

# OFFICIAL

## GENERAL TERMS AND CONDITIONS

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### 1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

**“Acceptance”** means that an Authorised Person has accepted that the Goods and Services as meeting the requirements of the Contract.

**“Acceptance Date”** means the date on which the Authorised Person has accepted the Goods and Services in accordance with clause 6.2.

**“Affected Party”** means the Party seeking to claim relief in respect of a Force Majeure Event.

**“Auditor”** means:

- a) the Authority’s internal and external auditors;
- b) the Authority’s statutory or regulatory auditors;
- c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office
- d) HM Treasury or the Cabinet Office
- e) any party formally appointed by the Authority to carry out audit or similar review functions; and
- f) successors or assigns of any of the above.

**“Authorised”** means signed by an Authorised Person.

**“Authorised Person”** means the Authority’s employee or the Chief Constable’s employee or a police officer if applicable authorised either generally or specifically by the Authority to enter into the Contract and act on behalf of the Authority

**“Authority”** means the contracting Authority referred to in the Contract or any successor organisation responsible for the tendering, award and overall management (including the issue of any variations and modifications to Contract) of the Contract on behalf of that contracting Authority and where that Authority is a PCC then it is entering into this Contract on behalf of itself and the Chief Constable and all the Conditions will apply to both legal entities.

**“Benchmarker”** means the person appointed by the Authority to conduct the Benchmark Review.

**“Benchmark Report”** means the report prepared by the Benchmarker following the Benchmark Review.

**“Benchmark Review”** means the process of comparing the Goods and Services against other provision as set out in the Specification or as subsequently agreed between the Parties.

**“Business Continuity Event”** means any incident or event that causes (or is likely to cause) an adverse effect on the performance and delivery of the Services or any material interruption, destruction or other loss of operational system capacity, which is material in nature and cannot be managed within the context of normal operating procedures.

**“Business Day”** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**“CDM Regulations”** means the Construction (Design and Management) Regulations 2015.

**“CEDR”** means the Centre for Effective Dispute Resolution

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**“Chief Constable”** means the Chief Constable of the same relevant policing area as the Authority.

**“Commencement Date”** means the start date from which the Contract takes effect in accordance with the Contract.

**“Conditions”** means the terms and conditions (including any attached schedules) set out in the Contract and this document from time to time.

**“Confidential Information”** means any and all:

- (a) information whether technical, operational, commercial, financial or otherwise (including without limitation data, know-how, formulae, processes, designs, photographs, audio or videotape, CD ROMs, drawings, specifications, samples, finances, programmes, records, business plans, consumer research, analysis or experience) of whatever nature and whether disclosed orally, pictorially, in writing, by demonstration, by viewing, in machine readable form or other means (including on electromagnetic or CD media or via telephone lines or radio or microwave) and whether stored electronically or otherwise which relates to a person's business, operations, products, developments, services, trade secrets, know-how, personnel, supplies, customers, victims, employees, police officers or the Services;
- (b) notes, reports, analysis and reviews of, and any other information derived from, any information referred to in clause (a) above or which contains or is based in whole or in part upon such information;
- (c) information designated as confidential, commercially sensitive or politically sensitive or which ought reasonably to be considered as such; and
- (d) all materials belonging to another person in respect of which the Parties owe obligations of confidentiality.

**“Contract”** means this contract between the Authority and the Supplier for the supply of Goods and Services in accordance with these Conditions as set out in clause 2.

**“Contract Change Notice”** means a notice in the form as the template change control notice attached to this Contract.

**“Contract Finder”** means the Government's publishing portal for public sector procurement opportunities.

**“Contract Manager”** shall have the meaning as set out in clause 3.

**“Contract Period”** means the term of the Contract from the Commencement Date until the Expiry Date.

**“Data Controller”** has the meaning set out in the Data Protection Legislation.

**“Data Controller's Data”** means any Personal Data, any special categories of personal data as referred to in Article 9(1) of the GDPR and any Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR belonging to either the Authority or the Chief Constable if applicable.

**“Data Processor”** has the meaning set out in the Data Protection Legislation.

**“Data Processing Details”** means the description of the data Processing being carried out under the Contract, the details of which are set out in the data processing agreement with the relevant Data Controller.

**“Data Protection Legislation”** means the DPA 2018, the GDPR, the applied GDPR (as applied by the DPA 2018), regulations made under the DPA 2018, regulations made under section 2(2) of the European Communities Act 1972 which relate to the GDPR or Law Enforcement Directive (Directive (EU) 2016/680) and any replacement or supplementary legislation coming into effect from time to time.

**“Data Subject”** has the meaning set out in the Data Protection Legislation.

**“Data Subject Access Request”** means 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.

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**“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 Goods and Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data specification and reports.

**“Delivery”** means as set out in clause 6 and shall include uses of the term “Delivers”.

**“Delivery Date”** means the date(s) set out in the relevant Purchase Order.

**“Delivery Instructions”** means the instructions set out in the Contract for the provision of the Goods and Services, including any other information the Authority considers appropriate to the provision of the Goods and Services.

**“DPA 2018”** means the Data Protection Act 2018.

**“Expiry Date”** means the end date of the Contract or, if this Contract is terminated before the date specified in the Contract, the earlier date of termination of the Contract.

**“Force Majeure Event”** means any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract 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 Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain.

**“Force Majeure Notice”** means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event.

**“GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679).

**“Goods”** means the goods (or any part of them) set out in the Contract.

**“Good Industry Practice”** means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Supplier engaged in the supply of goods and services similar to the Goods and Services under the same or similar circumstances as those applicable to the Contract.

**“Goods Specification”** means any specification for the Goods, including any related plans and drawings that are set out by the Authority to the Supplier.

**“Installation”** means the installation of the Goods in the designated location and into the operating environment specified by the Authority at the site and “Install” shall be interpreted accordingly.

**“Intellectual Property Rights”** means patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights.

**“Key Personnel”** means those individuals nominated by the Authority as being of importance to the completion or delivery of the Services.

**“Laws”** means any law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body or any approval of any local authority or statutory undertaker having jurisdiction in relation to the Goods and Services or with whose systems the Goods and Services are, or are to be, connected, including, for the avoidance of doubt, the CDM Regulations, in each case from time to time.

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**“Material Breach”** means a breach or an anticipatory breach that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from:

- (a) a substantial portion of this Contract; or
- (b) any of the obligations or warranties set out in this Contract,

for the remainder of the Contract.

**“Party/Parties”** means the party or parties to this Contract.

**“PCC”** means the Police and Crime Commissioner(s) and/or Police, Fire and Crime Commissioner referred to in the Contract.

**“Persistent Breach”** means repeated breaches of any of the terms of this Contract in such a manner as to reasonably justify the Authority’s opinion that the Supplier’s conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract.

**“Personal Data”** has the meaning set out in the Data Protection Legislation.

**“Process”** has the meaning set out in the Data Protection Legislation.

**“Premises”** means the location(s) owned by the Authority where the Goods and/or Services are to be delivered or performed.

**“Purchase Order”** means an official purchase order raised by the Authority.

**“Purchase Order Amendment”** means an issued and Authorised Purchase Order Amendment from the Authority or series of Purchase Order Amendments.

**“Rectification Plan”** means a plan agreed in accordance with clause 16 for the resolution of a Service Failure.

**“Regulations”** means the Public Contracts Regulations 2015 and “Regulation” will be interpreted accordingly.

**“Request”** has the meaning set out in the Freedom of Information Act 2000 (**FOIA**), and the Environmental Information Regulations 2004 (**EIR**).

**“Services”** means the services, including without limitation any Deliverables, Installation, and consequential connection, testing, commissioning or training to be provided by the Supplier under the Contract as set out in the Service Specification.

**“Service Credits”** means the sum attributable to a Service Failure as set out in the Specification.

**“Service Failure”** means a failure by the Supplier to deliver any part of the Goods and Services in accordance with the Service Levels.

**“Service Levels”** means those levels of delivery and performance set out in the Goods and Services Specification or any service level agreement attached to the Contract.

**“Services Specification”** means the description or specification for Services that is set out by the Authority to the Supplier.

**“Service Variation”** means a variation to all or part the Services in accordance with clause 14.

**“SME”** means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

**“Specification”** means the Goods Specification and the Services Specification as attached to the Contract.

**“Special Conditions”** means the special conditions attached to this Contract if any.

**“Sub-Contract”** means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide:

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- a) the Goods or Services or any part thereof; or
- b) facilities and/or, services necessary for the provision of the Goods or Services or any part thereof; or
- c) is responsible for the management, direction or control of the provision of the Goods or Services or any part thereof

“**Sub-Contractor**” means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person.

“**Sub-processor**” means any third party appointed to process Personal Data on behalf of the supplier related to this Contract.

“**Supplier**” means the supplier referred to in the Contract.

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“**VCSE**” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

### 1.2 Construction.

- (a) In this Contract unless the context otherwise requires, capitalised expressions shall have the meanings set out in clause 1.1 or the relevant Special Conditions in which that capitalised expression appears.
- (b) If a capitalised expression does not have an interpretation in clause 1.1 or relevant Special Conditions, it shall in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

### 1.3 In these Conditions:

- (a) the masculine gender includes the feminine and neuter and vice versa;
- (b) the singular includes the plural and vice versa;
- (c) references to persons include bodies corporate, unincorporated associations and partnerships;
- (d) the schedules if any form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the schedules;
- (e) references to clauses and schedules are to clauses and schedules of this Contract;
- (f) the headings of clauses are for convenience only and shall be disregarded in construing this Contract;
- (g) any reference to a statute or statutory provision includes a reference to any modification, consolidation or re-enactment of the provision for in force from time to time and all and any subordinate legislation in force from time to time made under it;
- (h) any obligation in this Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done;
- (i) general words shall not be given a restrictive interpretation by reasons of their being preceded or followed by words indicating a particular class of acts, matters or thing;
- (j) a reference to writing or writing does not include email or fax.

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### **2. BASIS OF CONTRACT**

- 2.1 The Authority appoints the Supplier on a non-exclusive and independent contractor basis to provide the Goods and Services in accordance with the terms and conditions of this Contract.
- 2.2 The Contract shall commence on the Commencement Date and the term of the Contract shall be the Contract Period.
- 2.3 All Purchase Orders issued by the Authority to the Supplier in relation to the Contract shall be fulfilled in accordance with the terms set out in the Contract.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.5 The Supplier acknowledges that where it has submitted a tender submission prior to the award of this Contract, the Authority has relied on all information provided in writing in such submission and warrants that it is accurate and valid and will notify the Authority of any matters which may arise during the term of the Contract that would cause the Supplier's responses to change. Any failure to notify the Authority in regard to the obligation in this clause shall constitute a Material Breach and the Authority reserves the right to terminate this Contract if the change in circumstances notified to the Authority under the terms of this Contract are of such a significant gravity that in the Authority's reasonable opinion the Contract would not have been awarded and/or the current status of the Supplier is such that the Authority is unable to continue the contractual relationship.
- 2.6 The Authority shall have the right, before delivery, to send the Supplier a Purchase Order Amendment in regard to the Goods adding to, deleting or modifying the requirements. If the Purchase Order Amendment will cause a change to the price or Delivery Date then the Supplier must suspend performance of the Purchase Order and notify the Authority without delay of the new price and Delivery Date at the same level of cost and profitability as the original price. The Supplier must allow the Authority 10 (ten) Business Days to consider any new price and Delivery Date. The Purchase Order Amendment shall take effect when, but only if, the Authorised Person accepts in writing the new price and Delivery Date within the time the Supplier stipulates. If the Authorised Person fails to confirm the Purchase Order Amendment within the time the Supplier stipulates then performance of the Contract shall immediately resume as though the said Purchase Order Amendment had not been issued. Each Purchase Order Amendment shall have precedence over any earlier Purchase Order Amendment.
- 2.1 If there is any ambiguity or inconsistency in or between these terms and conditions of the Contract and the Special Conditions, the Special Conditions will prevail.

