

# OFFICIAL

## GENERAL TERMS AND CONDITIONS

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## 1. INTERPRETATION

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

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

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

**“Authority’s Premises”** means the premises which are to be made available for use by the Consultant for the provision of the Services on the terms set out in this Contract.

**“Authority’s Property”** means all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Authority and/or the Chief Constable and any equipment, keys, hardware or software provided for the Consultant or the Consultant’s Personnel’s use by the Authority during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant or the Consultant’s Personnel on the computer systems or other electronic equipment of the Authority, the Consultant or the Consultant’s Personnel during the Engagement.

**“Applicable Laws”** means (for so long as and to the extent that they apply to this Contract) the law of the European Union, the law of any member state of the European Union and/or the Data Protection Legislation and any other law that applies in the UK

**“Authorised Representatives”** the persons respectively designated as such by the Authority or the Chief Constable and the Consultant.

**“Bribery Act”** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**“Charges”** the charges which shall become due and payable by the Authority to the Consultant in respect of the Services in accordance with the provisions of this Contract, as such charges are set out in Section 5 of this Contract.

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

**“Commencement Date”** means the start date from which the Contract takes effect as stated in Section One of the Contract.

**“Capacity”** means an agent, consultant, director, employee, owner, partner, shareholder or in other capacity.

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

- (a) information whether technical, operational, commercial, financial or otherwise (including without limitation data, know-how, formulae, processes, designs, photographs, audio or videotape, CD ROMs, drawings, specifications, samples, finances, programmes, records, business plans, consumer research, analysis or experience) of whatever nature and whether disclosed orally, pictorially, in writing, by demonstration, by viewing, in machine readable form or other means (including on electromagnetic or CD media or via telephone lines or radio or microwave) and whether stored electronically or otherwise which relates to the Authority’s or Chief Constable’s business, operations, products, developments, services, trade secrets, know-how, personnel,

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supplies, customers, victims, employees, police officers or the Services which includes police tactics or information, covert or overt;

- (b) notes, reports, analysis and reviews of, and any other information derived from, any information referred to in paragraph (a) above or which contains or is based in whole or in part upon such information;
- (c) information designated as confidential, commercially sensitive or politically sensitive or which ought reasonably to be considered as such; and
- (d) all materials belonging to another person in respect of which the parties owe obligations of confidentiality.

**“Conditions”** means the terms and conditions set out in this document from time to time.

**“Consultant's Personnel”** all employees, staff, other workers, agents and consultants of the Consultant and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

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

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

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

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

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

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

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

**“Data Protection Legislation”** means the Data Protection Act 2018 and the UK GDPR, and any replacement or supplementary legislation coming into effect from time to time

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

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

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

**“EIRs”** means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**“Engagement”** means the engagement of the Consultant by the Authority for the Contract Period on the terms of this Contract

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

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**“FOIA”** means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

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

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

**“GDPR”** means the UK General Data Protection Regulation

**“Health and Safety Policy”** means the health and safety policy of the Authority or the Chief Constable as provided to the Consultant on or before the Commencement Date or as subsequently provided to the Consultant from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

**“Information”** has the meaning given under section 84 of FOIA.

**“Intellectual Property Rights”** means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

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

**“Law”** means any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Consultant is bound to comply.

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

**“Request for Information”** means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

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

**“Service Levels”** means the levels of performance or key milestones set out in the Specification or any service level agreement attached to this Contract.

**“Services”** means the consultancy services to be delivered by or on behalf of the Consultant under this Contract, as more particularly described in the Specification.

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

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

**“Working Day”** means Monday to Friday, excluding any public holidays in England and Wales.

### 1.2 Construction.

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

### 1.3 In these Conditions:

- (a) Clause, schedule, section and paragraph headings shall not affect the interpretation of this Contract.
- (b) Words in the singular shall include the plural and vice versa.
- (c) 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, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- (d) A reference to **writing** or **written** includes faxes but not e-mail.
- (e) Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- (f) A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Contract) at any time.

## 2. BASIS OF CONTRACT

- 2.1 The Authority appoints the Consultant on a non-exclusive and independent contractor basis to provide the Services in accordance with the terms and conditions of this Contract.
- 2.2 The Contract shall commence on the Commencement Date and the term of the Contract shall be the Contract Period.
- 2.3 All Purchase Orders issued by the Authority to the Supplier in relation to the Contract shall be fulfilled in accordance with the terms set out in the Contract.
- 2.4 The Consultant acknowledges that the Authority has relied on all information provided in writing in their tender submission in awarding this Contract and warrants that it is accurate and valid and will notify the Authority of any matters which may arise during the term of the Contract that would cause the Consultant's responses to change. Any failure to notify the Authority in regard to the obligation in this clause shall constitute a Material Breach and the Authority reserves the right to terminate this Contract if the change in circumstances notified to the Authority under the terms of this Contract are of such a significant gravity that in the Authority's reasonable opinion the Contract would not have been awarded and/or the current status of the Consultant is such that the Authority is unable to continue the contractual relationship.
- 2.5 If there is any ambiguity or inconsistency in or between these terms and conditions of the Contract and the Special Conditions, the Special Conditions will prevail.

