THE KENT POLICE AND CRIME COMMISSIONER/ THE POLICE AND CRIME COMMISSIONER FOR ESSEX

Contract For xxxxxxxxxxxxxxxxxxxxxxx

Contract Terms and Conditions

Date xxxxxxxxxxxx
INTRODUCTION

The parties to the Contract are:

The Authorities: THE KENT POLICE AND CRIME COMMISSIONER of Office Of the Police and Commissioner, Police Headquarters, Sutton Road Maidstone Kent ME15 9BZ and/or ESSEX POLICE COMMISSIONER of PO Box 2 Chelmsford Essex CM2 6DA (delete as appropriate)

and

The Contractor: <<Name of Contractor>>
of <<Address>>

The Contract shall be subject to the Conditions and the Specification set out in this document. The Contract sets out the entire agreement and understanding between the parties relating to the matters contemplated within it, and supersedes any previous arrangement relating to the subject matter of this Contract. No other documents (including parts thereof), terms or variations to the Contract shall apply unless they have been agreed in writing by both parties and in accordance with the processes set out in this document. This exclusion includes any terms routinely issued by the Contractor in his business documentation (including quotations, Purchase Order acknowledgement, Delivery notes and invoices).
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Part 1.
DEFINITIONS

NB – Note for Contract Manager
If the contract is to cover a Service, the text throughout this document may need to be changed to remove reference to Goods and to insert Service in its place. However in most places it covers both.

When adding to definitions, place in alphabetical order

1.1 DEFINITIONS

In these Terms and Conditions:

1.1 "Acceptance" means acceptance of the <<Goods and/or Services>> by the Commissioners as notified to the Contractor or otherwise deemed to have occurred under the Sale of Goods Act 1979 (as amended) provided that the <<Goods and/or Services>> shall not be deemed accepted unless and until they have been delivered in accordance with all requirements of the Purchase Order and (if applicable) installed or assembled as required by the Purchase Order and made useable as referred to in clause 4.6.2 and after that the Commissioner has had a reasonable time to inspect them (and "Accept" and "Accepted" shall be construed accordingly).

1.2 'The Authorised Officer' means the Commissioner’s representative duly authorised to act in the administration of the contract. The Authorised Officer shall be the Chief Constable. Day to day contract management and dealing with the Contractor shall be handled by the 'Nominated Officer'; nominated for this purpose by the Authorised Officer.

1.3 “Commissioner/ities” shall mean The Kent Police and Crime Commissioner of 1st Floor Gail House, Lower Stone Street Maidstone ME15 6NB and/or Essex Police Commissioner, of PO Box 2 Chelmsford Essex CM2 6DA.

1.4 "Committed Costs" means costs reasonably incurred or committed to by the Contractor in relation to the delivery of Goods or Services prior to their Acceptance or performance (or if earlier prior to the Termination Date), which following any termination the Contractor has mitigated so far as reasonably practicable.

1.5 “Contract” shall mean the contract between the Commissioners and the Contractor for the supply of the <<Goods and/or Services>>. The Contract shall incorporate the General Conditions of Contract, Standard Conditions of Contract, Specification, the Form of Offer and the Schedule of Offer. The General Conditions of Contract shall apply to all aspects of the Contract, except where amended or replaced by the Special Conditions. If the General Conditions and Special Conditions conflict, then the Special Conditions shall prevail.

1.6 “Contract Manager” shall mean the person appointed by each party who shall be the initial point of contract for the other party for the overall management of the Contract.

1.7 “Contract Participant” means an organisation which is permitted to use the Contract (e.g. to raise purchase orders, conduct mini-competitions and enter into Service Level Agreements or other commitments), in accordance with the terms of this Contract.

NB – Note for Contract Manager
If the contract is be made available for other contract participants, you will need to refer to them in addition to or in place of the Commissioner at appropriate places in the clauses in Parts 2, 3 and 4. You will also need to identify the Contract Participants in Part 5 of the Contract.

1.8 “Contract Shortening” means an order of the court shortening the contract under Part 9 of the Public Contracts Regulations 2006 (as amended).

1.9 “Contractor” shall mean the person, firm or company responsible for the supply of the Goods and/or Services under the Contract as stated in the Purchase Order.
1.10 “Declaration of Ineffectiveness” means a declaration of ineffectiveness under Part 9 of the Public Contracts Regulations 2006 (as amended).

1.11 “Goods” shall mean all the goods identified in the Purchase Order to be purchased by the Commissioner from the Contractor, and including any labels, instructions or handbooks relating to such goods.

1.12 “Intellectual Property Rights” shall mean all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

1.13 “Losses” shall mean all direct, indirect or consequential liabilities (all of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and similar loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses).

1.14 “Normal Business Hours” shall mean between 08.30 and 17.00 hrs Monday to Friday (excluding bank holidays) and “Normal Business Days” shall have a corresponding meaning.

1.15 ‘The Nominated Officer’ shall mean the Head of Procurement for contract issues and XXXXXXXXXX for the day-to-day provision of the Service.

1.16 “Premises” shall mean any office, building, or other place where the Contractor is required to deliver the Goods and/or the Services in whole or in part. Such Premises may or may not be owned, occupied or represented by the Commissioner.

1.17 “Price” shall mean the sum (or sums) set out in the Purchase Order payable for the supply of the Goods and/or Services.

1.18 “Purchase Order” shall mean the Commissioners order to supply the Goods and/or Services, incorporating these Terms and Conditions.

1.19 “Services” shall mean all the services identified in the Purchase Order to be purchased by the Commissioner from the Contractor, including where relevant any instructions or handbooks relating to such services.

1.20 “Staff” shall mean the employees, sub-contractors and/or agents used and deployed by the Contractor to supply the Goods and/or Services and to fulfil any other Contract obligations.