### **3. CONTRACT MANAGEMENT AND MANAGEMENT INFORMATION**

- 3.1 The Supplier shall nominate a Contract Manager who shall have sufficient Authority to ensure that required Service Levels are met, to ensure sufficient resources are allocated to the Contract and any Purchase Order, and to maintain performance to the Specification, to pro-actively co-ordinate and communicate relevant purchase orders and to provide comprehensive support and links between the Authority and the Supplier, including sales support, information and advice on all of the Goods and Services. The Contract Manager shall be the prime contact between the Supplier and the Authority and any notice, communication, information or instruction given or made to or by the Contract Manager shall be deemed given to or received by the Supplier. It shall be the responsibility of the Contract Manager to ensure all staff involved in the Contract or any Purchase Order are fully aware of their obligations.
- 3.2 Where applicable, the Supplier shall, at no charge to the Authority, submit complete and accurate management information in connection with the Contract at such reasonable times as the Authority

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may request in such form as may be agreed between the Parties at the Commencement Date and as varied from time to time throughout the duration of the Contract and the Supplier shall:

- (a) operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver the agreed management information to the Authority; and
- (b) permit the Authority to share such management information with any other crown bodies or third parties in connection with their normal operational business.

#### 4. REPRESENTATIONS AND WARRANTIES

4.1 The Supplier acknowledges that Authority has entered into this Contract in reliance upon the Supplier's expertise in selecting and supplying the Specification fit to meet Authority's business requirements.

4.2 Each Party represents and warranties that:

- (a) it has full capacity and authority to enter into and to perform this Contract;
- (b) this Contract is executed by its duly authorised representative;
- (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract; and
- (d) its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

4.3 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has all necessary consents and regulatory approvals to enter into this Contract;
- (c) the Goods and Services will conform in all material aspects to the Specification and be free from defects;
- (d) its execution, delivery and performance of its obligations under this Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a default under any agreement by which it is bound;
- (e) as at the Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to its tender submitted to the Authority and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract;
- (f) it has and shall continue to have all necessary rights in any Intellectual Property Rights which are necessary for the performance of the Supplier's obligations under this Contract including the delivery of the Goods and the receipt of the Services by the Authority;
- (g) it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority;



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- (h) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- (i) it is not affected by any proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- (j) for the Contract Period and for a period of twelve (12) months after the termination or expiry of this Contract, the Supplier shall not employ or offer employment to any staff of the Authority which have been associated with the provision of the Services without written approval or the prior written consent of the Authority, which shall not be unreasonably withheld. However this clause 4.3(j) shall not preclude the Supplier's rights to (i) make generalised searches for employees by the use of advertisements in the media (including by any recruitment agency), (ii) hire any employee of the Authority who approaches the Supplier on an unsolicited basis; or (iii) solicit for employment or hire any such employee who ceases to be employed by the Authority.

4.4 Each of the representations and warranties set out in clauses 4.1 and 4.3 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Contract.

4.5 If at any time a Party becomes aware that a representation or warranty given by it under clauses 4.1 and 4.3 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

4.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Supplier which constitutes a Material Breach.

## 5. SUPPLY OF GOODS

5.1 The Supplier shall ensure that the Goods shall:

- (a) be new (unless otherwise specified on the Purchase Order) and be free from defects in design, material and workmanship, correspond with their description and any applicable Goods Specification and shall remain so for such period as is agreed with the Authority after Acceptance;
- (b) conform with the Deliverables set out in the Specification and be fit for any purpose expressly or impliedly made known to the Supplier by the Authority; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Authority expressly or by implication, and in this respect the Authority relies on the Supplier's skill and judgement; and
- (d) comply with all applicable Laws.

5.2 The Supplier warrants to the Authority that the Goods will be provided:

- (a) in a proper, skilful and workmanlike manner;
- (b) by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;

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- (c) in accordance with the Contract; and
  - (d) to the reasonable satisfaction of the Authorised Person.
- 5.3 The Supplier warrants that to the extent that associated services are performed, they shall be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with Good Industry Practice.
- 5.4 The Supplier will to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Goods and, where any warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier.
- 5.5 The Supplier will, unless it is unable to do so, assign to the Authority on Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in clause 5.4 above.
- 5.6 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract or in the Delivery or the Goods.
- 5.7 Repairs or replacements necessary due to any breaches of this clause 5 will themselves be covered by this Contract for a period of 12 months from Acceptance of such repairs or replacements by the Authority, including in accordance with clause 23.

## **6. DELIVERY OF THE GOODS AND TITLE**

- 6.1 The Supplier shall ensure that:
- (a) the Goods are properly packaged to survive transit and storage without damage, clearly and legibly labelled and addressed. The Authority will not be liable to pay for any pallets, packages or containers in which the Goods are supplied. All packaging must be clearly marked to show to whom it belongs. Any packaging that the Supplier requires returning will be done so at the Supplier's cost and risk;
  - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Authority's Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (c) if the Supplier requires the Authority to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 6.2 The Supplier shall deliver the Goods:
- (a) on the Delivery Date or, if no such date is specified, within the timescale agreed in this Contract;
  - (b) to the point of delivery stated in the Purchase Order, or as instructed by the Authority prior to delivery; and
  - (c) during the Authority 's normal business hours, or as instructed by the Authority.

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- 6.3 If the Supplier fails to perform its obligations under clause 6.2 and this failure is attributable to the sole default of the Supplier, then the Authority can give the Supplier a written notice specifying the times or the date(s) by which the Goods must be delivered, such times and date(s) to be reasonable in all the circumstances and, for this purpose, time is of an essence to the Contract. If the Supplier does not deliver the Goods within the times or on the date(s) set out in the notice, the Authority shall have the right to refuse any further Goods and/or terminate the Contract immediately without penalty to the Authority. However the Authority shall not exercise its right of termination unreasonably or vexatiously. The Authority shall also be entitled to purchase other goods of the same or similar description and will be entitled to recover from the Supplier the difference between the cost of the alternative Goods purchased (subject to any limit of liability clause as set out in the Contract) and the cost which would have been payable to the Supplier for the Goods which should have been provided by the Supplier. This shall be without prejudice to any other remedies set out in clause 23.1.
- 6.4 Where the Goods are delivered by the Supplier to the Authority delivery shall occur when the Goods are removed from the transporting vehicle, delivered in accordance with the delivery instructions and upon the signature by a representative of the Authority to whom the Supplier has been instructed to effect delivery. Where the Goods are collected by the Authority, delivery shall occur when they are loaded onto the Authority's vehicle and signed for by a representative of the Authority.
- 6.5 The Supplier shall not deliver the Goods in instalments without the Authority's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Authority to the remedies set out in clause 23.1.
- 6.6 Except where otherwise provided in the Contract, delivery shall include the unloading or stacking of the Goods by the Supplier at such places as the Authority may reasonably direct.
- 6.7 The issue by the Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods. The Authority shall not be deemed to have accepted any Goods other than in accordance with clause 7.
- 6.8 If the Supplier at any time becomes aware of any act or omission, or proposed act or omission by the Authority which prevents or hinders, or may prevent or hinder the Supplier from supplying the Goods in accordance with the Contract, the Supplier shall inform, in writing, the Authority as soon as reasonably practicable.
- 6.9 Title and risk in the Goods shall pass to the Authority on completion of Delivery.

## 7. ACCEPTANCE

- 7.1 The Authority shall have the right to reject the Goods and Services in whole or in part whether or not paid for in full or in part within a reasonable time of delivery or performance (notwithstanding the commencement by the Authority using the Goods or enjoying the benefit of the Services) if they do not conform to the requirements of the Contract.
- 7.2 Subject to clause 6.1, acceptance shall be deemed to have occurred after the reasonable time of delivery or performance referred to above unless the Authorised Person notifies the Supplier in writing of the rejection of the Goods or Services.

## 8. CONSUMABLES

- 8.1 The Authority reserves the right to procure consumables to be used on or with the Goods from the Supplier or such other source as the Authority deems appropriate. Such procurement of consumables from a source other than Supplier shall not invalidate the Authority's rights under the Contract and in no way affect the provisions of clauses 5.1 and 5.2 or otherwise provided that the consumables

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utilised meet the minimum standards as published by the Supplier or the manufacturer of the Goods, or where no published standards are available, the standards generally accepted as being appropriate to the consumable supplies for use on or with the Goods concerned.

- 8.2 In the event that the Supplier shall claim that the use of specific consumables is adversely affecting the standards of performance of the Goods and/or increasing the cost to the Supplier of meeting its obligations to provide repair or maintain the Goods it shall be for the Supplier to prove that the consumables do not meet the requisite minimum standards, and are affecting the Goods and/or increasing the Supplier's costs. If the Supplier shall prove that the consumables do not meet the requisite minimum standards the Authority shall cease using the consumables concerned and procure alternative consumables which meet the standards required.

### **9. SPARES**

- 9.1 The Supplier shall make available to the Authority, or any nominated third party maintenance provider, on request, with reasonable dispatch and at reasonable prices, all spares and replacement parts for the Goods as the Authority shall require.
- 9.2 The Supplier shall maintain a supply of such spares or replacement parts for such period as is agreed with the Authority from the date of Delivery or the Acceptance Date, whichever is the latest.
- 9.3 Such spares or replacement parts shall be fully compatible with, and maintain as a minimum the same levels of performance as the Goods originally supplied, but need not be identical to those items.
- 9.4 If during the period set out in clause 9.2 the Supplier or the Supplier's Sub-contractor intends to discontinue the manufacture of spares or replacement parts for the Goods the Supplier shall forthwith give notice to the Authority of such intention and supply where possible to the Authority at no extra cost a perpetual, royalty free, worldwide non exclusive license to use all of the relevant Intellectual Property Rights in all designs, tools, drawings or other items necessary for the Authority to procure replacement spares from any third party.

### **10. OPERATING MANUALS AND AS-FITTED DRAWINGS**

The Supplier shall supply to the Authority all operating manuals and other documentation necessary for the satisfactory operation of the Goods. If after the Acceptance Date the operating manuals and documentation need updating or replacing the Supplier shall be responsible for notifying the Authority of the availability of such updates or replacements and shall supply them at reasonable prices upon receipt of written instructions. The Supplier shall provide at no extra cost to the Authority the operating manuals and other documentation in the media format in which they are available at the appropriate time.

### **11. ATTACHMENT TO THE GOODS**

- 11.1 The Authority shall have the right to attach to, or install into or onto the Goods any other items or goods (including but not limited to software) which the Authority considers to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by the Authority. If the Authority attaches or installs such items or goods then this shall not have the effect of degrading the performance of the Goods and shall not relieve the Supplier from meeting its obligations under the Contract provided that:
- (a) the goods attached or installed are not specified in any of the Supplier's and/or the manufacturer's published specifications as having the effect of degrading the standards of performance or invalidating the Authority's rights under the Contract; and

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- (b) the Supplier has not otherwise notified the Authority in writing that the attachment or installation of specific goods will degrade the standards of performance or invalidate the Authority's rights under the Contract; and
- (c) the goods have been attached or installed in accordance with the published instructions of the Supplier.

11.2 Subject to clause 11.1, in the event that the attachments and/or installation is made by the Authority and the Supplier can prove that such attachment or installation is adversely affecting the standard of performance of the Goods then the Supplier shall be entitled to be reimbursed any associated direct costs which the Supplier can demonstrate as being reasonably and necessarily incurred in returning the Goods to the normal standards of performance in accordance with this Contract as a direct result of the attachment or installation made by the Authority (other than where such attachment or installation has been with the approval of the Supplier).

## 12. HAZARDOUS GOODS AND SAFETY

12.1 Where the Goods comprise or include substances hazardous to health, the Supplier will supply to the Authority on or before Delivery all data necessary to allow the Authority to form a suitable and sufficient assessment of the attendant risks and of the steps that need to be taken in order to meet the requirements of all applicable Laws.

12.2 All hazardous Goods must be clearly marked and display the name of the material in English and be delivered in such manner as is appropriate in view of the nature of the hazardous Goods. Transport and other documents must include a declaration of the hazard and the name of the material in English. The Goods must be accompanied by emergency information in English.

12.3 Without prejudice to the generality of clause 12.1, unless specifically required under the Contract, there shall be no asbestos content in the Goods.

12.4 If the Services contain any element which is notifiable for the purposes of the CDM Regulations then the Supplier shall be the principal contractor under the CDM Regulations in respect of those Services and shall perform all the functions and obligations required to be performed by the principal contractor under the CDM Regulations.

12.5 The Supplier shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the Contract. The Authority shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Premises and that may affect the Supplier in the performance of the Contract.

12.6 While on the Premises, the Supplier shall comply with any health and safety measures implemented by or on behalf of the Authority in respect of employees, Sub-contractors and agents of the Supplier and other persons working or present on those Premises.

12.7 The Supplier shall notify the Authority immediately in the event of any incident occurring in the performance of the Contract on the Premises where that incident causes any personal injury or damage to property or the creation of a risk that could give rise to personal injury.

12.8 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees, subcontractors and agents of the Supplier and other persons working on the Premises in the performance of the Contract.

