

**Contract for the  
Provision of  
Prostitution Research (Services)**

**FILE 518**

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## Part 1. The Agreement

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2018

### **BETWEEN:**

**(1) THE POLICE AND CRIME COMMISSIONER FOR SOUTH WALES** of Ty Morgannwg, South Wales Police Headquarters, Cowbridge Road, Bridgend, CF31 3SU of the one part (the “Commissioner”); and

**(2) [INSERT NAME OF CONTRACTOR]** (including Company Registration Number where applicable) of **[INSERT ADDRESS OF CONTRACTOR]** of the other part (the “Contractor”).

**WHEREAS** the Commissioner wishes to engage the Contractor to perform the Services and has accepted a tender by the Contractor for the provision of such Services in accordance with the terms of this Agreement, at the prices specified in the Pricing Schedule appended hereto.

### **IT IS HEREBY AGREED AS FOLLOWS:**

(1) In this Agreement certain words and expressions shall have the same meanings as are respectively assigned to them in clause A1 of the Standard Terms and Conditions of Contract below.

(2) The following documents which have been bound herewith shall form part of and be read and construed as forming part of this Agreement, and shall have the same force and effect as if set out in the body of this Agreement, and any reference to this Contract or Agreement shall include the following documents (collectively referred to as the “Contract Documents”):

Instructions to Tenderer  
Tender Evaluation Criteria  
Tender Requirements

Standard Terms and Conditions of Contract  
Contract Award Schedule  
Specification Schedule  
Pricing Schedule  
Performance Criteria Schedule  
Monitoring Schedule  
Commercially Sensitive Information Schedule  
Vetting Schedule – not used

Appendices

Certificate as to Collusive Tendering  
Certificate as to Canvassing  
Certificate of Undertaking  
The Contractor's Response

- (3) In the event of any ambiguity, conflict or difference between the Standard Terms and Conditions of Contract together with the Specification Schedule and the other documents, schedules, parts and appendices, the Standard Terms and Conditions of Contract together with the Specification Schedule shall prevail.
- (4) In consideration of the payments to be made by the Commissioner to the Contractor as hereinafter mentioned, the Contractor agrees to supply the Services in conformity in all respects with the provisions of this Agreement.
- (5) The Commissioner shall pay to the Contractor in consideration of the supply of the Services the Contract Price or such other sum as may become payable under the provisions of this Agreement, at the times and in the manner prescribed by this Agreement.

**IN WITNESS WHEREOF** the Parties have entered into this Contract the day and the year first before written:

SIGNED BY:

For and on behalf of

Police and Crime Commissioner for South Wales

In the presence of:

AND/OR

SIGNED BY:

For and on behalf of  
Police and Crime Commissioner for Gwent

In the presence of:

**1. (Company Signature)**

SIGNED BY:

Company Director/Secretary  
For and on behalf of [Contractor]

Company Director/Secretary  
For and on behalf of [Contractor]

**2. Sole Party Signature**

SIGNED BY:

[Sole Party details]

In the presence of:

**3. Partnership**

SIGNED BY:

[Partner]  
For and on behalf of [Contractor]

[Partner]  
For and on behalf of [Contractor]

## Part 2. Instructions to Tenderer

Your organisation has been identified as a potential provider of Prostitution Research for the Police and Crime Commissioner for South Wales. You are invited to review the requirements contained within this document and to respond accordingly if you wish to submit a Tender to provide the Services stated herein.

Please use the messaging tool within the etender website to inform us whether or not you intend to submit a tender (if not, please provide a brief reason), at least a week before the tenders are due to be returned.

The Commissioner will receive Tenders as detailed on the attached Schedules in accordance with the enclosed Standard Terms and Conditions of Contract and subject to Section 7 - Standing Orders Relating to Contracts within the Police and Crime Commissioner for South Wales Manual of Corporate Governance, a copy of which may be seen at:

<http://pcclivewww.blob.core.windows.net/wordpress-uploads/Manual-of-Corporate-Governance-2015.pdf>

Tenders which do not comply with the Contract Documents (as defined in the Agreement), Standard Terms and Conditions of Contract and the following Instructions may not be considered.

Reference to Tender Documents shall mean all documents provided as part of the tender process and any information provided specifically for this Tender within the etender website, including but not limited to requests for information within the qualification, technical and commercial envelopes.

The submission of a Tender for the supply of Services set out in the attached Schedules, Appendices and Parts shall be made only in accordance with the Tender Documents. The Commissioner shall not be bound by any variation, addition to or waiver of any condition contained in the Tender Documents except when specifically agreed in writing and signed by both parties.

The Commissioner welcomes tender responses in English or Welsh. Tenders submitted in Welsh will be treated no less favourably than those in English.

Any enquiries relating to any part of this Tender should be made through the messaging tool within the etenderwales website. All questions will be logged and collated, and responses will be provided to all applicants via the messaging tool. The identity of applicants raising any questions will remain confidential. **All clarification questions should be received via the etender website messaging facility by the time and date stated on the etender system.**

Please ensure you provide **all** the required information as set out in each Questionnaire. Please note that the system will not allow you to submit a tender unless **all** mandatory questions are completed.

Please only provide the information that is required. Supplementary information that is not requested will not be taken into account when scoring/awarding the Contract. If the question requires an attachment then the question will be set out to facilitate this.

The information you provide will be relied upon as being complete, true and accurate. It will form the Contract for the successful Tenderer. If any of the information given by your organisation is subsequently identified as being inaccurate this may exclude your organisation from further consideration.

This Tender must be fully completed even if you have previously submitted information. It is not sufficient to cross refer to previous responses as each question should be answered in its own right.

Please complete this Tender and submit it in its entirety, together with all attachments, back through the xchangewales portal by **the date and time stated on the etenderwales web site**. Tenderers should note that this is a web based system and due consideration should be given to the length of time it may take to upload any attachments through the portal. **Documentation not submitted by the specified due date and time may be excluded from evaluation.**

Do not leave your response until the last minutes/hours before the deadline (if you experience connection problems you will miss the deadline and your response may be deemed non-compliant and rejected by the Commissioner - always upload generic information early to avoid last minute time pressure).

Incomplete tenders may be rejected. Posted, Faxed or directly emailed Tenders will not be accepted.

The 'Tender Requirements' and Certificates contained within the Tender Documents must be agreed by a person duly authorised to sign and bind the Tenderer and all information given in the Tender Documents to be completed by the Tenderer must be given by a person duly authorised to sign and bind the Tenderer.

The Commissioner shall be under no obligation to check that persons purporting to have authority to sign and bind any Tenderer have such authority. The Commissioner shall be entitled to assume that all 'Tender Requirements' are properly signed and that any information given in the Tender Documents to be completed by the Tenderer is properly given and is correct.

The Commissioner reserves the right to divide the Contract between two or more Contractors. The Commissioner shall not be bound to accept the lowest or indeed any Tender for the Services. The Commissioner gives no assurance

or guarantee as to the level of services (if any) to be contracted for pursuant to this Tender. The Commissioner shall not be responsible for, or pay for, expenses or losses which may be incurred by the Tenderer in the preparation of its Tender.

The Commissioner retains the discretion to disclose information in response to a request under the Freedom of Information Act 2000 (the "FOIA"), without the consent of the tenderer. Any identification of confidential information is subject to the agreement of the Commissioner, who will judge whether the information is worthy of protection. Tenderers should avoid any information being identified as "in confidence", "trade secret" or similarly restricted where such information is not confidential in nature.

## **E-TENDER TECHNICAL INSTRUCTIONS**

Use the online 'HELP' function – it provides support for both the screen you are in and for key processes.

For security reasons your access to the portal will 'time out' if inactive for 15 minutes - this is part of strict government requirements to maintain security and tender integrity and cannot be changed.

As you progress through the questionnaires, click the 'Save' button regularly - failure to do so means you risk losing your work if you experience connection issues or security 'time-outs'.

Text box responses are restricted to a maximum number of characters within the etenderwales system. If the Commissioner requires a larger response they will add an additional text box or request an attachment. Attachments may be individually restricted at the discretion of the evaluation team and any specific instructions will be included within the question notes in the system. Also note that Numeric fields will not accept text, spaces, symbols etc. Note the red asterisk indicates a mandatory field - this must be completed in order to submit your response to the Commissioner.

If the Commissioner makes any changes to the settings and parameters area of a live tender after you have published your tender, you **MUST** re-publish your response – this is to ensure that changes are brought to your attention – you will receive a message prompt – generally this will not mean re-entering information.

Whilst the portal allows for large individual attachment sizes (max 50mb at a time), we recommend that you keep attachments to a manageable size to ensure ease and speed of access. Only attach documents that the Commissioner has requested and make sure that you attach them in the correct area (typically: 'Qualification Questionnaire' and 'Technical Questionnaire' for non-price responses and 'Commercial Questionnaire' for quotations).



If you have any software queries refer to online help in the first instance, if you still have an issue email or phone the BravoSolution helpdesk with a tender reference, a clear description of the problem and your contact details (ensure that you leave plenty of time for issues to be resolved prior to any deadlines).

## Part 3. Tender Evaluation Criteria

Tenders will be evaluated on the criteria listed below. The Tenderer should answer all of the questions in the envelopes that are attached within the etender system. Tenderers are requested not to attach general marketing information unless it is specifically relevant to a question. Tenderers should also refrain from referring to information provided previously within their PQQ or information supplied in answer to other questions as each question should be answered in its own right.

Each question is labelled from 1-3 for weighting, with 1 being of lowest importance and 3 being of highest importance. The score achieved will be multiplied by the weighting allocated against each individual question to arrive at a total score for each. Tenderers should give due consideration to the weightings shown when preparing their responses. Scored questions in the technical envelope will be evaluated using the scoring methodology below:

	Evidence	Scores
Good / Strong Response	<p><b>Strong Response</b> Response far exceeds expectations in terms of relevance to the area being tested and when compared to the requirements of the section.</p> <ul style="list-style-type: none"> <li>• Response is well presented and structured; <b>and</b></li> <li>• Response is directly and wholly relevant to the area being tested; <b>and</b></li> <li>• Response is judged to far exceed the minimum requirement for the section.</li> </ul>	10
	<p><b>Good Response</b> Response exceeds expectations in terms of relevance to the area being tested and when compared to the requirements of the section.</p> <ul style="list-style-type: none"> <li>• Response is well presented and structured; <b>and</b></li> <li>• Response is well aligned to the area being tested; <b>and</b></li> <li>• Response is judged to exceed the minimum requirements of the section.</li> </ul>	8
Competent Response	<p><b>Competent Response</b> Response offered is sufficient in terms of relevance to the area being tested and when compared to the requirements of the section.</p> <ul style="list-style-type: none"> <li>• A sufficient response is presented and follows a basic structure; <b>and</b></li> <li>• Response is sufficiently aligned with the area being tested; <b>and</b></li> <li>• Response is judged to meet the minimum requirements of the section.</li> </ul>	6
Poor / Unsatisfactory Response	<p><b>Unsatisfactory Response</b> Response offered is insufficient in terms of relevance to the area being tested and/or when compared to the requirements of the section.</p> <ul style="list-style-type: none"> <li>• Some evidence is presented but assertions and statements are insufficiently supported; <b>or</b></li> <li>• Response offered is only partly relevant to the area being tested; <b>and/or</b></li> <li>• Response offered is/may be relevant to the area being tested but is judged to be insufficient when compared to the requirements of the section in terms of sophistication/complexity.</li> </ul>	4
	<p><b>Poor Response</b> Response offered is way short of expectations in terms of relevance to the area being tested and/or when compared to the requirements of the section.</p> <ul style="list-style-type: none"> <li>• Little/no evidence is presented to support assertions or general statements; <b>or</b></li> <li>• Response does not correspond in any way to the area being tested; <b>and/or</b></li> </ul>	2

	<ul style="list-style-type: none"> <li>Response is/may be relevant to the area being tested but is judged to be far below the required level for the section in terms of sophistication / complexity.</li> </ul>	
	<p><b>No Evidence provided</b> Tenderer has responded but has not answered the question and has not demonstrated an understanding of our requirements.</p>	<b>0</b>

**Evaluation Criteria:-**

		Weighting	Percentage
<b>1.</b>	<b>Qualification Envelope:</b>		<b>N/A</b>
	Pass/Fail Questions	N/A	
<b>2.</b>	<b>Technical Envelope</b>		<b>75%</b>
	Question 1	3	
	Question 2	3	
	Question 3	2	
	Question 4	3	
	Question 5	3	
	Question 6	2	
	Question 7	2	
<b>3.</b>	<b>Commercial Envelope</b>		<b>25%</b>
	The Tenderer who submits the lowest total price shall receive the maximum percentage score available (e.g. 50% = 50 marks). All other Tenderers shall receive a percentage score calculated using their total price against the lowest price. See below for example.		
<b>4.</b>	<b>Presentations</b>		
	Following the submission and evaluation of tenders, presentations may be held for clarification purposes so that the evaluation panel may obtain a better understanding of what is contained in the tender submissions. Scores initially awarded to tenderers may be adjusted up or down to reflect the better understanding of the bid.	Initial scores may be adjusted due to a better understanding of the bid	

**Commercial Evaluation Example:**

Price	Tenderer Score			Lowest
	Supplier A	Supplier B	Supplier C	
<b>Total Price (£)</b>	100	150	200	100
<b>Score (as % of lowest price)</b>	100.0	66.7	50.0	
<b>Weighted Score</b>	25.0	16.7	12.5	

## **Part 4. Tender Requirements**

### **For the provision of Prostitution Research**

#### **To: The Police and Crime Commissioner for South Wales**

I/We offer to supply part/whole of the said Services in complete conformity with the attached Standard Terms and Conditions of Contract, Specification Schedules and Schedules and as may be described or implied therein as per the completed Pricing Schedule.

