

Dated

20[xx]

(1) [Choose an item]

-and-

(2) [Enter Supplier's Name]

AGREEMENT

relating to the supply of

[Enter Project Title]

OFFICIAL - SENSITIVE – COMMERCIAL

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CONTENTS

- Section A FORM OF AGREEMENT**
1. PARTICULARS
 2. INCORPORATION OF AGREEMENT
- Section B SCHEDULES**
1. SCHEDULE 1 – STATEMENT OF REQUIREMENTS/SPECIFICATION
 2. SCHEDULE 2 – CONTRACT MANAGEMENT PROCEDURES
 3. SCHEDULE 3 – PRICING SCHEDULE
- Section C TERMS AND CONDITIONS**
1. GENERAL CONDITIONS
 2. [CONDITIONS FOR SERVICES / NOT USED]
 3. [CONDITIONS FOR GOODS / NOT USED]
 4. [SUPPLEMENTAL CONDITIONS / NOT USED]
 - 4.1 [SCHEDULE X9]
 - 4.2 [SCHEDULE X10]
 - 4.3 [SCHEDULE X11]
 - 4.4 [SCHEDULE X12]
- Section D FORM OF TENDER AND RELEVANT CORRESPONDENCE / DOCUMENTATION**

SECTION A FORM OF AGREEMENT

Contract Reference:	[year/xxx]
Contract Title:	[insert full contract title]

Parties	
This Agreement is made between:	
1 Authority:	<p>[Drafting Note: If a single PCC/PFCC will be entering into the contract on behalf of the other PCCs/PFCCs (i.e. where the contract value is one million pounds (£1,000,000) or below), please select the lead authority from the first drop-down menu and remove all remaining drop-down menus.</p> <p>If all of the collaborating PCCs/PFCCs will be signatories to the contract (i.e. where the contract value exceeds one million pounds (£1,000,000), please select all relevant authorities from the drop-down menus below.]</p> <p>Choose an item. Choose an item. Choose an item. Choose an item. Choose an item. Choose an item. Choose an item.</p>
2 Supplier:	[insert company name] (company no [insert company number]) whose registered office is at [insert registered address] [Drafting Note: insert correct details from Companies House]

Contract Period	
• Effective Date	The latter of the dates that the Supplier and the Authority signs this Agreement.
• Commencement Date:	[enter date for the start of the goods/services required]
• Expiry Date:	[enter date of expiry (if extension applicable enter initial expiry date)]

SECTION A FORM OF AGREEMENT
SECTION A.1 PARTICULARS

• Extension Period/s:	[enter number and duration of extensions allowable under the contract]
• Final Expiry Date:	[enter expiry date including all extension periods]
• Break Notice Period:	Authority's Break Notice shall be [enter notice period OR as per the General Conditions]

Recitals	
• Tender Process	This Agreement has been awarded to the Supplier as a result of a [mini-competition issued on [DATE] by the Authority under the terms of the Framework Agreement ([Title of Framework and references])] OR [tender issued on [DATE] by the Authority].
• Advert References	[enter OJEU and/or contracts finder award notices]
• Date of Tender return	[enter date that tenders were returned]
• Date of Award	[enter date that contract was awarded]

Price	
• Price:	[[PRICE]] AND/OR See attached price schedule (Section B.3 - Schedule 3 (Pricing Schedule))

Contract Management [details can be completed post-award]		
• Contract Management Procedures	See Section B.2 – Schedule 2 (Contract Management)	
• Contract Manager (Operational)	Name	[Name of Authority's contract manager]
	Title	[Job title of above]
• Supplier's Account Manager	Name	[Name of Supplier's day-to-day contact]
	Title	[Job title of above]
• Commercial Representatives	Authority	
	Name	[Name of 7F Commercial Services representative]
	Title	[Job title of above]

SECTION A FORM OF AGREEMENT
SECTION A.1 PARTICULARS

	Supplier	
	Name	[Supplier representative with delegated authority's as per General Conditions]
	Title	[Job title of above]
<ul style="list-style-type: none"> Notices 	Authority	
	Name	Mr David Levy,
	Title	7 Force Director of Commercial Services
	Address	[address of relevant authority or Lead authority]
	Email	[enter authority email]
	Supplier	
	Name	[Supplier's nominated person for notices to be addressed to]
	Title	[Job title of above]
	Address	[Postal Address for Notices]
	Email	[Email Address for Notices]
<p>Required Insurance Policies [List the required insurances and levels here – amend requested levels and particular requirements accordingly. Note that the minimum levels of insurances shall be £5m unless circumstances dictate a higher value. The appropriate insurance levels should be determined by use of the toolkit or by seeking advice from insurance officers.]</p>		
Employers Liability	No less than £[XX]m [Note: this cannot be less than £5m]	
[Public/Product] Liability Insurance [Check with insurance over type of contract]	No less than £[XX]m	
Professional indemnity Insurance	No less than £[XX]m	

Services [delete section if not applicable]	
<ul style="list-style-type: none"> Conditions 	See Section C.2 Conditions for Services

SECTION A FORM OF AGREEMENT
SECTION A.1 PARTICULARS

<ul style="list-style-type: none"> • Specification: 	[insert short description AND/OR state “See Section B.1 – Schedule 1 (Statement of Requirements/ Specification)”]
<ul style="list-style-type: none"> • Location to be performed: 	[insert locations AND/OR state “See Section B.1 – Schedule 1 (Statement of Requirements/ Specification)”]
<ul style="list-style-type: none"> • Performance dates: 	[insert dates OR The Term of the Contract OR state “see Section B.1 – Schedule 1 (Statement of Requirements/Specification)”]

Key Personnel (as defined in Section C.2 Conditions for Services)	
Name(s)	Position(s)
[If no persons are named there are no Key Personnel]	

Goods [delete section if not applicable]	
<ul style="list-style-type: none"> • Conditions 	See Section C.3 Conditions for Goods
<ul style="list-style-type: none"> • Statement of Requirements/ Specification: 	[insert description OR state “See attached Section B.1 – Schedule 1 (Statement of Requirements/ Specification)”]
<ul style="list-style-type: none"> • Quantity required: 	[enter quantity required OR, for more complex requirements, state “see attached Section B.1 Statement of Requirements/Specification” AND/OR “as specified in each Order”] [Note: remember to include the units of measurement]
<ul style="list-style-type: none"> • Delivery Location: 	[list locations required OR, for more complex requirements, state “see attached Section B.1 Statement of Requirements/Specification” AND/OR “as specified in each Order”]
<ul style="list-style-type: none"> • Delivery Date: 	[enter delivery dates OR, for more complex requirements, state “see attached Section B.1 Statement of Requirements/Specification” AND/OR “as specified in each Order”]
<ul style="list-style-type: none"> • Delivery preference: 	[Fixed date only/on or before]
<ul style="list-style-type: none"> • Defects Liability Period (see clause G.7.3 in Section C.3 Conditions for Goods) 	[enter defects liability period OR state “as per Conditions for Goods”]

SECTION A FORM OF AGREEMENT
SECTION A.1 PARTICULARS

<ul style="list-style-type: none"> • Additional delivery instructions: 	
Supplemental Conditions [delete section if not applicable]	
<ul style="list-style-type: none"> • Conditions 	See Section C.4 Supplemental Conditions
<ul style="list-style-type: none"> • Performance Bond 	<p>Delete if not required The required form of bond or guarantee is set out in Schedule X10. The value required is xx% of the total Contract Price and the period of validity is the expiry date of this agreement.</p>
<ul style="list-style-type: none"> • Parent Company Guarantee 	<p>Delete if not required The required form of Parent Company Guarantee is set out in Schedule X11. The parent company name is [enter details] and registration number is [enter company registration number]</p>
<ul style="list-style-type: none"> • Collateral Warranties 	<p>Delete if not required The required form of Collateral Warranties is set out in Schedule X12. The limit of liability is [enter value]</p>

Order of Precedence	
<p>In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, or between the Schedules (save where any Schedule expressly provides otherwise), the inconsistency shall be resolved according to the following descending order of priority:</p>	<ol style="list-style-type: none"> 1. Section A.1 Particulars and Form of Agreement; 2. Section C.1 General Conditions; 3. Section C.2 Conditions for Services (where used); 4. Section C.3 Conditions for Goods (where used); 5. Section C.4 Supplemental Conditions (where used); 6. Section B - The Schedules; and 7. Section D - Form of Tender and Relevant Correspondence / Documentation (where used).

Form of Tender [delete section if not applicable]	
<ul style="list-style-type: none"> • Form of tender 	See Section D (FORM OF TENDER AND RELEVANT CORRESPONDENCE / DOCUMENTATION)
<ul style="list-style-type: none"> • Other relevant documents 	See Section D (FORM OF TENDER AND RELEVANT CORRESPONDENCE / DOCUMENTATION)

Default Sums (as defined in C1 and used in clause 9.2.3.1) [delete section if not applicable]	
[Description of Performance Default subject to Default Sums]	<p>£[XX] Per day/week/per occurrence]</p> <p>[The sum stated should be a reasonable estimate of the likely loss for the specific Performance Default described opposite. If the likely loss is difficult to assess, the sum should be commercially justified, with the justifications documented. Also consider if the sum should be claimed for a maximum time period, after which the Authority has a general damages claim. If a maximum time period is used clause 9.2.3.1 will require amendment.]</p> <p>[do not state Zero/Nil/0 or “not applicable” if not using – delete section if not applicable]</p>

Authority Assets (as defined in Section C.2 Conditions for Services and used in clause S4 (Equipment, Plant and Materials))
<ul style="list-style-type: none"> [List Authority’s Assets that are to be provided to the Supplier but shall remain the property of the Authority]

TUPE	
The Supplier and the Authority agree the following is the position in respect of Supplier staff and that the indicated additional clauses apply where indicated:	
	Tick Box that applies
Contract for Goods - No staff will TUPE from the Authority or another supplier to the Supplier	<input type="checkbox"/> No additional clauses to apply
Contract for Services - No staff are envisaged to TUPE from the Authority and/or another supplier(s) to the Supplier at the start of the Agreement and there is no scenario envisaged where staff may transfer from the Supplier to another supplier at the end of the Agreement	<input type="checkbox"/> No additional clauses to apply
Contract for Services - No staff are envisaged to TUPE from the Authority and/or another supplier(s) to the Supplier at the start of the Agreement but there could be a scenario envisaged where staff may transfer from the Supplier to another supplier at the end of the Agreement	<input type="checkbox"/> TUPE Clauses – S8 (Conditions of Services) shall apply

SECTION A FORM OF AGREEMENT
SECTION A.1 PARTICULARS

<p>Contract for Services - Staff are expected to TUPE from another supplier or suppliers to the Supplier at the start of the Agreement</p>	<input type="checkbox"/> TUPE Clauses – S8 (Conditions of Services) and X2 (Supplemental Conditions) shall apply
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[Drafting Note: If Staff are expected to TUPE from the Authority at the start of the Agreement - STOP - BESPOKE DRAFTING REQUIRED]

<p>Schedule of Processing, Personal Data and Data Subjects</p>	
<p>This Schedule shall be completed by the Authority, who may take account of the view of the Supplier, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.</p> <ol style="list-style-type: none"> 1. The contact details of the Authority's Data Protection Officer are: [Insert Contact details] 2. The contact details of the Supplier's Data Protection Officer are: [Insert Contact details] 3. The Supplier shall comply with any further written instructions with respect to processing by the Authority. 4. Any such further instructions shall be incorporated into this Schedule. 	
<p>Description</p>	<p>Details</p>
<p>Identity of the Controller and Processor</p>	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor in accordance with Clause 20.1 of Section C.1 (General Conditions). [If for the purposes of Data Protection, the Parties are Joint Controllers, please add Supplemental Conditions Clause 9 and Schedule X9 Joint Controller Agreement]</p>
<p>Subject matter of the processing</p>	<p>[This should be a high level, short description of what the processing is about i.e. its subject matter] Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public]</p>
<p>Duration of the processing</p>	<p>[Clearly set out the duration of the processing including dates]</p>
<p>Nature and purposes of the processing</p>	<p>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</p>
<p>Type of Personal Data being Processed</p>	<p>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</p>

SECTION A FORM OF AGREEMENT
SECTION A.1 PARTICULARS

Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
Actions to be taken to report a data breach, loss of data or a near miss	[Detail the reporting process/procedures to be followed if there has been a data breach or loss or where a near miss has occurred. This could include contact names, telephone numbers and e-mail address if different from the beginning of this schedule or from the operational contracts manager identified in the contract management details
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[Describe how long the data will be retained for, how it be returned or destroyed]

SECTION A FORM OF AGREEMENT
SECTION A.2 INCORPORATION OF AGREEMENT

[Note: delete this page if not being used] Execution under hand

This **Agreement** has been entered into on the date stated at the beginning of it

Signed by **the Authority**
for **Choose an item.**

Date

Name

Position

[Note: witness to be included when affixing the PCCs signature for a contract over £1million. Delete witness if not required.]

In the presence of a witness

Signed

Date

Name of Witness

Position

(Physical or Electronic Signature)

Signed by **the Supplier**

Date

Name

Position

(Physical or Electronic Signature)

SECTION A FORM OF AGREEMENT
SECTION A.2 INCORPORATION OF AGREEMENT

[Note: delete this page if not being used] Execution as a Deed
Executed as a Deed by the Authority

[Drafting Note: If the contract value is one million pounds (£1,000,000) or below, please use the execution block at Part A, and remove Part B. In this case, 1 PCC/PFCC may execute the contract on behalf of all other PCCs/PFCCs.]

[Part A]

Namely Choose an item.

THE COMMON SEAL of <u>Choose an item.</u> was hereunto affixed in the pursuance of the Agreement	
--	--

Date _____

Seal No _____

In presence of

Witness' Signature _____ (*Print Name*) _____

Witness' Address _____

SECTION A FORM OF AGREEMENT
SECTION A.2 INCORPORATION OF AGREEMENT

[Drafting Note: If the contract value exceeds one million pounds (£1,000,000), please use the execution blocks at Part B, and remove the contents of Part A. In this case, each of the collaborating PCCs/PFCCs will need to execute the contract by completing the relevant execution block below for their authority.]

[Part B]

Namely **The Police and Crime Commissioner for Kent**

THE COMMON SEAL of The Police and Crime Commissioner for Kent was hereunto affixed in the pursuance of the Agreement	
---	--

Date _____

Seal No _____

In presence of

Witness' Signature _____ (Print Name) _____

Witness' Address _____

Namely **The Police, Fire and Crime Commissioner for Essex**

THE COMMON SEAL of The Police, Fire and Crime Commissioner for Essex was hereunto affixed in the pursuance of the Agreement	
--	--

Date _____

Seal No _____

SECTION A FORM OF AGREEMENT
SECTION A.2 INCORPORATION OF AGREEMENT

In presence of

Witness' Signature _____ (*Print Name*) _____

Witness' Address _____

Namely **The Police and Crime Commissioner for Bedfordshire**

THE COMMON SEAL of The Police and Crime Commissioner for Bedfordshire was hereunto affixed in the pursuance of the Agreement	
---	--

Date _____

Seal No _____

In presence of

Witness' Signature _____ (*Print Name*) _____

Witness' Address _____

Namely **The Police and Crime Commissioner for Cambridgeshire**

THE COMMON SEAL of The Police and Crime Commissioner for Cambridgeshire was hereunto affixed in the pursuance of the Agreement	
---	--

Date _____

SECTION A FORM OF AGREEMENT
SECTION A.2 INCORPORATION OF AGREEMENT

Seal No _____

In presence of

Witness' Signature _____ (*Print Name*) _____

Witness' Address _____

Namely **The Police and Crime Commisisoner for Hertfordshire**

THE COMMON SEAL of The Police and Crime Commisisoner for Hertfordshire was hereunto affixed in the pursuance of the Agreement	
--	--

Date _____

Seal No _____

In presence of

Witness' Signature _____ (*Print Name*) _____

Witness' Address _____

Namely **The Police and Crime Commissioner for Norfolk**

SECTION A FORM OF AGREEMENT
SECTION A.2 INCORPORATION OF AGREEMENT

THE COMMON SEAL of The Police and Crime Commissioner for Norfolk was hereunto affixed in the pursuance of the Agreement	
--	--

Date _____

Seal No _____

In presence of

Witness' Signature _____ (*Print Name*) _____

Witness' Address _____

Namely **The Police and Crime Commisisoner for Suffolk**

THE COMMON SEAL of The Police and Crime Commisisoner for Suffolk was hereunto affixed in the pursuance of the Agreement	
--	--

Date _____

Seal No _____

In presence of

Witness' Signature _____ (*Print Name*) _____

Witness' Address _____

SECTION A FORM OF AGREEMENT
SECTION A.2 INCORPORATION OF AGREEMENT

[Note: delete this page if not being used] Execution as a Deed
Executed as a Deed by the Supplier

Namely¹ _____

(A) Acting by a Director and the Company Secretary/two Directors of the company^{2,3}

_____ and _____
(print name of signatory) (print name of signatory)

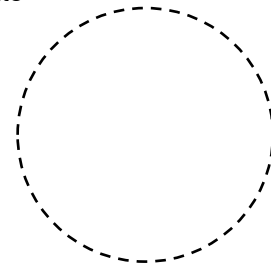
Signature Director Signature Company Secretary/Director

(B) By affixing hereto the common seal of the company/other body corporate^{2,4}

in the presence of

Signature Director

Signature Company Secretary/Director



[Common seal of the company]

(C) By attested signature of a single Director of the company^{2,5}

Signature Director

In presence of

Witness' Signature _____ (Print Name) _____

Witness' Address _____

(D) By attested signature of the individual⁶

Signature Director

In presence of

Witness' Signature _____ (Print Name) _____

Witness' Address _____

SECTION B

SCHEDULES

SECTION B.1

SCHEDULE 1 – STATEMENT OF REQUIREMENTS/SPECIFICATION

Statement of Requirements (SOR)/Specification

[This document can be utilised as a template to build a SOR/Specification considering the drafting notes below OR the drafting notes and contents can be deleted and either replaced with a SOR/Specification (copy and pasted) or attached as a separate document and noted here to state where the separate document can be located within the pack]

[Drafting note:

A good SOR/specification should:

- State the requirement completely, clearly, concisely, logically and unambiguously;
- Focus on outputs - not how they are to be met;
- Contain enough information for potential suppliers to decide and cost the goods or services they will offer, or in the case of negotiated route arrive at realistic budgetary costs;
- Permit offered goods or services to be evaluated against defined criteria by examination, trial, test or documentation;
- State the criteria for acceptance by examination, trial, test or documentation;
- Contain only the essential features or characteristics of the requirement;
- Provide equal opportunity for all potential suppliers to offer a product or service which satisfies the needs of the user and which may incorporate alternative technical solutions; and comply with any legal obligations;
- Use language that ties in with the definitions and terminology in the main contract and also not cut across contractual provisions.

A good SOR/specification should not:

- Over-specify requirements;
- Instruct on how the supplier should deliver the requirement
- Contain features that directly or indirectly discriminate in favour of, or against, any supplier, product, process or source. Discrimination on grounds of nationality is illegal and may not achieve value for money.]

Information to consider but covered in other parts of the Tender / Contract Documents:

- Contract Management arrangements (if using separate Contract Management Schedule)
- Contract Meetings
- Escalation process
- Invoicing and payment
- Contract

Contents

[Drafting Note: Sections 1 - 3 will apply regardless of the requirement

Not all of sections 4-18 will apply to your requirement. Edit and Remove as applicable.]

1. Summary of Requirements
2. Project Background & Objectives
3. Detailed Requirements and Scope
4. Deliverables & Timescales
5. Volumes & Capacity
6. Accreditation
7. Quality Plans
8. Security
9. After Sales Support
10. Warranty
11. Acceptance Testing
12. Storage / Retention
13. Social Value and Environmental Impact
14. Business Continuity & Disaster Recovery
15. HR Policies
16. End of Contract
17. Updates / Innovation / Obsolescence / Replacement Programmes

1. Summary of Requirements

[This should comprise a brief statement informing the reader what the specification is about.]

2. Project Background & Objectives

[This section should provide a detailed overview of how the need for the current requirement has arisen and what the future objectives of the contract will be. If necessary, provide information on useful reference material or on any related work that has already been done or is being undertaken (this could include previous/current contracts).

The section should include the required outcomes from the procurement and how the requirement fits in with any wider strategies or objectives. For more complicated requirements it may be necessary to set out this section using sub-headings:

Examples of outcomes could include:

- The development/upskilling of internal staff
- The implementation of new working practices
- Improved efficiencies
- Reduced costs
- To achieve/comply with any environmental, corporate or social responsibility targets set by the PCC, Government or EU.
- Benchmarking against other similar services

If it is anticipated that the requirement will change throughout the life of the contract then information should be provided on the likely scope of the change and the drivers which will precipitate this change.

Is there an agreed collaborative approach in place for this requirement?

- If so who is the collaboration with?
- How is this proportioned across the partners?]

3. Detailed Requirements and Scope

[This section should include a clear and detailed description the requirements.

