



**[INSERT CONTRACTOR LOGO]**

Date: [●]

- (1) The Chief Constable for Thames Valley Police
- (2) **[Name of Supplier]**

**Contract**

relating to

**the Purchase of Goods**

**[ENTER TITLE OF THE CONTRACT]**

**[ENTER CONTRACT REFERENCE]**

| Contract Summary           |                                                                                            |
|----------------------------|--------------------------------------------------------------------------------------------|
| Date:                      |                                                                                            |
| Agreement No:              | [AGREEMENT NUMBER]                                                                         |
| Authority:                 | The Chief Constable for Thames Valley Police                                               |
| Authority's address:       | Police Headquarters, Oxford Road, Kidlington, Oxfordshire, OX5 2NX                         |
| Authority Representatives: | Contact: [POSITION OF CONTACT]<br>Email address: [EMAIL ADDRESS]<br>DX number: [DX NUMBER] |
| Supplier:                  | [COMPANY NAME] (No. [NUMBER])                                                              |

|                                            |                                                                                                                                                                                                                                                                        |                                                                            |
|--------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| <b>Supplier's address:</b>                 | [ADDRESS]                                                                                                                                                                                                                                                              |                                                                            |
| <b>Supplier Representatives:</b>           | Contact: [POSITION OF CONTACT]<br>Email address: [EMAIL ADDRESS]<br>DX number: [DX NUMBER]                                                                                                                                                                             |                                                                            |
| <b>Background:</b>                         | [A<br>B<br>C]                                                                                                                                                                                                                                                          |                                                                            |
| <b>Commencement Date:</b>                  | [DATE OR The date when both parties have signed the Agreement.]                                                                                                                                                                                                        |                                                                            |
| <b>Initial Period:</b>                     | [TERM]                                                                                                                                                                                                                                                                 |                                                                            |
| <b>Extension Period:</b>                   | [EXTENSION PERIOD]                                                                                                                                                                                                                                                     |                                                                            |
| <b>Termination for convenience period:</b> | [Notice Period in days]                                                                                                                                                                                                                                                |                                                                            |
| <b>Price:</b>                              | [PRICE OR the price for Goods set out in the Charges, Payment and Invoicing Schedule.]                                                                                                                                                                                 |                                                                            |
| <b>Liability:</b>                          | General Liability Limitation £[INSERT] (see clause [XX])<br>Property Damage Limitation £[INSERT] (see clause [XX])                                                                                                                                                     |                                                                            |
| <b>Special Conditions:</b>                 |                                                                                                                                                                                                                                                                        |                                                                            |
| <b>Schedules:</b>                          | <b>Mandatory</b>                                                                                                                                                                                                                                                       | <b>Apply</b>                                                               |
|                                            | Service Specification                                                                                                                                                                                                                                                  | <input checked="" type="checkbox"/>                                        |
|                                            | Charges Payment and Invoicing Schedule                                                                                                                                                                                                                                 | <input checked="" type="checkbox"/>                                        |
|                                            | Dispute Resolution Schedule                                                                                                                                                                                                                                            | <input checked="" type="checkbox"/>                                        |
|                                            | <b>Optional</b>                                                                                                                                                                                                                                                        |                                                                            |
|                                            | Data Processing Schedule                                                                                                                                                                                                                                               | <input checked="" type="checkbox"/> OR <input checked="" type="checkbox"/> |
|                                            | Continuous Improvement Schedule                                                                                                                                                                                                                                        | <input checked="" type="checkbox"/> OR <input checked="" type="checkbox"/> |
|                                            | Guarantee Schedule                                                                                                                                                                                                                                                     | <input checked="" type="checkbox"/> OR <input checked="" type="checkbox"/> |
|                                            | Value for Money Schedule                                                                                                                                                                                                                                               | <input checked="" type="checkbox"/> OR <input checked="" type="checkbox"/> |
|                                            | <b>Policies (Mandatory)</b>                                                                                                                                                                                                                                            |                                                                            |
|                                            | Responsible Procurement Policy                                                                                                                                                                                                                                         | <input checked="" type="checkbox"/>                                        |
|                                            | Security Policy                                                                                                                                                                                                                                                        | <input checked="" type="checkbox"/>                                        |
|                                            | <b>Policies (Optional)</b>                                                                                                                                                                                                                                             |                                                                            |
|                                            | Safety Rules Policy                                                                                                                                                                                                                                                    | <input checked="" type="checkbox"/> OR <input checked="" type="checkbox"/> |
| <b>Executed as a Deed</b>                  | <p>IN WITNESS of which this Agreement has been duly executed by the Parties as a deed on the date which appears at the head of page 1.</p> <p>THE COMMON SEAL of <b>THE CHIEF CONSTABLE FOR THAMES VALLEY POLICE:</b></p> <p>was hereunto affixed and attested by:</p> |                                                                            |

|                            |                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                            | <p>.....</p> <p><b>The Head of Procurement for Thames Valley Police</b></p> <p><b>Executed as a deed by (the Supplier)</b> acting by [a director and its secretary][two directors]</p> <p><b>Signature of Director:</b>_____</p> <p><b>Signature of [Secretary][Director]:</b>_____</p>                                                                                                                |
| <b>Executed under hand</b> | <p><b>IN WITNESS</b> of which this Agreement has been duly executed by the parties.</p> <p><b>SIGNED</b> for and on behalf of The Chief Constable of Thames Valley Police</p> <p>Signature.....</p> <p>Name .....</p> <p>Position .....</p> <p>Date .....</p> <p><b>SIGNED</b> for and on behalf of [the Supplier]</p> <p>Signature.....</p> <p>Name .....</p> <p>Position .....</p> <p>Date .....</p> |

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## **1 DEFINITIONS AND INTERPRETATION**

1.1 In this agreement, unless the context otherwise requires, the following words have the following meanings:

**Agreement** means this Agreement as entered into between the Authority and the Supplier

**Approval** means the prior written consent of the Authority and **Approve** and **Approved** shall be construed accordingly

**Applicable Laws** means all applicable laws, statutes, regulations and codes from time to time in force

**Authority** means Thames Valley Police or any successor organisation responsible for tendering, award and overall management of the Agreement and for the undertaking of any commercial negotiations in connection with the Agreement

**Authorised Representatives** the persons respectively designated as such by the Authority and the Supplier as set out in the Contract Summary

**Authority Premises** means premises owned, controlled or occupied by the Authority which are made available for use by the Supplier or its Sub-contractors for delivery, installation or provision of the Goods (or any of them)

**Change** means any change to this Agreement including to any of the Goods in accordance clause 31

**Change of Control** means a change of control of the Supplier within the meaning of Section 450 of the Corporation Tax Act 2010

**Change Request** shall be a document setting out the proposed Changes and the effect those Changes will have on:

- (a) the Goods;
- (b) the Charges;
- (c) the timetable for the delivery of the Goods; and
- (d) any terms of this Agreement

**Charges** means the price (exclusive of any applicable VAT), payable to the Supplier by the Authority under this Agreement, as set out in the Charges, Payment and Invoicing Schedule, for the full and proper performance by the Supplier of its obligations under this Agreement

|                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Commencement Date</b>                             | means the date stated in the Contract Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Commercially Sensitive Information</b>            | means the confidential information specified to the Authority by the Supplier in writing prior to signature of this Agreement as being commercially sensitive information relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss                                                                                                                                                                                                                                                  |
| <b>Contract Summary</b>                              | means the contract summary form at the beginning of this Agreement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Data Protection Legislation</b>                   | all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party. |
| <b>Default</b>                                       | means any breach of the obligations of the Supplier or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its sub-contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Agreement and in respect of which the Supplier is liable to the Authority                                                                                                                                                                                                                                                                                             |
| <b>Delivery Date</b>                                 | the date specified for delivery of Goods in an Order                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Delivery Location</b>                             | the location specified for delivery of Goods in an Order                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Dispute</b>                                       | means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Goods, failure to agree in accordance with clause 31 (Contract Change) or any matter where this Agreement directs the parties to resolve an issue by reference to the Dispute Resolution Procedure                                                                                                                                                                                                                                                                                     |
| <b>Dispute Resolution Procedure</b>                  | means the dispute resolution procedure set out in the Dispute Resolution Procedure Schedule of this Agreement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Environmental Information Regulations or EIRs</b> | means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

|                                     |                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                     | relevant government department in relation to such regulations                                                                                                                                                                                                                                                                            |
| <b>Extension Period</b>             | means the extension period stated in the Contract Summary                                                                                                                                                                                                                                                                                 |
| <b>FOIA</b>                         | means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation                                                              |
| <b>Force Majeure Event</b>          | has the meaning given in clause 27 (Force majeure) of this Agreement                                                                                                                                                                                                                                                                      |
| <b>General Liability Limitation</b> | the amount specified in the Contract Summary                                                                                                                                                                                                                                                                                              |
| <b>Good Industry Practice</b>       | means standards, practices, methods and procedures conforming to the Applicable Laws and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances |
| <b>Goods</b>                        | means the goods or products to be provided by the Supplier to the Authority as specified in the Specification Schedule                                                                                                                                                                                                                    |
| <b>Guarantee</b>                    | a guarantee from a Guarantor in relation to the performance of the Supplier's obligations under this Agreement in the form as set out in the Guarantee Schedule.                                                                                                                                                                          |
| <b>Guarantor</b>                    | means an entity who provides a Guarantee (where applicable) in accordance with clause 42 (Guarantee)                                                                                                                                                                                                                                      |
| <b>Information</b>                  | has the meaning given to it under section 84 of the Freedom of Information Act 2000                                                                                                                                                                                                                                                       |
| <b>Initial Period</b>               | means the initial term of the Agreement stated in the Contract Summary                                                                                                                                                                                                                                                                    |
| <b>Order</b>                        | an order for Goods submitted by the Authority                                                                                                                                                                                                                                                                                             |
| <b>Order Number</b>                 | the reference number to be applied to an Order by the Supplier                                                                                                                                                                                                                                                                            |
| <b>Personal Data</b>                | as defined in Data Protection Legislation                                                                                                                                                                                                                                                                                                 |
| <b>Processing</b>                   | as defined in Data Protection Legislation                                                                                                                                                                                                                                                                                                 |
| <b>Property Damage Limitation</b>   | the amount specified in the Contract Summary                                                                                                                                                                                                                                                                                              |



|                                       |                                                                                                                                                                                                                                                                       |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Request for Information</b>        | means a request for information or an apparent request relating to this Agreement or the provision of the Goods or an apparent request for such information under the FOIA or the EIRs                                                                                |
| <b>Responsible Procurement Policy</b> | the Authority's "Responsible Procurement Policy" regarding the Supplier's compliance with social & ethical, economic, environmental and governance matters, as provided to the Supplier along with this Agreement and as updated by the Authority from time to time.  |
| <b>Safety Rules</b>                   | the Authority's "Safety Rules" policy regarding the safety rules to be followed by the Supplier when operating or working on Authority Premises or any Site, as provided to the Supplier along with this Agreement and as updated by the Authority from time to time. |
| <b>Security Policy</b>                | the Authority "Security Policy" regarding information security as provided to the Supplier along with this Agreement and as updated by the Authority from time to time                                                                                                |
| <b>Sites</b>                          | means any premises (including the Authority premises, the Supplier's premises or third party premises) from, to or at which the Goods are (or are to be) delivered                                                                                                    |
| <b>Specification</b>                  | as detailed in the Specification Schedule                                                                                                                                                                                                                             |
| <b>Sub-contract</b>                   | any contract or agreement, or proposed contract or agreement, between the Supplier or a Sub-contractor and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Goods                            |
| <b>Sub-contractor</b>                 | any third party with whom the Supplier or a Sub-contractor enters into a Sub-contract                                                                                                                                                                                 |
| <b>Supplier Personnel</b>             | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement                                                              |
| <b>Term</b>                           | the period of the Initial Period as may be varied by: <ul style="list-style-type: none"> <li>(a) the Extension Period; or</li> <li>(b) the earlier termination of this Agreement in accordance with its terms</li> </ul>                                              |
| <b>Termination Notice</b>             | means a written notice of termination given by one party to the other, notifying the party receiving the notice of the intention of the party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination           |

|                                    |                                                                                                                   |
|------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| <b>Termination Payment Default</b> | has the meaning given in clause 40.1.3 (Termination) of this Agreement                                            |
| <b>UK GDPR</b>                     | has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018. |
| <b>Valid Invoice</b>               | means an invoice issued by the Supplier to the Authority that complies with this Agreement                        |
| <b>Working Days</b>                | means any day other than a Saturday or Sunday or public holiday in England and Wales                              |

