

Dated

2023

(1) *THE POLICE, FIRE AND CRIME COMMISSIONER FOR ESSEX*

-and-

(2) UBC International Ltd T/A Ultimate Boats

AGREEMENT

relating to the supply of

CABIN RHIB

OFFICIAL - SENSITIVE – COMMERCIAL

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SECTION A FORM OF AGREEMENT

Contract Reference:	7F 2022 C049
Contract Title:	ESSEX CABIN RHIB

Parties

This Agreement is made between:

1 Authority:	The Police, Fire and Crime Commissioner for Essex and the Essex Chief Constable, Kelvedon Park, London Road, Rivenhall, Witham, Essex CM8 3HB ("Essex Police")
2 Supplier:	UBC International Ltd (company no 018146V) whose registered office is at 8 St. George's Street, Douglas, IM1 1AH, Isle of Man

Contract Period

• Effective Date	The latter of the dates that the Supplier and the Authority signs this Agreement.
• Commencement Date:	1st October 2023
• Expiry Date:	NA
• Extension Period/s:	NA
• Final Expiry Date:	Final Build date -
• Break Notice Period:	Authority's Break Notice shall be as per the General Conditions

Recitals

• Tender Process	This Agreement has been awarded to the Supplier as a result of a tender issued on 5 th May 2023 by the Authority.
• Advert References	CF-0003000D4K000001WteKUAS

SECTION A FORM OF AGREEMENT
SECTION A.1 PARTICULARS

• Date of Tender return	9 th June 2023
• Date of Award	14 th August 2023

Price	
• Price:	

Contract Management		
• Contract Management Procedures	See Section B.2 – Schedule 2 (Contract Management)	
• Contract Manager (Operational)	Name	Julian Plummer/Trevor Roper
	Title	Transport Services
• Supplier's Account Manager	Name	Rob Hammond
	Title	Head of Sales
• Commercial Representatives	Authority	
	Name	Ryan Lee Hagger
	Title	Category Specialist
	Supplier	
	Name	Rob Hammond
	Title	Head of Sales
• Notices	Authority	
	Name	Mr David Levy,
	Title	7 Force Director of Commercial Services
	Address	Essex PHQ Chelmsford Essex
	Email	David.Levy@Essex.police.uk
	Supplier	
	Name	Rob Hammond
	Title	Head of Sales

SECTION A FORM OF AGREEMENT
SECTION A.1 PARTICULARS

	Address	75 Beardmore Way, Clydebank Industrial Estate, Glasgow, G81 4HT
	Email	sale@ultimate-boats.com
Required Insurance Policies		
Employers Liability	No less than £10m	
Product Liability Insurance	No less than £10m	
Public Liability	No less than £10m	
Professional indemnity Insurance	Not Required	

Services	
• Conditions	See Section C1 Conditions for Goods
• Specification:	See Section B.1 – Schedule 1 Specification
• Location to be performed:	75 Beardmore Way Clydebank Industrial Estate Glasgow, G81 4HT Scotland
• Performance dates:	TBA

Key Personnel (as defined in Section C.2 Conditions for Services)	
Name(s)	Position(s)
Trevor Roper	Contract Manager (Transport Services)
Sgt Alex Southgate	OPC Specialist Operations

Goods	
Conditions	See Section C.3 Conditions for Goods
Statement of Requirements/ Specification:	“See attached Section B.1 – Schedule 1 (Statement of Requirements/ Specification)”

SECTION A FORM OF AGREEMENT
SECTION A.1 PARTICULARS

Quantity required:	"see attached Section B.1 Statement of Requirements/Specification"
Delivery Location:	"see attached Section B.1 Statement of Requirements/Specification"
Delivery Date:	"see attached Section B.1 Statement of Requirements/Specification"
Defects Liability Period (see clause G.7.3 in Section C.3 Conditions for Goods)	As per Tender Response return. Warranty as per specification clause 6 As per General Conditions G8
Conditions	As per conditions for goods C3
Parent Company Guarantee	See as an appendix to the contract.

Order of Precedence	
In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, or between the Schedules (save where any Schedule expressly provides otherwise), the inconsistency shall be resolved according to the following descending order of priority:	<ol style="list-style-type: none"> 1. Section A.1 Particulars and Form of Agreement; 2. Section C.1 3. Not used 4. Section D - Form of Tender and Relevant Correspondence / Documentation. 5. Section C.3 Conditions for Goods 6. Section B - The Schedules.

Form of Tender	
• Form of tender	See Section D (FORM OF TENDER AND RELEVANT CORRESPONDENCE / DOCUMENTATION)
• Other relevant documents	See Section D (FORM OF TENDER AND RELEVANT CORRESPONDENCE / DOCUMENTATION)

TUPE

SECTION A FORM OF AGREEMENT
SECTION A.1 PARTICULARS

The Supplier and the Authority agree the following is the position in respect of Supplier staff and that the indicated additional clauses apply where indicated:	
Tick Box that applies	
Contract for Goods - No staff will TUPE from the Authority or another supplier to the Supplier	<input checked="" type="checkbox"/> No additional clauses to apply
Contract for Services - No staff are envisaged to TUPE from the Authority and/or another supplier(s) to the Supplier at the start of the Agreement and there is no scenario envisaged where staff may transfer from the Supplier to another supplier at the end of the Agreement	<input type="checkbox"/> No additional clauses to apply
Contract for Services - No staff are envisaged to TUPE from the Authority and/or another supplier(s) to the Supplier at the start of the Agreement but there could be a scenario envisaged where staff may transfer from the Supplier to another supplier at the end of the Agreement	<input type="checkbox"/> TUPE Clauses – S8 (Conditions of Services) shall apply
Contract for Services - Staff are expected to TUPE from another supplier or suppliers to the Supplier at the start of the Agreement	<input type="checkbox"/> TUPE Clauses – S8 (Conditions of Services) and X2 (Supplemental Conditions) shall apply

Schedule of Processing, Personal Data and Data Subjects	
This Schedule shall be completed by the Authority, who may take account of the view of the Supplier, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.	
<ol style="list-style-type: none"> 1. The contact details of the Authority's Data Protection Officer are: Richard Baxter 2. The contact details of the Supplier's Data Protection Officer are: Pritesh Pankhania 3. The Supplier shall comply with any further written instructions with respect to processing by the Authority. 4. Any such further instructions shall be incorporated into this Schedule. 	
Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor in accordance with Clause 20.1 of Section C.1 (General Conditions).
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	

SECTION A FORM OF AGREEMENT
SECTION A.1 PARTICULARS

Type of Personal Data being Processed	
Categories of Data Subject	
Actions to be taken to report a data breach, loss of data or a near miss	
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	

Execution under hand

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

Signed by **the Authority**
for The Police, Fire and Crime
Commissioner for Essex

.....

Date

.....

Name

.....

Position

.....

.....

.....

.....

.....

Signed by **the Supplier**

.....

Date

07/09/2023

Name

Rob Hammond

Position

Head of Sales

.....



(Physical or Electronic Signature)

SECTION B

SCHEDULES

SECTION B.1

SPECIFICATION

Tender Reference: 7F-2022-C049
ESSEX CABIN RHIB

1 INTRODUCTION

- 1.1 The Essex Police Marine Unit has responsibility for the entire coastline of Essex from it's border with Suffolk in the north to the borders with the Metropolitan and Kent Police on the River Thames in the south. Between these points there are approximately 350 miles of tidal coastline made up of a varied range of busy shipping lanes, fast flowing estuaries, shallow creeks and marshes as well as exposed areas of water that often see heavy seas and gale force winds. They have responsibility for all areas within the UK Territorial limits.
- 1.2 Essex Police currently run two vessels to patrol their area – a 42ft Halmatic Launch and a 24ft Halmatic RHIB. The Halmatic Launch has reached the end of her working life having been built in 1996 and has become economically unviable to maintain.
- 1.3 Essex Police are now seeking to replace the 42ft Halmatic Launch with a Cabin RHIB that will maintain their current capabilities in line with the National Marine Policing model, tactics and requirements.

2 SCOPE OF THE REQUIREMENT

- 2.1 The aim of this specification is to detail the overall design, general construction and fitting out of a vessel for use by Essex Police. The contract is intended to be used for the acquisition of a rigid hulled boat with a cabin.

The objective is to have a vessel that is fit for purpose, complies with all relevant legislation as well as that which is forecast to come into effect with regards to emissions etc, in order to efficiently, effectively and safely carry officers and their equipment so that they can undertake operations and to provide the suitable welfare facilities to the staff whilst carrying out those operations.

It is envisaged that the cabined RHIB will be;

- 13m in length with a minimum beam of 3.4m
- Coded to MCA (Marine Coastguard Agency) Cat 2 up to 60NM from a safe Haven. Police Boat Code 3 Cat B 60nm from a safe haven.
- The vessel should have efficient and robust twin engines installed in compliance with all above coding requirements and be compliant with the latest emission regulations.

- Be able to reach a speed of approx. 40 knots whilst carrying 3 crew and up to 7 passengers all necessary equipment with full fuel and water tanks before planning out to provide a stable platform at 30 knots
- It must be capable of all - weather operation for periods no longer than 24 hours for a single operation.
- It must be capable of working in the hours of darkness.
- It must have the ability to carry a full team of three crew plus seven persons and accommodate a range of specialist and personal protective equipment. The deck space must be sufficient to operate advanced boarding equipment.
- There must be a capability to recover persons from the water from the boat.

3 KEY REQUIREMENTS:

- Size – 13m
- Seating capacity – 3 crew and 7 passengers
- Power – Twin propulsion - compliant with the current emission regulations and relevant coding
- Speed – top speed of approx. 40 knots
- Coding Cat 2 Code B – 60 miles
- Adequate storage facilities for all coding and safety equipment as well as that related to Marine Policing both externally and internally.
- Toilet facility fitted in line with coding
- Opening Side Windows for Helm/Navigator
- Range – 300 miles at cruising speed
- Table area for chart work and using a laptop with suitable power outlets including USB sockets
- Electronic Navigation package including two chart plotters and integrated radar
- VHF radio set
- Flir camera
- Water heater/food prep pod
- Bow crew transfer pod/Ability to nose on to vessels.

3.1 Build Structure

The build process and the structure of the craft must be analysed by an independent (independent to the boat builder's direct employment and preferably working for Essex Police) and a suitably qualified Naval Architect or Naval Architecture firm in order to provide to the Maritime Coastguard Agency (MCA) and to Essex Police's Certifying Authority and any other notifiable bodies where applicable, a confirmation letter of certificate stating that the craft's design and construction has been found to be in accordance with the relevant coding stated earlier in this document and in accordance with the Bureau Veritas High Speed Craft Rules or equivalent where applicable after their own structural review. This is in accordance with the requirements of the MCA and their Notified Bodies for qualification and confirmation of structural compliance to the Police boat and MCA coding required by Essex Police for this vessel.

