and

10.2.4. in respect of any matters for which the Supplier is not required to hold insurance: £1,000,000.

10.3. The indemnity contained in Clause 10.1 shall not apply to the extent that the loss, damage or personnel injury (including death) is caused by the negligent or wilful act of the Authority, its servants or agents.

10.4. The Supplier shall indemnify and keep indemnified the Authority, its servants and agents fully against any tax, national insurance contributions or similar impost in respect of the Supplier's Personnel.

10.5. Notwithstanding anything to the contrary contained in this Agreement, the Authority's liability whether arising from breach of contract, tort (including negligence), breach of statutory duty or otherwise shall be limited as follows:

10.5.1. in accordance with Clause 10.6: unlimited; and

10.5.2. in respect of all other liability falling outside of Clause 10.6 arising out of or in connection with its obligations (other than its obligation to pay the Price) under this Agreement and all actions, claims, demands, proceedings, costs and expenses arising in respect of it: £100,000.

10.6. Neither Party limits its liability for death or personal injury caused by the negligence of itself or any of its employees or agents acting in the course of their employment or in respect of a misrepresentation made fraudulently or in respect of any breach of an implied term in respect of title to goods.

10.7. The Supplier's liability for any breach of Clause 20 (Data Protection) or any breach of Data Protection Legislation shall be unlimited.

11. Insurance

11.1. Without limiting its liability hereunder the Supplier shall maintain Insurance throughout the duration of this Agreement and any Call-off agreements and for a period of six years following Termination, with an insurance company of good repute and at its own cost the Required Insurance Policies.

11.2. Each of the Required Insurance Policies must contain an indemnity to principles clause.

11.3. The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Contract Agreement and any Call Off Agreement, and shall procure that Sub-Contractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with Schedule 11 (Insurance).

11.4. The Supplier shall at the Commencement Date and thereafter upon request produce to the Contract Manager for inspection:

11.4.1. the originals of the Required Insurance Policies or evidence in the form of a broker's letter that such policies are in place; and

11.4.2. documentary evidence (including cover notes and premium receipts) that such insurances are properly maintained, and the Supplier shall provide copies of any such documents as the Authority may reasonably require.

11.5. The Supplier shall give immediate written notice to the Authority in the event of any cancellation or material change to any of the Required Insurance Policies.

11.6. In the event that the Supplier fails to comply with this Clause 11 and at any time fails to have in place any of the Required Insurance Policies the Authority may itself provide or arrange such insurance(s) and may charge the price of so doing together with an administration charge of 10% of such price to the Supplier which sum it may recover from the Supplier either by way of a deduction from any amounts payable by the Authority to the Supplier under this Agreement or by recovering the same as a debt due to the Authority from the Supplier.

12. Intellectual Property Rights

12.1. The Supplier hereby expressly acknowledges that the Authority alone has exclusive ownership and ultimate control of:

12.1.1. any Intellectual Property Rights in the format and content of this Agreement; and

12.1.2. any Intellectual Property Rights in any Authority Materials.

12.2. The Authority hereby expressly acknowledges that the Supplier alone has exclusive ownership and ultimate control of any Intellectual Property Rights in any Supplier Materials.

12.3. The Supplier hereby grants to the Authority a non-exclusive, royalty free, perpetual and irrevocable licence to use, reproduce, modify, adapt, amend, enhance and otherwise deal with (and to authorise a third party on behalf of the Authority, such third party having signed a confidentiality undertaking, to use, reproduce, modify, adapt, amend, enhance and otherwise deal with) the Supplier's pre-existing Intellectual Property Rights in the Supplier Materials for the Authority's own internal purposes, to allow the Authority to exploit the Intellectual Property Rights or similar generated under this Agreement and for any other purposes specified in this Agreement.

12.4. The Authority grants to the Supplier a non-exclusive, royalty-free, non-transferable licence to use, copy and modify the Authority Materials for the Contract Period of this Agreement for the sole purpose of providing the Goods and/or Services to the Authority.

12.5. Any and all Intellectual Property Rights developed under or pursuant to this Agreement or arising from the provision of the Goods and/or Services by the Supplier or any of the Supplier's Personnel (including any Intellectual Property Rights in the Deliverables, Goods or products of the Services), shall vest in and be the property of the Authority provided that in the event that any such Intellectual Property Rights do not vest in the Authority by operation of law the Supplier shall execute or cause to be executed including by any employee or agent of its any and all deeds, documents and acts required to assign such Intellectual Property Rights to the Authority with full title guarantee.

12.6. The Supplier shall not in connection with the provision of the Goods and/or Services use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any Intellectual Property Rights.

12.7. The Supplier shall indemnify the Authority against all actions, claims, demands, proceedings and Losses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Right by the use, manufacture, supply or possession of any Goods supplied by the Supplier or by the Authority's use of the Goods and/or receipt of the Services, subject to the following:

12.7.1. the Authority shall promptly notify the Supplier in writing of any alleged infringement of which it has notice;

12.7.2. the Authority shall make no admissions without the Supplier's consent, not to be unreasonably withheld or delayed;

12.7.3. the Authority, at the Supplier's request and expense, shall allow the Supplier to conduct and/or settle all negotiations and litigation and give the Supplier all reasonable assistance in so doing. The costs incurred or recovered in such negotiations or litigation shall be paid by and to the Supplier.

12.8. If an action, claim or demand for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Agreement or in the reasonable opinion of the Supplier is likely to be made, the Supplier may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed):

12.8.1. modify any or all of the Services without reducing the performance of the same so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted Services;

12.8.2. modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative Goods of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted Goods; or

12.8.3. procure a licence (at the Supplier's cost) to provide the Services and/or the Goods (as applicable), which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

12.9. The provisions contained in this Clause 12 shall survive expiry or Termination (for any reason).

13. Force Majeure

13.1. For the purposes of this Clause 13 the circumstances in Clauses 13.1.1 to 13.1.5 are events of Force Majeure:

13.1.1. acts of God, flood, drought, earthquake or other natural disaster;

13.1.2. terrorist attack, civil war, civil commotion or riots or disorder, war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

13.1.3. nuclear, chemical or biological contamination or sonic boom;

13.1.4. any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; and/or

13.1.5. any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party).

13.2. Provided it has complied with Clause 13.3, if a Party ("**Affected Party**") is prevented, hindered or delayed in or from performing any to perform any obligation under this Agreement because of an event of Force Majeure which is both:

13.2.1. beyond that Affected Party's control; and

13.2.2. could not be prevented by that Affected Party with the application of all due diligence and foresight,

which causes the cessation of or a substantial interference with the performance of the Services or delivery of Goods, then the duty of the Affected Party to perform the relevant obligation shall be suspended until such circumstances have ceased. In such instances the Authority shall not be liable to make any payment to the Supplier in respect of the suspension of the Services or any Goods to be delivered or any part of them and any sum already paid in respect of any part of the Services not yet performed or any Goods not yet delivered shall be held to the credit of the Authority and returned to the Authority as soon as possible.