Sub- sections might include:

3.1. Scope

What is within the scope of the contract and what is not?

- Consideration to any future changes to the specification which may arise throughout the life of the contract e.g. additional requirements or volumes.
- Information or equipment or facilities to be supplied by the Supplier
- Information or equipment or facilities to be supplied by the Authority
- Any requirements to work with other suppliers/stakeholders.

3.2. Delivery / Location(s)

- Location of delivery of services / goods

3.3. Input Requirements

- Essential input levels and standards that service / goods must provide for the requirement to succeed

3.4. Output Requirements

- Essential output levels and standards that service / goods must provide for the requirement to succeed

3.5. Resources

- Specific experience skills or qualifications required by the Suppliers staff

3.6. Mobilisation / installation / training / testing / acceptance procedures

- Any pre-contract / mobilisation activities such as installation and training requirements (for Internal or Supplier staff), testing to be undertaken and acceptance procedures for completed work / deliveries

3.7. Maintenance

- Any maintenance requirements

[More complex requirements might require a more detailed Service Level Agreement to be appended providing a breakdown of the performance levels required with measurable targets against each. Areas that might be covered are response and fix times, accuracy, availability and throughput.

The specification should include the requirement for an implementation plan which will allow the bidder to demonstrate their understanding of the nature of the requirement and the key milestones attached to the implementation of the contract]

4. Deliverables & Timescales

[This section should be used where there are multiple deliverables to be provided throughout the Contract Period. It should provide a prescriptive statement of the key deliverables required of the supplier and the timescales they are required in:

Examples for deliverables might include:

- Goods / Services
- Reports (the required format should also be stated)
- Management information (frequency/format/content)
- Mobilisation programmes
- Skills and knowledge transfer
- Equipment with handbooks / training / instructions
- Performance levels
- Presentations to the contracting authority

Key milestones might include:

- Transition duration from incumbent supplier
- Contract start date
- Delivery dates for required goods/services (consider impact of any lead times)
- Provision of management information or reports
- Identification of savings opportunities
- Any potential extension periods for the contract.

[Where possible the stakeholder should be flexible with end/delivery dates for the required goods/services to ensure the Authority obtains best value from the Supplier.]

5. Volumes & Capacity - (Assessed via either the SQ or ITT stage)

[This section should include at a minimum:

- What are the expected volumes for the product / service?
- How have these volumes been calculated? Is this based on previous data?
- How do you anticipate these volumes will fluctuate during the lifetime of the contract e.g. Are there any planned initiatives or operations which can impact on volumes

The capacity of the Supplier will be governed by the volumes required by the purchasing authority under the contract. Providing accurate volumes will enable the supplier to assess whether their current business can meet the expected demand or whether additional capacity is required.

When drafting the specification with regards to supplier capacity consider the following:

- Will the requirement be split amongst several Suppliers?
- Will there be peaks and troughs which affect supplier capacity?
- Will there be seasonal demand for the required goods/services?
- How will the supplier ramp up production/supply for unforeseen spikes in demand?]

6. Accreditation - (Assessed via SQ stage)

[If appropriate, the stakeholder should list any standards that need to be met by the supplier when performing the contract. Care should be taken not to use standards that are irrelevant or discriminate unnecessarily against certain Suppliers. For EU procurements, seek professional procurement advice on the use of standards. As a rule of thumb you must specify national standards that implement European standards where relevant. You must consider offers that claim to provide equivalent functionality or performance, even though they do not conform to the standard in question

Examples of accreditation could include:

- E.g. FSC for paper production
- ISO 14001/9001/27001 or equivalent QMS systems]

7. Quality Plans - (Assessed via ITT stage)

[The section will include information about the expected requirements of the Supplier with regards to their testing processes throughout the life of the contract to maintain consistency in the quality of the goods/services being supplied. If necessary, a quality plan should be requested from bidders during the tendering process.]

8. Security

[Any particular security specifications or requirements. This may include:

- Physical access, e.g. as access to buildings and police sites
- Information security, both physical and electronic]

9. After Sales Support - (Assessed via ITT stage)

[This section should detail the proposed service levels required during the Contract Period between the Authority and the Supplier. Requirements to consider including are:

- Do you require a helpdesk (dedicated or shared)?
- What level of response is required?]

10. Warranty - (Assessed via ITT stage)

[This section should stipulate the required warranty levels for the goods being supplied under the contract. When defining the warranty you should consider what the warranty needs to cover, what the repair or replacement process will be for any defective goods and the warranty duration.]

11. Acceptance Testing - (Assessed via ITT stage)

[This section should detail what tests/inspections the Authority will undertake on the goods being supplied by the Supplier. Consideration should also be given to how often quality will be assessed under the contract. Will it be:

- During tendering only e.g. samples
- During the mobilisation of the services

- Throughout the life of the contract at set/random time intervals
- Batch testing

The following should be considered in the event that the required goods are to be tested prior to being accepted by the Authority.

- Define the criteria which need to be met when accepting the final product.
- Are the items 'off-the-shelf' or are they 'made-to-order'? This will determine when the acceptance testing will be conducted i.e. at the ITT stage or at the Delivery stage.
- Explain how and where this testing is to be conducted and list the acceptance/evaluation criteria.
- Explain what will happen if the product does not meet the acceptance criteria.
- Will the supplier need to provide samples for acceptance testing? And if so how many?
- Consider timescales for acceptance testing
- Consider linking milestone payments to the acceptance testing if the product is be bespoke for the Forces]

12. Storage / Retention - (To be assessed via ITT)

- Will Force assets or information be stored suppliers site?
- Are there any specific technical requirements for the storage of Force assets excluding security requirements?
- Is there a personal data being stored or processed? Refer to Schedule of Processing Personal Data and Data Subjects

13. Social Value and Environmental Impact

Social Value objectives

- Consider how this contract will be socially sustainable (ensure that any social value requirements are relevant and proportionate to the contract).
- If buying a service how will we ensure people are treated fairly/equally and given the appropriate skills to provide the service we require?
- How could this contract sustain the local economy, including delivering value for money for residents?
(i.e. competitiveness, inclusive workforce, SMEs, efficiency, workforce learning/skills, encouraging investment, encouraging growth in sustainable/local production, tourism, use of local suppliers, improving disadvantaged areas)
- In relation to Social Value, can you specify the additional benefits to the community which can be derived from your proposed contract and how they will be delivered?

Environmental Impact

- Does the good or service have an impact on the environmental sustainability? (such as CO2, energy, waste & recycling, water, supply chains, air quality, travel/transport, public spaces, landscapes etc.)
- Are these impacts relevant to the scope of the contract?
- How can any impacts be mitigated within the contract?
- Is environmental legislation or Equality Act 2010 applicable?
- If buying goods, what is the life cycle cost? What will we do with it at the end of its useful life?
- What supply chain mapping is required?

14. Business Continuity & Disaster Recovery (BCDR) - (To be assessed via ITT)

- Is there a requirement for the supplier(s) to have a formal BCDR plan?
- How often should this plan be tested?

15. HR Policies

[Are there any specific HR requirements relevant to this requirement?]

16. End of Contract - (To be assessed via ITT)

[This section is particularly important for longer-term contracts, services where the Supplier hold data or assets belonging to the Authority, services requiring complex handover to another supplier. State requirements from the Supplier during any handover period at the end of the contract.

It might include:

- Working in tandem with a new supplier for a period, and a statement of the roles and responsibilities
- Removing equipment from the client's site or allowing the client to buy/lease this
- Returning a site to its original (or an improved) condition.
- Returning data to the Authority or deleting data stored on premises
- Returning other assets to the Authority or the incoming supplier]

17. Updates /Innovation/ Obsolescence / Replacement Programmes

[If pertinent to the requirement, include the need for the supplier to use their expertise to provide innovative solutions to your requirement.

If it is likely that the products being supplied will become obsolete during the life of the contract, or new and improved items will become available, state the requirement for the Supplier to keep the authority appraised of market changes, new products/standards becoming available or changes to legislation which may affect service delivery, in a timely fashion (e.g. 3 months)

In the case of a goods contract, the requirement should state that in the event of items becoming obsolete they should be removed from the contract and a suitable alternative (i.e. matching specification) provided as an alternative.

Consider the need for any maintenance requirements for items which become obsolete.]

- Any specific or special requirements the Supplier needs to address such as security, environmental, equality, project and risk management, and health and safety

SECTION B
SCHEDULES

SECTION B.2
SCHEDULE 2 - CONTRACT MANAGEMENT PROCEDURES

CONTRACT MANAGEMENT PROCEDURES

[Drafting note: the below text, headings and associated appendices are for guidance and example only, the 7 Force Commercial Services Lead and Contract Manager should draft this section with the Contract Management requirement in mind]

1. Introduction

The following specifies the contract management procedures to employ by all Parties during the term of this Agreement.

2. Management Team

The Supplier is required to provide details to the Contract Manager of the Supplier's Account Manager and Supplier's Personnel who shall be responsible for management, reporting and the day to day running of the Services / Goods under this Agreement.

Any queries or requests from the Contract Manager must be responded to within [2 Working Days] by the Supplier's Account Manager. An alternative contact should be provided for when the appointed Supplier's Account Manager is unavailable.

The Supplier's Account Manager will be responsible for:

- Addressing issues and queries surrounding the delivery of the Agreement
- Attending contract meetings
- Monitoring any Key Performance Indicators
- Providing the required Management Information to the Authority

3. Communications / Orders / instructions

The Contract Manager may issue instructions, Orders, notices or send other communications within the scope and terms of this Agreement and the Supplier shall forthwith comply with them.

If instructions or orders are given orally, they shall not have effect until the Contract Manager confirms them in writing.

[Orders must be pre-accompanied by a purchase order.] *(Delete if not applicable)*

[Orders will only be communicated via the form attached as Annex XX]

4. Meetings

Contract Initiation Meeting

The Supplier will be required to attend an initial meeting not less than [one/two/three weeks] prior to the Commencement Date. The date, time and location shall be advised by the Contract Manager.

[Subsequent pre-commencement meetings prior to the Commencement Date may be called as required by the Contract Manager in order to review progress or discuss specific points.] *(Delete if not applicable)*

In addition to the persons appointed as the Supplier's Account Manager with the Contract Particulars, the Contract Manager may require other members of the Supplier's Personnel to attend, including but not limited to:

- Supervisors and managers;
- Administrative staff responsible for order handling and invoices;
- Technical specialists

- Health and safety representatives

The Contract initiation meeting will generally follow the pro-forma agenda associated as Annex 1.

Contract Meetings

Contract meetings shall be held at a minimum of [monthly/quarterly] intervals or as otherwise directed by the Contract Manager and shall be attended by the Supplier's Account Manager and such other of the Supplier's Personnel as may be necessary to fully discuss the progress of the deliverables in the Agreement and resolve any issues raised/outstanding.

Such meetings shall:

- generally follow the pro-forma agenda associated as Annex 2
- be held at the Authority's offices at [enter relevant address] unless otherwise agreed
- be chaired and minuted by the Contract Manager
- are to be attended by individuals with appropriate decision making powers able to fully discuss and address all matters and issues

At least [four] working days prior to each the Supplier is to provide the Contract Manager with any documents relevant to the meeting including any performance report, in the format as agreed in the Contract initiation meeting.

Ad-hoc Meetings

The Supplier's Account Manager may be required to attend ad-hoc meetings from time-to-time, at the request of the Contract Manager, to discuss specific requirements which cannot wait until the next review meeting.

The Supplier' Account Manager, and where relevant the Supplier's Personnel, shall upon receipt of reasonable notice and during office hours attend all meetings arranged by the Authority's Contract Manager for the discussion of matters connected with the performance of this Agreement.

5. Escalation Process

The Parties will operate the Agreement in a spirit of trust and mutual co-operation with an emphasis on delivering an excellent customer service and effective problem solving.

Issues or disputes should generally be resolved at source between the relevant parties involved. In this regard Authority will expect that all parties will adopt a proactive approach to the identification of issues and will provide early warning of any problems likely to affect the cost, delivery or performance of the Agreement.

Where it is not possible to solve the issue at source, the Problem Solving Hierarchy in Annex 3 may be adopted, using the contacts as identified in Annex 4. This approach shall not exclude any party from proceeding directly to the processes described in the Agreement.

6. Information and Performance

Management Information (MI)

The collation of comprehensive, up-to-date and accurate management data is crucial to effectively implement the Authority's organisational policies and strategies. The Supplier will be required to provide the following information on a [monthly/quarterly] basis in the format agreed with by the Contract Manager:

- [Enter Management Information data requirements]
- [Enter Management Information data requirements]
- [Enter Management Information data requirements]

The Contract Manager may request additional information to assess the performance of the deliverables against the organisational goals and objectives. The Supplier shall provide the Contract Manager with such reports of the services, goods or copies of the deliverables at such intervals and in such form as the Authority may from time to time reasonably require.

Key Performance Indicators (KPIs)

General

Where provided, the Supplier is required to commit to the service levels set out in this Agreement, to be monitored through a number of established Key Performance Indicators (KPIs). The KPIs to be taken into account in determining the Supplier's performance under this Agreement are detailed in Annex 5.

The Supplier is to maintain such other records of his performance and comply with any additional KPIs as the Authority may reasonably require or to enable compliance with any statutory or regulatory obligations.

All performance information is to be provided in the format and at the times stipulated by the Contract Manager and otherwise in accordance with the Agreement to facilitate and enhance the Authority's performance management regime.

The Contract Manager shall determine whether the information provided by the Supplier in connection with its KPI performance is adequate or accurate and, to the extent that it is not, the Supplier shall be obliged to provide any further information requested by the Contract Manager. For the avoidance of doubt, if mitigating circumstances cannot be established then the Contract Manager's interpretation of the KPI data shall be final and binding on the Parties.

At any time during the Contract Period the Authority may carry out whatever checks and monitoring they deem necessary to ensure that any KPI's measured by the Supplier are correct.

The Authority is committed to continuous improvements in service, delivery, customer care and satisfaction and the Supplier's performance in this regard will be closely monitored utilising the KPIs referred to above.

Frequency of KPI Calculations

Unless otherwise stated, the KPIs will be calculated at the end of each calendar month with the results being available by the fourteenth day of the following month in order and made available prior to any relevant contract meeting.

KPIs and Default Notices

Without prejudice to other rights available to the Authority under this Agreement, where any KPI falls below the then current minimum percentage, and there are no mitigating circumstances (to be accepted at the absolute discretion of the Authority and Contract Manager), then the Authority may issue a Default Notice notifying such failures in performance to the Supplier by the Contract Manager in accordance with clause 8 (Performance Monitoring) of Section C.1 (General Conditions) of this Agreement.

7. Ordering and Payment Process

Invoicing

Invoice to:	[enter relevant force data]
Email:	[enter relevant force data]
Purchase Order Number/s	[Purchase Order Numbers]
Payment Profile:	[details of the planned payments or payment triggers and invoicing]

8. Exit Plan

Having regard for Clause S12 (Exit and Skills Transfer) The Supplier will be requested to provide an Exit Plan which shall be provided within **[3 months]** of the Commencement Date and shall be reviewed **[annually]** and agreed with the Contract Manager.

ANNEX 1 CONTRACT INITIATION MEETING PRO-FORMA

**Contract Initiation Meeting
Agenda**

Title: [insert Contract Title]

Date: [insert Meeting Date]

Location: [insert Meeting Location]

Attendees: [Confirm and insert Attendees]

	Agenda Item	
1.	Introductions & Apologies	Commercial Services
2.	Tender feedback (if applicable)	Commercial Services
3.	Form of Contract and execution <ul style="list-style-type: none"> - Key terms in the contract - Signing the contract (confirmation or timescales if not already executed) - 	Commercial Services
4.	Contract Management and structure <ul style="list-style-type: none"> - Roles and responsibilities - Routes of communication - Escalation procedures - Frequency of contract management meetings 	All
5.	Contract Mobilisation Plan <ul style="list-style-type: none"> - Meeting target timescales - Transition plans from incumbent (if applicable) - TUPE transition (if applicable) - 	Supplier
6.	Contract deliverables and key performance monitoring <ul style="list-style-type: none"> - Milestones dates and deliverables - Key Performance Indicator monitoring and frequency - Management information reporting - Business Continuity Plan 	Contract Manager
7.	Payment and Invoicing arrangements	Contract Manager
8.	AOB	All

ANNEX 2 CONTRACT MEETING PRO-FORMA

Contract Meeting
Agenda

Title: [insert Contract Title]

Date: [insert Meeting Date]

Location: [insert Meeting Location]

Attendees: [Confirm and insert Attendees]

	Agenda Item	
1.	Attendees & Apologies	Contract Manager
2.	Minutes and actions from previous meetings	Contract Manager
3.	Contract deliverables and key performance monitoring <ul style="list-style-type: none">- Milestones dates and deliverables- Key Performance Indicator monitoring and frequency- Management information reporting- Business Continuity Plan	Supplier
4.	Staffing and Management Team updates ((if any)	All
5.	Payment and invoicing issues (if any)	
6.	Health and Safety Issues (if any)	All
7.	Data Protection Issues (if any)	All
8.	AOB	All

ANNEX 3 PROBLEM SOLVING HIERARCHY

Problem Solving Hierarchy	
1.	Notwithstanding the existing Disputes Resolution clauses within the Agreement, this approach wishes to establish an earlier set of procedures to deal with problem solving and the avoidance of such disputes. It is hoped that the principals enshrined in the procedure would mean that every other approach is explored before progressing to any remedy available within the Agreement.
2.	This procedure may be used where the normal liaison is unable to establish a consensus or accepted decision or outcome.
3.	Where decisions or outcomes are agreed all Parties engaged in the delivery of the works shall comply with and accept the decisions.
4.	Copies of all documents arising out of any dispute/issue under this approach shall be copied and kept upon each contract file.
5.	In so far as is possible, the Supplier shall continue to provide the Services / Goods in accordance with the terms of this Agreement until a dispute/issue has been resolved.
6.	Issues or disputes should generally be resolved at source between the relevant Parties involved in accordance with this Problem Solving Hierarchy procedure. In this regard, the Authority will expect that all Parties will adopt a proactive approach to the identification of issues and will provide early warning of any problems likely to affect the cost, delivery or performance of the Agreement.
7.	Where it is not possible to solve the issue at source, it may be possible to commence the following procedure:
<p>Tier 1: If any Tier 1 member becomes aware of any difference or dispute that has not been able to be resolved at source, they may give a dated written notice, setting out such matters to the all other Tier 1 members. The following procedure may then apply:</p>	
<ul style="list-style-type: none"> • All those named as Tier 1 members shall meet within 5 working days of receipt of the notice or express their views within that timeframe. 	
<ul style="list-style-type: none"> • Tier 1 members may require technical specialists to provide information or present at the Tier 1 meeting. 	
<ul style="list-style-type: none"> • Member shall in good faith attempt a settlement to any dispute within 5 working days and will consider any matters and seek a joint resolution. 	
<ul style="list-style-type: none"> • The matter shall if possible be resolved at that meeting. 	
<ul style="list-style-type: none"> • The decision shall be recorded and copied to all Tier 1 members. 	
<ul style="list-style-type: none"> • Where the outcome is not satisfactory to any of the Tier 1 members or cannot be resolved within 5 working days after meeting, any Tier 1 member may escalate the matter to Tier 2; 	

SECTION B SCHEDULES
SECTION B.2 CONTRACT MANAGEMENT PROCEDURES

Tier 2: If the Tier 1 members cannot reach an acceptable solution, either parties may refer the matter to the Tier 2 members of the process, and shall give such notice together with copies of the original notice, relevant documentation / evidence and the outcomes of the Tier 1 meeting, which shall be sent to all of the Tier 2 members. Any further documentation or information that could not be sent with the notice, shall be sent not more than 5 working days before the meeting. The below procedure will then be followed by the Tier 2 members:

- The Tier 2 members shall meet within 10 working days of receipt of the notice, and subject to being forwarded the relevant documents, and deal with the referred matters only.
- The Tier 2 members will consider the matter and seek to agree a mutually acceptable resolution to the dispute.
- Where the outcome is not satisfactory to both parties or cannot be resolved within a further 5 working days after meeting, either party may escalate the matter to Tier 3. Such notice shall be given with a summary of the pertinent points to the dispute and the outcome of the Tier 2 meeting.
- The decision shall be recorded and copied to all the Tier 1 and Tier 2 members.

Tier 3: If not resolved at the Tier 2 process this may be escalated to Tier 3.

- Tier 3 members shall meet within 10 working days of receipt of the forwarded documents and deal with the referred matters only.
- Will determine the most equitable and amicable outcome in the interests of both parties.
- Where the outcome is likely to have a materially detrimental impact to the strategic plans of the Authority, the Director of Support Services for the Authority will be briefed prior to finalising the outcome of the dispute.
- The decision shall be recorded and copied to all the Tier 1 and Tier 2 members and any other relevant parties involved.
- Should no satisfactory outcome be possible then options to resolve such disputes as set out within the form of contract may be initiated by either Party.