I/We declare that I/we have read and understood the Tender Documents.

I/We undertake to execute the Agreement within 14 days or such other longer period as may be determined by the Commissioner from receipt of the letter of acceptance, and in accordance with the Standard Terms and Conditions of Contract to obtain all Insurances stipulated.

I/We understand that you reserve the right to accept or refuse this Tender whether it be lower, the same or higher than any other Tender, or for any other reason.

I/We agree that this Tender shall remain open for acceptance by you and will not be withdrawn or varied (except as requested by the Commissioner) by us for a period of 120 days from the closing date for submission of Tenders.

I/We agree that any unauthorised alteration or insertion by me/us to any of the Tender Documents and/or Contract Documents shall not affect the Agreement or the Standard Terms and Conditions of Contract, and may cause the Tender to be rejected.

I/We agree that any clauses in our own conditions of sale or contract or any supplementary condition or letter which are at variance with the Commissioner's Contract Documents shall be overridden by the Contract Documents unless specifically agreed to in writing.

I/We agree that this Tender will be arithmetically checked. Any arithmetical error will be corrected and a revised Contract Price calculated. I/We will be notified of any errors and amendments and asked either to confirm the revised Contract Price or withdraw their Tender. I/We may be required to produce the build-up of the prices in the Tender.

I/We hereby agree that the following Documents, Appendices, Schedules, Parts and Annexes are attached and form part of this Tender:-

#### **DOCUMENTS**

1. The Agreement
2. Instructions to Tenderer
3. Tender Evaluation Criteria
4. Tender Requirements

5. Standard Terms and Conditions of Contract

SCHEDULES

Contract Award Schedule  
Specification Schedule  
Pricing Schedule  
Performance Criteria Schedule  
Monitoring Schedule  
Commercially Sensitive Schedule  
Vetting Schedule – not used

APPENDICES

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- Monitoring Schedule
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- Vetting Schedule – not used

**A. GENERAL PROVISIONS**

**A1 Definitions and Interpretation**

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Approval” means the prior written consent of the Commissioner (and Approved shall be construed accordingly).

“Authorised Officer” means the person or persons duly appointed by the Commissioner as detailed in the Contract Award Schedule, to act as the day to day point(s) of contact in relation to the Contract.

“Chief Constable” means that Chief Constable of the respective police force from time to time and shall include its duly authorised personnel, officers, employees, representatives, agents and/or any such other duly authorised party and where the context so permits shall include the Commissioner.

“Commencement Date” means the date detailed in the Contract Award Schedule or such other date as agreed in writing by the Commissioner.

“Commercially Sensitive Information” means the information listed in the Commercially Sensitive Information Schedule comprised of information:

- (a) which is provided by the Contractor to the Commissioner in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

“Commissioner” means the party named in the Contract Award Schedule, any successor or replacement commissioner and/or any body to which all or part of the functions of the Commissioner may be lawfully transferred and shall include its duly authorised personnel, officers, employees, representatives, agents and/or any such other duly authorised party and where the context so permits shall include the Chief Constable.

“Confidential Information” means:

- (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; and/or
- (b) any information, including, but not limited to, any survey results, research data, advice, plans, recommendations or other reports or information which is generated by or on behalf of the Contractor for the Commissioner in the course of performing its obligations under the Contract.

“Contract” means this written agreement between the Commissioner and the Contractor consisting of these clauses and any attached Schedules or other documents attached to it, as Approved by the Commissioner (in each case as amended from time to time in accordance with the Contract).



“Contract Award Schedule” means the schedule containing the details of the Contract award.

“Contracting Authority” means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

“Contract Manager” means the person or persons duly appointed by the Contractor as detailed in the Contract Award Schedule, to act as the day to day point(s) of contact for communications in relation to the Contract.

“Contractor” means the person, firm or company with whom the Commissioner enters into the Contract.

“Contract Period” means the period detailed in the Contract Award Schedule and shall include, where applicable, any extension pursuant to clause F8., or such earlier period as shall end on the termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

“Contract Price” means the price (exclusive of any applicable VAT), payable to the Contractor by the Commissioner under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause C4.

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under such 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, and with effect from 25 May 2018, Regulation (EU) 2016/679 (the General Data Protection Regulation).

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“Equipment” means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

“Fees Regulations” means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under such 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” means in relation to either Party, a Force Majeure Event which is beyond the reasonable control of that Party concerned and which materially and adversely affects its ability to perform its obligations under the Contract.

“Force Majeure Event” includes fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding any one or more of the following:

- (a) any industrial action occurring within the Party’s or any sub-contractor’s organisation; or
- (b) any event to the extent that it could have been prevented or avoided, or its adverse impact could have been mitigated, through the exercise by the Party in question of Good Industry Practice, including the establishment and implementation of appropriate disaster recovery or business contingency arrangements; or
- (c) any lack of funds by the Party in question; or
- (d) the failure by any sub-contractor to perform its obligations under any sub-contract, unless that failure was in turn attributable to a Force Majeure Event, and cannot be excluded from, the preceding parts of this definition (if references in those preceding parts to the Party in question were references to the relevant sub-contractor).

“Fraud” means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Commissioner and/or the Crown.

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

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

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off. All references to “Intellectual Property” shall be construed accordingly.

“Key Personnel” means those persons named in the Contract Award Schedule as being key personnel.

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.

“Monitoring Schedule” means the Schedule containing details of the monitoring arrangements.

“Month” means calendar month.

“Party” means a party to the Contract and “Parties” shall be construed accordingly.

“Performance Criteria Schedule” means the Schedule containing details of the performance criteria.

“Premises” means the location where the Services are to be supplied, as set out in the Specification or otherwise agreed by the Commissioner.

“Pricing Schedule” means the Schedule containing details of the Contract Price.

“Property” means the property, other than real property, issued or made available to the Contractor by the Commissioner in connection with the Contract.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.

“Receipt” means the physical or electronic arrival of the invoice at the address of the Commissioner detailed at clause A5.3 or at any other address given by the Commissioner to the Contractor for the submission of invoices, provided that if any such invoice arrives on a day that is not a Working Day or after 17:00 on a Working Day, then it shall not be deemed to have been received until 10:00 on the next following Working Day.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Commissioner and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party service provider appointed by the Commissioner to supply any services which are substantially similar to any of the Services and which the Commissioner receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

“Request for Information” shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

“Relevant Convictions” means a conviction that is relevant to the nature of the Services and/or as listed by the Commissioner and/or relevant to the work of the Commissioner for the purpose of the Contract.

“Schedule” means a schedule attached to, and forming part of, the Contract.

“Services” means the services to be supplied as specified in the Specification.

“Specification” means the description of the Services to be supplied under the Contract as set out in the Specification Schedule.

“Specification Schedule” means the Schedule containing details of the Specification.

“Staff” means all persons employed or otherwise engaged by the Contractor to perform its obligations under the Contract together with the Contractor’s staff, workers, servants, agents, consultants, suppliers and sub-contractors, any other third parties with whom the Contractor contracts in order to provide any of the Services, who are engaged in the performance of the Contractor’s obligations under the Contract.

“Staff Vetting Procedure” means the Commissioner’s procedures for the vetting of personnel as advised to the Contractor by the Commissioner.

“Tender” means the document(s) submitted by the Contractor to the Commissioner in response to the Commissioner’s invitation to suppliers for formal offers to supply it with the Services.

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as it may have been, or may from time to time be amended, modified or re-enacted and shall include any subordinate legislation made under the relevant statute;
- (e) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”. The rule known as the ejusdem generis shall not apply and accordingly general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
- (g) the recitals and headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (h) references to “indemnity” and “indemnifying” any person against any circumstance include indemnifying and keeping that person harmless from all actions, claims and proceedings from time to time made against that person and all loss and damage and all payments, costs and expenses (including legal fees on a solicitor own client basis and taxes) made or incurred by that person as a consequence of or which should have arisen but for that circumstance;

- (i) references to writing shall mean any mode of reproducing words in a legible and non-transitory form;
- (j) the Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement;
- (k) where the Agreement is entered into by or on behalf of a partnership or otherwise by or on behalf of more than one person, any liability arising under it shall be deemed to be the joint and several liability of the partners or of such persons as stated above, and any demand for payment made or notice given by the Commissioner to any one or more of the persons so jointly and severally liable shall be deemed to be a demand made or notice given to all such persons. The Commissioner shall be at liberty to release or discharge any one or more of such persons from liability under the Agreement or to compound with, accept compositions from or make other arrangements with any of such persons without in consequence releasing or discharging any other party to this Agreement or otherwise prejudicing or affecting the Commissioner's rights and remedies against any such party;
- (l) references to time shall be construed, during the period of summer time, to be British Summer Time and otherwise to be Greenwich Mean Time; and
- (m) except as otherwise expressly provided in the Agreement, all remedies are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

**A2 Contract Period**

- A2.1 The Contract shall take effect on the Commencement Date, or such other date as agreed by the Parties and shall continue for the period detailed in the Contract Award Schedule unless and until it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause F8.

**A3 Contractor's Status**

- A3.1 At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party, save as expressly permitted by the terms of the Contract.

**A4 Commissioner's Obligations**

- A4.1 Save as otherwise expressly provided, the obligations of the Commissioner under the Contract are obligations of the Commissioner in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Commissioner in any other capacity, nor shall the exercise by the Commissioner of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Commissioner to the Contractor.

**A5 Notices**

- A5.1 Except as otherwise expressly provided within the Contract, no notice, consent or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

A5.2 Any notice, consent or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in clause A5.3. Provided the relevant communication is addressed correctly and is not returned as undelivered, the notice, consent or communication shall be deemed to have been given:

- (a) if hand delivered, at the time of actual delivery; or
- (b) 2 Working Days after the day on which the letter was posted; or
- (c) 4 hours, in the case of electronic mail or facsimile transmission after successful transmission; or
- (d) sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail;

provided in each case that if the deemed receipt occurs either on a day that is not a Working Day or after 17:00 on a Working Day, then the notice, consent or other communication in question shall not in fact be deemed to have been received until 10:00 on the next following Working Day (such times being local time at the address of the recipient).

A5.3 For the purposes of clause A5.2, the address and other contact details of each Party shall be detailed in the Contract Award Schedule or otherwise advised to the other in writing prior to the Commencement Date.

A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

A5.5 At the same time as giving any notice, consent or other communication to the Commissioner in accordance with clauses A5.2-A5.4 above, the Contractor shall provide a copy of the relevant notice, consent or other communication to the Authorised Officer using the email address or fax number set out in the Contract Award Schedule or otherwise notified to the Contractor for these purposes from time to time.

A5.6 Any notice, information instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Contractor.

## **A6 Mistakes in Information**

A6.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Commissioner by the Contractor in connection with the supply of the Services and shall pay the Commissioner any extra costs occasioned by any discrepancies, errors or omissions therein.