13.3. The Affected Party shall:

13.3.1. as soon as reasonably practicable after the start of the Force Majeure, notify the other party in writing of the Force Majeure, the date on which it started, its likely or potential

duration, and the effect of the event of Force Majeure on its ability to perform any of its obligations under this Agreement; and

13.3.2. use all reasonable endeavours to mitigate the effect of the event of Force Majeure on the performance of its obligations.

13.4. If the event of Force Majeure prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three (3) months, the party not affected by the Force Majeure Event may terminate this Agreement by giving one (1) weeks' written notice to the Affected Party.

14. Corrupt Gifts and Payments

14.1. The Supplier shall not receive or agree to receive from any person, or offer or give, or agree to give, to any employee, agent, servant or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or any other contract with the Authority or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract.

14.2. The Supplier shall not conspire with any person to do any of the acts mentioned in Clauses 14.1.

14.3. The Supplier shall not enter into this Agreement if in connection with it commission has been paid or is agreed to be paid to any employee, agent, servant or representative of the Authority by the Supplier or on the Supplier's behalf, unless before this Agreement is made particulars of any such commission and the terms of any agreement for the payment thereof have been disclosed in writing to the Authority's Commercial Representative.

14.4. In the event that the Supplier or the Supplier's Personnel or anyone acting on the Supplier's behalf (with or without its knowledge) breaches Clauses 14.1-14.3, or commits an offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under subsection 2 of Section 117 of the Local Government Act 1972, the Authority reserves the right to terminate this Agreement by notice in writing with immediate effect and recover from the Supplier any loss resulting from such termination including the administrative costs of re-tendering the requirement and any difference in the rates or prices which the Authority may have to pay to a new supplier where such rates or prices are higher than the rates or prices payable under this Agreement and/or the amount or value of the gift, consideration or commission.

14.5. Any decision of the Authority in relation to this Clause 14 shall be final and conclusive.

15. Equality and Discrimination

15.1. The Supplier shall comply with all applicable Equalities Legislation in its performance of this Agreement and shall take all reasonable steps to ensure that all servants, employees, agents and Subcontractors engaged in the provision of the Services and/or provision of the Goods do not unlawfully discriminate, harass or victimise within the meaning and scope of the Equalities Legislation. This Clause 15.1 is without prejudice to the Supplier's general obligation to comply with Legislation.

15.2. The Supplier shall not at any time unlawfully discriminate in relation to employing any person for the purposes of performing the Services and/or providing the Goods on the grounds of any of the Protected Characteristics or temporary or part-time or agency status in employment or otherwise. For the purposes of this Clause 15.2, employing a person shall include recruiting, appointing, selecting, training, promoting, remunerating, subjecting to a detriment, disciplining and dismissing.

15.3. Without prejudice to the generality of Clauses 15.1 and 15.2, the Supplier shall at all times comply with the Equality Act 2010 ("**2010 Act**") in respect of its treatment of its employees and in the performance of the Services and/or provision of the Goods. In particular, the Supplier shall in its performance of this Agreement take (and shall ensure that its servants, agents, employees and Subcontractors take) all reasonable steps to eliminate unlawful discrimination, harassment,

victimisation and any other conduct that is prohibited by or under the 2010 Act; advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the 2010 Act) and persons who do not share it; and foster good relations between persons who share such a protected characteristic and persons who do not share it.

15.4. The Supplier shall comply with the Equality Act 2010 Code of Practice on Employment and the Equality Act 2010 Code of Practice on Equal Pay (Codes) (or any replacement guidance and/or publication) issued by the Equality and Human Rights Commission in respect of its treatment of its employees and in the performance of the Services and/or provision of the Goods. In particular, and without prejudice to the foregoing, the Supplier shall operate an equal opportunities policy which, so far as practicable, complies fully with the practical guidance, recommendations and advice set out in the Codes.

15.5. The Supplier shall provide such information to the Authority as the Authority requires to satisfy itself that the Supplier has complied with and will continue to comply with Clauses 15.1 to 15.4. The Supplier shall also ensure that its servants, agents, employees and Subcontractors provide all relevant information to the Authority so that the Authority can assess its own compliance with its general and specific duties under the 2010 Act.

16. Health and Safety

16.1. The Supplier shall have due regard for and comply with its legal obligations under the Health and Safety at Work etc. Act 1974 ("**H&S Act**") and the Management of Health and Safety at Work Regulations 1999 and any amendments or regulations thereto. Particular attention is drawn to requirements of the H&S Act relating to safe working practices, use of safety equipment, all road safety measures and the conduct of persons employed.

16.2. The Supplier shall:

16.2.1. operate in accordance with good practice advice; for example that published by the Health and Safety Executive;

16.2.2. provide sufficient information, advice, training and instruction to its staff to ensure that safe working practices are adhered to;

16.2.3. ensure that:

(a) its staff are equipped with appropriate equipment, including appropriate personal protective equipment (PPE), in order to provide the Services and/or deliver the Goods safely;

(b) all such equipment shall meet or exceed the minimum safety standards required by Legislation at the time of use, shall comply fully with the relevant British, European and international standards and is maintained so that it is safe in use;

(c) any work equipment is constructed or adapted so as to be suitable for the purpose and location for which it is used or provided;

(d) any work related to driving activities must not endanger other road users or put the driver at risk. All staff must follow the guidance of the Highway Code and the Supplier's own policies and procedures.

16.2.4. adhere to any method statements supplied to the Authority as part of its tender submission detailing how it will comply with the above requirements;

16.2.5. introduce control measures to reduce risks to a minimum and provide adequate information and training to its staff; and

16.2.6. ensure that all its staff have received adequate health and safety training to reduce the risk of ill health and injury to themselves and others which may result from that work.

16.3. Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

17. Environmental Requirements

17.1. The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to this Agreement. In addition the Supplier shall comply with any environmental policies of the Authority made available to the Supplier from time to time.

17.2. In performing its obligations under this Agreement the Supplier shall (to the extent applicable to this Agreement):

- 17.2.1. demonstrate low carbon resource efficiency, including minimising the use of energy, water, wood, paper and other resources;
- 17.2.2. reduce waste;
- 17.2.3. phase out the use of ozone depleting substances; and
- 17.2.4. minimise the release of greenhouse gases (including carbon dioxide emissions), volatile organic compounds and other substances damaging to health and the environment.

17.3. Without prejudice to the generality of the foregoing, the Supplier shall promptly provide all such information regarding the environmental impact of this Agreement as may reasonably be requested by the Authority.