1.21 “Termination Date” means the end of the day on which any termination notice is given in the case of termination taking place immediately upon notice or the day on which any period of notice of termination expires or otherwise the day on which termination of the Contract takes effect.

1.22 “Terms and Conditions” means the terms and conditions set out in this document together with any schedules or annexes attached hereto, which attachments will have the effect as if set out in the main body of this document and shall form part of it. Any reference to these terms and conditions includes such schedules and annexes.

1.23 In these Terms and Conditions where the context permits references to:

1.23.1 the masculine gender includes the feminine;

1.23.2 the singular includes the plural;

1.24.3 a person includes a firm or corporation;

1.24.4 any enactment order regulation standard or other similar instrument shall be construed as a reference to any subsequent enactment order regulation standard of instrument amending same.
1.24.5 any condition headings and notes are for ease of reference only and shall not affect construction of the Contract.

Part 2.
CONTRACT SPECIFICATION

2.X SCOPE OF CONTRACT

2.X GOODS TO BE PROVIDED

2.X HUMAN RIGHTS ISSUES

In his provision of the Contract Service, the Contractor shall be fulfilling obligations the Commissioners is required to provide and in so doing, the Contractor shall be required to address issues arising from the application of the Human Rights Act 1998. The Commissioner considers that the Act is likely to be applicable in the following provisions of the Contract Service:

In the event of additional Human Rights issues arising, or of potential issues being identified, the Contractor shall raise these with the Nominated Officer in order that the position may be clarified.

Part 3.
SPECIAL CONDITIONS OF CONTRACT

NB – Note for Contract Manager
It is important that you draft clauses which satisfactorily cover the need (or the purpose of the contract). Those identified below are available for use, adaptation or removal and may be added to with others you need to prepare.

When you enter additional clauses, make sure they are next to clauses covering similar areas.

If the contract is to cover a Service, references to ‘Goods’ can be changed to ‘Service’.

3.1 PERIOD OF CONTRACT

3.1.1 Subject to the following requirements being met to the satisfaction of the Commissioner, the Period of Contract shall be from xx xxxxxxx xxxx to xx xxxxx xxxx, with an option for the Commissioner to extend the period by up to xxx months under these Contract Conditions unless specifically agreed otherwise between the parties at that time:

3.1.1.1 The Contractor maintaining levels of performance which are acceptable to the Commissioner (Contract Managers may prefer to state – The Contractor maintaining levels of performance required in the Service Level Agreement.).

3.1.1.2 The Contractor maintaining levels of pricing and value which are acceptable to the Commissioner.

3.1.1.3 The Commissioner continuing to need to purchase the Goods.

3.1.1.4 The Contractor maintaining monitoring systems which are acceptable to the Commissioner.

3.1.2 The Commissioner shall reserve the right to terminate the Contract at any time (in part or in full) where it considers the Contractor is failing to fulfil the above obligations.

NB – Note for Contract Manager
“c i to iii” provides an exit strategy and you may wish to amend this drafted text to identify an appropriate period of time.

3.1.3 3.1.3.1 The Commissioner shall, in addition to its power under the Conditions of Contract, have the power to determine the Contract at any time by giving the Contractor written notice, to expire
at the end of such period as may be specified in the notice. Upon the expiration of the notice
the Contract shall be determined without prejudice to the rights of the parties accrued to the
date of determination.

3.1.3.2 In the event of such notice being given the provisions of clause 4.1.1.4 shall be invoked.

3.1.3.3 In the event of this clause being invoked, the Commissioner shall only be obliged to pay for
goods and services ordered by the Commissioner, which are delivered and found to be
acceptable to the Commissioner, prior to the expiration of the notice. The Commissioner shall
not be liable for any further payments.

3.2 CONTACT WITH THE COMMISSIONER

3.2.1 Contact with the Contractor shall normally be handled by the Nominated Officer.

3.2.2 Unless specifically agreed by the Nominated Officer there shall be no contact with the Commissioner by
any sub contractor appointed by the Contractor. All contact with the Commissioner shall be handled
directly by the Contractor.

3.2.3 The Commissioner reserves the right to seek regular progress meetings with the Contractor. These shall be
arranged at the instigation of the Nominated Officer.

3.2.4 The Contractor shall appoint a dedicated Contract Manager empowered to act on behalf of the Contractor
for all purposes connected with the Contract. Any notice, information, instruction or other communication
given or made to the Contract Manager shall be deemed to have been given or made to the Contractor.

3.2.5 The Contractor shall give notice in writing to the Nominated Officer of the identity, address and telephone
number of any person authorised to act for any period as deputy for the Contract Manager.

3.2.6 The Contractor shall ensure that the Contract Manager, or a competent deputy, duly authorised by the
Contractor to act on his behalf is available for contact by the Nominated Officer at all reasonable times
during Period of Contract.

3.3 THE GOODS AND/OR SERVICES TO BE PROVIDED

NB – Note for Contract Manager
Please select the appropriate clause below
If the contract is to cover a Service, references to ‘Goods’ can be changed to ‘Service’.

The Contractor shall provide the Goods detailed in the Contract Specification (Part 2 of this document).
The Commissioner reserves the right to amend the Contract Specification, in consultation with the
Contractor during the Period of Contract.

3.4 DELIVERY

The Contractor shall deliver, free of charge, to any point specified by the Commissioner in its official orders
and shall only act on his receipt of an official order.

OR

The Contractor shall deliver, free of charge, to locations specified in the Contract Specification.

OR

3.4.1 Any Goods supplied through the Contract are to be delivered free of all charges for travelling, packing,
carriage and delivery to locations identified by the Commissioner, at the Contractor’s risk, in such
quantities, at such times, and in such manner, as the Commissioner, or its officers duly authorised, shall
from time to time order.