## **A7 Conflicts of Interest**

A7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Commissioner, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Commissioner under the provisions of the Contract. The Contractor shall disclose to the Commissioner forthwith full particulars of any such conflict of interest, potential or otherwise, which may arise.

A7.2 The Commissioner reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Commissioner, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor

and the duties owed to the Commissioner under the provisions of the Contract. The actions of the Commissioner pursuant to this clause A7 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Commissioner.

**A8 No Exclusivity**

A8.1 The Contractor hereby acknowledges and agrees that it is not being appointed as the Commissioner's exclusive provider of all services which are the same or similar to the Services and the Commissioner shall be free at any time to purchase such services from one or more other contractors.

**A9 No Guaranteed Purchases**

A9.1 The Commissioner does not give, and shall not be deemed to have given, any guarantee, warranty or other assurance as to the quantity or value of Services that may be required under the Contract, nor as to the revenue that the Contractor will generate as a result of entering into the Contract.

A9.2 Any estimate of demand or historical data given to the Contractor is for guidance purposes only and shall not form part of the Contract.

**B. SUPPLY OF SERVICES**

**B1 The Services**

B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Commissioner's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Commissioner may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours (or otherwise).

B1.2 If the Commissioner informs the Contractor in writing that the Commissioner reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Commissioner, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Commissioner.

B1.3 Subject to the Commissioner providing written consent in accordance with clause B2.2, timely supply of the Services shall be of the essence of the Contract, including commencing the supply of the Services within the time agreed or on a specified date.

**B2 Provision and Removal of Equipment**

B2.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.

B2.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.

B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Commissioner shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Commissioner's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of

Equipment when no longer required at the Contractor's sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

- B2.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- B2.5 The Contractor shall, at the Commissioner's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any Equipment which in the reasonable opinion of the Commissioner is either hazardous, noxious or not in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.
- B2.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff in accordance with clause B7.4 hereto.

### **B3 Manner of Carrying Out the Services**

- B3.1 The Contractor shall nominate a Contract Manager within its organisation holding a position or having the authority to ensure that sufficient resources are allocated to the Contract when required and to ensure that performance is in accordance with the Contract and Good Industry Practice. The Contract Manager shall be empowered to act on behalf of the Contractor for all purposes connected with the Agreement and shall be one of the designated Key Personnel.
- B3.2 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Commissioner prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.3 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- B3.4 Where directed by the Commissioner, the Contractor shall comply with the Performance Criteria Schedule.

### **B4 Key Personnel**

- B4.1 The Contractor acknowledges that its Key Personnel are essential to the proper provision of the Services to the Commissioner. Key Personnel shall be notified to the Commissioner prior to the Commencement Date.
- B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Commissioner, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- B4.3 Any replacements to the Key Personnel shall be subject to the agreement of the Commissioner. Such replacements shall be of at least equal status and of



equivalent experience and skills to the Key Personnel being replaced, and shall be suitable for the responsibilities of that person in relation to the Services.

- B4.4 The Commissioner shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

**B5 Contractor's Staff**

- B5.1 The Commissioner may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises, and/or be involved in the provision of the Services:-

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff,

whose admission or continued presence and/or involvement in the Contract would, in the reasonable opinion of the Commissioner, be undesirable.

- B5.2 At the Commissioner's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Commissioner may reasonably request.

- B5.3 If the Contractor fails to comply with clause B5.2 within 10 Working Days of the date of the request and in the reasonable opinion of the Commissioner such failure may be prejudicial to the interests of the Commissioner and/or Crown then the Commissioner may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Commissioner.

- B5.4 The Contractor shall ensure that its Staff, engaged within the boundaries of the Premises, comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

- B5.5 The Contractor acknowledges that the Commissioner shall be free to security search any member of Staff and shall procure that its Staff fully co-operate with the Commissioner for these purposes. The Contractor shall also ensure that its Staff carry out their duties and behave while at any Premises or while carrying out any activities under the Contract in an orderly and appropriate manner, having regard to the nature of their duties and that they shall at all times be dressed appropriately in view of their job category and the activities they are to carry out.

- B5.6 If and when requested by the Commissioner, the Contractor shall procure (in respect of its Staff) from each person identified by the request, a signed statement that he understands that the Official Secrets Act 1911 to 1989 applies to him both during the Contract Period and thereafter.

- B5.7 The Contractor shall comply with all requirements of the Commissioner's Staff Vetting Procedures in relation to all Staff requiring admission to the Premises and/or involvement in the Contract in any capacity. Without prejudice to the foregoing, the Commissioner may (in its absolute discretion) require the Contractor to ensure that any person employed in the provision of the Services has undertaken vetting in accordance with its Staff Vetting Procedures to a minimum level of Non Police Personnel Vetting Level 2 (or such other level as

agreed by the Commissioner). A Criminal Records Bureau check as per its Staff Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Staff Vetting Procedure check or otherwise) shall be employed or otherwise engaged in the provision of any part of the Services without the Approval of the Commissioner.

- B5.8 The Contractor shall ensure that only such of its Staff as have been authorised by the Commissioner and who have fully satisfied the tests set out in clause B5.7, B5.13 and B5.14 shall be permitted access to any of the Commissioner's premises, information or assets or otherwise have involvement in the performance of the Contractor's obligations under the Contract.
- B5.9 The Commissioner reserves the right to charge a fee to the Contractor in respect of the vetting procedure carried out in relation to those persons nominated by the Contractor for vetting.
- B5.10 Those persons authorised to carry out work in respect of the Contract may, as determined by the Commissioner in its absolute discretion, be issued with a photo pass confirming their identity. The Contractor shall ensure, at the Contractor's cost, that all relevant persons attend such location as the Commissioner shall direct for the issue of such photo pass.
- B5.11 Where photo passes are required:
- (a) the Contractor shall issue an authenticated photo pass to each person authorised to carry out work in respect of the Contract and required to have access to the relevant Premises in order to do so and shall provide a second copy of each photo pass for the retention of the Commissioner;
  - (b) the Contractor shall retrieve and destroy photo passes from any person that ceases to be authorised to carry out work in relation to the Contract or to require access to the Premises in order to do so;
  - (c) photo passes will be valid for a period of 3 years or such shorter period as the Commissioner may direct and in order that the Commissioner may be assured of the continuing suitability of Staff the Contractor shall ensure that completed security questionnaires are also submitted in respect of such relevant Staff not less than 6 weeks before the expiry of any existing passes.

- B5.12 The Contractor shall be required to submit a completed security questionnaire for each of its Staff who require access to any Confidential Information in relation to the performance of its obligations under the Contract. The security questionnaires must be completed by the individuals concerned and submitted within 5 Working Days following receipt from the Commissioner and in any event prior to work commencing. In the cases of additional or replacement Staff being nominated by the Contractor, completed security questionnaires must be submitted within 5 Working Days following receipt from the Commissioner and in any event prior to the date on which the relevant individuals are required to commence work on the Contract.
- B5.13 To ensure compliance with the requirements of this clause B5, the Contractor shall at no additional cost to the Commissioner nominate one of its employees as security controller for the purposes of the Contract and ensure that such nominate employee discharges the following responsibilities:
- (a) ensuring only those Staff who require access to Confidential Information in relation to performance of the Contractor's obligations under the Contract are nominated for security clearance;
  - (b) distribution of security questionnaires;
  - (c) gaining the consent of the person to be vetted;
  - (d) securing the accurate and timely completion of security questionnaires;
  - (e) confirmation and validation of the content of the security questionnaires;
  - (f) promoting security awareness and ensuring Staff understand their responsibilities under the Contract;
  - (g) liaison with the Commissioner's representatives;
  - (h) undertaking training in the role and responsibilities of security controller;
  - (i) securing the return and destruction of photo passes as required;
  - (j) carrying out such other activities as the Commissioner may from time to time direct, and
  - (k) ensuring that the Commissioner is notified of any change to personnel, including but not limited to, new appointments and termination of employment in respect of any person involved in the Contract.
- B5.14 The Commissioner hereby reserves the right to re-vet the Contractor's staff throughout the Contract Period.

- B5.15 The decision of the Commissioner as to whether any person is to be admitted to or is to be removed from the Premises or is to become involved in or is not to become involved in or is to be removed from involvement in the Contract and as to whether the Contractor has furnished the information or taken the steps required of him by this clause B5 shall be final and conclusive.
- B5.16 The Commissioner shall not be required to provide any reasoning for any decisions under this clause B5.
- B5.17 The Contractor shall bear the cost of any notice, instruction or decision of the Commissioner under this clause B5. The Commissioner shall under no circumstances be liable to the Contractor or its Staff in respect of any liability loss or damage occasioned by the requirement that a member of the Contractor's Staff be replaced or excluded from involvement in the Contract. The Contractor shall fully indemnify the Commissioner against any claim made by such member of Staff.
- B5.18 The Contractor's Staff engaged in and about the provision of the Agreement shall primarily be under the control and direction of the Contractor's own supervisory staff but nevertheless while on the Premises the Staff shall obey all reasonable instructions given to them by the Commissioner's supervisory staff in any matter in which the immediate safety of the Commissioner's staff, clients and visitors shall be involved.
- B5.19 If requested to do so by the Commissioner, the Contractor shall (and shall ensure that each member of its Staff shall, whether currently employed by the Contractor or not) provide to the Commissioner all relevant information in connection with any legal inquiry, court proceedings or other proceedings in which the Commissioner and/or the Chief Constable may become involved or any relevant disciplinary hearing internal to the Commissioner and/or the Police Force and shall give evidence in such inquiries or proceedings or hearings, arising out of the provision of the Contract, and shall if requested to do so by the Commissioner give evidence in connection with any matter with which the Contractor and/or its Staff have been involved in in the course of their duties hereunder. Without prejudice to the foregoing, the Contractor and its Staff shall give all reasonable assistance to the Commissioner in the investigation of any complaints, contract monitoring, disciplinary matters involving the Commissioner's staff and/or its officers, claims for damages and similar matters.
- B5.20 If the Commissioner at any time after the introduction of a member of the Contractor's Staff agrees to employ or make use of that individual in any capacity, whether on a permanent, temporary or self employed basis, or the Commissioner refers such individual to any third party who so employs or makes use of such individual, it is agreed that the Commissioner shall not be liable to pay any introduction fee or make any other payment whatsoever to the Contractor in respect of same,

**B6 Inspection of Premises**

- B6.1 Save as the Commissioner may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

**B7 Licence to occupy Premises**

- B7.1 Any land or Premises made available from time to time to the Contractor by the Commissioner in connection with the Contract, shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by

the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

- B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and shall ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Commissioner may reasonably request.
- B7.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Commissioner at the Contractor's expense. Ownership of such modifications shall rest with the Commissioner.
- B7.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Commissioner, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- B7.5 The Parties agree that there is no intention on the part of the Commissioner to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Commissioner retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

**B8 Property**

- B8.1 Where the Commissioner issues Property free of charge to the Contractor such Property shall be and remain the property of the Commissioner and the Contractor irrevocably licences the Commissioner and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Commissioner. The Contractor shall take all reasonable steps to ensure that the title of the Commissioner to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Commissioner's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Commissioner.
- B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Commissioner otherwise within 5 Working Days of receipt.
- B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Commissioner's reasonable security requirements as required from time to time.
- B8.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the

Commissioner's Default. The Contractor shall inform the Commissioner within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## **B9 Provision of Information**

B9.1 Without prejudice to any other provision in the Contract, including those in the Monitoring Schedule (if used), the Contractor shall provide such information in relation to the performance of its obligations under the Contract (including information in respect of progress against relevant timescales or milestones and information required by the Commissioner for the purposes of re-tendering the provision of the Service) as the Commissioner may reasonably request from time to time, such information to be provided in the format and within the timescales reasonably specified by the Commissioner.

B9.2 The Contractor shall ensure that all such information is accurate and complete and, in respect of any information required by the Commissioner for re-tendering purposes, shall notify the Commissioner without delay of any changes made to information previously provided to the Commissioner.

## **C PAYMENT AND CONTRACT PRICE**

### **C1 Contract Price**

C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Commissioner shall pay the Contract Price in accordance with clause C2.

C1.2 The Commissioner shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

### **C2 Payment and VAT**

C2.1 Unless otherwise specified in the Pricing Schedule, the Commissioner shall pay all sums due to the Contractor within 30 days of Receipt of a valid invoice, submitted monthly in arrears for work undertaken to the full satisfaction of the Commissioner. If a separate method of payment shall be used by the Commissioner this shall be specified in the Contract Award Schedule.