**3. REPRESENTATIONS AND WARRANTIES**

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

3.2 Each Party represents and warranties that:

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

3.3 The Consultant represents and warrants that:

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

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- (i) it is not affected by any proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Consultant or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Consultant's assets or revenue; and
  - (j) for the Contract Period and for a period of twelve (12) months after the termination or expiry of this Contract, the Consultant shall not employ or offer employment to any staff of the Authority which have been associated with the provision of the Services without written approval or the prior written consent of the Authority, which shall not be unreasonably withheld. However this clause 3.3(j) shall not preclude the Consultant's rights to (i) make generalised searches for employees by the use of advertisements in the media (including by any recruitment agency), (ii) hire any employee of the Authority who approaches the Consultant on an unsolicited basis; or (iii) solicit for employment or hire any such employee who ceases to be employed by the Authority.
- 3.4 Each of the representations and warranties set out in clauses 3.1 and 3.3 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Contract.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under clauses 3.1 and 3.3 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Consultant which constitutes a Material Breach.

## 4. SERVICE STANDARDS

The Consultant shall provide the Services during the Engagement:

- (a) with all reasonable care, skill and ability and use its reasonable endeavours to promote the interests of the Authority;
- (b) to ensure compliance with the Service Levels and all reasonable instructions by the Authority;
- (c) to ensure compliance with all Laws at no additional cost; and
- (d) promptly give to the Authority all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services and the Service Levels and any Laws.

## 5. HEALTH AND SAFETY

- 5.1 The Consultant shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:
  - (a) all applicable Law regarding health and safety; and
  - (b) the Health and Safety Policy whilst at the Authority's Premises.
- 5.2 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's Premises of which it becomes aware and

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which relate to or arise in connection with the performance of this Contract. The Consultant shall instruct the Consultant's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

### **6. AUTHORITY'S PREMISES**

- 6.1 The Authority shall provide the Consultant, subject to clause 5 and clause 9, with access to such parts of the Authority's Premises as the Consultant reasonably requires for the purposes only of properly providing the Services.
- 6.2 The Consultant shall ensure that:
- (a) where using the Authority's Premises, it will keep such Premises properly secure and it will comply and cooperate with the Authority's Authorised Representative's reasonable directions regarding the security of the same; and
  - (b) only those of the Consultant's Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so.
- 6.3 The Consultant shall notify the Authority immediately on becoming aware of any damage caused by the Consultant or the Consultant's Personnel to any property of the Authority, to any of the Authority's Premises or to any property of any other recipient of the Services in the course of providing the Services.

### **7. PAYMENT**

- 7.1 In consideration of the provision of the Services by the Consultant in accordance with the terms and conditions of this Contract, the Authority shall pay the Charges to the Consultant.
- 7.2 The Consultant shall invoice the Authority for payment of the Charges as agreed in writing between the Parties. All invoices shall be directed to the Authority's Authorised Representative.
- 7.3 The Authority shall pay the Consultant any sums due under such an invoice no later than a period of 30 days from the date of invoice.
- 7.4 Interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Consultant shall not suspend the supply of the Services if any payment is overdue.
- 7.5 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Consultant shall indemnify the Authority and the Chief Constable if applicable against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Consultant's failure to account for, or to pay, any VAT relating to payments made to the Consultant under this Contract.
- 7.6 The Consultant shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this Contract.
- 7.7 The Authority may retain or set off any sums owed to it by the Consultant which have fallen due and payable against any sums due to the Consultant under this Contract.

### **8. OTHER ACTIVITIES**

Nothing in this Contract shall prevent the Consultant or the Consultant's Personnel from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that such activity does not cause a breach of any of the Consultant's obligations under this Contract.

## **9. PERSONNEL USED TO PROVIDE THE SERVICES**

9.1 At all times, the Consultant shall ensure that:

- (a) each of the Consultant's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Consultant's Personnel to provide the Services properly;
- (c) only those people who are authorised by the Consultant (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (d) all of the Consultant's Personnel comply with the Authority's policies applicable to persons who are allowed access to the Authority's Premises including any health and safety procedures and security arrangements including a right to search when entering or leaving the Authority's Premises and being escorted in certain areas and ensuring that appropriate security clearance has been obtained for each of the Consultant's Personnel as required by the Authority (in its absolute discretion).

9.2 The Authority may refuse to grant access to, and remove, any of the Consultant's Personnel who do not comply with any such policies, or if they otherwise present a security threat or fails any security clearance check. The Authority does not have to give reasons for its decision.

9.3 The Authority reserves the right to remove from the Premises anyone not complying with this requirement or suspected of being under the influence of alcohol, or any other substance which has the effect of impairing performance.

9.4 The Consultant shall replace any of the Consultant's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Consultant's Personnel for any reason, the Consultant shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

9.5 The Consultant shall maintain up-to-date personal records on the Consultant's Personnel engaged in the provision of the Services and shall, to the extent permitted by applicable law and regulation and the Consultant's internal policies, provide information to the Authority as the Authority reasonably requests on the Consultant's Personnel. The Consultant shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

9.6 Where the Consultant provides the Services via the Key Personnel, they shall not be released from providing the Services to the Authority, except for reason of sickness, maternity leave, paternity leave, termination of employment or because the Authority has requested they be removed, or the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction or other extenuating circumstances explained to the Authority. Any replacements for the Key Personnel shall be subject to the agreement of the Authority and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Consultant.

## **10. REPORTING**

10.1 The Authorised Representatives shall discuss at regular intervals, such intervals to be no longer than once a month, the Consultant's progress and the Consultant shall provide the Authority with a monthly report summarising its performance in respect of the Service Levels.