12.9 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

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### 13. SUPPLY OF SERVICES

- 13.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to the Authority in accordance with the terms of this Contract.
- 13.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by the Authority
- 13.3 In providing the Services, the Supplier shall:
- (a) co-operate with the Authority in all matters relating to the Services, and comply with all reasonable instructions of the Authority;
  - (b) perform the Services with the best care, skill and diligence in accordance with Good Industry Practice;
  - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
  - (d) replace promptly any of its employees who, the Authority shall have reasonably decided have failed to carry out their duties with reasonable skill and care with another person with the necessary training and skills to meet the requirements of the Contract;
  - (e) ensure the Services and the Deliverables will conform with all descriptions and specifications set out in the Service Specification and shall be fit for any purpose expressly or impliedly made known to the Supplier by the Authority;
  - (f) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - (g) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Authority will be free from defects in workmanship, installation and design;
  - (h) obtain and at all times maintain all necessary licences and consents and comply with all applicable Laws;
  - (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Authority to the Supplier ("the Authority's Materials") in safe custody at its own risk, maintain the Authority's Materials in good condition until returned to the Authority and not dispose of or use the Authority's Materials other than in accordance with the Authority's written instructions or authorisation;
  - (j) not do or omit to do anything which may cause the Authority to lose any licence, Authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Authority may rely or act on the Services; and
  - (k) provide the Services via the Key Personnel (if any) who shall not be released from providing the Services to the Authority, except for reason of sickness, maternity leave, paternity leave, termination of employment or because the Authority has requested they be removed, or the element of the Service in respect of which the individual was engaged has been completed to the Authority's satisfaction or other extenuating circumstances explained to the Authority. Any replacements for the Key Personnel shall be subject to the agreement of the Authority and such replacements shall be of at least equal status or of equivalent experience and skills to the

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Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Supplier.

13.4 The Supplier shall provide general advice free of charge, in so far as telephone or e-mail can provide this quickly and easily. If detailed consideration is required then an additional charge may be agreed with the Authority.

### 14. SERVICE VARIATION

14.1 Subject to the provisions of this clause 14, either Party may request a Service Variation.

14.2 Where the Authority requests a Service Variation it shall notify the Supplier in writing (by way of Contract Change Notice if appropriate) and give the Supplier sufficient information to assess the extent and effect of the Service Variation, as follows:

- (a) where the request relates to an increase in the price to be paid by the Authority the Supplier shall respond within 15 Business Days demonstrating the necessity for any change to the price for those services.
- (b) when the request relates to a decrease in the Services or the price to be paid by the Authority the Supplier will respond within 15 Business Days showing the effect of the reduction along with such supporting evidence that the Authority shall require.

14.3 Where the Supplier requests a Service Variation it shall provide the Authority with sufficient information to assess the extent and effect of the Service Variation including demonstrating the necessity for any change to the price to be paid by the Authority for those services.

14.4 Once the other Party has had the reasonable period as requested by the requesting Party to consider the Service Variation requested each shall notify the others of their decision to accept or reject the Service Variation request.

14.5 If the Parties agree any Service Variation they shall confirm the same in writing and amend the Contract accordingly by way of Contract Change Notice if appropriate.

14.6 In the event that the Parties are unable to agree any Service Variation or the Supplier has not responded to the Authority's request for a Service Variation within the reasonable period referred to in clause 14.4, the Authority may;

- (a) allow the Supplier to fulfil its obligations under the Contract without the variation; or
- (b) terminate all or part of the Service with immediate effect if the Authority reasonably considers the Service Variation to be critical to delivery of the Contract.

### 15. SERVICE LEVELS AND CREDITS

15.1 The Supplier shall ensure that the Services meet or exceed the Service Levels at all times.

15.2 The Supplier shall provide the Authority with a monthly report detailing its performance in respect of each of the Service Levels if requested by the Authority.

15.3 If there is a Service Failure, the Supplier shall:

- (a) notify the Authority immediately of the Service Failure;
- (b) provide the Authority with a Rectification Plan in accordance with clause 16;
- (c) deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Failure from recurring; and

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(d) carry out the actions identified in the Rectification Plan in accordance with its terms.

15.4 The Supplier shall automatically credit the Authority with the applicable Service Credits as set out in the Specification if any. Service Credits shall either be shown as a deduction from the amount due from the Authority to the Supplier in the next invoice then due to be issued under this Contract, or the Supplier shall issue a credit note against a previous invoice and the amount for the Service Credits shall be repayable by the Supplier as a debt within 20 Business Days of issue of the credit note. The Parties agree that any such Service Credits have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered by the Authority.

15.5 The Authority and the Supplier shall review the Service Levels every 3 months throughout the duration of the Contract and make any changes in accordance with any agreed variation to the Contract in accordance with clause 14 to reflect changes in the Service Levels.

### 16. RECTIFICATION PLAN

16.1 If the Supplier commits a Service Failure, the Authority may serve a rectification notice to the Supplier which shall specify the Service Failure in outline and the actions the Supplier needs to take with respect to remedying the Service Failure ("**Rectification Notice**").

16.2 The Authority shall be under no obligation to initiate this rectification process if it has issued a notice of termination pursuant to clause 26.3 or 26.4.

16.3 Within the time frame specified in the Rectification Notice, the Supplier shall either:

(a) submit a draft Rectification Plan, even if it disputes that it is responsible for the matters which are the subject of the Rectification Notice; or

(b) inform the Authority that it does not intend to submit a Rectification Plan, in which event the Authority shall be entitled to terminate the Contract upon the expiry of a notice period specified in the termination notice served on the Supplier by the Authority.

16.4 The Authority shall either approve the draft Rectification Plan within 10 Business Days of its receipt or as soon as reasonably practicable, or it shall inform the Supplier why it cannot accept the draft Rectification Plan. In such circumstances, the Supplier shall address all such concerns in a revised Rectification Plan, which it shall submit to the Authority within 5 Business Days of its receipt of the Authority's comments or by such date as stipulated by the Authority.

16.5 Once agreed, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

16.6 If, despite the measures taken under clause 16.4, the revised Rectification Plan cannot be agreed within 10 Business Days or as soon as reasonably practicable then the Authority may elect to end the Rectification Plan process set out above and terminate the Contract upon the expiry of a notice period specified in the termination notice served on the Supplier by the Authority.

16.7 If a Rectification Plan is agreed between the Parties, but the Supplier fails to implement or successfully complete the Rectification Plan by the required Rectification Plan completion date, the Authority may:

(a) terminate the Contract upon the expiry of a notice period specified in the termination notice served on the Supplier by the Authority; or

(b) give the Supplier a further opportunity to resume full implementation of the Rectification Plan; or

(c) escalate any issues arising out of the failure to implement the remediation plan under the dispute resolution procedure set out in clause 41.



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16.8 If, despite the measures taken under clause 16.7 (b), the Supplier fails to implement the Rectification Plan in accordance with its terms, the Authority may elect to end the rectification plan process and refer the matter for resolution by the dispute resolution procedure set out in clause 41 or terminate the Contract immediately or upon the expiry of a notice period specified in the termination notice.

16.9 The Authority shall not be obliged to follow this rectification process if there is a repetition of substantially the same Service Failure as had previously been addressed in a Rectification Plan within a reasonable period following the conclusion of such previous Rectification Plan. In such event, the Authority may terminate the Contract upon the expiry of a notice period specified in the termination notice served on the Supplier by the Authority.

### **17. PROGRESS AND INSPECTION**

17.1 The Supplier shall at its expense provide any programmes for the provision of the Goods and Services delivery that the Authority may reasonably require. Such programmes shall be agreed with the Authority

17.2 The Supplier shall notify the Authority, in writing, without delay if manufacturing or production progress falls behind or may fall behind any of these programmes.

17.3 The Authority shall have the right to check progress at the Supplier's manufacturing facilities or offices (including home working) or the offices (including home working) of the Supplier's Sub-contractors at all reasonable times to inspect and to reject the Goods and Services that do not comply with the Contract. The Supplier's Sub-contracts shall reserve such rights for the Authority.

17.4 Any inspection or approval shall not relieve the Supplier from its obligations under the Contract.

### **18. BENCHMARK**

18.1 The Authority may, by written notice, require a Benchmark Review of any or the entire price paid by the Authority for the Goods and/or Services Specification and for the Service Levels.

18.2 Subject to clause 18.3 if any Benchmark Review determines that any or all of the price paid by the Authority for the Goods, Services and/or the Service Levels are not comparable to, or better than, the terms offered by the Supplier to any of its similarly situated commercial customers of equal or lesser size for comparable products or services, the Authority may require the Supplier to reduce the price and/or implement improvements to the Services or the Service Levels in accordance with the relevant Benchmark Report within 3 months of receipt of the Benchmark Report.

18.3 Any amendment to price for the Goods, Services and/or the Service Levels in accordance with the Benchmark Report shall be deemed agreed in accordance with the terms of clause 14 without cost to the Authority.

18.4 The Authority shall be notified of the Benchmark Report and any amendment to the Price of the Goods and/or Services in accordance with this Contract.

### **19. PRICE AND PAYMENT**

19.1 Subject to any applicable Service Credits and any Benchmark Review (conducted in accordance with this Contract or by the Authority in accordance with any framework agreement under which this Contract was awarded to the Supplier) the price of the Goods and Services shall be set out in the Purchase Order or determined in accordance with the Contract, and shall be the full and exclusive remuneration of the Supplier in respect of the delivery of the Goods and the performance of the Services. Unless otherwise agreed in writing by the Authority, the charges shall include every cost and

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expense of the Supplier directly or indirectly incurred in connection with the performance of the Goods and Services.

- 19.2 The price of the Goods shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Authority.
- 19.3 If any import or similar duty is payable where the Goods are imported into the United Kingdom from abroad, the Supplier will be responsible for paying it notwithstanding that the duty may subsequently be recoverable from the United Kingdom authorities. The Authority will lend reasonable co-operation to the Supplier in applying to recover duty from the United Kingdom authorities so far as it is reasonable for a Authority to do so. Any duty recovered will be retained by the Supplier if the price of the Goods excludes import duty. Any duty recovered by the Supplier will be paid to the Authority if the price of the Goods includes import duty. If the Supplier is unable to recover the import duty from the United Kingdom authorities in no circumstances will this be recoverable from the Authority.
- 19.4 Where appropriate, the price shall include the cost of instructing and training the Authority's personnel in the use, operation and exploitation of the Goods and Services. All instructions and training shall be provided in accordance with this Contract.
- 19.5 The Supplier shall invoice the Authority as agreed in writing between the Parties. Each invoice shall include such supporting information required by the Authority to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.
- 19.6 Invoices to the Authority must be sent or emailed to the contact details given in the relevant Purchase Order and must be correctly addressed with the full Purchase Order number quoted.
- 19.7 The Authority shall pay correctly rendered and undisputed invoices within 30 days of receipt of the invoice ("the Due Date"). Payment shall be made to the UK bank account held in the name of the Supplier and nominated in writing by the Supplier, such payment system to support or interact electronic security payment systems if any.
- 19.8 All amounts payable by the Authority under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Authority, the Authority shall on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 19.9 If a Party fails to make any payment due to the other under the Contract by the Due Date for payment, then the defaulting Party shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting Party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting Party disputes in good faith.
- 19.10 The Authority may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract providing that the Authority shall give the Supplier not less than 30 days' notice of any such set off.
- 19.11 Whenever, under the Contract any sums of money shall be recoverable from or payable by the Supplier the same may be deducted from any sums then due, or which at any time, thereafter may become due to the Supplier under this Contract or under any other agreement or contract with the Authority or with any other department within the Authority.