17.4. The Supplier shall meet all reasonable requests by the Authority for information evidencing compliance with the provisions of this Clause 17 by the Supplier.

18. Notices

18.1. Except as otherwise provided in this Agreement all notices which are required to be given under this Agreement shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address as the recipient may designate by notice given in accordance with the provision of this Clause 18 and marked for the attention of:

- 18.1.1. in the case of the Authority, the 7 Force Director of Commercial Services;
- 18.1.2. in the case of the Supplier, the Contract Manager.

18.2. A Party may change its details given in the table in clause 18.3 by giving notice, the change taking effect for the Party notified of the change at 9.00 am on the later of:

- 18.2.1. the date, if any, specified in the notice as the effective date for the change; or
- 18.2.2. five (5) Working Days after deemed receipt of the notice.

18.3. Any notice may be delivered personally or by first class pre-paid letter or by electronic mail and shall be deemed to have been served as follows:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.

Pre-paid first class post or other next working day delivery service providing proof of postage OR delivery.	9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
Email.	At the time of transmission.

18.4. For the purpose of Clause 18.3 and calculating deemed receipt; all references to time are to local time on Working Days in the place of deemed receipt.

18.5. Notices served other than in accordance with this Clause 18 will not be valid.

19. Audit and Information

19.1. The Supplier shall keep full and proper records in relation to the performance of its obligations under this Agreement and provide the Authority with any information regarding such records as may be reasonably requested in writing by the Authority and/or its internal or external auditors having regard to the Authority's duties and responsibilities as a public authority.

19.2. Any information requested in writing under Clause 19.1 shall be provided by the Supplier within a reasonable time being no longer than three (3) Working Days from the date of such written request and shall be provided in hard copy and, where available, also electronically. The Authority shall be entitled to have the originals of any document so requested.

19.3. Without prejudice to the Supplier's obligations under Clauses 19.1 and 19.2, the Authority shall be entitled to request, and the Supplier shall provide within a reasonable time, employment and relevant personal information in relation to the Supplier's personnel engaged upon or in connection with the provision of the Services for the purposes of anti-fraud measures such as data matching. The Supplier shall ensure that it takes any measures necessary pursuant to the Data Protection Act 2018 and any other relevant legislation to facilitate such disclosure lawfully and fairly.

19.4. The Authority shall have the right to conduct audits of data (financial and non-financial) which relate to the supply of the Goods and/or the Services through this Agreement, which is held by the Supplier, its staff, agents and Subcontractors during Working Hours.

19.5. The Authority shall use reasonable endeavours to serve a minimum of 24 hours' notice of its visit to the Supplier's or Subcontractor's premises, but reserves the right to conduct audits upon no notice.

19.6. The Supplier shall facilitate any access arrangements on behalf of the Authority to its premises and data and to the premises and data of its staff, agents and Subcontractors.

19.7. The Authority reserves the right to use its own staff and/or any agent or representative of its choice to conduct inspections, audits and testing on its behalf. Where an agent or representative is appointed, the Supplier shall be notified in writing or through a letter of authorisation presented by the agent/representative.

19.8. Where set out in paragraph 6 of Section B.2 (Contract Management) the Supplier shall provide the Management Information to the Authority in accordance with the requirements of that paragraph.

20. Data Protection

20.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor unless otherwise specified in the Schedule of Processing, Personal Data and Data Subjects. The only processing that the Supplier is authorised to do is listed in the Schedule of Processing, Personal Data and Data Subjects by the Authority and may not be determined by the Supplier.

20.2. The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

20.3. The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

- 20.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;
- 20.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- 20.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
- 20.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

20.4. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- 20.4.1. process that Personal Data only in accordance with the Schedule of Processing, Personal Data and Data Subjects, unless the Supplier is required to do otherwise by Legislation. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Legislation;
- 20.4.2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Supplier of the adequacy of the Protective Measures), having taken account of the:
 - 20.4.2.1. nature of the data to be protected;
 - 20.4.2.2. harm that might result from a Data Loss Event;
 - 20.4.2.3. state of technological development; and
 - 20.4.2.4. cost of implementing any measures;
- 20.4.3. ensure that:
 - 20.4.3.1. the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Schedule of Processing, Personal Data and Data Subjects);
 - 20.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and
 - 20.4.3.3. ensure that they:
 - 20.4.3.3.1. are aware of and comply with the Supplier's duties under this clause;
 - 20.4.3.3.2. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - 20.4.3.3.3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and

20.4.3.3.4. have undergone adequate training in the use, care, protection and handling of Personal Data; and

20.4.4. not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

20.4.4.1. the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;

20.4.4.2. the Data Subject has enforceable rights and effective legal remedies;

20.4.4.3. 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 (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

20.4.4.4. the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

20.4.5. at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Supplier is required by Legislation to retain the Personal Data.

20.5. Subject to clause 20.6, the Supplier shall notify the Authority immediately if it:

20.5.1. receives a Data Subject Request (or purported Data Subject Request);

20.5.2. receives a request to rectify, block or erase any Personal Data;

20.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

20.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

20.5.5. 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 Legislation; or

20.5.6. becomes aware of a Data Loss Event.

20.6. The Supplier's obligation to notify under clause 20.5 shall include the provision of further information to the Authority in phases, as details become available.

20.7. Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 20.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

20.7.1. the Authority with full details and copies of the complaint, communication or request;

20.7.2. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

- 20.7.3. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 20.7.4. assistance as requested by the Authority following any Data Loss Event;
 - 20.7.5. assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 20.8.** The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 20.8.1. the Authority determines that the processing is not occasional;
 - 20.8.2. the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 20.8.3. the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 20.9.** The Supplier shall allow for audits of its Processing activity by the Authority or the Authority's designated auditor.
- 20.10.** Each Party shall designate a data protection officer if required by the Data Protection Legislation.
- 20.11.** Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- 20.11.1. notify the Authority in writing of the intended Sub-processor and processing;
 - 20.11.2. obtain the written consent of the Authority;
 - 20.11.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 20 such that they apply to the Sub-processor; and
 - 20.11.4. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 20.12.** The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

20.13. The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

20.14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

21. Confidentiality

21.1. Each Party:

21.1.1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

21.1.2. shall not disclose any Confidential Information belonging to the other Party to any person without the prior written consent of the other Party except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

21.2. The Supplier shall not use any Confidential Information issued or provided by or on behalf of the Authority in connection with this Agreement otherwise than for the purpose of this Agreement (except with the prior written consent of the Authority).

