

## STANDARD TERMS AND CONDITIONS (PO)

### OFFICIAL

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**1. Definitions & Interpretations**

**1.1.** The following terms have the following meanings:

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

**Agreement** means this agreement between the Authority and the Supplier comprising 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 GDPR;

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

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

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

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

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

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

**Data Subject** has the meaning given in the GDPR;

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

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

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

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

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

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

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

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

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

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

**Extension Period** means the extension period specified in the Particulars;

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

**FOIA** means the Freedom of Information Act 2000;

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

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

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

**Information** has the meaning given under section 84 of FOIA;

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

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

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

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

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

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

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

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

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

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

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**Personal Data** has the meaning given in the GDPR;

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

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

**Processor** has the meaning given in the GDPR;

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

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

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

**Required Insurance Policies** means those insurances listed in the Particulars;

**Restructuring** has the meaning given in Clause 31.1;

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

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

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

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

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

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

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

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

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

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

**Termination** means termination or expiry of this Agreement;

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

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

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

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

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

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

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

**2. Not Used**

**3. Warranties and Representations**

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

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

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

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

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

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

**4. Status of Agreement**

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

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

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

**5. Contract Period**

**5.1.** In consideration of the Price the Supplier shall provide the Goods and/or the Services for the Contract Period.

**5.2.** Subject to satisfactory performance, the Authority shall be entitled at its absolute discretion to extend the duration of the Contract Period by any number of periods up to an aggregate of the Extension Period, or as may be stated in the Particulars. The clauses in this Agreement will apply throughout any such extended period unless otherwise stated to the contrary.

**5.3.** If the Authority wishes to exercise its right to extend part or all of this Agreement under Clause 5.2 it must serve on the Supplier notice in writing to that effect not less than three (3) months prior to the Expiry Date confirming the period of extension.



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**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;

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.

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

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**9. Performance Monitoring**

**9.1.** The Supplier is responsible for correcting any Performance Default including any drawn to its attention in a written notice from the Authority.

**9.2.** Without prejudice to the generality of Clause 9.1, in the event of a Performance Default the Authority shall be entitled to:

9.2.1. issue a Default Notice to the Supplier specifying the Performance Default and, in the event that such Performance Default is capable of remedy, the Supplier shall effect a remedy within 10 days or otherwise specifying a reasonable period within which the Supplier shall effect a remedy;

9.2.2. withhold payment of the Price (or any instalment of the Price) until the Performance Default is remedied;

9.2.3. subject to clause 9.3, deduct Default Sums at any time in respect of the Performance Default. The amount of the Default Sums will be:

9.2.3.1. where the Performance Default is set out in the Particulars, the corresponding Default Sum for each day or part thereof during which the Performance Default occurs or continues; or

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

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

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

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

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

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

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

**10. Indemnities**

**10.1.** Subject to Clause 10.2 and without prejudice to any rights or remedies of the Authority, the Supplier shall indemnify the Authority, and keep it indemnified, from and against any and all losses, costs, expenses, damages, claims, demands or proceedings whatsoever and howsoever to the extent arising directly (but not indirectly or consequentially) whether in

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contract, tort (including negligence), under statute, in common law or otherwise out of the act, default, negligence, breach of contract, breach of statute or statutory duty by the Supplier or any of its employees or agents acting within the course of their employment or any of its Subcontractors and their employees or agents.