- Single rigid hulled collared displacement vessel coated with appropriate antifouling and supplied with appropriate sacrificial anodes.
- GRP or similar material construction hull and wheelhouse.
- A full-length composite beaching shoe fitted to Hull.
- Foam Filled D section collar with additional protection on the bow to allow forward stemming to ladders.
- Length of 13 metres.
- Minimum beam 3.4 metres.

- All external deck to meet anti-slip requirements for working at sea.
- Toughened glass bonded windows in wheelhouse with appropriate demisting, wipers and water jets to front windscreens.
- GRP or similar constructed compartments for stowage or vessel equipment including that required by coding.
- Lockable wheelhouse for security.
- Three tow posts, one forward and two aft.
- Handrails forward, aft and along the cabin as appropriate
- Dedicated sea toilet.
- Fixed searchlight mounted on the wheelhouse and operated internally by crew.
- Self-draining deck.

3.2 Seating

- 3 crew positions with suspension shock mitigation seats.
- Seats for up to 7 passengers with shock mitigation seats.

3.3 Propulsion

- Twin engines that are able to achieve a maximum speed of approx. 40 knots. To be fitted with an appropriate level switch to stop engines in event of capsize.
- Must be compliant with the latest emission regulations.
- 2 x equal capacity fuel tanks to give a range of 300nm.

3.4 Safety and navigation equipment

- 10 person life raft.
- Horseshoe Lifebuoys.
- Emergency position indicating radio beacon (EPIRB).
- Class 1 automatic identification system (AIS) with Wifi AIS broadcast facility.
- Radar.
- Active radar reflector.
- 2 x Chart plotter (navigator and Cox)
- Magnetic and fluxgate compasses.
- Echo/depth sounder.
- VHF Radios x 2.
- Appropriate gas detectors equipped in the bilges.
- Pyrotechnics locker (flares etc)
- Day and night lights in cabin (red and white)
- Valley lights.
- Detachable fenders with suitable deck storage when not in use

3.5 Additional equipment and electronics

- Cabin Heating.
- Mount for airwaves radio.
- External Loudspeaker - radio.
- Police siren system with external loudspeaker as well as bull horn for sound signals.
- Low profile, low magnetic impedance light bar.
- Collapsible chart table.

- A primary anchor and a secondary anchor for use on different sea beds.
- Sufficient length of warp and chain to anchor a maximum depth of 40 metres.
- Anemometer.

3.6 Maintenance and certification

- Must be supplied with a comprehensive owner/operator manual and a planned and preventative maintenance Schedule.
- Comprehensive training supplied for Essex Police Marine Technician on the maintenance and repair of the vessel and engines (Dependant on engine options available as technician is trained in Mercury Outboards)
- Must be supplied with any specialist tools for opening hatches or access panels for any required maintenance.
- Must be supplied with comprehensive spares and parts list
- Must be inspected and certificated by and independent and a suitably qualified Naval Architect to coding requirements set out by Essex Police earlier in this documentation prior to delivery.
- All repairs and maintenance must be completed within Essex Police Dock. All costs applicable to the provider will not apply to the force should such repairs be under warranty.

3.7 Police Boat Codes



PBC3.pdf

Police Boat Code 3



Workboat+Code+(Edition+2).pdf

Work Boat Code 2

Workboat Code 3

The manufacturer will need to take into account any upgrades that may be required under the anticipated new Workboat code 3 and it's police boat annex which is due to come into force at some time in the future.

3.8 Delivery

Delivery of any new vessel will need to be to a boat yard with facilities capable of lifting and launching a vessel of our required dimension in Essex chosen by Essex Police and will need to be facilitated by the manufacturer/supplier in consultation with Essex Police. At time of delivery it would be expected of the manufacturer/supplier that a hand over of the vessel be initiated where by Essex Police officers and crew are to receive training in the familiarisation, whereabouts and use of onboard safety equipment, vessel safety systems to include electrical fuses and fuel line cut offs etc.

The method of delivery will depend on geographical location of the factory.

4 SOCIAL VALUE

4.1 Environmental

It is clear from the work done on assessing sustainability impacts for this particular tender, that vessels of this nature play a role in the escalation of climate change and that forces have a collective responsibility to try to minimise that effect. Nationally the public sector is therefore seeking vessels that minimise this impact, both in their mechanical running as well as construction materials.

4.2 Social/Economic

Essex Police want to support Sustainable Procurement by addressing the wider issue of sustainability where it can influence the type and quantity of resources we consume and the effect on the local and national economy. In accordance with the Public Services (Social Value) Act 2012, Commissioners across the UK have a duty to ensure that they consider how services can improve the social, economic and environmental well-being of their location and consider, then demonstrate, that some degree of social value has been sought and achieved where possible in contracts. One definition of Social Value, relevant to our blue light organisations, is as follows:

“Outcomes, measures and activity that will create safer, more resilient communities, reduce offending and reoffending and improve the quality of life of residents.”

In terms of the procurement of this vessel, we will be looking as part of this tender opportunity, for bidders to demonstrate how they can help us to achieve Social Value out of these contracts in a way that is relevant to the contract. So, for example and not limited to, making the environment safer, reducing crime, enhancing security, water safety, supporting training and economies and so on. We are looking to our suppliers to be innovative in their ideas of how they can provide positive social value outcomes for each of the organisations calling off this framework.

More information about Social Value can be found at:

<http://www.socialenterprise.org.uk/news/new- guide-the-public-services-social-value-act>

5 CONTRACT 11

5.1 Contract Management

- 5.1.1 The Supplier shall provide a suitably qualified contract manager for this contract and provide the force with the name and contact details (including the telephone number and email address) of the contract manager at implementation stage.
- 5.1.2 The Supplier shall communicate any changes to the force immediately should they impact on the build or delivery of the vessel.
- 5.1.3 The Supplier shall participate in face to face or online meetings at no additional cost to the force
- 5.1.4 The contract manager shall be the primary contact between the Supplier and the Force. They shall be responsible for managing the relationship, which shall include:
 - Ensuring continuity of provision and Service delivery;
 - Service planning, monitoring and continuous improvement;

- Agreeing and documenting points of contacts with the Supplier for communication and escalation;
- Contract administration;
- The provision of Management Information;
- Attending contract review meetings at the frequency determined by the force;
- Providing detailed key performance data;
- Issue resolution and Service improvement where issues have been identified; and
- Resolution of complaints and queries, which have been escalated.

5.1.5 The Supplier shall provide contact details of Supplier Personnel responsible for managing the contract if they differ to the contract manager.

5.1.6 The Supplier's contract manager shall escalate any issues that cannot be resolved between Contracting Authorities and the Supplier to the Authority.

5.2 Complaints Process

5.2.1 The Supplier shall ensure that any complaints / issues raised by Contracting Authorities Personnel are dealt with as a matter of priority.

5.2.2 The Supplier shall assist in seeking speedy resolution to resolve the situation, irrespective of where the fault lies. Types of complaints that shall be supported in this way include, but are not limited to:

- Contracting Authorities Personnel complaints relating to delays in booking appointments of Services;
- Contracting Authorities Personnel complaints relating to the availability of receiving the Services;
- Contracting Authorities Personnel complaints relating to any sharing of patient Data;
- Contracting Authorities Personnel complaints in relation to the quality of Services received;
- Contracting Authorities Personnel complaints in relation to Services not meeting the specific needs of individuals e.g. facilities for disabled Contracting Authorities Personnel;
- Contracting Authorities complaints relating to failure to meet agreed Service Levels; and
- Contracting Authorities complaints in relation to invoicing and billing.

5.2.3 The Supplier shall acknowledge complaints made by Contracting Authorities Personnel whether verbal, formal or informal and written within one (1) day of the details of the complaint being received by the Supplier.

5.2.4 The Supplier shall have in place a robust escalation process to support complaints handling and to ensure effective management and resolution of all complaints received from Contracting Authorities.

5.2.5 The Supplier shall provide the Contracting Authorities with a copy of the Suppliers documented complaints process.

6 After build- warranty etc

- 6.1.1 A minimum of 12 months manufacturer's warranty on the vessel and supplied parts including mechanical and electrical.
- 6.1.2 Agreement between both parties prior to contract with regards to how warranty repair work will be completed and where i.e. return to factory or conducted locally to Essex.
- 6.1.3 By prior agreement with the force, other forces may arrange to view the build with the successful contractor in attendance.

SECTION B
SCHEDULES

SECTION B.2
SCHEDULE 2 - CONTRACT MANAGEMENT PROCEDURES

CONTRACT MANAGEMENT PROCEDURES

1. Introduction

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

2. Management Team

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

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

The Supplier's Account Manager will be responsible for:

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

3. Communications / Orders / instructions

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

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

4. Meetings

Contract Initiation Meeting

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

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

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

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

Contract Meetings

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

Such meetings shall:

- generally follow the pro-forma agenda associated as Annex 2
- be held at the Authority's offices unless otherwise agreed

- be chaired and minuted by the Contract Manager
- are to be attended by individuals with appropriate decision making powers able to fully discuss and address all matters and issues

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

Ad-hoc Meetings

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

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

5. Escalation Process

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

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

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

6. Ordering and Payment Process

Invoicing

Invoice to:	Trevor Roper
Email:	Colleen.Palmer@essex.police.uk
Purchase Order Number/s	NA
Payment Profile:	Staged Payments TBA

7. Exit Plan

Not used

SECTION B

SCHEDULES

SECTION B.3

SCHEDULE 3 - PRICING SCHEDULE

**Suppliers are to relate a total delivered price.
Individual cost lines are provided for the detail on the
total inclusive cost, EG cost of material,delivery etc.**

Contract Title: ESSEX CABIN RHIB 7F 2022 C049

Percentage Available: 60%	
Total delivered price as per specification - Tenderers to detail below individual lines included - Cell B23 will be used for the evaluation.	
Evaluation Total	

Ex VAT

SECTION C

TERMS AND CONDITIONS

GENERAL CONDITIONS OF CONTRACT

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

1. Definitions & Interpretations

1.1. The following terms have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

Controller has the meaning given in the UK GDPR;

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

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

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

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

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

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

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

Data Subject has the meaning given in the UK GDPR;

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

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

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

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

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

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

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

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

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

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

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

Extension Period means the extension period specified in the Particulars;

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

FOIA means the Freedom of Information Act 2000;

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

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

Information has the meaning given under section 84 of FOIA;

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

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

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

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

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

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

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

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

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

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

Personal Data has the meaning given in the UK GDPR;

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

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

Processor has the meaning given in the UK GDPR;

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

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

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

Required Insurance Policies means those insurances listed in the Particulars;

Restructuring has the meaning given in Clause 31.1;

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

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

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

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

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

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

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

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

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

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

Termination means termination or expiry of this Agreement;

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

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

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

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

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

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

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

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

2. Warranties and Representations

- 2.1. Without prejudice to any other warranties expressed in this Agreement or implied by law the Supplier warrants and represents that:
 - 2.1.1. it has full capacity and authority and all necessary consents, including where required the consent of its parent company, to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
 - 2.1.2. this Agreement shall be performed in compliance with all Legislation, applicable laws, enactments, orders, regulations and other similar instruments;
 - 2.1.3. it shall discharge its obligations hereunder with all due skill, care and diligence and in accordance with good industry practice;
 - 2.1.4. it owns, has obtained or shall obtain all the consents, licences, permits and approvals necessary for the Supplier to perform its duties under this Agreement and shall comply with the terms of any such consents, licences, permits and approvals at all times. The cost of such consents, licences, permits and approvals shall be borne solely by the Supplier; and
 - 2.1.5. the Supplier is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement.