C2.2 The Contractor shall ensure that each invoice contains the information set out in clause C6 and that it is supported by any other documentation reasonably required by the Commissioner to substantiate the invoice. Without prejudice to the generality of the previous sentence, the Contractor shall ensure that each invoice contains details of the appropriate purchase order issued by the Commissioner in respect of the Services in question, unless the Commissioner has confirmed in writing that such details are not required.

C2.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

C2.4 The Contractor shall indemnify the Commissioner on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Commissioner at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.5 shall be paid by the Contractor to the Commissioner not less than 5 Working

Days before the date upon which the tax or other liability is payable by the Commissioner.

**C3 Recovery of Sums Due**

C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Commissioner in respect of any breach of the Contract), the Commissioner may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Commissioner.

C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Contractor shall make all payments due to the Commissioner without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Commissioner to the Contractor.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

**C4 Price adjustment on extension of the Contract Period**

C4.1 The Contract Price shall apply for the Contract Period. In the event that the Commissioner agrees to extend the Contract Period pursuant to clause F8 the Commissioner shall, in the 6 month period prior to the expiry of the Contract Period, enter into good faith negotiations with the Contractor to agree a variation in the Contract Price.

C4.2 If the Parties are unable to agree a variation in the Contract Price in accordance with clause C4.1, the Contract shall terminate at the end of the Contract Period.

C4.3 If a variation in the Contract Price is agreed between the Commissioner and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

C4.4 Any increase in the Contract Price pursuant to clause C4.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in the Pricing Schedule) between the Commencement Date and the date 6 Months before the end of the Contract Period.

**C5 Euro**

C5.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Commissioner.

**C6 Form of Invoice**

C6.1 Unless otherwise agreed in writing by the Commissioner, all invoices shall include the following information:

- (a) the Contract number;
- (b) the purchase order number;

- (c) the Commissioner's contact;
- (d) invoice number and date;
- (e) a detailed description of the Services provided (including the location, date or time period of delivery of the Services);
- (f) a detailed description of any recoverable expenses and costs;
- (g) the Contractor's VAT number;
- (h) the amount due exclusive of VAT, other duty or early settlement discount;
- (i) the VAT rate and VAT amount;
- (j) details of any other duty or early settlement discount;
- (k) details of the Contractor's BACS details or other method of payment.

## **D. STATUTORY OBLIGATIONS AND REGULATIONS**

### **D1 Prevention of Corruption**

- D1.1 The Contractor warrants and undertakes that it shall at all times comply with the Bribery Act 2010.
- D1.2 The Contractor shall not offer or give, or agree to give, to the Commissioner or any other public body or any person employed by or on behalf of the Commissioner 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 in relation to the obtaining or execution of the Contract or any other contract with the Commissioner or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- D1.3 The Contractor warrants that it has not paid commission or agreed to pay commission to the Commissioner or any other public body or any person employed by or on behalf of the Commissioner or any other public body in connection with the Contract.
- D1.4 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by the Bribery Act 2010 or the conduct specified in clauses D1.2 or D1.3, the Commissioner may:
- (a) terminate the Contract with immediate effect by notice in writing; and
  - (b) recover in full from the Contractor any other loss sustained by the Commissioner in consequence of any breach of those clauses .

### **D2 Prevention of Fraud**

- D2.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Commissioner.



D2.2 The Contractor shall notify the Commissioner immediately if it has reason to suspect that any Fraud in relation to any contract with the Commissioner has occurred or is occurring or is likely to occur.

D2.3 If the Contractor or its Staff commits Fraud in relation to this Contract or any other contract with the Crown (including the Commissioner) the Commissioner may:

- (a) terminate the Contract with immediate effect by notice in writing; or
- (b) recover in full from the Contractor any other loss sustained by the Commissioner in consequence of any breach of this clause.

### **D3 Discrimination**

D3.1 The Contractor shall not unlawfully discriminate either directly or indirectly, or harass or victimise, instruct, cause, induce or knowingly help unlawful acts, and any other conduct that is prohibited on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998, or other relevant or equivalent legislation (including any equivalent legislation in force in any other jurisdiction in which any activities are carried out under or in connection with the Contract by the Contractor or any of its Staff or sub-contractors), or any statutory modification or re-enactment thereof.

D3.2 The Contractor shall take all reasonable steps to secure the observance of clause D3.1 by all Staff and sub-contractors.

D3.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clause D3.1 or D3.2, the Commissioner may:

- (a) terminate the Contract with immediate effect by notice in writing; or
- (b) recover in full from the Contractor any other loss sustained by the Commissioner in consequence of any breach of those clauses.

### **D4 The Contracts (Rights of Third Parties) Act 1999**

D4.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause D4 does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

### **D5 Environmental Requirements**

D5.1 The Contractor shall perform its obligations under the Contract in accordance with the Commissioner's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases,

volatile organic compounds and other substances damaging to health and the environment.

- D5.2 In so far as the Contractor or any of its sub-contractors or Staff dispose of any waste goods or other items (including electronic products) in the course of or in connection with the performance of the Contractor's obligations under the Contract, the Contractor shall ensure that those goods or other items are disposed of in an environmentally friendly manner and in accordance with all applicable laws and regulations, including (where applicable) the Waste Electrical and Electronic Equipment Regulations 2006.
- D5.3 The Commissioner is committed to ensuring that workers employed or engaged in its supply chains throughout the world are treated fairly, humanely and equitably and to this end the Contractor shall comply, in relation to all workers employed or engaged by it directly or indirectly in connection with the supply of the Services, with the policies, procedures and requirements of the International Labour Organisation and United Nations Universal Declaration of Human Rights.
- D5.4 If and when requested to do so by the Commissioner at any time, the Contractor shall provide the Commissioner with such documents and/or permit representatives of the Commissioner to have such access to the Contractor's premises and personnel as the Commissioner may reasonably require for the purposes of verifying compliance on the part of the Contractor with its obligations under clauses D5.1 to D5.3.
- D5.5 The Contractor shall procure that each of its sub-contractors (if any) comply with obligations substantially similar to those set out in clauses D5.1 to D5.4.

## **D6 Health and Safety**

- D6.1 The Contractor shall, and shall ensure that all Staff and sub-contractors shall, when working on the Premises or any site in connection with the Contract comply with all relevant health and safety legislation, codes of practice and any other appropriate standards, policies, procedures and documentations notified by the Commissioner. This will include, but is not limited to, the following:
- (a) Health and Safety at Work etc Act 1974;
  - (b) Management of Health and Safety at Work Regulations 1999;
  - (c) Workplace (Health, Safety and Welfare) Regulations 1992;
  - (d) Control of Substances Hazardous to Health Regulations 2002;
  - (e) Provision and Use of Work Equipment Regulations 1998;
  - (f) Personal Protective Equipment at Work Regulations 1992;
  - (g) Construction (Design and Management) Regulations 2007;
  - (h) Electricity at Work Regulations 1989;
  - (i) Personal Protective Equipment Regulations 2002;
  - (j) Work at Heights Regulations 2005;
  - (k) any legislation which is equivalent to any of the legislation referred to in this clause D6.1 and which is in force in any other jurisdiction in which any activities are carried out under or in connection with the Contract by the Contractor or any of its Staff or sub-contractors.

- D6.2 The Contractor shall provide applicable hazard information such as material safety data sheets and shall inform the Commissioner of all regulations, guidance and significant risk (statutory or otherwise) which the Contractor knows or believes to be associated with the Services, and/or any combination of the Services with any other product or service.
- D6.3 The Contractor shall indemnify the Commissioner against all liability and loss related to any third party claim which arises from the act or omission of the Contractor and/or any of its Staff or sub-contractors resulting in the alleged release of any waste, hazardous substance or other pollutant.
- D6.4 The Contractor shall notify the Commissioner of past enforcement action taken against the Contractor and provide such details of prosecutions, fines, accident history and frequency rate as may be considered necessary by the Commissioner.
- D6.5 The Contractor shall have a designated policy to manage, control and audit the health and safety standards of its sub-contractors and shall take appropriate action if any sub-contractors fail to meet required standards.
- D6.6 The Commissioner shall be entitled, acting through its authorised officers and health and safety advisors, to suspend the performance by the Contractor of some or all of its obligations under the Contract in the event of non compliance by the Contractor of its obligations under this clause D6. The Contractor shall not resume performance of the suspended obligations until notified that the Commissioner is satisfied that the relevant non compliance has been rectified.
- D6.7 The Contractor acknowledges and agrees that any breach of its obligations under this clause D6, including any persistent, minor breaches, may (at the Commissioner's discretion) have the following consequences (without limitation);
- (a) the exercise of rights on the part of the Commissioner to suspend the performance by the Contractor of some or all of its obligations under the Contract or terminate the Contract;
  - (b) to the extent permitted by applicable laws, the imposition of restrictions on the Contractor from working on any other contract with the Commissioner until improvements to its health and safety practices have been made and suitable evidence of such has been provided to the Commissioner;
  - (c) to the extent permitted by applicable laws, the removal of the Contractor from the Commissioner's approved/select lists.
- D6.8 The Contractor shall provide the Commissioner on request with a copy of its health and safety policy, risk assessments, method statements and safe systems and procedures. Notwithstanding this, the Contractor shall ensure that its Staff and sub contractors comply at all times with the Commissioner's health and safety policies and safety rules in so far as it or they are relevant to the Contract.
- D6.9 The Contractor shall comply with any health and safety related conditions stipulated by the Commissioner from time to time. Such conditions shall override details contained in the Contractor's internal documentation.
- D6.10 The Contractor shall notify the Commissioner in writing without delay of all incidents, which either could have lead, or did lead, to injury and/or damage. All accidents involving the Contractor or its Staff must be reported by completion of an Accident Report form in the Commissioner's standard form, which will be provided by the Commissioner and which must then be immediately forwarded to the Authorised Officer. The Authorised Officer must be advised of all

occurrences at the earliest opportunity. The Commissioner reserves the right to investigate all accidents occurring within the Premises and the Contractor and its Staff shall co-operate fully with such investigations.

- D6.11 The Contractor shall nominate a senior representative to act as co-ordinator between both parties for matters of health and safety arising out of the Contract.
- D6.12 The Contractor shall ensure that sufficiently trained and competent employees shall be provided to undertake the duties defined in the Contract and shall provide evidence of competency where required by the Commissioner.
- D6.13 The Contractor shall provide product specifications, technical supporting information, user instructions and maintenance information relating to any goods to be supplied to the Commissioner.
- D6.14 The Contractor represents and warrants to the Commissioner that it has satisfied itself that all necessary tests and examinations have been made or will be made prior to the delivery of the Services and/or any goods to ensure that the provision of the Services and/or delivery of any goods are designed to be safe and without risk to the health and safety of persons.
- D6.15 The Contractor shall undertake in relation to its own Staff, risk assessments on Premises and activities included in the Contract. Where an assessed risk may also affect other persons at the Premises, the Contractor shall provide a copy of the assessment to the Authorised Officer. The Contractor shall undertake risk assessments to ascertain whether the nature or the location of any duties upon which the Contractor's Staff shall be engaged in the provision of the Contract make the wearing of any special or protective clothing and footwear necessary or appropriate, and where this is the case the Contractor shall provide and shall require its Staff to wear such clothing or footwear, at the Contractor's sole expense.
- D6.16 The Contractor shall hold the following documents and ensure that they are accurately maintained:
- (a) The Contractor's Health and Safety Policy;
  - (b) Arrangements in place to cover health and safety;
  - (c) The Contractor's Health and Safety training programme for all Staff;
  - (d) Risk Assessment Programme;
  - (e) Risk Assessments, including but not limited to general assessments, manual handling, DSE, COSHH, First Aid, Fire;
  - (f) Health and safety training records for all their Staff, including:
    - Risk Assessment
    - Manual Handling
    - DSE
    - COSHH
    - First Aid
    - Fire Warden
  - (g) Evidence of communication of risks identified;
  - (h) Evidence of application of appropriate controls;
  - (i) Fire prevention and fire evacuation programme;
  - (j) Evidence of systems of monitoring standard of health and safety.
- D6.17 Upon request by the Commissioner, the Contractor shall supply evidence of any or all documentation listed in clause D6.16.