- 10.2.** The Supplier's liability under Clause 10.1 is limited as follows:
- 10.2.1. in accordance with Clause 10.6: unlimited;
  - 10.2.2. in accordance with Clause 10.7: unlimited;
  - 10.2.3. in respect of any matters for which the Supplier is required to hold insurance: the value of the relevant insurance; and
  - 10.2.4. in respect of any matters for which the Supplier is not required to hold insurance: £1,000,000.
- 10.3.** The indemnity contained in Clause 10.1 shall not apply to the extent that the loss, damage or personnel injury (including death) is caused by the negligent or wilful act of the Authority, its servants or agents.
- 10.4.** The Supplier shall indemnify and keep indemnified the Authority, its servants and agents fully against any tax, national insurance contributions or similar impost in respect of the Supplier's Personnel.
- 10.5.** Notwithstanding anything to the contrary contained in this Agreement, the Authority's liability whether arising from breach of contract, tort (including negligence), breach of statutory duty or otherwise shall be limited as follows:
- 10.5.1. in accordance with Clause 10.6: unlimited; and
  - 10.5.2. in respect of all other liability falling outside of Clause 10.6 arising out of or in connection with its obligations (other than its obligation to pay the Price) under this Agreement and all actions, claims, demands, proceedings, costs and expenses arising in respect of it: £100,000.
- 10.6.** Neither Party limits its liability for death or personal injury caused by the negligence of itself or any of its employees or agents acting in the course of their employment or in respect of a misrepresentation made fraudulently or in respect of any breach of an implied term in respect of title to goods.
- 10.7.** The Supplier's liability for any breach of Clause 20 (Data Protection) or any breach of Data Protection Legislation shall be unlimited.
- 11. Insurance**
- 11.1.** Without limiting its liability hereunder the Supplier shall maintain Insurance throughout the duration of this Agreement and 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
  - 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.

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**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;

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

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- 12.7.3. the Authority, at the Supplier's request and expense, shall allow the Supplier to conduct and/or settle all negotiations and litigation and give the Supplier all reasonable assistance in so doing. The costs incurred or recovered in such negotiations or litigation shall be paid by and to the Supplier.
- 12.8.** If an action, claim or demand for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Agreement or in the reasonable opinion of the Supplier is likely to be made, the Supplier may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed):
- 12.8.1. modify any or all of the Services without reducing the performance of the same so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted Services;
- 12.8.2. modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative Goods of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted Goods; or
- 12.8.3. procure a licence (at the Supplier's cost) to provide the Services and/or the Goods (as applicable), which are the subject of the alleged infringement, on terms which are acceptable to the Authority.
- 12.9.** The provisions contained in this Clause 12 shall survive expiry or Termination (for any reason).
- 13. Force Majeure**
- 13.1.** For the purposes of this Clause 13 the circumstances in Clauses 13.1.1 to 13.1.5 are events of Force Majeure:
- 13.1.1. acts of God, flood, drought, earthquake or other natural disaster;
- 13.1.2. terrorist attack, civil war, civil commotion or riots or disorder, war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 13.1.3. nuclear, chemical or biological contamination or sonic boom;
- 13.1.4. any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; and/or
- 13.1.5. any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party).
- 13.2.** Provided it has complied with Clause 13.3, if a Party ("**Affected Party**") is prevented, hindered or delayed in or from performing any to perform any obligation under this Agreement because of an event of Force Majeure which is both:
- 13.2.1. beyond that Affected Party's control; and
- 13.2.2. could not be prevented by that Affected Party with the application of all due diligence and foresight,
- which causes the cessation of or a substantial interference with the performance of the Services or delivery of Goods, then the duty of the Affected Party to perform the relevant obligation shall be suspended until such circumstances have ceased. In such instances the Authority shall not be liable to make any payment to the Supplier in respect of the suspension of the Services or any Goods to be delivered or any part of them and any sum already paid in respect of any part of the Services not yet performed or any Goods not yet delivered shall be held to the credit of the Authority and returned to the Authority as soon as possible.