3. Status of Agreement

- 3.1. Nothing in this Agreement shall be construed as or have the effect of creating a partnership, a contract of employment or a relationship of principal and agent between the Supplier or the Supplier's Personnel and the Authority.
- 3.2. The Supplier shall not (and shall procure that the Supplier's Personnel do not) say or do anything that might lead any other person to believe that the Supplier or the Supplier's Personnel are acting as the partner, employee or agent of the Authority.
- 3.3. The Supplier shall not (and shall procure that the Supplier's Personnel do not) hold themselves out as having authority to bind the Authority unless specifically permitted in writing by the Authority's Commercial Representative.

4. Contract Period

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

5. Amendments and Variations

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

6. Price

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

7. Payment

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

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7.6.2. Not Used;

7.6.3. is payable by reference to:

(a) ~~a schedule of rates; and/or~~

(b) the quantity of Services provided during any given period,

it shall be paid on receipt of a correct invoice which specifies the relevant rate(s) and the quantity of Services provided during the period(s) to which the invoice relates.

7.7. Upon receipt of a valid and correct invoice, the Authority shall make payment of the Price or the invoiced portion of the Price within 30 calendar days.

7.8. In respect of Services, the Supplier shall submit a single, fully itemised invoice for the Services undertaken during that period to which the invoice relates unless this Agreement specifies payment is due upon Acceptance of the Services or Deliverables, in which case the Supplier shall submit a single, fully itemised invoice after Acceptance of the Services or Deliverables.

7.9. In respect of Goods the Supplier shall submit a single, fully itemised invoice for the Goods or any specified or agreed instalment of the Goods.

7.10. All payments must be invoiced and made in pounds sterling.

7.11. The Authority may withhold or delay payment of any invoice where it disputes the invoice or where the Goods and/or the Services referred to in it have not been provided in accordance with this Agreement.

7.12. Without prejudice to the Authority's other rights and remedies wherever any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Agreement or under any other agreement or contract with the Authority.

7.13. Where the Supplier enters into a sub-contract for the purpose of performing its obligations under this Agreement, it shall cause a term to be included in such sub-contract which requires payment to be made by the Supplier to the Subcontractor within a specified period not exceeding 30 calendar days from receipt of a valid and undisputed invoice as defined by the sub-contract.

7.14. The Supplier shall ensure that all sub-contracts shall contain a provision requiring the Subcontractor to include a clause to the same effect as clause 8.13 above in any contracts the Subcontractor enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

7.15. In performing its obligations under this Agreement, the Supplier is prohibited from taking or seeking to take advantage of any particular taxation regime (including the use of any offshore tax haven) which will or may enable the Supplier to avoid liability for any taxation in the United Kingdom. In the event that the Supplier or the Supplier's Personnel or anyone acting on the Supplier's behalf (with or without its knowledge) breaches this Clause, the Authority reserves the right to terminate this Agreement by notice in writing with immediate effect and recover from the Supplier any loss resulting from such termination including the administrative costs of re-tendering the requirement and any difference in the rates or prices which the Authority may have to pay to a new contractor where such rates or prices are higher than the rates or prices payable under this Agreement.

7.16. The Supplier shall not suspend the supply of the Goods and/or Services unless the Supplier is entitled to terminate the Agreement under clause 24.4 for failure to pay an undisputed sum. Interest shall be payable at an annual rate of 4% above the Bank of England base rate from time to time in force and the Parties agree that this clause constitutes a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

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

8. Performance Monitoring

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

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remedies or instructs a third party to remedy the Performance Default, it shall be entitled to recover the costs of the same plus any reasonable administration costs from the Supplier.

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

9. Liability and Indemnities

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

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

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

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

9.2.3. in respect of any liability under Clause 20 (Data Protection) the greater of: (a) **[£10,000,000]**; and (b) **[100%]** of the Price payable by the Authority under this Agreement;

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

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

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

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

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

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

9.5.1. the Authority's total aggregate liability for any and all any and all losses, costs, expenses, damages, claims, demands or proceedings whatsoever and howsoever to the extent arising directly (but not indirectly or consequentially) whether in contract, tort (including negligence), under statute, in common law or otherwise out of the act, default, negligence, breach of contract, breach of statute or statutory duty by the Authority or any of its employees or agents acting within the course of their employment incurred by the Supplier under or in connection with this Agreement shall in no event exceed [the Price].

- 9.6. Neither Party limits its liability for:
- 9.6.1. death or personal injury caused by the negligence of itself or any of its employees or agents acting in the course of their employment; or
 - 9.6.2. fraud or a misrepresentation made fraudulently by it or its employees; or
 - 9.6.3. any breach of an implied term in respect of title to goods; or
 - 9.6.4. any liability to the extent it cannot be limited or excluded by law.
- 9.7. Neither Party shall be liable to the other Party for any indirect, special or consequential loss.
- 9.8. Notwithstanding Clause 10.7 but subject to Clause 10.2, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following losses, costs, expenses, damages, claims, demands incurred by the Authority to the extent that they arise as a result of a breach by the Supplier of this Agreement:
- 9.8.1. any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the breach;
 - 9.8.2. any wasted expenditure or charges;
 - 9.8.3. the additional cost of procuring replacement services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such replacement services and/or replacement Deliverables above those which would have been payable under this Agreement;
 - 9.8.4. any compensation or interest paid to a third party by the Authority;
 - 10.8.5 any fine or penalty incurred by the Authority pursuant to any applicable law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; and
 - 10.8.6 any anticipated savings identified in this Agreement.

11 Insurance

- 11.1 Without limiting its liability hereunder the Supplier shall maintain Insurance throughout the duration of this Agreement and for a period of six years following Termination, with an insurance company of good repute and at its own cost the Required Insurance Policies.
- 11.2 Each of the Required Insurance Policies must contain an indemnity to principles clause.
- 11.3 The Supplier shall at the Commencement Date and thereafter upon request produce to the Contract Manager for inspection:
- 11.3.1 the originals of the Required Insurance Policies or evidence in the form of a broker's letter that such policies are in place; and
 - 11.3.2 documentary evidence (including cover notes and premium receipts) that such insurances are properly maintained, and the Supplier shall provide copies of any such documents as the Authority may reasonably require.
- 11.4 The Supplier shall give immediate written notice to the Authority in the event of any cancellation or material change to any of the Required Insurance Policies.
- 11.5 In the event that the Supplier fails to comply with this Clause 11 and at any time fails to have in place any of the Required Insurance Policies the Authority may itself provide or arrange such insurance(s) and may charge the price of so doing together with an administration charge of 10%

of such price to the Supplier which sum it may recover from the Supplier either by way of a deduction from any amounts payable by the Authority to the Supplier under this Agreement or by recovering the same as a debt due to the Authority from the Supplier.

12 Intellectual Property Rights

12.1 The Supplier hereby expressly acknowledges that the Authority alone has exclusive ownership and ultimate control of:

12.1.1 any Intellectual Property Rights in the format and content of this Agreement; and

12.1.2 any Intellectual Property Rights in any Authority Materials.

12.2 The Authority hereby expressly acknowledges that the Supplier alone has exclusive ownership and ultimate control of any Intellectual Property Rights in any Supplier Materials.

12.3 The Supplier hereby grants to the Authority a non-exclusive, royalty free, perpetual and irrevocable licence to use, reproduce, modify, adapt, amend, enhance and otherwise deal with (and to authorise a third party on behalf of the Authority, such third party having signed a confidentiality undertaking, to use, reproduce, modify, adapt, amend, enhance and otherwise deal with) the Supplier's pre-existing Intellectual Property Rights in the Supplier Materials for the Authority's own internal purposes, to allow the Authority to exploit the Intellectual Property Rights or similar generated under this Agreement and for any other purposes specified in this Agreement.

12.4 The Authority grants to the Supplier a non-exclusive, royalty-free, non-transferable licence to use, copy and modify the Authority Materials for the Contract Period of this Agreement for the sole purpose of providing the Goods and/or Services to the Authority.

12.5 Any and all Intellectual Property Rights developed under or pursuant to this Agreement or arising from the provision of the Goods and/or Services by the Supplier or any of the Supplier's Personnel (including any Intellectual Property Rights in the Deliverables, Goods or products of the Services), shall vest in and be the property of the Authority provided that in the event that any such Intellectual Property Rights do not vest in the Authority by operation of law the Supplier shall execute or cause to be executed including by any employee or agent of its any and all deeds, documents and acts required to assign such Intellectual Property Rights to the Authority with full title guarantee.

12.6 The Supplier shall not in connection with the provision of the Goods and/or Services use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any Intellectual Property Rights.

12.7 The Supplier shall indemnify the Authority against all actions, claims, demands, proceedings and Losses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Right by the use, manufacture, supply or possession of any Goods supplied by the Supplier or by the Authority's use of the Goods and/or receipt of the Services, subject to the following:

12.7.1 the Authority shall promptly notify the Supplier in writing of any alleged infringement of which it has notice;

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

12.7.3 the Authority, at the Supplier's request and expense, shall allow the Supplier to conduct and/or settle all negotiations and litigation and give the Supplier all reasonable assistance in so doing. The costs incurred or recovered in such negotiations or litigation shall be paid by and to the Supplier.