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### 20. WORK ON THE PREMISES

- 20.1 If the Contract involves any Goods and Services which the Supplier Delivers or performs on the Premises then the following clauses shall apply:
- (a) the Supplier shall ensure that the Supplier and their employees, Sub-contractors and their employees and any other persons associated with the Supplier will adhere in every respect to all applicable Laws;
  - (b) the Supplier shall ensure that the Supplier and their employees, Sub-contractors and their employees and any other person associated with the Supplier will comply with any reasonable regulations or Authority's policies that the Authority may notify to the Supplier in writing including any health and safety policies and security arrangements; and
  - (c) when required, the Supplier and their employees, Sub-contractors and their employees shall comply with any security requirements including a right to search when entering or leaving the Premises and being escorted in certain areas. The Authority reserves the right to remove from the Premises anyone not complying with the Authority's security arrangements or suspected of being under the influence of alcohol, or any other substance which has the effect of impairing performance.
- 20.2 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Authority's prior written consent.
- 20.3 Access to the Premises shall not be exclusive to the Supplier any only such as shall enable the performance of the Contract concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Authority may reasonably require.
- 20.4 The Authority shall have the power at any time during the progress of the Contract to order in writing:
- (a) the removal from the Premises of any materials which in the Authority's reasonable opinion are either hazardous or not in accordance with or in breach of the Contract; and
  - (b) the substitution of proper and suitable materials; and
  - (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work or Goods and Services which, in respect of material or workmanship, is not in the Authority's reasonable opinion in accordance with the Contract.
- 20.5 On completion or termination of the Contract the Supplier shall remove their plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Contract and leave the Premises in a neat and tidy condition within the timescales instructed to the Supplier by the Authority and make good any damage caused to the reasonable satisfaction of the Authority.
- 20.6 The Supplier shall ensure that their employees, Sub-contractors and their employees and any other persons associated with Supplier shall be dressed appropriately where applicable. The Authority reserves the right to remove from the Premises anyone who is, in the Authority's absolute discretion, not complying with this requirement.
- 20.7 Any land or Premises made available from time to time to the Supplier by the Authority in connection with the Contract shall be made available to the Supplier on a non-exclusive basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligation under the Contract. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

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- 20.8 The Supplier shall limit access to the land or Premises to such personnel as is necessary to enable it to perform its obligations under the Contract.
- 20.9 The Supplier agrees that there is no intention on the Authority's part to create a tenancy of any nature whatsoever in favour of the Supplier or its personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any Premises owned or occupied by the Authority in any manner it sees fit.
- 20.10 The Authority's decision as to whether any person is to be refused access to any Premises occupied by or on behalf of the Authority shall be final and conclusive and the Supplier shall replace promptly any such person to ensure that its requirements under the Contract are met.
- 20.11 The Supplier shall bear the cost of or costs arising from any notice, instructions or decision of the Authority under this clause 20.

### **21. COMPLIANCE WITH APPLICABLE LAWS**

- 21.1 The Supplier shall (at no additional cost to the Authority) at all times carry out and provide the Goods and Services in compliance with all Laws. The Supplier shall maintain such records as are necessary pursuant to such Laws and shall promptly on request make them available for inspection by any relevant Authority that is entitled to inspect them and by the Authority (or its authorised representative).
- 21.2 The Supplier shall neither be relieved of its obligations to supply the Goods and Services in accordance with the terms of the Contract nor be entitled to an increase in the price as the result of any modifications to the Laws.
- 21.3 Without prejudice to clause 21.2, the Supplier shall monitor and shall keep the Authority informed in writing of any changes in the Laws which may impact the Goods and Services and shall provide the Authority with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.
- 21.4 The Supplier shall consult with the Authority (and wherever possible agree with the Authority) on the manner, form and timing of changes it proposes to make to meet any changes in Laws where they would impact the Goods or Services. The Supplier shall not implement any change, without the Authority's prior written agreement, which would have an adverse effect on the Supplier's ability to provide the Goods and Services in accordance with the Specification.
- 21.5 Without prejudice to the rest of this clause 21, the Supplier shall use all reasonable endeavours to minimise any disruption caused by any changes in applicable Laws introduced pursuant to this clause 21.

### **22. SERVICE IMPROVEMENT AND TECHNOLOGY REFRESH**

- 22.1 The Contract Manager and an Authorised Person shall have regular meetings as agreed to monitor and review the performance of this Contract, the achievement of the Service Levels and the provision of the Services. Such meetings shall be minuted by the Authorised Person where appropriate and copies of any such minutes shall be circulated to and approved by both Parties.
- 22.2 Prior to each meeting, the Authorised Person shall notify the Contract Manager, and vice versa, of any issues relating to the provision of the Services for discussion at the meeting. At the meeting, the Parties shall agree a plan to address such issues. In the event of any issue being unresolved, or a failure to agree on the plan, the procedures set out in clause 16 shall apply. Progress in implementing the plan shall be included in the agenda for the next meeting.

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- 22.3 The Supplier shall, at its own cost, submit and promptly inform the Authority of any new and evolving relevant technologies and processes which could improve the Goods and Services. Such report shall be provided in sufficient detail to enable the Authority to evaluate properly the benefits of the new technology or process and, at the Authority's request, the Supplier shall make available to the Authority the new Goods and Services on the terms on which they are generally made available to the Supplier's customers by the Supplier.
- 22.4 If the Authority wishes to incorporate any improvement identified by the Supplier pursuant to clause 22.3, the Parties shall discuss the implementation of the associated change provided always that if the Supplier's costs in providing the Goods and Services as a result of any such change implemented by the Authority are reduced, a reasonable proportion as agreed of the cost savings shall be passed on to the Authority by way of a consequential and immediate reduction in the price for the Goods and Services.

### 23. REMEDIES AND INSURANCE

- 23.1 If the Supplier fails to deliver the Goods on the Delivery Date and/or perform the Services by the applicable date(s), or if the Goods or Services do not comply with the warranties and obligations set out in clauses 4, 5 or 13 or the terms of the Contract, then, without limiting any of its other rights or remedies, the Authority shall have the right to any one or more of the following remedies:
- (a) to terminate or suspend the Contract in whole or in part in accordance with clause 26;
  - (b) to reject the Goods (in whole or in part) and require the Supplier to arrange collection of them at the Supplier's own risk and expense;
  - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - (d) to require re-performance of the Services;
  - (e) to refuse to accept any subsequent performance of the Services (or part thereof) and/or delivery or attempted delivery of all or some of the Goods from the Supplier;
  - (f) to recover from the Supplier any reasonable costs properly incurred by the Authority in obtaining substitute goods and/or services from a third party; and/or
  - (g) to claim damages for any other costs, loss or expenses incurred by the Authority which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 23.2 The Supplier shall keep the Authority and the Chief Constable if applicable indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Authority and the Chief Constable if applicable as a result of or in connection with:
- (a) any claim made against the Authority and/or the Chief Constable if applicable for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services;
  - (b) any claim made against the Authority and/or the Chief Constable if applicable by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or Sub-contractors;

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- (c) any claim made against the Authority and/or the Chief Constable if applicable by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods or Services, to the extent that the defect in the Goods or Services is attributable to the acts or omissions of the Supplier, its employees, agents or Sub-contractors;
- (d) the provision of the Goods and Services, including advice and recommendations made and accepted by the Authority and/or the Chief Constable if applicable, not being in accordance with the Specification;
- (e) any Installation and/or any Goods and Services and/or advice given or anything done or omitted to be done under, or in connection with the Contract by the Supplier; and
- (f) any damage by the Supplier to the Authority's property or Premises (including any materials, tools or patterns sent to the Supplier for any purpose).

This clause 23.2 shall survive termination of the Contract.

23.3 The Authority's rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law and any equitable remedy.

23.4 The Supplier must take out and maintain insurance adequate to cover the risks set out in the Contract and in any event shall take out and maintain the following insurance coverages:

- (a) Product Liability Insurance coverage of not less than ten million pounds sterling (£10,000,000) for any one, or series of claims that may arise; and
- (b) Professional Indemnity Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise; and
- (c) Public Liability Insurance coverage of not less than ten million pounds sterling (£10,000,000) for any one, or series of claims that may arise; and
- (d) Employer Liability Insurance coverage of not less than ten million pounds sterling (£10,000,000) for any one, or a series of claims that may arise; and
- (e) Any other insurance coverage which is set out in the Special Conditions.

23.5 The Supplier will take out and maintain such insurances as set out in this clause 23 with a reputable insurance company and shall at the Authority's request provide evidence of the insurance policy or policies and of payment of the premiums. The Supplier's failure to maintain such insurances or satisfy the Authority, acting reasonably, that such insurances have been maintained, shall be treated as a Material Breach and shall give the Authority the right to terminate the Contract in accordance with clause 26.

## 24. LIABILITY

24.1 Neither Party excludes or limits its liability for:

- (a) death or personal injury caused by its negligence or that of its employees, agents or Sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) the wilful abandonment by the Supplier of its obligations in relation to the provision of the Services; or
- (d) breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

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24.2 Subject to clause 24.1, neither Party will be liable to the other Party for:

- (a) indirect loss or damage;
- (b) special loss or damage;
- (c) consequential loss or damage;
- (d) loss of profits (whether direct or indirect);
- (e) loss of turnover (whether direct or indirect);
- (f) loss of business opportunity (whether direct or indirect); and/or
- (g) damage to goodwill (whether direct or indirect),

and in each case, even if that Party was aware of the possibility of such loss or damage to the other.

24.3 Subject to clauses 24.1, the provisions of clause 24.2 shall not be taken as limiting the right of the Authority to, amongst other things, recover from the Supplier as a direct loss:

- (a) any additional operational and/or administrative costs and expenses; and/or
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority; and/or
- (c) damage due to the loss of data if any, but only to the extent that such losses relate to the costs of working around any loss of data and the direct costs of recovering or reconstructing such data,

resulting directly from any act or omission of the Supplier.

24.4 If any limitation or provision contained or expressly referred to in this clause 24 is held to be invalid under any Law, it will be deemed omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this clause 24.

24.5 Nothing in this clause 24 shall affect a Party's general duty to mitigate its loss.

## 25. SUSPENSION

25.1 Without limiting its other rights or remedies the Authority may suspend the Contract in whole or in part by giving written notice of such suspension to the Supplier if the Supplier or any of their employees or agents are or become;

- (a) subject to a criminal investigation in respect of allegations arising out of or relating to their professional practice whether in respect of work undertaken in performance of the Contract or otherwise; or
- (b) subject to a criminal investigation relating to an allegation, which if substantiated, would constitute a breach of the terms of this Contract; or
- (c) subject to any allegation of professional negligence; or
- (d) in the reasonable opinion of the Authority, involved in any fraudulent activities or misapplication of funds (whether involving the Contract or not); or
- (e) subject to investigation by a relevant regulatory body in respect of any alleged breach of a relevant code of practice.

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- 25.2 The Supplier must inform the Authority immediately upon becoming aware of any of the matters set out above.
- 25.3 The Authority shall have no liability to accept delivery of any Goods or performance of the Services during the period of suspension and the sums payable by the Authority under the Contract shall be reduced during the period of suspension by an amount equivalent to the value of the Goods and Services suspended for the duration of such suspension and the Authority shall have no liability whatsoever to make any payment to the Supplier of any sums withheld during the period of suspension.
- 25.4 For the avoidance of doubt the Authority will be entitled during any period of suspension to engage other Supplier to provide the Goods and / or Services which the Supplier is unable to provide by reason of the suspension.
- 25.5 Following a suspension pursuant to clause 25.1 above the Authority shall keep the matter under review and should the reasons for the suspension be resolved to the satisfaction of the Authority then the Authority may give written notice lifting suspension of the Contract.
- 25.6 For the avoidance of doubt, if the investigations or allegations at clause 25.1 are substantiated this will constitute a Material Breach for which the Authority reserves the right to terminate the Contract under clause 26 below.

## **26. TERMINATION**

- 26.1 Without limiting its other rights or remedies, the Authority may terminate the Contract in respect of the supply of the Goods and Services or part of such supply by giving the Supplier 6 months' written notice.
- 26.2 The Authority may terminate this Contract in the circumstances provided for under clauses 16.3, 16.8 or 16.9.
- 26.3 The Authority may immediately terminate this Contract where:
- (a) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9); or
  - (b) the Supplier has, at the time of contract award, been in one of the situations referred to in Regulation 57(1), including as a result of the application of Regulation 57(2), and should therefore have been excluded from the procurement procedure; or
  - (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaty on European Union and the Public Contracts Directive 2014/24 or the Treaty on the Functioning of the European Union that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty on the Functioning of the European Union.
- 26.4 The Authority may immediately terminate or suspend this Contract, either in whole or in part to the extent that it relates to any part of the Goods and Services which are materially affected by the relevant circumstances, where:
- (a) the Supplier commits a Material or Persistent Breach of the Contract and (if such breach is remediable) fails to remedy that breach to the satisfaction of the Authority within the reasonable timescale as specified by the Authority, after issue of a written notice specifying the breach and requesting it to be remedied;



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- (b) in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or credit rating of the Supplier which adversely impacts on the Supplier's ability to deliver the Goods or supply the Services under the Contract or could reasonably be expected to have an adverse impact on the Supplier's ability to deliver the Goods or supply the Services under the Contract;
- (c) the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (e) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (f) (being an individual) the Supplier is the subject of a bankruptcy petition or order;
- (g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (h) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;
- (i) (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
- (k) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 26.4(c) to clause 26.4(j) inclusive;
- (l) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (m) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- (n) there is a change of control of the other Party (within the meaning of section 1124 of the Companies Tax Act 2010).