## **D7 Welsh Language**

- D7.1 The Contractor shall comply with the provisions of the Welsh Language Act 1993 and the requirements of the current SWP Welsh Language Scheme, the Welsh

Language (Wales) Measure 2011, the Welsh Language Standards (No 5) Regulations 2016 and the relevant Welsh Language Standards placed on the Chief Constable and the Commissioner in the provision of the Service as amended from time to time.

## **D8 Transparency**

**D8.1** The Contractor acknowledges that the Commissioner is subject to the Elected Local Policing Bodies (Specified Information) Order 2011. The Contractor gives consent to the Commissioner to publish the contents of the Official Order, information regarding any tender process, and information regarding amounts paid to the Contractor under these Terms and Conditions (the "Contract Information"). The Commissioner in its absolute discretion may redact all or part of the Contract Information prior to its publication. At its sole discretion, the Commissioner shall make the final decision regarding publication and/or redaction of the Contract Information.

## **D9 Indemnity for Breach of Clause D Statutory Obligations and Regulations**

**D9.1** The Contractor shall fully indemnify the Commissioner and the Chief Constable against any actions, claims, loss, proceedings, demands, damages, charges or other costs (including legal costs and disbursements on a solicitor own client basis) arising from any breach of any provision of clauses D1 – D8 inclusive.

## **E PROTECTION OF INFORMATION**

### **E1 Data Protection Act**

**E1.1** For the purposes of this Clause E1, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.

**E1.2** The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

**E1.3** Notwithstanding the general obligation in clause E1.2, where the Contractor is processing Personal Data as a Data Processor for the Commissioner the Contractor shall:

- (a) process the Personnel Data only in accordance with instructions from the Commissioner (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Commissioner;
- (b) comply with all applicable laws;
- (c) process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Contractor's obligations under this Contract or as is required by Law or any Regulatory Body;
- (d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the

Personal Data and having regard to the nature of the Personal Data which is to be protected;

- (e) take reasonable steps to ensure the reliability of its Staff and agents who may have access to the Personal Data;
- (f) obtain prior written consent from the Commissioner in order to transfer the Personal Data to any sub-contractor for the provision of the Services;
- (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Commissioner;
- (h) ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause E1;
- (i) ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Commissioner;
- (j) not disclose Personnel Data to any third parties in any circumstances other than with the written consent of the Commissioner or in compliance with a legal obligation imposed upon the Commissioner; and
- (k) notify the Commissioner (within 5 Working Days) if it receives a request from a Data Subject to have access to that person's Personal Data or a complaint or request relating to the Commissioner's obligations under the DPA.

E1.4 The provision of this Clause E1 shall apply during the Contract Period and indefinitely after its expiry.

E1.5 The Contractor shall fully indemnify the Commissioner and Chief Constable against any actions, claims, loss, proceedings, demands, damages, charges or other costs (including legal costs and disbursements on a solicitor own client basis) arising from any breach of any provision of this clause E1.

## **E2 Official Secrets Acts 1911 to 1989, S182 of the Finance Act 1989**

E2.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

E2.2 In the event that the Contractor or its Staff fail to comply with this clause E2, the Commissioner reserves the right to terminate the Contract by giving notice in writing to the Contractor.

E2.3 The Contractor shall fully indemnify the Commissioner and Chief Constable against any actions, claims, loss, proceedings, demands, damages, charges or other costs (including legal costs and disbursements on a solicitor own client basis) arising from any breach of any provision of this clause E2.

## **E3 Confidential Information**

- E3.1 Except to the extent set out in this clause E3 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- (a) treat all Confidential Information belonging to the other Party as confidential and use all reasonable endeavours to prevent their Staff from making any disclosure to any person of any such Confidential Information; and
  - (b) not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of either Party's obligations under the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.
- E3.2 Clause E3.1 shall not apply to the extent that the disclosing party can show by reference to written records that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;
  - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - (c) such information was obtained from a third party without obligation of confidentiality;
  - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - (e) it is independently developed without access to the other Party's Confidential Information.
- E3.3 The Contractor may only disclose the Commissioner's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information for such purposes, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E3.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Commissioner's Confidential Information received otherwise than for the purposes of this Contract.
- E3.5 The Contractor shall ensure that its Staff, professional advisors and consultants are aware of and comply with the Contractor's confidentiality obligations under the Contract. Where it is considered necessary in the opinion of the Commissioner, the Contractor shall ensure its Staff, professional advisors and/or consultants give a confidentiality undertaking before beginning work in connection with the Contract on terms equivalent to those set out in this Agreement. Such undertaking shall ensure that such Staff, professional advisors and consultants are bound in every respect as the Contract is bound by the terms of this Agreement.
- E3.6 Nothing in this Contract shall prevent the Commissioner from disclosing any Confidential Information obtained from the Contractor:
- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies

or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

- (b) to any consultant, contractor or other person engaged by the Commissioner or any person conducting an Office of Government Commerce gateway review;
- (c) for the purpose of the examination and certification of the Commissioner's accounts; or
- (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Commissioner has used its resources.

- E3.7 The Commissioner shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E3.6 is made aware of the Commissioner's obligations of confidentiality.
- E3.8 Nothing in this clause E3 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- E3.9 In the event that the Contractor fails to comply with clauses E3.1 to E3.5, the Commissioner reserves the right to terminate the Contract with immediate effect by notice in writing.
- E3.10 Clauses E3.1 to E3.6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- E3.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services under the Contract, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards, best practice and any requirements specified by the Commissioner.
- E3.12 The Contractor shall immediately notify the Commissioner of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services under the Contract and will keep a record of such breaches. The Contractor shall use its best endeavours to recover such Confidential Information or data howsoever it may be recorded. This obligation is in addition to the Contractor's obligations under clauses E3.1 to E3.5. The Contractor shall co-operate with the Commissioner in any investigation that the Commissioner considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- E3.13 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Commissioner's request if the Commissioner reasonably believes the Contractor has failed to comply with clause E3.11.
- E3.14 The Contractor shall fully indemnify the Commissioner and Chief Constable against any actions, claims, loss, proceedings, demands, damages, charges or other costs (including legal costs and disbursements on a solicitor own client basis) arising from any breach of any provision of this clause E3.



**E4 Freedom of Information**

- E4.1 The Contractor acknowledges that the Commissioner is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Commissioner to enable the Commissioner to comply with its Information disclosure obligations.
- E4.2 The Contractor shall and shall procure that any sub-contractors shall:
- (a) transfer to the Commissioner all Requests for Information (“**RFI**”) that it receives as soon as practicable and in any event within 2 Working Days of receiving a RFI;
  - (b) provide the Commissioner with a copy of all information (at no cost to the Commissioner) the subject of a RFI in its possession, or power in the form that the Commissioner requires within 5 Working Days (or such other period as the Commissioner may specify) of the Commissioner’s request; and
  - (f) provide all necessary assistance as reasonably requested by the Commissioner to enable the Commissioner to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
  - (g) provide all reasonable assistance (at no cost) to the Commissioner in the event of a Request for Information which leads to Information Tribunal Proceedings, such assistance to include (but not be limited to) providing statements, documentation and suitable witness attendance in respect of such proceedings. ,
- E4.3 The Commissioner shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations
- E4.4 In no event shall the Contractor respond directly to a RFI unless expressly authorised to do so by the Commissioner.
- E4.5 The Contractor acknowledges that (notwithstanding the provisions of clause E4) the Commissioner may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“**the Code**”), be obliged under the FOIA, or the Environmental Information Regulations, to disclose information concerning the Contractor or the Services in certain circumstances:
- (a) without consulting the Contractor; or
  - (b) following consultation with the Contractor and having taken their views into account;
- provided always that where clause E4.5(a) applies the Commissioner shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.
- E4.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Commissioner to inspect such records as requested from time to time.

E4.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Commissioner may be obliged to disclose it in accordance with this clause E4.

E4.8 The Contractor shall fully indemnify the Commissioner and Chief Constable against any actions, claims, loss, proceedings, demands, damages, charges or other costs (including legal costs and disbursements on a solicitor own client basis) arising from any breach of any provision of this clause E4.

**E5 Publicity, Media and Official Enquiries**

E5.1 The Contractor shall not make any press announcement or publicise the Contract or any part thereof in any way, except with the Approval of the Commissioner.

E5.2 The Contractor shall take all reasonable steps to ensure that its Staff and sub-contractors comply with clause E5.1.

**E6 Security**

E6.1 The Commissioner shall maintain the security of the Premises in accordance with its own security requirements from time to time. The Contractor shall comply, and shall ensure that its Staff comply, with all applicable security requirements of the Commissioner in respect of the Premises and/or in respect of any Confidential Information of the Commissioner (including documents containing confidential and/or secret information) which is in the possession and/or control of the Contractor or any of its Staff from time to time.

E6.2 The Commissioner shall provide to the Contractor, upon request, copies of its written security procedures and may afford the Contractor, upon reasonable request, with an opportunity to inspect its physical security arrangements.

**E7 Intellectual Property Rights**

E7.1 Subject to clause E7.11, all Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs and/or other material (the "**IP Materials**"):

(a) furnished to or made available to the Contractor by or on behalf of the Commissioner shall remain the property of the Commissioner; and

(b) prepared by or for the Contractor on behalf of the Commissioner for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Commissioner;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without Approval, use or disclose any Intellectual Property Rights in the IP Materials.

E7.2 The Contractor hereby assigns to the Commissioner (and where applicable shall ensure that any sub-contractor or member of Staff assigns to the Commissioner), with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E7.1(b). This assignment shall take effect on the Commencement Date or as a present assignment of future rights that shall take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall

execute all documentation necessary to execute this assignment at the Contractor's expense.

- E7.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in all Intellectual Property produced by the Contract or the performance of the Contract.
- E7.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Commissioner a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Commissioner an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Commissioner to sub-license, transfer, novate or assign to another body as set out in clause F1.8, the Replacement Contractor or to any other third party supplying services to the Commissioner.
- E7.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Commissioner and/or the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and all other liabilities which the Commissioner or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- (a) items or materials based upon designs supplied by the Commissioner and/or the Crown; or
  - (b) the use of data supplied by the Commissioner and/or the Crown which is not required to be verified by the Contractor under any provision of the Contract.
- E7.6 The Commissioner shall notify the Contractor in writing of any claim or demand brought against the Commissioner for infringement or alleged infringement of any Intellectual Property Right in materials supplied, licensed and/or sub-licensed by the Contractor.
- E7.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied, licensed and/or sub-licensed by the Contractor, provided always that the Contractor:
- (a) shall consult the Commissioner on all substantive issues which arise
  - (b) shall take due and proper account of the interests of the Commissioner; and
  - (c) shall not settle or compromise any claim without the Commissioner's Approval (such consent not to be unreasonably withheld or delayed).
- E7.8 The Commissioner shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Commissioner or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Commissioner for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Commissioner in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause E7.5(a) or (b).

E7.9 Subject to the conditions of clause E7.7 being met by the Contractor in respect of any negotiations or litigation undertaken by the Contractor in accordance with clause E7.7, the Commissioner shall not (without the Approval of the Contractor, such consent not to be unreasonably withheld or delayed), make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Commissioner or the Contractor in connection with the performance of its obligations under the Contract.

E7.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Commissioner and, at its own expense and subject to the Approval of the Commissioner (not to be unreasonably withheld or delayed), use its best endeavours to:

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
- (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Commissioner,

and in the event that the Contractor is unable to comply with clauses E7.10(a) or (b) within 20 Working Days of receipt of the Contractor's notification the Commissioner may terminate the Contract with immediate effect by notice in writing.

E7.11 The Contractor grants to the Commissioner a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Commissioner reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided.

E7.12 The Contractor shall fully indemnify the Commissioner (and the Chief Constable) against any actions, claims, loss, proceedings, demands, damages, charges or other costs (including legal costs and disbursements on a solicitor own client basis) arising from any breach of any provision of this clause E7.

## **E8 Audit**

E8.1 The Contractor shall keep and maintain, until six years after the Contract has been completed to the satisfaction of the Commissioner or otherwise terminated, records of all Services supplied under the Contract, all expenditures which are reimbursable by the Commissioner and of the hours worked and costs incurred by the Contractor or in connection with the Contractor's Staff in connection with the Contract. The Contractor shall on request afford the Commissioner or its representatives such access to those records as may be required by the Commissioner in connection with the Contract.