12.8 If an action, claim or demand for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Agreement or in the reasonable opinion of the

Supplier is likely to be made, the Supplier may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed):

12.8.1 modify any or all of the Services without reducing the performance of the same so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted Services;

12.8.2 modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative Goods of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted Goods; or

12.8.3 procure a licence (at the Supplier's cost) to provide the Services and/or the Goods (as applicable), which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

12.9 The provisions contained in this Clause 12 shall survive expiry or Termination (for any reason).

13 Force Majeure

13.1 For the purposes of this Clause 13 the circumstances in Clauses 13.1.1 to 13.1.5 are events of Force Majeure:

13.1.1 acts of God, flood, drought, earthquake or other natural disaster;

13.1.2 terrorist attack, civil war, civil commotion or riots or disorder, war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

13.1.3 nuclear, chemical or biological contamination or sonic boom;

13.1.4 any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; and/or

13.1.5 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party).

13.2 Provided it has complied with Clause 13.3, if a Party ("**Affected Party**") is prevented, hindered or delayed in or from performing any to perform any obligation under this Agreement because of an event of Force Majeure which is both:

13.2.1 beyond that Affected Party's control; and

13.2.2 could not be prevented by that Affected Party with the application of all due diligence and foresight,

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

13.3 The Affected Party shall:

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

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

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

14 Corrupt Gifts and Payments

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

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

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

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

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

15 Equality and Discrimination

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

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

16 Health and Safety

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

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

17 Environmental Requirements

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

18 Notices

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

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

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

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

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

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

19 Audit and Information

- 19.1 The Supplier shall keep full and proper records in relation to the performance of its obligations under this Agreement and provide the Authority with any information regarding such records as may be reasonably requested in writing by the Authority and/or its internal or external auditors having regard to the Authority's duties and responsibilities as a public authority.
- 19.2 Any information requested in writing under Clause 19.1 shall be provided by the Supplier within a reasonable time being no longer than three (3) Working Days from the date of such written request and shall be provided in hard copy and, where available, also electronically. The Authority shall be entitled to have the originals of any document so requested.
- 19.3 Without prejudice to the Supplier's obligations under Clauses 19.1 and 19.2, the Authority shall be entitled to request, and the Supplier shall provide within a reasonable time, employment and relevant personal information in relation to the Supplier's personnel engaged upon or in connection with the provision of the Services for the purposes of anti-fraud measures such as data matching. The Supplier shall ensure that it takes any measures necessary pursuant to the Data Protection Act 2018 and any other relevant legislation to facilitate such disclosure lawfully and fairly.
- 19.4 The Authority shall have the right to conduct audits of data (financial and non-financial) which relate to the supply of the Goods and/or the Services through this Agreement, which is held by the Supplier, its staff, agents and Subcontractors during Working Hours.
- 19.5 The Authority shall use reasonable endeavours to serve a minimum of 24 hours' notice of its visit to the Supplier's or Subcontractor's premises, but reserves the right to conduct audits upon no notice.
- 19.6 The Supplier shall facilitate any access arrangements on behalf of the Authority to its premises and data and to the premises and data of its staff, agents and Subcontractors.
- 19.7 The Authority reserves the right to use its own staff and/or any agent or representative of its choice to conduct inspections, audits and testing on its behalf. Where an agent or representative is appointed, the Supplier shall be notified in writing or through a letter of authorisation presented by the agent/representative.
- 19.8 Where set out in paragraph 6 of Section B.2 (Contract Management) the Supplier shall provide the Management Information to the Authority in accordance with the requirements of that paragraph.

20 Data Protection

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

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

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

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

- 20.17 The processor must also delete existing personal data unless the law requires its storage (regardless of whether the data is returned), the processor must also give the controller whatever information it needs to ensure they are both meeting their Article 28 obligations.

21 Confidentiality

21.1 Each Party:

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

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

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

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

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

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

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

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

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

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

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

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

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

21.5.1 total contract value;

21.5.2 invoice dates;

21.5.3 VAT rate; and

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- 21.5.4 total amount of each invoice submitted under this Agreement,
- which for the avoidance of doubt shall not be Confidential Information for the purposes of this Agreement.
- 21.6 The Authority may discuss with the Supplier its proposed decision with regard to whether any information should be redacted in accordance with Clause 21.5 before publication of this Agreement and will consider any representations made by the Supplier with regard to the extent of the redaction, if any, but the final decision as to both redaction and publication will be for the Authority alone to make.
- 21.7 The Supplier shall assist and cooperate with the Authority (at the Supplier's expense) to enable the Authority to publish this Agreement in accordance with Clause 21.5 in a timely manner.
- 21.8 Notwithstanding any other term of this Agreement, the Parties agree that the Authority is entitled to share the terms of this Agreement, any information provided by or produced pursuant to the same as well as Confidential Information with Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services ("**HMICFRS**") (or any successor body) and the Independent Office for Police Conduct ("**IOPC**") (or any successor body). Furthermore, the Supplier shall provide such assistance as may be required by the Authority in relation to any request for information received from HMICFRS and/or the IOPC.
- 21.9 The provisions of this Clause 21 shall survive the Termination of this Agreement and shall continue in full force and effect without limit in time.
- 21.10 Where the Supplier comes into contact with official documentation in the performance of this Agreement which attract Government security classifications 'Official', 'Secret' or 'Top Secret' (or any modification or update of the same) the Supplier shall take, and be able to evidence that it has taken, such additional steps in accordance with official guidance that is available for the proper handling and protection of such information.

22 Freedom of Information

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

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provided always that where Clause 22.3.1 applies, the Authority shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Supplier prior to any disclosure.

- 22.4 Subject to the Authority complying with its obligations under this Clause 22 the Authority shall not be liable for any loss, damage, harm or other detriment suffered by the Supplier or any Subcontractor arising from the disclosure of any Information, whether or not such Information is Confidential Information, falling within the scope of the FOIA or EIR.
- 22.5 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, proceedings and liabilities that the Authority incurs due to the Supplier's or any Subcontractor's breach of this Clause 22.

23 Termination on Change of Control and Insolvency

- 23.1 The Authority may terminate this Agreement, without liability, by notice in writing to the Supplier (or the Supplier's representative in the event of 23.1.7) having effect immediately or after such period as the Authority may determine if:
- 23.1.1 the Supplier or its holding company or ultimate holding company undergoes a change of control, within the meaning of 1124 of the Corporation Tax Act 2010; or
- 23.1.2 the Supplier is an individual and a petition is presented for the Supplier's bankruptcy or a criminal bankruptcy order is made against the Supplier, or the Supplier makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if a trustee in bankruptcy or a supervisor under an individual voluntary arrangement is appointed to manage the Supplier's affairs; or
- 23.1.3 the Supplier is a company and the company passes a resolution for winding up or dissolution (otherwise than exclusively for the purposes of and followed by an amalgamation or reconstruction) or an application is made for an administration order in relation to it, or any party gives or files notice of an intention to appoint an administrator of it or such an administrator is appointed, or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager or supervisor or provisional liquidator is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or
- 23.1.4 the Supplier is a firm, or a number of persons acting together in any capacity and any event in Sub-Clauses 23.1.2 or 23.1.3 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or
- 23.1.5 the Supplier is unable to pay its debts within the meaning of [Section 123 of the Insolvency Act 1986](#); or
- 23.1.6 any similar event occurs within the United Kingdom under the law of any other jurisdiction; or
- 23.1.7 the Supplier, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his affairs or becomes a patient under any mental health legislation; or
- 23.1.8 the Supplier is an individual and he suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of his business.
- 23.2 The Supplier (or the Supplier's manager representative in the event of clause 23.1.7 applying) shall notify the Authority in writing immediately upon the occurrence of any of the events mentioned in Clause 23.1.

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

24 Termination on Default

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

24.1.1 the Supplier commits a material breach of any term of this Agreement which breach is irremediable;

24.1.2 the Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

24.1.3 the Authority has served three (3) or more Default Notices on the Supplier in any consecutive period of six (6) months;

24.1.4 in the event that any one Default Notice has not been successfully resolved and signed off in writing by the Authority within such timescales as instructed, or if no such timescales have been stipulated, where the default has not been rectified within ten (10) Working Days;

24.1.5 the Supplier or any of its employees or agents acting or purporting to act on the Supplier's behalf commits an act which is an offence under the Enterprise Act 2002;

24.1.6 the Supplier or any of its employees shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this Agreement or to any other contract with the Authority;

24.1.7 the Supplier or any of its employees have committed any offence under the Bribery Act 2010;

24.1.8 the Supplier fails to remove a member of its staff where such person has not successfully passed the Vetting Procedure as may be required by the Authority;

24.1.9 the Supplier fails to remove a member of staff from the provision of Services under this Agreement in accordance with clause S3 (Supplier's Personnel) of Section C.2 (Conditions for Services);

24.1.10 in the event that a director or person in significant control of the Supplier (or such equivalent where the Supplier is not a company) is convicted of a criminal offence;

24.1.11 in the event that any of the grounds listed in [Regulation 57\(1\), 57\(3\) or 57\(8\) of the Public Contracts Regulations 2015](#) apply to the Supplier or where the Authority reasonably apprehends that such events is about to occur in relation to the Supplier and notifies the Supplier accordingly;

24.1.12 the Supplier, any of the Supplier's Personnel, or any Subcontractor commits an MSA Offence or is subject to any investigation relating to an alleged MSA Offence or any prosecution under the Modern Slavery Legislation.

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

24.2.1 a substantial portion of this Agreement; or

24.2.2 any of the obligations set out in Clauses 2 (Warranties and Representations), 14 (Corrupt Gifts and Payments), 15 (Equality and Discrimination), 16 (Health and Safety), 20 (Data Protection), 21 (Confidentiality) and 35 (Conflicts of Interest).

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

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

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

25 Break

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

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

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

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

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

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

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

26 Consequences of Termination or Expiry

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

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

26.2.1 immediately cease to provide the Services;

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

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

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

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

Information), 20 (Data Protection), 21 (Confidentiality), 22 (Freedom of Information), 26 (Consequences of Termination and Expiry), 27 (Inadequacy of Damages), 32 (Severability), 39 (Rights and Remedies), 40 (Governing Law) and 41 (Entire Agreement).