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### 27. CONSEQUENCES OF TERMINATION

- 27.1 Where the Authority terminates (in whole or in part) the Contract for any reason (except for under clause 26.1) then makes other arrangements for the supply of the Goods and Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period provided that Authority shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.
- 27.2 Upon termination of the Contract whether by expiration of the Contract Period or otherwise, the Supplier agrees and hereby guarantees that it will co-operate fully with the Authority to transfer to the Authority (including but not limited to) any plans, drawings, specifications, technical and legact data, copies of records (electronic or otherwise), copies of reports (electronic or otherwise), information (howsoever stored), test results, samples relating to this Contract which are in the possession of the Supplier or any third party, provided always that:
- (a) the Supplier shall not be required to transfer to the Authority any patent design or other Intellectual Property Right owned by the Supplier and valid at the time the Contract was originally tendered or the Purchase Order was accepted, in any of the specifications, drawings or plans etc, and which has not already transferred under this Contract to the Authority; and
  - (b) any charges applicable for any samples or drawings, which were made known to (and agreed by) the Authority prior to the signing of this Contract, will be made to the Supplier if outstanding at the time of termination.
- 27.3 All items shall be delivered to the Authority within 14 days of termination of the Contract or upon a request being made to the Supplier by the Authority). Any request by the Authority shall detail the reasonable location of delivery, method of delivery, format of any data or information and the medium to be used for its migration. Unless otherwise agreed, the language that any drawings, data, reports or information etc shall be written and presented in shall be modern British English.
- 27.4 Other than the prices agreed at clause 27.2(b), the Supplier shall make no other charge for the return of any item listed at clause 27.2.
- 27.5 All items shall be returned to the Authority in the original condition they were in when presented to the Supplier. Samples should be in the condition or state they were in at the time of acceptance or approval by the Authority as being in compliance with the design or specification detailed within the Contract, subject to any subsequent agreed testing or reasonable wear and tear.
- 27.6 The accrued rights and remedies of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 27.7 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

### 28. REPUTATION

- 28.1 The Supplier shall not, and shall procure that its employees and Sub-Contractors shall not:
- (a) do any act or make any omission that has or could reasonably be expected to have an adverse impact upon the security of the business, operations, systems or properties or Premises of the Authority;
  - (b) take any action which might or shall:

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- (i) harm or be prejudicial to the public confidence in the Authority and the Chief Constable if applicable or to its public image(s); or
- (ii) bring the Authority and the Chief Constable if applicable into disrepute.

28.2 Without limiting clause 28.1, the Supplier shall comply with the provisions of the reasonable standards, policies, procedures and regulations provided from time to time to the Supplier by the Authority.

### 29. CONFIDENTIAL INFORMATION

29.1 If the Authority has required the Supplier or its Sub-contractors to sign a mutual confidentiality agreement with it or the Chief Constable if applicable prior to signing or during the term of this Contract, the Supplier shall comply at all times with its obligations under that mutual confidentiality agreement.

29.2 The Supplier shall upon the reasonable request at any time by the Authority, obtain signed individual confidentiality undertakings from any employees or Sub-contractors in a form approved by the Authority.

29.3 A Party is entitled to disclose the whole or any part of the other's Confidential Information:

- (a) to its directors, officers, employees, servants, Sub-contractors, agents or professional advisers to the extent necessary to enable the performance or enforcement of its rights or obligations under this Contract subject to any such persons signing confidentiality undertakings in a form approved by the Authority if requested to do so;
- (b) when (and to the extent) required to do so by Laws or pursuant to the rules or any order having the force of law of any court, association or agency of competent jurisdiction or any governmental agency;
- (c) to the extent that the Confidential Information has, except as a result of breach of obligations of confidentiality, become publicly available or generally known to the public at the time of such disclosure (provided that no Confidential Information shall be deemed to be so publicly available or generally known only because such information is within or part of more general information, or (in the case of a complex body of such information) because one or more elements of it separately comprise publicly available information or information generally known to the public);
- (d) in the case of disclosure by the Authority:
  - (i) to the extent required for the purpose of the continued provision of the Goods and / or Services (or similar replacement goods and / or services) in the event of suspension, expiry or termination of particular Goods and / or Services;
  - (ii) in relation to the outcome of a procurement as may be required to be published in the Official Journal of the European Union or elsewhere;
  - (iii) to any department, office or agency of the Government or other entity where required for its proper departmental, parliamentary, governmental, statutory or judicial purposes;
  - (iv) to any consultant, contractor or other person engaged by the Authority in connection with the provision of the Services or the performance of the Supplier's obligations under this Contract, to the extent reasonably necessary to enable that consultant, contractor or other person to carry out their engagement with the Authority;

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- (v) to the extent the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions in accordance with the law; and
  - (vi) subject to clause 36, to the extent the Authority (acting reasonably) deems disclosure necessary or appropriate in order to comply with its obligations and responsibilities under the FOIA or the Environmental Information Regulations.
- 29.4 Notwithstanding clause 29.3, the Supplier shall give the Authority prompt advance notice of any disclosure of the Authority's Confidential Information and shall consult and give the Authority reasonable opportunity to comment on the nature and extent of disclosure, and shall take account of any reasonable comment made by the Authority. Notwithstanding the permitted disclosures under clause 29.3, the Authority shall have the right to prohibit disclosure of the Authority's Confidential Information to any person and the Supplier shall not make such disclosure to any such person so prohibited by the Authority unless subject to a court order or permitted under Freedom of Information legislation.
- 29.5 The Supplier shall:
  - (a) use the Authority's and the Chief Constable's if applicable Confidential Information solely for this Contract;
  - (b) take all necessary precautions to ensure that all of the Authority's and the Chief Constable's if applicable Confidential Information is held in confidence and treated as proprietary;
  - (c) comply with all instructions and/or guidelines produced by the Authority from time to time for the handling and storage of its and the Chief Constable's if applicable Confidential Information generally or for specific items;
  - (d) inform all staff and Sub-contractors and agents that breach of any of its confidentiality obligations shall result in contractual and/or disciplinary action (and the Supplier shall ensure that such contractual and/or disciplinary actions and proceedings are reported to the Authority and instituted and enforced as required); and
  - (e) forthwith report to the Authority all failures to comply with the obligations set out in this clause 29.5 of which the Supplier is or becomes aware.
- 29.6 Notwithstanding the generality of clause 29.3, Controller's Data shall not be released from any of the confidentiality obligations of clause 29, except with the prior consent of the Authority in accordance with the relevant laws.
- 29.7 Without prejudice to any other rights and remedies that the other Party would have, each Party agrees that damages would not be an adequate remedy for any breach of this clause 29 and that the other Party shall be entitled to the remedies of injunction, specific performance and/or other equitable relief for any threatened or actual breach of this clause 29.
- 29.8 The Authority's and the Supplier's obligations under this Contract with respect to Confidential Information shall survive its expiry or termination and shall continue for as long as such information remains confidential.
- 29.9 Nothing in this clause 29 limits, diminishes, waives or releases either Party's obligations and responsibilities under the Official Secrets Acts 1911 to 1989 or in regard to personal data in accordance with the Data Protection Legislation.

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- 29.10 The Supplier shall at all times (including after termination or expiry of this Contract) comply with the obligations imposed by the Official Secrets Acts 1911 to 1989.
- 29.11 The Supplier shall:
- (a) take all reasonable steps, by display of notices or by other appropriate means, to ensure that such persons have notice that the Official Secrets Acts 1911 to 1989 applies to them and shall continue so to apply; and
  - (b) where requested by the Authority at any time, procure (within 10 Business Days of the request) the signature by all of the persons specified by the Authority of an Official Secrets undertaking in a form specified by the Authority.
- 29.12 The Supplier shall ensure that a similar obligation to this clause 29 is included in all contracts or agreements the Supplier entered into with a Sub-contractor or agent in connection with the provision of the Goods and / or Services.
- 29.13 The Authority may terminate this Contract immediately in the event that the Supplier fails to comply with any requirement of this clause 29, including the failure to procure the signature of an Official Secrets undertaking for any person specified by the Authority or any disclosure of the Authority's Confidential Information in breach of this clause 29.

### **30. PUBLICITY**

- 30.1 Unless expressly permitted in writing by the Authority, the Supplier shall not publish or permit to be published either alone or in conjunction with any other person any information, articles, photographs or other illustrations relating to or connected with the Contract.
- 30.2 This Contract shall not entitle the Supplier or any of their Sub-contractors, agents or employees to endorse its goods or services with any reference to the Authority, the relevant police force or Chief Constable if applicable and the Supplier shall not exhibit for advertising or any other reason any goods or services or equipment supplied under the Contract which can be identified with the Authority without the prior written consent of the Authority.
- 30.3 Clause 30 includes any such reference made in any form of written, pictorial or audible advertising campaign, marketing, sales or promotion campaign.

### **31. INTELLECTUAL PROPERTY**

All Intellectual Property Rights in any Specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- (a) provided to the Supplier by the Authority and/or Chief Constable if applicable shall remain the Authority's property absolutely;
- (b) prepared by or for the Supplier specifically for the Authority in relation to the performance of the Contract shall belong to the Authority including the Deliverables;
- (c) pre-existing at the Commencement Date and owned or licensed by the Supplier shall be licensed to the Authority insofar as it is necessary for the Authority to exercise its other rights under the Contract. Such a license shall be perpetual, worldwide, irrevocable, royalty-free and capable of sub-license on those terms.

### **32. ENVIRONMENTAL AND ETHICAL SOURCING**

- 32.1 The Supplier shall perform its obligations under the Contract in accordance with the spirit and objectives of the Authority's environmental policy, if any.

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- 32.2 The Supplier shall ensure that workers employed or engaged on the Contract are treated fairly, humanely and equitably.
- 32.3 In so far as the Supplier or any Sub-contractor or its employee dispose of any waste goods or other items (including electronic products) in the course of or in connection with the performance of the Supplier's obligations under the Contract, the Supplier shall ensure that those goods or other items are disposed of in an environmentally friendly manner and in accordance with all applicable EU and UK laws and regulations, including (where applicable) the Environmental Protection Act 1990 and the Waste Electrical and Electronic Equipment Regulations 2013.
- 32.4 If and when requested to do so by the Authority at any time, the Supplier shall provide the Authority with such documents and/or permit representatives of the Authority to have such access to the Supplier's premises and personnel as the Authority may reasonably require for the purposes of verifying compliance on the part of the Supplier with its obligations under this clause 32.
- 32.5 The Supplier shall procure that each of its Sub-contractors (if any) comply with obligations substantially similar to those set out in clauses 32.1 to 32.4 above.
- 32.6 In performing its obligations under this Contract, the Supplier shall:
- (a) comply with 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; and
  - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
  - (c) include in contracts with its direct Sub-contractors and suppliers provisions which are at least as onerous as those set out in this clause 32.
  - (d) notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
  - (e) maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Authority in connection with this Contract; and permit the Authority and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 32.
- 32.7 The Supplier represents and warrants that it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 32.8 The Authority may terminate this Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this clause 32.

### **33. EQUALITY AND DIVERSITY**

- 33.1 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Human Rights Act 1998, the Equality Act 2010 or other relevant or equivalent Laws from time to time in force (including any equivalent legislation in force in any other jurisdiction in which any activities are carried out under or in connection with the Contract by the

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Supplier or any of its employees or Sub-contractors or its employees), or any statutory modification or re-enactment thereof.

33.2 The Supplier shall take all reasonable steps to secure the observance of clause 33.1 by all employees, agents and Sub-contractors.

### **34. ANTI-BRIBERY AND FRAUD**

34.1 The Supplier shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act relating to obtaining or the signing of the Contract or any other contract with the Authority or any other public body or showing or refraining from showing favour or disfavour to any person, in relation to the Contract or any other contract with the Authority, or if similar acts have been done by any person employed by the Supplier, or acting on the Supplier's behalf (whether with or without the knowledge of the Supplier).

34.2 The Supplier warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Supplier or any other public body in connection with the Contract.

34.3 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice, conduct have been carried out in the United Kingdom;
- (c) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 34.3(b), and will enforce them where appropriate;
- (d) promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract;
- (e) immediately notify the Authority if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract); and
- (f) ensure that all persons associated with the Supplier or other persons who are performing services in connection with this Contract comply with this clause 34.