SECTION B SCHEDULES
SECTION B.2 CONTRACT MANAGEMENT PROCEDURES

ANNEX 4 TIER CONTACTS FOR PROBLEM SOLVING HIERARCHY

The following have been identified as Tier 1, 2, and 3 members for the purpose of the Problem Solving Hierarchy:

Tier 1		
Role/Title	Name	Contact Number and Email
Contract Manager	[enter Contract Managers name]	Tel: [enter as applicable] Email: [enter as applicable]
Supplier's Account Manager	[enter Contract Managers name]	Tel: [enter as applicable] Email: [enter as applicable]
[Add further member roles necessary]	[enter as applicable]	Tel: [enter as applicable] Email: [enter as applicable]

Tier 2		
Role/Title	Name	Contact Number and Email
Authority's Commercial Representative	[enter Commercial Services lead name]	Tel: [enter as applicable] Email: [enter as applicable]
[enter Contract Manager Supervisor and/or Department Head]	[enter as applicable]	Tel: [enter as applicable] Email: [enter as applicable]
[enter Supplier's nominated Tier 2 member]	[enter as applicable]	Tel: [enter as applicable] Email: [enter as applicable]

Tier 3		
Role/Title	Name	Contact Number and Email
Director of Commercial Services[and / or Head of Department]	[enter Director of Commercial Services name]	Tel: [enter as applicable] Email: [enter as applicable]
[enter Contract Manager Supervisor and/or Department Head]	[enter as applicable]	Tel: [enter as applicable] Email: [enter as applicable]
[enter Supplier's nominated Tier 3 member at Director Level or equivalent]	[enter as applicable]	Tel: [enter as applicable] Email: [enter as applicable]

ANNEX 5 KEY PERFORMANCE INDICATORS (KPIs)

KPI Description	Measurement	Service Level	Frequency of Measure	Frequency of Reporting	Target

SECTION B
SCHEDULES

SECTION B.3
SCHEDULE 3 - PRICING SCHEDULE

**SECTION C
TERMS AND CONDITIONS**

GENERAL CONDITIONS OF CONTRACT

1. Definitions & Interpretations
2. **[[Authority structure] / Not Used]]**
3. Warranties and Representations
4. Status of Agreement
5. Contract Period
6. Amendments and Variations
7. Price
8. Payment
9. Performance Monitoring
10. Liabilities and Indemnities
11. Insurance
12. Intellectual Property Rights
13. Force Majeure
14. Corrupt Gifts and Payments
15. Equality and Discrimination
16. Health and Safety
17. Environmental Requirements
18. Notices
19. Audit and Information
20. Data Protection
21. Confidentiality
22. Freedom of Information
23. Termination on Change of Control and Insolvency
24. Termination on Default
25. Break
26. Consequences of Termination and Expiry
27. Inadequacy of Damages
28. Dispute Resolution
29. Continuation of Contract in Event of Disputes
30. Transfer and Sub-Contracting
31. Machinery of Government Changes
32. Modern Slavery
33. Severability
34. Waiver
35. Conflicts of Interest
36. Non-Exclusivity
37. Additional Claims
38. Third Party Rights
39. Rights and Remedies
40. Governing Law
41. Entire Agreement
42. Costs
43. Announcements
44. Counterparts
45. Policies
46. The Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

1. Definitions & Interpretations

1.1. The following terms have the following meanings:

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

Agreement means this agreement between the Authority and the Supplier comprising the Terms, Section A.1 (Particulars), Section A.2 (Incorporation of Agreement), Section B (Schedules), Section C (Terms and Conditions) and, where used, Section D (Form of Tender and Tender and Relevant Correspondence / Documentation);

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

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

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

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

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

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

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

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

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

Controller has the meaning given in the UK GDPR;

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

- communicated in writing, orally, electronically or by any other means by the Authority to the Supplier;

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

- obtained by the Supplier during the course of the Supplier providing the Goods and/or the Services; or
- compiled for the Authority by the Supplier during the course of the Supplier's provision of the Goods and/or the Services;

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

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

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the DPA 2018 (and regulations made under it), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, the LED and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including the privacy of electronic communications), and the guidance and codes of practice issued by the Commissioner or other relevant regulatory authority and which are applicable to a party;

Data Protection Officer has the meaning given in the UK GDPR;

Data Subject has the meaning given in the UK GDPR;

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

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

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

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

Deliverables means all documents, products and materials developed by the Supplier or its agents, contractors, and employees as part of or in relation to the Services in any form or media including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

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

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

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

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

2010 and / or any preceding, successor or amending Legislation concerning the same and/or amending the Protected Characteristics;

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

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

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

Extension Period means the extension period specified in the Particulars;

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

FOIA means the Freedom of Information Act 2000;

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

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

Information has the meaning given under section 84 of FOIA;

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

LED means the Law Enforcement Directive (Directive (EU) 2016/680) as given effect in the UK through Part 3 of the DPA 2018;

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

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

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

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

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

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

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

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

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

Personal Data has the meaning given in the UK GDPR;

Personal Data Breach has the meaning given in the UK GDPR;

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

Processor has the meaning given in the UK GDPR;

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

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

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

Required Insurance Policies means those insurances listed in the Particulars;

Restructuring has the meaning given in Clause 31.1;

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

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

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

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

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

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

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

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

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

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

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

Termination means termination or expiry of this Agreement;

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

UK GDPR has the meaning given to it in section 3(10) (as supplemented by section 205(4) of the DPA 2018);

Variation means an amendment to the terms of this Agreement, or an amendment, omission, change or modification to the Services or part of the Services, or a change in the way in which the Services are to be carried out, effected in accordance with Clause 6;

Vetting Procedure means the Authority's Non-Police Personnel Vetting (NPPV) policy as may be amended from time to time, and for the purposes of this Agreement;

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

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

- 1.2. Unless the context requires otherwise, words in the singular shall include the plural and vice versa.
- 1.3. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.4. Words importing individuals shall be deemed also to include reference to incorporated and unincorporated associations and vice versa.
- 1.5. Headings are included for ease of reference only and shall not affect the construction of this Agreement.
- 1.6. Any reference to any Clause or Schedule or Appendix is, except where it is expressly stated otherwise, a reference to a clause of or schedule or appendix to the Terms. A reference to a paragraph is to the relevant paragraph of the Schedule in which it appears.
- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, consolidation, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8. The expressions "subsidiary" and "holding company" shall have the meanings set out in [section 1159 of the Companies Act 2006](#).
- 1.9. Any references to a "month" or "day" shall be to a calendar month or day respectively.

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

- 1.10. The Parties have had the opportunity to take legal advice and no term of this Agreement will be construed contra proferentem.
- 1.11. Words preceding “include”, “includes” or “including” shall be construed without limitation by the words which follow those words.
- 1.12. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13. A reference to a person includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.14. In any case where the consent or approval of the Authority (or any officer of the Authority) is required or a notice is to be given by the Authority, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified by the Authority by notice in writing to the Supplier.
- 1.15. A reference to any indemnity in this Contract given by the Supplier to the Authority shall be construed as also being given to the Chief Constables of the Authority.

[Drafting Note: Clause 2 below must be included in all contracts exceeding one million pounds (£1,000,000) in value and in any other instance where the collaborating PCCs/PFCCs will each be a signatory to the Agreement. If this is not applicable, please mark Clause 2 as ‘Not Used’ and delete sub-clauses 2.1 – 2.4]

2. [[Authority structure] / [Not Used]]

- 2.1. **[[Essex Police], [Kent Police], [Bedfordshire Police], [Cambridgeshire Police], [Hertfordshire Police], [Norfolk Police] and [Suffolk Police] are collectively referred to as the Authority in this Agreement, and references to the Authority are to each of these Authority entities together.**
- 2.2. **The Parties agree that the rights and obligations of the Authority shall be subject to the following principles:**
 - 2.2.1. **the rights of the Authority are collective as between the Authority entities;**
 - 2.2.2. **any instruction, direction, permission, authorisation, consent, approval, sign-off, waiver, demand, change or agreement to be given by the Authority under this Agreement shall be provided by the Authority’s [[Contract Manager] /**

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

[Commercial Representative]] on behalf of all the Authority entities and shall be binding upon all Authority entities;

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

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

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

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

3. Warranties and Representations

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

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

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

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

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

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

4. Status of Agreement

4.1. Nothing in this Agreement shall be construed as or have the effect of creating a partnership, a contract of employment or a relationship of principal and agent between the Supplier or the Supplier's Personnel and the Authority.

4.2. The Supplier shall not (and shall procure that the Supplier's Personnel do not) say or do anything that might lead any other person to believe that the Supplier or the Supplier's Personnel are acting as the partner, employee or agent of the Authority.

4.3. The Supplier shall not (and shall procure that the Supplier's Personnel do not) hold themselves out as having authority to bind the Authority unless specifically permitted in writing by the Authority's Commercial Representative.

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

5. Contract Period

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

6. Amendments and Variations

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

7. Price

- 7.1. The Price is fixed for the Contract Period, and unless specifically stated in Supplemental Conditions, includes any extension of this Agreement.
- 7.2. The Supplier shall be deemed to have satisfied itself before entering into this Agreement as to the accuracy and sufficiency of the Price which shall, except where expressly provided to the contrary, cover all the Supplier's obligations under this Agreement and the Supplier shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Price.

8. Payment

- 8.1. In consideration of the performance of the Supplier's obligations under this Agreement by the Supplier, the Authority shall pay the Price.
- 8.2. All rates and prices are exclusive of Value Added Tax (VAT). If appropriate, VAT will be added at the relevant rate and will be shown as a separate net item on each invoice submitted.
- 8.3. Except where otherwise provided in this Agreement, the amount payable to the Supplier for the performance of this Agreement shall be inclusive of all costs, including but not limited to staff, facilities, equipment, materials and all other expenses incurred by the Supplier in discharging its obligations under this Agreement.
- 8.4. Invoices shall be submitted to the invoice address specified in this Agreement or otherwise instructed by the Contract Manager in writing.
- 8.5. The Supplier shall submit to the Authority such records as the Authority may reasonably require to enable the Authority to verify the information and the amounts referred to in that invoice.
- 8.6. To the extent that the Price:
- 8.6.1. is a fixed sum it shall be payable to the Supplier on either completion of the Services or on successful delivery of the Goods;

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

- 8.6.2. is an annual sum it shall accrue on a daily basis and shall be payable to the Supplier monthly in arrears;
- 8.6.3. is payable by reference to:
- (a) a schedule of rates; and/or
 - (b) the quantity of Services provided during any given period,
- it shall be paid on receipt of a correct invoice which specifies the relevant rate(s) and the quantity of Services provided during the period(s) to which the invoice relates.
- 8.7. Upon receipt of a valid and correct invoice, the Authority shall make payment of the Price or the invoiced portion of the Price within 30 calendar days.
- 8.8. In respect of Services, the Supplier shall submit a single, fully itemised invoice for the Services undertaken during that period to which the invoice relates unless this Agreement specifies payment is due upon Acceptance of the Services or Deliverables, in which case the Supplier shall submit a single, fully itemised invoice after Acceptance of the Services or Deliverables.
- 8.9. In respect of Goods the Supplier shall submit a single, fully itemised invoice for the Goods or any specified or agreed instalment of the Goods.
- 8.10. All payments must be invoiced and made in pounds sterling.
- 8.11. The Authority may withhold or delay payment of any invoice where it disputes the invoice or where the Goods and/or the Services referred to in it have not been provided in accordance with this Agreement.
- 8.12. Without prejudice to the Authority's other rights and remedies wherever any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Agreement or under any other agreement or contract with the Authority.
- 8.13. Where the Supplier enters into a sub-contract for the purpose of performing its obligations under this Agreement, it shall cause a term to be included in such sub-contract which requires payment to be made by the Supplier to the Subcontractor within a specified period not exceeding 30 calendar days from receipt of a valid and undisputed invoice as defined by the sub-contract.
- 8.14. The Supplier shall ensure that all sub-contracts shall contain a provision requiring the Subcontractor to include a clause to the same effect as clause 8.13 above in any contracts the Subcontractor enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.
- 8.15. In performing its obligations under this Agreement, the Supplier is prohibited from taking or seeking to take advantage of any particular taxation regime (including the use of any offshore tax haven) which will or may enable the Supplier to avoid liability for any taxation in the United Kingdom. In the event that the Supplier or the Supplier's Personnel or anyone acting on the Supplier's behalf (with or without its knowledge) breaches this Clause, the Authority reserves the right to terminate this Agreement by notice in writing with immediate effect and recover from the Supplier any loss resulting from such termination including the administrative costs of re-tendering the requirement and any difference in the rates or prices which the Authority may have to pay to a new contractor where such rates or prices are higher than the rates or prices payable under this Agreement.
- 8.16. The Supplier shall not suspend the supply of the Goods and/or Services unless the Supplier is entitled to terminate the Agreement under clause 24.4 for failure to pay an undisputed sum. Interest shall be payable at an annual rate of 4% above the Bank of England base rate from time

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

to time in force and the Parties agree that this clause constitutes a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

- 8.17. In any event, all invoices must be provided to the Authority within 90 days of completion of delivery of the relevant Goods and/or Services to which the invoice relates. Invoices delivered after the expiry of this period shall be invalid and the Authority shall have no liability in respect of such invoices.
- 8.18. With effect from 18 April 2020, the Authority shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 8.19. For the purposes of Clause 8.18, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

9. Performance Monitoring

- 9.1. The Supplier is responsible for correcting any Performance Default including any drawn to its attention in a written notice from the Authority.
- 9.2. Without prejudice to the generality of Clause 9.1, in the event of a Performance Default the Authority shall be entitled to:
- 9.2.1. issue a Default Notice to the Supplier specifying the Performance Default and, in the event that such Performance Default is capable of remedy, the Supplier shall effect a remedy within 10 days or otherwise specifying a reasonable period within which the Supplier shall effect a remedy;
- 9.2.2. withhold payment of the Price (or any instalment of the Price) until the Performance Default is remedied;
- 9.2.3. subject to clause 9.3, deduct Default Sums at any time in respect of the Performance Default. The amount of the Default Sums will be:
- 9.2.3.1. where the Performance Default is set out in the Particulars, the corresponding Default Sum for each day or part thereof during which the Performance Default occurs or continues; or
- 9.2.3.2. where the Performance Default is not set out in the Particulars, an amount equivalent to any costs reasonably incurred by the Authority in rectifying the Performance Default or procuring the rectification of the Performance Default by a third party together with any reasonable administration costs.
- 9.3. The parties confirm that the Default Sums referred to in clause 9.2.3.1 and set out in the Particulars:
- 9.3.1 are reasonable and proportionate to protect the Authority's legitimate interest in performance; and
- 9.3.2 are without prejudice to the right of the Authority to claim damages arising out of the Performance Default provided that any amounts already paid by the Supplier in the form of Default Sums for the same breach shall be deducted from the Authority's damages claim.
- 9.4 In the case of a Performance Default which is capable of remedy the Supplier shall remedy such Performance Default at no cost to the Authority and within the period specified in the Default Notice or, if no such timescale is stipulated, as soon as possible.
- 9.5 If the Supplier fails to remedy a Performance Default within the time specified in the Default Notice, or, if no such timescale is stipulated, within a reasonable period, the Authority shall be entitled to

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

remedy or to instruct a third party to remedy the Performance Default (if such default is capable of remedy by the Authority or a third party). Such remedy may include, but shall not be limited to, purchasing other goods or services which are the same or similar to the Goods or Services to be supplied by the Supplier pursuant to this Agreement. In circumstances where the Authority remedies or instructs a third party to remedy the Performance Default, it shall be entitled to recover the costs of the same plus any reasonable administration costs from the Supplier.

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

10. Liability and Indemnities

- 10.1. Subject to Clause 10.2 and Clause 10.8 and without prejudice to any rights or remedies of the Authority, the Supplier shall be liable to the Authority for any and all losses, costs, expenses, damages, claims, demands or proceedings whatsoever and howsoever to the extent arising directly (but not indirectly or consequentially) whether in contract, tort (including negligence), under statute, in common law or otherwise out of the act, default, negligence, breach of contract, breach of statute or statutory duty by the Supplier or any of its employees or agents acting within the course of their employment or any of its Subcontractors and their employees or agents.

- 10.2. Subject to Clause 10.6 the Supplier's liability under this Agreement is limited as follows:

10.2.1. in respect of any matter for which the Supplier is required to hold insurance: the value of the relevant Required Insurance Policy (whether or not the Supplier in fact holds that insurance); and

10.2.2. in respect of any matter for which the Supplier is not required to hold insurance: the greater of: (a) [£1,000,000]; and (b) [100%] of the Price payable by the Authority under this Agreement;

10.2.3. in respect of any liability under Clause 20 (Data Protection) the greater of: (a) [£10,000,000]; and (b) [1000%] of the Price payable by the Authority under this Agreement;

10.2.4. in respect of any liability under Clause 10.4 (Tax Indemnity), unlimited;

10.2.5. in respect of any liability under Clause 12.7 (Intellectual Property Rights Indemnity), unlimited;

10.2.6. in respect of any liability under Clause 22.5 (Freedom of Information Indemnity), 150% of the Price payable by the Authority in current year of the Agreement.

- 10.3. Any Supplier liability under this Agreement shall not apply to the extent that the losses, costs, expenses, damages, claims, demands or proceedings are caused by the negligent or wilful act of the Authority, its servants or agents.

- 10.4. **Tax Indemnity:** The Supplier shall indemnify and keep indemnified the Authority, its servants and agents from and against any and all losses, costs, expenses, damages, claims, demands or proceedings whatsoever and howsoever to the extent arising directly (but not indirectly or consequentially) whether in contract, tort (including negligence), under statute, in common law or otherwise out of the act, default, negligence, breach of contract, breach of statute or statutory duty by the Supplier or any of its employees or agents acting within the course of their employment or any of its Subcontractors and their employees or agents, to the extent the same are associated with any responsibility for any tax, national insurance contributions or similar impost in respect of the Supplier's Personnel.

- 10.5. Subject to Clauses 10.2 and 10.6 and without prejudice to the Authority's obligation to pay the Price as and when it falls due for payment:

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

- 10.5.1. the Authority's total aggregate liability for any and all any and all losses, costs, expenses, damages, claims, demands or proceedings whatsoever and howsoever to the extent arising directly (but not indirectly or consequentially) whether in contract, tort (including negligence), under statute, in common law or otherwise out of the act, default, negligence, breach of contract, breach of statute or statutory duty by the Authority or any of its employees or agents acting within the course of their employment incurred by the Supplier under or in connection with this Agreement shall in no event exceed [the Price].
- 10.6. Neither Party limits its liability for:
- 10.6.1. death or personal injury caused by the negligence of itself or any of its employees or agents acting in the course of their employment; or
- 10.6.2. fraud or a misrepresentation made fraudulently by it or its employees; or
- 10.6.3. any breach of an implied term in respect of title to goods; or
- 10.6.4. any liability to the extent it cannot be limited or excluded by law.
- 10.7. Neither Party shall be liable to the other Party for any indirect, special or consequential loss.
- 10.8. Notwithstanding Clause 10.7 but subject to Clause 10.2, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following losses, costs, expenses, damages, claims, demands incurred by the Authority to the extent that they arise as a result of a breach by the Supplier of this Agreement:
- 10.8.1. any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the breach;
- 10.8.2. any wasted expenditure or charges;
- 10.8.3. the additional cost of procuring replacement services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such replacement services and/or replacement Deliverables above those which would have been payable under this Agreement;
- 10.8.4. any compensation or interest paid to a third party by the Authority;
- 10.8.5. any fine or penalty incurred by the Authority pursuant to any applicable law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; and
- 10.8.6. any anticipated savings identified in this Agreement.

11 Insurance

- 11.1. Without limiting its liability hereunder the Supplier shall maintain Insurance throughout the duration of this Agreement and for a period of six years following Termination, with an insurance company of good repute and at its own cost the Required Insurance Policies.
- 11.2. Each of the Required Insurance Policies must contain an indemnity to principles clause.
- 11.3. The Supplier shall at the Commencement Date and thereafter upon request produce to the Contract Manager for inspection:
- 11.3.1. the originals of the Required Insurance Policies or evidence in the form of a broker's letter that such policies are in place; and

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

- 11.3.2 documentary evidence (including cover notes and premium receipts) that such insurances are properly maintained, and the Supplier shall provide copies of any such documents as the Authority may reasonably require.
- 11.4 The Supplier shall give immediate written notice to the Authority in the event of any cancellation or material change to any of the Required Insurance Policies.
- 11.5 In the event that the Supplier fails to comply with this Clause 11 and at any time fails to have in place any of the Required Insurance Policies the Authority may itself provide or arrange such insurance(s) and may charge the price of so doing together with an administration charge of 10% of such price to the Supplier which sum it may recover from the Supplier either by way of a deduction from any amounts payable by the Authority to the Supplier under this Agreement or by recovering the same as a debt due to the Authority from the Supplier.