## 11. MONITORING

- 11.1 The Authority may monitor the performance of the Services by the Consultant.
- 11.2 The Consultant shall co-operate, and shall procure that its sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 11.1 at no additional charge to the Authority.

## 12. STATUS

- 12.1 The relationship of the Consultant (and the Consultant's Personnel) to the Authority will be that of independent contractor and nothing in this Contract shall render it (nor the Consultant's Personnel) an employee, worker, agent or partner of the Authority or the Chief Constable and the Consultant shall not hold itself out as such and shall procure that the Consultant's Personnel shall not hold themselves out as such.
- 12.2 This Contract constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the Authority and the Chief Constable if applicable for and in respect of:
- (a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Consultant's Personnel in respect of the Services, where such recovery is not prohibited by law. The Consultant shall further indemnify the Authority and the Chief Constable if applicable against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Authority or the Chief Constable in connection with or in consequence of any such liability, deduction, contribution, assessment or claim;
  - (b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant's Personnel against the Authority or the Chief Constable arising out of or in connection with the provision of the Services.
- 12.3 The Authority may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Consultant.
- 12.4 The Consultant warrants that it is not nor will it prior to the cessation of this Contract, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

## 13. DISPUTE RESOLUTION

- 13.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (**Dispute**) then, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
  - (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Authority's Chief Executive and the Consultant's Chief Executive who shall attempt in good faith to resolve it; and

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- (c) if the Authority's Chief Executive and the Consultant's Chief Executive are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 60 days after the date of the ADR notice.

13.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 36.11 which clause shall apply at all times.

### **14. SUB-CONTRACTING AND ASSIGNMENT**

14.1 The Authority may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract in the event of a change in the legal status of the Authority by reason of any statute.

14.2 The Consultant must not assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract, nor may the Consultant sub-contract the whole or any part of its obligations under this Contract except that the Consultant may sub contract part of its activities under this Contract with the prior written consent of the Authority Provided Always that:

- (a) The Consultant will remain liable for all its obligations under this contract irrespective of any such subcontracting; and
- (b) The Consultant shall be fully responsible for the acts of any sub contractor as if they were its own.

### **15. INDEMNITIES**

The Consultant shall indemnify and keep indemnified the Authority and the Chief Constable if applicable against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Contract, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of Consultant's Personnel save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or applicable law by the Authority or the Authority's Authorised Representatives.

### **16. INSURANCE**

16.1 The Consultant must take out at its own cost and maintain with a reputable insurance company policies of insurance providing an adequate of cover for the risks set out in the Contract and in any event shall take out and maintain the following insurance coverages:

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

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- 16.2 The Consultant shall at its own cost effect and maintain with a reputable insurance company a The cover shall be in respect of all risks which may be incurred by the Consultant, arising out of the Consultant's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Consultant.
- 16.3 The Consultant shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate insurance policies are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 16.4 The terms of any insurance or the amount of cover shall not relieve the Consultant of any liabilities under the Contract.

### **17. FREEDOM OF INFORMATION**

- 17.1 The Consultant acknowledges that the Authority and the Chief Constable if applicable are subject to the requirements of the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR) and the Consultant agrees to assist and cooperate with the Authority and the Chief Constable if applicable (at the Consultant's expense) as mandated by the Authority or Chief Constable if applicable in relation to these laws.
- 17.2 Any Requests received by the Consultant shall be forwarded to the Authority or Chief Constable immediately.
- 17.3 The provisions of clause 17 shall extend to sub-contractors and the Consultant shall ensure compliance with this requirement.
- 17.4 The Consultant acknowledges that the Authority and the Chief Constable if applicable may, acting in accordance with the FOIA, or the EIR be obliged to disclose information relating to the Contract:
- (a) without consulting with the Consultant; or
  - (b) following consultation with the Consultant and having taken the Consultant's views into account: or
  - (c) in accordance with legislation and procedural transparency requirements.
- 17.5 Where it is necessary for the Consultant to provide information to the Authority which it believes to be information falling into the exemptions set out in the FOIA ("Exempt Information"), it shall state in writing to the Authority the nature of the information and the relevant exemption. The Authority will use reasonable endeavours to consult with the Consultant before disclosing such information under the FOIA. The Consultant acknowledges that the final decision whether to disclose such information will rest with the Authority and not with the Consultant. Nothing contained in this Contract or any documents or negotiations relating to this Contract shall prevent the Authority from disclosing any information which (in the Authority's reasonable opinion or in accordance with any recommendation, notice or decision of a competent Authority) it is required to disclose under the FOIA.
- 17.6 When requested to do so by the Authority, the Consultant shall promptly provide the information in its possession relating to this Contract and shall assist and co-operate with the Authority to enable the Authority to respond to a Request within the time limit set out in the relevant legislation.

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- 17.7 The Consultant shall observe the Authority's Retention and Destruction Policy (details of which shall be provided by the Authority to the Consultant upon request) and shall not destroy information other than in accordance with this policy. If the Authority notifies the Consultant of a request for information held by the Consultant, which is due for destruction the Consultant shall immediately suspend destruction of that information to allow disclosure to take place. Upon the termination of this Contract the parties shall agree which party has the control of the retained information. Should the Consultant retain control of the information this clause 17 shall remain in force beyond the termination of this Contract.
- 17.8 The Consultant shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed.
- 17.9 The Consultant shall indemnify the Authority and the Chief Constable if applicable against all claims, demands, actions, costs, proceedings and liabilities that the Authority directly incurs due to the Consultant's or any sub-contractor breach of this clause 17 or any part of it.

