

OFFICIAL



Office of the Police and Crime
Commissioner for Surrey

STANDARD TERMS OF PURCHASE - GOODS AND SERVICES

INTERPRETATION

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by the PCC for the supply of the Goods and/or Services in accordance with clause 9.

Commencement Date: the date that the first of the Goods are to be delivered or the first of the Services are to commence.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.5.

Contract: the contract between the PCC and the Contractor for the supply of Goods and/or Services as set out in these Conditions and the Order.

Contract Manager: the persons from each of the PCC (the **PCC Contract Manager**) and the Contractor (the **Contractor Contract Manager**) appointed to be responsible for managing the Contract.

Contractor: the company or entity from whom the PCC purchases the Goods and/or Services.

Contractor's Team: the Contractor's employees, consultants, agents and Subcontractors which it engages in relation to the Goods and/or Services.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Deliverables: all documents, products and materials developed by the Contractor 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).

EIR: has the meaning given in clause 4.16.

FOIA: has the meaning given in clause 4.16.

Force: The Police and Crime Commissioner for Surrey. Surrey Police Headquarters, Sandy Lane Guildford, Surrey, GU3 1HG

Goods: the goods, products and items set out in the Specification.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Mandatory Policies: the PCC's mandatory policies and codes as provided by the PCC to the Contractor from time to time.

Official Purchase Order: the PCC's purchase order for the Services.

Order: the PCC's order for the supply of Goods and/or Services, as set out in the Official Purchase Order or in the PCC's acceptance of the Contractor's quotation, as the case may be. The PCC's acceptance of the Contractor's quotation shall not imply the acceptance of any terms and conditions other than those set out in these Conditions and the Order.

PCC: The Police and Crime Commissioner for [Sussex/Surrey] of [address].

PCC Materials: has the meaning set out in clause 4.1(j).

Services: the services, including any Deliverables, to be provided by the Contractor under the Contract as set out in the Specification.

Specification: the description or specification for the Goods and/or Services to be provided in accordance with the Order.

Subcontractor: a subcontractor or agent which the Contractor engages in relation to the Services.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the PCC to purchase Goods and/or Services in accordance with these Conditions.

- 2.2 The Order shall be deemed to be accepted on the earlier of:
- (a) receipt of the Order by the Contractor; or
 - (b) any act by the Contractor consistent with fulfilling the Order.

at which point and on which date the Contract shall come into existence (“**Commencement Date**”).

- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 In the case of a conflict between the terms of these Conditions and any other document setting out the relationship between the PCC and the Contractor, the terms of these Conditions shall prevail.
- 2.5 These Conditions shall extend to any substituted or remedial services provided by the Contractor.

3. SUPPLY OF GOODS AND SERVICES

- 3.1 The Contractor shall from the Commencement Date and for the duration of the Contract perform the Contract in accordance with the terms of the Contract.
- 3.2 The Contractor shall meet any performance dates specified in the Order or notified to the Contractor by the PCC, and time is of the essence in relation to any of those performance dates.
- 3.3 The PCC may amend or cancel an Order in whole or in part at any time before delivery of the Goods or provision of the Services by giving the Contractor written notice.

4. CONTRACTOR’S OBLIGATIONS

- 4.1 In providing any Goods and Services, the Contractor shall:
- (a) co-operate with the PCC in all matters relating to the performance of this Contract, and comply with all instructions of the PCC;
 - (b) use all reasonable endeavours to supply the Goods and perform the Services in accordance with the Order and by the date specified in the Order, or, if no date is specified, with 5 Business Days of submitting the Order (**Delivery Date**);
 - (c) perform the Services with the best care, skill and diligence in accordance with best practice in the Contractor's industry, profession or trade;