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- 13.3.** The Affected Party shall:
- 13.3.1. as soon as reasonably practicable after the start of the Force Majeure, notify the other party in writing of the Force Majeure, the date on which it started, its likely or potential duration, and the effect of the event of Force Majeure on its ability to perform any of its obligations under this Agreement; and
  - 13.3.2. use all reasonable endeavours to mitigate the effect of the event of Force Majeure on the performance of its obligations.
- 13.4.** If the event of Force Majeure prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three (3) months, the party not affected by the Force Majeure Event may terminate this Agreement by giving one (1) weeks' written notice to the Affected Party.
- 14. Corrupt Gifts and Payments**
- 14.1.** The Supplier shall not receive or agree to receive from any person, or offer or give, or agree to give, to any employee, agent, servant or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or any other contract with the Authority or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract.
- 14.2.** The Supplier shall not conspire with any person to do any of the acts mentioned in Clauses 14.1.
- 14.3.** The Supplier shall not enter into this Agreement if in connection with it commission has been paid or is agreed to be paid to any employee, agent, servant or representative of the Authority by the Supplier or on the Supplier's behalf, unless before this Agreement is made particulars of any such commission and the terms of any agreement for the payment thereof have been disclosed in writing to the Authority's Commercial Representative.
- 14.4.** In the event that the Supplier or the Supplier's Personnel or anyone acting on the Supplier's behalf (with or without its knowledge) breaches Clauses 14.1-14.3, or commits an offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under subsection 2 of Section 117 of the Local Government Act 1972, the Authority reserves the right to terminate this Agreement by notice in writing with immediate effect and recover from the Supplier any loss resulting from such termination including the administrative costs of re-tendering the requirement and any difference in the rates or prices which the Authority may have to pay to a new supplier where such rates or prices are higher than the rates or prices payable under this Agreement and/or the amount or value of the gift, consideration or commission.
- 14.5.** Any decision of the Authority in relation to this Clause 14 shall be final and conclusive.
- 15. Equality and Discrimination**
- 15.1.** The Supplier shall comply with all applicable Equalities Legislation in its performance of this Agreement and shall take all reasonable steps to ensure that all servants, employees, agents and Subcontractors engaged in the provision of the Services and/or provision of the Goods do not unlawfully discriminate, harass or victimise within the meaning and scope of the Equalities Legislation. This Clause 15.1 is without prejudice to the Supplier's general obligation to comply with Legislation.
- 15.2.** The Supplier shall not at any time unlawfully discriminate in relation to employing any person for the purposes of performing the Services and/or providing the Goods on the grounds of any of the Protected Characteristics or temporary or part-time or agency status in employment or otherwise. For the purposes of this Clause 15.2, employing a person shall include recruiting, appointing, selecting, training, promoting, remunerating, subjecting to a detriment, disciplining and dismissing.

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- 15.3.** Without prejudice to the generality of Clauses 15.1 and 15.2, the Supplier shall at all times comply with the Equality Act 2010 ("**2010 Act**") in respect of its treatment of its employees and in the performance of the Services and/or provision of the Goods. In particular, the Supplier shall in its performance of this Agreement take (and shall ensure that its servants, agents, employees and Subcontractors take) all reasonable steps to eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act; advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the 2010 Act) and persons who do not share it; and foster good relations between persons who share such a protected characteristic and persons who do not share it.
- 15.4.** The Supplier shall comply with the Equality Act 2010 Code of Practice on Employment and the Equality Act 2010 Code of Practice on Equal Pay (Codes) (or any replacement guidance and/or publication) issued by the Equality and Human Rights Commission in respect of its treatment of its employees and in the performance of the Services and/or provision of the Goods. In particular, and without prejudice to the foregoing, the Supplier shall operate an equal opportunities policy which, so far as practicable, complies fully with the practical guidance, recommendations and advice set out in the Codes.
- 15.5.** The Supplier shall provide such information to the Authority as the Authority requires to satisfy itself that the Supplier has complied with and will continue to comply with Clauses 15.1 to 15.4. The Supplier shall also ensure that its servants, agents, employees and Subcontractors provide all relevant information to the Authority so that the Authority can assess its own compliance with its general and specific duties under the 2010 Act.
- 16. Health and Safety**
- 16.1.** The Supplier shall have due regard for and comply with its legal obligations under the Health and Safety at Work etc. Act 1974 ("**H&S Act**") and the Management of Health and Safety at Work Regulations 1999 and any amendments or regulations thereto. Particular attention is drawn to requirements of the H&S Act relating to safe working practices, use of safety equipment, all road safety measures and the conduct of persons employed.
- 16.2.** The Supplier shall:
- 16.2.1. operate in accordance with good practice advice; for example that published by the Health and Safety Executive;
  - 16.2.2. provide sufficient information, advice, training and instruction to its staff to ensure that safe working practices are adhered to;
  - 16.2.3. ensure that:
    - (a) its staff are equipped with appropriate equipment, including appropriate personal protective equipment (PPE), in order to provide the Services and/or deliver the Goods safely;
    - (b) all such equipment shall meet or exceed the minimum safety standards required by Legislation at the time of use, shall comply fully with the relevant British, European and international standards and is maintained so that it is safe in use;
    - (c) any work equipment is constructed or adapted so as to be suitable for the purpose and location for which it is used or provided;
    - (d) any work related to driving activities must not endanger other road users or put the driver at risk. All staff must follow the guidance of the Highway Code and the Supplier's own policies and procedures.
  - 16.2.4. adhere to any method statements supplied to the Authority as part of its tender submission detailing how it will comply with the above requirements;