1.2 In this Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in clause 1 above or the relevant clause or Schedule in which that capitalised expression appears:

- 1.2.1 any reference to a statute or a provision of a statute shall be construed as a reference to that statute or provisions as amended, re-enacted or extended at the relevant time;
- 1.2.2 any reference to a person shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or one or more of the foregoing;
- 1.2.3 any reference to the singular shall include the plural and vice versa;
- 1.2.4 any reference to the masculine gender shall include the feminine and neuter and vice versa;
- 1.2.5 the table of contents and headings are inserted for ease of reference only and shall not affect the construction of this Agreement;
- 1.2.6 where any party comprises two or more persons, any obligations of that party in, under or arising from this Agreement is undertaken by or binding upon such two or more persons jointly and severally;
- 1.2.7 references to any party to this Agreement include its successors-in-title and permitted assignees;
- 1.2.8 references to numbered clauses, schedules or paragraphs are references to the relevant clauses or schedules in this Agreement or the relevant paragraph of this Agreement respectively;
- 1.2.9 any reference to **written** or **writing** includes email but not faxes;
- 1.2.10 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which most approximates in that jurisdiction to the English legal term;
- 1.2.11 references to times of the day are to London time and references to a day are to a period of 24 hours commencing at midnight at the start of the day;
- 1.2.12 any document expressed to be in the agreed form or in the agreed terms means a document in a form Approved by (and for the purposes of identification signed or initialled by or on behalf of) the Authority.

## **2 AMENDMENTS AND VARIATIONS TO THE AGREEMENT**

- 1.1 Either party may propose changes to the scope or execution of the Goods, provided that such variation does not amount to a material Change of this Agreement within the meaning of the Applicable Laws. No proposed Change shall come into effect until a relevant Change Request has been signed by both parties in accordance with clause 31.

## **3 PRECEDENCE**

- 1.2 In the event of, and only to the extent of, any conflict or inconsistency between the clauses of this Agreement, the Schedules and any other documents referred to in or attached to this Agreement, the conflict or inconsistency shall be resolved in accordance with the following order of precedence:

- 1.2.1 first priority, the clauses of this Agreement;
- 1.2.2 second priority, the Schedules;
- 1.2.3 third priority, any other Authority document referred to in or attached to this Agreement including the Contract Summary;
- 1.2.4 fourth priority, the Supplier's tender submission or any other document supplied by the Supplier (and referenced in this Agreement).

- 1.3 The Supplier shall:

- 1.3.1 perform its obligations under this Agreement, including in relation to the supply of the Goods and any associated services supplied by the Supplier in accordance with:
  - (a) the Specification Schedule
  - (b) all Applicable Law;
  - (c) Good Industry Practice;
  - (d) the Security Requirements (as set out in the Security Policy);
  - (e) all other relevant documents referred to in this Agreement; and
  - (f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of clauses 3.2.1(a) to 3.2.1(e).
- 1.3.2 deliver the Goods using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

- 1.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of clauses 3.2.1(a) (a) to 3.2.1(f), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

## **4 WARRANTIES**

- 1.5 Each party represents and warrants that:

- 1.5.1 it has full capacity and authority to enter into and to perform this Agreement;
- 1.5.2 this Agreement is executed by its duly Authorised Representative;
- 1.5.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge,

threatened against it (or, in the case of the Supplier, any of its affiliates) that might affect its ability to perform its obligations under this Agreement; and

1.5.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to following (as applicable) (as the case may be for each party) bankruptcy, reorganisation, insolvency, moratorium or similar Applicable Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

1.6 Each of the representations and warranties set out in clauses 4.1 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Agreement.

1.7 If at any time a party becomes aware that a representation or warranty given by it under clause 4.1 has been breached, is untrue or is misleading, it shall immediately notify the other party of the relevant occurrence in sufficient detail to enable the other party to make an accurate assessment of the situation.

1.8 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Supplier which constitutes a material Default.

## **5 MISTAKES IN INFORMATION**

1.9 The Supplier shall be responsible for the accuracy of all drawings, data, documentation and information supplied to the Authority by the Supplier in connection with this Agreement and shall pay the Authority any extra costs incurred by the Authority due to any discrepancies, errors or omissions therein.

## **6 GOODS PACKAGING AND LABELLING**

1.10 The Goods supplied to the Authority by the Supplier under this Agreement shall:

1.10.1 be in accordance with the terms set out in the relevant purchase order and conform to the Specification;

1.10.2 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;

1.10.3 be fit and sufficient for all purposes for which such Goods are generally used and for any specific purpose made known to the Supplier by the Authority;

1.10.4 be free from defects in design, material and workmanship and remain so for twelve (12) months after delivery;

1.10.5 be of the same quality and description as any sample provided; and

1.10.6 comply with all applicable statutory and regulatory requirements.

1.11 The Supplier shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition.

1.12 The Supplier shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to supply the Goods in accordance with the terms of this Agreement.

- 1.13 The Supplier shall comply with all Applicable Laws, enactments, orders, regulations and other instruments relating to the packing, packaging, marking, storage, handling, and delivery of the Goods.
- 1.14 The Authority shall have the right to enter the Supplier's premises to:
- 1.14.1 inspect the manufacturing facilities and the equipment used by the Supplier in the manufacture of the Goods;
  - 1.14.2 inspect and take samples of the raw materials, the packaging and the Goods; and
  - 1.14.3 inspect stock levels of Goods.
- 1.15 Inspections carried out pursuant to clause 6.5 shall be carried out during business hours on reasonable notice to the Supplier, provided that, in the event of an emergency, the Supplier shall grant the Authority immediate access to its premises.
- 1.16 If following an inspection the Authority reasonably considers that the Goods are not or are not likely to be as warranted under clause 6.1, the Authority shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure that the Goods are or will be as warranted under clause 6.1. The Authority shall have the right to re-conduct inspections and take further samples after the Supplier has carried out its remedial actions.

## **7 DELIVERY**

- 1.17 The Supplier shall deliver the Goods specified in each Order to the Delivery Location on the Delivery Date. The Supplier shall not deliver an Order more than five (5) Working Days in advance of the Delivery Date without the prior written consent of the Authority.
- 1.18 Delivery of an Order shall be complete on the completion of unloading of the Order at the Delivery Location.
- 1.19 The Supplier shall not deliver Orders by instalments except with the prior written consent of the Authority. Where Orders are to be delivered by instalments, they may be invoiced and paid for separately. References in this Agreement to Orders shall, where applicable, be read as references to instalments.
- 1.20 If an Order is not delivered on the specified Delivery Date, then, without limiting any other right or remedy the Authority may:
- 1.20.1 refuse to take any subsequent attempted delivery of the Order;
  - 1.20.2 terminate this Agreement with immediate effect;
  - 1.20.3 obtain substitute products from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Authority in obtaining such substitute products; and
  - 1.20.4 subject clause 28 of this Agreement, claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date, provided that the Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Authority's failure to comply with its obligations under this Agreement.
- 1.21 If the Authority fails to accept delivery of an Order on the specified Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under this Agreement:
- 1.21.1 the Order shall be deemed to have been delivered at 9.00am on the Delivery Date; and

1.21.2 the Supplier shall store the Order until delivery takes place, and charge the Authority for all related costs and expenses (including insurance).

1.22 Each delivery of Goods shall be accompanied by a delivery note from the Supplier showing the Order Number, the date of the Order, the type and quantity of Goods included in the Order, including the code numbers of the Goods, and, in the case of Goods being delivered by instalments, the outstanding balance of Goods specified in an Order remaining to be delivered.

1.23 If the Supplier requires the Authority to return any packaging materials to the Supplier, that fact must be clearly stated on the delivery note accompanying the relevant Order, and any such returns shall be at the Supplier's expense.

## **8 ACCEPTANCE**

1.24 The Authority shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

1.25 If any Goods delivered to the Authority do not comply with clause 6 of this Agreement, or are otherwise not in conformity with the terms of this Agreement, then, without limiting any other right or remedy that the Authority may have, the Authority may reject those Goods and:

1.25.1 require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within five (5) Working Days of being requested to do so;

1.25.2 require the Supplier to repay the price of the rejected Goods in full (whether or not the Authority has previously required the Supplier to repair or replace the rejected Goods);

1.25.3 claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that do not conform with the terms of this Agreement.

1.26 The Authority's rights and remedies under this clause are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this agreement by the Sale of Goods Act 1979.

1.27 The terms of this Agreement shall apply to any repaired or replacement Goods supplied by the Supplier.

1.28 If the Supplier fails to promptly repair or replace rejected Goods in accordance with clause 8.2.1, the Authority may, without affecting its rights under clause 8.2.3, obtain substitute products from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse the Authority for the costs it incurs in doing so.

1.29 If the parties dispute whether any Goods comply with clause 6 of this Agreement, either party may refer the matter to an expert for determination in accordance with clause 43 of this Agreement.

## **9 PROPERTY AND RISK**

1.30 Without prejudice to the Authority's other rights and remedies under this Agreement, property and risk in the Goods shall pass to the Authority on acceptance of delivery.

## **10 INSTALLATION**

1.31 Where the installation is required, the Supplier shall:

- 1.31.1 make no delivery of plant, materials or equipment and shall not commence any installation work without the prior consent of the Authority;
  - 1.31.2 carry out the installation work diligently and with reasonable skill and care;
  - 1.31.3 comply with the Authority's requirements relating to access to and use of its premises and shall co-ordinate its work with any other employee or contractor who is carrying out work for the Authority; and
  - 1.31.4 keep the Sites clean and tidy at all times and shall remove all plant and unused materials when the installation work is complete.
- 1.32 The Authority shall have the power at any time during any installation works to give notice to the Supplier requiring:
- 1.32.1 the removal from its premises of any materials which are hazardous or noxious or not in accordance with this Agreement;
  - 1.32.2 the substitution of proper and suitable materials; and/or
  - 1.32.3 the removal and re-execution of any installation work or any Goods which are not in accordance with this Agreement.

## **11 POLICIES**

- 1.33 The Supplier shall abide by the relevant Authority policies as specified in the Contract Summary (as updated from time to time) and other Authority policies as notified to the Supplier from time to time.
- 1.34 Any breach or non-compliance with the terms of an Authority policy shall amount to a Default for the purposes of this Agreement.

## **12 SUPPLIER'S STATUS**

- 1.35 At all times during the Term the Supplier shall be an independent supplier and nothing in the Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the parties and accordingly neither party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other party save as expressly permitted by the terms of the Agreement.

## **13 CONFIDENTIALITY**

- 1.36 **"Confidential information"** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with the provision of the Goods, including but not limited to:
- 1.36.1 the existence and terms of this Agreement or any agreement entered into in connection with this Agreement;
  - 1.36.2 any information that would be regarded as confidential by a reasonable business person relating to:
    - (a) the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party; and
    - (b) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
  - 1.36.3 any information developed by the parties in the course of carrying out this Agreement.