- (d) ensure that the Goods, Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Goods and Deliverables shall be fit for any purpose expressly or impliedly made known to the Contractor by the PCC;
- (e) provide all equipment, tools and vehicles and such other items as are required to perform the Contract;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Goods and Deliverables, and all goods and materials supplied and used in the Services or transferred to the PCC, will be free from defects in workmanship, installation and design and be fit any purpose held out by the Contractor or made know to the Contractor by the PCC;
- (g) allow the PCC to inspect and test the Goods and Deliverables at any time before delivery. If the PCC consider the Goods and Deliverables do not conform or are unlikely to comply with the Contractor's undertakings in clause 4.1(f), the PCC shall inform the Contractor who shall take immediate action to ensure compliance;
- (h) obtain and at all times maintain all necessary licences and consents;
- (i) comply with all applicable laws, statutes, regulations and codes from time to time in force, including any applicable European legislation, orders, and bylaws, and the Mandatory Policies;
- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by the PCC to the Contractor (**PCC Materials**) in safe custody at its own risk, maintain the PCC Materials in good condition until returned to the PCC, and not dispose of or use the PCC Materials other than in accordance with the PCC's written instructions or authorisation;
- (k) not do or omit to do anything which may cause the PCC to lose any licence, authority, consent or permission on which it relies, and the Contractor acknowledges that the PCC and the Force may rely or act on the Services; and
- (l) comply with any additional obligations as set out in the Specification or Official Purchase Order.

Delivery and performance

4.2 The Contractor 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; and
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special

storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

- 4.3 The Contractor shall deliver the Goods and perform the Services:
- (a) at the location specified in the Order or at such address notified by the PCC to the Contractor; and
 - (b) during the PCC's normal business hours, or as instructed by the PCC.
- 4.4 The PCC's rights and remedies are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this Contract by the Sale of Goods Act 1979.
- 4.5 Delivery of the Goods shall be completed on the completion of unloading the Goods at the delivery location.
- 4.6 The Contractor shall not deliver the Goods in instalments without the PCC's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately.
- 4.7 Title and risk in the Goods shall pass to the PCC on completion of delivery.

Acceptance

- 4.8 The PCC shall have the right to reject the Goods and Services in whole or in part whether or not paid for in full or in part within a reasonable time of delivery or performance (notwithstanding the commencement by the PCC using the Goods or enjoying the benefit of the Services) if they do not conform to the requirements of the Contract.
- 4.9 Acceptance shall occur when the PCC provides to the Contractor a written confirmation of acceptance of the Goods or Services.

Bribery and Corruption

- 4.10 The Contractor shall not:
- (a) offer to give or agree to give any member, person or officer of the PCC or the Force or any other public body, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract, or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for the PCC; or

- (b) enter into this or any other contract with the PCC in connection with which commission has been paid or agreed to be paid by it or on its behalf or to its knowledge, unless before the contract is made particulars of any such commission and the terms and conditions of any agreement for the payment thereof have been fully disclosed in writing to the PCC.

4.11 Any breach of clause 4.10 by the Contractor or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Contractor), or the commission of any corruption offence by the Contractor or by anyone employed by it or acting on its behalf, in relation to this or any other contract shall entitle the PCC to terminate the Contract with immediate effect and recover from the Contractor the amount or value of any such gift, consideration or commission.

4.12 Any dispute over the interpretation or effect of clauses 4.10 and 4.11 shall be decided by the PCC whose decision shall be final and conclusive.

Security

4.13 The Contractor will be expected to co-operate fully with any requests for information and assistance with relevant staff and contractors of the PCC as well as the Force.

4.14 In the event that any issues arise which in the opinion of the PCC are a threat to security which cannot suitably be addressed, the PCC reserves the right to terminate the Contract on immediate notice.

4.15 The Contractor shall permit the PCC or authorised representatives of the PCC to make any inspections or tests which may reasonably be required, and the Contractor shall afford all reasonable facilities and assistance free of charge at the Contractor's premises to do this. For the avoidance of doubt inspections may include examination of security procedures, facilities or records relating to the provisions of the Goods and/or Services as the PCC may from time to time direct. Notwithstanding that the Goods and/or Services or any part thereof has been subject to a review or inspection, no failure to make a complaint at the time of such inspection or tests, and no approval given during or after such tests or inspection, shall constitute a waiver by the PCC of any rights or remedies in respect of the Goods and/or Services, and the Contractor shall not be relieved from any liability or obligation as a result of such inspection and arising at any time during the term of the Contract.