34.4 The Supplier shall not engage in any activity practice or conduct which would constitute an offence under the Prevention of Corruption Acts 1889 to 1916 or Fraud Act 2006.

34.5 The Supplier shall not receive any fee or reward the receipt of which is offence under the sub-section (2) of Section 117 of the Local Government Act 1972.

34.6 Breach of this clause 34 shall entitle the Authority to terminate the Contract with immediate effect.

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34.7 In the event of any breach of this clause 34 by the Supplier or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Supplier):

- (a) the Supplier shall immediately give the Authority full details of any such breach and shall co-operate fully with the Authority in disclosing information and documents which the Authority may request; and/or
- (b) the Authority shall (without prejudice to any of its rights or remedies under this Contract or otherwise) be entitled by notice in writing to terminate this Contract immediately; and
- (c) the Supplier shall be liable for and shall indemnify and keep the Authority and the Chief Constable if applicable indemnified in respect of any and all loss resulting from such termination.

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

- (a) the interpretation of this clause 34; or
- (b) the right of the Authority to terminate this Contract; or
- (c) the amount or value of any gift, consideration or commission

the decision of the Authority shall be final and conclusive.

### **35. DATA PROTECTION**

35.1 The Supplier warrants that it will comply with the Data Protection Legislation and this clause is in addition to, and does not relieve, remove or replace the Supplier's obligations under the Data Protection Legislation.

35.2 The Supplier agrees that if it acts at any time under this Contract as a Data Processor of the Data Controller's Data, it shall enter into a data processing contract in the relevant Data Controller's standard form, such data processing contract to include the Data Processing Details setting out the scope, nature and purpose of the Processing by the Supplier, the duration of the Processing, the types of the Data Controller's Data and categories of Data Subject involved and the obligations and rights of the Supplier and the Data Controller.

35.3 The Supplier shall comply at all times with its obligations under the data processing contract referred to in clause 35.2 above and shall only Process the Data Controller's Data to the extent, and in such a manner, as is necessary for the purposes identified by the Data Controller and in the manner specified by the Data Controller and for no other purpose or in any manner except on the written instructions of the Data Controller or as required by any Laws. The Supplier shall not determine at any time the purpose or means of the Processing and, if it is so required by any Laws, the Supplier shall promptly notify the Data Controller before Processing the Data Controller's Data unless prohibited by such Laws. The Supplier will keep a record of any Processing of the Data Controller's Data it carries out under the Contract.

35.4 In addition to the provisions of any data processing agreement, where the Supplier processes Data Controller's Data on behalf of either the Authority or the Chief Constable if applicable, the following provisions of this clause 35 shall apply.

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

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



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- (A) a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - (b) an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 35.7 The Supplier shall Process Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Data Processing Details Form and in accordance with the Data Controller's instructions if applicable from time to time and shall not Process the Personal Data for any other purpose. The Supplier will keep a record of any Processing of Personal Data it carries out under this Contract.
- 35.8 The Supplier shall promptly comply with any request from the Data Controller requiring the Supplier to amend, transfer or delete the Personal Data.
- 35.9 The Supplier shall only collect any Personal Data in a form which is fully compliant with the Data Protection Legislation which will contain a data protection notice informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purposes or purposes for which their Personal Data will be Processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, Processed to enable Processing in respect of the Data Subject to be fair.
- 35.10 If the Supplier receives any complaint, notice or communication which relates directly or indirectly to the Processing of the Personal Data or to either Party's compliance with the Data Protection Legislation and the data protection principles set out therein, it shall immediately notify the Data Controller and it shall provide the Data Controller with full co-operation and assistance in relation to any such complaint, notice or communication.
- 35.11 At the Data Controller's request, the Supplier shall provide to the Data Controller a copy of all Personal Data held by it in the format and on the media reasonably specified by the Data Controller.
- 35.12 The Supplier shall not transfer the Personal Data outside the European Economic Area without the prior written consent of the Data Controller and in accordance with the Data Protection Legislation.
- 35.13 The Supplier shall promptly inform the Data Controller if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Supplier will restore such Personal Data at its own expense.
- 35.14 The Supplier shall ensure that access to the Personal Data is, in accordance with the Data Protection Legislation, limited to:
- (a) those employees who need access to the Personal Data to meet the Supplier's obligations under this Contract; and
  - (b) in the case of any access by any employee, such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties.
- 35.15 The Supplier shall ensure that all employees:
- (a) are informed of the confidential nature of the Personal Data;
  - (b) have undertaken training in the Data Protection Legislation relating to handling Personal Data; and

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- (c) are aware both of the Supplier's duties and their personal duties and obligations under the Laws, the Data Protection Legislation and this Contract.
- 35.16 The Supplier shall take reasonable steps to ensure the reliability of any of the Supplier's employees who have access to the Personal Data including any vetting status required.
- 35.17 The Supplier shall provide the Data Controller with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data.
- 35.18 The Supplier shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Data Controller or as provided for in this Contract in accordance with the Data Protection Legislation.
- 35.19 The Supplier warrants that:
- (a) it will Process the Personal Data in compliance with the Data Protection Legislation;
  - (b) where applicable, it will comply with all obligations of any data Processing contract the Data Controller requires the Supplier to sign; and
  - (c) it will take appropriate technical and organisational measures against the unauthorised or unlawful Processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure the Data Controller's compliance with the seventh data protection principle.
- 35.20 The Supplier shall notify the Data Controller immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract; or
  - (e) 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 Law.
- 35.21 The Supplier shall notify the Data Controller immediately if it becomes aware of any unauthorised or unlawful Processing, loss of, damage to or destruction of the Personal Data.
- 35.22 The Supplier shall, at the written direction of the Data Controller, delete or return Personal Data (and any copies of it) to the Data Controller on termination of the Contract unless the Supplier is required by Law to retain the Personal Data.
- 35.23 The Supplier agrees to indemnify and keep indemnified and defend at its own expense the Data Controller against all costs, claims, damages or expenses incurred by the Data Controller or for which the Data Controller may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this clause 35.
- 35.24 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- (a) notify the Data Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Data Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 35 such that they apply to the Sub-processor; and

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- (d) provide the Data Controller with such information regarding the Sub-processor as the Data Controller may reasonably require.

- 35.25 The Supplier shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 35.26 The Supplier shall comply with the Authority's or the Chief Constable's baseline security requirements as updated from time to time by the relevant body and notified to the Supplier.
- 35.27 If requested by the Authority, the Supplier to enter into a Security Aspects Letter ("SAL") with the relevant force if applicable and the Supplier shall comply with that the protocols set out in that SAL. In the event the Supplier fails to adhere to the SAL protocols, the Authority shall have the right to terminate this Contract and to recover from the Supplier the amount of any loss resulting from any such termination.

### **36. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

- 36.1 The Supplier acknowledges that the Authority and the Chief Constable if applicable are subject to the requirements of the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR) and the Supplier agrees to assist and cooperate with the Authority and the Chief Constable if applicable (at the Supplier's expense) as mandated by the Authority or Chief Constable if applicable in relation to these laws.
- 36.2 Any Requests received by the Supplier shall be forwarded to the Authority or Chief Constable if applicable immediately.
- 36.3 The provisions of clause 36 shall extend to Sub-contractors and the Supplier shall ensure compliance with this requirement.
- 36.4 The Supplier acknowledges that the Authority and the Chief Constable if applicable may, acting in accordance with the FOIA, or the EIR be obliged to disclose information relating to the Contract:
  - (a) without consulting with the Supplier; or
  - (b) following consultation with the Supplier and having taken the Supplier's views into account: or
  - (c) in accordance with legislation and procedural transparency requirements.
- 36.5 Where it is necessary for the Supplier to provide information to the Authority which it believes to be information falling into the exemptions set out in the FOIA ("Exempt Information"), it shall state in writing to the Authority the nature of the information and the relevant exemption. The Authority will use reasonable endeavours to consult with the Supplier before disclosing such information under the FOIA. The Supplier acknowledges that the final decision whether to disclose such information will rest with the Authority and not with the Supplier. Nothing contained in this Contract or any documents or negotiations relating to this Contract shall prevent the Authority from disclosing any information which (in the Authority's reasonable opinion or in accordance with any recommendation, notice or decision of a competent Authority) it is required to disclose under the FOIA.
- 36.6 The Supplier shall observe the Authority's Retention and Destruction Policy (details of which shall be provided by the Authority to the Supplier upon request) and shall not destroy information other than in accordance with this policy. If the Authority notifies the Supplier of a request for information held by the Supplier, which is due for destruction the Supplier shall immediately suspend destruction of that information to allow disclosure to take place. Upon the termination of this Contract the parties shall agree which party has the control of the retained information. Should the Supplier retain control of the information this clause 36 shall remain in force beyond the termination of this Contract.

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36.7 The Supplier shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed.

36.8 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, proceedings and liabilities that the Authority directly incurs due to the Supplier's or any sub-contractor breach of this clause 36 or any part of it.

### **37. RE-TENDERING AND HANDOVER**

37.1 Within twenty eight (28) days of being so requested by the Authority, the Supplier shall provide, all the information necessary to enable the Authority to issue invitations to tender for the future provision of the Goods and Services including (but not limited to) the information relating to employees who will or may transfer as detailed in clause 37.2 below, and the Supplier hereby agrees to the use of such information for these express and any implied purposes. For the avoidance of any doubt all or any such information can be requested by the Authority at any time whether in relation to an intention to issue such an invitation or otherwise.

37.2 Where, in the opinion of the Authority, TUPE may apply to the Contract on its termination or expiration, the information to be provided by the Supplier under clause 37.1 shall include, as applicable, accurate information relating to the employees (whether of the Supplier or any Sub-contractor or other organisation) whose employment would or may be transferred pursuant to TUPE, including in particular but not limited to:

- (a) the number of employees who would be transferred and their job titles, but with no obligation on the Supplier to specify their names save as permitted by TUPE;
- (b) sufficient details of the work undertaken by each of the employees who will or may transfer under TUPE to enable the Authority and/or any replacement supplier to take their own informed view as to whether TUPE will or could apply (including sufficient details, particulars and breakdown of working time as is reasonably required or requested);
- (c) their dates of birth, sex, salary, length of service, hours of work, salary and/or pay rates, and any other factors affecting their redundancy entitlement, any specific terms applicable to those employees individually whether during their employment or on its termination;
- (d) details of any disciplinary action taken within the previous two years in respect of the employees;
- (e) details of any grievances brought by the employees in the previous two years;
- (f) details of any outstanding claims arising from the employees' employment or its termination including any claims which the Supplier believes those employees might bring; and
- (g) the terms and conditions of employment applicable to those employees, including but not limited to probationary periods, information relating to pension entitlements or provision, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave (and details of how pay for annual leave is calculated), sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any relevant collective agreements, facility time arrangements and additional employment benefits.

37.3 The Supplier shall comply with its obligations under TUPE where applicable (including without limitation its duties to inform and consult under Regulation 13 of TUPE) pursuant to this Contract and shall indemnify the Authority and the Chief Constable if applicable and any replacement supplier against any claims sustained as a result of any breach of this clause OR any award of compensation

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under Regulation 15 save where such failure arises from the failure of the Authority and/or the Chief Constable if applicable or any replacement supplier to comply with its or their duties under Regulation 13 of TUPE.

- 37.4 The Supplier shall indemnify the Authority and the Chief Constable if applicable against any claim made against the Authority or the Chief Constable or any replacement supplier at any time by any person in respect of the liability incurred by the Authority and/or the Chief Constable if applicable or any replacement supplier arising from any deficiency or inaccuracy in information, which the Supplier is required to provide under clauses 37.1, 37.2 and/or TUPE.
- 37.5 The Supplier shall co-operate fully with the Authority and/or the Chief Constable if applicable during the handover arising from the completion or earlier termination of this Contract. This co-operation, during the setting up operations period of the replacement Supplier (if any), shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition and if required, access to the Supplier's employees including those who the Supplier considers will transfer pursuant to TUPE to the Authority and/or the Chief Constable if applicable or a replacement supplier on the termination of this Contract.
- 37.6 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority and/or the Chief Constable if applicable, any replacement supplier and/or any replacement sub-contractor to ensure the smooth transfer of any employees who transfer under TUPE on the termination of this Contract including providing sufficient information in advance of the transfer date to ensure that all necessary payroll arrangements can be made to enable the transferring employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Business Days following the transfer date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority and/or the Chief Constable if applicable or, at the direction of the Authority and/or the Chief Constable if applicable, to any replacement supplier and/or any replacement sub-contractor (as appropriate), in respect of each transferring employee:
- (a) the most recent month's copy pay slip data;
  - (b) details of cumulative pay for tax and pension purposes;
  - (c) details of cumulative tax paid;
  - (d) tax code;
  - (e) details of any voluntary deductions from pay; and
  - (f) bank/building society account details for payroll purposes.
- 37.7 Where TUPE does not apply to the Contract on its termination or expiration, the Supplier shall retain all responsibility for outgoings in respect of its employees after the end of the Contract including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions, redundancy costs and otherwise and shall indemnify the Authority and the Chief Constable if applicable and any replacement supplier against any claims sustained as a result of any breach of this clause.