3.4.2 The Commissioner’s delivery addresses shall be:

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

The Commissioner reserves the right to add additional delivery points as and when required.
CONTRACT FOR XXXXXXXXXXXXXX

3.4.3 All orders shall be acknowledged in writing by the Contractor, giving the estimated delivery date. Such acknowledgement shall be sent to the address identified on the purchase order.

3.4.4 The contractor shall adhere to delivery times stated in the tender document. The maximum delivery time is normally not expected to exceed xxxxx weeks.

NB: Note for Contract Manager – if using this clause, identify the maximum period for the Goods or Services concerned.

The time of delivery shall be of the essence.

3.4.5 Failure to deliver the Goods which are the subject of the Contract within the specified time limit set in these Conditions of Contract, shall result in liquidated damages being imposed by the Commissioner of one per cent per week of the cost of such articles which remain undelivered.

The Commissioner may at its discretion, waive the damages on receipt of evidence, in writing, that the contractor’s inability to deliver the article or articles is due to circumstances beyond his control.

OR

The Contractor shall adhere to any project deadlines set by the ‘Nominated Officer’. These deadlines may be fundamental to the consultancy and failure to meet them may constitute a breach of Contract.

The time of delivery shall be of the essence.

OR

3.4 PROGRAMME OF WORK

Upon award of the Contract, the Contractor shall agree a programme of work with the Nominated Officer. The Contractor shall adhere to the work programme.

3.5 ORDERING AND PAYMENT ARRANGEMENTS

3.5.1 Ordering

Orders for the Goods available through this Contract shall be raised by BCUs and Departments within the Commissioner. Each order shall set out the details of the requirement.

3.5.2 Payment

3.5.2.1 Payment for all Goods provided through this Contract shall be in accordance with rates identified in the Contract Price Schedule, presented with the Contractor’s tender, except where amended in accordance with clause 3.6.

3.5.2.2 Payment shall be made against invoices presented in accordance with clause 4.12.

3.5.3 Currency

All payments shall be invoiced and made in pounds sterling (£). Should the Government adopt an alternative national currency during the period of the contract (e.g. the Euro), invoicing and payments may be transferred to such currency in compliance with appropriate legislation at that time.

3.6 PRICE FIRMNESS

NB – Note for Contract Manager
Please select the appropriate clause below

The Contract price shall be fixed for the duration of the contract.

OR
3.6 PRICE FIRMNESS

In the supply of Goods through this Contract the Contractor shall be expected to support the Commissioners efforts to obtain Goods in the most cost effective manner as encouraged in the Best Value initiative. To that end the Contractor shall be expected to reduce the costs of fulfilling the Contract during the Period of Contract and to pass these savings onto the Commissioner in the form of price reductions.

Further scope for variation to prices shall be accommodated in the following ways:

3.6.1 Price Review - Proposals by Contractor

3.6.1.1 As and when the Contractor is able to reduce rates contained in the Contract Price Schedule, the Commissioner shall seek to implement his proposals at the earliest opportunity.

3.6.1.2 Should the Contractor at any time after the expiration of 12 months from the commencement of this Contract (as identified in clause 3.1), wish to supply all or any of the Goods subject of this Contract at an increased price, he shall give not less than three calendar months notice in writing of the proposed increased price to the Nominated Officer. Such notice shall clearly identify the proposed price in pounds sterling, rather than percentage or any other measure of movement.

3.6.1.3 The Contractor’s application shall be accompanied by information and records which detail the increases in costs that he has incurred in respect of the Contract since the commencement of the Contract or the implementation of the last price increase (whichever is the most recent). The Commissioner cannot consider any application without such supportive information and shall have to reject the application.

3.6.1.4 The Commissioner reserves the right to:

3.6.1.4.1 Accept an application.

NB – Note for Contract Manager
Please select the appropriate text below

3.6.1.4.2 Where the does not judge the information accompanying the application to be supportive of the proposed price or where its own review of the market identifies a different price level or trend in price movement to that included in the Contractor’s application or the service level or performance requirements are not being met, the Commissioner may:

(a) Reject the application, in such case the current Contract price shall continue to apply.

or

(b) Propose a reduced level of price increase, which may be introduced with the agreement of the Contractor. In the event of the Contractor’s agreement not being given, the current Contract price shall continue to apply until agreement between the parties is reached. The agreed price shall be implemented not less than one month after the date of its acceptance by both parties.

3.6.1.4.3 In the event of agreement not being reached under clause 3.6.1 c (ii) in what the Commissioner considers to be a reasonable period of time, the Commissioner reserves the right to serve not less than 30 days notice upon the Contractor in order to determine the Contract, save in respect of any items for which an order shall have been despatched on behalf of the Commissioner before the expiry of the said application and without prejudice to the rights of the parties hereto as regards any antecedent claim for breach of Contract.

The Commissioners decision shall be final.
3.6.1.5 Any price increase accepted by the Commissioner shall be fixed for at least 12 months.

3.6.2 Price Review - In Accordance with Market Conditions

Throughout the Period of Contract, the Commissioner reserves the right to monitor the market for Goods available through this Contract. Where it is found that Goods of like quality and specification are available at lower prices than those currently available through the Contract, the Contractor shall be required to review his prices. Should the Commissioner not be satisfied with the Contractor’s response, the Commissioner reserves the right to determine the Contract in respect of some or all of the Goods available.

3.7 SUB-CONTRACTORS

3.7.1 The Contractor shall adhere to clause 4.3 of the Contract and only employ sub-contractors to fulfil his contract obligations after the written agreement of the Commissioner has been sought and received.

3.7.2 The Contractor shall be required to obtain the written agreement of the Commissioner before transferring work from one sub-contractor to another or to the Contractor’s own organisation. He shall also need to explain how such change would benefit the Commissioner.