Freedom of Information

4.16 The Contractor acknowledges that both the PCC and the Force are subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR"), and shall facilitate the Force and PCC's

compliance with their information disclosure requirements pursuant to and in the manner provided for in the FOIA and EIR.

- 4.17 Where the PCC or the Force receives a request for information in relation to information that the Contractor is holding on behalf of the PCC or the Force and which the PCC or the Force does not hold itself, the PCC or the Force shall refer to the Contractor such request for information as soon as practicable and, in any event, within five (5) working days of receiving a request for information, and the Contractor shall:
- (a) provide the PCC or the Force with a copy of all such information in the form that the PCC or the Force requires as soon as practicable and by such date specified by the PCC or the Force acting reasonably may specify; and
 - (b) provide all necessary assistance as reasonably requested by the PCC or the Force to enable the PCC or the Force to respond to a request for information within the time for compliance set out in section 10 (1) of FOIA or Regulation 5 (1) of EIR.

- 4.18 The Contractor shall ensure that all information held on behalf of the PCC and the Force is retained for disclosure for at least six (6) years (from the date it is acquired) and shall permit the PCC and the Force to inspect such information as requested from time to time.

Official Secrets Acts 1911 to 1989

- 4.19 The Contractor's attention is drawn to the provisions of the Official Secrets Act 1911 to 1989 in general, and to the provisions of the Official Secrets Act 1989 in particular. The Contractor shall take all reasonable steps by display of notices or by other appropriate means to ensure that all members of the Contractor's Team have notice that these statutory provisions apply to them and will continue so to apply after the completion or earlier termination of the Contract.
- 4.20 If so required by the PCC, the Contractor, and such members of the Contractor's Team as the PCC may direct, shall sign a declaration that they have been made aware of, and understand their obligations under such Acts.

5. THE CONTRACTOR'S TEAM

- 5.1 The Contractor shall not permit or allow any member of the Contractor's Team to perform any part of the Contract, or to receive any sensitive confidential or operational information concerning the Contract or any of the PCC's operations systems or infrastructure, unless that person has been previously approved in writing by the PCC Contract Manager.

- 5.2 Owing to the nature of the Contract, if persons are required to be allocated by the Contractor for performance of the Contract, such persons are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 1986. The Contractor shall ensure that, if relevant and required by the PCC, all employees and/or persons engaged in the performance of the Contract provide information in accordance with such Act and Orders about convictions which for other purposes are “spent” under the provisions of the said Act. If required by the PCC, the Contractor shall disclose all convictions other than those in respect of minor traffic offences of the Contractor’s Team performing the Contract, and the PCC Contract Manager may require such employees and/or persons to be removed from performance of the Contract.
- 5.3 The Contractor shall ensure that all members of the Contractor’s Team are bound by undertakings of confidentiality in respect of any information obtained by them in the course of the performance of the Contract and, if requested by the PCC Contract Manager, the Contractor shall procure that such persons enter into appropriate agreements concerning such confidentiality undertakings.
- 5.4 If the Contractor is required to allocate or permit any employee or person to perform the Contract at the PCC’s sites or premises, the Contractor must provide details of such person in writing to the PCC before he/she starts to perform the Contract. Such details will contain the full name, present address and addresses for the past five years, and the date and place of birth of the employee or person so that the PCC Contract Manager may perform or procure the performance of security checks on the employee or person. Notwithstanding such notification, the PCC shall be entitled to require the Contractor to immediately remove or cause to be removed from the performance of or involvement with the Contract any member of the Contractor’s Team, and the Contractor or Sub-contractor shall thereupon withdraw that employee and/or person and provide a replacement, and the PCC shall as soon as reasonably practicable confirm the requirement in writing to the Contractor.
- 5.5 The PCC shall in no circumstances be liable either to the Contractor and/or the sub-contractor and/or employee and/or person in respect of any liability loss or damage occasioned by such withdrawal suspension or removal and the Contractor shall fully and promptly indemnify the PCC against any claim made by such sub-contractor and/or person and/or employee.
- 5.6 The Contractor shall:
- (a) procure the availability of the Contractor’s Team to provide the Contract during the term of the Contract, ensuring that a sufficient reserve of employees is available to cover holidays and staff absences;