### **18. DATA PROTECTION**

- 18.1 The Consultant warrants that it will comply with the Data Protection Legislation and this clause is in addition to, and does not relieve, remove or replace the Consultant's obligations under the Data Protection Legislation.
- 18.2 Where the Authority or the Chief Constable if applicable is the Controller of the Controller's Data and the Consultant is the Processor, the Consultant shall enter into a data processing contract with the relevant Controller setting out the scope, nature and purpose of the Processing by the Consultant, the duration of the Processing, the types of Controller's Data and categories of Data Subject involved and the obligations and rights of the Consultant and the Controller.
- 18.3 The Consultant shall comply at all times with its obligations under the data processing contract referred to in clause 18.2 above and shall only Process the Controller's Data to the extent, and in such a manner, as is necessary for the purposes identified by the Controller and in the manner specified by the Controller and for no other purpose or in any manner except on the written instructions of the Controller or as required by any Laws. The Processor shall not determine at any time the purpose or means of the Processing and, if it is so required by any Laws, the Consultant shall promptly notify the Controller before Processing the Controller's Data unless prohibited by such Laws. The Consultant will keep a record of any Processing of the Controller's Data it carries out under the Contract.
- 18.4 Where either the Authority or the Chief Constable if applicable is acting as joint Controllers of the Controller's Data with the Consultant, both parties shall enter into a joint data control agreement that clearly sets out each controller's respective responsibilities and duties to ensure compliance under the Data Protection Legislation. The relevant parties shall comply at all times with all obligations set out in such joint data control agreement.
- 18.5 In all circumstances where the Consultant processes Controller's Data on behalf of it in connection with this Contract, the Consultant Processes any Controller's Data on behalf of the relevant Controller pursuant to this Contract, the Consultant agrees to:
- (a) provide all reasonable assistance to the relevant Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the relevant Controller, include:
    - (i) a systematic description of the envisaged processing operations and the purpose of the processing;

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- (ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Controller's Data.
- (b) process such Controller's Data only for the purposes of performing the Consultant's obligations under this Contract and only in accordance with the relevant Controller's lawful written instructions from time to time and any data processing agreement, including with regard to transfers of such Controller's Data outside the European Economic Area or to an international organisation (unless required to do so by any UK, European Union or EU member state law to which the Consultant is subject; in such a case the Consultant shall inform the relevant Controller of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest);
- (c) keep such Controller's Data confidential, disclose and permit access to such Controller's Data only to those of the Consultant's Personnel who need to have such access to perform the Consultant's obligations in this Contract, and procure that such Consultant's Personnel are aware of the Consultant's duties under this Contract and any data processing agreement and are subject to and abide by such confidentiality obligation;
- (d) not disclose, or sub-contract the Processing of, such Controller's Data to any third party including but not limited to businesses associated with the Consultant or any of the Consultant's principals, without the relevant Controller's prior written consent. Where the relevant Controller provides such consent to disclosure or sub-contracting, the Consultant shall first procure from such third party obligations concerning the security and processing of such Controller's Data in a form acceptable to the relevant Controller which, for the avoidance of doubt, shall include the obligations and restrictions contained in this clause 18.5. Where the Consultant subcontracts its obligations under this Contract to a third party, the Consultant shall remain fully liable to the relevant Controller for the performance of that third party's data protection obligations;
- (e) provide the relevant Controller with copies of such Controller's Data as the relevant Controller may reasonably request from time to time;
- (f) assist the relevant Controller as the relevant Controller may reasonably request from time to time, by using appropriate technical and organisational measures, insofar as that is possible, for the fulfilment of the relevant Controller's obligations to respond to
  - (i) requests made by Data Subjects under applicable Data Protection Legislation; (ii) other requests for information which the relevant Controller may receive in respect of such Controller's Data; or (iii) any other request to which the relevant Controller may be obliged to respond;
- (g) make available to the relevant Controller all information necessary to demonstrate compliance with the obligations laid down in this clause 18.5 and applicable Data Protection Legislation, including but not limited to the sixth principle of the DPA 2018 or any equivalent provisions under applicable Data Protection Legislation, and allow for and contribute to audits including inspections conducted by the relevant Controller or another auditor mandated by the relevant Controller. The Consultant shall inform the

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relevant Controller immediately if, in the Consultant's opinion, an instruction in that regard infringes applicable Data Protection Legislation or any other European Union or EU member state's data protection provisions to which the relevant Controller is subject;

- (h) comply with applicable Data Protection Legislation and take all measures, including but not limited to appropriate technical and organisational measures, required by applicable Data Protection Legislation (including but not limited to article 32 of the GDPR) and all associated primary and secondary legislation when processing such Controller's Data which may include pseudonymising and encrypting Controller's Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability and access to the Controller's Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
- (i) assist the relevant Controller in ensuring compliance with the relevant Controller's security obligations set out in applicable Data Protection Legislation (including but not limited to articles 32 to 36 of the GDPR), taking into account the nature of the Processing and the information available to the Consultant;
- (j) upon termination of this Contract, cease Processing such Controller's Data provided that the Consultant may continue to hold such Controller's Data for archival purposes to the extent and for so long as is necessary to comply with any statutory obligations to hold such Controller's Data ("Archival Period");
- (k) upon termination of this Contract or expiry of any relevant Archival Period (whichever is later), at the relevant Controller's option delete or return such Controller's Data; and
- (l) notify the relevant Controller without undue delay in the event that the Consultant breaches any of the clauses above).