## **38. EMPLOYEES AND TUPE**

- 38.1 If TUPE applies to a number of staff engaged in the provision of services equivalent to the Services (or some of them) prior to the start of the Contract Period, the contracts of employment (together with any collective agreement) of such staff (subject to Regulation 4(7) of TUPE) will be from the

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Commencement Date as if they were originally made between the relevant staff member and the Supplier.

- 38.2 The Supplier shall take all necessary steps including those required by law to ensure that all employees, servants or agents of the Supplier and any Sub-contractors, their employees, servants or agents, employed in the execution of the Contract have the right to work in the United Kingdom, have complied and will in the future comply with any restrictions in force concerning their right to work in the United Kingdom (including but not limited to any restrictions on their hours of work) and are not claiming any benefit payable to jobseekers.
- 38.3 During the Term the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or to the Chief Constable if applicable any information they may reasonably require relating to the manner in which the Services are organised, which shall include, but is not limited to, the following:
- (a) the numbers of employees engaged in providing the Services;
  - (b) the percentage of time spent by each employee engaged in providing the Services; and
  - (c) a description of the nature of the work undertaken by each employee by location.
- 38.4 The Supplier shall indemnify and keep indemnified the Authority and the Chief Constable if applicable against any loss incurred by the Authority and/or the Chief Constable or any replacement supplier connected with or arising from any claim or proceedings by any trade union, elected employee representative or staff association made against the Authority and/or the Chief Constable if applicable or any replacement supplier in respect of any or all of the Supplier's staff or employees or any other employee of the Supplier or its Sub-contractors and which arises from or is connected with any failure by the Supplier to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or TUPE.
- 38.5 The Supplier shall indemnify and keep indemnified the Authority and the Chief Constable if applicable against any claim demand or loss incurred by the Authority and/or the Chief Constable if applicable or any replacement supplier at any time whether connected with or arising from the employment of or any policy applicable to, or any collective agreement in respect of any of the Supplier's staff or any other person at any time employed by (or engaged by) the Supplier or its Sub-contractors or otherwise including but not limited to any claims for: breach of contract; breach of policy; unfair dismissal; a redundancy payment; pay including a claim for unlawful deductions from wages and/or any claim in relation to holiday pay entitlement; discrimination; equal pay; industrial or personal injury; a claim for failure to consult, claims arising by virtue of custom and practice, any claims or demand from HMRC or any other statutory authority which relates to financial obligations but not limited to PAYE, and primary and secondary national insurance contributions; or otherwise relating to their employment by the Supplier save to the extent that the liability arises from any wrongful act by the Authority and/or the Chief Constable if applicable or its employees.
- 38.6 The Supplier shall indemnify and keep indemnified the Authority and the Chief Constable if applicable against any loss incurred from any change or proposed change to the terms and conditions of employment of any or all of the Supplier's staff or any other employee of the Supplier or its Sub-contractors where such change is or is proposed to be effected following the transfer of any such person pursuant to this Contract and in respect of any loss incurred by the Authority and/or the Chief Constable if applicable or any replacement supplier arising from the employment or proposed employment of any such person otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.

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- 38.7 Except with the prior written consent of the Authority, the Supplier shall not at any time after the Authority has served notice of the termination of the Contract, within twelve months of the date upon which the Contract will terminate in accordance with its provisions, or after the Supplier shall have otherwise become aware of the proposed termination or re-tendering of this Contract, any Contract or the provision by it of the Goods and Services in respect of any employee employed by or assigned by the Supplier or its Sub-contractors to the discharge of the Contract:
- (a) vary any terms and conditions of employment of any employee or any policy or collective agreement applicable to any employee (provided always that this provision shall not affect the right of the Supplier to give effect to any pre-existing contractual obligation to any such employee);
  - (b) remove or replace any particular employee or significantly alter the proportion of work which such employee undertakes on work arising from the provision of goods or services under this Contract (unless requested by such employee or upon the resignation of such employee in which case the Supplier shall replace such person with another person of similar skills, qualifications and experience);
  - (c) increase or decrease the number of employees or Sub-contractors engaged in the discharge of the Contract.
- 38.8 The Supplier shall indemnify and keep indemnified and hold harmless the Authority and the Chief Constable if applicable and any replacement supplier from and against all liabilities whatsoever (to include legal expenses on a full indemnity basis) (and including but without limitation any claim by or liability to a Sub-contractor or any employee, agent or independent contractor of such Sub-contractor or any other person whatsoever) arising out of any breach by the Supplier or any of its Sub-contractors of clause 38.7.
- 38.9 The Authority and Supplier shall continue to monitor the performance and objectives of the Contract throughout its duration and to make any amendments or changes necessary to the Contract, or its performance or objectives in order further to promote equality, diversity and equal opportunity.
- 38.10 The Supplier shall notify the Authority immediately in writing as soon as it becomes aware of any investigation or proceedings brought against it in relation to equality, diversity or equal opportunity whether under the Act or otherwise.
- 38.11 Where any investigation is undertaken by a person or body empowered to conduct such an investigation and/or proceedings are instituted following such an investigation against the Supplier or against the Authority either in connection with any contract awarded to the Supplier or generally, the Supplier shall, without charge:
- (a) provide any information requested by or on behalf of the Authority in the timescale allotted;
  - (b) attend and permit its employees, workers, agents, consultants and Sub-contractors to attend any meetings as required;
  - (c) allow the Authority access to and investigation of any information, documents or data deemed to be relevant to the investigation;
  - (d) allow itself and any of its employees, workers, agents, consultants and Sub-contractors to appear as witnesses in any proceedings; and
  - (e) co-operate fully with the person or body conducting the investigation.

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- 38.12 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Supplier, its staff, employees, workers, consultants, agents or Sub-contractors and where there is a finding against the Supplier in any such investigation or proceedings, the Supplier shall indemnify and keep indemnified and hold harmless the Authority and the Chief Constable if applicable with respect to all costs, charges and expenses (including legal and administrative expenses on an indemnity basis) incurred by the Authority and the Chief Constable if applicable during or in connection with any such investigation or proceedings and further indemnify and keep indemnified and hold harmless the Authority and the Chief Constable if applicable from and against all and any compensation, damages, costs, losses, fines, penalties or other award (including any interest) the Authority or the Chief Constable may be ordered or required to pay.
- 38.13 If a finding of unlawful discrimination or breach of equal opportunities legislation (including but not limited to the Act) is made against the Supplier or against the Authority arising from the conduct of the Supplier or any of its employees, workers, consultants, agents or Sub-contractors, the Supplier shall take immediate remedial steps to prevent further recurrences and shall advise the Authority of the steps taken.
- 38.14 If the Supplier enters into any Sub-contract as authorised in this Contract in connection with this Contract, it shall impose obligations and terms on its Sub-contractors which are identical to those imposed on it by this clause 38. The Authority expects that the Supplier will not sub-contract to any person, organisation, business, service or group which has a poor history in regard to acts of unlawful discrimination. Any breach of this clause will be considered by the Authority as a fundamental breach of the contract between the Authority and the Supplier.
- 38.15 Without prejudice to its remedies set out above, the Authority may terminate the Contract if notice has been given to the Supplier of a substantial or persistent breach of this section providing that in the case of persistent breach the Supplier has been given a reasonable period to rectify the breach and the Supplier has failed to do so.
- 38.16 The Supplier shall comply with the Authority's policies and procedures to prevent unlawful discrimination because of a Protected Characteristic from time to time.
- 38.17 The Supplier warrants that its own practices and procedures comply with the Equality Act 2010 and that its employees, workers, consultants and/or Sub-contractors are fully trained on matters relating to the prevention of unlawful discrimination and the promotion of equality and diversity and shall comply with the Authority's policies and procedures to prevent unlawful discrimination because of a Protected Characteristic from time to time.

## **39. VETTING**

- 39.1 The Authority may request any such employees of the Supplier or any Sub-contractor, who are involved in delivering the Goods or performing the Services, that it deems necessary to undergo a security vetting procedure or have the Authority's approval and secure vetting to the appropriate level prior to commencing any work on this Contract.
- 39.2 To facilitate the relevant vetting when so requested by the Authority, the Supplier shall provide a list of the names and addresses of all persons (if any) who it is expected will be engaged in the provision of the Goods and Services, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably require to permit appropriate security checking. This may include the requirement for the individuals concerned to provide personal details about family members and financial circumstances and make a personal declaration as to the accuracy of the information provided.



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- 39.3 For the avoidance of doubt, where the Authority has requested employees to undergo security vetting, only employees who have completed the vetting process and/or received written confirmation of their successful application can work on this Contract.
- 39.4 If requested by the Authority, the Supplier will be responsible for the vetting costs of all employees, or any Sub-contractor, who are required to be vetted under clause 39.1 above.
- 39.5 The Authority does not accept liability for delays relating to the period between vetting forms being submitted to the Authority and confirmation to the Supplier of the vetting application outcome.
- 39.6 The outcome of vetting and the decision from the Authority is final and binding. Employees who have not received vetting clearance by the Authority are not permitted to work on this Contract and the Supplier shall replace any of its employees who, the Authority shall have decided in its absolute discretion, have failed the appropriate security checking. The Authority shall not have to disclose why an employee has failed security checking. Following the removal of any of the Supplier's employees for failing vetting, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Contract.
- 39.7 The Supplier is responsible for ensuring all personnel supporting the Contract, including but not limited to, Sub-contractors employees are successfully vetted in line with any vetting requested by the Authority and shall ensure throughout the term of the Contract that they are at all times compliant with the vetting requirements of the Authority.
- 39.8 It is the Supplier's responsibility to ensure all staff working, who need to be vetted in accordance with clause 39.1 above, submit completed forms and supply any information required by the Authority's vetting unit and any changes in circumstances that occur after vetting has taken place during the term of the Contract are notified to the Authority. Any delay in the performance of the Contract resulting from the Supplier's employees or Sub-contractor employees not submitting fully and accurately completed forms and submitting any further information required or from declined vetting applications shall be the responsibility of the Supplier.
- 39.9 The Supplier shall keep an accurate and up to date record of their vetted employees and Sub-contractors employees and must ensure that vetting remains current for any individual involved in the delivery of this Contract.

### **40. INDEPENDENT POLICE COMPLAINT COMMISSION**

The Supplier must ensure that their staff are made aware of the ability of the Independent Police Complaints Commission to investigate any matters reported to them under the Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015 including but not limited to the conduct of the Supplier and their staff.

### **41. DISPUTE RESOLUTION PROCEDURE**

- 41.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("**Dispute**") then except as expressly provided in the Contract, the Parties shall follow the procedure set out in this clause:
- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Person and the Contract Manager shall attempt in good faith to resolve the Dispute;
  - (b) if the Authorised Person and the Contract Manager are for any reason unable to resolve the Dispute within the reasonable timescale set out in the Dispute Notice, the Dispute shall be

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referred to the appropriate senior member of procurement staff of the Authority and a similarly suitable employee of the Supplier who shall attempt in good faith to resolve it; and

- (c) if the appropriate employees referred to in clause 41.1(b) are for any reason unable to resolve the Dispute within a reasonable time of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing ("**ADR Notice**") to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than the date set out in the ADR Notice.

41.2 Subject to clause 41.3 below, no Party may commence any court or arbitration proceedings in relation to the whole or part of the Dispute until the mediation has taken place, provided that the right to issue proceedings is not prejudiced by a delay.

41.3 If the Dispute is not resolved at mediation or either Party fails to participate or to continue to participate in the mediation, the Dispute may be finally resolved by the courts of England and Wales in accordance with clause 50.10 in this Contract.

### **42. TRANSPARENCY**

42.1 Following the publication of the Statutory Instrument 2012 - Amendment 2479 (<http://www.legislation.gov.uk/uksi/2012/2479/made>), all Police Forces of England and Wales have an obligation to make publicly available a copy of each contract with a value exceeding £10,000 to which (i) the elected local policing body, or (ii) the chief officer of the police force maintained by the body, is or is to be a party.