12 Intellectual Property Rights

- 12.1 The Supplier hereby expressly acknowledges that the Authority alone has exclusive ownership and ultimate control of:
- 12.1.1 any Intellectual Property Rights in the format and content of this Agreement; and
- 12.1.2 any Intellectual Property Rights in any Authority Materials.
- 12.2 The Authority hereby expressly acknowledges that the Supplier alone has exclusive ownership and ultimate control of any Intellectual Property Rights in any Supplier Materials.
- 12.3 The Supplier hereby grants to the Authority a non-exclusive, royalty free, perpetual and irrevocable licence to use, reproduce, modify, adapt, amend, enhance and otherwise deal with (and to authorise a third party on behalf of the Authority, such third party having signed a confidentiality undertaking, to use, reproduce, modify, adapt, amend, enhance and otherwise deal with) the Supplier's pre-existing Intellectual Property Rights in the Supplier Materials for the Authority's own internal purposes, to allow the Authority to exploit the Intellectual Property Rights or similar generated under this Agreement and for any other purposes specified in this Agreement.
- 12.4 The Authority grants to the Supplier a non-exclusive, royalty-free, non-transferable licence to use, copy and modify the Authority Materials for the Contract Period of this Agreement for the sole purpose of providing the Goods and/or Services to the Authority.
- 12.5 Any and all Intellectual Property Rights developed under or pursuant to this Agreement or arising from the provision of the Goods and/or Services by the Supplier or any of the Supplier's Personnel (including any Intellectual Property Rights in the Deliverables, Goods or products of the Services), shall vest in and be the property of the Authority provided that in the event that any such Intellectual Property Rights do not vest in the Authority by operation of law the Supplier shall execute or cause to be executed including by any employee or agent of its any and all deeds, documents and acts required to assign such Intellectual Property Rights to the Authority with full title guarantee.
- 12.6 The Supplier shall not in connection with the provision of the Goods and/or Services use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any Intellectual Property Rights.
- 12.7 The Supplier shall indemnify the Authority against all actions, claims, demands, proceedings and Losses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Right by the use, manufacture, supply or possession of any Goods supplied by the Supplier or by the Authority's use of the Goods and/or receipt of the Services, subject to the following:
- 12.7.1 the Authority shall promptly notify the Supplier in writing of any alleged infringement of which it has notice;

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

- 12.7.2 the Authority shall make no admissions without the Supplier's consent, not to be unreasonably withheld or delayed;
- 12.7.3 the Authority, at the Supplier's request and expense, shall allow the Supplier to conduct and/or settle all negotiations and litigation and give the Supplier all reasonable assistance in so doing. The costs incurred or recovered in such negotiations or litigation shall be paid by and to the Supplier.
- 12.8 If an action, claim or demand for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Agreement or in the reasonable opinion of the Supplier is likely to be made, the Supplier may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed):
- 12.8.1 modify any or all of the Services without reducing the performance of the same so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted Services;
- 12.8.2 modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative Goods of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted Goods; or
- 12.8.3 procure a licence (at the Supplier's cost) to provide the Services and/or the Goods (as applicable), which are the subject of the alleged infringement, on terms which are acceptable to the Authority.
- 12.9 The provisions contained in this Clause 12 shall survive expiry or Termination (for any reason).

13 Force Majeure

- 13.1 For the purposes of this Clause 13 the circumstances in Clauses 13.1.1 to 13.1.5 are events of Force Majeure:
- 13.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 13.1.2 terrorist attack, civil war, civil commotion or riots or disorder, war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 13.1.3 nuclear, chemical or biological contamination or sonic boom;
- 13.1.4 any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; and/or
- 13.1.5 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party).
- 13.2 Provided it has complied with Clause 13.3, if a Party ("**Affected Party**") is prevented, hindered or delayed in or from performing any to perform any obligation under this Agreement because of an event of Force Majeure which is both:
- 13.2.1 beyond that Affected Party's control; and
- 13.2.2 could not be prevented by that Affected Party with the application of all due diligence and foresight,

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

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

Services not yet performed or any Goods not yet delivered shall be held to the credit of the Authority and returned to the Authority as soon as possible.

13.3 The Affected Party shall:

13.3.1 as soon as reasonably practicable after the start of the Force Majeure, notify the other party in writing of the Force Majeure, the date on which it started, its likely or potential duration, and the effect of the event of Force Majeure on its ability to perform any of its obligations under this Agreement; and

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

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

14 Corrupt Gifts and Payments

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

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

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

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

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

15 Equality and Discrimination

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

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

- 15.2 The Supplier shall not at any time unlawfully discriminate in relation to employing any person for the purposes of performing the Services and/or providing the Goods on the grounds of any of the Protected Characteristics or temporary or part-time or agency status in employment or otherwise. For the purposes of this Clause 15.2, employing a person shall include recruiting, appointing, selecting, training, promoting, remunerating, subjecting to a detriment, disciplining and dismissing.
- 15.3 Without prejudice to the generality of Clauses 15.1 and 15.2, the Supplier shall at all times comply with the Equality Act 2010 ("**2010 Act**") in respect of its treatment of its employees and in the performance of the Services and/or provision of the Goods. In particular, the Supplier shall in its performance of this Agreement take (and shall ensure that its servants, agents, employees and Subcontractors take) all reasonable steps to eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act; advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the 2010 Act) and persons who do not share it; and foster good relations between persons who share such a protected characteristic and persons who do not share it.
- 15.4 The Supplier shall comply with the Equality Act 2010 Code of Practice on Employment and the Equality Act 2010 Code of Practice on Equal Pay (Codes) (or any replacement guidance and/or publication) issued by the Equality and Human Rights Commission in respect of its treatment of its employees and in the performance of the Services and/or provision of the Goods. In particular, and without prejudice to the foregoing, the Supplier shall operate an equal opportunities policy which, so far as practicable, complies fully with the practical guidance, recommendations and advice set out in the Codes.
- 15.5 The Supplier shall provide such information to the Authority as the Authority requires to satisfy itself that the Supplier has complied with and will continue to comply with Clauses 15.1 to 15.4. The Supplier shall also ensure that its servants, agents, employees and Subcontractors provide all relevant information to the Authority so that the Authority can assess its own compliance with its general and specific duties under the 2010 Act.

16 Health and Safety

- 16.1 The Supplier shall have due regard for and comply with its legal obligations under the Health and Safety at Work etc. Act 1974 ("**H&S Act**") and the Management of Health and Safety at Work Regulations 1999 and any amendments or regulations thereto. Particular attention is drawn to requirements of the H&S Act relating to safe working practices, use of safety equipment, all road safety measures and the conduct of persons employed.
- 16.2 The Supplier shall:
- 16.2.1 operate in accordance with good practice advice; for example that published by the Health and Safety Executive;
 - 16.2.2 provide sufficient information, advice, training and instruction to its staff to ensure that safe working practices are adhered to;
 - 16.2.3 ensure that:
 - (a) its staff are equipped with appropriate equipment, including appropriate personal protective equipment (PPE), in order to provide the Services and/or deliver the Goods safely;
 - (b) all such equipment shall meet or exceed the minimum safety standards required by Legislation at the time of use, shall comply fully with the relevant British, European and international standards and is maintained so that it is safe in use;
 - (c) any work equipment is constructed or adapted so as to be suitable for the purpose and location for which it is used or provided;

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

- (d) any work related to driving activities must not endanger other road users or put the driver at risk. All staff must follow the guidance of the Highway Code and the Supplier's own policies and procedures.
- 16.2.4 adhere to any method statements supplied to the Authority as part of its tender submission detailing how it will comply with the above requirements;
- 16.2.5 introduce control measures to reduce risks to a minimum and provide adequate information and training to its staff; and
- 16.2.6 ensure that all its staff have received adequate health and safety training to reduce the risk of ill health and injury to themselves and others which may result from that work.
- 16.3 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

17 Environmental Requirements

- 17.1 The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to this Agreement. In addition the Supplier shall comply with any environmental policies of the Authority made available to the Supplier from time to time.
- 17.2 In performing its obligations under this Agreement the Supplier shall (to the extent applicable to this Agreement):
 - 17.2.1 demonstrate low carbon resource efficiency, including minimising the use of energy, water, wood, paper and other resources;
 - 17.2.2 reduce waste;
 - 17.2.3 phase out the use of ozone depleting substances; and
 - 17.2.4 minimise the release of greenhouse gases (including carbon dioxide emissions), volatile organic compounds and other substances damaging to health and the environment.
- 17.3 Without prejudice to the generality of the foregoing, the Supplier shall promptly provide all such information regarding the environmental impact of this Agreement as may reasonably be requested by the Authority.
- 17.4 The Supplier shall meet all reasonable requests by the Authority for information evidencing compliance with the provisions of this Clause 17 by the Supplier.

18 Notices

- 18.1 Except as otherwise provided in this Agreement all notices which are required to be given under this Agreement shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address as the recipient may designate by notice given in accordance with the provision of this Clause 18 and marked for the attention of:
 - 18.1.1 in the case of the Authority, the 7 Force Director of Commercial Services;
 - 18.1.2 in the case of the Supplier, the Contract Manager.
- 18.2 A Party may change its details given in the table in clause 18.3 by giving notice, the change taking effect for the Party notified of the change at 9.00 am on the later of:

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

18.2.1 the date, if any, specified in the notice as the effective date for the change; or

18.2.2 five (5) Working Days after deemed receipt of the notice.

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

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first-class post or other next working day delivery service providing proof of postage OR delivery.	9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
Email.	At the time of transmission.

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

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

19 Audit and Information

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

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

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

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

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

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

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

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

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

20 Data Protection

- 20.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor unless otherwise specified in the Schedule of Processing, Personal Data and Data Subjects. The only processing that the Supplier is authorised to do is listed in the Schedule of Processing, Personal Data and Data Subjects by the Authority and may not be determined by the Supplier.
- 20.2 The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 20.3 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- 20.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 20.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 20.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 20.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 20.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 20.4.1 process that Personal Data only in accordance with the Schedule of Processing, Personal Data and Data Subjects, unless the Supplier is required to do otherwise by Legislation. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Legislation;
 - 20.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Supplier of the adequacy of the Protective Measures), having taken account of the:
 - 20.4.2.1 nature of the data to be protected;
 - 20.4.2.2 harm that might result from a Data Loss Event;
 - 20.4.2.3 state of technological development; and
 - 20.4.2.4 cost of implementing any measures;
 - 20.4.3 ensure that:
 - 20.4.3.1 the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Schedule of Processing, Personal Data and Data Subjects);
 - 20.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and
 - 20.4.3.3 ensure that they:
 - 20.4.3.3.1 are aware of and comply with the Supplier's duties under this clause;

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

- 20.4.3.3.2 are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
- 20.4.3.3.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
- 20.4.3.3.4 have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 20.4.4 not transfer Personal Data outside of the UK or EEA unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
- 20.4.4.1 the transfer is to a territory which was subject to an adequacy finding by the European Commission (as at 31 December 2020) under the Data Protection Legislation (in force as at 31 December 2020) that the territory provides adequate protection for the privacy rights of individuals, and the United Kingdom continues to recognise such adequacy findings as being a sufficient basis for the processing of Personal Data outside the United Kingdom; or
- 20.4.4.2 the transfer is to a territory which is subject to an adequacy regulation made by the relevant United Kingdom government Secretary of State; or
- 20.4.4.3 the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or DPA 2018 Section 75) as determined by the Authority;
- 20.4.4.4 the Data Subject has enforceable rights and effective legal remedies;
- 20.4.4.5 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
- 20.4.4.6 the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- 20.4.4.7 no onward transfer of Personal Data to another third country by the transferee is permitted unless one of the conditions set out in this Clause 20.4.4 is met;
- 20.4.4.8 if any of the conditions relied on under this Clause 20.4.4 in respect of any transfers of Personal Data at any time ceases to be valid, the Supplier shall, if possible, implement an alternative mechanism to ensure compliance with the Data Protection Legislation (and if no alternative mechanism is available, the Authority and the Supplier shall work together in good faith to determine the appropriate measures to be taken, taking into account any relevant guidance and accepted good industry practice, and the Authority reserves the right to require the Supplier to cease any affected transfers if no alternative mechanism to ensure compliance with Data Protection Legislation is reasonably available);
- 20.4.4.9 the Supplier warrants that it has carried out any assessments of relevant third countries' data protection laws required by the Data Protection Legislation and, where required, has implemented additional safeguards and/or supplementary measures to ensure that any transfers made by the Supplier in accordance with this Clause 20.4.4 comply with the Data Protection Legislation;
- 20.4.4.10 in relation to any transfer to a third country, the Supplier shall, and/or shall procure that any relevant third party shall, to the extent permitted by law:

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

- 20.4.4.10.1 provide reasonable assistance to the Authority to enable the Authority to conduct an assessment of the relevant third country's data protection laws if required to ensure compliance with the Data Protection Legislation;
 - 20.4.4.10.2 notify the Authority immediately if it becomes aware of any change to the relevant third country's data protection laws which have any impact on the accuracy of any previous assessment or the ongoing compliance of any transfer with Data Protection Legislation;
 - 20.4.4.10.3 work with the Authority to implement any additional safeguards or supplementary measures reasonably requested by the Authority to ensure compliance with Data Protection Legislation;
 - 20.4.4.10.4 notify the Authority immediately if it becomes aware of any request from a governmental or law enforcement agency (**Requesting Body**) in any third country for a copy of, or access to, Personal Data (**Request**) and, in such circumstances: (a) inform the Requesting Body that Personal Data may not be disclosed to the Requesting Body without the Authority's consent; and (b) not provide a copy of or access to Personal Data, or allow a copy or access to be provided, in response to any Request without the Authority's prior written consent.
- 20.4.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Supplier is required by Legislation to retain the Personal Data.
- 20.5 Subject to clause 20.6, the Supplier shall notify the Authority immediately if it:
- 20.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 20.5.2 receives a request to rectify, block or erase any Personal Data;
 - 20.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 20.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 20.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Legislation; or
 - 20.5.6 becomes aware of a Data Loss Event.
- 20.6 The Supplier's obligation to notify under Clause 20.5 shall include the provision of further information to the Authority in phases, as details become available.
- 20.7 Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 20.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- 20.7.1 the Authority with full details and copies of the complaint, communication or request;
 - 20.7.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 20.7.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

- 20.7.4 assistance as requested by the Authority following any Data Loss Event;
- 20.7.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 20.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 20.8.1 the Authority determines that the processing is not occasional;
- 20.8.2 the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
- 20.8.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 20.9 The Supplier shall allow for audits of its Processing activity by the Authority or the Authority's designated auditor.
- 20.10 Each Party shall designate a data protection officer if required by the Data Protection Legislation.
- 20.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- 20.11.1 notify the Authority in writing of the intended Sub-processor and processing;
- 20.11.2 obtain the written consent of the Authority;
- 20.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 20 such that they apply to the Sub-processor; and
- 20.11.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 20.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 20.13 The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 20.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 20.15 The Supplier shall indemnify and keep indemnified the Authority, its servants and agents from and against any and all losses, costs, expenses, damages, claims, demands or proceedings whatsoever and howsoever to the extent arising directly (but not indirectly or consequentially) whether in contract, tort (including negligence), under statute, in common law or otherwise out of the act, default, negligence, breach of contract, breach of statute or statutory duty by the Supplier or any of its employees or agents acting within the course of their employment or any of its Subcontractors and their employees or agents, to the extent the same are associated with any breach of this Clause 20.

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

21 Confidentiality

21.1 Each Party:

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

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

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

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

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

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

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

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

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

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

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

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

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

21.5.1 total contract value;

21.5.2 invoice dates;

21.5.3 VAT rate; and

21.5.4 total amount of each invoice submitted under this Agreement,

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

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

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

22 Freedom of Information

- 22.1 The Supplier acknowledges that, in order to comply with the FOIA and the Environmental Information Regulations 2004 ("EIR"), the Authority may be obliged, on request, to provide or consider the provision of Information to third parties where that Information constitutes or may constitute Confidential Information. Subject to the provisions of this Clause 22, the Supplier shall assist and co-operate with the Authority (at the Supplier's expense) to facilitate the Authority's compliance with the FOIA and/or the EIR in that regard.
- 22.2 Without prejudice to the generality of its obligations under Clause 22.1, the Supplier shall:
- 22.2.1 transfer any Request for Information that it or its Subcontractors receive, to the Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving that Request for Information; and
- 22.2.2 provide the Authority with a copy of all Information in its or its Subcontractor's possession or power that the Authority reasonably considers is relevant to the Request for Information in the form that the Authority requires as soon as practicable and in any event within five (5) Working Days of the Authority requesting that Information (and any follow-up Information required by the Authority thereafter within two (2) Working Days of the Authority's follow-up request).
- 22.3 The Supplier further acknowledges that, notwithstanding the provisions of Clause 21, the Authority may, acting in accordance with the FOIA Code, be obliged under the FOIA or the EIR to disclose Information that is or may be Confidential Information:
- 22.3.1 in certain circumstances without consulting with the Supplier; or
- 22.3.2 following consultation with the Supplier and having taken the Supplier's views into account,
- provided always that where Clause 22.3.1 applies, the Authority shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Supplier prior to any disclosure.

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

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

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

23 Termination on Change of Control and Insolvency

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

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

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

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

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

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

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

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

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

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

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

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

24 Termination on Default

- 24.1 The Authority may terminate this Agreement, without liability, by notice in writing to the Supplier having effect immediately or after such period as the Authority may determine if:
- 24.1.1 the Supplier commits a material breach of any term of this Agreement which breach is irremediable;
 - 24.1.2 the Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
 - 24.1.3 the Authority has served three (3) or more Default Notices on the Supplier in any consecutive period of six (6) months;
 - 24.1.4 in the event that any one Default Notice has not been successfully resolved and signed off in writing by the Authority within such timescales as instructed, or if no such timescales have been stipulated, where the default has not been rectified within ten (10) Working Days;
 - 24.1.5 the Supplier or any of its employees or agents acting or purporting to act on the Supplier's behalf commits an act which is an offence under the Enterprise Act 2002;
 - 24.1.6 the Supplier or any of its employees shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this Agreement or to any other contract with the Authority;
 - 24.1.7 the Supplier or any of its employees have committed any offence under the Bribery Act 2010;
 - 24.1.8 the Supplier fails to remove a member of its staff where such person has not successfully passed the Vetting Procedure as may be required by the Authority;
 - 24.1.9 the Supplier fails to remove a member of staff from the provision of Services under this Agreement in accordance with clause S3 (Supplier's Personnel) of Section C.2 (Conditions for Services);
 - 24.1.10 in the event that a director or person in significant control of the Supplier (or such equivalent where the Supplier is not a company) is convicted of a criminal offence;
 - 24.1.11 in the event that any of the grounds listed in [Regulation 57\(1\), 57\(3\) or 57\(8\) of the Public Contracts Regulations 2015](#) apply to the Supplier or where the Authority reasonably apprehends that such events is about to occur in relation to the Supplier and notifies the Supplier accordingly;
 - 24.1.12 the Supplier, any of the Supplier's Personnel, or any Subcontractor commits an MSA Offence or is subject to any investigation relating to an alleged MSA Offence or any prosecution under the Modern Slavery Legislation.
- 24.2 For the purposes of Clause 24.1.1, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:
- 24.2.1 a substantial portion of this Agreement; or
 - 24.2.2 any of the obligations set out in Clauses 2 (Warranties and Representations), 14 (Corrupt Gifts and Payments), 15 (Equality and Discrimination), 16 (Health and Safety), 20 (Data Protection), 21 (Confidentiality) and 35 (Conflicts of Interest).

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

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

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

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

25 Break

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

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

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

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

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

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

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

26 Consequences of Termination or Expiry

26.1 Termination shall be without prejudice to the rights and remedies of the Supplier and the Authority accrued before Termination and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding as at the date of Termination.