3.7.3 Where the Contractor enters into a sub-contract with another supplier or contractor for the purpose of fulfilling his obligations under this Contract, he shall cause a term to be included in such sub-contract which requires his payment to be made to the supplier or contractor within a specified period not exceeding those set out in Commissioner’s Standard Terms.

3.7.4 Where the Contractor uses subcontractors or other third parties in his provision of the Goods/Service he shall make it evident to them that the Contract does not provide for third parties rights and is for use only by him (the Contractor appointed by the Commissioner [see clause 4.3.5]). Subcontractors shall have no right to any redress under this Contract. All bills, invoices and charges raised by subcontractors and other third parties shall be sent directly to the Contractor, who shall bear responsibility for their payment.

3.8 COLLABORATION

NB – Note for Contract Manager
This clause would only apply when the contract is open to other organisations

3.8.1 The Contract shall be managed by the The Kent Police and Crime Commissioner/ The Police and Crime Commissioner for Essex and shall be available for any organisation identified as a Contract Participant.

3.8.2 The Contract Participants are presented in Part 5 of this Contract document.

3.8.3 Each Contract Participant may participate in this Contract and raise orders, as and when required, receive service and settle invoices, conduct mini-competitions and enter into Service Level Agreements or other commitments on the terms contained within the Contract. Each individual order/commitment shall form the contract between purchaser (e.g. the Police Force, Emergency Service, etc.) and the supplier (Contractor), to which the terms and conditions of this Standing Offer Contract shall be applied.

3.8.4 The Commissioner shall not be liable for the settlement of any payments incurred by any Contract Participant which has made use of the Contract to obtain Goods and/or Services.

3.9 SUPPORTIVE SERVICES

3.9.1 Continuation of Business

NB – Note for Contract Manager
Use either of these options if they are appropriate to the contract. The second clause would apply to contracts which are larger and more important to the Authorities operations.

A The Contractor shall ensure that he routinely carries out risk assessments of the issues that limit or prevent his delivery of the Goods/Contract Service required through this Contract. The Contractor shall set in place “business continuity” measures which he can effect in the event of disruption to his normal operations.
business activities and his ability to meet his contract obligations. He shall provide details of these to the Nominated Officer on request.

OR

B

3.9.1.1 Upon award of the Contract and prior to its commencement, the Contractor shall carry out a risk assessment of the issues that could limit or prevent his delivery of the Goods/Contract Service.

3.9.1.2. The Contractor shall assemble a Business Continuity Plan and provide a copy for the Nominated Officer prior to the commencement of the Contract.

3.9.1.3 The Business Continuity Plan shall be reviewed and updated as necessary during Contract Review Meetings between representatives of the Contractor and the Commissioner.

3.9.2 Monitoring Arrangements

The Contractor shall routinely provide the Nominated Officer with management information based on Contract activity and demand. The format of all management information shall be in accordance with the Contract Specification or, where not identified, the format shall be agreed between the Contractor and the Authorised Officer upon commencement of the Contract. The format may be changed during the Period of Contract by agreement between the Authorised Officer and the Contractor.

3.9.3 Market Developments

The Contractor shall share his knowledge of market activities concerning the developments and price movement of the Goods available through this Contract with the Nominated Officer. The Commissioner shall treat this information in a confidential manner.

3.10 ESTIMATED REQUIREMENTS

3.10.1 Any estimate of demand given to the Contractor is for guidance only and shall not form part of the Contract.

3.10.2 Any such estimates, if identified in the Contract documentation are liable to amendment. The Commissioner’s final requirement shall be as identified in its official orders.

3.11 INCREASE IN CONTRACT DEMAND

Although this Contract has been awarded on the basis of its use by the Commissioner (and other identified Contract Participants), other Police Commissioners, Forces and Emergency Service Providers shall be eligible to use the Contract. In the event of the demand for Goods and Services through this Contract increasing as a result of additional demand from Contract Participants joining the Contract, the Contractor shall agree price reductions with the Commissioner for the benefit of the Commissioner and all Contract Participants.

NB: Note for Contract Manager – identify organisations likely to have the right to use this contract.

3.12 CONTRACTOR’S STAFF

NB – Note for Contract Managers – Use the parts of these clauses which are appropriate to the contract and add in more, if necessary, to cover specific issues.

3.12.1 Acceptance of Contractor’s Staff

3.12.1.1 Where required by the Commissioner, and in accordance with clause 4.15, the Contractor shall identify named members of the Staff who he proposes to use to provide the Goods and provide the Commissioner with requested information in respect of each and of their close family members. The Contractor shall update this information as and when these individuals are replaced or complemented by others. After a review of this information the Commissioner shall advise the Contractor whether it can accept entry of the nominated Staff onto the Contract. The
Commissioner reserves the right to reject any of the Contractor's staff without giving any reason or explanation. The Commissioner also reserves the right to remove the right of Contract participation from any of the Contractor's Staff at any time during the lifetime of the Contract, without giving any reason or explanation.

3.12.1.2 Any decisions reached by the Commissioner over rights of access to and barring from its premises of individual members of the Contractor's Staff, and therefore their ability to work towards the fulfilment of the Contract, shall be final and absolute. The Commissioner shall not be liable to the Contractor for any costs incurred as a result of its decisions and the Contractor shall indemnify the Commissioner against any suits or claims that may arise from any employment actions against itself or the Contractor resulting from its decisions.

3.12.1.3 Where appropriate to enable the Contractor to fulfil his obligations under the Contract, the Commissioner may grant the following access to the Contractor and his Staff:

3.12.1.3.1 Access to the Commissioner's premises

The Commissioner shall allocate electronic access keys to the Contractor, who shall issue them to his Staff who need to have access to the Commissioner's premises in order to fulfil the Contractor obligations. The Contractor shall only issue such keys to named Staff who have been cleared for access by the Commissioner. Each key shall be returned to the Contractor's custody once the individual member of Staff no longer requires access to the Commissioner's premises or leaves the Contractor's employment.