E8.2 The Contractor shall, if so required by the Commissioner, permit representatives of the National Assembly for Wales, National Audit Office, the European Commission or the European Court of Auditors, to examine their records at all reasonable times and shall, if required by such an organisation, provide appropriate oral and/or written explanation thereof.

- E8.3 The Contractor shall grant to the Commissioner, Association of Chief Police Officers, any statutory auditors of the Commissioner together with other similar professional advisors of the Commissioner and their respective authorised agents the right of reasonable access to such records and/or materials used in connection with this Contract, and shall provide all reasonable assistance at all times during the currency of this Contract for the purposes of carrying out an audit of the Contractor's compliance with this Contract, including its activities, the calculation of charges in accordance with the terms of the Contract, performance security and integrity in connection therewith.
- E8.4 Without prejudice to the foregoing, in the event of any investigation into suspected fraudulent activity or other impropriety by the Contractor or any third party the Commissioner reserves for itself, any statutory auditors of the Commissioner and their respective authorised agents the right of immediate access to such records and/or materials described in clauses E8.1 and E8.3 above, and the Contractor agrees to render all assistance necessary to the conduct of such investigation at all times during the currency of the Contract or at any time thereafter. For the avoidance of doubt, the Contractor shall only be repaid its reasonable expenses incurred in giving assistance pursuant to this clause E8.4 in the event that the result of such investigation reveals no fraudulent activity or other impropriety by the Contractor, its servants, agents or sub-contractors.

## **F. CONTROL OF THE CONTRACT**

### **F1 Transfer and Sub-Contracting**

- F1.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval of the Commissioner. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors and/or assignees as though they are its own.
- F1.3 Where the Commissioner has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Commissioner, be sent by the Contractor to the Commissioner as soon as reasonably practicable.
- F1.4 Without prejudice to the foregoing, in the event that the Contractor wishes to assign (with the Approval of the Commissioner) to a third party ("**the Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract. Any assignment under this clause F1.4 shall be subject to:
- (a) reduction of any sums in respect of which the Commissioner exercises its right of recovery under clause C3;
  - (b) all related rights of the Commissioner under the contract in relation to the recovery of sums due but unpaid; and
  - (c) the Commissioner receiving notification under both clauses F1.5 and F1.6.
- F1.5 In the event that the Contractor assigns the right to receive the Contract Price under clause F1.4, the Contractor or the Assignee shall notify the Commissioner in writing of the assignment and the date upon which the assignment becomes effective.

- F1.6 The Contractor shall ensure that the Assignee notifies the Commissioner of the Assignee's contact information and bank account details to which the Commissioner is to make payment.
- F1.7 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Commissioner.
- F1.8 Subject to clause F1.10, the Commissioner may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
  - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Commissioner (including, without limitation any body established pursuant to the provisions of the Police Reform and Social Responsibility Act 2011); or
  - (c) any private sector body which substantially performs the functions of the Commissioner,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F1.9 Any change in the legal status of the Commissioner such that it ceases to be a Contracting Authority shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Commissioner.
- F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.8 to a body which is not a Contracting Authority or if there is a change in the legal status of the Commissioner such that it ceases to be a Contracting Authority (unless such change is pursuant to the provisions of the Police Reform and Social Responsibility Act 2011) (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- (a) the rights of termination of the Commissioner in clauses H1 shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor (such consent not to be unreasonably withheld or delayed).
- F1.11 The Commissioner may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Commissioner shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

**F2 Waiver**

F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A5.

F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

**F3 Variation**

F3.1 Subject to the provisions of this clause F3, the Commissioner may request a variation to the Specification (such a change is hereinafter called a “**Variation**”).

F3.2 The Commissioner may request a Variation by notifying the Contractor in writing of the “Variation” and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Commissioner shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

F3.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Commissioner may;

(a) allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification;

(b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at clause I2.

F3.4 No variation of the Contract shall be valid unless effected in accordance with clause F3.2 (in respect of Variations) or otherwise expressly agreed in writing by the Commissioner and communicated to the other Party in writing in accordance with clause A5.

**F4 Severability**

F4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

**F5 Remedies in the event of inadequate performance**

F5.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected

with the performance of the Contractor's obligations under the Contract, then the Commissioner shall notify the Contractor, and where considered appropriate by the Commissioner, investigate the complaint. The Commissioner may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 of the Contract.

F5.2 In the event that the Commissioner is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Commissioner may, without prejudice to its rights under clause H2, do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Commissioner that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract and in such circumstances the Commissioner shall have no liability to pay the Contract Price in respect of those Services which the Commissioner has itself supplied or procured;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (c) terminate, in accordance with clause H2, the whole of the Contract.

F5.3 Without prejudice to its rights under clause C3, the Commissioner may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Commissioner or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Commissioner uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F5.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Commissioner shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Commissioner may direct.

F5.5 In the event that:

- (a) the Contractor fails to comply with clause F5.4 above and the failure is materially adverse to the interests of the Commissioner or prevents the Commissioner from discharging a statutory duty; or
- (b) the Contractor persistently fails to comply with clause F5.4 above,

the Commissioner may terminate the Contract with immediate effect by notice in writing.

## **F6 Remedies Cumulative**

F6.1 Except as otherwise expressly provided by the Contract, all rights and remedies available to either Party for breach of the Contract or otherwise are cumulative and may be exercised concurrently or separately, and the exercise of any one



right or remedy shall not be deemed an election of such right or remedy to the exclusion of (and shall be without prejudice to the availability of) any other right or remedy.

**F7 Monitoring of Contract Performance**

F7.1 Where applicable, the Contractor shall comply with the monitoring arrangements set out in the Monitoring Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

**F8 Extension of Contract Period**

F8.1 Subject to clause C4, the Commissioner may in its sole discretion extend the Contract for further period(s) as detailed in the Contract Award Schedule up to the maximum allowed by the Contract or as limited by Legislation. The provisions of the Contract shall apply (subject to any Variation or adjustment to the Contract Price pursuant to clause C4) throughout any such extended period.

**F9 Entire Agreement**

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and the Contractor acknowledges and agrees that it has not been induced to enter into the Contract in reliance upon (and in connection with the Contract does not have any remedy and waives all rights in respect of) any warranty, representation, statement, agreement or undertaking of any nature whatsoever, whether written or oral, other than as expressly set out in the Contract, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F9.2 In the event of, and only to the extent of, any conflict or inconsistency between the clauses of the Contract, the Schedules and/or any document referred to in or attached to the Contract, Schedules, and/or any document, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the clauses of the Contract;
- (b) the Specification Schedule;
- (c) the remaining Schedules; and
- (d) any other document referred to in or attached to the Contract.

F9.3 No terms or conditions put forward at any time by the Contractor shall form any part of the Contract.

**F10 Counterparts**

F10.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

**G LIABILITIES**

**G1 Liability, Indemnity and Insurance**

G1.1 Neither Party excludes or limits liability to the other Party for or in respect of:

- (a) death or personal injury caused by its negligence; or

- (b) Fraud; or
  - (c) fraudulent misrepresentation; or
  - (d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
  - (e) any liability arising under any indemnity provision in the Contract, save as expressly provided for in the Contract.
- G1.2 Subject to clauses G1.4 and G1.5, the Contractor shall indemnify the Commissioner and keep the Commissioner indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Commissioner or by breach by the Commissioner of its obligations under the Contract.
- G1.4 Without prejudice to the Contractor's liability pursuant to clause G1.1, the Contractor shall effect and maintain for the Contract Period with a reputable insurance company or companies acceptable to the Commissioner a policy or policies of insurance covering all the matters which are the subject of the indemnities and undertakings on the part of the Contractor contained in the Agreement and against all actions, claims, demands, costs and expenses in respect thereof, in the sum of £5,000,000 at least in respect of any one incident and unlimited in total unless otherwise agreed by the Commissioner in writing.
- G1.5 The Contractor shall have in force (and shall ensure that any sub-contractor has in force) with a reputable insurance company or companies acceptable to the Commissioner in the following amounts unless otherwise specified by the Commissioner in the Contract Award Schedule:
- (a) employers liability insurance in accordance with any legal requirements for the time being in force, in the sum of not less than £10,000,000; and
  - (b) public liability insurance in the sum of not less than £5,000,000 for any one incident and unlimited in total, unless otherwise agreed by the Commissioner in writing; and
  - (c) professional indemnity insurance in the sum of not less than £1,000,000 for any one incident and unlimited in total;
- and such insurance shall be maintained for the Contract Period.
- G1.6 Save as otherwise provided in the Contract and subject always to clause G1.1, in no event shall the Commissioner be liable to the Contractor:
- (a) loss of profits, business, revenue or goodwill; and/or
  - (b) loss of savings (whether anticipated or otherwise); and/or

(c) indirect or consequential loss or damage.

- G1.7 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from any Default on the part of the Contractor and/or its Staff (including any sub-contractors).
- G1.8 The Contractor shall give the Commissioner, on request, copies of all insurance policies referred to in this clause G1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies. Inspection and/or receipt of such information shall not constitute acceptance by the Commissioner of the terms thereof, nor be a waiver of the Contractor's liability under the Contract.
- G1.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Commissioner shall be entitled to make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor on written demand, together with any expenses incurred in procuring such insurance.
- G1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities or obligations under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.
- G1.11 In the event that the Commissioner receives a claim relating to the Services or the Contract, the Contractor shall fully co-operate with the Commissioner or its insurers and shall assist them in dealing with such claims (including, without limitation, providing information and documentation in a timely manner and at the Contractor's sole expense).

## **G2 Warranties and Representations**

- G2.1 The Contractor warrants and represents that:
- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
  - (b) in entering the Contract it has not committed any Fraud;
  - (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Commissioner prior to execution of the Contract;
  - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
  - (e) 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 the Contract;

- (f) no 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 Contractor 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 Contractor's assets or revenue;
- (g) it owns or has obtained valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) the Services or any part thereof and/or the Commissioner's use and/or possession of all and/or any of the goods provided as part of the Services will not infringe the Intellectual Property Rights of any third party;
- (i) the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence and in accordance with Good Industry Practice;
- (j) all components of any goods provided under the Contract shall be free from defects in design, materials or workmanship;
- (k) all materials supplied by the Contractor shall of satisfactory quality, fit for all purposes for which all and any such materials are supplied and shall correspond to any description or sample provided by the Contractor to the Commissioner;
- (l) any training and/or documentation provided shall contain all information necessary to enable the Commissioner to make full and proper use of the Services and/or any goods provided under the Contract.
- (m) in the 3 years prior to the date of the Contract:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

G2.2 Each of the warranties set out in this clause G2 shall be construed as a separate warranty and/or condition and shall not be limited by reference to any other warranty and/or condition.

## **H DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on insolvency and change of control**

H1.1 The Commissioner may terminate the Contract with immediate effect by notice in writing where the Contractor is a company (howsoever constituted) and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed or any other step is taken with a view to it being determined that it would be wound-up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (b) a petition is presented for its winding up (which is not dismissed within 10 Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (c) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in clauses H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Commissioner may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- (b) a petition is presented and not dismissed within 10 Working Days or order made for the Contractor's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 10 Working Days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or

- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H1.3 The Commissioner may terminate the Contract with immediate effect by notice in writing where the Contractor is a partnership and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:-
  - (i) an application for an interim order is made pursuant to section 252-253 of the Insolvency Act 1986 or a proposal is made for any composition, scheme or arrangement with, or assignment for the benefit of, his creditors;
  - (ii) a petition is presented for his bankruptcy;
  - (iii) a receiver or similar officer is appointed over the whole or any part of his assets.

H1.4 The Contractor shall notify the Commissioner immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**change of control**"). The Commissioner may terminate the Contract by notice in writing with immediate effect within 6 months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the Commissioner becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

## H2 Termination on Default

H2.1 The Commissioner may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Commissioner within 10 Working Days, or such other period as may be specified by the Commissioner, after issue of a written notice specifying the Default and requesting it to be remedied; or

- (b) the Default is not, in the opinion of the Commissioner, capable of Remedy, or
- (c) the Default is a material breach of the Contract, or
- (d) the Default relates to a failure to meet and/or rectify performance in respect of particular delivery timescales, service levels or key performance indicators and the failure in question is of a severity that permits the Commissioner by reference to other provisions in the Contract (whether in a Schedule or otherwise) to terminate the Contract.