18.6 The Consultant shall notify the Controller immediately if it becomes aware of any unauthorised or unlawful Processing, loss of, damage to or destruction of the Controller's Data and agrees to indemnify and keep indemnified and defend at its own expense the Controller against all costs, claims, damages or expenses incurred by the Controller or for which the Controller may become liable due to any failure by the Consultant or the Consultant's Personnel to comply with any of its obligations under this clause 18.

18.7 The Consultant shall comply with the Authority's or the Chief Constable's baseline security requirements as updated from time to time by the relevant body and notified to the Consultant.

18.8 If requested by the Authority, the Consultant to enter into a Security Aspects Letter ("SAL") with the relevant force if applicable and the Consultant shall comply with the protocols set out in that SAL. In the event the Consultant fails to adhere to the SAL protocols, the Authority shall have the right to terminate this Contract and to recover from the Consultant the amount of any loss resulting from any such termination.

## 19. CONFIDENTIALITY

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

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- 19.2 The Consultant acknowledges that in the course of the Engagement it and the Consultant's Personnel will have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this clause.
- 19.3 The Consultant shall not, and shall procure that the Consultant Personnel shall not (except in the proper course of its or their duties), either during the Engagement or at any time after this Contract has terminated, use or disclose to any third party (and shall use all reasonable endeavours to prevent the publication and disclosure of) any Confidential Information. This restriction does not apply to:
- (a) any use or disclosure authorised in writing by the Authority or required by law; or
  - (b) any information which is already in, or comes into, the public domain otherwise than through the Consultant or the Consultant Personnel's unauthorised disclosure.
- 19.4 At any stage during the Engagement, the Consultant will promptly on request return to the Authority all and any Authority's Property in its or the Consultant's Personnel's possession.

## **20. INTELLECTUAL PROPERTY RIGHTS**

- 20.1 In the absence of prior written contract by the Authority to the contrary, all Intellectual Property Rights created by the Consultant's Personnel:
- (a) in the course of performing the Services; or
  - (b) exclusively for the purpose of performing the Services,
- shall vest in the Authority on creation.
- 20.2 The Consultant shall indemnify the Authority and the Chief Constable if applicable against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Rights by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions

## **21. REMEDIES**

- 21.1 If the Consultant fails to perform the Services by the applicable date(s), or if the Services do not comply with the obligations set out in clause 4 or the terms of the Contract, then, without limiting any of its other rights or remedies, the Authority shall have the right to any one or more of the following remedies:
- (a) to terminate the Contract in accordance with clause 24;
  - (b) to require re-performance of the Services;
  - (c) to refuse to accept any subsequent performance of the Services (or part thereof) from the Consultant;
  - (d) to recover from the Consultant any reasonable costs properly incurred by the Authority in obtaining substitute services from a third party; and/or
  - (e) to claim damages for any other costs, loss or expenses incurred by the Authority which are in any way attributable to the Consultant's failure to carry out its obligations under the Contract.
- 21.2 The Consultant shall keep the Authority and the Chief Constable if applicable indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any

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interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Authority and the Chief Constable as a result of or in connection with:

- (a) any claim made against the Authority and/or the Chief Constable if applicable for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services;
- (b) any claim made against the Authority and/or the Chief Constable if applicable by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Consultant, the Consultant's Personnel, agents or subcontractors;
- (c) any claim made against the Authority and/or the Chief Constable if applicable by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Services, to the extent that the defect in the Services is attributable to the acts or omissions of the Consultant, the Consultant's Personnel, agents or subcontractors;
- (d) the provision of the Services, including advice and recommendations made and accepted by the Authority and/or the Chief Constable if applicable, not being in accordance with the Specification;
- (e) any installation and/or advice given or anything done or omitted to be done under, or in connection with the Contract by the Consultant; and
- (f) any damage by the Consultant to the Authority's property or Premises (including any materials, tools or patterns sent to the Consultant for any purpose) by the Authority.

This clause 21.2 shall survive termination of the Contract.

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

## **22. LIABILITY**

- 22.1 Neither Party excludes or limits its liability for:

- (a) death or personal injury caused by its negligence or that of the Consultant's Personnel, agents or sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by the Consultant or the Consultant's Personnel;
- (c) the wilful abandonment by the Consultant of its obligations in relation to the provision of the Services; or
- (d) breach of any obligations as to title implied by section 2 of the Supply of Goods and Services Act 1982.

- 22.2 Subject to clause 22.1, neither Party will be liable to the other Party for:

- (a) indirect loss or damage;
- (b) special loss or damage;
- (c) consequential loss or damage;
- (d) loss of profits (whether direct or indirect);
- (e) loss of turnover (whether direct or indirect);

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- (f) loss of business opportunity (whether direct or indirect); and/or
- (g) damage to goodwill (whether direct or indirect),

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

22.3 Subject to clauses 22.1, the provisions of clause 22.2 shall not be taken as limiting the right of the Authority to, amongst other things, recover from the Consultant as a direct loss:

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

resulting directly from any act or omission of the Consultant.

22.4 If any limitation or provision contained or expressly referred to in this clause 22 is held to be invalid under any Law, it will be deemed omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this clause 22.