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- 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 Head of Strategic Procurement;
- 18.1.2. in the case of the Supplier, the Contract Manager.
- 18.2.** A Party may change its details given in the table in clause 18.3 by giving notice, the change taking effect for the Party notified of the change at 9.00 am on the later of:
- 18.2.1. the date, if any, specified in the notice as the effective date for the change; or
- 18.2.2. five (5) Working Days after deemed receipt of the notice.
- 18.3.** Any notice may be delivered personally or by first class pre-paid letter or by electronic mail and shall be deemed to have been served as follows:

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<b>Delivery method</b>	<b>Deemed delivery date and time</b>
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 <b>OR</b> delivery.	9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
Email.	At the time of transmission.

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

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

**19. Audit and Information**

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

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

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

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

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

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

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

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

**20. Data Protection**

**20.1.** The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor unless otherwise specified in the Schedule of Processing, Personal Data and Data Subjects. The only processing that the Supplier is

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authorised to do is listed in the Schedule of Processing, Personal Data and Data Subjects by the Authority and may not be determined by the Supplier.

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

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

20.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;

20.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;

20.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and

20.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

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

20.4.1. process that Personal Data only in accordance with the Schedule of Processing, Personal Data and Data Subjects, unless the Supplier is required to do otherwise by Legislation. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Legislation;

20.4.2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Supplier of the adequacy of the Protective Measures), having taken account of the:

20.4.2.1.nature of the data to be protected;

20.4.2.2.harm that might result from a Data Loss Event;

20.4.2.3.state of technological development; and

20.4.2.4.cost of implementing any measures;

20.4.3. ensure that:

20.4.3.1. the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Schedule of Processing, Personal Data and Data Subjects);

20.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and

20.4.3.3. ensure that they:

20.4.3.3.1. are aware of and comply with the Supplier's duties under this clause;

20.4.3.3.2. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

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- 20.4.3.3.3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
      - 20.4.3.3.4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
    - 20.4.4. not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
      - 20.4.4.1. the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
      - 20.4.4.2. the Data Subject has enforceable rights and effective legal remedies;
      - 20.4.4.3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
      - 20.4.4.4. the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
    - 20.4.5. at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Supplier is required by Legislation to retain the Personal Data.
- 20.5.** Subject to clause 20.6, the Supplier shall notify the Authority immediately if it:
  - 20.5.1. receives a Data Subject Request (or purported Data Subject Request);
  - 20.5.2. receives a request to rectify, block or erase any Personal Data;
  - 20.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 20.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - 20.5.5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Legislation; or
  - 20.5.6. becomes aware of a Data Loss Event.
- 20.6.** The Supplier's obligation to notify under clause 20.5 shall include the provision of further information to the Authority in phases, as details become available.
- 20.7.** Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 20.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

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- 20.7.1. the Authority with full details and copies of the complaint, communication or request;
  - 20.7.2. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 20.7.3. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 20.7.4. assistance as requested by the Authority following any Data Loss Event;
  - 20.7.5. assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 20.8.** The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 20.8.1. the Authority determines that the processing is not occasional;
  - 20.8.2. the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 20.8.3. the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 20.9.** The Supplier shall allow for audits of its Processing activity by the Authority or the Authority's designated auditor.
- 20.10.** Each Party shall designate a data protection officer if required by the Data Protection Legislation.
- 20.11.** Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- 20.11.1. notify the Authority in writing of the intended Sub-processor and processing;
  - 20.11.2. obtain the written consent of the Authority;
  - 20.11.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 20 such that they apply to the Sub-processor; and
  - 20.11.4. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 20.12.** The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 20.13.** The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 20.14.** The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

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**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.