**“Representatives”** means, in relation to a party, its employees, officers, representatives, contractors subcontractors and advisers.

- 1.37 The provisions of this clause shall not apply to any Confidential Information that:
- 1.37.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
  - 1.37.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - 1.37.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
  - 1.37.4 the parties agree in writing is not confidential or may be disclosed; or
  - 1.37.5 is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 1.38 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
- 1.38.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (Permitted Purpose); or
  - 1.38.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 13.
- 1.39 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 1.39.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - 1.39.2 it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Agreement,
- and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 13.
- 1.40 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 1.41 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.



- 1.42 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.
- 1.43 On termination or expiry of this Agreement, each party shall:
- 1.43.1 destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
  - 1.43.2 erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
  - 1.43.3 certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 40 (Termination).
- 1.44 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 1.45 The provisions of this clause 13 shall survive for a period of five years from termination or expiry of this Agreement.

## **14 INTELLECTUAL PROPERTY**

- 1.46 Save where the Goods are made up in accordance with a design supplied by the Authority, the Supplier warrants that none of the Goods shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party.
- 1.47 The Supplier shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may incur as a result of or in connection with any breach of clause 14.1.

## **15 PROVISION OF INFORMATION**

- 1.48 Without prejudice to any other provisions in this Agreement, the Supplier shall provide such information in relation to the performance of its obligations and compliance with the Applicable Laws required under this Agreement (including information in respect of claims, progress against relevant timescales or milestones and information required by the Authority for the purposes of re-tendering provision of the Goods) as the Authority may reasonably request from time to time, such information to be provided in the format and within the timescales reasonably specified by the Authority. The Supplier shall ensure that all such information is accurate and complete and, in respect of any information required by the Authority for re-tendering purposes, shall notify the Authority without delay of any changes to information previously provided to the Authority.

## **16 DATA PROTECTION**

- 1.49 Where the Data Processing Schedule is stated to apply in the Contract Summary, both parties acknowledge that in connection with the Processing of Personal Data in relation to the provision of the Goods under this Agreement, both parties will comply with the Data Protection Legislation and the terms of the Data Processing Schedule.

## **17 FREEDOM OF INFORMATION**

- 1.50 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 1.50.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
  - 1.50.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - 1.50.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information;
  - 1.50.4 as requested by the Authority and using the Information Commissioner's methodology to do so, redact all necessary information. The Supplier shall provide the Authority with redacted versions within fourteen (14) Working Days of the Commencement Date; and
  - 1.50.5 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 1.51 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **18 SECURITY/OFFICIAL SECRETS ACT**

- 1.52 If and when requested by the Authority, the Supplier shall procure (in respect of the Supplier's Personnel involved in the delivery of the Goods) from each person identified by the request, a signed statement that he understands that the Official Secrets Acts 1911 to 1989 applies both during the carrying out and after expiry or termination of the Agreement.

## **19 PUBLICITY AND COMMUNICATIONS**

- 1.53 The Supplier shall not:
- 1.53.1 make any press announcements or publicise this Agreement in any way; or
  - 1.53.2 use the Authority's name, logo or brand in any promotion or marketing or announcement of orders, without the prior written Approval of the Authority.
- 1.54 Each party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other party (including the Goods) and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## **20 TRANSPARENCY**

- 1.55 The Supplier acknowledges that the Authority is subject to the Elected Local Policing Bodies (Specified Information) Order 2011 and hereby gives its consent for the Authority to publish this Agreement when the Authority is required to do so.
- 1.56 The Authority, at its sole discretion and where applicable by application of a public interest test, may:
- 1.56.1 publish all or part of the information contained in this Agreement (including information deemed by the Supplier to be confidential) where the Authority are required to publish information in accordance with all Applicable Laws; and
  - 1.56.2 redact all or part of the information contained within this Agreement prior to its publication. In doing so the Authority will take account of the FOIA requirements.
- 1.57 The Authority may consult with the Supplier regarding any redactions to this Agreement to be published pursuant to this clause. The final decision regarding publication and/or redaction of the information contained within this Agreement shall be that of the Authority.
- 1.58 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

## **21 SUPPLIER'S RECORDS**

- 1.59 The Supplier shall allow the Authority (or its professional advisers) to access the Supplier's premises, personnel, systems and relevant records to verify that the Charges and any other sums charged to the Authority under this Agreement are accurate.
- 1.60 Subject to the Authority's obligations of confidentiality at clause 13 (Confidentiality), the Supplier shall provide the Authority (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 1.61 The Supplier shall keep and maintain until six (6) years after the end of the Term, or as long a period as may be agreed between the parties.
- 1.62 The Authority shall provide reasonable notice of its intention to conduct an audit and any audit shall be conducted on a Working Day.
- 1.63 The Authority and its professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge.

## **22 HEALTH AND SAFETY**

- 1.64 The Supplier shall perform its obligations under this Agreement (including those in relation to the Goods) in accordance with:
- 1.64.1 all Applicable Laws regarding health and safety; and
  - 1.64.2 the Authority's health and safety policy (as provided to the Supplier from time to time) whilst at the Authority Premises; and
  - 1.64.3 the Safety Rules Policy (where stated to apply in the Contract Summary).
- 1.65 Each party shall promptly notify the other as soon as possible 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.

- 1.66 While on the Authority Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of Supplier Personnel and other persons working there and any instructions from the Authority on any necessary associated safety measures.

## **23 EQUALITY**

- 1.67 The Supplier shall:

- 1.67.1 perform its obligations under this Agreement (including those in relation to provision of the Goods) in accordance with:
- (a) all Applicable Laws (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
  - (b) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under Applicable Laws;
- 1.67.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

## **24 RESPONSIBLE PROCUREMENT**

- 1.68 The Supplier shall comply with the Responsible Procurement Policy in respect to all social & ethical, economic, environmental and governance matter arising from, or relating to, this Agreement.

## **25 ANTI-SLAVERY AND HUMAN TRAFFICKING**

- 1.69 In performing its obligations under this Agreement, the Supplier shall:

- 1.69.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force (**Anti-Slavery Laws**) including but not limited to the Modern Slavery Act 2015;
- 1.69.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales;
- 1.69.3 include in contracts with its subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 25;
- 1.69.4 notify the Authority as soon as it becomes aware of any actual or suspected breach of clause 25.1.1 and clause 25.1.2; and
- 1.69.5 maintain a complete set of records to trace the supply chain of all Goods provided to the Authority in connection with this Agreement; and permit the Authority and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 24.1.

- 1.70 The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

- 1.71 Breach of this clause 25 shall be deemed a material breach under clause 40.

## 26 CORRUPTION AND FRAUD

### 1.72 The Supplier shall:

- 1.72.1 comply with all Applicable Laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 (the **Relevant Requirements**);
- 1.72.2 not commit any Prohibited Act or engage in any activity, practice or conduct that would constitute a Prohibited Act by it, or the Authority if such activity, practice or conduct had been carried out in the United Kingdom;
- 1.72.3 devise, implement and enforce throughout the Term its own written policies and procedures, including adequate procedures under the Bribery Act 2010, in order to ensure compliance by:
  - (a) the Supplier;
  - (b) the Supplier Personnel; and
  - (c) any other associated persons of the Supplier,

with the Relevant Requirements as set out in this clause, and the Supplier shall produce to the Authority copies of such written policies and procedures within 7 days of signature of this Agreement and at any time upon request by the Authority;

- 1.72.4 promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement;
- 1.72.5 immediately notify the Authority in writing if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier, and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement;
- 1.72.6 within two (2) months of the Commencement Date, and annually thereafter, certify to the Authority in writing signed by an officer of the Supplier, compliance with this clause 26.1 by the Supplier and all persons associated with it under clause 26.2. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.

### 1.73 The Supplier shall ensure that any person associated with the Supplier who is providing the Goods and in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 26 (the **Relevant Terms**), the Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Authority for any breach of the Relevant Terms, and shall be directly liable to the Authority for any breach by such persons of any of the Relevant Terms.

### 1.74 If the Supplier (including any member of the Supplier's Personnel, Sub-contractor, third party or agent, in all cases whether or not acting in the Supplier's knowledge) engages in conduct prohibited by this clause 26 or commits any offence under the Bribery Act 2010, the Authority may:

- 1.74.1 terminate this Agreement with immediate effect and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Authority throughout the remainder of the Term; or

- 1.74.2 recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of the conditions set out in this clause.
- 1.75 For the purposes of this clause 26.6:
- 1.75.1 the meaning of **adequate procedures and foreign public official** and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively;
- 1.75.2 a person associated with the Supplier includes but is not limited to any Sub-contractor or third party of the Supplier; and
- 1.75.3 **Prohibited Act** means any of the following:
- (a) offering, giving or agreeing to give to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward;
  - (b) for doing, 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 agreement with the Authority or any other public body; or
  - (c) for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such agreement;
  - (d) paying commission or agreeing to pay any commission to the Authority or any other public body or any person employed by or on behalf of the Authority, or any other public body in connection with this Agreement, or any other agreement with the Authority, or any other public body or person employed by or on behalf of the Authority, or any other public body; or
  - (e) committing any offence:
    - (i) under the Bribery Act 2010; or
    - (ii) under any Applicable Laws creating offences in respect of fraudulent acts; or
    - (iii) at common law in respect of fraudulent acts,
- in relation to this Agreement, or any other agreement with the Authority, or any other public body or person employed by or on behalf of the Authority, or any other public body.
- 1.76 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by Supplier Personnel and the Supplier (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.
- 1.77 The Supplier shall notify the Authority immediately if it has reason to suspect that any fraud in relation to any agreements with the Authority has occurred or is occurring or is likely to occur.
- 1.78 If the Supplier or Supplier Personnel commits fraud in relation to this Agreement or any contract with the Authority, the Authority may:
- 1.78.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply

of the Goods and any additional expenditure incurred by the Authority throughout the remainder of the Term; or

1.78.2 recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this clause.

## **27 FORCE MAJEURE**

1.79 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

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

1.79.2 epidemic or pandemic, subject to clause 27.2;

1.79.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

1.79.4 nuclear, chemical or biological contamination or sonic boom;

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

1.79.6 collapse of buildings, fire, explosion or accident;

1.79.7 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);

1.79.8 non-performance by suppliers or Sub-contractors (other than by companies in the same group as the party seeking to rely on this clause); and

1.79.9 interruption or failure of utility service.

1.80 The Supplier and the Authority acknowledge and agree that events and circumstances arising from or related to the COVID-19 coronavirus shall not amount to a Force Majeure Event.

1.81 Provided it has complied with clause 27.5, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

1.82 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

1.83 The Affected Party shall:

1.83.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than five (5) days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

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

- 1.84 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four (4) weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving four (4) weeks' written notice to the Affected Party.