- (b) ensure that the Contractor's Team are suitably skilled and experienced to perform tasks assigned to them and use reasonable skill and care in the performance of the Contract and that all members of the Contractor's Team are of good character;
- (c) be and shall ensure that every member of the Contractor's Team is at all times properly and sufficiently qualified, experienced and trained with regard to the performance of the Contract and in particular:
 - (i) the task or tasks such person has to perform;
 - (ii) all relevant provisions of the Contract;
 - (iii) all relevant policies, rules, procedures and standards of the PCC from time to time;
 - (iv) all relevant rules, procedures and statutory requirements concerning health and safety at work including the PCC's safety policy as notified in advance in writing to the Contractor from time to time;
 - (v) fire risks and fire precautions;
 - (vi) the need to maintain the highest standards of hygiene, courtesy and consideration;
 - (vii) the need to recognise situations which may involve any actual or potential danger of personal injury to any person on the PCC's premises, and where possible without personal risk to make safe such situations and forthwith to report such situations to the PCC Contract manager or in the event of an emergency the appropriate individual with responsibility for the premises.

5.7 The Contractor shall procure that all monies or other items of value found by the Contractor's Team on any PCC premises shall be handed to the PCC Contract Manager as soon as possible and a written receipt obtained.

5.8 The Contractor shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions or levies of any kind relating to or arising out of the employment of any person employed by the Contractor or any Sub-Contractor, and shall fully and promptly indemnify the PCC and the Force in respect of any liability in respect thereof.

5.9 The Contractor shall:

- (a) observe, and ensure that the Contractor's Team observes, all health and safety rules and regulations and any other security requirements that apply at any of the PCC's premises. The PCC reserves the right to refuse the Contractor's Team access to the PCC's premises, which

shall only be given to the extent necessary for the performance of the Contract;

- (b) notify the PCC as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the performance of the Contract; and
- (c) not unlawfully harass or victimise within the meaning and scope of the provisions of the Equality Act 2010 or any Act of Parliament or statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions by all the Contractor's Team. The PCC may at its discretion and at any time take all reasonable steps including without limitation the inspection of the Contractor's employment records or site visits to ensure compliance with its requirements.

6. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 6.1 The Contractor shall not include or permit the inclusion at any time of the name/style or logo of the PCC or the Force or used by the PCC or the Force or any photograph or drawing depicting an employee or member of the PCC or officer or employee of the Force in any published material without the consent of the PCC.
- 6.2 Neither the Contractor nor any member of the Contractor's Team shall, without prior written consent of the PCC (which shall not be withheld unreasonably), advertise or publicly announce that the Contractor is providing the Goods and/or Services to the PCC or the Force or the existence of the Contract. If such consent is given, only factual statements that the Goods and/or Services are being or have been provided may be made, and no endorsements by the PCC or the Force may be implied.
- 6.3 Any breach of clause 6.1 or clause 6.2 will entitle the PCC to terminate the contract with immediate effect and without penalty to the PCC. The Contractor acknowledges and agrees that damages will not be an adequate remedy for any such breach and will indemnify the PCC and the Force for all and any costs expenses losses and liabilities the PCC or the Force may incur or suffer in relation to enforcing clause 6.1 or clause 6.2 including seeking an injunction to prevent such unauthorised use.
- 6.4 In the event of any enquires including media, Parliamentary or official enquiries being received by the Contractor about the Contract, the Good and/it the Services provided thereunder or any other matter relating to the Contract, the Contractor shall immediately refer the matter to the PCC Contract Manager. The Contractor shall make

no formal or informal response without the prior written approval of the PCC Contract Manager.