27 Inadequacy of Damages

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

28 Dispute Resolution

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

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

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

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

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

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

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

29 Continuation of Agreement in Event of Disputes

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

30 Transfer and Sub-contracting

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

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

SECTION C TERMS AND CONDITIONS
SECTION C.1 GENERAL CONDITIONS

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

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

31 Machinery of Government Changes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 Severability

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

34 Waiver

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

35 Conflicts of Interest

- 35.1 The Supplier shall use all reasonable endeavours to ensure that neither the Supplier nor any of the Supplier's Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or such persons and the duties owed to the Authority under the provisions of this Agreement. The Supplier shall disclose to the Authority full particulars of any such conflict of interest which may arise.
- 35.2 If, in the reasonable opinion of the Authority, a conflict of interest arises then the Supplier shall take all necessary measures as are required by the Authority to resolve the conflict of interest or alleviate its effect, at the Supplier's expense.
- 35.3 If a resolution of the conflict of interest is not possible then without prejudice to any rights or remedies of the Authority, the Authority shall have the right to terminate this Agreement with immediate effect and recover from the Supplier any loss resulting from such termination.
- 35.4 Where the Authority is of the opinion that a conflict of interest which existed at the time of the award of this Agreement could have been discovered by a competent supplier and ought to have been disclosed by the Supplier, the Authority may terminate this Agreement immediately and, without prejudice to any other rights, recover from the Supplier the amount of any loss resulting from such termination.

36 Non-Exclusivity

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

37 Additional Claims

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

38 Third Party Rights

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

39 Rights and Remedies

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

40 Governing Law

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

41 Entire Agreement

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

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

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

42 Costs

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

43 Announcements

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

44 Counterparts

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

45 Policies

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

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

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

CONDITIONS OF CONTRACT FOR GOODS

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

G1. Definitions

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

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

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

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

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

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

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

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

G2. The Goods

- G2.1 The Authority may submit Orders for Goods at any time.
- G2.2 The Supplier shall supply Goods in accordance with the Authority's Orders, by the delivery date specified in the Order, or, if none is specified, within five (5) Working Days of submitting the Order.
- G2.3 The Authority may amend or cancel an Order in whole or in part at any time before delivery by giving the Supplier written notice. The Authority shall pay the Supplier fair and reasonable compensation for any work in progress manufacturing the Goods at the time of cancellation of an Order, but such compensation shall not include loss of anticipated profits or any consequential loss.
- G2.4 The Supplier shall ensure that the Goods:
 - (a) shall be to the reasonable satisfaction of the Authority and shall conform in all respects with any specification and particulars including quantity, quality and description, specified in this Agreement;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Authority expressly or by implication, and in this respect the Authority relies on the Supplier's skill and judgement;
 - (c) where they are manufactured products, be free from defects in design, material and workmanship; and

- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods or other similar instruments from time to time in force.

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

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

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

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

G3. Health and Safety

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

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

G4. Delivery

G4.1 The Supplier shall ensure that:

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

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

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

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

G6. Damage in transit

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

G7. Inspection, Rejection & Guarantee

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

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

SECTION C4 SUPPLEMENTAL CONDITIONS
TERMS AND CONDITIONS

SUPPLEMENTAL CONDITIONS OF CONTRACT

TO CONTRACT REF: 7F 2022 C049

X1	Vetting
X2	TUPE (Not Used)
X3	Title and Risk at the Supplier's Premise
X4	Price Review on Extension (Not Used)
X5	Price Review - In Accordance with Market Conditions (Not Used)
X6	Review
X7	Time is of the Essence
X8	Purchases on behalf of the Authority (Not Used)
X9	Price Reductions (Not Used)
X10	GDPR – Joint Controllers (Not Used)
X11	Performance Bond (Not Used)
X12	Parent Company Guarantee
X13	Collateral Warranties (Not Used)
X14	Driving for Better Business

X1 Vetting

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

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

X2 TUPE (Not Used)

X3 Title and Risk at the Supplier's Premises

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

X4 Price Review on Extension (Not Used)

X5 Price Review - In Accordance with Market Conditions (Not Used)

X6 Review

X6.3.2 the Supplier shall provide the Goods to the Named Authority in accordance with the Statement of Requirements/Specification (Section B2, Schedule 1) and to meet the service levels and key performance indicators set out in the Contract Management Procedures (Section B2, Schedule 2) from the date specified in the Authority's notice;

X6.3.3 the charges for the Goods to the Named Authority shall be as set out in accordance with the Pricing Schedule (Section B2, Schedule 3), and accordingly shall not increase the Supplier's profit margin, and shall be payable in accordance with the procedures set out in the Contract Management Procedures (Section B2, Schedule 2);

X6.3.4 the Supplier shall deliver the Goods to the Named Authority during the Contract Period and on the terms and conditions set out in this Agreement without amendment.

X7 Time is of Essence

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

X8 Purchases on behalf of the Authority (Not Used)

X9 Price Reductions (Not Used)

X10 GDPR – Joint Controllers (Not Used)

X11 Performance Bonds (Not Used)

X12 Parent Company Guarantee

X12.1 The Supplier shall on the execution of this Contract provide to the Authority, as stated in the Contract Particulars as being required, a guarantee by the Guarantor in favour of the Authority substantially to secure the due performance by the Supplier of its obligations to the Authority on or before the Commencement Date in the form annexed at Schedule X11 (Parent Company Guarantee).

X12.2 The Authority shall be entitled to withhold 20% of any payment due until the Supplier has complied with clause X12.1.

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

X12.3 Unless and until otherwise agreed by the Parties the form of parent company guarantee set out in Schedule X11 (Parent Company Guarantee) shall be the relevant specified form for the purposes of this Agreement.

X12.4 If during the Contract Period the parent company ceases to be the parent company of the Supplier, the Supplier shall as a condition of the contract procure a parent company guarantee in the same form from its new parent company. If the new parent company is not the same financial covenant, the Authority shall be entitled to demand security of equivalent standing in the form of an insurance backed guarantee or bond.

X13 Collateral Warranties (Not Used)

X14 Driving for Better Business

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

X14.2 The Supplier shall:

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

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

Schedule X11: Parent Company Guarantee

THIS GUARANTEE is made the 7th day of **September 2023**

BETWEEN:

1. **Exo Technologies** whose registered office is at 8 St Georges St, Douglas, Isle Mann, IM1 1AH (the "Guarantor"); and
2. **Essex Police** whose registered office is at **Chelmsford PHQ** (the "Authority") which expression includes its permitted successors and assigns).

WHEREAS:

- A This guarantee and indemnity (the "**Guarantee**") is given in connection with a binding contract dated **01/10/2023** (the "**Agreement**") made between the Authority and **Ultimate Boats Ltd** (the "Supplier") for the services set out in the Agreement (the "**Services**") and upon the terms and conditions contained therein.
- B The Supplier is a subsidiary company of the Guarantor.
- C The Guarantor has agreed to guarantee the due performance of the Supplier's obligations to the Authority under the Agreement in the manner set out below.

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

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

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

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

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

connection with the Agreement on the part of the Supplier which is the subject matter of any such decision, agreement or admission.

DATED this day of 23

[REDACTED]

[REDACTED]

.....
Board Adviser / Equity Investor

SECTION D

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

ULTIMATE BOATS LTD

Invitation to Tender (ITT)

Tender Response Document

ESSEX CABIN RHIB

Tender Reference: 7F 2022 C049

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SCHEDULE ONE – FORM OF TENDER

Project Reference	7F 2022 C049	Tender Reference	C18290
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Project Title	ESSEX CABIN RHIB
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Supplier Name	ULTIMATE BOATS
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Having duly examined the Invitation to Tender Documents including the Statement of Requirements, Terms and Conditions of Contract and all other supplementary documents and clarification issued during the tender period; and being fully satisfied in all respects with the requirements of this competition; We hereby offer to provide the goods in conformity with the Contract for the rates and prices set out in Pricing Submission of this Tender Response Document.

All rates and/or prices stated in this Tender are firm and fixed prices for the duration of the Contract.

We understand that the Authority is under no obligation to accept our Tender and may accept or may reject the submission.

We understand that the Authority is not bound to accept the lowest or any Tender that they may receive and will not be liable for any expenses incurred by Us (the Tenderer) in connection with the preparation and submission of this Tender.

We agree that the insertion by Us (the Tenderer) of any conditions qualifying this Tender or any unauthorised alteration to any of the Tender Documents may cause the Tender to be rejected.

We agree that this Tender shall remain open to be accepted or not by the Authority and shall not be withdrawn for a period of **90 Days** from the date submitted.

We agree in legally binding terms to comply with the provisions relating to confidentiality set out in the Invitation to Tender Documents.


If this Tender should be accepted, We hereby agree that an official instruction and/or signed contract together with the agreed Tender documentation will then constitute a contract between the Authority and Us (the Tenderer).

If this Tender is accepted, We will execute documents in the form of the Contract within thirty (30) days of being called upon to do so with each party bearing its own expenses in relation to the execution thereof.

We agree to comply with the Authority's Security Vetting Policy. If we fail to comply with the terms and the agreed start date, we acknowledge that the Authority at their discretion may withdraw the Tender Acceptance without penalty.


We confirm that we are authorised to complete the Form of Tender and Declarations Form

Signed for and on behalf of the above named Tenderer

Authorised Signatory 1	
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Name	Robert Hammond
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Position in Company	Sales & Business Development Director
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Authorised Signatory 2	
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Name	Shane Mugan
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Position in Company	Board Adviser / Equity Investor
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Date of Signing	30/05/2023
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Company Address	75 Beardmore Way Clydebank Industrial Estate Glasgow, G81 4HT Scotland	
Company Registration Number (if relevant)	132474C	
Registered Office (if relevant)	8 St. George's Street Douglas, IM1 1AH Isle of Man	
Contact Details	Telephone	+44.141.941.0447
	Mobile	+44.7782.109.350
	e-mail	robert.hammond@ultimate-boats.com

SCHEDULE TWO – ANTI COLLUSION/BONA-FIDE TENDER CERTIFICATE

Project Reference	7F 2022 C049	Tender Reference	C18290
Project Title	ESSEX CABIN RHIB		
Supplier Name	ULTIMATE BOATS		

We understand that the essence of the public procurement process is that the Authority shall receive bona fide competitive Tenders from all Tenderers. In recognition of this principle, we hereby certify that this is a bona fide Tender, intended to be competitive, and that we have not fixed or adjusted the amount of the Tender, or the rates or prices quoted, by or under or in accordance with any agreement or arrangement with any other Tenderer.