## **28 LIABILITIES**

- 1.85 Neither party excludes or limits liability to the other party for:
- 1.85.1 death or personal injury caused by its negligence; or
  - 1.85.2 fraud; or
  - 1.85.3 fraudulent misrepresentation; or
  - 1.85.4 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
  - 1.85.5 any liability arising under any indemnity provision in the Agreement, save for the indemnity set out at clause 28.2, or (in the case of the Supplier only) any liability arising under clause 26 (Corruption and fraud).
- 1.86 Subject to clause 28.3, the Supplier shall indemnify and keep indemnified the Authority from and against any loss, damages, liabilities, claims, demands, proceedings, actions, costs, or expenses suffered by the Authority and legal fees and costs incurred by the Authority resulting from:
- 1.86.1 any breach of this Agreement by the Supplier;
  - 1.86.2 any act, neglect or Default of the Supplier or the Supplier's Personnel;
  - 1.86.3 any breaches in respect of any matter arising from the performance of the Goods resulting in any successful claim by any third party; and
  - 1.86.4 any failure for any reason by the Supplier to provide the Goods in accordance with this Agreement which results in the Authority making alternative provision for the Goods.
- 1.87 Subject always to clause 28.1, the liability of either party for Defaults shall be subject to the following limits:
- 1.87.1 save as provided by clause 28.3.3, the liability of either party for any single Default resulting in loss of or damage to the property of the other party shall not exceed the Property Damage Limitation;
  - 1.87.2 save as provided by clause 28.3.3, the aggregate liability under the Agreement of either party for any and all Defaults (other than a Default covered by clause 28.3.1) shall not exceed the General Liability Limitation].
  - 1.87.3 to the extent that the liability of the Supplier for any particular Default is (or, but for any breach of this Agreement by the Supplier, would be) covered by any insurance which the Supplier is required under this Agreement to maintain, the Supplier shall at a minimum be liable to the Authority in respect of that Default up to the limit of liability, even if this results in the liability of the Supplier under this Agreement exceeding the limits specified in clauses 28.3.1 or 28.3.2, as applicable.
- 1.88 During the term of this Agreement and for a period of 6 years after the expiry or termination of this Agreement, the Supplier shall maintain in force, with a reputable insurance company:
- 1.88.1 employer's liability insurance in accordance with legal requirements for the time being in force and in any event for not less ten million pounds (£10,000,000);



- 1.88.2 professional indemnity insurance at an amount not less than ten million pounds (£10,000,000);
- 1.88.3 public liability insurance at an amount not less than ten million pounds (£10,000,000);
- 1.88.4 product liability insurance at an amount not less than ten million pounds (£10,000,000);

to cover the liabilities that may arise under or in connection with this Agreement and shall produce to the Authority on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **29 ASSIGNMENT**

- 1.89 The Supplier shall not assign, Sub-contract or in any other way dispose of this Agreement or any part of it without prior written consent of the Authority.
- 1.90 The Authority may at any time assign, mortgage, charge, Sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that it gives prior written notice of such dealing to the Supplier.

## **30 SUB-CONTRACTING**

- 1.91 The Supplier shall only Sub-contract its obligations under this Agreement to a Sub-contractor, with the prior written consent of the Authority in accordance with the following provisions of this clause.
- 1.92 Upon requesting the appointment of a Sub-contractor, the Supplier shall provide the Authority with such information as the Authority reasonably requests regarding a proposed Sub-contractor.:
- 1.93 [Where the Authority provides written consent to the appointment of a Sub-contractor the Supplier shall ensure the Sub-contract shall include:
  - 1.93.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce the terms of that Sub-contract as if it were the Supplier;
  - 1.93.2 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Authority;
  - 1.93.3 a provision requiring the Sub-contractor to enter into a direct confidentiality agreement with the Authority on the same terms as set out in clause 13 of this Agreement;
  - 1.93.4 a provision requiring the Sub-contractor to comply with protection of data requirements pursuant to the Data Processing Schedule to this Agreement;
  - 1.93.5 a provision requiring the Sub-contractor to comply with the prevention of corruption obligations pursuant to clause 26 (Corruption and fraud) of this Agreement;
  - 1.93.6 a provision restricting the ability of the Sub-contractor to further Sub-contract elements of the Goods or services provided to the Supplier without first seeking the consent of the Authority; and
  - 1.93.7 payment terms as set out in clause 36 (Charges and payment) of this Agreement.]
- 1.94 The Supplier shall not terminate or materially amend the terms of any Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

1.95 The Authority may require the Supplier to terminate any Sub-contract where the acts or omissions of the relevant Sub-contractor have given rise to the Authority's right of termination under this Agreement.

1.96 The Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that Sub-contractor also do, or refrain from doing, such act or thing.

### **31 CONTINUOUS IMPROVEMENT**

1.97 If the Contract Summary states the Continuous Improvement Schedule applies to this Agreement then the provisions of this clause 31 shall apply.

1.98 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Goods in accordance with the Continuous Improvement Schedule.

1.99 Any potential changes highlighted as a result of the Supplier's reporting in accordance with clause 31.1 shall be addressed by the parties using clause 33 (Contract Change).

### **32 VALUE FOR MONEY**

1.100 If the Contract Summary states the Value for Money Schedule applies to this Agreement then the provisions of this clause 32 shall apply.

1.101 Notwithstanding the Supplier's obligations under clause 31 (Continuous Improvement), the Authority shall be entitled to regularly benchmark the Charges and level of performance by the Supplier of the supply of the Goods, against other suppliers providing goods substantially the same as the Goods during the Term in accordance with the Value for Money Schedule.

### **33 CONTRACT CHANGE**

1.102 Either party may propose changes to the scope or execution of this Agreement , but no proposed changes shall come into effect until a relevant Change Request has been signed by both parties.

1.103 If the Authority wishes to make a change to the Goods:

1.103.1 it shall notify the Supplier, providing as much detail as is reasonably necessary to enable the Supplier to prepare the draft Change Request; and

1.103.2 the Supplier shall, within five (5) Working Days of receiving the Authority's request at clause 27.1, provide a draft Change Request to the Authority.

1.104 If the Supplier wishes to make a change to the Goods, it shall provide a draft Change Request to the Authority.

1.105 If the Supplier submits a draft Change Request in order to comply with any applicable safety or regulatory requirements and such changes do not affect the nature, scope of, or charges for the Goods, the Authority shall not unreasonably withhold or delay consent to it.

1.106 If the parties:

1.106.1 agree to a Change Request, they shall sign it and that Change Request shall amend this Agreement; or

1.106.2 are unable to agree a Change Request, either party may require the disagreement to be dealt with in accordance with the Dispute Resolution Schedule.

- 1.107 The Supplier shall only be entitled to charge for the time it spends on preparing and negotiating Change Requests which originate from the Authority in accordance with clause 33.2. The Supplier shall charge for its time so spent on a time and materials basis at the Supplier's daily rates specified in the Charges, Payment and Invoicing Schedule.

#### **34 CHANGE OF CONTROL OF SUPPLIER**

- 1.108 The Supplier shall notify the Authority immediately if the Supplier undergoes a Change of Control. The Authority may terminate the Agreement with immediate effect by giving notice in writing within six (6) months of:

1.108.1 being notified that a Change of Control has occurred; or

1.108.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control, but shall not be permitted to terminate where an Approval in writing was granted prior to the Change of Control.

#### **35 CHANGE IN LAW**

- 1.109 The Supplier shall neither be relieved of its obligations to supply the Goods in accordance with this Agreement nor be entitled to an increase in the Charges as a result of any change in Applicable Laws.

#### **36 CHARGES AND PAYMENT**

- 1.110 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Goods, the Authority shall pay the undisputed Charges in accordance with the Charges, Payment and Invoicing Schedule.
- 1.111 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.
- 1.112 For the purposes of clause 36.2, 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.

#### **37 VAT**

- 1.113 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a Valid Invoice.
- 1.114 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this clause 37 (VAT) shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

#### **38 RECOVERY OF SUMS DUE**

- 1.115 Wherever under the Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum 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.

- 1.116 Any overpayment by either party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the party who made the overpayment from the party in receipt of the overpayment.
- 1.117 The Supplier shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- 1.118 Unless otherwise specified in this Agreement, any sum payable by the Supplier to the Authority under this Agreement or by either party to the other under clause 38.2 shall be paid in cleared funds, within five (5) Working Days of a demand for the same being notified by the recipient party to the paying party, to such bank or building society account as the recipient party may from time to time direct.

### **39 AUDIT**

- 1.119 Supplier shall keep and maintain until two (2) years after the end of the Term, or as long a period as may be agreed between the parties, full and accurate records of the Agreement including the Goods supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority.
- 1.120 During the Term and for a period of two (2) years after the termination or expiry of this Agreement, the Authority (acting by itself or through its Authorised Representatives) may conduct an audit of the Supplier to:
- 1.120.1 verify the Supplier's compliance with the terms and conditions of this Agreement:
  - 1.120.2 to review the integrity, confidentiality and security of any information and data relating to the Authority or any Authority personnel; and
  - 1.120.3 to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 1.121 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods.
- 1.122 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or Authorised Representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 1.122.1 all information requested by the above persons within the permitted scope of the audit;
  - 1.122.2 reasonable access to any Sites; and
  - 1.122.3 access to the Supplier's Personnel.
- 1.123 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
- 1.124 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 39, unless the audit identifies a material failure by the Supplier to perform its obligations under this Agreement in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

- 1.125 If an audit identifies that the Supplier has failed to perform its obligations under this Agreement in any material manner, the Authority may stipulate a remedial plan (including, where applicable, provision of information about the Charges, proposed Charges or Supplier's costs).

#### **40 TERMINATION**

##### **1.126 Termination for breach**

1.126.1 The Authority may terminate this Agreement (in whole or in part) with immediate effect by issuing a Termination Notice to the Supplier if the Supplier commits a Default and:

- (a) the Supplier has not remedied the Default to the reasonable satisfaction of the Authority within ten (10) Working Days, or such other period as may be specified by the Authority, after issue of a Termination Notice; or
- (b) the Default is not, in the reasonable opinion of the Authority, capable of remedy; or
- (c) the Default, in the reasonable opinion of the Authority, is a material breach of the Agreement;

1.126.2 If this Agreement is terminated by the Authority, such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination.

1.126.3 In the event that at any time undisputed Charges have been overdue for payment for a period of ninety (90) days or more, the Authority will have committed a Termination Payment Default.

1.126.4 The Supplier may terminate this Agreement in the event that the Authority commits a Termination Payment Default by giving sixty (60) days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the sixty (60) day notice period, the Supplier's notice to terminate this Agreement shall be deemed to have been withdrawn.

##### **1.127 Termination for breach of the Public Contracts Regulations 2015**

1.127.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisions contained in Regulation 73 (1)(a) to (c) of the Public Contracts Regulations 2015. The costs incurred by the parties shall lie where they fall if the Authority terminates under this clause 40.2.

#### **41 TERMINATION WITHOUT CAUSE**

1.128 The Authority shall have the right to terminate this Agreement at any time for any reason by giving the Supplier no less than three (3) months' prior written notice.

#### **42 GUARANTEE**

1.129 Where the Contract Summary states the Guarantee Schedule will apply to this Agreement then the provisions of this clause 42 apply.

1.130 Where the Authority has stipulated that the award of this Agreement shall be conditional upon receipt of a Guarantee, then, on or prior to the Commencement Date or on any other date specified by the Authority, the Supplier shall deliver to the Authority:

1.130.1 an executed Guarantee in the form set out in the Guarantee Schedule; and

1.130.2 a certified copy extract of the board minutes and/or resolution of the guarantor approving the execution of the Guarantee.

1.131 The Authority may in its sole discretion at any time agree to waive compliance with the requirement in clause 42.1 by giving the Supplier notice in writing.

#### **43 DISPUTE RESOLUTION**

1.132 The parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure as set out in the Dispute Resolution Procedure Schedule.

1.133 The Supplier shall continue to provide the Goods in accordance with the terms of this Agreement until a Dispute has been resolved.

#### **44 REMEDIES CUMULATIVE**

1.134 Except as otherwise expressly provided by this Agreement, all rights and remedies available to either party under this Agreement or otherwise are cumulative and may be exercised concurrently or separately, and the exercise of any one right or remedy shall not be deemed an election of such right or remedy to the exclusion of, and shall be without prejudice to the availability of, any other right or remedy.

#### **45 ENTIRE AGREEMENT**

1.135 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

1.136 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

1.137 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

#### **46 WAIVER**

1.138 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

1.139 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

1.140 A party that waives a right or remedy provided under this Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

1.141 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by Applicable Laws, in equity or otherwise.