42.2 As part of the transparency agenda, Government has made the following commitments with regard to procurement and contracting:

- (a) All new contracts over the value of £10,000 to be published in full online;
- (b) All items of spending over £500 per month to be published online.

42.3 To meet this requirement the Authority intends to publish all contracts over a value exceeding £10,000 on the Freedom of Information (FOI) page of the Bluelight Procurement Database ([www.blpd.gov.uk](http://www.blpd.gov.uk)).

42.4 The full list of criteria for which redactions may be permitted as set out as follows:

- (a) Exemptions (absolute or qualified) provided for by the Freedom of Information Act 2000, regarding the disclosure of information;
- (b) Provisions provided for in the Public Contracts Regulations 2015, regarding the disclosure of confidential information;
- (c) Protection of personal privacy as required under the Data Protection Legislation;
- (d) The protection of Intellectual Property Rights (IPR);
- (e) Third party confidential information e.g. contracts with foster carers and child minders.

42.5 Information and guidance on understanding exemptions and other FOI matters can be accessed from the Information Commissioner's Office [www.ico.gov.uk](http://www.ico.gov.uk).

### **43. BUSINESS CONTINUITY**

43.1 The Supplier shall ensure that it implements and maintains at all times a Business Continuity plan.

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- 43.2 Where a Business Continuity Event affects the Authority, the Supplier shall comply with instructions from the Authority where applicable as to the order of priority in which the services should be restored.
- 43.3 The Supplier shall undertake regular risk assessments in relation to the provision of the Services not less than once every six (6) months (or such other period as the Parties agree in writing) (commencing from the start of the Contract) and shall provide the results of, and any recommendations in relation to, those risk assessments to the Authority promptly in writing following each review.
- 43.4 The Supplier shall establish, maintain and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.

### **44. BARRED LIST**

- 44.1 This clause 44 shall apply where the Services being provided under the Contract include functions of a public nature which relate to policing and law enforcement.
- 44.2 In accordance with the Part 4A of the Police Act 1996, no employees of the Supplier, or any Sub-contractor, are permitted to be involved in the provision of the Services if they are on the police barred list published from time to time by the College of Policing ("Barred List").
- 44.3 The Supplier is responsible for ensuring all personnel supporting the contract, including but not limited to, Sub-contractors employees are not on the Barred List and shall ensure throughout the Contract Period that they are at all times compliant with the requirements of clause 44.2 above.
- 44.4 To enable the Authority to comply with its duties under Part 4A of the Police Act 1996, when so requested by the Authority, the Supplier shall provide a list of the names of all persons who it is expected will be engaged in the provision of the Goods and/or performance of the Services, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably require to permit the Barred List and the Police Advisory List to be checked.
- 44.5 The outcome of any check made pursuant to clause 44.4 above and the decision from the Authority in respect of the same is final and binding. Employees who are found by the Authority or notified to the Authority as being on the Barred List are not permitted to work on this Contract and the Supplier shall replace any of its employees or Sub-contractor's employees who are on the Barred List.
- 44.6 Following the removal of any of the Supplier's or Sub-contractor's employees in accordance with clause 44.5 above, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Contract.

### **45. IMPROVING VISIBILITY OF SUBCONTRACT OPPORTUNITIES AVAILABLE TO SMES AND VCSES IN THE SUPPLY CHAIN**

- 45.1 This clause 45 and clause 46 shall apply where the advertised contract value for the Contract was valued above £5 million per annum,
- 45.2 The Supplier shall:
- (a) subject to clause 45.4, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of £25,000 that arise during the term of the Contract;
  - (b) within 90 days of awarding a subcontract to a sub-contractor, update the notice on Contracts Finder with details of the successful sub-contractor;

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- (c) monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the term of the Contract;
- (d) provide reports on the information at clause 45.2(c) to a Authority in the format and frequency as reasonably specified by the Authority; and
- (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

45.3 Each advert referred to at clause 45.2(a) above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

45.4 The obligation at clause 45.2(a) shall only apply in respect of subcontract opportunities arising after the contract award date.

45.5 Notwithstanding clause 45.2, the Authority may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

### **46. MANAGEMENT CHARGES AND INFORMATION**

46.1 In addition to any other management information requirements set out in this Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to the Authority which incorporate the data described in the MI Reporting template which is:

- (a) the total contract revenue received directly on a specific contract;
- (b) the total value of sub-contracted revenues under the contract(including revenues for non-SMEs/non-VCSEs); and
- (c) the total value of sub-contracted revenues to SMEs and VCSEs.

46.2 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Authority from time to time. The Supplier shall use the initial MI Reporting Template which is set out in the Annex to Public Procurement Policy Note 01/08: Supply Chain Visibility Action and which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version. The Authority shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.

46.3 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Authority.

### **47. FORCE MAJEURE**

47.1 Subject to the remaining provisions of this clause 47 (and, in relation to the Supplier, subject to its compliance with its obligations in clause 43), a Party may claim relief under this clause 46 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

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- 47.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 47.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this clause 47 to the extent that consequences of the relevant Force Majeure Event:
- (i) are capable of being mitigated by any of the Goods and Services but the Supplier has failed to do so; and/or
  - (ii) should have been foreseen and prevented or avoided by a prudent provider of goods and services similar to the Goods and Services, operating to the standards required by this Contract.
- 47.4 Subject to clause 47.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Goods and Services affected by the Force Majeure Event.
- 47.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 47.6 Provided the Affected Party has complied with the clauses above, it shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations which is as a result of a Force Majeure Event and the time for performance of such obligations shall be extended accordingly.
- 47.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 47.8 Relief from liability for the Affected Party under this clause 47 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under clause 47.7.
- 47.9 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 weeks, the party not affected by the Force Majeure Event may terminate this Contract by giving 4 weeks' written notice to the Affected Party.

## **48. SUPPLY CHAIN RIGHTS AND PROTECTIONS**

### **Appointment of Sub-contractors**

- 48.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- (a) manage any Sub-contractors in accordance with Good Industry Practice;
  - (b) comply with its obligations under this Contract in the delivery of the Goods and Services; and
  - (c) assign, novate or otherwise transfer to the Authority or any replacement supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract.
- 48.2 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Authority in writing of:

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- (a) the proposed Sub-contractor's name, registered office and company registration number;
  - (b) the scope of any Goods and Services to be provided by the proposed Sub-contractor; and
  - (c) where the proposed Sub-contractor is connected to the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 48.3 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to clause 48.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-contract; and
  - (b) any further information reasonably requested by the Authority.
- 48.4 The Authority may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to clause 48.2 (or, if later, receipt of any further information requested pursuant to clause 48.3), object to the appointment of the relevant Sub-contractor if it considers that:
- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Goods and Services and/or may be contrary to the interests of the Authority;
  - (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable goods and services to its other customers;
  - (c) the proposed Sub-contractor employs unfit persons; and/or
  - (d) the proposed Sub-contractor should be excluded in accordance with clause 48.12;
- in which case, the Supplier shall not proceed with the proposed appointment.
- 48.5 If the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
- (i) the Supplier's notice issued pursuant to clause 48.2; and
  - (ii) any further information requested by the Authority pursuant to clause 48.3;
- the Supplier may proceed with the proposed appointment.
- 48.6 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Sub-contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Contract;
  - (b) a right under Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce any provisions under the Sub-contract which are capable of conferring a benefit upon the Authority;
  - (c) a provision enabling the Authority to enforce the Sub-contract as if it were the Supplier;
  - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
  - (e) obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Contract in respect of:
    - (i) data protection requirements set out in clause 35 (*Data Protection*);

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- (ii) FOIA requirements set out in clause 36 (Freedom of Information and environmental information regulations);
- (iii) vetting requirements set out in clause 39 (*Vetting*); and
- (iv) the keeping of records in respect of the goods and services being provided under the Sub-contract in accordance with clause 49 (*Records and Audits access*);
- (f) provisions enabling the Supplier to terminate the Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under this Contract;

48.7 The Supplier shall not terminate or materially amend the terms of any Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

### Supply chain protection

48.8 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract contain provisions:

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-clause (b), the invoice shall be regarded as valid and undisputed for the purpose of sub-clause (d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding 30 days of verifying that the invoice is valid and undisputed;
- (e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a clause to the same effect as this clause in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract

48.9 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within 30 days of verifying that the invoice is valid and undisputed;

### Termination of Sub-contracts

48.10 The Authority may require the Supplier to terminate a Sub-contract where:

- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to clause 26 (Termination);
- (b) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (c) there is a Change of Control of the relevant Sub-contractor, unless:
  - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

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- (ii) the Authority has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

### **Retention of Legal Obligations**

48.11 Notwithstanding the Supplier's right to sub-contract pursuant to this clause 48, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Goods and Services delivered by the Supplier and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the Supplier to procure that employees of the Supplier and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Goods and Services.

### **Exclusion of Sub-contractors**

48.12 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

- (a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
- (b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

## **49. RECORDS AND AUDIT ACCESS**

49.1 The Supplier shall keep and maintain for seven (7) years after the Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Goods and Services provided under it, any Sub-Contracts and the amounts paid by the Authority.

49.2 The Supplier shall keep the records and accounts referred to in clause 49.1 in accordance with Good Industry Practice and all Laws.

49.3 the Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditors is outside of the control of the Authority.

49.4 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:

- (a) all information within the scope of the audit requested by the Auditor;
- (b) reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Goods and Services; and
- (c) access to the Supplier's personnel.

49.5 If an audit reveals that the Supplier has overpaid any charges due in respect of any one year then, without prejudice to the Authority's other rights under this Contract, the Supplier shall reimburse the Authority such overpaid charges and its reasonable costs incurred in relation to the audit.

49.6 If an audit reveals that a Material Breach has been committed by the Supplier, the Authority shall be entitled to terminate this Contract.



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49.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

### 50. GENERAL

#### 50.1 Assignment and sub-contracting

- (a) The Authority may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract in the event of a change in the legal status of the Authority by reason of any statute.
- (b) The Supplier must not assign, transfer or sub-let the Contract or any part, share or interest in it either directly or indirectly to any person and shall not sub-contract except in accordance with the terms of the Contract.
- (c) The Supplier will be liable under this Contract irrespective of any sub-contracting.
- (d) If there is a breach of the provisions of this condition, the Authority shall be entitled to cancel the Contract immediately and clause 26 will apply.

#### 50.2 Notices

- (a) Any notice or other communication given to a Party under or in connection with the Contract shall be in writing, addressed to the that Party at its registered office (if it is a company) or its principal place of business or such other address as either Party may have specified to the other Party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier or fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 50.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### 50.3 Severance

- (a) If any court or competent Authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### 50.4 Variation

Subject to clause 14, no variation of this Contract, any Purchase Order, Purchase Order Amendment or any document referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the Parties (save for any documents referred to in this Contract which may expressly or implicitly vary from time to time). In the case of the Authority this must be by an Authorised Person.

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### 50.5 **Waiver**

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

### 50.6 **Third party rights**

- (a) Except as expressly provided in clause 50.6(b) below, a person who is not party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- (b) The Chief Constable also has the benefit of this Contract and is able to enforce all the Supplier's obligations set out in the Contract.
- (c) The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to any other party.

### 50.7 **Counterparts**

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

### 50.8 **Entire Agreement**

- (a) This Contract, and any documents referred within it, constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

### 50.9 **Status**

- (a) The relationship of the Supplier (and the Supplier's employees) to the Authority will be that of independent contractor and nothing in this Contract shall render it (nor the Supplier's personnel) an employee, worker, agent or partner of the Authority or the Chief Constable if applicable and the Supplier shall not hold itself out as such and shall procure that the Supplier's employees shall not hold themselves out as such.
- (b) Neither the Supplier nor its employees shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Authority, or in any other way to bind the Authority in the performance, variation, release or discharge of any obligation.
- (c) This Contract constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the Authority and the Chief Constable if applicable for and in respect of:
  - (i) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in

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connection with either the performance of the Services or any payment or benefit received by the Supplier's employees in respect of the Services, where such recovery is not prohibited by law. The Consultant shall further indemnify the Employer and the Chief Constable if applicable against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Authority or the Chief Constable in connection with or in consequence of any such liability, deduction, contribution, assessment or claim;

- (ii) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Supplier's employees against the Authority or the Chief Constable arising out of or in connection with the provision of the Services.
- (d) The Authority may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Supplier.
- (e) The Supplier warrants that it is not nor will it prior to the cessation of this Contract, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

### 50.10 **Governing law and jurisdiction.**

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, laws of England and Wales, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.