We have not (as defined in the Invitation):


- Entered into any agreement with any other person with the aim of preventing Tenders being made or as to the fixing or adjusting of the amount of any Tenders or the conditions on which any Tenders are made;
- Caused or induced any person to enter into such an agreement mentioned above or to inform us of the amount or the approximate amount of any rival Tenders for the Contract;
- Informed any other person, other than the person calling for these Tenders, of the amount or the approximate amount of the Tender, except where the disclosure, in confidence, of the amount of the Tenders was necessary to obtain quotations necessary for the preparation of the Tenders for insurance, for contract guarantee bonds or for professional advice required for the preparation of the Tenders;
- Committed any offence under the Bribery Act 2010;
- Offered or agreed to pay or give any sum of money, inducement 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 Tenders or proposed Tenders for the Services any act or omission;
- Canvassed any other persons in connection with the Contract;
- Contacted any officer of the Authority about any aspect of the Contract other than permitted as part of the procurement exercise for the purposes of, including (but without limitation), discussing the possible transfer to the employment of the Bidder of such officer or for soliciting information in connection with the Contract.

We also undertake that we shall not procure the doing of any of the acts as mentioned above before the hour and date specified for the return of the Tenders, nor shall we do so while the resulting Contract continues in force between Us (the Tenderer) or our successors in title and the Authority.

In this certificate the word "person" includes any person, body or association, corporate or incorporate and "agreement" includes any arrangement whether formal or informal and whether legally binding or not.

Signed for and on behalf of the above named Tenderer

Authorised Signatory 1	
Name	Robert Hammond
Position in Company	Head of Sales & Business Development

Authorised Signatory 2	
Name	Shane Mugan
Position in Company	Board Adviser / Equity Investor
Date of Signing	30/05/2023


SCHEDULE THREE – CONFIDENTIALITY UNDERTAKING


Project Reference	7F 2022 C049	Tender Reference	C18290
Project Title	ESSEX CABIN RHIB		
Supplier Name	ULTIMATE BOATS		

WHEREAS:

- A. The Authority is conducting a tendering process for the procurement of the Project.
- B. The Authority intends to circulate certain documents and information relating to the Project (“the Tender Documents”) to the Tenderer.
- C. The Tender Documents contain certain confidential information to which the Tenderer may have access, (“**the Confidential Information**”), which is more particularly described in the Schedule hereto and includes all other documents made available now and in the future to the Tenderer and identified as confidential.
- D. The Authority gives to the Tenderer the Confidential Information in order for the Tenderer to submit Tenders (if applicable) subject to this undertaking.
1. We, the Tenderer, undertake to the Authority in consideration of the sum of one pound sterling (£1) (the receipt of which is hereby acknowledged) that:
 - a) We will hold the Confidential Information in the strictest confidence;
 - b) We will use the Confidential Information only for the purpose of preparing Tenders;
 - c) We will not disclose the Confidential Information to any third party (including without limitation to any agent, professional adviser or associated company) or to any employee other than third parties or employees who need to have access to prepare the Tender (if applicable);
 - d) In relation to those third parties or employees who are given access to this Confidential Information, we will ensure that they keep the Confidential Information confidential and are bound by personal undertaking to the Authority in the same terms;
 - e) We will not copy or reproduce the Confidential Information in any way; and
 - f) We will not directly or indirectly use the Confidential Information for any reason or divulge it without the Authority’s prior written consent to any person, firm, company or other organisation save where we can show that the Confidential Information, (or the relevant part thereof), has already come into the public domain or we are required to disclose the Confidential Information, (or relevant part thereof), by law.
 2. We agree that any breach of this undertaking by us or any third party or employee to whom we release Confidential Information may result in legal proceedings being commenced against us, including a claim for the recovery of any losses or damages incurred by the Authority as a result of that breach. We shall in this respect be liable for and shall fully indemnify and keep indemnified the Authority against all liabilities, damages, costs, losses, claims, demands and proceedings arising from or in connection with any breach of this undertaking, however arising, by us or any third party or employee to whom we release Confidential Information.
 3. We agree that this undertaking shall be subject to English Law and we hereby agree to submit to the exclusive jurisdiction of the English Courts.

Signed for and on behalf of the above named Tenderer

Authorised Signatory 1	
Name	Robert Hammond
Position in Company	Head of Sales & Business Development

Authorised Signatory 2	
Name	Shane Mugan
Position in Company	Board Adviser / Equity Investor
Date of Signing	30/05/2023

SCHEDULE FOUR – SCHEDULE TO THE CONFIDENTIALITY UNDERTAKING

Project Reference	7F 2022 C049	Tender Reference	C18290
Project Title	ESSEX CABIN RHIB		
Supplier Name	ULTIMATE BOATS		

Confidential Information shall include but not be limited to:-

1. The documents for the Contract including without limitation the Invitation and appendices, the Contract and its Schedules, the Specification, any amendments or revisions to the tender documents, the Workforce Information, and all other documentation issued by the Authority relating to the Invitation to Tender Documents.
2. Details of any discussions with the Authority, its officers or advisers in connection with the Invitation to Tender Documents and any information that may be obtained by Us (the Tenderer) through observation at meetings, conferences, presentations and demonstrations or as the Authority, its officers or advisers may provide to us whether orally or in writing, electronically, physical or visual form regarding the bid process or the clarifications or proposals for the Contract.

Information considered to be exempt from Freedom of Information requests shall be set out in the table below on the following basis:

1. Any information supplied, which the Tenderer considers may be potentially exempt from disclosure under the Freedom of Information Act MUST be set out in this section.
2. Any information not contained in this section will be subject to disclosure without any prior consultation.
3. The information considered to be exempt must be referred to in the table below; this could be a whole section of the documentation provided, a clause or paragraph in the documentation provided.
4. The Tenderer should set out in this section of the Invitation to Tender Documents to be returned, that information which it considers to be exempt from disclosure, the reason for non-disclosure, the exemption that might be applicable and the time period for which this information should be considered to be exempt.
5. The Tenderer acknowledges nevertheless that any information contained within this section is indicative only and the Authority may nevertheless be required to disclose such information under the FOIA or the EIR. The Tenderer should also include in this section the name and contact details of a link person who will be able to handle Freedom of Information requests.

Further guidance can be found by following the link:

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/>

Tenderer Name:	Ultimate Boats	Contact Name:	Robert Hammond
Address:	Ultimate Boats 75 Beardmore Way Clydebank G81 4HT		
Telephone No:	+44.7782.109.350	Email:	Robert.hammond@ultimate-boats.com
Exempted Information (cross reference to Initial Tender)	Reasons for Exemption	Time period for exemption	
UB Essex Police Tender Support Presentation V.2.0	43(1) Trade Secrets 43(2) Commercial Interests	20 Years	

SCHEDULE FIVE – SECURITY ASPECTS SCHEDULE

Project Reference	7F 2022 C049	Tender Reference	C18290
Project Title	ESSEX CABIN RHIB		
Supplier Name	ULTIMATE BOATS		

INTRODUCTION

The purpose of this Security Aspects Schedule is to formally communicate the expectations that the Authority has regarding the Supplier handling of information relating to the Contract. The standard of protection required varies with the sensitivity of the information being shared. The primary objective of this Schedule is to ensure the appropriate handling of policing material by the Supplier, and the correct allocation of Classifications / Protective Markings and their associated handling instructions to material related to the services generated by (and provided to) the Supplier relating to the Contract.

This Schedule will form part of the Contract between the Authority and the Supplier. It establishes the security provisions that the Supplier shall comply with in provision of services to the Authority

In handling policing information, the Supplier shall comply with the Security Policy Framework (SPF). It is also governed by the following policies and standards:

- National Policing IS Community Security Policy;
- Guidance on the Management of Police Information (2nd Edition, 2010);
- National Policing Vetting Policy for the Police Community (v3.1, Feb 2012);
- National systems Codes of Connection/Community Code of Connection;
- HMG IA standards and Good Practice Guides;
- PSN-P Community Code of Connection;
- PSN-P Enhanced Requirements for Policing.

The Supplier is expected to comply with those standards in the design, development and operation of the system provided as part of the Contract.

This Schedule does not preclude the security responsibilities detailed elsewhere within the Contract. This version of the Security Aspects Schedule supersedes any previous versions issued.

SUB-CONTRACTORS AND SUPPLIERS

Where the Supplier makes use of Sub-contractors or other suppliers, it is the responsibility of the Supplier to ensure that the obligations and responsibilities of this Schedule are flowed down to them. It is additionally the responsibility of the Supplier to ensure that the Sub-contractors / suppliers understand and comply with these obligations and responsibilities.

OFF SHORING

Offshoring of any information or data associated with the Contract shall not be implemented without the direct approval of the Authority.

CONFIDENTIALITY AND NON-DISCLOSURE OF POLICE INFORMATION

The information held or to be held relating to this Contract could have a direct impact on operational policing, the effective working of the criminal justice system and potentially the security of the nation. The Supplier's attention is therefore drawn to the provisions of the Official Secrets Acts 1911 to 1989 in general, and to the provisions of Section 4 of the Official Secrets Act 1989 in particular. The Supplier shall take all reasonable steps to make sure that all individuals employed on any work in connection with this Contract have notice that these statutory provisions apply to them and shall continue to apply after the completion or earlier termination of this Contract.

The nature of this Contract dictates that information about the Contract, or the data held in relation to this Contract, be handled with a 'need to know' principle in accordance with the associated Classification / Protective Marking.

CLASSIFICATION AND PROTECTIVE MARKING OF INFORMATION ASPECTS

The Home Office and the Policing community applies Government Security Classification (GSC) to all information it generates. The Supplier shall apply the GSC in accordance with this Schedule to any information generated as part of this Contract.

CLASSIFICATION AND PROTECTIVE MARKING OF INFORMATION ASPECTS

By default all information provided by the Home Office is OFFICIAL but will generally have no marking to identify it as OFFICIAL. The Home Office will label OFFICIAL SENSITIVE as such.

POLICE DESCRIPTORS

Any information that bears a 'Police' descriptor shall be subject to additional controls as described in the National Policing Policy and summarised below:

- Non-Police Personnel must hold an appropriate Non-Police Personnel Vetting clearance as detailed in Section 7 Clearance Requirements below;
- Systems which hold or process data marked with a 'Police' descriptor must be accredited by an authority recognised by the Police Service;
- Sites which hold or process Police data must be audited and meet the Police Assured Secure Facilities requirements.

CLEARANCE REQUIREMENTS

The Classification associated with various information related to this Contract varies from item to item. Accordingly, the clearance requirements of an individual will vary depending on what access they have.

The Authority reserves the right to approve the vetting of all staff involved with this project. Confirmation of clearance must be passed to the Authority who reserves the right to validate it.

The clearance requirements for this Contract are identified in Part 2 'Conditions of Tendering' with the Tender Document.

INFORMATION ASSURANCE RESPONSIBILITIES

Full responsibilities of the Supplier with regard to information assurance and security are detailed in the Part 2 Conditions of Tendering.