21.3. The provisions of Clauses 21.1 to 21.2 inclusive shall not apply to any information:

21.3.1. which is already in the public domain other than through previous default by the Party making the disclosure or any other person to whom that Party is permitted to disclose such information under this Agreement;

21.3.2. which is required to be disclosed by law whether under the FOIA or EIR (as defined in Clause 22.1 below) or otherwise;

21.3.3. which is required to be disclosed by order of a court of competent jurisdiction;

21.3.4. which is required to be disclosed by the Authority to any department, office or agency of the government which includes the Commission for Local Administration and the Audit Commission and any successor body with responsibility for auditing public bodies;

21.3.5. which was obtained from a third party without obligation of confidentiality;

21.3.6. was already in the possession of the Party making the disclosure without restrictions as to its use before it came into that Party's possession or knowledge as a result of or in connection with this Agreement; or

21.3.7. is reasonably required by any person engaged in the performance of their obligations in relation to this Agreement for the performance of those obligations.

21.4. The Supplier hereby consents to the Authority providing the prices of the Goods and/or the Services or other details of this Agreement to any other police authority solely for the purpose of enabling that authority to evaluate any potential contract which it may enter into with the Supplier.

21.5. Notwithstanding any other term of this Agreement, the Supplier hereby gives its consent for the Authority to publish this Agreement in its entirety to the general public subject to the Authority redacting any information which is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and the Supplier shall assist the Authority in identifying such exempt information. The Supplier also gives its consent for the Authority to publish Management Information arising under this Agreement to the general public, which includes:

- 21.5.1. total contract value;
- 21.5.2. invoice dates;
- 21.5.3. VAT rate; and
- 21.5.4. total amount of each invoice submitted under this Agreement,

which for the avoidance of doubt shall not be Confidential Information for the purposes of this Agreement.

- 21.6.** The Authority may discuss with the Supplier its proposed decision with regard to whether any information should be redacted in accordance with Clause 21.5 before publication of this Agreement and will consider any representations made by the Supplier with regard to the extent of the redaction, if any, but the final decision as to both redaction and publication will be for the Authority alone to make.
- 21.7.** The Supplier shall assist and cooperate with the Authority (at the Supplier's expense) to enable Authority to publish this Agreement in accordance with Clause 21.5 in a timely manner.
- 21.8.** Notwithstanding any other term of this Agreement, the Parties agree that the Authority is entitled to share the terms of this Agreement, any information provided by or produced pursuant to the same as well as Confidential Information with Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services ("**HMICFRS**") (or any successor body) and the Independent Office for Police Conduct ("**IOPC**") (or any successor body). Furthermore, the Supplier shall provide such assistance as may be required by the Authority in relation to any request for information received from HMICFRS and/or the IOPC.
- 21.9.** The provisions of this Clause 21 shall survive the Termination of this Agreement and shall continue in full force and effect without limit in time.
- 21.10.** Where the Supplier comes into contact with official documentation in the performance of this Agreement which attract Government security classifications 'Official', 'Secret' or 'Top Secret' (or any modification of update of the same) the Supplier shall take, and be able to evidence that it has taken, such additional steps in accordance with official guidance that is available for the proper handling and protection of such information.

22. Freedom of Information

- 22.1.** The Supplier acknowledges that, in order to comply with the FOIA and the Environmental Information Regulations 2004 ("**EIR**"), the Authority may be obliged, on request, to provide or consider the provision of Information to third parties where that Information constitutes or may constitute Confidential Information. Subject to the provisions of this Clause 22, the Supplier shall assist and cooperate with the Authority (at the Supplier's expense) to facilitate the Authority's compliance with the FOIA and/or the EIR in that regard.
- 22.2.** Without prejudice to the generality of its obligations under Clause 22.1, the Supplier shall:
 - 22.2.1. transfer any Request for Information that it or its Subcontractors receive, to the Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving that Request for Information; and
 - 22.2.2. provide the Authority with a copy of all Information in its or its Subcontractor's possession or power that the Authority reasonably considers is relevant to the Request for Information in the form that the Authority requires as soon as practicable and in any event within five (5) Working Days of the Authority requesting that Information (and any follow-up Information required by the Authority thereafter within two (2) Working Days of the Authority's follow-up request).

22.3. The Supplier further acknowledges that, notwithstanding the provisions of Clause 21, the Authority may, acting in accordance with the FOIA Code, be obliged under the FOIA or the EIR to disclose Information that is or may be Confidential Information:

22.3.1. in certain circumstances without consulting with the Supplier; or

22.3.2. following consultation with the Supplier and having taken the Supplier's views into account,

provided always that where Clause 22.3.1 applies, the Authority shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Supplier prior to any disclosure.

22.4. Subject to the Authority complying with its obligations under this Clause 22 the Authority shall not be liable for any loss, damage, harm or other detriment suffered by the Supplier or any Subcontractor arising from the disclosure of any Information, whether or not such Information is Confidential Information, falling within the scope of the FOIA or EIR.

22.5. The Supplier shall indemnify the Authority against all claims, demands, actions, costs, proceedings and liabilities that the Authority incurs due to the Supplier's or any Subcontractor's breach of this Clause 22.

23. Termination on Change of Control and Insolvency

23.1. The Authority may terminate this Agreement, without liability, by notice in writing to the Supplier (or the Supplier's representative in the event of 23.1.7) having effect immediately or after such period as the Authority may determine if:

23.1.1. the Supplier or its holding company or ultimate holding company undergoes a change of control, within the meaning of 1124 of the Corporation Tax Act 2010; or

23.1.2. the Supplier is an individual and a petition is presented for the Supplier's bankruptcy or a criminal bankruptcy order is made against the Supplier, or the Supplier makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if a trustee in bankruptcy or a supervisor under an individual voluntary arrangement is appointed to manage the Supplier's affairs; or

23.1.3. the Supplier is a company and the company passes a resolution for winding up or dissolution (otherwise than exclusively for the purposes of and followed by an amalgamation or reconstruction) or an application is made for an administration order in relation to it, or any party gives or files notice of an intention to appoint an administrator of it or such an administrator is appointed, or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager or supervisor or provisional liquidator is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or

23.1.4. the Supplier is a firm, or a number of persons acting together in any capacity and any event in Sub-Clauses 23.1.2 or 23.1.3 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or

23.1.5. the Supplier is unable to pay its debts within the meaning of [Section 123 of the Insolvency Act 1986](#); or

23.1.6. any similar event occurs within the United Kingdom under the law of any other jurisdiction; or

23.1.7. the Supplier, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his affairs or becomes a patient under any mental health legislation; or

23.1.8. the Supplier is an individual and he suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of his business.

23.2. The Supplier (or the Supplier's manager representative in the event of clause 23.1.7 applying) shall notify the Authority in writing immediately upon the occurrence of any of the events mentioned in Clause 23.1.

23.3. In relation to Sub-Clause 23.1.1 the Authority may only exercise its right to terminate under Clause 23.1 where there are reasonable grounds for the Authority to do so within six (6) months of a change of control and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs.