26.2 Upon Termination (for whatever reason) the Supplier shall:

26.2.1 immediately cease to provide the Services;

26.2.2 immediately cease to make any further delivery or other action in respect of Goods which have not been Accepted by the Authority prior to the date of Termination;

26.2.3 cease to make use of any of the Authority's property including its Intellectual Property Rights in any way whatsoever;

26.2.4 without prejudice to the Authority's other rights under this Agreement within 10 calendar days of Termination at the Supplier's own cost return to the Authority or otherwise dispose of in accordance with the Authority's instructions all and any:

(a) documents and other information and materials relating to the Services;

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

- (b) Data (which upon the Authority's request will be transferred in compatible form on to such computer system as the Authority may reasonably request) (including back-ups); and
 - (c) other equipment and property and software belonging to the Authority which may be in the possession or under the control of the Supplier;
- 26.2.5 make good to the Authority any accounting discrepancy and/or loss or damage attributable to a material breach or matters the subject of a Default Notice, its employees or agents or any Subcontractors or its employees or agents; and
- 26.2.6 vacate any Authority premises or part of any Authority premises that the Supplier has used in connection with the performance of the Services.
- 26.3 In the event that the Supplier fails to comply with its obligations in Clause 26.2.4 the Authority may:
 - 26.3.1 recover possession of the items referred to in Clause 26.2.4 and for this purpose the Supplier hereby grants to the Authority and its appointed agents a licence to enter onto any land or premises belonging to or under the control of the Supplier; and
 - 26.3.2 recover its reasonable costs incurred in connection with exercising its rights pursuant to Clause 26.3.1, such sum to be recoverable by the Authority from the Supplier as a debt.
- 26.4 Clause 26.3 together with all other provisions of this Agreement which are expressed to survive termination or expiry of this Agreement shall continue in full force and effect in accordance with their terms.
- 26.5 Subject as otherwise provided in this Agreement neither Party shall have any further obligation to the other under this Agreement. For the avoidance of doubt, the Authority shall only be liable upon termination for payment in respect of Goods that have been Accepted by the Authority and Services provided by the Supplier up to the date of Termination. The Authority shall have no liability to the Supplier for any Losses it may suffer as a result of any termination.
- 26.6 Prior to and at the end of the Contract Period or termination, the Supplier shall co-operate with the Authority and any replacement Supplier nominated by the Authority ("**New Supplier**") in ensuring the smooth handover and continued running of the Services during such handover and in particular, but without limitation, the Supplier shall, to the extent required by the Authority:
 - 26.6.1 allow the Authority and any New Supplier reasonable right of access to the Supplier's and Subcontractor's premises, systems, procedures and staff, where appropriate; and
 - 26.6.2 deliver to the Authority upon request all information, materials and documents relating to the Services in its possession or under its control or in the possession or under the control of any permitted Subcontractors and in default of compliance with this provision the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter for the purpose of any such recovery any premises of the Supplier or its permitted Subcontractors where any such documents, information or materials may be held.
- 26.7 Any expiry or termination of this Agreement howsoever arising shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Authority and shall not affect the continued operation of any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement including Clauses 1 (Definitions & Interpretations), 2 (Warranties and Representations), 4 (Status of Agreement), 8.11 to 8.12 (withholding or setting-off payment), 10 (Indemnities), 11 (Insurance), 12 (Intellectual Property Rights), 18 (Notices), 19 (Audit and Information), 20 (Data Protection), 21 (Confidentiality), 22 (Freedom of Information), 26 (Consequences of Termination and Expiry), 27 (Inadequacy of Damages), 32 (Severability), 39 (Rights and Remedies), 40 (Governing Law) and 41 (Entire Agreement).

27 Inadequacy of Damages

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

28 Dispute Resolution

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

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

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

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

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

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

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

29 Continuation of Agreement in Event of Disputes

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

30 Transfer and Sub-contracting

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

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

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

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

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

31 Machinery of Government Changes

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

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

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

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

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

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

31.2 When there is a Restructuring, the Supplier shall offer to deliver the Goods and/or the Services to the other Government department, agency or public body which takes on responsibility for the services or functions previously the responsibility of the Authority, on terms broadly equivalent to those terms set out in this Agreement.

31.3 When there is a Restructuring where the delivery of services or fulfilment of functions provided or fulfilled by another Government department, agency or other public body becomes the responsibility of the Authority, the Supplier shall offer any additional Goods and/or Services so required by the Authority on terms broadly equivalent to those terms set out in this Agreement.

31.4 When considering the impact of a Restructuring the following principles shall apply when agreeing the Variation and (as applicable) calculating any increase or decrease to the total amount of charges payable by the Authority to the Supplier:

31.4.1 the Supplier must use all reasonable endeavours to minimise any increase in costs it may suffer and maximise the reduction in costs that it can achieve as a result of the Restructuring;

31.4.2 the Supplier must limit or avoid to the fullest extent possible, any capital or other expenditure which it planned to incur (for example to replace or maintain assets) which will no longer be necessary or appropriate as a result of the Restructuring;

31.4.3 (in the case of any Restructuring described in Clause 31.1.2 or 31.1.3) the Supplier shall only be entitled to proceed with the Variation to the extent that it can demonstrate to the Authority that the Variation is reasonable; and

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

- 31.4.4 (in the case of any Restructuring pursuant to Clause 31.1.1) the Supplier must demonstrate that it has complied with its obligations pursuant to Clause 31.2 and where the Supplier enters into a contract for the provision of continuing services with another Government department, agency or public body under that clause: (i) the Supplier shall demonstrate that it has used reasonable endeavours to structure those arrangements so as to mitigate any costs associated with the restructuring of the Services under this Agreement (for example, by redeploying assets) and (ii) the Supplier shall not be entitled to recover as a cost or charge under the Supplier, amounts for which it is separately recovering a charge under those alternate arrangements for any equivalent replacement service.
- 31.5 In the event that the Authority merges with or is taken over by another contracting authority, agency or other public body ("**Joining Authority**") during the Contract Period, the Authority and the Joining Authority together shall be entitled to continue to receive the Goods and/or the Services.
- 32 Modern Slavery**
- 32.1 The Supplier undertakes, warrants, and represents that:
- 32.1.1 neither it, nor any member of the Supplier's Personnel, nor any Subcontractor:-
- 32.1.1.1 has committed an MSA Offence;
- 32.1.1.2 has been notified that it is subject to any investigation relating to an alleged MSA Offence or any prosecution under the Modern Slavery Legislation; or
- 32.1.1.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or a prosecution under the Modern Slavery Legislation;
- 32.1.2 it, the Supplier's Personnel, and all Subcontractors shall comply with the Modern Slavery Legislation; and that
- 32.1.3 it shall give immediate written notification to the Authority if it becomes aware or has reason to believe that it, any member of the Supplier's Personnel, or any Subcontractor has breached or has potentially breached any of Supplier's obligations under this Clause 32 (Modern Slavery), which notification shall set out full details of the circumstances concerning the breach or potential breach of Supplier's obligations under this Clause 32 (Modern Slavery).
- 32.2 Upon the Authority's receipt of any notification from the Supplier given pursuant to Clause 32.1.3 above, the Authority may at its sole and absolute discretion:-
- 32.2.1 inform any and all relevant agencies or bodies, including without limitation the Secretary of State pursuant to section 52 of the Modern Slavery Act 2015 (whereupon the Supplier shall at the Authority's request respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to access any and all documents which led the Supplier to give the notification described in Clause 32.1.3 above);
- 32.2.2 without liability to the Supplier, terminate this Agreement with notice having immediate effect; and/or
- 32.2.3 require the Supplier to remove any Subcontractor or member of the Supplier's Personnel suspected or known to have committed an MSA Offence from the performance of the Supplier's obligations under this Agreement.
- 32.3 Where required by section 54 of the Modern Slavery Act 2015, the Supplier shall complete a slavery and human trafficking statement for each Financial Year setting out the steps that it has taken to ensure that there is no slavery or human trafficking in its business or supply chains.

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

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

33 Severability

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

34 Waiver

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

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

35 Conflicts of Interest

35.1 The Supplier shall use all reasonable endeavours to ensure that neither the Supplier nor any of the Supplier's Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or such persons and the duties owed to the Authority under the provisions of this Agreement. The Supplier shall disclose to the Authority full particulars of any such conflict of interest which may arise.

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

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

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

36 Non-Exclusivity

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

37 Additional Claims

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

38 Third Party Rights

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

39 Rights and Remedies

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

40 Governing Law

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

41 Entire Agreement

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

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

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

42 Costs

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

43 Announcements

The Supplier shall not make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this Agreement, the wider transactions contemplated by it, or the relationship between the Parties, without the prior written consent of the Authority, except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

44 Counterparts

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

45 Policies

The Supplier shall comply with any policies of the Authority mentioned in this Agreement or mentioned within Section B Schedule 1 (Specification) including as updated from time to time.

**46 The Independent Police Complaints Commission (Complaints and Misconduct)
(Contractors) Regulations 2015**

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

[Note: delete this section if not being used and update index]

CONDITIONS OF CONTRACT FOR SERVICES

- S1. Definitions
- S2. The Services
- S3. Supplier's Personnel
- S4. Equipment, Plant and Materials
- S5. Inspection
- S6. The Authority Premises
- S7. Health and Safety and Security
- S8. TUPE
- S9. Soliciting for Employment
- S10. Business Continuity Planning
- S11. Exit and Skills Transfer

S1. Definitions

In this Agreement the following words shall have the following meanings unless the context requires otherwise:

Assigned Employees has the meaning set out in clause S8.1

Authority Assets means any tools, equipment, plant and material belonging to the Authority which are made available to the Supplier including, but not limited to, those items set out in the section headed Authority Assets in Section A.1 (Particulars) of this Agreement;

Deliverables means anything specified in this Agreement to be delivered by the Supplier to the Authority under this Agreement including reports, manuals and other documentation and outputs;

Direct Losses means all damages, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but to avoid doubt, excluding Indirect Losses;

Directive means the EC Acquired Rights Directive 2001/23/EC as amended;

Employee Liability Information means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(1) of TUPE regarding any person employed by him who is assigned to the organised grouping of resources or employees which is the subject of a Relevant Transfer and also such employees as fall within Regulation 11(4) of TUPE;

Future Service Provider means any service provider to the Authority who shall provide any service equivalent to any part of the Services immediately after expiry or earlier termination of this Agreement;

Indirect Losses means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;

Key Personnel means any of the Supplier's Personnel named in this Agreement as key personnel in Section A.1 (Particulars) of this Agreement or any of the Supplier's Personnel who the Authority notifies to the Supplier in writing are to be regarded as key personnel;

Legislation means as defined in Section C.1 (General Conditions) of this Agreement;

Particulars means as defined in Section C.1 (General Conditions) of this Agreement;

Price means as defined in Section C.1 (General Conditions) of this Agreement;

SECTION C TERMS AND CONDITIONS
SECTION C.2 CONDITIONS OF SERVICES

Premises means the location(s) where the Services are to be performed as specified in this Agreement;

Relevant Employees means the employees who are or may be the subject of a Relevant Transfer;

Relevant Transfer means a relevant transfer for the purposes of TUPE;

Relevant Workforce Information means the Employee Liability Information and together with other information reasonably requested by the Authority to enable an effective tendering process and transfer of the Services to the Future Service Provider;

Retendering Information has the meaning set out in clause S8.1.1;

Return Date has the meaning set out in clause S8.5;

Returning Employees has the meaning set out in clause S8.5;

Services means as defined in Section C.1 (General Conditions) of this Agreement;

Specification means as defined in Section C.1 (General Conditions) of this Agreement;

Subcontractor means as defined in Section C.1 (General Conditions) of this Agreement;

Supplier's Personnel means as defined in Section C.1 (General Conditions) of this Agreement;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and or any other regulations enacted for the purpose of implementing the EC Acquired Rights Directive 2001/23/EC, as amended, Directive into English law.

S2. The Services

S2.1 The Supplier shall from the Commencement Date and for the duration of the Contract Period provide the Services to the Authority as set out in the Particulars and in accordance with this Agreement.

S2.2 The Supplier warrants that it shall:

S2.2.1 meet any performance dates for the Services specified in the Particulars, this Agreement or as notified to the Supplier by the Authority;

S2.2.2 co-operate with the Authority in all matters relating to the Services, and comply with all instructions of the Authority;

S2.2.3 perform the Services with all the due skill, care and diligence to be expected of a competent supplier experienced in providing services of a similar kind, scope and complexity as the Services;

S2.2.4 appropriately select and use Supplier's Personnel who are suitably skilled, trained, experienced, and security cleared (as required) to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;

S2.2.5 adequately supervise and manage the Supplier's Personnel properly to ensure that Supplier's obligations fulfilled in accordance with this Agreement;

SECTION C TERMS AND CONDITIONS
SECTION C.2 CONDITIONS OF SERVICES

- S2.2.6 ensure that if any of the Supplier's Personnel are not British citizens, the Supplier shall ensure that the Supplier's Personnel has the necessary Home Office permission to work and shall ensure compliance with the Immigration, Asylum and Nationality Act 2006 and any other Legislation relevant to the legality of employing any person who is not a British national;
- S2.2.7 ensure that the Services conform with all descriptions and specifications set out in any Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Authority;
- S2.2.8 provide all equipment, tools and vehicles and 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;
- S2.2.9 obtain and at all times maintain all necessary licences and consents, and comply with all applicable Legislation;
- S2.2.10 observe all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises; and
- S2.2.11 hold all Authority Materials in safe custody at its own risk, maintain the Authority Materials in good condition until returned to the Authority, and not dispose or use the Authority Materials other than in accordance with the Authority's written instructions or authorisation. All Authority Materials are the exclusive property of the Authority.
- S2.3 The Authority's rights under this Agreement are in addition to the statutory terms implied in favour of the Authority (so far as not inconsistent with any express terms of this Agreement) including those terms implied under the Supply of Goods and/or Services Act 1982.

S3. Supplier's Personnel

- S3.1 If and when requested by the Authority, the Supplier shall provide the Authority with a list of the names of all the Supplier's Personnel who may at any time be concerned with the provision of the Services or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity, qualifications, experience and other supporting evidence as the Authority may reasonably require.
- S3.2 Where the Authority reasonably requires by notice to the Supplier that any of the Supplier's Personnel is not to become involved in or is to be removed from involvement in the Services, the Supplier shall immediately comply with such request. The Supplier shall replace any such person with someone with equivalent experience, qualifications, training and security clearance. The Authority reserves the right to reject any of the Supplier's Personnel without giving any reason or explanation.
- S3.3 The Authority also reserves the right to remove the right of contract participation from any of the Supplier's Personnel at any time during the lifetime of the Agreement, without giving any reason or explanation. The Authority shall not in any circumstances be liable to any such person or member of staff or the Supplier in relation to any such removal and the Supplier shall fully and promptly indemnify the Authority in respect of any claims brought by any such person or member of staff arising from it.
- S3.4 The Supplier's Personnel shall:
- S3.4.1 take instructions and all directions and, where appropriate, receive the Authority's decisions only through the Authority's Contract Manager;
- S3.4.2 act in accordance with all reasonable instructions and directions from the Authority's Contract Manager in carrying out the Services;

SECTION C TERMS AND CONDITIONS
SECTION C.2 CONDITIONS OF SERVICES

- S3.4.3 keep the Authority's Contract Manager advised on all matters materially related to its performance of the Services according to reporting formats specified by the Authority;
- S3.4.4 answer all reasonable enquiries received from the Authority's Contract Manager; and
- S3.4.5 attend or be represented at regular meetings as requested by the Authority from time to time.
- S3.5 The Supplier shall employ sufficient staff to ensure that the Services are provided under this Agreement, including during periods of absence of its staff due to sickness, maternity leave, holidays, training or otherwise.
- S3.6 The decision of the Authority as to whether any person is not to become involved in or is to be removed from involvement in the Services, as to the designation or approval of Key Personnel and as to whether the Supplier has furnished the information or taken the steps required by this clause S3 shall be final and conclusive.
- S3.7 The Supplier shall make the Key Personnel available for the purposes of the Services and shall not make any changes in the Key Personnel without the prior written approval of the Authority, such approval not to be unreasonably withheld. Whenever, for any reason, the Key Personnel are unavailable for the performance of the Services, the Supplier shall as soon as reasonably practicable substitute suitably qualified replacements acceptable to the Authority.
- S3.8 The Supplier shall ensure that leave is taken by the Key Personnel on dates which do not interfere with the proper delivery of the Services.
- S3.9 The Supplier shall not vary the Prices at any time during the term of this Agreement including any extension due to the promotion of any of the Supplier's Personnel.
- S3.10 The Supplier shall bear the cost of any notice, instruction or decision of the Authority under this clause S3.

S4. Equipment, Plant and Materials

- S4.1 The Supplier shall provide all equipment, plant and materials necessary for the provision of the Services except where otherwise provided for under this Agreement.
- S4.2 Where the Authority in accordance with this Agreement issues Authority Assets free of charge to the Supplier such Authority Assets shall be and remain the property of the Authority. The Supplier shall not in any circumstances have a lien on the Authority Assets and shall take all steps necessary to ensure that the title of the Authority and the exclusion of any lien are brought to the attention of any third party dealing with the Authority Assets.
- S4.3 The Supplier shall maintain all Authority Assets provided by the Authority in good order and condition and shall use such equipment, plant and materials solely in connection with this Agreement. The Supplier shall notify the Authority of any surplus materials remaining after completion of the Services and shall dispose of them as the Authority may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or the Supplier's Personnel shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Authority, the Supplier shall deliver up such equipment, plant or materials whether processed or not to the Authority on demand.

SECTION C TERMS AND CONDITIONS
SECTION C.2 CONDITIONS OF SERVICES

- S4.4 Where the Supplier utilises part of or an element of the Price for the purchase of equipment, plant or materials for the purposes of delivering the Services, the Supplier shall maintain a list of such equipment, plant and/or materials and provide a copy of such list upon demand to the Authority. No later than one month prior to expiry or upon notification of termination of this Agreement the Supplier shall provide a copy of such list to Authority and invite the Authority to select those items of equipment, plant or materials that the Authority would like passed to it at the expiry or earlier termination of this Agreement. The Supplier shall comply with the Authority's instruction in this respect.
- S4.5 Under International Financial Reporting ("IFRS"), the Authority is required to ensure that contracts that secure the use of specific assets solely for the Authority are treated as assets within its accounts, e.g. the hiring or leasing of equipment over more than one year or the outsourcing of a service that may include the use of assets. In accordance with this requirement, the Supplier shall identify such assets and their value prior to contract commencement. The asset information will be maintained during the life of the contract to reflect acquisition and disposal of assets.

S5. Monitoring and Inspection

- S5.1 The Authority reserves the right to monitor the Supplier's performance of its obligations under this Agreement by any means it considers appropriate at its absolute discretion, including by unannounced inspections.
- S5.2 The Supplier shall assist the Authority as necessary and undertake as requested any monitoring of the Services or of the users or recipients of the Services as the Authority shall require in order for the Authority to fulfil any of its statutory obligations, including, without limitation, to meet its obligations under the Equality Act 2010.
- S5.3 Throughout the Contract Period, the Parties shall work together to ensure that this Agreement and the Supplier's performance of the Services represent value for money and continuous improvement for the benefit of the Authority.
- S5.4 At any time during the Contract Period, the Authority shall be entitled to carry out, either itself or by engaging a suitably qualified third party, a thorough review of the operation of this Agreement and the provision of the Services, including, their value for money. The Supplier shall offer all reasonable assistance, at its own cost, to the Authority and any independent third party in the carrying out of any such review and shall attend meetings and provide documents as may be reasonably requested for this purpose.
- S5.5 The Supplier shall, upon request, provide management information based on this Agreement's activity and demand to the Authority's Contract Manager, the format and timescales for which shall be agreed between the Supplier and the Authority's Contract Manager where such a request is made.

S6. The Authority Premises

- S6.1 This clause S6 shall only apply where the Premises are provided by or on behalf of the Authority or where access to the Premises is required by the Supplier in order to perform the Services.
- S6.2 Access to the Premises shall be made available to the Supplier free of charge and shall be used solely for the purposes of performing this Agreement. The Supplier shall have use of the Premises as licensee.
- S6.3 Access to the Premises shall not be exclusive to the Supplier but shall be such as to enable the Supplier to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Authority may reasonably require.
- S6.4 Where any of the Supplier's Personnel is replaced in accordance with S3 the Supplier shall ensure that such Supplier's Personnel are prevented being admitted to the Premises and take any steps reasonably required by the Authority to prevent such admittance.

SECTION C TERMS AND CONDITIONS
SECTION C.2 CONDITIONS OF SERVICES

- S6.5 The Supplier shall make no delivery of its equipment, plant or materials nor commence the Services on the Premises without the Authority's Contract Manager's prior approval.
- S6.6 The Supplier shall maintain its items of equipment, plant and materials within the Premises in a safe, serviceable and clean condition.
- S6.7 All equipment, plant and materials brought onto the Premises by the Supplier shall be at the Supplier's own risk and the Authority shall have no liability for any loss of or damage to the same unless the Supplier can demonstrate that such loss or damage was caused by the wilful act of the Authority.
- S6.8 The Supplier shall provide for the haulage or carriage of its equipment, plant or materials to the Premises and the removal therefrom when no longer required at the Supplier's sole cost.
- S6.9 The Authority shall have the power at any time during this Agreement to order in writing that the Supplier:
- S6.9.1 remove from the Premises any of its equipment, plant or materials which in the opinion of the Authority is either hazardous, noxious or not in accordance with this Agreement; and
- S6.9.2 substitute proper and suitable equipment, plant and materials.
- S6.10 On completion of the Services the Supplier shall remove its equipment, plant and unused materials and shall clear away from the Premises all rubbish arising out the Services and leave the Premises in a neat and tidy condition.
- S6.11 The Supplier shall pay the costs of making good any damage to the Premises (and any fixtures and fittings of the Premises) caused by the Supplier's Personnel other than fair wear and tear.
- S6.12 Continuity of electricity, heating, telephone, water supplies, stationery and sewerage ("Supplies") at the Premises is not guaranteed and no liability will be accepted by the Authority for shutdown or restrictions due to any cause whatsoever.
- S6.13 The Supplier's Personnel shall ensure that the Premises are used with due regard for the need for the efficient use and conservation of Supplies and the Authority shall not bear the costs of any use of such Supplies by the Supplier's Personnel which do not conform to the requirements of this clause S6.13.