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

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- 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**

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**24. Termination on Default**

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

- 24.1.1. the Supplier commits a material breach of any term of this Agreement which breach is irremediable;
- 24.1.2. the Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 24.1.3. the Authority has served three (3) or more Default Notices on the Supplier in any consecutive period of six (6) months;
- 24.1.4. in the event that any one Default Notice has not been successfully resolved and signed off in writing by the Authority within such timescales as instructed, or if no such timescales have been stipulated, where the default has not been rectified within ten (10) Working Days;
- 24.1.5. the Supplier or any of its employees or agents acting or purporting to act on the Supplier's behalf commits an act which is an offence under the Enterprise Act 2002;
- 24.1.6. the Supplier or any of its employees shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this Agreement or to any other contract with the Authority;
- 24.1.7. the Supplier or any of its employees have committed any offence under the Bribery Act 2010;
- 24.1.8. the Supplier fails to remove a member of its staff where such person has not successfully passed the Vetting Procedure as may be required by the Authority;
- 24.1.9. the Supplier fails to remove a member of staff from the provision of Services under this Agreement in accordance with clause S3 (Supplier's Personnel) of Section C.2 (Conditions for Services);
- 24.1.10. in the event that a director or person in significant control of the Supplier (or such equivalent where the Supplier is not a company) is convicted of a criminal offence;
- 24.1.11. in the event that any of the grounds listed in Regulation 57(1), 57(3) or 57(8) of the Public Contracts Regulations 2015 apply to the Supplier or where the Authority reasonably apprehends that such events is about to occur in relation to the Supplier and notifies the Supplier accordingly;
- 24.1.12. the Supplier, any of the Supplier's Personnel, or any Subcontractor commits an MSA Offence or is subject to any investigation relating to an alleged MSA Offence or any prosecution under the Modern Slavery Legislation.

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

- 24.2.1. a substantial portion of this Agreement; or
- 24.2.2. any of the obligations set out in Clauses 2 (Warranties and Representations), 14 (Corrupt Gifts and Payments), 15 (Equality and Discrimination), 16 (Health and Safety), 20 (Data Protection), 21 (Confidentiality) and 35 (Conflicts of Interest).

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

**SECTION C TERMS AND CONDITIONS**  
**SECTION C.1 GENERAL CONDITIONS**

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

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

**25. Break**

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

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

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

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

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

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

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

**26. Consequences of Termination or Expiry**

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

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

26.2.1. immediately cease to provide the Services;

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

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

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

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

(b) Data (which upon the Authority's request will be transferred in compatible form on to such computer system as the Authority may reasonably request) (including back-ups); and

(c) other equipment and property and software belonging to the Authority which may be in the possession or under the control of the Supplier;

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- 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

**SECTION C TERMS AND CONDITIONS**  
**SECTION C.1 GENERAL CONDITIONS**

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remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

**28. Dispute Resolution**

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

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

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

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

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

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

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

**29. Continuation of Agreement in Event of Disputes**

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

**30. Transfer and Sub-contracting**

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

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

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

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

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**SECTION C.1 GENERAL CONDITIONS**

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**31. Machinery of Government Changes**

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

- 31.1.1. the delivery of services or fulfilment of functions provided or fulfilled by the Authority becomes the responsibility of another Government department, agency or other public body;
- 31.1.2. the delivery of services or fulfilment of functions provided or fulfilled by another Government department, agency or other public body becomes the responsibility of the Authority;
- 31.1.3. the Authority is required to take on new services or fulfil new functions; and/or
- 31.1.4. any of the services or functions provided or fulfilled by the Authority cease to be provided or fulfilled by the Authority without being provided or fulfilled by any Government department, agency or other public body in place of the Authority,