24. Termination on Default

24.1. The Authority may terminate this Agreement, without liability, by notice in writing to the Supplier having effect immediately or after such period as the Authority may determine if:

24.1.1. the Supplier commits a material breach of any term of this Agreement which breach is irremediable;

24.1.2. the Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

24.1.3. the Authority has served three (3) or more Default Notices on the Supplier in any consecutive period of six (6) months;

24.1.4. in the event that any one Default Notice has not been successfully resolved and signed off in writing by the Authority within such timescales as instructed, or if no such timescales have been stipulated, where the default has not been rectified within ten (10) Working Days;

24.1.5. the Supplier or any of its employees or agents acting or purporting to act on the Supplier's behalf commits an act which is an offence under the Enterprise Act 2002;

24.1.6. the Supplier or any of its employees shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this Agreement or to any other contract with the Authority;

24.1.7. the Supplier or any of its employees have committed any offence under the Bribery Act 2010;

24.1.8. the Supplier fails to remove a member of its staff where such person has not successfully passed the Vetting Procedure as may be required by the Authority;

24.1.9. the Supplier fails to remove a member of staff from the provision of Services under this Agreement in accordance with clause S3 (Supplier's Personnel) of Section C.2 (Conditions for Services);

24.1.10. in the event that a director or person in significant control of the Supplier (or such equivalent where the Supplier is not a company) is convicted of a criminal offence;

24.1.11. in the event that any of the grounds listed in [Regulation 57\(1\), 57\(3\) or 57\(8\) of the Public Contracts Regulations 2015](#) apply to the Supplier or where the Authority reasonably apprehends that such events is about to occur in relation to the Supplier and notifies the Supplier accordingly;

24.1.12. the Supplier, any of the Supplier's Personnel, or any Subcontractor commits an MSA Offence or is subject to any investigation relating to an alleged MSA Offence or any prosecution under the Modern Slavery Legislation.

24.2. For the purposes of Clause 24.1.1, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

24.2.1. a substantial portion of this Agreement; or

24.2.2. any of the obligations set out in Clauses 2 (Warranties and Representations), 14 (Corrupt Gifts and Payments), 15 (Equality and Discrimination), 16 (Health and Safety), 20 (Data Protection), 21 (Confidentiality) and 35 (Conflicts of Interest).

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

24.3. In the event that any of the grounds listed in [Regulation 73\(1\)\(a\) and \(c\) of the Public Contracts Regulations 2015](#) apply to this Agreement, or in the case of 73(1)(b) to the Supplier, the Authority may terminate this Agreement by giving five (5) Working Days' prior written notice to the Supplier of such termination.

24.4. The Supplier may terminate this Agreement if the Authority is in material breach of its obligations to pay undisputed sums pursuant to this Agreement by giving the Authority sixty (60) Working Days' notice specifying the breach and requiring its remedy. The Supplier's right of termination under this clause 24 shall not apply to non-payment of the Price where such non-payment is due to the Authority exercising its rights to deduct sums pursuant to the provisions of this Agreement.

25. Break

25.1. Without prejudice to other rights to terminate this Agreement, the Authority shall be entitled to terminate this Agreement or any part thereof at any time by giving notice, in writing, to the Supplier not less than the Break Notice Period stated in the Particulars.

25.2. If no Break Notice Period is stated in the Particulars, the Authority shall be entitled to terminate this Agreement or any part thereof by giving notice, in writing, to the Supplier of not less than:

25.2.1. ten (10) Working Days where this Agreement relates to the provision of Goods;

25.2.2. ten (10) Working Days where the term of this Agreement is less than 90 days and relates to provision of Services;

25.2.3. twenty (20) Working Days where the term of this Agreement is 90 days or more and relates to provision of Services;

provided that where this Agreement relates to the provision of both Goods and Services then the relevant time period for the provision of Services shall apply.

25.3. Where the Authority terminates this Agreement under Clause 25.1 or 24.2, the Authority shall only be liable upon termination for payment in respect of Services or Goods provided by the Supplier up to the date of Termination. The Authority shall have no liability to the Supplier for any Losses it may suffer as a result of any termination.

26. Consequences of Termination or Expiry

- 26.1.** Termination shall be without prejudice to the rights and remedies of the Supplier and the Authority accrued before Termination and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding as at the date of Termination.
- 26.2.** Upon Termination (for whatever reason) the Supplier shall:
- 26.2.1. immediately cease to provide the Services;
 - 26.2.2. immediately cease to make any further delivery or other action in respect of Goods which have not been Accepted by the Authority prior to the date of Termination;
 - 26.2.3. cease to make use of any of the Authority's property including its Intellectual Property Rights in any way whatsoever;
 - 26.2.4. without prejudice to the Authority's other rights under this Agreement within 10 calendar days of Termination at the Supplier's own cost return to the Authority or otherwise dispose of in accordance with the Authority's instructions all and any:
 - (a) documents and other information and materials relating to the Services;
 - (b) Data (which upon the Authority's request will be transferred in compatible form on to such computer system as the Authority may reasonably request) (including back-ups); and
 - (c) other equipment and property and software belonging to the Authority which may be in the possession or under the control of the Supplier;
 - 26.2.5. make good to the Authority any accounting discrepancy and/or loss or damage attributable to a material breach or matters the subject of a Default Notice, its employees or agents or any Subcontractors or its employees or agents; and
 - 26.2.6. vacate any Authority premises or part of any Authority premises that the Supplier has used in connection with the performance of the Services.
- 26.3.** In the event that the Supplier fails to comply with its obligations in Clause 26.2.4 the Authority may:
- 26.3.1. recover possession of the items referred to in Clause 26.2.4 and for this purpose the Supplier hereby grants to the Authority and its appointed agents a licence to enter onto any land or premises belonging to or under the control of the Supplier; and
 - 26.3.2. recover its reasonable costs incurred in connection with exercising its rights pursuant to Clause 26.3.1, such sum to be recoverable by the Authority from the Supplier as a debt.
- 26.4.** Clause 26.3 together with all other provisions of this Agreement which are expressed to survive termination or expiry of this Agreement shall continue in full force and effect in accordance with their terms.
- 26.5.** Subject as otherwise provided in this Agreement neither Party shall have any further obligation to the other under this Agreement. For the avoidance of doubt, the Authority shall only be liable upon termination for payment in respect of Goods that have been Accepted by the Authority and Services provided by the Supplier up to the date of Termination. The Authority shall have no liability to the Supplier for any Losses it may suffer as a result of any termination.
- 26.6.** Prior to and at the end of the Contract Period or termination, the Supplier shall co-operate with the Authority and any replacement Supplier nominated by the Authority ("**New Supplier**") in ensuring the smooth handover and continued running of the Services during such handover and in particular, but without limitation, the Supplier shall, to the extent required by the Authority:
- 26.6.1. allow the Authority and any New Supplier reasonable right of access to the Supplier's and Subcontractor's premises, systems, procedures and staff, where appropriate; and

26.6.2. deliver to the Authority upon request all information, materials and documents relating to the Services in its possession or under its control or in the possession or under the control of any permitted Subcontractors and in default of compliance with this provision the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter for the purpose of any such recovery any premises of the Supplier or its permitted Subcontractors where any such documents, information or materials may be held.