#### **47 NOTICES**

1.142 A notice given to a party under or in connection with this Agreement:

- 1.142.1 shall be in writing and in English;
- 1.142.2 shall be signed by or on behalf of the party giving it;
- 1.142.3 shall be sent to the party for the attention of the contact and at the address of the set out below ;
- 1.142.4 is deemed received as set out in clause 47.4 if prepared and sent in accordance with this clause.
- 1.143 The addresses, email addresses and DX numbers for service of notices are set out in the Contract Summary:
- 1.144 A party may change its details given in clause 47.2 by giving notice, the change taking effect for the party notified of the change on the later of:
  - 1.144.1 the date, if any, specified in the notice as the effective date for the change; or
  - 1.144.2 the date seven (7) days after deemed receipt of the notice.
- 1.145 This clause 47.4 sets out the delivery methods for sending a notice to a party under this Agreement and, for each delivery method, the date and time when the notice is deemed to have been received (provided that all other requirements of this clause have been satisfied and subject to the provisions in clause 47.5):
  - 1.145.1 if delivered by hand, on signature of a delivery receipt;
  - 1.145.2 if sent by pre-paid first class post the next working day delivery service at 9.00am on the second day after posting or at the time recorded by the delivery service;
  - 1.145.3 if sent by email, at the time of transmission;
  - 1.145.4 if sent by document exchange (DX), at 9.00 am on the second day after being put into the DX.
- 1.146 If deemed receipt under clause 47.4 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 47.5, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 1.147 This clause 47 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### **48 SEVERABILITY**

- 1.148 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 1.149 In the event that any deemed deletion under clause 48.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either party may give notice to the other party requiring the parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably practicable, achieves the parties' original commercial intention.
- 1.150 If the parties are unable to resolve the matter arising in accordance with clause 48.2 within twenty (20) Working Days of the date of the notice given pursuant to clause 48.2, this

Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the parties shall lie where they fall if this Agreement is terminated pursuant to this clause 47.

**49 THIRD PARTY RIGHTS**

- 1.151 Unless it expressly states otherwise] this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 1.152 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

**50 GOVERNING LAW**

- 1.153 This Agreement and any Dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 1.154 Subject to the Dispute Resolution Procedure, the parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

**51 JURISDICTION**

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



**Schedules** (Remove any not used and mark as such):

**Schedule 1 – Specification Schedule**

**Schedule 2 - Charges, Payment and Invoicing Schedule**

**Schedule 3 - Dispute Resolution Procedure Schedule**

**Schedule 4 - Data Processing Schedule**

**Schedule 5 - Continuous Improvement Schedule**

**Schedule 6 - Guarantee Schedule**

**Schedule 7 - Value for Money Schedule**

## **Schedule 1 - Specification Schedule**

*[Attach the TVP specification]*

## **Schedule 2 - Charges, Payment and Invoicing Schedule**

### **2 General Provisions**

- 2.1 This Schedule details:
- 2.1.1 the Charges for the Goods under this Agreement; and
  - 2.1.2 the payment terms/profile for the Charges;
  - 2.1.3 the invoicing procedure; and
  - 2.1.4 the procedure applicable to any adjustments of the Charges.

### **3 Agreement Charges**

- 3.1 The Charges which are applicable to this Agreement are set out in Appendix 1 of this Schedule.
- 3.2 The Supplier acknowledges and agrees that:
- 3.2.1 the parties acknowledge that a discount structure as set out in Appendix 2 shall be applied by the Supplier to this Agreement.
  - 3.2.2 subject to Paragraph 5 of this Schedule (Adjustment of Charges), the Charges cannot be increased during the Term.

### **4 Payment Terms/Payment Profile**

- 4.1 The payment terms/profile which are applicable to this Agreement are set out in Appendix 3 of this Schedule.

### **5 Invoicing Procedure**

- 5.1 The Authority shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a valid invoice, submitted to the address specified by the Authority in Paragraph 4.4 of this Schedule and in accordance with the provisions of this Agreement.
- 5.2 The Supplier shall ensure that each invoice shall be submitted electronically and must specify:
- 5.2.1 all appropriate references, including the unique purchase order reference number; and
  - 5.2.2 a detailed breakdown of the Goods within this Agreement against the applicable due and payable Charges; and
  - 5.2.3 shows separately:
    - (a) the VAT added to the due and payable Charges in accordance with this Agreement (VAT) and the tax point date relating to the rate of VAT shown; and
    - (b) is supported by any other documentation reasonably required by the Authority to substantiate that the invoice is a valid invoice.
- 5.3 All payments due by one party to the other shall be made within thirty (30) days of receipt of a valid invoice unless otherwise specified in this Agreement, in cleared funds, to such bank or building society account as the recipient party may from time to time direct.
- 5.4 The Supplier shall submit invoices directly to:

[INSERT ADDRESS]

## **6 Adjustment of Charges**

6.1 The Charges shall only be varied:

- 6.1.1 due to a change in law in relation to which the parties agree that a change is required to all or part of the Charges (Legislative Change);
- 6.1.2 where all or part of the Charges are reduced as a result of a review of the Charges in accordance the Continuous Improvement Schedule;
- 6.1.3 where all or part of the Charges are reduced as a result of a review of Charges in accordance with the Value for Money Schedule (Benchmarking);
- 6.1.4 where all or part of the Charges are reviewed and reduced in accordance with Paragraph 6 of this Schedule.

6.2 The Authority may at its sole discretion consider indexation of the Charges or any part of the Charges subject to the Supplier having applied continuous improvements to the satisfaction of the Authority in accordance with the Continuous Improvement Schedule.

6.3 Subject to Paragraphs 5.1.1 to 5.1.4 and 5.2 of this Schedule, the Charges will remain fixed for the Term

## **7 Supplier Periodic Assessment of Agreement Charges**

7.1 Every six (6) months during the Term, the Supplier shall assess the level of the Charges to consider whether it is able to reduce them.

7.2 Such assessments by the Supplier under Paragraph 6 of this Schedule shall be carried out on 1 May and 1 December in each year (or in the event that such dates do not fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Charges it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with Paragraph 7 of this Schedule below.

## **8 Implementation of Adjusted Charges**

8.1 Variations in accordance with the provisions of this Schedule to all or part the Charges (as the case may be) must be Approved by the Authority and the Parties shall amend the Charges shown in Appendix 1 to this Schedule to reflect such variations.

## **Appendix 1: Charges**

[agreed charges must be included]

## **Appendix 2: Discounts**

[to be added if applicable]

## **Appendix 3 Payment Terms/Profile**

[to be added if applicable]

## Schedule 3 - Dispute Resolution Procedure Schedule

### 1 Definitions

1.1 In this Schedule, the following definitions shall apply:

|                                      |                                                                                                                                            |
|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"CEDR"</b>                        | means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;           |
| <b>"Counter Notice"</b>              | has the meaning given to it in paragraph 6.2 of this Schedule;                                                                             |
| <b>"Dispute Notice"</b>              | as described in paragraph 2 of this Schedule;                                                                                              |
| <b>"Exception"</b>                   | means a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Agreement or in the supply of the Goods; |
| <b>"Expedited Dispute Timetable"</b> | means the accelerated timetable for the resolution of disputes as set out in paragraph 2.6 of this Schedule;                               |
| <b>"Expert"</b>                      | means the person appointed by the parties in accordance with paragraph 5.2 of this Schedule;                                               |
| <b>"Expert Determination"</b>        | as prescribed in paragraph 5 of this Schedule;                                                                                             |
| <b>"Mediation Notice"</b>            | has the meaning given to it in paragraph 3.2 of this Schedule; and                                                                         |
| <b>"Mediator"</b>                    | means the independent third party appointed in accordance with paragraph 4.2 of this Schedule.                                             |

### 2 Introduction

2.1 If a Dispute arises then:

- 2.1.1 the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- 2.1.2 if such attempts are not successful within a reasonable time either party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

- 2.2.1 the material particulars of the Dispute;
- 2.2.2 the reasons why the party serving the Dispute Notice believes that the Dispute has arisen; and
- 2.2.3 if the party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6, the reason why.

2.3 Unless agreed otherwise in writing, the parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure set out in this Schedule.

2.4 Subject to paragraph 2.1 the parties shall seek to resolve Disputes:

- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3);

2.4.2 then by mediation (as prescribed in paragraph 4); and

2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6) or litigation (in accordance with the Governing law and Jurisdiction clauses of this Agreement,

specific issues shall be referred to Expert Determination (as prescribed in paragraph 5) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 (Expert Determination).

2.5 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one party would be materially disadvantaged by a delay in resolving the Dispute, the parties may agree to use the Expedited Dispute Timetable. If the parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

2.6 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this Schedule:

2.6.1 in paragraph 3.2.3, ten (10) Working Days;

2.6.2 in paragraph 4.2, ten (10) Working Days;

2.6.3 in paragraph 5.2, five (5) Working Days; and

2.6.4 in paragraph 6.2, ten (10) Working Days.

2.7 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

### **3 Commercial negotiations**

3.1 Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authorised Representatives, such discussions being commercial negotiations.

3.2 If:

3.2.1 either party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or

3.2.2 the parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3; or

3.2.3 the parties have not settled the Dispute in accordance with paragraph 3.1 within thirty (30) Working Days of service of the Dispute Notice,

either party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with paragraph 4.

### **4 Mediation**

- 4.1 If a Mediation Notice is served, the parties shall attempt to resolve the Dispute in accordance with the CEDR Model Mediation Procedure which shall be deemed to be incorporated by reference into this Agreement.
- 4.2 If the parties are unable to agree on the joint appointment of a mediator within thirty (30) Working Days from service of the Mediation Notice then either party may apply to CEDR to nominate the mediator.
- 4.3 If the parties are unable to reach a settlement in the negotiations at the mediation, and only if the parties so request and the mediator agrees, the mediator shall produce for the parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been produced in writing and signed by, or on behalf of, the parties (in accordance with the procedure for variations in accordance with clause 31 (Contract Change) (where appropriate) set out in this Agreement. The mediator shall assist the parties in recording the outcome of the mediation.

## **5 Expert determination**

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Goods or otherwise relates to an ICT technical, financial technical or other aspect of a technical nature (as the parties may agree) and the Dispute has not been resolved by discussion or mediation, then either party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an expert for determination.
- 5.2 The expert shall be appointed by agreement in writing between the parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the expert shall be appointed on the instructions of a suitable independent association or professional body.
- 5.3 The expert shall act on the following basis:
  - 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
  - 5.3.2 the expert's determination shall (in the absence of a material failure by either party to follow the agreed procedures) be final and binding on the parties;
  - 5.3.3 the expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his/her appointment or as soon as reasonably practicable thereafter and the parties shall assist and provide the documentation that the expert requires for the purpose of the determination;
  - 5.3.4 any amount payable by one party to another as a result of the expert's determination shall be due and payable within twenty (20) Working Days of the expert's determination being notified to the parties;
  - 5.3.5 the process shall be conducted in private and shall be confidential; and
  - 5.3.6 the expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## **6 Arbitration**

- 6.1 The Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4.



- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 or be subject to the jurisdiction of the courts in accordance with Governing law and Jurisdiction clauses of this Agreement. The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 shall apply;
  - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Governing law and Jurisdiction clauses of this Agreement, the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
  - 6.3.3 the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 6.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 or commence court proceedings in the courts in accordance with Governing law and Jurisdiction clauses of this Agreement which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraph 6.1 to 6.3, the parties hereby confirm that:
- 6.4.1 all disputes, issues or claims arising out of or in connection with this Agreement (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA") subject to paragraph 6.4.5, 6.4.6 and 6.4.7;
  - 6.4.2 the arbitration shall be administered by the LCIA;
  - 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the parties in the absence of any material failure to comply with such rules;
  - 6.4.4 if the parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - 6.4.5 the chair of the arbitral tribunal shall be British;
  - 6.4.6 the arbitration proceedings shall take place in London and in the English language; and
  - 6.4.7 the seat of the arbitration shall be London.