7. THE PCC'S REMEDIES

7.1 If the Contractor fails to perform the Contract by the Delivery Date or such other applicable date, the PCC shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract in whole or in part with immediate effect by giving written notice to the Contractor;
- (b) to refuse to accept any subsequent performance of the Contract (including delivery of the Goods or performance of the Services) which the Contractor attempts to make;
- (c) to recover from the Contractor any costs incurred by the PCC in obtaining substitute services from a third party;
- (d) obtain substitute products or services from another supplier and recover from the Contractor any costs and expenses incurred by the PCC in obtaining such substitute;
- (e) where the PCC has paid in advance for Goods and/or Services that have not been provided by the Contractor, to have such sums refunded by the Contractor; or
- (f) to claim damages for any additional costs, loss or expenses incurred by the PCC which are in any way attributable to the Contractor's failure to meet such dates.

7.2 If any Goods delivered or Services supplied to the PCC are not in conformity with the terms of this Contract, then, without limiting any other right or remedy that the PCC may have, the PCC may reject those Goods and/or Services and:

- (a) require the Contractor to repair or replace the rejected Goods or correct or re-perform the Services at the Contractor's risk and expense within five Business Days of being requested to do so;
- (b) instruct third parties to remedy or cause to be remedied any non-conformity or deficiency and the Contractor shall indemnify the PCC for all such costs;
- (c) require the Contractor to repay the price of the rejected Goods and/or Services in full (whether or not the PCC has previously required the Contractor to repair or replace the rejected Goods or correct or re-perform the Services);
- (d) terminate the Contract in whole or in part with immediate effect or written notice to the Contractor; and/or

- (e) claim damages for any other costs, expenses or losses resulting from the Contractor's delivery of Goods or performance of the Services that do not conform with the terms of this Contract.

7.3 These Conditions shall extend to any substituted or remedial goods or services provided by the Contractor.

7.4 The PCC 's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

8. THE PCC'S OBLIGATIONS

The PCC shall:

- (a) provide the Contractor with reasonable access at reasonable times to the PCC's premises for the purpose of performing the Contract; and
- (b) provide such information to the Contractor as the Contractor may reasonably request and the PCC considers reasonably necessary for the purpose of performing the Contract.

9. CHARGES AND PAYMENT

9.1 The Charges shall be set out in the Order, and shall be the full and exclusive remuneration of the Contractor in respect of the performance of the Contract. Unless otherwise agreed in writing by the PCC, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Contract.

9.2 The Contractor shall invoice the PCC on completion of the Services and following completion of the delivery of the Goods. Each invoice shall include such supporting information required by the PCC to verify the accuracy of the invoice, including but not limited to the number of the Official Purchase Order.

9.3 In consideration of the performance of the Contract by the Contractor, the PCC shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Contractor.

9.4 All amounts payable by the PCC under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Contractor to the PCC, the PCC shall, on receipt of a valid VAT invoice from the Contractor, pay to the Contractor such additional amounts in respect of VAT as are chargeable on the supply of the Goods and Services at the same time as payment of the Charges.

- 9.5 Any queries relating to payment shall be referred to the PCC Contract Manager.
- 9.6 The PCC may at any time, without notice to the Contractor, set off any liability of the Contractor to the PCC against any liability of the PCC to the Contractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the PCC of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 9.7 The Contractor shall maintain during the term of the Contract and for seven years after its termination complete and accurate records of the performance of this Contract, including the time spent and materials used by the Contractor in providing the Goods and the Services. The Contractor shall allow the PCC and its authorised agents reasonable access to such records at all reasonable times on request, and shall provide all reasonable assistance to the PCC for the purposes of carrying out an audit of the Contractor's compliance with this Contract including all activities, charges, performance, security and integrity.
- 9.8 The Contractor shall, if requested by the PCC, provide free of any charge or cost such management information as the PCC may require from time to time.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Contractor assigns to the PCC, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including the Deliverables, and the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Intellectual Property Rights whether occurring before, on, or after the date of this Contract.
- 10.2 In respect of all Intellectual Property Rights that are assigned to the PCC under the Contract, including the Deliverables or any part of them, the Contractor warrants that:
- (a) it has full clear and unencumbered title to all such items;
 - (b) at the date of delivery of such items to the PCC, it will have full and unrestricted rights to transfer all such items to the PCC; and
 - (c) so far as it is aware, exploitation of the assigned rights will not infringe the rights of any third party.
- 10.3 The Contractor shall obtain waivers of all moral rights in the products, including the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

10.4 The Contractor shall, promptly at the PCC's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the PCC may from time to time require for the purpose of securing for the PCC the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the PCC in accordance with clause 10.1.