H2.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Commissioner in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

### **H3 Commissioner's Right to Termination**

H3.1 The Commissioner shall have the right to terminate the Contract at any time by giving 3 Months' written notice to the Contractor or such other period of notice as agreed in writing by the Parties.

H3.2 The Commissioner shall have the right to terminate the Contract at any time with immediate effect on giving notice to the Contractor if there is a risk, or the Commissioner reasonably considers that there is a risk, of the Commissioner's reputation being damaged if the Contract was to continue in force.

H3.3 The Commissioner may, at its sole discretion, terminate the Contract, or any part thereof, with immediate effect in the event of any of the grounds contained within Regulation 73 of the Public Contracts Regulation 2015 occurring.

H3.4 The decision of the Commissioner to terminate the Contract under this clause H3 is at its reasonable, sole discretion and it is not required to provide any reasoning for such decision.

### **H4 Consequences of Expiry or Termination**

H4.1 Where the Commissioner terminates the Contract under clauses A7.2, B5.3, D1.4, D2.3, D3.3, D6.7, E2.2, E3.9, E7.10, F5.2, F5.5, H1, H2.1, H3.2, H3.3, H5.4 and/or paragraph 1.17 of the Performance Criteria Schedule and then makes other arrangements for the supply of Services, the Commissioner may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Commissioner throughout the remainder of the Contract Period. The Commissioner shall take all reasonable steps to mitigate such additional expenditure.

H4.2 Where the Contract is terminated under any of the clauses referred to in clause H4.1, no further payments shall be payable by the Commissioner to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract, but where the payment has yet to be made by the Commissioner), until the Commissioner has established the final cost of making the other arrangements envisaged under this clause. The Contractor shall also return to the Commissioner any sums pre-paid in respect of Services not provided by the date of termination (or expiry).

H4.3 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Commissioner or the Contractor under clauses B5.19, C2, C3, D1, D2, D3.3, D4.1, D6.3, D9, E1, E2, E3, E4, E5, E6, E7, E8, F6, G1, H4, H6, I1 and I2 [K1.5 and K1.7].

H4.4 The Contractor undertakes to offer all reasonable assistance to the Commissioner and to any third party engaged by the Commissioner to provide such services following termination of the Contract, howsoever arising. The Contractor shall use its best endeavours to ensure continuity in the Services provided to the Commissioner.

## **H5 Disruption**

H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Commissioner, its employees or any other contractor employed by the Commissioner.

H5.2 The Contractor shall immediately inform the Commissioner of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.

H5.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Commissioner (acting reasonably), then the Contract may be terminated with immediate effect by the Commissioner by notice in writing.

## **H6 Recovery upon Termination**

H6.1 On the termination of the Contract for any reason, the Contractor shall:

- (a) immediately return to the Commissioner all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which were obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Commissioner all Property (including materials, documents, information and access keys) provided to the Contractor under clause B8. Such property shall be handed back in good working order (allowance shall be made for fair wear and tear);
- (c) assist and co-operate with the Commissioner to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress;
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Commissioner for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Commissioner or the Replacement Contractor to conduct due diligence.



H6.2 If the Contractor fails to comply with clause H6.1 (a) and (b), the Commissioner may recover possession thereof and the Contractor grants a licence to the Commissioner and/or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

H6.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H6.1(c) and (d) free of charge. Otherwise, the Commissioner shall pay the Contractor's reasonable costs of providing such assistance where requested by the Commissioner and the Contractor shall take all reasonable steps to mitigate such costs.

## **H7 Force Majeure**

H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 3 Months, either Party may terminate the Contract with immediate effect by notice in writing.

H7.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier of the Contractor shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

H7.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause H7.1 it shall immediately notify the other by the most expeditious method then available, inform the other of the period for which it is estimated that such failure or delay shall continue and shall use its best endeavours, acting in accordance with Good Industry Practice, to resume performance of its obligations as quickly as possible to minimise the duration and impact of any such failure or delay.

H7.4 The Commissioner shall not be required to pay the Contractor in respect of any period during which (and to the extent that) the Contractor is prevented or delayed in performing its obligations due to Force Majeure. In these circumstances, the Contract Price shall be adjusted and any necessary refund or credit effected in accordance with the Commissioner's reasonable instructions.

## **H8 Ineffectiveness**

H8.1 If at any time a "declaration of ineffectiveness" is made by a court in respect of the Contract pursuant to regulation 98(2)(a) of the Public Contracts Regulations 2015 then:

- (a) the provisions of clause H6 and any other provisions in the Contract which are intended to apply on or after the date on which the Contract is terminated for any reason shall apply as if on the date on which the relevant declaration of ineffectiveness is to take effect (and as a result the Contract is to come to an end);
- (b) the Commissioner shall not be required or liable (on whatever grounds) to pay any compensation or restitution to the Contractor in respect of any loss, damage, costs, expenses or other liabilities suffered or incurred by the Contractor as a result of or in connection

with the relevant declaration of ineffectiveness being made, including any loss of revenue or profit that the Contractor might otherwise have generated under the Contract during the Contract Period.

H8.2 If at any time an order is made by a court, pursuant to regulation 102(3)(a) of the Public Contracts Regulations 2015, that the duration of the Contract be shortened, then:

(a) the provisions of clause H6 and any other provisions in the Contract which are intended to apply on or after the date on which the Contract is terminated for any reason shall apply as if on the date on which the relevant declaration of ineffectiveness is to take effect (and as a result the Contract is to come to an end);

(b) the Commissioner shall not be required or liable (on whatever grounds) to pay any compensation or restitution to the Contractor in respect of any loss, damage, costs, expenses or other liabilities suffered or incurred by the Contractor as a result of or in connection with the relevant declaration of ineffectiveness being made, including any loss of revenue or profit that the Contractor might otherwise have generated under the Contract during the Contract Period.

## **I DISPUTES AND LAW**

### **11 Governing Law and Jurisdiction**

11.1 Subject to the provisions of clause I2, the Commissioner and the Contractor accept the exclusive jurisdiction of the courts of England and Wales and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to the laws of England and Wales.

### **12 Dispute Resolution**

12.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to a chief executive (or equivalent) of each Party.

12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

12.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless (a) the Commissioner considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

12.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor (and its Staff) shall comply fully with the requirements of the Contract at all times.

12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the

other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.

- (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6.
- (g) In the absence of any specific arrangements as to costs which is recorded in accordance with clause I2.5(d), each Party shall bear their own costs and expenses in respect of any mediation.

I2.6 Subject to clause I2.2, the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 have been completed save that:

- (a) the Commissioner may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.
- (b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Commissioner of its intentions and the Commissioner shall have 15 Working Days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.
- (c) the Contractor may request by notice in writing to the Commissioner that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Commissioner may consent as it sees fit.

- 12.7 In the event that any arbitration proceedings are commenced pursuant to clause 12.6:
- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
  - (b) the Commissioner shall give a written notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:
    - (i) that the dispute is referred to arbitration; and
    - (ii) providing details of the issues to be resolved;
  - (c) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
  - (e) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days of the Arbitration Notice being issued by the Commissioner under clause 12.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - (f) the arbitration proceedings shall take place in London or Cardiff and in the English or Welsh language; and
  - (g) the arbitration proceedings shall be governed by, and interpreted in accordance with the laws of England and Wales.

## **J. SECURITY FOR PERFORMANCE**

- J1.1 If required by the Commissioner, the Contractor shall provide a security for its performance, in a form Approved by the Commissioner. This security for performance shall be at the sole discretion of the Commissioner and can take the form, without limitation, of a performance bond and/or parent company guarantee.
- J1.2 In the event of a performance bond being required by the Commissioner, it shall be a condition precedent of this Agreement to become effective that the said performance bond shall be delivered by the Contractor to the Commissioner within fourteen days (or such other period as shall be agreed by the Commissioner) of the execution of this Agreement, failing which, this Agreement shall become null and void.

## **K. TRANSFER OF UNDERTAKINGS**

- K1.1 Both the Commissioner and the Contractor recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“the TUPE regulations”) may apply in respect of the award of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Contractor on the commencement of the Contract. The provisions within this section only apply in respect of a relevant transfer for the purposes of the TUPE regulations.

- K1.2 During the period of six months preceding the expiry of the Contract or after the Commissioner has given notice to terminate the Contract or the Contractor stops trading, and within 20 Working Days of being so requested by the Commissioner, the Contractor shall fully and accurately disclose to the Commissioner for the purposes of the TUPE regulations all information relating to its employees engaged in providing the Services under the Contract, in particular, but not necessarily restricted to, the following:
- (a) the total number of staff whose employment with the Contractor is liable to be terminated at the expiry of this Contract but for any operation of law; and
  - (b) for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements; and
  - (c) full information about the other terms and conditions on which the affected staff are employed (including but not limited to their working arrangements), or about where that information can be found;
  - (d) details of pension entitlements, if any;
  - (e) information regarding bonus schemes, option plans, severance arrangements or insured benefits such as private medical or long term disability benefits, if any;
  - (f) details of any disciplinary procedure taken against an employee;
  - (g) details of any grievance procedure taken by an employee within the previous two years;
  - (h) job titles of the members of staff affected and the qualifications required for each position;
  - (i) information of any court, or tribunal case, claim or action brought by an employee within the previous two years, or that the Contractor reasonable believes that an employee may bring, arising out of the employee's employment with the Contractor;
  - (j) any other information not captured above which is necessary to provide the Specified Information.
- K1.3 The Contractor shall permit the Commissioner to use the information for the purposes of the TUPE regulations and re-tendering. The Contractor shall co-operate with the re-tendering of the Contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.
- K1.4 The Contractor agrees to indemnify the Commissioner fully and hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Condition K1.2.
- K1.5 The Contractor agrees to indemnify the Commissioner from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or person claiming to be an employee on any date upon which the Contract is terminated and/or transferred to any third party ("Relevant Transfer Date") arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
- K1.6 In the event that such information provided by the Contractor in accordance with Condition K1.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify the Commissioner of the inaccuracies and provide the amended information.
- K1.7 During the 12 months preceding the expiry of this Agreement or where notice to terminate this Agreement for whatever reason has been given, the Contractor shall

not without the prior written consent of the Commissioner, unless bona fide in the ordinary course of business:

- (a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
- (b) materially increase or decrease the number of employees employed in connection with the Services; or
- (c) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.

K1.8 In the event that the Contractor enters into any sub-contract in connection with this Agreement, it shall impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this clause K1 and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify the Commissioner and keep the Commissioner indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Commissioner as a result of or in connection with any failure on the part of the Sub-Contractor to comply with such terms.

K1.9 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.

## **Part 6. CONTRACT AWARD SCHEDULE**

### **Parties**

1. Commissioner Details: Police and Crime Commissioner for South Wales
2. Address: Police Headquarters, Cowbridge Road, Bridgend CF31 3SU.
3. Contractor Details: TO BE COMPLETED AFTER TENDER
4. Company Registration Number: TO BE COMPLETED AFTER TENDER
5. Company Registered Address: TO BE COMPLETED AFTER TENDER

### **Duration**

1. Commencement Date: Date of this Agreement
2. Contract Period: Duration of the provision of Services
3. Expiry Date: Completion of Services
4. Permitted extensions to the Contract Period (for the purposes of clause F8):  
N/A

### **Contact Details**

1. South Wales Police Contact Name: TO BE COMPLETED AFTER TENDER
2. Contract Manager: TO BE COMPLETED AFTER TENDER
3. Key Personnel (for the purposes of clause B4): TO BE COMPLETED AFTER  
TENDER

## **Contact Details for the Purposes of Clause A5**

### 1. Authorised Officer Details:

Address: TO BE COMPLETED AFTER TENDER

Telephone: TO BE COMPLETED AFTER TENDER

Email: TO BE COMPLETED AFTER TENDER

### 2. Contractor Contact Details:

Address: TO BE COMPLETED AFTER TENDER

Telephone: TO BE COMPLETED AFTER TENDER

Email: TO BE COMPLETED AFTER TENDER

## **Insurance Levels**

- a. Are the insurance levels in clause G1.5 to be amended: No

## **Payment Method**

1. Is there to be any specific form of payment to be used for the Contract, e.g. BACS, Credit Card etc: No

The Contractor agrees that, should the Commissioner develop use of the National Police Procurement Hub (NPPH), or any superseding system, and require the Contractor to participate in use of the NPPH in the future, the Contractor shall:-

- a. accept electronic orders via the NPPH;  
b. develop the use of electronic invoices via the NPPH;



- c. develop and provide the Commissioner with a catalogue listing contracted Services in an agreed format.