## **7 Urgent relief**

- 7.1 Either party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
- 7.1.1 for interim or interlocutory remedies in relation to this Agreement or infringement by the other party of that party's Intellectual Property Rights; and/or

- 7.1.2 where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that party to commence proceedings before the expiry of the limitation period.

## Schedule 4 - Data Processing Schedule

### 477829392 Principles

477829392.1 The Agreement involves the Processing of Personal Information by the Supplier on behalf of the Authority.

477829392.2 The parties wish to agree the terms set out in this Data Processing Schedule in order to, at the very least, satisfy the requirement under Data Protection Legislation that a written contract be in place where Processing of Personal Data takes place.

### 477829393 Definitions and interpretation

477829393.1 For the purpose of this Schedule, unless the contract indicates otherwise, the following words have the following meanings:

|                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Adequate Jurisdiction</b>                                                                                | a jurisdiction outside the United Kingdom or the European Economic Area that has been determined to have in place adequate protections for Personal Data including under the Data Protection Legislation, pursuant to a valid decision notice issued by the European Commission                                                                                                                                                                                                                                                                      |
| <b>Customer Data</b>                                                                                        | all information and data (including texts, documents, drawings, diagrams, images or sounds) owned by, licensed to (other than by the Supplier) or relating to the Authority which is in each case generated by, supplied to, or is otherwise retained by, the Supplier or any Sub-Processor pursuant to or in connection with the Agreement;                                                                                                                                                                                                         |
| <b>Data Breach</b>                                                                                          | means (a) a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, access to, Personal Information, transmitted, stored or otherwise Processed or (b) any other breach of obligations relating to the Processing of Personal Data including but not limited to rights not met in relation to Data Subject access requests, fair processing, objection to processing (including marketing and automated decisions), rectification, erasure, restriction of processing, data portability; |
| <b>"Controller", "Data Subject", "Personal Data", "Process", "Processed", "Processing", and "Processor"</b> | have the meanings set out in, and will be interpreted in accordance with the Data Protection Legislation.                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Group</b>                                                                                                | together a person and any other person that controls, is controlled by or is under common control with the first person from time to time;                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Personal Information</b>                                                                                 | the Personal Data (as defined under Data Protection Legislation) comprised in Customer Data being Processed from time to time pursuant to the terms of this Schedule, including as is more particularly described in Appendix 1 to this Data Processing Schedule;                                                                                                                                                                                                                                                                                    |

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Regulator</b>                    | the UK Information Commissioner's Office or such other supervisory authority as may be responsible for enforcing compliance with the Data Protection Legislation from time to time;                                                                                                                                                                                                                     |
| <b>Sub-Processor</b>                | any third party Sub-contractor appointed by the Supplier in accordance with the Agreement or this Data Processing Schedule, with the prior written consent of the Authority, to Process Personal Information;                                                                                                                                                                                           |
| <b>Supplier Personnel</b>           | all or any of: (i) the directors, officers, employees and/or agents of the Supplier or any member of its Group; (ii) the directors, officers, employees and/or agents of any Sub-Processor; and (iii) any other individuals engaged by or on behalf of Supplier or any Sub-Processor in the performance of any part of the Supplier's obligations under the Agreement or this Data Processing Schedule; |
| <b>Standard Contractual Clauses</b> | the standard contractual clauses regarding transfer of Personal Data to a non-Adequate Jurisdiction as dictated by the Regulators from time to time.                                                                                                                                                                                                                                                    |
| <b>UK GDPR</b>                      | has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.                                                                                                                                                                                                                                                                                       |

477829393.2 Terms and expressions used in this Data Processing Schedule that are not defined in this the Agreement shall have the meaning assigned to them in the Data Protection Legislation relevant to the Processing in question.

477829393.3 References to statutes or statutory provisions include references to any orders or regulations made thereunder and references to any statute, provision, order or regulation include references to that statute, provision, order or regulation as amended, modified, re-enacted or replaced before the date hereof (subject as otherwise expressly provided herein) and to any previous statute, statutory provision, order or regulation amended, modified, re-enacted or replaced by such statute, provision, order or regulation.

#### **477829394 Authority and Roles**

477829394.1 With respect to the parties' rights and obligations under this Data Processing Schedule and the Agreement (to the extent they relate to Personal Data), the parties agree that the Authority is the Controller and that it authorises the Supplier to Process the Personal Information during the term of the Agreement as the Processor.

477829394.2 A description of the nature and purpose of the Processing carried out by the Supplier under the Agreement, and the type of Personal Data and categories of Data Subjects contained in the Personal Information is set out in Appendix 1 to this Data Processing Schedule, and Supplier shall keep this information up-to-date while the Agreement is in force.

477829394.3 Where under this Data Processing Schedule the Authority's consent is required before the Supplier is permitted to do a particular act or thing, unless expressly provided otherwise, the Authority shall be entitled to give or withhold consent or make consent subject to conditions at its sole discretion.

477829394.4 The parties acknowledge that if the Supplier infringes the terms of this Data Processing Schedule and the Data Protection Legislation by determining the purposes and means of Processing, the Supplier shall be considered to be a Controller in respect of that Processing.

## **477829395 Compliance and processing**

477829395.1 The Supplier shall, and shall procure that any Sub-Processor shall:

477829395.1.1 comply with its obligations under the Data Protection Legislation and this Data Processing Schedule;

477829395.1.2 only process the Personal Information for the limited purposes of performing its obligations as a Processor under the Agreement;

477829395.1.3 process the Personal Information only in accordance with the documented instructions of the Authority on its own behalf and on behalf of the relevant member(s) of its Group who is/are the Controller(s) from time to time (including for the avoidance of doubt the instructions as are set out in this Data Processing Schedule provided always that if the Supplier is required by Applicable Law to Process the Personal Information for any purpose it will inform the Authority of that legal requirement before carrying out any such Processing, unless the Applicable Law prohibits the same on grounds of public interest;

477829395.1.4 keep the Personal Information secret and confidential in accordance with the terms of this Data Processing Schedule; and

477829395.1.5 without prejudice to paragraph 4.1.3, ensure that Personal Information will be used solely for the purposes of providing, and to the extent required to provide, the Goods.

477829395.2 The Supplier shall immediately inform the Authority in writing if, in its opinion, an instruction from the Authority infringes the Data Protection Legislation.

477829395.3 The Supplier shall conduct data protection impact assessments of any Processing operations and consult with the Regulator, Data Subjects and their representatives in respect of the same.

## **477829396 Supplier Personnel**

477829396.1 The Supplier shall take reasonable steps to ensure the reliability of any Supplier Personnel who have access to any Personal Information, and ensure that the Personal Information shall only be accessible by Supplier Personnel:

477829396.1.1 to the extent necessary to properly perform their duties in relation to the Goods;

477829396.1.2 who are informed of its confidential nature and the security procedures relating to it, and who are contractually bound to maintain its confidentiality; and

477829396.1.3 who are appropriately reliable, qualified and trained.

## **477829397 Security of processing**

477829397.1 The Supplier shall implement (and assist the Authority to implement) appropriate technical and organisational measures:

477829397.1.1 in such a manner that Processing will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of the Data Subject; and

477829397.1.2 in relation to the Processing to ensure a level of security appropriate to the risk (taking into account the nature, scope, context and purposes of Processing the Personal Information), including by (as appropriate):

- (a) pseudonymising and encrypting Personal Information and ensuring the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
- (b) being able to restore the availability and access to Personal Information in a timely manner in the event of a physical or technical incident;
- (c) regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing (and having a suitable process to do so); and
- (d) when assessing the appropriate level of security for such Personal Information the Supplier shall take into account the risks that are presented by Processing, in particular from a Data Breach.

477829397.1.3 The Supplier shall allow for and contribute to any and all supplier assurance reviews of the type and frequency deemed appropriate to the Authority due to the overall risk the Supplier (including any of its affiliates and/or Sub-Processors) poses, or is likely to pose, to the Authority Sites, systems or information.

477829397.1.4 The Supplier shall work with the Authority business relationship manager for the purpose of minimising risks identified as a result of the supplier assurance review and provide any necessary supporting evidence such as but not limited to, ISO certification documents, penetration test results, and access reports.

#### 477829398 **Assisting with requests from Data Subjects**

477829398.1 The Supplier shall assist the Authority in fulfilling its obligations to respond to requests for exercising the rights of the Data Subject under the Data Protection Legislation, including but not limited to:

477829398.1.1 responding to requests for exercising Data Subjects' Rights (defined below) under Data Protection Legislation by implementing appropriate technical and organisational measures to enable such assistance;

477829398.1.2 conducting privacy impact assessments of any Processing operations and consulting with supervisory authorities, Data Subjects and their representatives in respect of the same.

**Data Subjects' Rights** shall have the following meaning in this paragraph: rights including but not limited to the right to be informed, the right to have Personal Information corrected if it is inaccurate, the right to object to certain Processing of Personal Information, the right to restrict Processing of Personal Information, the right to have Personal Information erased (commonly known as 'right to be forgotten'), the right to request access to Personal Information, the right to move, copy or transfer certain Personal Information (commonly known as 'data portability'), rights in relation to automated decision making including profiling, and the right to complain to the Regulator about infringements of the Data Protection Legislation and for the avoidance of doubt in cases where a Data Subject has engaged the right to have Personal Information erased under the Data Protection Legislation, the Supplier acknowledges and agrees that merely putting beyond use the Personal Data or suppressing the same will not amount to erasure so as to enable it to comply with this paragraph 7.1.

#### 477829399 **Data breaches**

477829399.1 The Supplier shall notify the Authority, without undue delay (and in any event within 24 hours or by 5pm on the next Working Day), if it becomes aware of a Data Breach, or any unauthorised or unlawful Processing of the Personal Information and, together with such notice, provide a written description of:

477829399.1.1 the nature of, and facts relating to, the Data Breach together (where possible) with categories and approximate numbers of the Data Subjects and Personal Information records concerned;

477829399.1.2 the name and contact details of the data protection officer or other contact point at the Supplier (or the relevant Sub-Processor) where more information can be obtained;

477829399.1.3 the likely consequences of the Data Breach; and

477829399.1.4 measures taken or proposed to be taken to address the Data Breach including any measures to mitigate any possible adverse effects,

51.1.1.1 in each case taking into account the nature of the Processing and the information available to the Supplier, and where and in so far as it is not possible to provide all the relevant information at the same time, the information may be provided in phases without undue further delay, but the Supplier (and Sub-Processors, as applicable) may not delay notification under this paragraph 8.1 on the basis that an investigation is incomplete or ongoing.

51.1.1.2

477829399.2 The Supplier shall assist the Authority in fulfilling its obligations to respond to Data Breaches under the Data Protection Legislation, including but not limited to:

477829399.2.1 (without prejudice to paragraph 8.1) documenting any Data Breach (including the facts relating to the Data Breach, their effects and the remedial action taken) and reporting any Data Breach to the Regulator and/or Data Subjects, including by taking into account the information available to the Supplier; and

477829399.2.2 (without prejudice to paragraph 8.1) taking measures to address Data Breaches, including, where appropriate, measures to mitigate their possible adverse effects.

#### **477829400 General assistance with other aspects of the Data Protection Legislation**

477829400.1 The Supplier shall promptly provide to the Authority with such assistance as the Authority may from time to time reasonably require to enable it to comply with its security, breach notification, impact assessment, prior consultation, record keeping and audit responsibilities under the Data Protection Legislation.