SPECIFIC VETTING HANDLING AND STORAGE OF GOVERNMENT AND POLICING INFORMATION

Information assets received by or generated by the Supplier shall be treated according to the guidelines in this Schedule. Some documents or other information provided by the Authority or developed by the Supplier (as directed by the Authority) will have specific handling rules. The handling rules associated with a specific deliverable will supersede the guidance in the following section.

Information shall be handled by the Authority in accordance with the following handling instructions. The following guidance is not exhaustive. The Supplier shall contact the Authority for guidance on the handling and storage of any information related to the Contract that is not covered in the following sections.

HANDLING INSTRUCTIONS

OFFICIAL information of the following type:

- Existence of project;
- This Schedule;
- Contractual material – post contract award;
- Management Information;
- High-level summary description of system.

Staff Vetting Requirement of staff being allowed access (subject to need to know): BPSS

Storage

Documents and Media - kept separate from documents and media unrelated to the design, build, ongoing operation of the requirements of the Contract.

Electronic information - may be stored on Supplier corporate network.

Disposal

Supplier may follow own corporate guidelines.

Transmission

Mail:- By post or courier, in a sealed envelope.

Telephone:- May be used.

Facsimile:- May be used. Check recipient is on hand to receive before transmission.

Service Provider networks: - May be used.

Public networks / Internet (including email): - May be used.

CJX, GSI, PSN Networks: - May be used.

OFFICIAL data of the following type:

- Personal Data¹ (Data Protection Act 2018 Term);
- Contract material – pre-contract award;
- Location details of end users;

- High Level Design of the system.

Staff Vetting Requirement of staff being allowed access (subject to need to know): BPSS and NPPV Level 2 for information about Authority's location / address.

Storage

Documents and Media - protected by at least one physical barrier and only accessible by those with a need to know.
Electronic information - may be stored on the Supplier's laptops / desktops that have been equipped with FIPS140-2 disk encryption deemed suitable to protect OFFICIAL SENSITIVE. May only be stored on the Supplier's network / systems which have been provisioned for the use of the project and only allows access by those individuals involved with the project.

Disposal

Dispose of according to HMG guidelines – see HMG Information Assurance Standard 5.

Transmission

Mail: - By post or courier. Do not show protective marking on the envelope. The document shall be marked appropriately. Envelope shall be fully addressed to the named recipient and include return address details.

Telephone: - Public Service Telephone Network (PSTN) and digital mobile telephones may be used.

Facsimile: - Check recipient is on hand to receive prior to transmission. Send cover sheet first and wait for confirmation before sending the document itself.

Service Provider Networks: - May be used if previously accredited to handle Business Impact Level 2 data on an OFFICIAL or OFFICIAL SENSITIVE system;

Internet: - In exceptional circumstances and not for routine communications, documents protectively marked as PROTECT may be sent through Internet, for example via email, if basic precautions have been taken to prevent accidental or opportunistic access to the document:

Personal Data² items must be encrypted using WinZip (AES-256) or better.

Other data, including specified OFFICIAL SENSITIVE items, good password-protection or encryption using WinZip (AES-256) is also required.

CJX / GSi, PSN Network: - May be used to send material to Authority addressees or other CJX / GSi / PSN email addressees.

CJSM Email: – May be used for the transmission of information with the Authority or other CJX / GSi emails addressees.

OFFICIAL SENSITIVE data of the following types:

- Sensitive Personal Data³ (Data Protection Act 2018 term);
- Operational Policing Data;
- Specific design details of all or part of the system;
- Configuration details of the system;
- Detailed information of the hardware / software components including security related material.

Staff Vetting Requirement of staff being allowed access (subject to need to know): National non-Police Personnel Vetting (NPPV) level 3 and SC

Storage

Documents and media - Protected by at least one physical barrier and only accessible by those with a need to know. Mechanisms used must be deemed adequate for such classification / protective marking by the Authority.

Electronic information - may be stored on stand-alone networks that have been accredited to, store data of Business Impact Level 3 as an OFFICIAL SENSITIVE system, or RESTRICTED information.

May also be stored on laptops / desktops that are accredited to hold data of Business Impact Level 3 as an OFFICIAL SENSITIVE system or RESTRICTED information and are equipped with government-approved CPA Foundation or CAPS Baseline grade whole disk encryption. A list of serial numbers of these laptops shall be maintained by the Supplier and made available to the Authority on request. USB storage portable devices must be encrypted that has at least FIPS140-2 level 2 certification. The number of Information Assets must be kept at the minimum necessary.

Disposal

Dispose of according to HMG guidelines – see HMG Information Assurance Standard 5.

Transmission

Mail: - by post or courier, double enveloped. Do not show protective marking on the outer envelope. Label the inner envelope OFFICIAL SENSITIVE or RESTRICTED. Both envelopes should be fully addressed to the named recipient and include return address details.

Telephone: - Public Service Telephone Network (PSTN) should generally not be used for conversations with OFFICIAL SENSITIVE or RESTRICTED content unless operationally urgent (and then guarded language should be used).

Facsimile: - should not be used for OFFICIAL SENSITIVE or RESTRICTED content unless operationally urgent. In such cases, check recipient is on hand to receive prior to transmission, send cover sheet first and wait for confirmation before sending the document itself.

Service Provider Networks: - may be used if previously accredited to process data, up to and including Business Impact Level 3 as an OFFICIAL SENSITIVE system, or for RESTRICTED information.

Internet: - using a government approved encryption product deemed adequate for the Business Impact Level of the data, or for RESTRICTED information.

In exceptional circumstances and not for routine communications, data with a Business Impact Level 3, from or to an OFFICIAL SENSITIVE system or assets protectively marked as RESTRICTED may be sent through Internet if the information asset has been encrypted to appropriate level before transmission. As a minimum WinZip version 10.0 using AES-256 (or equivalent) with a complex 14 character password. Passwords must be sent via an entirely separate communication channel.

CJX / GSI / PSN Network: - may be used to send material to Authority addressees or other CJX / GSi email addressees.

CJSM Email: - may be used for the transmission of information with the Authority or other CJX / GSi emails addressees. PSN should use the rules for transmission across the Internet above. Attachments must use the same measures identified for Internet above.

OFFICIAL SENSITIVE data of the following type:

Operational Policing Data.

Staff Vetting Requirement of staff being allowed access (subject to need to know): National non-Police Personnel Vetting (NPPV) level 3 and SC

Storage

Documents and media - protected by at least two physical barriers from those without a need to know and only accessible by those with a need to know.

Electronic information - may be stored on standalone systems that have been accredited to, store / process data up to and including Business Impact Level 4 as an OFFICIAL SENSITIVE system, or CONFIDENTIAL information (with use of CPA Foundation or CAPS Enhanced / High grade encryption). Arrangements must be approved by the Accreditor.

Disposal

Dispose of according to HMG guidelines - see HMG Information Assurance Standard 5.

Transmission

Mail: - may be used for electronic copies of Information Assets protectively marked as CONFIDENTIAL when using an Enhanced-encrypted media to store the electronic copies. It may not be used for paper copies of Information Assets protectively marked as CONFIDENTIAL.

Hand delivery by the Supplier personnel: - may be used, provided that OFFICIAL SENSITIVE or CONFIDENTIAL Information Assets (e.g. documents, notebooks) are carried in a lockable container approved for carrying CONFIDENTIAL assets.

Telephone, Facsimile, Service Provider Networks, Internet, CJX / GSi / PSN Network: - must not be used.

Other sensitive matters may be identified during the life cycle of Contract. The Authority shall consult with the Authority for advice on the appropriate classification for such matters.

ACTIONS

You are requested to confirm by signature (below) that the levels of Government Classifications, Police Protective Marking and Descriptors associated with Contract have been brought to the attention of the person directly responsible for the security of this Contract, that they are fully understood, and that the required security controls can and will be taken to safeguard the material concerned.

If the Supplier has any difficulty in interpreting the meaning of the above classification or in safeguarding the materials, then they shall consult with the Authority for further advice.

Tenderer Name:	Ultimate Boats	Contact Name:	Robert Hammond
Address:	75 Beardmore Way Clydebank Industrial Estate Glasgow, G81 4HT Scotland		
Telephone No:	+44.7782.109.350	Email:	robert.hammond@ultimate-boats.com

Footnotes

¹ Personal data relates to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

² Personal data relates to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

³ Sensitive Personal Data consists of information relating to -

- (a) the racial or ethnic origin of the data subject,
- (b) their political opinions,
- (c) their religious beliefs or other beliefs of a similar nature,
- (d) whether they are a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
- (e) their physical or mental health or condition,
- (f) their sexual life,
- (g) the commission or alleged commission by them of any offence, or
- (h) any proceedings for any offence committed or alleged to have been committed by them, the disposal of such proceedings or the sentence of any court in such proceedings.

⁴ A board level member who has responsibility and accountability for Information Risk within the Contractor organisation.

SCHEDULE SIX – SUBCONTRACTING ARRANGEMENTS

Project Reference	7F 2022 C049	Tender Reference	C18290
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Project Title	ESSEX CABIN RHIB
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Supplier Name	ULTIMATE BOATS
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The Supplier shall provide the information requested in the table below in accordance with Regulation 71(3) of the Public Contracts Regulations 2015.

The Authority may at their discretion extend this obligation further down the supply chain.

The information should be provided at the time of tender submission but shall be provided at the latest by the time the contract starts being performed, i.e. when the specific Sub-contractors are known.

The Supplier shall also notify the Authority if / when there is any change to the basic contact information described above about the Sub-contractor, and provide equivalent basic contact information for any new Sub-contractors.

This requirement does not extend to organisations that are simply delivering consumables / goods / parts to the Premises.

Sub-contractor and Functions Fulfilled	Contact Details (address, telephone, e-mail)	Legal Representatives
N/A	N/A	N/A

SCHEDULE SEVEN – PRICING SUBMISSION

Project Reference	7F 2022 C049	Tender Reference	C18290
Project Title	ESSEX CABIN RHIB		
Supplier Name	ULTIMATE BOATS		

All prices shall be in pounds Sterling and shall be inclusive of any import duties, customs fees and transport charges. Any discounts available and VAT payable shall be shown separately. Also submitted as attachment.

SCHEDULE EIGHT – METHOD STATEMENT

Project Reference	7F 2022 C049	Tender Reference	C18290
Project Title	ESSEX CABIN RHIB		
Supplier Name	ULTIMATE BOATS		

Tenderers must submit their Method Statements by completing this Method Statement Template. Tenderers may be disqualified for providing Method Statements in any other format. Responses must be entered into the correct sections and numbered accordingly.