10.5 All PCC Materials are the exclusive property of the PCC.

11. INDEMNITY

11.1 The Contractor shall keep the PCC indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the PCC as a result of or in connection with:

- (a) any claim brought against the PCC for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Goods and Services, to the extent that the claim is attributable to the acts or omissions of the Contractor or the Contractor's Team;
- (b) any third party's use of the Intellectual Property Rights in the Deliverables;
- (c) any breach of the warranties contained in clause 10.2;
- (d) any breach by the Contractor and/or any Sub-Processor (as applicable) of clause 15.4 including where the Contractor's breach then places the PCC in breach or subject to regulatory action; and all amounts paid or payable by the PCC to a third party which would not have been paid or payable if the Contractor's breach of clause 15.4 had not occurred;
- (e) any claim made against the PCC by a third party arising out of, or in connection with, the supply of the Goods and Services, including any claim for injury or damage to person or property to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Contractor or the Contractor's Team; and
- (f) compensation for any injury (including injury resulting in death) or damage occasioned to any person whomsoever and reinstate and make good to the satisfaction of the PCC or compensation for any injury or damage occasioned to any property or right whatsoever where such injury or damage is caused by an action or omission of the Contractor or the Contractor's Team.

11.2 At the request of the PCC and at the Contractor's expense, the Contractor shall provide all reasonable assistance to enable the PCC to resist any claim, action or

proceedings brought against the PCC as a consequence of a breach of the warranties contained in clause 10.2.

11.3 This clause 11 shall survive termination of the Contract.

12. INSURANCE

12.1 During the term of the Contract and for a period of two years thereafter, the Contractor shall maintain in force, with a reputable insurance company, all appropriate insurance including but not limited to professional indemnity insurance with any limit reasonably required by the PCC in writing and any other insurances which the PCC advises the Contractor in writing that it requires.

12.2 The Contractor shall, on the PCC 's request, produce both any insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

13. TERMINATION

13.1 Without affecting any other right or remedy available to it, the PCC may terminate the Contract:

- (a) with immediate effect by giving written notice to the Contractor:
 - (i) if there is a change of Control of the Contractor; or
 - (ii) if the Contractor's financial position deteriorates to such an extent that in the PCC 's opinion the Contractor's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (iii) if the Contractor takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
 - (iv) if the Contractor suspends, or threatens to suspend, or ceases, or threatens to cease, to carry on all or a substantial part of its business; or
 - (v) if the Contractor commits a breach of any of clause 4.1(i), 4.10, 4.19, 4.20, 6.1 or 6.2 ; or

(vi) if the Contractor (if the Contractor is an individual), any director (in the case of a company), any member (in the case of a limited liability partnership), or any partner (in the case of a partnership):

(A) is convicted of a criminal offence relating to the conduct of the Contractor's business or profession;

(B) fails to comply with any obligations relating to the payment of any taxes or social security contributions;

(C) makes, or is found to have made, any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation; or

(D) fails to obtain any necessary licences or obtain or maintain membership of any relevant body;

(b) for convenience by giving the Contractor one month's written notice.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect and claim for any resulting losses or expenses by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or

(b) commits a series of breaches of any term of this Contract having been given notice under clause 13.2 on not less than two previous occasions.

13.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

14. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason, the Contractor shall immediately deliver to the PCC all Deliverables whether or not then complete, and return all PCC Materials. If the Contractor fails to do so, then the Contractor grants the PCC an irrevocable licence to enter the Contractor's premises and take possession of them. Until they have been returned or delivered, the Contractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

15. **GENERAL**

15.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result solely from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance by one party continues for fourteen days, the other party may terminate the Contract by giving fourteen days written notice to the delayed or non-performing party.