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

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

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

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

- 31.4.1. the Supplier must use all reasonable endeavours to minimise any increase in costs it may suffer and maximise the reduction in costs that it can achieve as a result of the Restructuring;
- 31.4.2. the Supplier must limit or avoid to the fullest extent possible, any capital or other expenditure which it planned to incur (for example to replace or maintain assets) which will no longer be necessary or appropriate as a result of the Restructuring;
- 31.4.3. (in the case of any Restructuring described in Clause 31.1.2 or 31.1.3) the Supplier shall only be entitled to proceed with the Variation to the extent that it can demonstrate to the Authority that the Variation is reasonable; and
- 31.4.4. (in the case of any Restructuring pursuant to Clause 31.1.1) the Supplier must demonstrate that it has complied with its obligations pursuant to Clause 31.2 and where the Supplier enters into a contract for the provision of continuing services with another Government department, agency or public body under that clause: (i) the Supplier shall demonstrate that it has used reasonable endeavours to structure those arrangements so as to mitigate any costs associated with the restructuring of the Services under this Agreement (for example, by redeploying assets) and (ii) the Supplier shall not be entitled to recover as a cost or charge under the Supplier, amounts for which it is separately recovering a charge under those alternate arrangements for any equivalent replacement service.

**SECTION C TERMS AND CONDITIONS**  
**SECTION C.1 GENERAL CONDITIONS**

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**31.5.** In the event that the Authority merges with or is taken over by another contracting authority, agency or other public body (“**Joining Authority**”) during the Contract Period, the Authority and the Joining Authority together shall be entitled to continue to receive the Goods and/or the Services.

**32. Modern Slavery**

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

32.1.1. neither it, nor any member of the Supplier’s Personnel, nor any Subcontractor:-

32.1.1.1. has committed an MSA Offence;

32.1.1.2. has been notified that it is subject to any investigation relating to an alleged MSA Offence or any prosecution under the Modern Slavery Legislation; or

32.1.1.3. is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or a prosecution under the Modern Slavery Legislation;

32.1.2. it, the Supplier’s Personnel, and all Subcontractors shall comply with the Modern Slavery Legislation; and that

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

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

32.2.1. inform any and all relevant agencies or bodies, including without limitation the Secretary of State pursuant to section 52 of the Modern Slavery Act 2015 (whereupon the Supplier shall at the Authority’s request respond promptly to the Authority’s enquiries, co-operate with any investigation, and allow the Authority to access any and all documents which led the Supplier to give the notification described in Clause 32.1.3 above);

32.2.2. without liability to the Supplier, terminate this Agreement with notice having immediate effect; and/or

32.2.3. require the Supplier to remove any Subcontractor or member of the Supplier’s Personnel suspected or known to have committed an MSA Offence from the performance of the Supplier’s obligations under this Agreement.

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

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

**33. Severability**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the

**SECTION C TERMS AND CONDITIONS**  
**SECTION C.1 GENERAL CONDITIONS**

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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.



**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 on 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;

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

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**SECTION C.2 CONDITIONS OF SERVICES**

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**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.

S2.3 The Supplier warrants that it shall:

S2.3.1. meet any performance dates for the Services specified in the Particulars, this Agreement or as notified to the Supplier by the Authority;

S2.3.2. co-operate with the Authority in all matters relating to the Services, and comply with all instructions of the Authority;

S2.3.3. 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;

S2.3.4. 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;

S2.3.5. adequately supervise and manage the Supplier's Personnel properly to ensure that Supplier's obligations fulfilled in accordance with this Agreement;

S2.3.6. ensure that if any of the Supplier's Personnel are not British citizens, Swiss nationals or a national of a country in the European Economic Area, 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;

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- S2.3.7. 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;
  - S2.3.8. 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;
  - S2.3.9. obtain and at all times maintain all necessary licences and consents, and comply with all applicable Legislation;
  - S2.3.10. observe all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises; and
  - S2.3.11. 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.
- S2.6. 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;
  - 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.

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- 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.
- 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.

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**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.
- 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:

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- 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 shut-down 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.
- 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:

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- 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:

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- (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.

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.



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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.

**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;
  - (c) where they are manufactured products, be free from defects in design, material and workmanship; and

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- (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.

G4.2 The Supplier shall deliver the Goods specified in each Order:

- (a) on its relevant Delivery Date or as stated in the Particulars;

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(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.

**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.

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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.

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.

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

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- 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.