Tenderers must ensure that Method Statements are anonymised and must not include their name, logos or company headings in the Method Statements. Tenderers should refer to themselves as 'the Supplier' in the Method Statements.

Any appendices attached by a Tenderer and forming part of their Method Statement must be within the maximum word limit for that Method Statement, unless otherwise indicated.

Tenderers may not exceed any stated word limits defined within the Method Statement, unless otherwise advised by the Authority. The Authority reserves the right to mark any Method Statement accordingly and any words, text or diagrams included that exceed the relevant word limit or have not been specifically excluded from the word limit and placed in appendices, may not be included for evaluation purposes.

Cross referencing between Method Statements is not permitted. Tenderers should not cross-reference between boxes/Method Statements. Cross referenced sections shall not be evaluated or marked.

Tenderers must provide a response to each requirement or request for information as fully as possible in the same order as and referring to, the paragraphs in this section of the Tender. Responses must be unambiguous. The response to paragraphs specifying requirements shall be either "Fully Compliant" or "Not Compliant". In the case of compliance adequate detail shall be provided to explain the manner in which the requirement is met. Where the latter response is provided additional explanation shall be given. Whenever the response is the result of a calculation, the method shall be explained and any assumptions made shall be stated.

SCHEDULE EIGHT – METHOD STATEMENT

Project Reference	7F 2022 C049	Tender Reference	C18290
Project Title	ESSEX CABIN RHIB		
Supplier Name	ULTIMATE BOATS		

Tenderers are required to submit **one Method Statements** set out in the Table below.

STATEMENT REQUIREMENTS CRITERIA	OF PERCENTAGE SCORE	TECHNICAL QUESTION
Specification 3.8	5%	Q 1) Using a method statement, please explain the delivery process in detail. This is to include but is not limited to, where the product will be made, build timescales, delivery and any processes we need to be aware of up to receipt and signoff. 4.

TENDERER RESPONSE (MAXIMUM WORD LIMIT 500 Words)

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STATEMENT REQUIREMENTS CRITERIA	OF PERCENTAGE SCORE	TECHNICAL QUESTION
Specification 2.1 & 3.7	10%	Q2) Using a method statement please detail as to how the vessel will be future proofed to ensure the vessel remains fit for policing purposes. This is to include but is not limited to; complying with relevant legislation including emissions and providing suitable welfare facilities to staff carrying out the operations.

TENDERER RESPONSE (MAXIMUM WORD LIMIT 500 Words)


SECTION D FORM OF TENDER AND RELEVANT CORRESPONDENCE / DOCUMENTATION

STATEMENT OF REQUIREMENTS CRITERIA	PERCENTAGE SCORE	TECHNICAL QUESTION
Specification 3.6	10%	Q3) Using method statements please provide detail as to how the servicing of the vessel will be completed. This is to include but is not limited to what the proposed service agreement will entail and who (including subcontractor details as required) will undertake the maintenance as per the specification.
TENDERER RESPONSE (MAXIMUM WORD LIMIT 500 Words)		
STATEMENT OF REQUIREMENTS CRITERIA	PERCENTAGE SCORE	TECHNICAL QUESTION
Specification 6.1.3	5%	Q4) Using Method statements please provide specific detail around supplier expectations on how Essex Police is to promote the vessel to external stakeholders. For example having the vessel made available to other forces where we can accommodate. What is the process and any conditions to this requirement.
TENDERER RESPONSE (MAXIMUM WORD LIMIT 500 Words)		

SECTION D FORM OF TENDER AND RELEVANT CORRESPONDENCE / DOCUMENTATION

OUTCOME AND DETAIL	PERCENTAGE SCORE	UNIT	FINANCIAL VALUE PER UNIT
CLIMATE IMPACTS ARE REDUCED – WHILST VESSEL IS BEING BUILT IN THE YARD THIS RELATES TO ANY TRANSPORTING OF MATERIALS RELEVANT TO THE BUILDING OF THE VESSEL. SAVINGS IN CO2 EMISSIONS ON CONTRACT	2.5%	TONNES OF CO2E	£69.35
TENDERER RESPONSE (MAXIMUM WORD LIMIT 500 Words)			
OUTCOME AND DETAIL	PERCENTAGE SCORE	UNIT	VALUE PER UNIT
OUTCOME AND DETAIL	PERCENTAGE SCORE	UNIT	FINANCIAL VALUE PER UNIT
AIR POLLUTION IS REDUCED NUMBER OF LOW OR NO EMISSION VEHICLES INCLUDED ON PROJECT (MILES DRIVEN) – THIS RELATES FROM CONTRACTORS BUILD BASE TO ESSEX DELIVERED SITE AND ANY OTHER MILES DRIVEN IN RELATION TO THIS CONTRACT	2.5%	1000	£0.02
TENDERER RESPONSE (MAXIMUM WORD LIMIT 500 Words)			
OUTCOME AND DETAIL	PERCENTAGE SCORE	UNIT	VALUE PER UNIT
<u>WORKING MORE WITH THE COMMUNITY - IMPACT ON THE BUILD YARDS LOCAL COMMUNITY</u> DONATIONS OR IN-KIND CONTRIBUTIONS TO LOCAL COMMUNITY PROJECTS (£ & MATERIALS) THIS RELATES TO SUPPLIERS SUPPORTING THEIR LOCAL COMMUNITIES WITHIN THE AREA OF THE BUILD YARD.	2.5%	£ value	£1.00
TENDERER RESPONSE (MAXIMUM WORD LIMIT 500 Words)			

SCHEDULE NINE – DECLARATION OF NON-INVOLVEMENT IN ORGANISED CRIME [OR CONSPIRACY CONCERNING THE COMMITTING OF OFFENCES]			
Project Reference	7F 2022 C049	Tender Reference	C18290
Project Title	ESSEX CABIN RHIB		

Supplier Name	ULTIMATE BOATS
MANDATORY REQUIREMENT (SOC)	
<p>To ensure that Seven Force Commercial Services nor any of the seven police forces that it supports covering Bedfordshire, Cambridgeshire, Essex, Hertfordshire, Kent, Norfolk and Suffolk (acting individually or collectively as one or more forces) (the Seven Forces) do not unwittingly engage with organised criminals through their contractual activity it is considered relevant and proportionate to obtain from prospective Tenderers for any Seven Force contracts a 'declaration of non- involvement in organised crime [or conspiracy concerning the committing of offences]'. Where the Tenderer (or prospective Tenderer) is a corporate body or partnership, to satisfy the requirements of that declaration it is necessary that an authorised signatory of the entity provides the declaration, confirming that the content of the following statement is applicable to the business entity or, in the case of a consortium, to each of the companies or entities within the group or consortia. [Please note that if you are in a consortium you should ask each individual company or entity to complete this form to enable you to make the declaration below. In this case, please additionally submit the completed form for each company and/or entity.] Checks will be carried out upon receipt of the tenders by the Seven Forces. Where it is found that there is a link to organised crime [and/or conspiracy in relation to offences], then the Seven Forces reserve the right to remove your bid without any consultation. You will be notified of removal at this point. You are now required to complete the attached declaration and Schedule 1 and upload with your response. Failure to do so will result in your bid being rejected.</p> <p><u>DECLARATION OF NON- INVOLVEMENT IN ORGANISED CRIME</u> Declaration for corporate entity/partnership/consortium I can confirm that no director, shareholder, or other persons who have power of representation, decision or control over in respect of [INSERT NAME OF BUSINESS ENTITY] or otherwise connected to me in any way, and where the tender concerns a consortium that no director, shareholder, or other persons who have power of representation, decision or control over any of the companies or entities within the group or consortia, are engaged in the criminal activities of an organised crime group, as defined in the Serious Crime Act 2015 [or are involved with any activity akin to the offence of conspiracy].</p> <p>Or Declaration for individual I can confirm that neither I nor anyone who has power of representation, direction or control over or in respect of any of my business interests, or who is otherwise connected to me in any way, is engaged in the criminal activities of an organised crime group, as defined in the Serious Crime Act 2015 [or are involved with any activity akin to the offence of conspiracy].</p> <p>Attestation wording applicable to both corporate entity/partnership/consortium and individuals I confirm that I have read over and understood section 45 of the Serious Crime Act 2015 [and section 1 of the Criminal Law Act 1977]. In making this declaration, I confirm that I have taken all the necessary steps to ensure the accuracy of my attestation and understand that the wilful provision of misleading or inaccurate information may constitute a serious misrepresentation.</p>	
Signed	
Name	Shane Mugan
Company business address and postcode:	8 St. George's Street Douglas, IM1 1AH Isle of Man
Home address including postcode:	
Contact telephone number:	+44.7782 109 350

SECTION D FORM OF TENDER AND RELEVANT CORRESPONDENCE / DOCUMENTATION

Witnessed by (name):	Robert Hammond
Designation:	Head of Sales & Business Development
Witnessed by (signed):	
Date and place of signature:	30/05/2023 Glasgow

Company Number:	132474C
VAT Number:	GB 005 3809 02
Address of Company: (Provide owners of business premises)	75 Beardmore Way Clydebank Industrial Estate Glasgow, G81 4HT Scotland
Designated Point of Contact: (Supply full name, DOB & Home Address)	Robert Hammond Service address: 75 Beardmore Way Clydebank Industrial Estate Glasgow, G81 4HT Scotland
Director/ Owners/ Person with Significant Control (PSC): (Supply full name, DOB & Home Address)	
Provide details of any known sub-contractor: (Where possible information should be provided as above)	N/A

SCHEDULE TEN – CHECKLIST FOR TENDERERS

Project Reference	7F 2022 C049	Tender Reference	C18290
Project Title	ESSEX CABIN RHIB		
Supplier Name	ULTIMATE BOATS		

Tenderers are required to complete the Checklist[s] below to ensure that all required documents are included within their Tender submission:

NUMBER	SCHEDULE	Please tick to confirm included
ONE	FORM OF TENDER	X

SECTION D FORM OF TENDER AND RELEVANT CORRESPONDENCE / DOCUMENTATION

NUMBER	SCHEDULE	Please tick to confirm included
TWO	ANTI-COLLUSION/BONA FIDE TENDERING CERTIFICATE	X
THREE	CONFIDENTIALITY UNDERTAKING	X
FOUR	SCHEDULE TO THE CONFIDENTIALITY UNDERTAKING	X
FIVE	SECURITY ASPECTS SCHEDULE	X
SIX	SUBCONTRACTING ARRANGEMENTS	x
SEVEN	PRICING SUBMISSION	X
EIGHT	METHOD STATEMENT	X
NINE	SOC DECLARATION	X
TEN	CHECKLIST FOR TENDERERS	x