477829400.2 The Supplier shall at the option of the Authority, securely delete or return to the Authority, all Personal Information in accordance with paragraph 16.1 at any time at the written request of the Authority (provided the Authority is acting reasonably), and securely delete any existing or remaining copies, and promptly certify (via an authorised representative) when this exercise has been completed.

#### **477829401 Information provision, records and audit rights**

477829401.1 The Supplier shall (and shall procure that Sub-Processors shall) at no additional cost to the Authority, maintain a written record of the Processing activities it carries out under the Agreement and the Authority's instructions relating to the Personal Information, together with:

477829401.1.1 a general description of the technical and organisational measures referred to in paragraph 6.1;

477829401.1.2 all information necessary to demonstrate compliance with the Agreement; and

477829401.1.3 such other records as the Authority may reasonably request and/or which the Supplier is legally obliged to keep under the Data Protection Legislation,

and shall promptly make such information available to the Authority on request.

477829401.2 The Supplier shall grant to the Authority, by the Authority's own personnel or by an independent auditor, the right of access at all reasonable times upon reasonable notice (save in the case of emergency) to inspect and take copies from information and record of Processing activity under the Agreement and shall provide all reasonable assistance at all times for the duration of the Agreement for the purposes of allowing the Authority to obtain such information as is necessary to carry out an audit for the purpose of examining the Supplier's compliance with its obligations arising under the Agreement.

477829401.3 The Supplier shall allow for and contribute to audits, including inspections, conducted by the Regulator and provide all information necessary in response to any request from the Regulator in relation to the same, in each case which relates in whole or in part to the Personal Information.

477829401.4 The Supplier shall conduct an annual audit in respect of its Processing of the Personal Information, its compliance with the Data Protection Legislation and promptly thereafter supply the Authority with a copy of a written report in respect of the annual audit including the findings and outcomes relating to the same.

#### 477829402 **Communication of information to the Authority**

477829402.1 The Supplier shall promptly notify the Authority if it receives:

477829402.1.1 from a Data Subject a communication relating to the exercise of that person's rights under the Data Protection Legislation in relation to the Personal Information, including their right to access the Personal Information or prevent certain Processing; or

477829402.1.2 any complaint, request, notice, communication or penalty which relates directly or indirectly to the Processing of the Personal Information or to either party's compliance with the Data Protection Legislation (save to the extent that such notification is prohibited by the relevant Data Protection Legislation),

and, together with such notice, shall provide a copy of any such communication, complaint, request, notice or penalty and reasonable details of the circumstances giving rise to it.

#### 477829403 **Regulator**

477829403.1 The Supplier shall provide assistance (including information and access), as reasonably required by the Authority, regarding the obligations of the Authority to co-operate with the Regulator in the performance of its tasks.

477829403.2 The Supplier shall, to the extent permitted by Applicable Law, notify and consult with the Authority prior to co-operating directly with the Regulator and/or disclosing any information relating to the Authority or the Processing under the Agreement.

#### 477829404 **Transfers of Personal Information outside of the UK or EEA**

477829404.1 The Supplier shall not transfer Personal Information outside of the United Kingdom or the European Economic Area (**EEA**) without the prior written consent of the Authority and, where the Authority consents to such transfer, the Supplier shall, where applicable and in any event prior to causing or permitting any such Processing to occur outside the United Kingdom and/or the EEA:

477829404.1.1 ensure that the Standard Contractual Clauses are entered into as between the Authority as 'data exporter' and the recipient of the Personal Information



(including the Sub-Processor, as relevant) as 'data importer' and that they remain in place throughout the term of the Agreement; or

477829404.1.2 verify that the transfer is to a recipient located within an Adequate Jurisdiction (subject to any applicable restrictions); or

477829404.1.3 provide evidence in writing to the Authority that the recipient of the Personal Information (including the Sub-Processor, as relevant) has entered into Binding Corporate Rules which are valid in respect of Processing of Personal Information under this Data Processing Schedule and which have been approved by the European Commission and/or appropriate regulators (and the Supplier hereby warrants and undertakes to ensure that the Standard Contractual Clauses are entered into in the manner more particularly described at paragraph 13.1.1 immediately in the event that the recipient of the Personal Information is no longer entered into Binding Corporate Rules).

477829404.2 Should any of the transfer mechanisms more particularly referred to in paragraph 13.1 used by the Supplier for the purposes of transfers under the this Data Processing Schedule be held by the European Commission to be invalid under the Data Protection Legislation or be formally described by the Regulator as no longer providing for adequate protection for Personal Data under the Data Protection Legislation, the Supplier will (at the option of the Authority):

477829404.2.1 immediately at no additional cost to the Authority put in place an alternative mechanism for transfers which has been prior Approved in writing by the Authority having regard to the Data Protection Legislation; or

477829404.2.2 cease transfers of the Personal Information to the relevant recipient forthwith and procure that the relevant recipient immediately takes all actions as are necessary in order for the Supplier to comply with paragraph 9.2.

#### 477829405 **Description of Processing**

477829405.1 The Supplier warrants and undertakes to use best endeavours to ensure that its description of the Processing carried out on the Personal Information as is set out in Appendix 1 to this Data Processing Schedule and as is completed in the first instance by the Supplier, is complete and accurate as at the date of the Supplier's signature of the Agreement.

477829405.2 the Authority reserves the right to review and amend the description of the Processing more particularly referred to in paragraph 14.1 at its sole discretion.

#### 477829406 **Engagement of another processor**

477829406.1 The Supplier shall not engage another processor to process Personal Information on behalf of the Authority (a Sub-Processor) unless:

477829406.1.1 it has obtained the Authority's prior specific written consent;

477829406.1.2 it has carried out sufficient due diligence on the proposed Sub-Processor, and obtained sufficient guarantees that such Sub-Processor will implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of the Data Subject;

477829406.1.3 it has provided the Authority with full details of the proposed Sub-Processor and the processing it will be carrying out;

477829406.1.4 the Authority is granted the right to inspect the facilities of the proposed Sub-Processor and/or the Supplier's due diligence (to the extent the Authority

reasonably requires to confirm the security of the proposed Personal Information Processing);

477829406.1.5 it has entered into a written agreement with such Sub-Processor on no less onerous terms as are set out in this Data Processing Schedule, except for this paragraph 15, which shall be replaced by a provision preventing that other processor from sub-contracting; and

477829406.1.6 the written agreement referred to in paragraph 15.1.5 shall terminate automatically on expiry or termination of the Agreement (in whole or in part) for any reason.

477829406.2 The Supplier shall not be relieved of any of its obligations under the Agreement or this Data Processing Schedule by entering into any Sub-contract or otherwise delegating the performance of any part of the Goods, and the Supplier shall remain fully liable to the Authority for the performance of any Sub-Processor's obligations, and for its acts and omissions (as if they were the acts and omissions of the Supplier).

#### 477829407 **Termination**

477829407.1 Following the termination or expiry of the Agreement, the Supplier shall (at the Authority's discretion) either promptly:

477829407.1.1 return to the Authority all of the Personal Information (or relevant part thereof, including all existing copies) in a format agreed by the Authority which, unless otherwise agreed, shall be a structured, commonly used and machine readable format; or

477829407.1.2 securely delete all of the Personal Information (or relevant part thereof, including all existing copies) and certify such deletion in writing.

## Appendix 1: Details of Processing of Personal Information

The Processing of the Personal Information taking place under this Agreement includes that which is set out in the following description.

|                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Controller</b>                                         | Thames Valley Police, Police Headquarters, Oxford Road, Kidlington, Oxfordshire, OX5 2NX                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Processor</b>                                          | <p><b>*Mandatory</b></p> <p>[Supplier Address, Postcode]<br/>Data Protection Officer: [Name]</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>The subject matter of the Processing is:</b>           | [DESCRIBE for example, personal data relating to individuals benefitting from obligations performed by the Supplier under the Agreement] <b>*Mandatory (To be completed by the Authority relationship manager – high level )</b>                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>The nature and purpose of the Processing is:</b>       | <p><b>*Mandatory (To be completed by the Authority relationship manager – more granular )</b> [DESCRIBE for example: Processing of personal data relating to [description of whose personal data will be processed is conducted to enable the Supplier to perform its obligations under this Agreement and shall include, but shall not be limited to, the following types of Processing:</p> <ul style="list-style-type: none"> <li>• collection;</li> <li>• recording;</li> <li>• organisation;</li> <li>• structuring;</li> <li>• storage;</li> <li>• adaptation or alteration;</li> <li>• retrieval;</li> <li>• consultation; and</li> <li>• use.]</li> </ul> |
| <b>The duration of the Processing is:</b>                 | <p>[DESCRIBE] OR [As set out in this Agreement] OR [Example: The Processing will last for the duration of the Agreement and for such period after the expiry or termination of the Agreement to allow the Supplier to comply with its legal obligations and return or delete the personal data in accordance with the Agreement.] <b>*Mandatory (To be completed by the Authority relationship manager)</b></p> <p>This section should include the length of time the supplier will process data for.</p>                                                                                                                                                         |
| <b>The categories of Personal Data being Processed is</b> | <p>: <b>*Mandatory (To be completed by the Authority relationship manager)</b><br/>[DESCRIBE]</p> <p>This section should include a list of personal data being processed, for example: Name, Address, DOB, Contact Details, NI, the Authority Account details, IP Address, Nationality, and Health Data etc. It should be separated into personal data and special category personal data. Example:</p> <p>The personal data Processed by the Supplier under this Agreement relates to [insert who it relates to – and comprises the following types of personal data:</p> <p>Personal Data<br/>1. name;</p>                                                      |

|                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                        | <p>2. contact details including address, telephone number and email address;</p> <p>3. date of birth;</p> <p>4. national insurance number;</p> <p>5. authority account details</p> <p>6. IP address</p> <p>7. [include any other personal data processed]</p> <p>Special Category Personal Data</p> <p>1. racial or ethnic origin; and</p> <p>2. health data.</p> <p>[please also list any other special categories of personal data processed, for example: political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying an individual and sex life or sexual orientation.]</p> <p><b>Personal Information Definition;</b> Any information relating to an identified or identifiable natural person.</p> <p><b>Special Categories of Personal Information;</b> Personal information that consists of information with regard to racial or ethnic origin; political opinions; physical or mental health or condition; sexual life; genetic data" and "biometric data etc.</p> |
| <p><b>The categories of Data Subjects include:</b></p> | <p><b>*Mandatory (To be completed by the Authority relationship manager)</b></p> <p>[DESCRIBE]</p> <p>This section should include a list of categories of Data Subjects, for example;</p> <p>1. Colleagues;</p> <p>2. Customers;</p> <p>3. Customer Representatives;</p> <p>4. Agency Staff;</p> <p>5. Suppliers;</p> <p>6. Enquirers;</p> <p>7. complainants etc.</p> <p><b>Definition;</b> A Data Subject is an individual whom the particular personal information is about.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

## **Continuous Improvement Schedule**

### **1 Supplier's obligations**

- 1.1 The Supplier shall have an on-going obligation throughout the Term to identify new or potential improvements to the supply of the Goods in accordance with this Schedule with a view to reducing the Authority's costs (including the Charges) and/or improving the quality and efficiency of the supply of the Goods to the Authority. As part of this obligation the Supplier shall identify and report to the Authority once every twelve (12) months regarding:
  - 1.1.1 the emergence of new and evolving relevant technologies which could improve the development, manufacturing, distribution or supply of the Goods, and those technological advances potentially available to the Supplier and the Authority which the parties may wish to adopt;
  - 1.1.2 new or potential improvements to the Goods including in respect of the quality, responsiveness, procedures, benchmarking methods, ways of supplying the Goods and customer support services in relation to the Goods;
  - 1.1.3 changes in business processes and working practices that would enable the Goods to be provided at lower cost and/or with greater benefits to the Authority;
  - 1.1.4 changes to the ICT environment, business processes and working practices that would enable reductions in the total energy consumed in the provision of the Goods;
  - 1.1.5 improvements which the Supplier uses or is planning to use with its other customers;
  - 1.1.6 proposals as to how any investment required for continuous improvement could be shared with other customers of the Supplier;
  - 1.1.7 a zero usage report for the delivered Goods;
  - 1.1.8 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the provision of the Goods, and identifying opportunities to assist the Authority in meeting their sustainability objectives; and
  - 1.1.9 any Change in Charges and cost / benefit analysis of the potential improvements identified subject to this Schedule.
- 1.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- 1.3 If the Authority wishes to incorporate any improvement identified by the Supplier, including any impact on the Charges declared by the Supplier as part of that improvement, the Authority shall request a Change in accordance clause 31 (Contract Change).
- 1.4 Notwithstanding anything to the contrary in this Agreement, the parties may not change or improve the Goods in any way which adversely affects or may adversely affect any relevant Authority Standards or processes.