S7. Health and Safety, and Security

- S7.1 The Supplier shall notify the Authority if any of the Services are or become hazardous to health, safety or the operation of the Authority's services and of the precautions that should be taken in respect thereto.
- S7.2 The Authority shall notify the Supplier of any special health and safety hazards which the Authority becomes aware of in relation to the Premises, where the Premises are provided by or on behalf of the Authority, which may affect the Supplier's performance of the Services. If the Authority notifies the Supplier of any special health and safety hazards the Supplier shall draw any such hazards to the attention of the Supplier's Personnel.
- S7.3 The Supplier shall be responsible for the observance by itself and the Supplier's Personnel of all such rules, site regulations, policies, procedures, requirements (including those relating to security arrangements) and safety precautions necessary for the protection of itself and the Supplier's Personnel and any other persons including all precautions required to be taken by or under all applicable laws, enactments, orders, regulations, other similar instruments and codes of practice. The Supplier and the Supplier's Personnel shall co-operate fully with the Authority to ensure the proper discharge of these duties.

SECTION C TERMS AND CONDITIONS
SECTION C.2 CONDITIONS OF SERVICES

S7.4 Where the Premises are provided by or on behalf of the Supplier, the Authority shall be entitled to inspect the Premises to ensure they are appropriate for the provision of the Services.

S7.5 Accidents to the Supplier's Personnel at the Premises which ordinarily are required to be reported in accordance with the Health and Safety at Work etc. Act 1974 shall be reported immediately to the Authority's Contract Manager.

S7.6 The Authority may undertake security and/or identity checks on any of the Supplier's Personnel requiring unescorted access to the Authority's premises or IT network. The Supplier and the Supplier's Personnel must comply with the Authority's arrangements for undertaking security and identity checks.

S8. Transfer of undertakings (Protection of Employment) Regulations 2006 (TUPE)

Retendering

S8.1 The Supplier shall (and shall procure that any Subcontractor shall) within the period of twelve (12) months immediately preceding the end of the Contract Period, or following the service of a notice to terminate in accordance with the provisions of the Agreement:

S8.1.1 on receiving a request from the Authority to provide Employee Liability Information in respect of any person engaged or employed by the Supplier or any of its Subcontractor in the provision of the Services ("**Assigned Employees**"), the Relevant Workforce Information and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Supplier (or of any Subcontractor as the case may be) until immediately before the end of the Contract Period, would be Relevant Employees (**Retendering Information**);

S8.1.2 provide the Retendering Information promptly and at no cost to the Authority;

S8.1.3 notify the Authority forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;

S8.1.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees;

S8.1.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business, and provided that the Authority's prior written consent is obtained; and

S8.1.6 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services, save with the Authority's prior written consent.

S8.2 Without prejudice to clauses S8.1 and S8.3, the Supplier shall provide (and shall procure that any Subcontractor shall provide) the Employee Liability Information to the transferee under TUPE at such time or times as are required by TUPE, and shall warrant at the time of providing such Employee Liability Information that such information will be updated to take account of any changes to such information as is required by TUPE.

S8.3 The Supplier shall indemnify and shall keep indemnified in full the Authority and at the Authority's request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Supplier or any of its Subcontractors failing to provide or promptly to provide the Authority and/or any Future Service Provider where requested by the Authority's Commercial Representative with any Retendering Information and/or Employee Liability Information, or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information. However this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Supplier by the Authority and was materially inaccurate or incomplete when originally provided.

Transfer at the end of the Contract Period

S8.4 The Authority and the Supplier agree that it is their intention that TUPE shall apply at the end of the Contract Period in respect of the provision thereafter of any service equivalent to the Services or part thereof, but the position shall be determined in accordance with TUPE at the date of expiry or termination as the case may be, and this clause is without prejudice to such determination.

S8.5 For the purposes of this clause S8, **“Returning Employees”** shall mean those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the end of the Contract Period whose employment transfers to the Authority or a Future Service Provider pursuant to TUPE. At the end of the Contract Period for whatever reason (such date being termed the **“Return Date”**), the provisions of this clause S8.5 will apply:

S8.5.1 The Supplier shall or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Supplier or its Subcontractors (who had been engaged in the provision of the Services) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Supplier or Subcontractors up to the Return Date are satisfied;

S8.5.2 Without prejudice to clause 8.5.1, the Supplier shall:

- (i) remain (and procure that its Subcontractors shall remain) (as relevant) responsible for all the Supplier’s or Subcontractor’s employees (other than the Returning Employees) on or after the end of the Contract Period and shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Supplier’s or Subcontractor’s employees who are not Returning Employees;
- (ii) in respect of those employees who are Returning Employees, indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Supplier or any Subcontractor to comply with its or their obligations under Regulations 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE as if such legislation applied, even if it does not in fact apply, save to the extent that any such failure to comply arises as a result of an act or omission of any of the Authority or any Future Service Provider.

S8.5.3 The Authority shall be entitled to assign the benefit of the indemnity in clause S8.5.2(ii) to any Future Service Provider.

Sub-Contractors

S8.6 In the event that the Supplier enters into any subcontract in connection with this Agreement, it shall impose obligations on its Subcontractors in the same terms as those imposed on it pursuant to this clause S8 and shall procure that the Subcontractor complies with such terms. The Supplier shall indemnify and keep the Authority indemnified in full against all Direct Losses, incurred by the Authority or any Future Service Provider as a result of or in connection with any failure on the part of the Supplier to comply with this clause and/or the relevant Subcontractor’s failure to comply with such terms.

S9. Soliciting for Employment

S9.1 Each Party to this Agreement undertakes not to attempt to solicit nor procure the service or employment of employees of the other Party or persons engaged under a contract for services with the other Party during the term of this Agreement and within six calendar months after the termination or expiry of this Agreement without the prior written permission of the other Party.

SECTION C TERMS AND CONDITIONS
SECTION C.2 CONDITIONS OF SERVICES

S9.2 Clause S9.1 shall not restrict either Party from appointing any person, whether employee or consultant of the other or not, who has applied in response to an advertisement properly and publicly placed in the normal course of business. In such event, neither Party shall have any obligation or liability to the other by way of introductory or finder's fee.

S10. Business Continuity Planning

S10.1 The Authority may require the Supplier to develop and agree with the Authority a Business Continuity Plan. Where so required the Supplier shall:

S10.1.1 in accordance with good industry practice, maintain detailed and comprehensive contingency plans against events which could affect the ability of the Supplier or its agent or Sub-contractors to perform the Services in accordance with this Agreement, including loss of computer and business systems, loss or failure of equipment, loss of utilities or premises, industrial relations problems, failures in the supply chain, pandemic and loss of Key Personnel; and

S10.1.2 keep the plans under review and make such changes, from time to time, as shall be required in accordance with good industry practice.

S10.2 The Authority shall be entitled to review any business continuity plans developed under this Agreement at any time and, at its sole discretion, make suggested changes or amendments to the plans which the Supplier, acting reasonably shall consider and, after consultation and agreement with the Authority, put in place.

S11. Exit and Skills Transfer

S11.1 The Authority may require the Supplier to develop and agree with the Authority an exit and skills transfer plan describing how the Services shall be handed over and appropriate skills transferred. Any such exit and skills transfer plan will be developed in line with the Authority's requirements and updated through the term of this Agreement.

[Note: delete this section if not being used and update index]

CONDITIONS OF CONTRACT FOR GOODS

- G1. Definitions
- G2. The Goods
- G3. Health and Safety
- G4. Delivery
- G5. Title and Risk
- G6. Damage in Transit
- G7. Inspection, Rejection and Guarantee

G1. Definitions

In this Agreement the following words shall have the following meanings unless the context requires otherwise:

Defects Liability Period means the period set out in Section A.1 (Particulars) of this Agreement or as described in clause G7.3;

Delivery Date means the date for delivery of the Goods set out in Section A.1 (Particulars) of this Agreement or stated in the Authority's Order, or if none is specified, as described in clause G2.2;

Delivery Location means the location for delivery of the Goods set out in Section A.1 (Particulars) of this Agreement or stated in the Authority's Order;

Goods as defined in Section C.1 (General Conditions) of this Agreement;

Order the Authority's order for the Goods submitted by the Authority in accordance with clause G2.

Price means as defined in Section C.1 (General Conditions) of this Agreement;

Working Days means as defined in Section C.1 (General Conditions) of this Agreement.

G2. The Goods

- G2.1 The Authority may submit Orders for Goods at any time.
- G2.2 The Supplier shall supply Goods in accordance with the Authority's Orders, by the delivery date specified in the Order, or, if none is specified, within five (5) Working Days of submitting the Order.
- G2.3 The Authority may amend or cancel an Order in whole or in part at any time before delivery by giving the Supplier written notice. The Authority shall pay the Supplier fair and reasonable compensation for any work in progress manufacturing the Goods at the time of cancellation of an Order, but such compensation shall not include loss of anticipated profits or any consequential loss.
- G2.4 The Supplier shall ensure that the Goods:
 - (a) shall be to the reasonable satisfaction of the Authority and shall conform in all respects with any specification and particulars including quantity, quality and description, specified in this Agreement;
 - (b) 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;

SECTION C TERMS AND CONDITIONS
SECTION C.3 CONDITIONS OF GOODS

- (c) where they are manufactured products, be free from defects in design, material and workmanship; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods or other similar instruments from time to time in force.

G2.5 The Authority has the right to inspect and test the Goods at any time before delivery.

G2.6 If following such inspection or testing the Authority considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause G2.4, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

G2.7 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under this Agreement, and the Authority shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

G2.8 The provisions of this clause G2 shall apply during the continuance of this Agreement and after its expiry or termination howsoever arising.

G3. Health and Safety

G3.1 The Supplier represents and warrants to the Authority that the Supplier has satisfied itself that all necessary tests and examinations have been made, or will be made, prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to health or safety of persons using the same, and that it has made available to the Authority adequate information about any precautions that should be taken in respect of the Goods. The Supplier shall also ensure that the Goods are delivered in a safe manner without risk to health or safety of persons delivering or receiving delivery of the same.

G3.2 The provisions of this clause G3 shall apply during the continuance of this Agreement and after its expiry or termination howsoever arising.

G4. Delivery

G4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of Goods is accompanied by a delivery note which shows the order number, the type and quantity of Goods (including the code number of the Goods, where applicable), the net and tare weights, special storage instructions (if any) and, if the relevant Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
- (c) all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings; and
- (d) 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. The Authority accepts no liability in respect of the non-arrival at the Supplier's premises of the packaging materials.
- (e) any equipment, plant or unused materials utilised during the delivery are removed from the Delivery Location and all rubbish arising from the delivery is cleared away.

SECTION C TERMS AND CONDITIONS
SECTION C.3 CONDITIONS OF GOODS

- G4.2 The Supplier shall deliver the Goods specified in each Order:
- (a) on its relevant Delivery Date or as stated in the Particulars;
 - (b) at the Delivery Location; and
 - (c) during the Authority's normal business hours, or as instructed by the Authority.
- G4.3 The delivery of Goods is completed on the completion of unloading of those Goods at the Delivery Location.
- G4.4 Except where otherwise provided in this Agreement, delivery shall include, at no extra cost to the Authority, the unloading and stacking of the Goods by the Supplier at such place within the Delivery Location as the Authority shall reasonably require.
- G4.5 Any access to the Delivery Location and any labour and equipment that may be provided by the Authority in connection with the delivery shall be provided without acceptance by the Authority of any liability whatsoever.
- G4.6 Where any access to the Delivery Location is necessary in connection with delivery the Supplier shall be responsible for the observance by itself and the Supplier's Personnel of all such rules, site regulations, policies, procedures, requirements (including those relating to security arrangements) and safety precautions necessary for the protection of itself and the Supplier's Personnel and any other persons including all precautions required to be taken by or under all applicable laws, enactments, orders, regulations, other similar instruments and codes of practice. The Supplier and the Supplier's Personnel shall co-operate fully with the Authority to ensure the proper discharge of these duties.
- G4.7 Where any access to the Delivery Location is necessary in connection with delivery the Supplier shall on completion of the delivery leave the Delivery Location in a neat and tidy condition.
- G4.8 Unless expressly agreed to the contrary in this Agreement or subsequently in writing by the Parties the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the time specified or agreed shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of this Agreement without further liability.
- G4.9 If the Authority rejects any Goods they are returnable at the Supplier's risk and expense. If the Supplier fails to collect rejected Goods within a reasonable period after notification of the rejection, the Authority may charge the Supplier storage costs and sell or dispose of the rejected Goods. The Authority will account to the Supplier for the proceeds of sale (if any) after deducting the purchase price paid for the Goods, storage costs and its reasonable costs and expenses in connection with the sale.
- G5. Title & Risk**
- G5.1 Title and risk in the Goods shall without prejudice to any of the rights or remedies of the Authority (including the rights and remedies under clause G7) pass to the Authority at the time of delivery.
- G5.2 Transfer of title and risk shall not relieve the Supplier of any of its obligations under this Agreement.
- G5.3 The Supplier warrants that the Goods shall be free from all encumbrances when title and risk pass.

SECTION C TERMS AND CONDITIONS
SECTION C.3 CONDITIONS OF GOODS

G6. Damage in transit

- G6.1 On dispatch of any consignment of Goods, the Supplier shall send to the Authority's Contract Manager a written advice note specifying the Authority's Agreement reference, a description of the Goods, the means of transport, the place and date of dispatch, the number of packages and their weight and volume.
- G6.2 Where the Goods are either damaged in transit or having been placed in transit fail to be delivered to the Authority, the Authority shall elect:
- G6.2.1 to reject the consignment; or
- G6.2.2 to require the Supplier, free of charge to the Authority, to repair or replace (at the option of the Authority) the Goods and deliver the repaired or replaced Goods to the Delivery Location in accordance with timescales specified by the Authority provided that:
- G6.2.2.1 in the case of damage to such Goods in transit the Authority shall within fifteen (15) Working Days of delivery give notice to the Supplier that the Goods have been damaged;
- G6.2.2.2 in the case of non-delivery the Authority shall (provided that the Authority has been advised in writing of the dispatch of Goods in accordance with clause G6.1) within ten (10) Working Days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

G7. Inspection, Rejection & Guarantee

- G7.1 The Supplier shall permit the Authority or its authorised representative to make any inspections or tests which may reasonably be required and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's premises. No failure to make a complaint at the time of such inspections or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods and, in particular, the Authority retains the right to reject the Goods.
- G7.2 The Authority may, notwithstanding the use or any continued use by the Authority of the Goods after the right of rejection thereof has arisen, reject by notice in writing any of the Goods which in the opinion of the Authority, are not of satisfactory quality and/or fit for their purpose and/or fail to meet the requirements of this Agreement. Any Goods not so rejected shall be deemed to have been accepted by the Authority. Such notice shall be given within a reasonable time after delivery to the Authority of the Goods concerned. If the Authority shall reject any of the Goods pursuant to this clause G7 the Authority shall be entitled (without prejudice to other rights and remedies) either:
- G7.2.1 at the Supplier's expense to have the Goods concerned as quickly as possible and in any event within five (5) Working Days either repaired by the Supplier or (as the Authority shall elect) replaced by the Supplier with Goods which conform in all respects with this Agreement and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
- G7.2.2 to treat this Agreement as discharged by the Supplier's breach and require a refund from the Supplier in respect of the Goods concerned and engage an alternative contractor to provide the outstanding balance of the Goods. The Supplier shall indemnify the Authority against all reasonable costs incurred in doing so. Such costs shall include the administrative costs of re-tendering the requirement and any difference in the price of the Goods which the Authority may have to pay to the new contractor where such price is higher than the price payable under this Agreement.

SECTION C TERMS AND CONDITIONS
SECTION C.3 CONDITIONS OF GOODS

- G7.3 Unless agreed otherwise, the Supplier shall guarantee the Goods for the Defects Liability Period stated in the Particulars or, if not stated, for the shorter of 12 months from putting into service or 18 months from delivery. If the Authority shall within such guarantee period or within twenty (20) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Defects Liability Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Authority may have) as quickly as possible remedy such defects (whether by repair or replacement as the Authority shall elect) without cost to the Authority, unless otherwise instructed. If instructed otherwise by the Authority, an appropriate deduction may be made from the contract sum of the Price.
- G7.4 The Supplier shall, immediately following notification by the Authority of any defect in the Goods, submit to the Authority written proposals for the repair or replacement of the Goods and state the time required for such repair or replacement (and the time for removing the Goods from the Delivery Location where necessary). If these proposals are not received by the Authority within ten (10) Working Days of the Authority's notification, or are not acceptable to the Authority, repair or replacement (or removal) may be arranged by the Authority from an alternative source at the Supplier's expense.
- G7.5 Any Goods rejected or returned by the Authority as described in clause G7.2 or G7.3 shall be returned to the Supplier at the Supplier's risk and expense.
- G7.6 Any Goods repaired or replaced under this clause G7 shall be subject to the same Defects Liability Period specified in clause G7.3 which shall run from the actual date of delivery of the Goods following their repair or replacement.

[Note: delete this section if not being used and update index]

SUPPLEMENTAL CONDITIONS OF CONTRACT

TO CONTRACT REF: [xxxx/xxx]

[Drafting note: delete text of clauses which are not applicable and insert “NOT USED” next to the Clause number of the deleted content. Do not assume clause are relevant if you have not considered them. These are additional clauses for specific purposes only – do not use them unless you need to. If in doubt – ask.]

- X1 Vetting
- X2 TUPE (Relevant Transfers from Incumbent(s))
- X3 Title and Risk at the Supplier's Premise
- X4 Price Review on Extension
- X5 Price Review - In Accordance with Market Conditions
- X6 Review
- X7 Time is of the Essence
- X8 Purchases on behalf of the Authority
- X9 Price Reductions
- X10 GDPR – Joint Controllers
- X11 Performance Bond
- X12 Parent Company Guarantee
- X13 Collateral Warranties
- X14 Driving for Better Business

X1 Vetting

- X1.1 No member of the Supplier's Personnel including any director, partner or other office holder of the Supplier shall commence their duties in connection with the Goods and/or Services under the Agreement until the Supplier, if required to do by the Authority, has provided evidence to the Authority that such person has successfully passed the Vetting Procedure and complied with any of the then internal vetting policies, which will be made available to the Supplier. The Supplier shall ensure that all members of its staff provide all information required by the Authority in order for the Vetting Procedure to be carried out.
- X1.2 The Supplier shall monitor the level and validity of the checks required by the Vetting Procedure pursuant to clause X1.1 for each member of its staff and shall ensure that these checks are renewed as and when required and the Supplier shall verify the same to the Authority on a six-monthly basis, or such other frequency as determined by the Authority.
- X1.3 The Supplier shall inform the Authority where any information in relation to any member of staff changes throughout the duration of the Agreement, and if required, shall re-submit an application under the Vetting Procedure for that member of staff.
- X1.4 Without affecting the Supplier's rights and obligations as an employer the Authority may, to the extent reasonably necessary to protect the standards and reputation of the Authority, request the Supplier to remove from the provision of the Goods and/or Services (or any part of them) any person or member of staff for any reason, which may include where the Supplier has not provided evidence that such person has successfully passed the Vetting Procedure in accordance with clause X1.1, and the Supplier shall immediately comply with such request. The Authority shall not in any circumstances be liable to any such person or member of staff or the Supplier in relation to any such removal and the Supplier shall fully and promptly indemnify the Authority in respect of any claims brought by any such person or member of staff arising from it. Any employee or agent removed from the provision of the Goods or Services pursuant to this clause X1.4 shall be replaced promptly by the Supplier with a compliantly vetted and suitably trained, skilled and competent person.

X2 TUPE (Relevant Transfers from Incumbent/s)

Definitions

X2.1. For the purposes of this clause, the following terms shall have the meanings given to them below:

Direct Losses means all damages, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but to avoid doubt, excluding Indirect Losses;

Employee Liability Information means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(1) of TUPE regarding any person employed by him who is assigned to the organised grouping of resources or employees which is the subject of a Relevant Transfer and also such employees as fall within Regulation 11(4) of TUPE;

First Employee List has the meaning set out in clause X2.6;

Incumbent means any provider of services to the Authority prior to the Commencement Date, where those services are the same as or similar to the Services or part thereof;

Indirect Losses means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;

Relevant Employees means the employees who are the subject of a Relevant Transfer;

Relevant Transfer means a relevant transfer for the purposes of TUPE;

Relevant Workforce Information means the workforce information of the type to enable an effective tendering process and transfer of the services to the Supplier;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and or any other regulations enacted for the purpose of implementing the Directive into English law.

Relevant Transfers

X2.2 The Supplier agrees that the occurrence of the following events:

X2.2.1 the Commencement Date; or

X2.2.2 where the identity of a provider of any service which constitutes or which will constitute the Services in whole or in part is changed (whether in anticipation of changes pursuant to this Agreement or not),

shall constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees shall have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the new provider except insofar as such contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity or survivors' benefits.