The Contractor shall maintain a register to identify to which member of staff individual keys are issued. A copy of the register shall always be available to the Nominated Officer on demand.

Under no circumstances shall any key be allocated to or exchanged between members of Staff other than through the Contractor’s register. The Commissioner reserves the right to examine the register at any time and to conduct a spot check of the key held by any individual member of the Contractor’s Staff at any time.

In the event of any proof or suspicion that the requirements of this clause are not being adhered to, the Commissioner reserves the right to withdraw any or all keys at any time and to suspend the Contractor’s control of their allocation.

3.12.1.3.2 Use of equipment and systems.

(a) The Contractor and his Staff may be given permission by the Commissioner to use equipment and systems provided by the Contractor within the Commissioner's premises.

(b) The Contractor and his Staff may also or alternatively be given access to use the Commissioner's property, equipment and systems (including use of the telephone system, local area network, internet and intranet facilities, special computer programs and Commissioner computers).

3.12.1.3.3 Such use and access shall be limited to that which is required to fulfil the Contract.

The Commissioner may withdraw the right of use from the Contractor and/or any member of his Staff, at any time, if required for operational or security reasons or if the Contractor or a member of his Staff is believed to be using the property, equipment or systems for non-contract purposes or is abusing his right to use/access in any way. Such action on the part of the Contractor or of his Staff would be considered to be unprofessional and may lead the Commissioner to require the disciplining and/or removal of the Contractor or of the member(s) of Staff concerned from the Contract and may become the subject of an investigation.
3.12.1.3.4 The Commissioner reserves the right to review access with the Contractor during Contract Review Meetings in order to identify what types of access are justified and can be made available by the Commissioner at that time and for which members of the Contractor’s Staff.

3.12.2 Removal of Staff for Inappropriate / Offensive / Discriminatory Behaviour

3.12.2.1 The Commissioner regards inappropriate, offensive or discriminatory remarks or behaviour from its staff as gross misconduct and requires the same of its contractors.

3.12.2.2 If a member of the Contractor’s Staff (or his sub-contractor’s) behaves in a manner which is or makes remarks which are inappropriate, offensive or discriminatory whilst on the Commissioner’s premises, or in the company of Commissioner personnel, then the Commissioner shall require the immediate removal of the member of Staff concerned from its premises pending an investigation. If the investigation finds the allegations to be sustained, then the Contractor shall no longer be able to use that member of his Staff to deliver his Contract obligations.

3.12.2.3 The Contractor shall be associated with any suits or actions linked with the investigations and shall be required to provide a substitute member of Staff, who is acceptable to the Commissioner and at no extra cost to the Commissioner.

3.12.3 Competence of Contractor’s Staff

3.12.3.1 The Contractor and his Staff shall be expected to exercise professional and personal competence in the delivery of the Goods/Services. This shall include adherence to the law. The Commissioner reserves the right to reject individual members of the Contractor’s Staff where it is not satisfied with their performance and to require their replacement by the Contractor.

3.12.3.2 All Staff used shall have relevant qualifications and/or experience and the Commissioner reserves the right to be provided with details of the qualifications (including sight of certificates) of any members of the Contractor’s Staff who are appointed to provide the Contract Service.

3.12.4 Identifying Contractor’s Staff

3.12.4.1 The Contractor shall provide his Staff with an identity badge, which presents a photograph of the individual and identifies the individual’s and the Contractor’s name. The badge shall be worn by the individual member of Staff at all times when engaged in the performance of this contract and are on the Commissioners premises.

3.12.4.2 All Staff to be involved in the contract shall be security cleared and the list of call-out sub-contractors shall be vetted by the Contractor.

3.12.5 Reporting Injury, Diseases And Dangerous Occurrences (RIDDOR)

NB – Note for Contract Manager
When drafting the contract conditions which will require contractor’s staff to visit the Authorities premises or deliver a service on the Commissioners behalf, the Contract Manager shall select one of the following, as appropriate to the contract:

Please select the appropriate text below

a. For Contracts for Embedded Services, where competence rests with Contractor (e.g. Catering, Building Cleaning, Custody Services)

In the event of a member of the Contractor’s Staff being involved in an incident, whilst providing the Goods, which involves injury, disease or dangerous occurrence and requires reporting, the Contractor’s managers and supervisors shall have the Commissioners appropriate reporting forms completed and shall provide a copy to the Commissioners Personnel Manager, at the location where the incident occurred, without delay. The Contractor shall also retain a copy, and have the information transferred onto its own forms/records if it requires.
The relevant form need only be completed where the incident requires investigation. In the event of the incident causing the member of the Contractor’s Staff to be absent from work for 3 days or more, an investigation must be undertaken.

Where investigation is required, it shall be jointly carried out by the Contractor and the Commissioner.

OR

b. For Contracts for Other Services, where competence rests with Commissioner (e.g. Non-Outsourced Contracts)

In the event of a member of the Contractor’s Staff being involved in an incident, whilst providing the Goods, which involves injury, disease or dangerous occurrence and requires reporting, the Contractor’s managers and supervisors shall ensure that the Nominated Officer is made aware of the incident. If the incident took place on the Commisioner’s premises, the Contractor shall provide the Nominated Officer with a completed copy of the Contractor’s reporting forms. If necessary, the Contractor may be required to have the Commissioner’s reporting forms completed.

Where investigation is required, it shall be carried out by the Commissioner and the Contractor shall be informed of the outcome.

3.12.6 Staff Providing Contract Service

NB – Note for Contract Manager
This clause would relate to contracts for services where the circumstances described might occur

3.12.6.1 If the provision of the Contract Service is or becomes the principal purpose of any of the Staff used by the Contractor to provide the Service to the Commissioner and/or to any of the Contract Participants, he shall notify the Commissioner, in writing. He shall also provide any details of the Staff concerned that the Nominated Officer may subsequently ask for.