Any timescales for the same shall be discussed between the Contractor and the Commissioner and agreed prior to development.

### **Performance Criteria Schedule**

1. Is the Performance Criteria Schedule applicable to this Contract: No

## Part 7. SPECIFICATION SCHEDULE

### **Background**

On 1 July 2016, the Home Affairs Select Committee (HASC) published their interim report on prostitution. The report made six recommendations: decriminalising soliciting; amending brothel-keeping legislation; deleting previous offences relating to prostitution; developing guidance for police and local authorities; policy changes to prevent trafficking and exploitation; and strengthening the evidence base on prostitution. The Government response accepted that there was a need for in-depth research to develop an impartial evidence base, which is vital prior to considering further changes to policy and legislation.

The South Wales Police and Crime Commissioner has subsequently received a maximum of £150,000 funding from the Home Office to commission research on the nature and prevalence of prostitution in England and Wales.

In addition, South Wales Police have undertaken profiling analysis and consultation on a force basis to better understand the policing demands in terms of types of prostitution, sex work, brothels, online and associated vulnerabilities of sex workers. This work has been undertaken through the assessment of data and consultation with support providers, street sex workers and women working in parlours. Local findings are reflective of some of the issues highlighted by the Home Affairs Select Committee.

### **Research Scope**

The overarching aim of the research is to:

- **better understand the extent and changing nature of prostitution in England and Wales.**

The Contractor shall be required to:

- develop a comprehensive typology of contemporary prostitution, incorporating the multiple realities of workers and others linked to prostitution and sex work. This will include street and off-street sectors; those working online; those trafficked for the purposes of sex work; and other relevant categorisations;
- develop approaches for estimating the extent of each of these types of prostitution; and specify where further work needs to be undertaken
- where possible, populate the typology using existing survey and administrative data.

## **Research Methodology**

The Research Methodology set out below is an outline proposal, and the Contractor shall develop this methodology. The methodologies for each stage of the research are cumulative, with each stage building on the previous stage. The Research Methodology will be finalised and agreed with the Contractor during the initial phase of the Project.

## **Key Stakeholders**

The Contractor shall be required, as a minimum, to liaise with the following key stakeholders during the course of the research:

- people affected by or involved in prostitution;
- third sector organisations including generic and specialist support services currently working with or providing support to those affected by or involved in prostitution;
- law enforcement agencies;
- academics;
- health services;
- policy makers;
- gatekeepers – those who control access to people or resources;
- Sex workers.

Disclosures relating to safeguarding will be required to be referred to the relevant local safeguarding fora in line with safeguarding legislation and policy guidance.

## **Typology of Prostitution**

The Contractor will be required to develop a typology of prostitution based around:

1. A systematic review of the current evidence on prostitution, using current UK published literature and drawing on overseas literature if available and relevant. It is anticipated that this will draw on the recent Scottish Government review on prostitution.<sup>1</sup> Tenders should set out the approach they propose using for the search, including sources and how they will evaluate and present this evidence.
2. Interviews with key stakeholders and organisations, and people affected by or involved in prostitution, including sex workers, to understand the evidence they have available and to test out the findings of the work.
3. Development of tools for assessing the quality of data sources (tools shall be agreed by the Steering Group prior to being developed by the Contractor). Data should be triangulated, as appropriate, and overlaps in the different types of prostitution should be explored as appropriate.
4. Data workshops to be held with possible data providers and academics, to identify approaches to quantifying the unpopulated categorisations.

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<sup>1</sup> <http://www.gov.scot/Publications/2017/02/3333/1>,  
<http://www.gov.scot/Publications/2017/02/6562>

The Contractor shall comprehensively test this typology at a minimum of four stakeholder workshops. Participants will include representation from those key stakeholder groups outlined above.

The Contractor shall be required to peer review the typology i.e. the work must be evaluated by one or more people of similar competence to the Contractor who produces the work.

### **Populating the Typology**

The Contractor will be required to populate the typology through:

1. A systematic review, to capture data on different categories of the typology which may become apparent during the project.
2. Interviews with key stakeholders and organisations, and people affected by or involved in prostitution, including sex workers, to highlight additional data sources.
3. Development of tools for assessing the quality of these data sources (tools shall be agreed by the Steering Group prior to being developed by the Contractor). Data should be triangulated, as appropriate, and overlaps in the different types of prostitution should be explored as appropriate.
4. Data workshops to be held with possible data providers and academics, to identify approaches to quantifying the unpopulated categorisations.

The Contractor shall comprehensively test this populated typology at a minimum of four stakeholder workshops. Participants will include representation from those key stakeholder groups outlined above.

The Contractor shall be required to peer review the populated typology i.e. the work must be evaluated by one or more people of similar competence to the Contractor who produces the work.

### **Outputs**

The Contractor shall be required to produce the following outputs:

1. Short Summary document outlining interim findings and recommendations at six months
2. Deliver a presentation at six months to the Steering / Advisory Group to advise on progress and interim recommendations
3. Typology Report of approximately 30 pages, with appropriate annexes setting out the typology, available data and proposing a strategy for developing data and filling any data gaps.
4. Technical Report making available online additional data and information that has been collected but not included in the Typology Report.

5. The development of tools that will be published and accessible to interested parties to assist the measuring of prevalence

The structure and format of all reports will be agreed, by the Steering Group, in advance of drafting. Reports will be written in an accessible way, using the Home Office house style (details available on request). The published reports will reference the Home Office, South Wales PCC and researchers collectively.

### **Quality**

Given the sensitivities of this work, it is imperative that the research design, tools and outputs are of high quality and are reviewed. As a minimum, the final research designs will be peer reviewed and signed off by the Steering Group prior to the commencement of work. And all final outputs should also be independently peer reviewed.

### **Management of the Contract**

#### **Governance**

The Contractor shall nominate a dedicated Lead who will be the main point of contact for the research work and manage the Working Group. The Contractor shall be required to set up the Working Group during the initial phase of the project, the Working Group will be responsible for conducting the research and delivering the requirements of this specification. The Working Group will report to the Advisory / Steering Group on a quarterly basis.

The Advisory/Steering Group, made up of representatives from South Wales PCC, South Wales Police, NPCC Sex Work Lead, and the Home Office, will meet quarterly and will be responsible for steering the Contractor's work and monitoring progress. The Advisory / Steering Group will report to the Oversight Group. The Advisory / Steering Group will provide oversight to ensure safeguarding issues have been identified and appropriate action has been taken.

The Oversight Group, comprising of senior South Wales PCC, NPCC and Home Office representatives, will meet bi-annually during the lifetime of the research, to provide oversight of the research work.

#### **Monitoring and Reporting**

The Contractor, via the Working Group, will be required to provide Quarterly Highlight Reports to demonstrate progress against the project plan, agreed milestones, outputs and exception reporting. In addition the Contractor will be required to report any action taken relating to reporting of safeguarding concerns that they become aware of whilst undertaking the research. The template for the Quarterly Highlight Report will be agreed with the Advisory / Steering Group in the initial phase of the project.

**Timeline**

The research is proposed to begin on 1<sup>st</sup> April 2018 and final draft reports will be required to be presented to the steering group no later than 31<sup>st</sup> March 2019. The Contractor shall be required to produce a Project Plan and identify key milestones for delivery, which will be agreed by the Advisory / Steering Group in the initial phase of the Project.

## **Part 8. PRICING SCHEDULE**

A detailed breakdown of the costs for providing the Service, in accordance with the Specification. The prices shall include all costs such as management costs, overheads, travelling expenses, additional staff etc. but exclude VAT.

The Pricing Schedule shall demonstrate that the costs are being allocated to items that would reasonably be expected to add value to the Service.

Details	Cost (£s)
Total cost	

Invoices shall be submitted quarterly, in arrears, and shall be subject to review based on progress against the agreed timescales.

## **Part 9. PERFORMANCE CRITERIA SCHEDULE**

Not used



## **Part 10. MONITORING SCHEDULE**

The Contractor shall regularly provide evidence showing progress against the agreed timescales and actions resulting from meetings with the Steering Group and other key stakeholders.

## **Part 11. COMMERCIALLY SENSITIVE INFORMATION SCHEDULE**

To be completed after tender (if applicable)

## **Part 12. VETTING SCHEDULE**

Not Used

## **Part 13. Certificate as to Collusive Tendering**

The essence of selective tendering is that the Commissioner shall receive bona fide competitive Tenders from all persons tendering. In recognition of this principle:

I/we certify that this is a bona fide Tender, intended to be competitive and that I/we have not fixed or adjusted the amount of the Tender to the rates and prices quoted by or under or in accordance with any agreement or arrangement with any other person.

I/we also certify that I/we have not done and undertake that I/we will not do at any time any of the following acts:

- a communicate to a person other than the Commissioner the amount or the approximate amount of my proposed Tender (other than in confidence in order to obtain quotations necessary for the preparation of the Tender for insurance); or
- b enter into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any Tender to be submitted;
- c offer or agree to any or give or pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or have done or causing or have caused to be done in relation to any other Tender or proposed Tender for the Services any act or omission.

## **Part 14. Certificate as to Canvassing**

To: THE POLICE AND CRIME COMMISSIONER SOUTH WALES

The POLICE AND CRIME COMMISSIONER FOR SOUTH WALES  
(hereinafter called 'the Commissioner')

I hereby certify that I have not canvassed or solicited any Member, Officer or employee of the Commissioner in connection with the award of this Tender or any other Tender or proposed Tender for the Services and that no person employed by me/us or acting on my/our behalf has done any such act.

I further hereby undertake that I will not in the future canvass or solicit any Member Officer or employee of the Commissioner in connection with the award of this Tender or any other Tender or proposed Tender for the Services and that no person employed by me or acting on my behalf will do any such act.

## **Part 15. Certificate of Undertaking**

### **14.1 CONSORTIUM**

I/We do hereby certify that:-

- (a) The Consortium's tender is bona fide and intended to be competitive.
- (b) The Consortium has not entered into any agreement with any person outside the Consortium with the aim of preventing tenders being made, or asked the amount of another tender, or the conditions on which the tender is made.
- (c) The Consortium has not informed any person outside the Consortium other than the person calling for the tenders the amount or approximate amount of the tender except where the disclosure in confidence of the appropriate amount of the tender was necessary to obtain insurance premium or other quotations necessarily required for the preparation of the tender.
- (d) The Consortium has not caused or induced any person to enter into such an agreement as is mentioned in (b) above or to inform the Consortium of the amount or the approximate amount of any rival tender for the Contract.

I/We further undertake that the Consortium will not do any of the acts mentioned in (b), (c) and (d) above before the hour and date specified for the return of the tender.

### **14.2 SINGLE BODY TENDERING**

I/We do hereby certify that:-

- (a) My/our tender is bona fide and intended to be competitive and I/we have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person.
- (b) I/We have not indicated to any person other than the person calling for the tender the amount or approximate amount of the proposed tender except where the disclosure in confidence of the approximate amount of the tender was necessary to obtain insurance premium or other quotations necessarily required for the preparation of the tender.
- (c) I/We have not entered into any agreement or arrangement with any other person that they shall refrain from tendering or asked the amount of any tender to be submitted.

- (d) I/We have not offered to pay or give or agreed to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the nature specified and described above.

I/We further undertake that I/we will not do any of the acts mentioned in (b), (c) and (d) above before the hour and date specified for the return of the tender.

## Part 16. The Contractor's Response

The Contractor shall hereby reaffirm that the information submitted in the Tender Response, recorded on the etendering website is still current and there have been no significant changes to the company's status.

The Contractor acknowledges that the information supplied in the ITT on the etendering system forms part of this Contract.

The Contractors response (code ITT\_64827) is accessible on the etendering website <https://etenderwales.bravosolution.co.uk>. Please contact the Procurement Department at South Wales Police for access to this website.

Signed (1) \_\_\_\_\_

Status \_\_\_\_\_

Signed (2) \_\_\_\_\_

Status \_\_\_\_\_

For and on behalf of \_\_\_\_\_

Date \_\_\_\_\_

To be signed at the same time as contract signature, not at time of tender.