26.7. Any expiry or termination of this Agreement howsoever arising shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Authority and shall not affect the continued operation of any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement including Clauses 1 (Definitions & Interpretations), 2 (Warranties and Representations), 4 (Status of Agreement), 8.11 to 8.12 (withholding or setting-off payment), 10 (Indemnities), 11 (Insurance), 12 (Intellectual Property Rights), 18 (Notices), 19 (Audit and Information), 20 (Data Protection), 21 (Confidentiality), 22 (Freedom of Information), 26 (Consequences of Termination and Expiry), 27 (Inadequacy of Damages), 32 (Severability), 39 (Rights and Remedies), 40 (Governing Law) and 41 (Entire Agreement).

27. Inadequacy of Damages

Without prejudice to any other rights or remedies that the Authority may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the Supplier. Accordingly, the Authority shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

28. Dispute Resolution

28.1. In the event that any dispute arises between the Parties in connection with this Agreement, the Parties shall, in the first instance, use their reasonable endeavours to resolve it amicably between them.

28.2. If the dispute cannot be initially resolved between the Parties, the Escalation Process detailed in Section B Schedule 2 (Contract Management) shall apply. In cases where no Escalation Process has been stipulated, where the dispute is not resolved between the Supplier's Account Manager and the Contract Manager within twenty (20) Working Days the matter shall be referred to a senior officer of the Authority and a senior representative of the Supplier for resolution.

28.3. In the event that on the expiry of the final stage of the Escalation Process or the period of twenty (20) Working Days from the date of the referral under Clause 28.2, or such longer period as the Parties may agree, the dispute remains unresolved it shall be referred to a mediator appointed by the Centre for Effective Dispute Resolution ("**Mediator**").

28.4. The Mediator shall determine the rules and procedures by which the mediation shall be conducted save that:

28.4.1. each Party shall be entitled to make a written statement of its case to the Mediator prior to the commencement of the mediation provided that such statement shall be provided to the Mediator not less than ten (10) Working Days or such other period as may be agreed by the Mediator before the mediation is to commence; and

28.4.2. within ten (10) Working Days of the conclusion of the mediation the Mediator shall provide a written report to the Parties which report shall set out the nature of the dispute and the nature of its resolution if any.

28.5. The Mediator may charge a reasonable fee which the Parties shall pay in equal shares unless the Mediator orders otherwise.

29. Continuation of Agreement in Event of Disputes

If any dispute of any kind whatsoever arises between the Parties in connection with or arising out of this Agreement the Supplier shall at the Authority's discretion continue to perform this Agreement with all due diligence pending settlement of the dispute.

30. Transfer and Sub-contracting

30.1. The Supplier shall not assign, novate, subcontract, charge or otherwise dispose of this Agreement or any part of this Agreement without the prior written consent of the Authority which shall not be unreasonably withheld.

30.2. Where permitted to subcontract pursuant to Clause 30.1, the Supplier shall ensure that any Subcontractor complies with the terms of this Agreement, so far as they are applicable. Subcontracting any part of this Agreement shall not relieve the Supplier of any obligation or duty attributable to the Supplier under this Agreement.

30.3. Where the Authority has consented to the placing of sub-contracts, the Supplier shall, on request by the Authority and within a reasonable time, send copies of the subcontracts to the Authority.

30.4. Any change in the legal status of the Authority such that it ceases to be a contracting authority shall not affect the validity of this Agreement. In such circumstances, this Agreement shall bind and ensure to the benefit of any successor body to the Authority.

30.5. The Authority may require the Supplier to terminate a Sub-Contract where:

30.5.1. the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 24 (Termination on Default) except Clause 25 (Break); and/or

30.5.2. the relevant Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise;

30.6. Where the Authority requires the Supplier to terminate a Sub-Contract pursuant to Clause 30.5 above, the Supplier shall remain responsible for fulfilling all its obligations under this Contract Agreement including the provision of the Services.

31. Machinery of Government Changes

31.1. If there is a restructuring of the Authority ("**Restructuring**") and/or its provision of services or fulfilment of functions, such that:

31.1.1. the delivery of services or fulfilment of functions provided or fulfilled by the Authority becomes the responsibility of another Government department, agency or other public body;

31.1.2. the delivery of services or fulfilment of functions provided or fulfilled by another Government department, agency or other public body becomes the responsibility of the Authority;

31.1.3. the Authority is required to take on new services or fulfil new functions; and/or

31.1.4. any of the services or functions provided or fulfilled by the Authority cease to be provided or fulfilled by the Authority without being provided or fulfilled by any Government department, agency or other public body in place of the Authority,

then the Parties shall (subject to Clause 31.4) negotiate in good faith in accordance with the Clause 6 (Amendments and Variations) to agree a Variation to this Agreement that appropriately reflects the amended obligations of the Parties in the light of the Restructuring.

- 31.2.** When there is a Restructuring, the Supplier shall offer to deliver the Goods and/or the Services to the other Government department, agency or public body which takes on responsibility for the services or functions previously the responsibility of the Authority, on terms broadly equivalent to those terms set out in this Agreement.
- 31.3.** When there is a Restructuring where the delivery of services or fulfilment of functions provided or fulfilled by another Government department, agency or other public body becomes the responsibility of the Authority, the Supplier shall offer any additional Goods and/or Services so required by the Authority on terms broadly equivalent to those terms set out in this Agreement.
- 31.4.** When considering the impact of a Restructuring the following principles shall apply when agreeing the Variation and (as applicable) calculating any increase or decrease to the total amount of charges payable by the Authority to the Supplier:
- 31.4.1. the Supplier must use all reasonable endeavours to minimise any increase in costs it may suffer and maximise the reduction in costs that it can achieve as a result of the Restructuring;
 - 31.4.2. the Supplier must limit or avoid to the fullest extent possible, any capital or other expenditure which it planned to incur (for example to replace or maintain assets) which will no longer be necessary or appropriate as a result of the Restructuring;
 - 31.4.3. (in the case of any Restructuring described in Clause 31.1.2 or 31.1.3) the Supplier shall only be entitled to proceed with the Variation to the extent that it can demonstrate to the Authority that the Variation is reasonable; and
 - 31.4.4. (in the case of any Restructuring pursuant to Clause 31.1.1) the Supplier must demonstrate that it has complied with its obligations pursuant to Clause 31.2 and where the Supplier enters into a contract for the provision of continuing services with another Government department, agency or public body under that clause: (i) the Supplier shall demonstrate that it has used reasonable endeavours to structure those arrangements so as to mitigate any costs associated with the restructuring of the Services under this Agreement (for example, by redeploying assets) and (ii) the Supplier shall not be entitled to recover as a cost or charge under the Supplier, amounts for which it is separately recovering a charge under those alternate arrangements for any equivalent replacement service.
- 31.5.** In the event that the Authority merges with or is taken over by another contracting authority, agency or other public body ("**Joining Authority**") during the Contract Period, the Authority and the Joining Authority together shall be entitled to continue to receive the Goods and/or the Services.