3.12.6.2 Such notification shall be made prior to the provision occurring (preferably at the time of tendering) or as soon as the Contractor becomes aware of the fact and, in any event, not less than three calendar months prior to the end of the Period of Contract. If the Contractor fails to notify the Commissioner he shall be required to indemnify the Commissioner against any claims from successor contractors for TUPE.

3.13 TUPE REQUIREMENTS AND INFORMATION
NB – Note for Contract Manager
This clause is only required when TUPE applies to the contract.

TUPE shall be deemed to apply to this Contract. The clauses relating to TUPE are presented in Part 6 of this document.

3.14 IMPLIED PROVISIONS

The Contractor shall not attempt to exempt himself from the implied provisions of the Sale of Goods Act 1979 and/or the Sale of Goods and Services Act 1982 and any statutory modification or re-enactment thereof.

3.15 STATUS OF CONTRACTOR

The relationship of the Contractor to the Commissioner and to Contract Participants shall be that of an independent Contractor and not that of an employee or agent. As a result, the Commissioner and the Contract Participants shall not be responsible for the payment or deduction of any amount whatsoever required by law to be made by an employer in relation to its employees. Neither Contractor nor its employees or agents shall be covered by any of the Commissioners or the Contract Participants’ employee benefit schemes or insurance policies.

3.16 DISCREDITABLE BEHAVIOUR
In the event that the Contractor’s activities (whether through this Contract or in any other part of its business operations) are found to be in conflict with the aims of the Commissioner, or with the aims of criminal justice or to be immoral socially or commercially, its ability to fulfil the Contract or supply the Goods shall be considered to be undermined and is discredited and the Commissioner shall have the right to terminate the Contract with immediate effect and any payments after that point shall cease.

### 3.17 INDEMNITY ARRANGEMENTS

**NB – Note for Contract Manager**

The value of cover you enter below should reflect the risks and value of the contract. Text below presents likely maximums.

3.17.1 The insurance cover to be maintained by the Contractor to meet the requirements of clause 4.10.2 shall be:

- Unlimited cover in respect of death and injury;
- Professional Indemnity cover for £2 million in respect of a single claim;
- A maximum cover of £5 million in respect of any other single claim.

The Contractor shall provide such proof of insurance as the Commissioner or its officers may from time to time require.

3.17.2 The Contractor shall indemnify and make good or pay compensation to the Commissioner for any loss, damage or misuse of property or materials or facilities at any of the Commissioner locations where the Contractor or his representatives are present and which arises from their actions or default.

3.17.3 For the avoidance of any doubt, the Contractor shall be liable for the following, although the list is not exhaustive:

3.17.3.1 Any liability, loss, damage, claims or proceeding whatsoever arising under any statute or at common law in respect of damage to property (whether real or personal) or personal injury or the death of any person whomsoever arising out of or in the course of or caused by the performance of this Contract.

3.17.3.2 Any liability against which the Contractor is required by the Conditions and Supplementary Conditions of Contract to indemnify the Commissioner.

3.17.3.3 All actions, costs, liabilities, claims or demands whatsoever arising out of authorised and unauthorised acts or omissions of his Staff whether such acts or omissions are within or outside the course of such employment and agency.

3.17.3.4 Any action brought against the Commissioner as a result of the Contractor’s activities.

### 3.18 RETURN OF THE COMMISSIONER’S PROPERTY AND DATA

3.18.1 All property loaned to or placed in the care of the Contractor by the Commissioner shall remain the property of the Commissioner and shall be returned to the Commissioner upon the termination of the contract (howsoever arising) or when requested by the Nominated Officer. Due care shall be exercised throughout the Contract with the Commissioners property.

3.18.2 All data compiled and held by the Contractor in his fulfilment of the Contract (howsoever held) and data supplied by the Commissioner shall be the property of the Commissioner and returned to the Commissioner upon the termination of the contract (howsoever arising) or when requested by the Nominated Officer. Due care shall be exercised throughout the Contract with the Commissioners property.

### 3.19 DAMAGE TO PROPERTY

The Contractor shall take care not to damage or mark the Commissioners property in his fulfilment of the Contract. Where damage or marking occurs the Contractor shall reinstate the same at his own expense. All such work shall be executed so as to correctly match the surrounding work.
The Commissioners reserves the right to carry out any work to reinstate any damage caused by the Contractor and invoice the Contractor accordingly.

3.20 INTELLECTUAL PROPERTY RIGHTS

3.20.1 The intellectual property rights in any reports or products which the Contractor has designed for and produced for the Commissioners shall belong to the Commissioners.

3.20.2 The intellectual property rights in all information owned by or licensed to the commissioners and supplied to the Contractor in the fulfilment of the contract shall continue to belong to that party.

3.20.3 The Contractor shall be permitted to use this information in order to fulfil his obligations under this Contract but shall not use it in the preparation of any other service not covered by this Contract.

3.21 HEALTH AND SAFETY

In addition to the requirements of clause 4.14.1.2, the Contractor shall be required to:

3.21.1 Fully comply with the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999 and with all regulations attached thereto.

3.21.2 Operate in accordance with good practice advice; for example that published by the Health and Safety Executive.

3.21.3 Provide sufficient information, advice, training and instruction to his Staff to ensure that safe working practises are adhered to.

3.21.4 Ensure that:

3.21.4.1 his Staff are equipped with appropriate equipment, including appropriate personal protective equipment (PPE), in order to provide the Services safely;

3.21.4.2 all such equipment shall meet or exceed the minimum safety standards required by statute at the time of use, shall comply fully with the relevant British, European and International Standards and is maintained so that it is safe in use;

3.21.4.3 any work equipment is constructed or adapted so as to be suitable for the purpose and location for which it is used or provided.