15.2 **Assignment and other dealings.**

- (a) The PCC may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Contractor may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the PCC.

15.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15.3; and
 - (ii) as may be required by law (including but not limited to in accordance with FOIA and EIR), a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

15.4 **Data Protection.** The parties recognise that the Contractor may process personal data that comes into its possession as a result of or in connection with its performance of its obligations under this Contract and where such is applicable, clauses 15.4.1 to 15.4.7 (inclusive) of this Contract shall apply.

- 15.4.1 Any terms used in this Contract that are defined in the Data Protection Laws shall have the meaning given to them in such laws, including, without

limitation “**Controller**”, “**Processor**”, “**Processing**”, “**Data Subject**”, “**Personal Data**” and “**Personal Data Breach**”.

- 15.4.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15.4 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 15.4, **Applicable Laws** means (for so long as and to the extent that they apply to the Contractor) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 15.4.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the PCC is the Controller and the Contractor is the Processor. Schedule 1 sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 15.4.4 Without prejudice to the generality of clause 15.4.2, each party will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data for the duration and purposes of this Contract.
- 15.4.5 Without prejudice to the generality of clause 15.4.2 the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Contract:
- (i) process that Personal Data only on the documented written instructions of the PCC which are set out herein unless the Contractor is required by Applicable Laws to otherwise process that Personal Data. Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify PCC of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying PCC;
 - (ii) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the PCC, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
- (iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (iv) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the PCC has been obtained and the following conditions are fulfilled:
 - (a) the PCC or the Contractor has provided appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) the Contractor complies with reasonable instructions notified to it in advance by the PCC with respect to the processing of the Personal Data;
 - (v) assist the PCC in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (vi) notify the PCC without undue delay (and in any event within 12 hours) on becoming aware of a Personal Data Breach;
 - (vii) at the written direction of the PCC, delete or return Personal Data and copies thereof to the PCC on termination of the Contract unless required by Applicable Law to store the Personal Data; and
 - (viii) maintain complete and accurate records and information to demonstrate its compliance with this clause 15.4 and allow for audits by the PCC or the PCC's designated auditor and immediately inform the PCC if, in the opinion of the Contractor, an instruction infringes the Data Protection Legislation.

15.4.6 The Contractor shall not permit any Processing of Personal Data by any agent or subcontractor or other third party ("Sub-Processor") without the prior written authorisation of the PCC and only then subject to the Contractor informing the PCC of any changes it has made and permitting the PCC to object to those, as well as such conditions as the PCC may require and provided that the Contractor remains fully liable for all the actions and omissions of the Sub-Processor and that any Sub-Processor

agrees in writing to comply with obligations the same as those imposed on the Contractor in this clause 15.4.

15.4.7 In the arising out of or in connection with any breach by the Contractor and/or any Sub-Processor (as applicable) of this clause 15.4, the Contractor shall indemnify the PCC as provided at clause 11.

15.5 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.6 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.7 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

15.7.1 waive that or any other right or remedy; or

15.7.2 prevent or restrict the further exercise of that or any other right or remedy.

15.8 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

15.9 **Notices.**

15.9.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address, email address and/or fax number as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

15.9.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's

delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

15.9.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.10 **Third parties.** No one other than a party to the Contract and the Force shall have any right to enforce any of its terms.

15.11 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

15.12 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Schedule 1 Processing, Personal Data and Data Subjects

The processing of personal data is as follows *(provide a description of the subject matter and nature of the processing, including any systems used to store and process personal data, obligations of the Processor and any rights of the Controller with regards to the personal data)*:

.....

Data subjects - the personal data concern the following categories of data subjects (please specify):

.....

Purposes of the Processing - the processing is necessary for the following purposes (please specify):

.....

Duration of Processing:

.....

Categories of data - the personal data processed fall within the following categories of data (please specify):

.....

Special categories of personal data (if appropriate) - the personal data processed fall within the following categories of special categories of personal data (please specify):

.....

The Contractor shall process the Personal Data only in accordance with terms of this Contract and the instructions received in writing by PCC from time to time.