32. Modern Slavery

32.1. The Supplier undertakes, warrants, and represents that:

- 32.1.1. neither it, nor any member of the Supplier's Personnel, nor any Subcontractor:
 - 32.1.1.1. has committed an MSA Offence;
 - 32.1.1.2. has been notified that it is subject to any investigation relating to an alleged MSA Offence or any prosecution under the Modern Slavery Legislation; or
 - 32.1.1.3. is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or a prosecution under the Modern Slavery Legislation;

- 32.1.2. it, the Supplier's Personnel, and all Subcontractors shall comply with the Modern Slavery Legislation; and that
- 32.1.3. it shall give immediate written notification to the Authority if it becomes aware or has reason to believe that it, any member of the Supplier's Personnel, or any Subcontractor has breached or has potentially breached any of Supplier's obligations under this Clause 32 (Modern Slavery), which notification shall set out full details of the circumstances concerning the breach or potential breach of Supplier's obligations under this Clause 32 (Modern Slavery).

32.2. Upon the Authority's receipt of any notification from the Supplier given pursuant to Clause 32.1.3 above, the Authority may at its sole and absolute discretion:

- 32.2.1. inform any and all relevant agencies or bodies, including without limitation the Secretary of State pursuant to section 52 of the Modern Slavery Act 2015 (whereupon the Supplier shall at the Authority's request respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to access any and all documents which led the Supplier to give the notification described in Clause 32.1.3 above);
- 32.2.2. without liability to the Supplier, terminate this Agreement with notice having immediate effect; and/or
- 32.2.3. require the Supplier to remove any Subcontractor or member of the Supplier's Personnel suspected or known to have committed an MSA Offence from the performance of the Supplier's obligations under this Agreement.

32.3. Where required by section 54 of the Modern Slavery Act 2015, the Supplier shall complete a slavery and human trafficking statement for each Financial Year setting out the steps that it has taken to ensure that there is no slavery or human trafficking in its business or supply chains.

32.4. The Supplier acknowledges, understands, and accepts that the Authority is subject to the requirements of section 52 of the Modern Slavery Act 2015 and, where so requested by the Authority, shall assist and co-operate with the Authority at the Supplier's own expense in order to enable Authority to comply with such requirements.

33. Severability

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, The Authority and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

34. Waiver

34.1. The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligation established by this Agreement.

34.2. A waiver of any Performance Default shall not constitute a waiver of any subsequent Performance Default.

35. Conflicts of Interest

35.1. The Supplier shall use all reasonable endeavours to ensure that neither the Supplier nor any of the Supplier's Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or such persons and the duties

owed to the Authority under the provisions of this Agreement. The Supplier shall disclose to the Authority full particulars of any such conflict of interest which may arise.

35.2. If, in the reasonable opinion of the Authority, a conflict of interest arises then the Supplier shall take all necessary measures as are required by the Authority to resolve the conflict of interest or alleviate its effect, at the Supplier's expense.

35.3. If a resolution of the conflict of interest is not possible then without prejudice to any rights or remedies of the Authority, the Authority shall have the right to terminate this Agreement with immediate effect and recover from the Supplier any loss resulting from such termination.

35.4. Where the Authority is of the opinion that a conflict of interest which existed at the time of the award of this Agreement could have been discovered by a competent supplier and ought to have been disclosed by the Supplier, the Authority may terminate this Agreement immediately and, without prejudice to any other rights, recover from the Supplier the amount of any loss resulting from such termination.

36. Non-Exclusivity

The Authority may at any time engage other persons to provide services and/or goods of the same type as the Services and/or the Goods.

37. Additional Claims

No claims for additional payment or time shall be allowed on the grounds of any matter for which a competent supplier would have made due allowance or which the Supplier could reasonably have discovered by a visit to the Authority's premises, reference to the Authority, or such other means as may have been appropriate.

38. Third Party Rights

A person who is not a Party to this Agreement shall have no right to enforce any of its provisions which expressly or by implication confer a benefit on him or her without prior written agreement of both Parties. This Clause does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and the provisions of this Clause do not apply to the Crown.

39. Rights and Remedies

39.1. The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

39.2. Without prejudice to any other rights or remedies arising under this Contract, including under Clause 24 (Termination on Default), if the Supplier fails to achieve a KPI Target on three or more occasions within any twelve (12) Month rolling period, the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

39.2.1. The Authority shall be entitled to require the Supplier, and the Supplier agrees to prepare and provide to the Authority, an Improvement Plan within ten (10) Working Days of a written request by the Authority for such Improvement Plan. Such Improvement Plan shall be subject to Approval and the Supplier will be required to implement any Approved Improvement Plan, as soon as reasonably practicable.

39.2.2. The Authority shall be entitled to require the Supplier, and the Supplier agrees to attend, within a reasonable time one (1) or more meetings at the request of the Authority in order to resolve the issues raised by the Authority in its notice to the Supplier requesting such meetings.

39.2.3. The Authority shall be entitled to serve an Improvement Notice on the Supplier and the Supplier shall implement such requirements for improvement as set out in the Improvement Notice.

39.2.4. In the event that the Authority has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Supplier either:

(a) fails to implement such requirements for improvement as set out in the Improvement Notice; and/or

(b) fails to implement an Improvement Plan Approved by the Authority;

then (without prejudice to any other rights and remedies of termination provided for in this Contract), the Authority shall be entitled to terminate this Contract for material Default.

40. Governing Law

This Agreement is made in England and according to English law, and is subject to the exclusive jurisdiction of the courts of England and Wales to which both Parties irrevocably submit.

41. Entire Agreement

41.1. This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, promises, assurances, warranties, representations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

41.2. Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

41.3. Nothing in this Clause 41 shall exclude any liability in respect of misrepresentations made fraudulently.

42. Costs

Except as expressly provided in this Agreement, each Party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this Agreement and any documents referred to in it.