3.21.5 Adhere to method statements supplied to the Commissioner as part of his tender submission detailing how he shall comply with the above requirements.

3.21.6 Introduce control measures to reduce risks to a minimum and provide adequate information and training to his Staff.

3.21.7 Ensure that all his Staff are competent in the work in which they shall be employed.

3.21.8 Ensure that all his Staff have received adequate Health & Safety training to reduce the risk of ill health and injury to themselves and others which may result from that work.

3.22 ENVIRONMENTAL CONSIDERATIONS

3.22.1 Legislation and Regulation

The Contractor shall take action to minimise any adverse affect on the environment from the products used in fulfilment of the Contract or from their manufacture, storage and supply, in accordance with
CONTRACT FOR XXXXXXXXXXXXX

legislation and best practice at the time, as set out in the following legislation and any statutory modification or re-enactment thereof:

### 3.22.1.1 Waste Disposal

The Contractor shall comply with the requirements of the following regulations:

- **3.22.1.1.1** European Union’s Waste, Electrical and Electronic Equipment Directive 2002/96/EC (also known as the WEEE Directive), which shall require the Contractor to hold records of relevant disposal documents for a minimum of three years (eight in the case of hazardous waste).
- **3.22.1.1.3** EU Batteries and Accumulators Directive 1991/157/EC.
- **3.22.1.1.5** The Landfill (England and Wales) (Amendment) Regulations 2004.

The Contractor shall:

- **3.22.1.1.6** maintain an audit trail of waste;
- **3.22.1.1.7** use secure disposal sites;
- **3.22.1.1.8** use appropriate transport for waste (e.g. secure and of suitable capacity);
- **3.22.1.1.9** hold or use organisations holding appropriate waste licences or exemption certificates;
- **3.22.1.1.10** retain waste destruction certificates

### 3.22.1.2 Environmental Impact

The Contractor shall comply with the requirements of the following regulations:

- **3.22.1.2.2** Control of Vibration at Work Regulations 2005 (updated regulation from EU Directive 89/391/EEC).
- **3.22.1.2.3** The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2004 (also known as ROHS).
- **3.22.1.2.4** European Union’s Energy Using Products Directive 2005 (also known as EUP).
- **3.22.1.2.5** United Nations Economic Commission for Europe Policy Statement on Sustainable Timber Resources.

### 3.22.2 Sustainability

The Commissioners shall be working towards meeting the requirements of the “UK Government Sustainable Procurement Action Plan” and shall require the Contractor to give consideration to sustainability and to develop the means of delivering this in his fulfilment of the Contract.
3.22.3 **Further Information**

Further information is available through the following Government websites:
- [http://www.netregs.gov.uk/](http://www.netregs.gov.uk/)

3.23 **EXCLUSIVITY**

In order to fulfil its operational needs the Commissioner reserves the right to obtain Goods from sources of its choice and is not beholden to purchase through this Contract should it choose to exercise this right.

3.24 **REORGANISATION OF THE COMMISSIONER**

3.24.1 In the event of the following occurring during the Period of Contract:

3.24.1.1 Significant reorganisation of the Commissioner (e.g. its incorporation into a larger Commissioner, its division into smaller Commissioners or its division among other authorities);

3.24.1.2 Reorganisation of the Commissioners role which would require it to relinquish control of the Contract either wholly or to an extent that it judged the remainder to render the Contract to be no longer viable;

the Commissioner shall have power to determine this Contract and any orders/commitments hereunder by giving the Contractor not less than six months written notice and upon expiration of the notice the Contract shall be determined without prejudice to the rights of the parties accrued to the date of determination. The Commissioners shall not be disadvantaged either financially or in the level of service provided by the Contractor during the period of notice.

3.24.2 Should the Commissioners learn of proposals which may require it to invoke this clause it shall advise the Contractor at the earliest opportunity in order that he may be aware of the possibility.

3.24.3 If any Commissioners which takes over the Commissioners role in full or in part agrees to take over the Contract in full or in part, the Contractor shall work with the new Commissioner/Commissioners in order to ensure an efficient assignment of the Contract and of the delivery of the Goods/Services.

3.25 **REORGANISATION OF CONTRACT ARRANGEMENTS**

3.25.1 Should a Contract (national, regional or collaborative contract) become available, which is available for the Commissioner to use and which offers the Commissioner advantages over this Contract (e.g. better pricing or service provision), the Commissioner shall have power to determine this Contract and any orders hereunder by giving the Contractor written notice and upon expiration of the notice the Contract shall be determined without prejudice to the rights of the parties accrued to the date of determination.

3.25.2 Should the Commissioner learn of proposals which may require it to invoke this clause it shall advise the Contractor at the earliest opportunity in order that he may be aware of the possibility.

3.26 **PREPARATION OF TENDER**

3.26.1 The Contractor shall be deemed to have satisfied himself before submitting his tender as to the accuracy and sufficiency of the information (including rates and prices) submitted by him in his tender which shall (except in so far as it is otherwise provided in the Contract) cover all his obligations under the Contract and shall be deemed to have obtained for himself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect his tender.

3.26.2 Information supplied by the Commissioner (whether in Contract and Tender Documents or otherwise) is supplied for general guidance in the preparation of the Tenders. No responsibility is accepted by the
Commissioner for the accuracy of information given to or obtained by the Contractor at the time of tendering.

3.27 CONTRACTOR TO FULLY INFORM HIMSELF

The Contractor shall be deemed to have examined the requirements specified and these Conditions and the Contract Specification, and to have satisfied himself that his proposal to provide the Goods (or Services) shall be sufficient for him to be able to fulfil his obligations under the Contract. Save as specified in the provisions of this Contract, no claim from the Contractor for any additional payments to those presented in his tender shall be allowed in any matter relating to the Contract obligations, the requirements specified or these conditions, on which the Contractor could reasonably have satisfied himself by a visit to the premises, reference to the Commissioner, or such other means as may have been appropriate.