22.5 Nothing in this clause 22 shall affect a Party's general duty to mitigate its loss.

## **23. SUSPENSION**

23.1 Without limiting its other rights or remedies the Authority may suspend the Contract in whole or in part by giving written notice of such suspension to the Consultant if the Consultant or any of the Consultant's Personnel or agents are or become;

- (a) subject to a criminal investigation in respect of allegations arising out of or relating to their professional practice whether in respect of work undertaken in performance of the Contract or otherwise; or
- (b) subject to a criminal investigation relating to an allegation, which if substantiated, would constitute a breach of the terms of the Contract; or
- (c) subject to any allegation of professional negligence;
- (d) subject to investigation by a relevant regulatory body in respect of any alleged breach of a relevant code of practice; or
- (e) In the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or credit rating of the Consultant which adversely impacts on the Consultant's ability to supply the Services under the Contract or could reasonably be expected to have an adverse impact on the Consultant's ability to supply the Services under the Contract
- (f) in the reasonable opinion of the Authority, involved in any fraudulent activities or misapplication of funds (whether involving the Contract or not).

23.2 The Consultant must inform the Authority immediately upon becoming aware of any of the matters set out above.

23.3 The sums payable by the Authority under the Contract shall be reduced during the period of suspension by an amount equivalent to the value of the Services suspended for the duration of

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such suspension and the Authority shall have no liability whatsoever to make any payment to the Consultant of any sums withheld during the period of suspension.

- 23.4 For the avoidance of doubt the Authority will be entitled during any period of suspension to engage other Consultant to provide the Services which the Consultant is unable to provide by reason of the suspension.
- 23.5 Following a suspension pursuant to clause 23.1 above the Authority shall keep the matter under review and should the reasons for the suspension be resolved to the satisfaction of the Authority then the Authority may give written notice lifting suspension of the Contract.

### **24. TERMINATION FOR BREACH**

- 24.1 The Authority may terminate this Contract in whole or part with immediate effect by the service of written notice on the Consultant in the following circumstances:
- (a) if the Consultant is in breach of any material obligation under this Contract provided that if the breach is capable of remedy, the Authority may only terminate this Contract under this clause 24.1 if the Consultant has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;
  - (b) if the Consultant persistently fails the Service Levels;
  - (c) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.
- 24.2 The Authority may terminate this Contract in accordance with the provisions of clauses 2, 3, 26, 34 and clause 35.
- 24.3 If this Contract is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Consultant hereby indemnifies the Authority and the Chief Constable if applicable against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

### **25. TERMINATION ON NOTICE**

Without affecting any other right or remedy available to it, the Authority may terminate this Contract at any time by giving one month's written notice to the Consultant.

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

- 26.1 The Consultant shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act relating to obtaining or the signing of the Contract or any other contract with the Authority or any other public body or showing or refraining from showing favour or disfavour to any person, in relation to the Contract or any other Contract with the Authority, or if similar acts have been done by any person employed by the Consultant, or acting on the Consultant's behalf (whether with or without the knowledge of the Consultant).
- 26.2 The Consultant warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Consultant or any other public body in connection with the Contract.
- 26.3 The Consultant shall:

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- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
  - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
  - (c) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 26.3(b), and will enforce them where appropriate;
  - (d) promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this Contract;
  - (e) immediately notify the Authority if a foreign public official becomes an officer or employee of the Consultant or acquires a direct or indirect interest in the Consultant (and the Consultant warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract); and
  - (f) ensure that all persons associated with the Consultant or other persons who are performing services in connection with this Contract comply with this clause 26.
- 26.4 The Consultant shall not engage in any activity practice or conduct which would constitute an offence under the Prevention of Corruption Acts 1889 to 1916 or Fraud Act 2006.
- 26.5 The Consultant shall not receive any fee or reward the receipt of which is offence under the sub-section (2) of Section 117 of the Local Government Act 1972.
- 26.6 Breach of this clause 26 shall entitle the Authority to terminate the Contract with immediate effect.
- 26.7 In the event of any breach of this clause 26 by the Consultant or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Consultant):
- (a) the Consultant shall immediately give the Authority full details of any such breach and shall co-operate fully with the Authority in disclosing information and documents which the Authority may request; and/or
  - (b) the Authority shall (without prejudice to any of its rights or remedies under this Contract or otherwise) be entitled by notice in writing to terminate this Contract immediately; and
  - (c) the Consultant shall be liable for and shall indemnify and keep the Authority and the Chief Constable if applicable indemnified in respect of any and all loss resulting from such termination.
- 26.8 In any dispute, difference or question arising in respect of:
- (a) the interpretation of this clause 26; or
  - (b) the right of the Authority to terminate this Contract; or
  - (c) the amount or value of any gift, consideration or commission
- the decision of the Authority shall be final and conclusive.