### **2. Gain share**

- 2.1 The Supplier shall in good faith work with the Authority to increase the cost efficiency of the Service. Any savings achieved through implementation of any continuous improvements measures undertaking in accordance with Paragraph 1 shall be shared equally between the Supplier and the Authority.
- 2.2 Prior to any implementation of any such gain share under Paragraph 2.1 the parties shall:
  - 2.2.1 agree on how to account for any savings achieved by the continuous improvement measures and
  - 2.2.2 work together to implement any such gain share for the mutual benefit of the parties.

## **Schedule 6 - Guarantee Schedule**

### **APPENDIX A OF GUARANTEE SCHEDULE - FORM OF GUARANTEE**

[Insert the name of the Guarantor]

- and -

The Chief Constable for Thames Valley Police

DEED OF GUARANTEE

**THIS DEED OF GUARANTEE** is made the                      day of                      202[ ]

BETWEEN:

- (1) [Insert the name of the Guarantor] [a company incorporated in England and Wales with number [ ] whose registered office is at [insert details of the Guarantor's registered office here]] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**")]; in favour of
- (2) The Chief Constable for Thames Valley Police of Police Headquarters, Oxford Road, Kidlington, Oxfordshire, OX5 2NX ("**Beneficiary**")

**WHEREAS:**

- [(A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.]
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee the due performance by the Supplier of all of the Supplier 's obligations under the Guaranteed Agreement.
- (C) It is the intention of the parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

## 1. **DEFINITIONS AND INTERPRETATION**

### 1.1 In this Deed of Guarantee:

1.1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;

1.1.2 the words and phrases below shall have the following meanings:

"Guaranteed Agreement" means the [ ] made between the Beneficiary and the Supplier on [ ]; and

"Guaranteed Obligations" means all obligations of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement.

1.1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;

1.2 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;

1.3 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

- 1.4 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.5 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.6 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.7 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.8 references to clauses and schedules are, unless otherwise provided, references to clauses of and schedules to this Deed of Guarantee; and
- 1.9 references to liability are to include any liability whether actual, contingent, present or future.

## **2 GUARANTEE AND INDEMNITY**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under the Guaranteed Agreement or in respect of the Guaranteed Obligations.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
- 2.4 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
- 2.5 indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 2.6 As a separate and independent obligation, the Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier 's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

## **3 OBLIGATION TO ENTER INTO A NEW AGREEMENT**



If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

#### **4 DEMANDS AND NOTICES**

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

4.1.1 [Address of the Guarantor in England and Wales]

4.1.2 [Facsimile Number]

4.1.3 [For the Attention of]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

#### **5 BENEFICIARY'S PROTECTIONS**

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

- 5.2.1 it shall not be discharged by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
  - 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
  - 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
  - 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

## **6 RIGHTS OF SUBROGATION**

- 6.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the

performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 6.1.1 of subrogation and indemnity;
- 6.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- 6.1.3 to prove in the liquidation or insolvency of the Supplier, only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this clause on trust for the Beneficiary.

## **7 REPRESENTATIONS AND WARRANTIES**

The Guarantor hereby represents and warrants to the Beneficiary that:

- 7.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 7.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 7.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to paragraph 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:
- 7.4 the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
- 7.5 any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
- 7.6 the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;
- 7.7 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 7.8 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **8 PAYMENTS AND SET-OFF**

- 8.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

8.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) calculated from day to day at a rate per annum equal to [4%] above the base rate of the Bank of England from time to time in force.

8.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

## **9 GUARANTOR'S ACKNOWLEDGEMENT**

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

## **10 ASSIGNMENT**

The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

## **11 SEVERANCE**

If any provision of this Deed of Guarantee 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 Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

## **12 THIRD PARTY RIGHTS**

A person who is not a party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third parties) Act 1999 to enforce any term of this Deed of Guarantee. This paragraph does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **13 GOVERNING LAW**

13.1 This Deed of Guarantee shall be governed by and construed in all respects in accordance with English law.

13.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

13.3 Nothing contained in this paragraph shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

13.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this paragraph on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

13.5 [Provision dealing with the appointment of English process agent by a non English incorporated Guarantor] [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier 's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by )

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

The Common Seal of The Chief Constable for Thames Valley Police

was hereunto affixed in the presence of )

The Head of Procurement for Thames Valley Police

.....  
The Head of Procurement for Thames Valley Police

## Schedule 7 - Value for Money Schedule

### 800746688 Definitions

800746688.1 In this Schedule, the following expressions shall have the following meanings:

|                            |                                                                                                                                                                                                                                                                                                                               |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Benchmarked Rates"</b> | the Charges for the Benchmarked Goods;                                                                                                                                                                                                                                                                                        |
| <b>"Benchmarker"</b>       | a neutral and independent third party with knowledge and experience of financial matters in relation to the Benchmarked Goods;                                                                                                                                                                                                |
| <b>"Benchmark Review"</b>  | a review of the Goods carried out in accordance with this Schedule to determine whether those Goods represent Good Value;                                                                                                                                                                                                     |
| <b>"Benchmarked Goods"</b> | any Goods included within the scope of a Benchmark Review pursuant to this Schedule;                                                                                                                                                                                                                                          |
| <b>"Comparable Rates"</b>  | rates payable by the Comparison Group for Comparable Goods that can be fairly compared with the Charges;                                                                                                                                                                                                                      |
| <b>"Comparable Goods"</b>  | Goods that are identical or materially similar to the Benchmarked Goods (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Goods exist in the market, the Supplier shall propose an approach for developing a comparable Goods benchmark;    |
| <b>"Comparison Group"</b>  | a sample group of organisations providing Comparable Goods which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their product offering so as to be fair comparators with the Supplier or which, are best practice organisations; |
| <b>"Equivalent Data"</b>   | data derived from an analysis of the Comparable Rates and/or the Comparable Goods (as applicable) provided by the Comparison Group;                                                                                                                                                                                           |
| <b>"Good Value"</b>        | that the Benchmarked Rates are within the Upper Quartile; and                                                                                                                                                                                                                                                                 |
| <b>"Upper Quartile"</b>    | in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Goods, are within the top 25% in terms of best value for money for the recipients of Comparable Goods.                                                                |

800746688.2 The Supplier acknowledges that the Authority wishes to ensure that the Goods, represent value for money to the taxpayer throughout the Term.

800746688.3 This Schedule sets to ensure the Agreement represents value for money throughout and that the Authority may terminate the Agreement by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Paragraphs 3 of this Schedule.

1.4 Amounts payable under this Schedule shall not fall with the definition of Charges.

### 800746689 Benchmarking

800746689.1 How benchmarking works

800746689.1.1 The Authority may, by written notice to the Supplier, require a Benchmark Review of any or all of the Goods.

800746689.1.2 The Authority shall not be entitled to request a Benchmark Review during the first six (6) month period from the Commencement Date or at intervals of less than twelve (12) months after any previous Benchmark Review.

800746689.1.3 The purpose of a Benchmark Review will be to establish whether the Benchmarked Goods are, individually and/or as a whole, Good Value.

800746689.1.4 The Goods that are to be the Benchmarked Goods will be identified by the Authority in writing.

800746689.1.5 Upon its request for a Benchmark Review the Authority shall nominate a Benchmarker. The Supplier must Approve the nomination within ten (10) Working Days unless the Supplier provides a reasonable explanation for rejecting the appointment. If the appointment is rejected then the Authority may propose an alternative Benchmarker. If the parties cannot agree the appointment within twenty (20) Working Days of the initial request for Benchmark review then a Benchmarker shall be selected by the Chartered Institute of Financial Accountants.

800746689.1.6 The cost of a Benchmarker shall be borne by the Authority (provided that each party shall bear its own internal costs of the Benchmark Review) except where the Benchmark Review demonstrates that the Benchmarked Good and/or the Benchmarked Goods are not Good Value, in which case the parties shall share the cost of the Benchmarker in such proportions as the parties agree (acting reasonably). Invoices by the Benchmarker shall be raised against the Supplier and the relevant portion shall be reimbursed by the Authority.

## 800746689.2 Benchmarking Process

800746689.2.1 The Benchmarker shall produce and send to the Authority, for Approval, a draft plan for the Benchmark Review which must include:

- (a) a proposed cost and timetable for the Benchmark Review;
- (b) a description of the benchmarking methodology to be used which must demonstrate that the methodology to be used is capable of fulfilling the benchmarking purpose; and
- (c) a description of how the Benchmarker will scope and identify the Comparison Group.

800746689.2.2 The Benchmarker, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking.

800746689.2.3 The Authority must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising the Benchmarker and the Supplier whether it Approves the draft plan, or, if it does not Approve the draft plan, suggesting amendments to that plan (which must be reasonable). If amendments are suggested then the Benchmarker must produce an amended draft plan and this Paragraph 2.2.3 shall apply to any amended draft plan.

800746689.2.4 Once both parties have Approved the draft plan then they will notify the Benchmarker. No party may unreasonably withhold or delay its Approval of the draft plan.

800746689.2.5 Once it has received the Approval of the draft plan, the Benchmarker shall:

- (a) (finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the Benchmarkers professional judgment using:
  - (i) market intelligence;
  - (ii) the Benchmarkers own data and experience;
  - (iii) relevant published information; and
  - (iv) pursuant to Paragraph 2.2.7 below, information from other suppliers or purchasers on Comparable Rates;
- (b) by applying the adjustment factors listed in Paragraph 2.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
- (c) using the Equivalent Data, calculate the Upper Quartile;
- (d) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.

800746689.2.6 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Benchmarkers in order to undertake the benchmarking. The Supplier agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.

800746689.2.7 In carrying out the benchmarking analysis the Benchmarkers may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:

- (a) the Agreement terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
- (b) exchange rates;
- (c) any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Suppliers pricing to appear non-competitive.

### 800746689.3 Benchmarking Report

800746689.3.1 For the purposes of this Schedule "Benchmarking Report" shall mean the report produced by the Benchmarkers following the Benchmark Review and as further described in this Schedule;

800746689.3.2 The Benchmarkers shall prepare a Benchmarking Report and deliver it to the Authority, at the time specified in the plan Approved pursuant to Paragraph 2.2.3, setting out its findings. Those findings shall be required to:

- (a) include a finding as to whether or not a Benchmarked Good and/or whether the Benchmarked Goods as a whole are, Good Value;
- (b) if any of the Benchmarked Goods are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Goods as a whole Good Value; and



- (c) include sufficient detail and transparency so that the Authority can interpret and understand how the Benchmarker has calculated whether or not the Benchmarked Goods are, individually or as a whole, Good Value.

The parties agree that any changes required to this Agreement identified in the Benchmarking Report shall be implemented at the direction of the Authority in accordance with clause 31 (Contract Change