43. Competitive Terms

43.1. If the Authority is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:

43.1.1. require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or

43.1.2. subject to Clause 30.5 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

43.2. If the Authority exercises either option pursuant to Clause 43.1.1, then the Contract Prices shall be reduced by an amount that is agreed in accordance with Clause 6 (Amendments and Variation).

43.3. The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:

43.3.1. the Authority shall make the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and

43.3.2. any reduction in the Contract Prices taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

44. PUBLICITY AND BRANDING

44.1. The Supplier shall not:

44.1.1. make any press announcements or publicise this Contract in any way; or

44.1.2. use the Authority's name or brand in any promotion or marketing or announcement of Orders,

without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).

44.2. Each Party acknowledges to the other that nothing in this Contract, either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.

44.3. The Authority shall be entitled to publicise this Contract in accordance with any legal obligation upon the Authority, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

45. Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

46. Policies

The Supplier shall comply with any policies of the Authority mentioned in this Agreement or mentioned within Vol 2 Statement of Requirements including as updated from time to time.

47. The Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

Should a member of the public make a complaint about a Supplier, Supplier's Personnel or Subcontractor(s), the police are obliged by law to investigate the complaint. Should a complaint arise, the Supplier will be required to support any investigation and assist the investigation officer with enquiries. The Supplier will also be required to act as the single point of contact for complaints.

SCHEDULE 1 – KEY PERFORMANCE INDICATORS

1. GENERAL

1.1. This schedule sets out the KPIs by which the Supplier's overall performance under this Contract Agreement shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Contract Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause **Error! Reference source not found.** (Variation Procedure).

1.2. The Supplier shall comply with all its obligations related to KPIs set out in this Contract Agreement including Contract Schedule 8 (Contract Management) and shall use all reasonable endeavours to meet the KPI Targets identified in the table below.

1.3. The table below sets out the KPIs that the Successful Tenderer is required to achieve when providing the Services, the mechanism by which a KPI Failure will be managed and the method by which the Successful Tenderer's performance will be monitored.

KPI	PERFORMANCE INDICATOR	STANDARD	FAILURE	REMEDY
GENERAL MANAGEMENT:				
GM1	Ensure all consultants' key and sub-consultant key personnel successfully undergo security clearance prior to undertaking the Service.	100% compliance	Employee or consultant not vetted / vetting expired	Employee or consultant excluded. Three events annually will result in a material breach of contract.
GM2	Provide monthly performance reports including but not limited to: Clear invoice summaries per Authority; Monthly health and safety report; Any complaints; Any service failures and disputes; Any service changes; Planned training/education/campaigns; Proposed continuous improvement/efficiency initiatives; Project progress against key milestones; Positive feedback and successes; Lessons learnt; Tracking against key risks and issues; Demonstration of value engineering and value for money in projects; Innovation; Local SME engagement; Social value generation; Financial reports on projects; Robustness of contract administration; Post-project completion visits; Progress of any impending or outstanding claims and the preparation and settlement of final accounts; Sub-consultant performance; Capacity	100% compliance and accuracy. All reports required within agreed dates - 1 week in advance of previous month reporting	No report or incomplete report	0.01% of the total annual contract value as a service credit for each working weeks delay
GM3	Billing	100% accurate billing, evidenced where required, within contracted timescales	Inaccurate bills	0.01% of the total annual contract value as a service credit for each occurrence after 1 per month
GM4	Local SME partnering	70% supply chain comprises local SME businesses	Local supply chain usage below the threshold	0.02% of the total annual contract value as a service credit for each usage percentage below the threshold
GM5	Staff Turnover: The number of key personnel that have left or been replaced, expressed as a percentage of the total number of people allocated to the account	95%	Below 95%	No remedy – Indicator to understand churn

KPI	PERFORMANCE INDICATOR	STANDARD	FAILURE	REMEDY
GM6	Achievement of social value objectives	95% of social value target achieved	Below 95%	0.01% of the total annual contract value as a service credit

CLIENT SATISFACTION:

CS1	How satisfied is the authority with the consultants project participants and collaborative working? 10 = Totally satisfied 5/6 = Neither satisfied nor dissatisfied 1 = Totally dissatisfied	An average score of 7 across each project	An average score below 7	0.01% of the total annual contract value as a service credit for each occurrence after 1 per month
CS2	How satisfied is the authority with the performance of the sub-£50k process as well as the engagement and variety of local SME's? 10 = Totally satisfied 5/6 = Neither satisfied nor dissatisfied 1 = Totally dissatisfied	An average score of 7 across each project	An average score below 7	0.01% of the total annual contract value as a service credit for each occurrence after 1 per month
CS3	How satisfied is the authority with the finished product/facility, design or report? And that it clearly demonstrated innovation and value for money? 10 = Totally satisfied 5/6 = Neither satisfied nor dissatisfied 1 = Totally dissatisfied	An average score of 7 across each project	An average score below 7	0.01% of the total annual contract value as a service credit for each occurrence after 1 per month
CS4	Reworks required for projects (designs, reports, plans) in a month 10 = Rework free 8 = Some reworks with no significant impact on the authority 5/6 = Some reworks with some impact on the authority 3 = Major reworks with a major impact on the authority 1 = Total failure	An average score of 7 across each project	An average score below 7	0.01% of the total annual contract value as a service credit for each occurrence after 1 per month increasing by 0.01% per point for severity. Excludes remedies for scores of 1 to 3

SAFETY:

SM1	Comply with current statutory Health and Safety Regulations	100% compliance with regulations	Non-adherence within a month of the request	0.01% of the total annual contract value as a service credit for each occurrence after 1 per month
SM2	Comply with the Authorities safety management policies and procedures.	100% compliance to policies and procedures	Non-adherence within a month of the request	0.01% of the total annual contract value as a service credit for each occurrence after 1 per month

TIME:

T1	Delivery against planned programme versus actual timeline. Percentage of key milestones achieved prior to / or upon target date	95-100%	Below 95%	0.01% of the total annual contract value as a service credit for each occurrence after 1 per month
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ENVIRONMENTAL:

E1	How satisfied was the authority with the impact on the environment (such as energy use, CO2 emissions, materials from non-renewable source) was taken into account in the finished product/facility for relevant projects? 10 = Basis of concept design 8 = Major influence on design 5/6 = Some influence on design 3 = Minor influence on design 1 = No influence on design	10	Below 10	0.01% of the total annual contract value as a service credit for each occurrence after 1 per month
E2	How satisfied was the authority with the impact on the biodiversity was taken into	10	Below 10	0.01% of the total annual contract value as a service

	account in the finished product/facility for relevant projects? 10 = Thorough consideration of biodiversity 8 = Good level of consideration of biodiversity 5/6 = Fair consideration of biodiversity 3 = Some consideration of biodiversity 1 = No consideration of biodiversity			credit for each occurrence after 1 per month
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