X2.3 On the occasion of a Relevant Transfer, the Supplier shall comply (and shall procure that any Subcontractor of the Supplier shall comply) with its obligations under TUPE (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to this Agreement. The Supplier shall indemnify the Authority against any Direct Losses sustained as a result of any breach of this clause X2.3 by the Supplier (including against any claim that the Authority may have received from any third party).

Emoluments and Outgoings

- X2.4 The Authority shall procure that the relevant Incumbent is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to, but not including, the Commencement Date.
- X2.5 The Supplier shall be responsible for (or shall procure that any relevant Subcontractor is responsible for) all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Supplier (or any of its Subcontractors) in connection with the provision of any part of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Commencement Date.

Relevant Workforce Information

- X2.6 The Authority has supplied to the Supplier with its Tender Documents the Relevant Workforce Information affecting each of those employees of each Incumbent whom it is expected (if they remain in the employment of the Incumbent until immediately before the Commencement Date) would be Relevant Employees (**First Employee List**).
- X2.7 Without prejudice to clauses X2.6, X2.14 and X2.15, the Authority shall procure (if it has the contractual or legal powers to do so) and shall otherwise use all reasonable endeavours to procure that all Incumbents:
- X2.7.1 provide the Employee Liability Information to the Supplier at such time or times as are required by TUPE; and
 - X2.7.2 update the Relevant Workforce Information;
 - X2.7.3 update the Employee Liability Information to take account of any changes as required by TUPE.
- X2.8 The Supplier accepts that the Authority does not give any warranty as to the accuracy or completeness of the Relevant Workforce Information supplied by any Incumbent.
- X2.9 If at any time (including, for the avoidance of doubt, after the Commencement Date) the Supplier is able to demonstrate that the costs of employing Staff to provide the Services exceed the costs set out in its Tender, and that these additional costs are due to increased costs of employing the Relevant Employees, on account of any inaccuracies in or omissions from the information contained in the First Employee List or any subsequent list of Relevant Employees and Relevant Workforce Information, then (subject to clauses X2.10, X2.11 and X2.12) there shall be a corresponding adjustment to the Price to compensate for any such difference.
- X2.10 If the circumstances described in clause X2.9 arise:
- X2.10.1 in circumstances where there are more Relevant Employees who transfer under TUPE than shown on the final list of Relevant Employees then the parties shall discuss the implications for the provision of Services; and
 - X2.10.2 the Supplier and any relevant Subcontractor shall take all reasonable steps to mitigate any additional costs and any adjustment to the Price shall be calculated as if they had done so.
- X2.11 In calculating any adjustment to be made to the Price pursuant to clause X2.9:

SECTION C TERMS AND CONDITIONS
SECTION C.4 SUPPLEMENTAL CONDITIONS

X2.11.1 no account shall be taken of a decrease in the costs of engaging sufficient numbers of Staff to deliver the Services to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after the Commencement Date, fewer suitably qualified persons available than are required in order to deliver the Services;

X2.11.2 to avoid double counting, no account shall be taken of any change to the costs of engaging sufficient numbers of Staff to deliver the Services to the extent that the Supplier has been or will be compensated as a result of any indexation of the Price under this Agreement.

X2.12 Either party may propose an adjustment to Price pursuant to clause X2.9 above by giving not less than ten (10) Business Days' notice to the other. Each party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to clause X2.9 above.

X2.13 In relation to all matters described in clauses X2.10 and X2.11 the Supplier and the Authority shall (and the Supplier shall procure that any relevant Subcontractor shall) co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

Union Recognition

X2.14 The Authority shall procure (if it has the contractual or legal powers to do so) and shall otherwise use all reasonable endeavours to procure that each Incumbent shall supply to the Supplier no later than five (5) Business Days prior to the Commencement Date true copies of union recognition agreement(s) and the Supplier shall (and shall procure that each and every Subcontractor shall) in accordance with TUPE recognise the trade unions representing Relevant Employees (as relevant to each Subcontractor) after the Relevant Transfer, to the same extent as they were recognised by the Incumbent before the Commencement Date.

X2.15 The Supplier shall procure that, on each occasion on which the identity of a Subcontractor changes pursuant to this Agreement, in the event that there is a Relevant Transfer, the new Subcontractor shall in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Subcontractor, to the same extent as they were recognised before the change of identity of the Subcontractor in respect of the provision of the Services.

Indemnities

X2.16 Subject to clause X2.17, the Authority shall indemnify and keep indemnified in full the Supplier (for itself and for the benefit of each relevant Subcontractor) against all Direct Losses incurred by the Supplier or any relevant Subcontractor in connection with or as a result of:

X2.16.1 a breach by the Authority of its obligations under clauses X2.4 or X2.5 above;

X2.16.2 any claim or demand by any Relevant Employee arising out of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the Incumbent in relation to any Relevant Employee prior to the date of the Relevant Transfer (save where such act, fault or omission arises as a result of the Supplier's or any relevant Subcontractor's failure to comply with Regulation 13 of TUPE) and any such claim is not in connection with the Relevant Transfer.

X2.17 The indemnities contained in clause X2.16 shall only apply to the Authority to the extent that the Authority recovers any sum in respect of the subject matter of those indemnities from such Incumbent under any indemnity or other legal entitlement it has against such Incumbent. The Authority will use its reasonable endeavours to recover any such sums under any such entitlement as in mentioned in this clause X2.17.

SECTION C TERMS AND CONDITIONS
SECTION C.4 SUPPLEMENTAL CONDITIONS

- X2.18 The Supplier shall indemnify and keep indemnified in full the Authority, and at the Authority's request each and every service provider who shall provide any service equivalent to any part of the Services immediately after expiry or earlier termination of this Agreement (**Future Service Provider**) against:
- X2.18.1 all Direct Losses incurred by the Authority or any Future Service Provider in connection with or as a result of any claim or demand against the Authority or any Future Service Provider by any person who is or has been employed or engaged by the Supplier or any Subcontractor in connection with the provision of any part of the Services where such claim arises as a result of any act, fault or omission of the Supplier and/or any Subcontractor after the Commencement Date;
 - X2.18.2 all Direct Losses incurred by the Authority or any Future Service Provider in connection with or as a result of a breach by the Supplier of its obligations under clause X2.5 above; and
 - X2.18.3 all Direct Losses incurred by the Authority or any Future Service Provider in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Supplier and/or the relevant Subcontractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Supplier and/or any Subcontractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE or otherwise, and whether any such claim arises or has its origin before or after the Commencement Date.
- X2.19 The Supplier shall indemnify and keep indemnified in full each Authority, against all Direct Losses incurred by that Authority in connection with or as a result of:
- X2.19.1 a claim that the change of identity of employer occurring by virtue of TUPE to the Supplier or the relevant Subcontractor being significant and detrimental to any of the Relevant Employees (or to any person who would have been a Relevant Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Commencement Date as a result of the change in employer and whether such claim arises before or after the Commencement Date;
 - X2.19.2 any proposed or actual change by the Supplier or any Subcontractor to the Relevant Employees' working conditions, terms or conditions or any proposed measures of the Supplier or the relevant Subcontractor which are to any of the Relevant Employee's material detriment (or to the material detriment of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE)) on or before the Commencement Date as a result of any such proposed changes or measures and whether such claim arises before or after the Commencement Date; and
 - X2.19.3 any claim arising out of any misrepresentation or misstatement whether negligent or otherwise made by the Supplier or any of its Subcontractor to the Relevant Employees or their representatives whether before on or after the Commencement Date and whether liability for any such claim arises before on or after the Commencement Date.
- X2.20 For the avoidance of doubt, the indemnities in clauses X2.18 and X2.19 shall not apply to the extent that the claim arises from a wrongful act or omission of the Authority.

Provision of Details and Indemnity

- X2.21 The Supplier shall as soon as reasonably practicable and in any event within five (5) Business Days following a written request by the Authority provide to it details of any measures which the Supplier or any Subcontractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and shall indemnify the Authority and Incumbent against all Direct Losses resulting from any failure by the Supplier to comply with this obligation.

X3 Title and Risk at the Supplier's Premises

- X3.1 Where goods belonging to the Authority are sent to the Supplier's premises or the premises of any third party authorised by the Supplier, for overhaul, repair, cleaning or the provision of any other service by the Supplier, such goods shall be at the risk of the Supplier from the time that they are handed over to the Supplier or its authorised agent until such time as they have been returned to the Authority and, if so provided for in the Particulars, repositioned, and reconnected to the satisfaction of the Authority. The property in such goods shall at all times remain with the Authority and the Supplier shall clearly mark such goods as belonging to the Authority and keep them separate from all other goods in the Supplier's possession as far as it is reasonable to do so in order to complete the agreed work.

X4 Price Review on Extension

- X4.1 As and when the Supplier is able to reduce rates contained in the Price, the Authority shall seek to implement his proposals at the earliest opportunity.
- X4.2 In exercise of the Authority's right to extend part or all the agreement beyond the initial Contract Period, should the Supplier after the expiration of the initial Contract Period wish to supply all or any of the Goods / Services subject of this Agreement at an increased price, he shall give not less than three months' notice in writing before the expiration of the initial Contract Period with the proposed increased price to the Authority's Commercial Representatives. Such notice shall clearly identify the proposed price in pounds sterling, rather than percentage or any other measure of movement.
- X4.3 The Supplier's application shall be accompanied by information and records which detail the increases in costs that he has incurred in respect of the Agreement since the commencement of the Agreement or the implementation of the last price increase (whichever is the most recent). The Authority cannot consider any application without such supportive information and shall have to reject the application.
- X4.4 The Authority reserves the right to accept or reject an application.
- X4.5 Where the Authority does not judge the information accompanying the application to be supportive of the proposed price or where its own review of the market identifies a different price level or trend in price movement to that included in the Supplier's application or the service level or performance requirements are not being met, the Authority may propose a reduced level of price increase, which may be introduced with the agreement of the Supplier. In the event of the Supplier's agreement not being given, the current Contact price shall continue to apply until agreement between the parties is reached. The agreed price shall be implemented not less than one month after the date of its acceptance by both parties.
- X4.6 In the event of agreement not being reached under clause X4.5 in what the Authority considers to be a reasonable period of time, the Authority reserves the right to serve not less than 30 days' notice upon the Supplier in order to determine the Agreement, save in respect of any items for which an order shall have been despatched on behalf of the Authority before the expiry of the said application and without prejudice to the rights of the parties hereto as regards any antecedent claim for breach of contract.

SECTION C TERMS AND CONDITIONS
SECTION C.4 SUPPLEMENTAL CONDITIONS

X4.7 Any claim for an increase in the charges during an extension will only be considered if the increase does not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (or another such index as notified to the Supplier in writing) between the Commencement Date and the date 3 months before the end of the Contract Period.

X4.8 Any price increase accepted by the Authority shall be fixed for at least 12 months.

X5 Price Review - In Accordance with Market Conditions

Throughout the Contract Period, the Authority reserves the right to monitor the market for Goods/Services available through this Agreement. Where it is found that Goods/Services of like quality and specification are available at lower prices than those currently available through the Agreement, the Supplier shall be required to review his prices. Should the Authority not be satisfied with the Supplier's response, the Authority reserves the right to determine the Agreement in respect of some or all of the Goods available giving not less than 30 days' notice.

X6 Review

[Drafting Note. Sample drafting provided below is for illustration purposes only. It may be possible to make this clause more explicit about when each Named Authority will join to the contract e.g. by stating in the contract that Named Authority 1 will join on 1 January, etc. If it is possible to be more explicit at the outset then this would be beneficial but will depend on the particular facts at the time to ensure the review clause is as clear, precise and unequivocal as possible. X6.1 should be modified accordingly to align with information published in any notice and the ITT]

X6.1 Named Authorities

The Authority may require the Supplier to provide the **[Goods and/or Services]** to:

List all authorities that have been named as potential beneficiaries of the agreement in any notices (ie FTS) and the ITT and where there are specific dates or if the forces are optional.

referred to hereafter as the Named Authorities, at any time during the Contract Period. The Supplier acknowledges that the Authority gives no warranty or guarantee as to the number of Named Authorities that will require **[Goods and/or Services]** to be provided under this Contract and therefore gives no commitment as to the volumes or prices to be received by the Supplier under this Contract. The Supplier acknowledges the Named Authorities are not obliged to take any **[Goods and/or Services]** from the Supplier and that nothing shall prevent the Named Authorities from receiving services that are the same as or similar to the **[Goods and/or Services]** from any third party.

X6.2 In the event that the Authority requires the Supplier to provide the **[Goods and/or Services]** to the Named Authorities, the Authority shall give notice to the Supplier in writing, confirming:

X6.2.1 the identity of the Named Authority to receive the **[Goods and/or Services]**;

X6.2.2 the date from which the Supplier shall provide the **[Goods and/or Services]** to the Named Authority;

X6.2.3 the period of time that the Supplier shall provide the **[Goods and/or Services]** to the Named Authority, and where no such period is specified, the Supplier shall provide the **[Goods and/or Services]** to the Named Authority for the remainder of the Contract Period.

X6.3 Following receipt of the Authority's notice pursuant to clause X6.2:

SECTION C TERMS AND CONDITIONS
SECTION C.4 SUPPLEMENTAL CONDITIONS

- X6.3.1 the parties shall document the inclusion of the Named Authority in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the [Goods and/or Services] to the Named Authority have already been agreed and therefore at no additional cost to the Authority;
- X6.3.2 the Supplier shall provide the [Goods and/or Services] to the Named Authority in accordance with the Statement of Requirements/Specification (Section B2, Schedule 1) and to meet the service levels and key performance indicators set out in the Contract Management Procedures (Section B2, Schedule 2) from the date specified in the Authority's notice;
- X6.3.3 the charges for the [Goods and/or Services] to the Named Authority shall be as set out in accordance with the Pricing Schedule (Section B2, Schedule 3), and accordingly shall not increase the Supplier's profit margin, and shall be payable in accordance with the procedures set out in the Contract Management Procedures (Section B2, Schedule2);
- X6.3.4 the Supplier shall deliver the [Goods and/or Services] to the Named Authority during the Contract Period and on the terms and conditions set out in this Agreement without amendment.

X7 Time is of Essence

Except where otherwise provided in this Agreement, timely provision of the Services/Goods shall be of the essence of this Agreement and failure to commence or provide the Services/Goods within the time promised or specified shall enable the Authority (at the Authority's option acting reasonably) to release itself from any obligation to accept and pay for the Services/Goods and/or to cancel all or part of this Agreement, in either case without additional cost and without prejudice to the Authority's other rights and remedies.

X8 Purchases on behalf of the Authority

In the event that the Supplier procures goods or services including equipment from third parties on behalf of the Authority, it shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2015 as though the Supplier were a contracting authority within the meaning of those regulations and in accordance with all other applicable domestic and European law.

X9 Price Reductions

In the supply of the Services and/or the Goods during the Contract Period the Supplier shall be expected to support the Authority's efforts to obtain services and goods in the most cost effective manner in order to maximise the Authority's use of resources to support operational policing requirements. To that end the Supplier shall, where practicable, seek to reduce the cost of the Services and/or the Goods during the Contract Period and to pass these savings on to the Authority in the form of price reductions. Where such price reductions are identified they shall be recorded by way of a variation to this Agreement in accordance with clause 6 of Section C.1 (General Conditions) of this Agreement.

X10 GDPR – Joint Controllers

- X10.1 Where the Parties include two or more Joint Controllers as identified in the Schedule of Processing, Personal Data and Data Subjects in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule X9 in replacement of clauses 20.1-20.14 of Section C.1 (General Conditions) of this Agreement for the Personal Data under Joint Control.
- X10.2 For the purposes of this clause X10 the term 'Joint Controllers' shall mean 'where two or more Controllers jointly determine the purposes and means of processing'.

X11 Performance Bonds

[A bank or bond or guarantee should be considered depending on the risk profile of the contract for all contracts exceeding one million pounds]

- X11.1 The Supplier shall on the execution of this Contract provide to the Authority, as stated in the Contract Particulars as being required, a performance bond of the Supplier's due performance of its obligations to the Authority substantially from a bank or other surety approved by the Authority, in the amount stated in the Contract Particulars on or before the Commencement Date in the form annexed at Schedule X10 (Performance Bond) and shall remain valid until the expiry of this agreement.
- X11.2 The Authority shall be entitled to withhold 20% of any payment due until the Supplier has complied with clause X10.1
- X11.3 Unless and until otherwise agreed by the Parties the form of performance bond set out in Schedule X10 (Performance Bond) shall be the relevant specified form for the purposes of this Agreement.

X12 Parent Company Guarantee

[A Parent Company Guarantee should be considered depending on the risk profile of the contract for all contracts exceeding £50,000]

- X12.1 The Supplier shall on the execution of this Contract provide to the Authority, as stated in the Contract Particulars as being required, a guarantee by the Guarantor in favour of the Authority substantially to secure the due performance by the Supplier of its obligations to the Authority on or before the Commencement Date in the form annexed at Schedule X11 (Parent Company Guarantee).
- X12.2 The Authority shall be entitled to withhold 20% of any payment due until the Supplier has complied with clause X12.1.
- X12.3 Unless and until otherwise agreed by the Parties the form of parent company guarantee set out in Schedule X11 (Parent Company Guarantee) shall be the relevant specified form for the purposes of this Agreement.
- X12.4 If during the Contract Period the parent company ceases to be the parent company of the Supplier, the Supplier shall as a condition of the contract procure a parent company guarantee in the same form from its new parent company. If the new parent company is not the same financial covenant, the Authority shall be entitled to demand security of equivalent standing in the form of an insurance backed guarantee or bond.

X13 Collateral Warranties

[A Collateral Warranty should be considered depending on the risk profile and services to be provided from Subcontractors, for any contract and particularly contracts exceeding one million pounds]

- X13.1 The Supplier shall on the execution of this Contract provide to the Authority, as stated in the Contract Particulars as being required, the Collateral Warranties by the Subcontractors intended to deliver Services in favour of the Authority substantially at least thirty (30) days prior to the Commencement Date in the form annexed at Schedule X12 (Collateral Warranty).
- X13.2 The Authority shall be entitled to withhold 20% of any payment due until the Supplier has complied with clause X13.1.
- X13.3 Unless and until otherwise agreed by the Parties the form of collateral warranty set out in Schedule X12 (Collateral Warranty) shall be the relevant specified form for the purposes of this Agreement.

SECTION C TERMS AND CONDITIONS
SECTION C.4 SUPPLEMENTAL CONDITIONS

X13.4 The Supplier shall not engage any new Subcontractor in connection with this Agreement and/or the Services unless the relevant new Subcontractor has delivered to the Authority an agreement substantially in the form of the Collateral Warranty duly executed as a deed.

X13.5 Notwithstanding any other provision of this Agreement, if the Supplier fails to comply with its obligations pursuant to clause X12, the Supplier will be prohibited from using any Subcontractor for which an executed Collateral Warranty as required by clause X12 has not been delivered to the Authority until such time as such Collateral Warranty, duly executed, is delivered to the Authority.

X14 Driving for Better Business

X14.1 The Health and Safety at Work Act 1974 requires directors, employers and employees to manage and mitigate risks associated with work related road safety. The Supplier shall have due regard for and comply with its legal obligation and the management of health and safety.

X14.2 The Supplier shall:

- (a) not do anything that puts drivers at risk;
- (b) ensure that all employees work related driving activities do not endanger other road users;
- (c) have appropriate policies and procedures in place and have clear methods of cascading these to all employees, agents and Subcontractors;
- (d) ensure that all employees, agents and Subcontractors follow the guidance of the Highway Code;
- (e) introduce control and monitoring measures by registering with the Driving for Better Business and actively made improvements to their work related road safety.

X14.3 The Authority may exercise its rights under clause 24 of Section C.1 (General Conditions) of this Agreement where there are reasonable grounds to do so, where the Supplier or their employees, agents or Subcontractor fail to comply with Health and Safety.

Schedule X9 – Joint Controller Agreement

1. Joint Controller Status and Allocation of Responsibilities

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 2-15 of Framework Agreement Schedule 4 (where one Party is Controller and the other Party is Processor) and paragraphs 17-27 of Framework Agreement Schedule 4 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that the [\[Authority/Supplier\]](#):
- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
 - (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
 - (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
 - (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
 - (e) shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [\[Authority's/Supplier's\]](#) privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of clause 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

2. Undertakings of Both Parties

- 2.1 The Supplier and the Authority each undertake that they shall:
- (a) report to the other Party every [\[x\]](#) months on:
 - (i) the volume of Data Subject Request (or purported Data Subject Requests) from Data Subjects (or third parties on their behalf);
 - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
 - (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
 - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and

- (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law, that it has received in relation to the subject matter of the Contract during that period;
- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex.
- (e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
 - (i) are aware of and comply with their 's duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information
 - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (v) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
 - (vi) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

3. Data Protection Breach

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
- (b) all reasonable assistance, including:
 - co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
 - co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
 - providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;
- (d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (e) measures taken or proposed to be taken to address the Personal Data Breach; and
- (f) describe the likely consequences of the Personal Data Breach.