## **27. CONSEQUENCES OF TERMINATION**

- 27.1 On termination of this Contract (or where reasonably so required by the Authority before such completion) the Consultant shall procure that all the Authority's Property and original Confidential (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith.
- 27.2 Where the Authority terminates (in whole or in part) the Contract for any reason (except for under clause 25) then makes other arrangements for the supply of the Services, the Authority may recover from the Consultant the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period provided that Authority shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Authority to the Consultant until the Authority has established the final cost of making those other arrangements.
- 27.3 Upon termination of the Contract whether by expiration of the Contract term or otherwise, the Consultant agrees and hereby guarantees that it will co-operate fully with the Authority to transfer to the Authority (including but not limited to) any plans, drawings, specifications, technical and legacy data, copies of records (electronic or otherwise), copies of reports (electronic or otherwise), information (howsoever stored), test results, samples relating to this Contract which are in the possession of the Consultant or any third party, provided always that:
- (a) the Consultant shall not be required to transfer to the Authority any patent design or other Intellectual Property Right owned by the Consultant and valid at the time the Contract was originally tendered or the Purchase Order was accepted, in any of the specifications, drawings or plans etc, and which has not already transferred under this Contract to the Authority; and
  - (b) any charges applicable for any samples or drawings, which were made known to (and agreed by) the Authority prior to the signing of this Contract, will be made to the Consultant if outstanding at the time of termination.
- 27.4 All items shall be delivered to the Authority within 14 days of termination of the Contract or upon a request being made to the Consultant by the Authority). Any request by the Authority shall detail the reasonable location of delivery, method of delivery, format of any data or information and the medium to be used for its migration. Unless otherwise agreed, the language that any drawings, data, reports or information etc shall be written and presented in shall be modern British English.
- 27.5 Other than the Charges agreed at clause 7.1, the Consultant shall make no other charge for the return of any item listed at clause 27.3.
- 27.6 All items shall be returned to the Authority in the original condition they were in when presented to the Consultant. Samples should be in the condition or state they were in at the time of acceptance or approval by the Authority as being in compliance with the design or specification detailed within the Contract, subject to any subsequent agreed testing or reasonable wear and tear.
- 27.7 The accrued rights and remedies of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 27.2 The provisions of clause 15 (Indemnities), clause 16 (Insurance), clause 17 (Freedom of Information), clause 18 (Data Protection), clause 19 (Confidentiality), clause 24 (Termination for

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Breach), this clause 27 (Consequences of termination) and clause 37 (General) shall survive termination or expiry of this Contract.

### **28. REPUTATION**

28.1 The Consultant shall not:

- (a) do any act or make any omission that has or could reasonably be expected to have an adverse impact upon the security of the business, operations, systems or properties or the Authority's Premises;
- (b) take any action which might or shall:
  - (i) harm or be prejudicial to the public confidence in the Authority and/or the Chief Constable or to its public image(s); or
  - (ii) bring the Authority and/or the Chief Constable into disrepute.

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

### **29. VETTING**

29.1 The Authority may request any such of the Consultant's Personnel that it deems necessary to undergo a security vetting procedure or have the Authority's approval and secure vetting to the appropriate level prior to commencing any work on this Contract.

29.2 To facilitate the relevant vetting when so requested by the Authority, the Consultant shall provide a list of the names and addresses of all persons (if any) who it is expected will be engaged in the provision of the Services, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably require to permit appropriate security checking. This may include the requirement for the individuals concerned to provide personal details about family members and financial circumstances and make a personal declaration as to the accuracy of the information provided.

29.3 For the avoidance of doubt, where the Authority has requested the Consultant's Personnel to undergo security vetting, only the Consultant's Personnel who have completed the vetting process and/or received written confirmation of their successful application can work on this Contract.

29.4 If requested by the Authority, the Consultant will be responsible for the vetting costs of all employees, or any sub-contractor, who are required to be vetted under clause 29.1 above.

29.5 The Authority does not accept liability for delays relating to the period between vetting forms being submitted to the Authority and confirmation to the Supplier of the vetting application outcome.

29.6 The outcome of vetting and the decision from the Authority is final and binding. Any of the Consultant's Personnel who have not received vetting clearance by the Authority are not permitted to work on this Contract and the Consultant shall replace any of its Consultant's Personnel who, the Authority shall have decided in its absolute discretion, have failed the appropriate security checking. The Authority shall not have to disclose why one of the Consultant's Personnel has failed security checking. Following the removal of any of the Consultant's Personnel for failing vetting, the Consultant shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Contract.

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- 29.7 The Consultant is responsible for ensuring all of the Consultant's Personnel are successfully vetted in line with any vetting requested by the Authority and shall ensure throughout the term of the Contract that they are at all times compliant with the vetting requirements of the Authority.
- 29.8 It is the Consultant's responsibility to ensure all Consultant's Personnel, who need to be vetted in accordance with clause 29.1 above, submit completed forms and supply any information required by the Authority's vetting unit and any changes in circumstances that occur after vetting has taken place during the term of the Contract are notified to the Authority. Any delay in the performance of the Contract resulting from the Consultant's Personnel not submitting fully and accurately completed forms and submitting any further information required or from declined vetting applications shall be the responsibility of the Consultant.
- 29.9 The Consultant shall keep an accurate and up to date record of their vetted Consultant's Personnel and must ensure that vetting remains current for any individual involved in the delivery of this Contract.