4. Audit

4.1 The Supplier shall permit:

- (a) the Authority, or a third-party auditor acting under the Authority's direction, to conduct, at the Authority's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or

- (b) the Authority, or a third-party auditor acting under the Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

4.2 The Authority may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection.

5. Impact Assessments

5.1 The Parties shall:

- (a) provide all reasonable assistance to the each other to prepare any data protection impact assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 GDPR.

6. ICO Guidance

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

7. Liabilities for Data Protection Breach

[Drafting Guidance Note: This clause represents a risk share, you may wish to reconsider the apportionment of liability and whether recoverability of losses are likely to be hindered by the contractual limitation of liability provisions]

7.1 If financial penalties are imposed by the Information Commissioner on either the Authority or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

- (a) if in the view of the Information Commissioner, the Authority is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Authority, then the Authority shall be responsible for the payment of such Financial Penalties. In this case, the Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Authority and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

- (b) if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Authority and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
- (c) if no view as to responsibility is expressed by the Information Commissioner, then the Authority and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 34 of the Core Terms (*Resolving disputes*).

7.2 If either the Authority or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "Claim Losses"):

- (a) if the Authority is responsible for the relevant Personal Data Breach, then the Authority shall be responsible for the Claim Losses;
- (b) if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and
- (c) if responsibility for the relevant Personal Data Breach is unclear, then the Authority and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in either clause 7.2 or clause 7.3 shall preclude the Authority and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Authority.

8. Termination

If the Supplier is in material Default under any of its obligations under this Annex 2 (*Joint Controller Agreement*), the Authority shall be entitled to terminate the Contract by issuing a Termination Notice to the Supplier in accordance with Clause 18.5 (*Ending the contract*).

9. Sub-Processing

9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

- (a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and

- (b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

10. Data Retention

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by the Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

Schedule X10: Performance Bond

BOND

DATE

20[]

PARTIES

1. **THE SUPPLIER** named in the Schedule as principal.
2. **THE GUARANTOR** named in the Schedule as guarantor.
3. **THE AUTHORITY** named in the Schedule.

RECITALS

- A. By a contract (the "**Agreement**") entered into or to be entered into between the Authority and the Supplier, particulars of which are set out in the Schedule, the Supplier has agreed with the Authority to execute works (the "**Services**") upon and subject to the terms and conditions therein set out.
- B. The Guarantor has agreed with the Authority at the request of the Supplier to guarantee the performance of the obligations of the Supplier under the Agreement upon the terms and conditions of this Bond subject to the limitations set out in clause 2.

NOW THIS DEED WITNESSES as follows:

1. The Guarantor guarantees to the Authority that in the event of a breach of the Agreement by the Supplier or determination of the Agreement by the Authority, the Guarantor shall subject to the provisions of this Bond satisfy and discharge the damages and expenses sustained by the Authority as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Agreement.
2. The maximum aggregate liability of the Guarantor and the Supplier under this Bond shall not exceed the sum set out in the Schedule (the "**Bond Amount**") but subject to such limitation and to clause 4, the liability of the Guarantor shall be no less than the liability of the Supplier under the Agreement.
3. The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Agreement or in the extent or nature of the Services and no allowance of time by the Authority under or in respect of the Agreement or the Services shall in any way release reduce or affect the liability of the Guarantor under this Bond.
4. Whether or not this Bond shall be returned to the Guarantor, the obligations of the Guarantor under this Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Agreement or determination of the Supplier's employment which has occurred and in respect of which a claim in writing containing particulars of such breach or determination has been made upon the Guarantor before Expiry.
5. The Supplier having requested the execution of this Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Authority or the Guarantor against the Supplier) to perform and discharge the obligations on its part set out in the Agreement.
6. This Bond and the benefits thereof may be assigned with the prior written consent of the Guarantor (such consent not to be unreasonably withheld or delayed).
7. This Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

SECTION C TERMS AND CONDITIONS
SECTION C.4 SUPPLEMENTAL CONDITIONS - SCHEDULE X10

THE SCHEDULE

The Supplier: [] (Registered No. [])
whose registered office is at []

The Guarantor: [] (Registered No. [])
whose registered office is at []

The Authority: [] (Registered No. [])
whose registered office is at []
(including its assigns);

The Agreement: A contract dated [] 201[] between the Authority and the
Supplier for the original contract sum of [] pounds (£[])

The Bond Amount: The sum of [] pounds sterling (£[]) [xx%]

Expiry: The expiry date of the Agreement which shall be conclusive for the purposes
of this Bond

In Witness whereof the parties have executed this Deed on the date before written.

THE COMMON SEAL of [] was hereunto)
affixed by order:)

.....
[xxxxxxxx]

EXECUTED as a **DEED** by)
SUPPLIER acting by:)

.....
Director
.....
Director/Secretary

EXECUTED as a **DEED** by)
GUARANTOR acting by:)

.....
Director
.....

Schedule X11: Parent Company Guarantee

THIS GUARANTEE is made the [] day of [] 20[]
BETWEEN:

1. [] whose registered office is at [] (the "Guarantor"); and
2. [] whose registered office is at [] (the "Authority") which expression includes its permitted successors and assigns).

WHEREAS:

- A. This guarantee and indemnity (the "**Guarantee**") is given in connection with a binding contract dated [] (the "**Agreement**") made between the Authority and [] (the "Supplier") for the services set out in the Agreement (the "**Services**") and upon the terms and conditions contained therein.
- B. The Supplier is a subsidiary company of the Guarantor.
- C. The Guarantor has agreed to guarantee the due performance of the Supplier's obligations to the Authority under the Agreement in the manner set out below.

In consideration of the Authority entering into the Agreement **IT IS AGREED:**

1. The Guarantor hereby unconditionally and irrevocably guarantees to the Authority:
 - 1.1 due and prompt performance by the Supplier of all and any obligations under or arising from the Agreement;
 - 1.2 that if any sums are due and payable to the Authority by the Supplier pursuant to the terms of the Agreement and there is any default in any payment of such sum the Guarantor shall forthwith on first demand by the Authority unconditionally pay to the Authority in full the monies which are due and payable to it and unpaid by the Supplier; and
 - 1.3 to pay all costs and expenses which the Authority may incur in enforcing this Guarantee.
2. The Guarantor hereby unconditionally and irrevocably undertakes fully and properly to indemnify the Authority against all damages, costs, claims, losses, demands, liabilities and expenses which may be suffered or incurred by the Authority by reason of any default on the part of the Supplier in performing and observing the terms and conditions of the Agreement, and in particular such costs and expenses as may be incurred as a result of a third party providing all or any part of the Services by reason of a failure by the Supplier to provide such Services in accordance with the terms of the Agreement.
3. The Guarantor shall not be discharged or released from this Guarantee, nor shall its liability under this Guarantee be affected or impaired by any agreement, conduct or forbearance between or afforded to the Supplier or any assignee by the Authority; or by any alterations in the obligations imposed by the Agreement; or by any variations agreed to the Agreement; or by termination of the Agreement; or by any intermediate payment; or satisfaction made by the Supplier or any assignee; whether or not such matters are with or without the consent of the Guarantor. The Authority shall not be obliged to request payment from the Supplier before enforcing the terms of this Guarantee and the Guarantor shall be treated in all respects as being jointly and severally liable with the Supplier for all liabilities, obligations and undertaking of the Supplier as provided in the Agreement.
4. This Guarantee shall remain in full force and effect until all monies and liabilities now or hereafter due and owing or incurred by the Supplier to the Authority have been satisfied in full.
5. If any monies shall become payable under or in respect of this Guarantee the Guarantor shall not, so long as any monies due and payable by the Supplier to the Authority under the terms of the Agreement remain unpaid:

SECTION C TERMS AND CONDITIONS
SECTION C.4 SUPPLEMENTAL CONDITIONS - SCHEDULE X11

- 5.1 in respect of the amounts paid by the Guarantor under this Guarantee, seek to enforce repayment by subrogation or otherwise;
- 5.2 in the event of the insolvency, winding up, liquidation or dissolution of the Supplier prove in competition with the Authority in respect of any monies owing to the Guarantor by the Supplier on any account whatsoever but will give to the Authority the benefit of any such proof and of all monies to be so received in respect thereof.
- 6 All demands made by the Authority under this Guarantee shall be sent to the Guarantor at the address set out above or such other address as may be notified by the Guarantor to the Authority. Such demand shall be deemed to have been made and received by the Guarantor:
 - 6.1 if delivered by hand, on signature of a delivery receipt or at the time of delivery at the address;
 - 6.2 if sent by pre-paid first class post or other next working day delivery service providing proof of postage **OR** delivery, 9:00 am on the second Working Day after posting or at the time recorded by the delivery service;
 - 6.3 if sent by e-mail, at the time of transmission.
7. No failure to exercise and no delay in exercising on the part of the Authority any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any right, power or privilege. The rights and remedies provided herein are cumulative and not exclusive of any right or remedies provided by law.
8. The Guarantor hereby warrants and represents to the Commissioner that it has full power and authority to enter into and perform its obligations under this Guarantee.
9. This Guarantee may not be terminated by the Guarantor while any obligations under it remain in effect and it shall be binding upon the Guarantor's successors in title.
10. This Guarantee shall remain in full force and effect notwithstanding any change in the constitution of the Guarantor, the Supplier or the Authority.
11. The Guarantor hereby irrevocably appoints its Company Secretary as its authorised agent for the purpose of accepting service of process for all purposes in connection with this Guarantee.
12. This Guarantee shall be governed by the construed in all respects in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising in relation to this Guarantee.
13. For the avoidance of doubt the decision of a court or tribunal of competent jurisdiction or any agreement reached between the Supplier and the Authority or any admission by the Supplier shall be binding on the Guarantor and shall prove the default, breach of contract, or neglect in connection with the Agreement on the part of the Supplier which is the subject matter of any such decision, agreement or admission.

SECTION C TERMS AND CONDITIONS
SECTION C.4 SUPPLEMENTAL CONDITIONS - SCHEDULE X11

DATED this _____ day of _____ 20[]

IN WITNESS whereof the parties have executed this Deed on the date before written.

THE COMMON SEAL OF [])
)
was hereunto affixed in the **)**
presence of: **)**

EXECUTED as a DEED by)
GUARANTOR acting by:)

.....
Director
.....

Schedule X12: Collateral Warranty

THIS DEED is made the _____ day of _____ 20[]

BETWEEN

1. [] (company registered number) whose registered office is at [] (the "Subcontractor");
2. [] of [] (the "Beneficiary"), which expression includes its permitted successors in title and assigns); and
3. [] (company registered number) whose registered office is at [] and its permitted successors and assigns (the "Supplier").

BACKGROUND

- A. By a contract dated on or about the date of this Deed (the "Agreement"), the Beneficiary has appointed the Supplier to carry out works and associated services (the "Services").
- B. By a contract dated on or about the date of this Deed (the "Subcontract"), the Supplier has appointed the Subcontractor to provide services as set out in [schedule [insert]] of the Subcontract as its subcontractor.
- C. The Subcontractor is obliged under the Subcontract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

In consideration of the payment of ten pounds (£10.00) by the Beneficiary to the Subcontractor, receipt of which the Subcontractor acknowledges:

1. SUBCONTRACTOR'S WARRANTY AND LIABILITY

- 1.1 The Subcontractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its duties and obligations under the Subcontract in accordance with the Subcontract and (without qualification to or derogation from the foregoing) has exercised and will exercise all the reasonable skill care and diligence to be expected of a suitably skilled qualified and experienced professional performing services the like of those undertaken by the Subcontractor under the Subcontract.
- 1.2 The Subcontractor shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (excluding set-off and counterclaim) as it would have had, if the Beneficiary had been named as a joint employer with the Supplier, against the Beneficiary under the Subcontract and has no liability hereunder which is greater or of a longer duration than it would have had if the Beneficiary had been a party to the Subcontract as joint employer. The Subcontractor shall not be entitled to set-off or counter-claim against any liability to the Beneficiary under this Deed any sum of money or other entitlement due to it from the Supplier under the terms of the Subcontract.
- 1.3 Upon the expiration of 12 years from the expiry or termination of the Subcontract the liability of the Subcontractor under this Deed shall cease and determine, save in relation to any claims made by the Beneficiary against the Subcontractor and notified by the Beneficiary to the Subcontractor in writing prior thereto.

2. DOCUMENTS

- 2.1. In relation to all documents and information of any nature whatsoever which have been or are hereafter provided by the Subcontractor in the course of performing its obligations under the Subcontract (the “**Documents**”) the Subcontractor hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, an irrevocable royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding the termination of the Subcontract or determination of the employment of the Subcontractor under the Subcontract or any dispute thereunder or hereunder) to use and to reproduce all Documents for any purpose whatsoever connected with the Services or the provision of the Services by the Authority or any third party. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 2.2. The Beneficiary will not hold the Subcontractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by the Subcontractor unless the Subcontractor authorises such use and confirms that the Documents are suitable for it.
- 2.3. The Subcontractor agrees on reasonable request at any time and following reasonable written prior notice to give the Beneficiary or those authorised by it access to the Documents and to provide copies (including CD-Roms, copy negatives and CAD disks) thereof at the Beneficiary’s expense.
- 2.4. The Subcontractor warrants to the Beneficiary that the Documents (save to the extent duly appointed sub-consultants and Subcontractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Services, including use by the Beneficiary in accordance with the licence granted by this clause 2, will not infringe the rights of any third party.

3. INSURANCE

- 3.1. The Subcontractor hereby covenants with the Beneficiary that it has effected policies of £10 million Public Liability insurance covering the liabilities of the Subcontractor under the Subcontract and under this Deed for negligence, with a limit of indemnity of not less than £10 million pounds and an excess of not more than £[] ([] million pounds) for any occurrence or series of occurrences arising out of any each and every event and that it will maintain such insurance with reputable insurers carrying on business in the United Kingdom from the date hereof until 12 years after expiry or termination of the Subcontract provided that such insurance is generally available in the market at commercially reasonable rates and (for the avoidance of doubt) provided further that payment of any increased or additional premiums required by insurers by reason of the Subcontractor’s own claims record or other acts omissions matters or things peculiar to the Subcontractor will be deemed to be within the reasonable rates.
- 3.2. The Subcontractor shall immediately inform the Beneficiary if for any period such insurance is not or ceases to be available on commercially reasonable terms and shall obtain in respect of such period such reduced level of insurance as is available and would be fair and reasonable in the circumstances for the Subcontractor to obtain.
- 3.3. As and when reasonably required by the Beneficiary the Subcontractor will produce for inspection documentary evidence that the insurance referred to in clause 3.1 and 3.2 is being properly maintained and that payment has been made in respect of the last preceding premium due thereunder.

4. NOTICES

Any notice to be given by any party hereunder will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery provided that if it is sent after 4.45 pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

5. ASSIGNMENT

- 5.1. The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Subcontractor on two occasions only to any person taking an assignment of the whole or substantial part of the Beneficiary's interest in the Agreement.
- 5.2. In calculating the number of assignments for the purposes of clause 5.1 no account will be taken of assignments to a successor authority assuming the functions of the Beneficiary or assignments by way of security or by way of re-assignment on redemption.
- 5.3. The Beneficiary will notify the Subcontractor in writing following any assignment specifying the name and address of the assignee and the date of the assignment.
- 5.4. The Subcontractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original Beneficiary hereunder or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Agreement or that the original Beneficiary or any intermediate Beneficiary has not suffered any or as much loss.

6. BENEFICIARY'S REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Subcontractor including without prejudice to the generality of the foregoing any remedies in negligence.

7. INSPECTION OF DOCUMENTS

The Subcontractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents, or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure be made for its benefit or on its behalf.

8. STEP-IN RIGHTS

- 8.1. The Subcontractor warrants to the Beneficiary that it shall not terminate nor treat as terminated its employment under the Subcontract without first giving to the Beneficiary not less than 28 days' prior notice of the Subcontractor's intention to do so, specifying the grounds for so doing.
- 8.2. If the Beneficiary serves on the Subcontractor a notice in accordance with clause 8.3, the Subcontractor shall not terminate nor treat as terminated its employment under the Subcontract but service of such notice shall not prejudice any other right or remedy the Subcontractor may have under or in connection with the Subcontract.
- 8.3. Unless the employment of the Subcontractor under the Subcontract shall have terminated previously (and whether or not the Subcontractor shall have served notice on the Beneficiary pursuant to clause 8.1) if the Beneficiary serves upon the Subcontractor a notice to do so before the end of the 28 day period referred to in clause 8.1 above, the Subcontractor shall thereafter accept the instructions of the Beneficiary or its appointee to the exclusion of the Supplier under and in connection with the Subcontract.
- 8.4. As against the Supplier and the Beneficiary the Subcontractor shall be entitled and obliged to rely upon and to comply with such notice served by the Beneficiary under clause 8.3 and shall not make any enquiry into the entitlement of the Beneficiary as against the Supplier to serve such notice.
- 8.5. As from the date of service of notice under clause 8.3, the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Supplier under the Subcontract to the exclusion of the Supplier and will as soon as practicable thereafter use its reasonable endeavours to remedy any outstanding breach by the Supplier (insofar as such breach is capable of remedy), provided that this shall not affect or derogate from any right of action the Supplier may have against the Subcontractor in respect of any breach of duty of the Subcontractor under or in connection with the Subcontract happening prior to the date of service of notice by the Beneficiary under clause 8.3.

SECTION C TERMS AND CONDITIONS
SECTION C.4 SUPPLEMENTAL CONDITIONS - SCHEDULE X12

- 8.6. Within 21 days after serving notice under clause 8.3 or clause 8.9 the Beneficiary shall pay to the Subcontractor an amount equal to the sum then owing to the Subcontractor under the Subcontract for the Subcontractor's services.
- 8.7. If the employment of the Subcontractor under the Subcontract is terminated before service of any notice under clause 8.3, then if required to do so by notice served by the Beneficiary not later than 6 weeks after the date of such termination, the Subcontractor shall enter into a new contract with the Beneficiary or its appointee for the performance of the Subcontracted services on the same terms as the Subcontract but with such revisions as the Beneficiary shall reasonably require to reflect the altered circumstances. Forthwith upon the execution of such new contract, the Beneficiary shall pay to the Subcontractor an amount equal to the sum which, immediately before termination of the Subcontractor's employment, was owing to the Subcontractor by the Supplier under the Subcontract in respect of the Sub-contracted services delivered and which remains unpaid.
- 8.8. Upon payment by the Beneficiary in accordance with clause 8.6 or 8.7 of an amount equal to the relevant sum owing from the Supplier, the Subcontractor shall assign to the Beneficiary all the Subcontractor's rights against the Supplier in respect of such unpaid sum, and shall pay to the Beneficiary any of the same subsequently received by it from the Supplier.
- 8.9. The Subcontractor further covenants with the Beneficiary that if the Agreement is terminated by the Beneficiary, the Subcontractor, if requested by the Beneficiary by notice in writing and subject to clauses 8.4-8.6, will accept the instructions of the Beneficiary or its appointee to the exclusion of the Supplier in respect of the Subcontracted services upon the terms and conditions of the Subcontract and will if so requested enter into a novation agreement whereby the Beneficiary is substituted for the Supplier under the Subcontract.
- 8.10. The Beneficiary guarantees to the Subcontractor the performance of the obligations of any appointee of the Beneficiary nominated under clause 8.3 or 8.7 or 8.9.
- 8.11. Where the Subcontractor has given rights in relation to the Subcontract similar to those contained in this clause 8 to any other person then if both the Beneficiary and any such other person serve notice under clause 8.3 or clause 8.7 or clause 8.9 or its equivalent the notice served by the Beneficiary will prevail over any notice served by any other person.
- 8.12. The Supplier agrees to the foregoing provisions of this clause 8 and agrees to be bound by them.

9. OTHER COLLATERAL WARRANTIES

Following a written request from the Beneficiary the Subcontractor will (unless it has already done so) execute and/or procure that its Subcontractors and/or professional consultants or any of them each execute a deed of collateral warranty in the relevant form specified in the Subcontract in favour of any person in whose favour the Subcontract obliged the Subcontractor to give or procure the giving of such a warranty.

10. APPLICABLE LAW AND JURISDICTION

This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

11. THIRD PARTY RIGHTS

This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. The rights of any person to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

SECTION C TERMS AND CONDITIONS
SECTION C.4 SUPPLEMENTAL CONDITIONS - SCHEDULE X12

IN WITNESS of which this document is executed as a Deed and is delivered on the date first stated above.

Signed as a deed by)
THE SUB CONTRACTOR)
in the presence of) Signature of director/secretary/attorney

.....
Signature of witness

Name

Address

.....

Signed as a deed by)
a lawful attorney of)
THE SUPPLIER) Signature of attorney
in the presence of

.....
Signature of witness

Name

Address

.....

THE COMMON SEAL OF [])
))
was hereunto affixed in the)
presence of:)

SECTION D

**FORM OF TENDER AND RELEVANT CORRESPONDENCE /
DOCUMENTATION**