### **30. INDEPENDENT POLICE COMPLAINT COMMISSION**

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

### **31. BARRED LIST**

- 31.1 This clause 31 shall apply where the Services being provided under the Contract include functions of a public nature which relate to policing and law enforcement.
- 31.2 In accordance with the Part 4A of the Police Act 1996, none of the Consultant's Personnel or any subcontractor, are permitted to be involved in the provision of the Services if they are on the police barred list published from time to time by the College of Policing ("Barred List").
- 31.3 The Consultant is responsible for ensuring all the Consultant's Personnel supporting the contract, including but not limited to, sub-contractors employees are not on the Barred List and shall ensure throughout the term of the Contract that they are at all times compliant with the requirements of clause 31.2 above.
- 31.4 To enable the Authority to comply with its duties under Part 4A of the Police Act 1996, when so requested by the Authority, the Consultant shall provide a list of the names of all persons who it is expected will be engaged in the provision of the performance of the Services, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably require to permit the Barred List and the Police Advisory List to be checked.
- 31.5 The outcome of any check made pursuant to clause 31.4 above and the decision from the Authority in respect of the same is final and binding. Any of the Consultant's Personnel who are found by the Authority or notified to the Authority as being on the Barred List are not permitted to work on this Contract and the Consultant shall replace any of its employees or sub-contractor's employees who are on the Barred List.
- 31.6 Following the removal of any of the Consultant's or sub-contractor's employees in accordance with clause 31.5 above, the Consultant shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Contract.

## **32. TRANSPARENCY**

- 32.1 Following the publication of the Statutory Instrument 2012 – Amendment 2479 (<http://www.legislation.gov.uk/ukxi/2012/2479/made>), all Police Forces of England and Wales have an obligation to make publicly available a copy of each contract with a value exceeding £10,000 to which (i) the elected local policing body, or (ii) the chief officer of the police force maintained by the body, is or is to be a party.
- 32.2 As part of the transparency agenda, Government has made the following commitments with regard to procurement and contracting:
- (a) All new contracts over the value of £10,000 to be published in full online;
  - (b) All items of spending over £500 per month to be published online.
- 32.3 To meet this requirement the Authority intends to publish all contracts over a value exceeding £10,000 on the Freedom of Information (FOI) page of the Bluelight Procurement Database ([www.blpd.gov.uk](http://www.blpd.gov.uk)).
- 32.4 The full list of criteria for which redactions may be permitted as set out as follows:
- (a) Exemptions (absolute or qualified) provided for by the Freedom of Information Act 2000, regarding the disclosure of information;
  - (b) Provisions provided for in the Public Contracts Regulations 2015, regarding the disclosure of confidential information;
  - (c) Protection of personal privacy as required under the Data Protection Act;
  - (d) The protection of Intellectual Property Rights (IPR);
  - (e) Third party confidential information e.g. contracts with foster carers and child minders.
- 32.5 Information and guidance on understanding exemptions and other FOI matters can be accessed from the Information Commissioner's Office [www.ico.gov.uk](http://www.ico.gov.uk).

## **33. FORCE MAJEURE**

- 33.1 Subject to the remaining provisions of this clause 33, a Party may claim relief under this clause 33 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Consultant in performing its obligations under this Contract which results from a failure or delay by any of the Consultant's Personnel shall be regarded as due to a Force Majeure Event only if that Consultant's Personnel is itself impeded by a Force Majeure Event from complying with an obligation to the Consultant.
- 33.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 33.3 If the Consultant is the Affected Party, it shall not be entitled to claim relief under this clause 33 to the extent that consequences of the relevant Force Majeure Event:
- (i) are capable of being mitigated by any of the Services but the Consultant has failed to do so; and/or
  - (ii) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.

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- 33.4 Subject to clause 33.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 33.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Consultant is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 33.6 Provided the Affected Party has complied with the clauses above, it shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations which is as a result of a Force Majeure Event and the time for performance of such obligations shall be extended accordingly.
- 33.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 33.8 Relief from liability for the Affected Party under this Clause 33 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under clause 33.7.
- 33.9 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 weeks, the party not affected by the Force Majeure Event may terminate this Contract by giving 4 weeks' written notice to the Affected Party.

### **34. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS**

- 34.1 In performing its obligations under this Contract, the Consultant shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
  - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; ]
  - (c) include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 34.
  - (d) notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
  - (e) maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Authority in connection with this Contract; and permit the Authority and its third party representatives to inspect the Consultant's premises, records, and to meet the Consultant's Personnel to audit the Consultant's compliance with its obligations under this clause 34.
- 34.2 The Consultant represents and warrants that it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or

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enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

- 34.3 The Authority may terminate this Contract with immediate effect by giving written notice to the Consultant if the Consultant commits a breach of this clause 34.

### 35. PUBLICITY

The Consultant shall not:

- (a) make any press announcements or publicise this Contract or its contents in any way; or
- (b) use the Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority.

### 36. GENERAL

#### 36.1 Variation

No variation of the Contract shall be effective unless it is writing and signed by the parties.

#### 36.2 Waiver

No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

#### 36.3 Rights and remedies

Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

#### 36.4 Severability

- (a) If any provision or part-provision of this 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 this Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### 36.5 Partnership or agency

- (a) Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- (b) Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**36.6 Third party rights**

- (a) Except as expressly provided in clause 36.6(b) below, a person who is not party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- (b) The Chief Constable also has the benefit of this Contract and is able to enforce all the Consultant's obligations set out in the Contract.
- (c) The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to any other party.

**36.7 Notices**

- (a) Any notice given to a party under or in connection with this Contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by fax to its main fax number.
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, on signature of a delivery receipt;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.
  - (iii) if sent by fax, at 9.00 am on the next Working Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

**36.8 Entire Agreement**

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

**36.9 Counterparts**

This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Contract, but all the counterparts shall together constitute the same contract.

**36.10 Governing law**

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

36.11 **Jurisdiction**

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