3.28 HUMAN RIGHTS

In its provision of the Contract the Contractor and his Staff shall be required to ensure adherence to the requirements of the Human Rights Act 1998, as addressed within the Contract Specification.

3.29 DIVERSITY - RESPONSIBILITIES

3.29.1 Promotion of Equality

NB – Note for Contract Manager
This clause (or an appropriate adaptation) would be expected to be used when the contractor would be providing a service to the public or to the Authorities employees on behalf of or in the place of the Authorities.

The Contractor shall be responsible for carrying out Services on behalf of the Commissioners which shall require him to deal directly members of the public and/or the Commissioner’s staff. The Contractor shall be required to adopt the Commissioners obligation to proactively promote equality in respect of all aspects of diversity, as identified below, throughout all of his functions and policies which impact on its delivery of the Contract:

- Age
- Disability
- Gender (Including Transgender)
- Race
- Religion or belief
- Sexual Orientation

OR

NB – Note for Contract Manager
This clause (or an appropriate adaptation) would be expected to be used when the contract is significant in value or importance to the Commissioner.

3.29.1 Promotion of Equality

3.29.1.1 Through his fulfilment of his Contract obligations, the Contractor shall be a significant commercial partner to the Commissioners and shall be required to adopt the Commissioners obligation to proactively promote equality in respect of all aspects of diversity, as identified below, throughout all of his functions and policies which impact on its delivery of the Contract:

- Age
- Disability
- Gender (Including Transgender)
- Race
- Religion or belief
- Sexual Orientation
3.29.1.2 Throughout the Period of Contract the Contractor shall be required to demonstrate his work in this area to the Commissioners satisfaction.

3.29.2 Contractor’s Equality Duties

As the Commissioners has appointed the Contractor to deliver services to the public on its behalf, the Contractor and his Staff shall be required to fully incorporate the Commissioner Race Equality and Disability Equality Schemes into the methods he uses to deliver the service. The Commissioner shall develop these Schemes in accordance with the terms of the Race Relations (Amendment) Act 2000 and the Disability Discrimination Act 2005.

3.30 KENT POLICE COMMISSIONER/ESSEX POLICE COMMISSIONER – VALUES

NB – Note for Contract Manager
This clause should be deleted if the contract is collaborative.

The Contractor is advised below of the aims and values that Kent Police Commissioner/Essex Police Commissioner applies in its work. The Commissioner expects the Contractor to adopt and apply these values when fulfilling its obligations under this Contract:

Aim
- Working in partnership to make our community safer.

Values
- To promote the trust and confidence of our community, we will:
  - Treat everyone fairly and with respect
  - Act with courage and integrity
  - Take pride in delivering a high quality service and keeping our promises
  - Engage, listen and respond
  - Learn from experience and always seek to improve.

Part 4.
GENERAL CONDITIONS OF CONTRACT

4.1 Not Used

4.2 APPLICATION OF THESE TERMS

4.2.1 These Terms and Conditions shall apply to and be incorporated into the Contract and shall prevail over any inconsistent terms or conditions contained, or referred to, in the Contractor’s quotation, confirmation of order, or specification, or other document supplied by the Contractor, or implied by trade custom, practice or course of dealing.

4.2.2 Each Purchase Order constitutes an offer by the Commissioner to purchase the Goods and/or Services subject to these Terms and Conditions. Accordingly, any acceptance of the Purchase Order by the Contractor shall establish a contract for the sale and purchase of the Goods and/or Services on these Terms and Conditions.

4.2.3 The execution and return of the acknowledgement copy of the Purchase Order form by the Contractor, or the Contractor’s commencement of Services or delivery of Goods pursuant to the Purchase Order constitutes acceptance of the Purchase Order on these Terms and Conditions by the Contractor.

4.2.4 No addition to, variation of, exclusion or attempted exclusion of the Purchase Order or these Terms and Conditions or any of them shall be binding on the Commissioner unless in writing and signed by a duly authorised representative of the Commissioner.

4.3 ASSIGNMENT, SUBCONTRACTING AND THIRD PARTY RIGHTS
4.3.1 The Contractor shall not assign, novate or (save as set out in clause 4.3.2) otherwise dispose of any or all of its rights and obligations under the Contract without having applied for and received the Commissioner’s written approval.

4.3.2 The Contractor shall not sub-contract any part of this Contract without the Commissioners prior written consent, which shall not be unreasonably withheld or delayed. The Contractor shall be responsible for all Goods and/or Services supplied by sub-contractors as if such Goods and/or Services had been supplied by the Contractor.

4.3.3 The Commissioner may, without consent:

4.3.3.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract to any organisation or body to which the powers and duties (or any of them) of the Commissioner may be transferred (whether by Act of Parliament or otherwise); or

4.3.3.2 assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract to any other body (including but not limited to any private sector body) which substantially performs any of the powers or duties that previously had been performed by the Commissioner and in either case the Contractor shall promptly enter into any reasonable agreements to put the assignment, novation or arrangement into effect.

4.3.4 Any change in the legal status of the Commissioner such that it ceases to be a contracting Commissioner shall not affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Commissioners.

4.3.5 Nothing within this Contract shall confer upon any third party the right or benefit to pursue any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

4.4 PERFORMANCE

4.4.1 The Contractor warrants to the Commissioner that any Goods supplied under the Contract shall:

4.4.1.1 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purposes held out by the Contractor or made known to the Contractor in writing by the Commissioner prior to its submission of the Purchase Order;

4.4.1.2 be free from defects in design, material and workmanship;

4.4.1.3 correspond to any specifications set out in the Purchase Order and to any sample provided to and approved by the Commissioner (but no such approval shall remove the requirement to comply with the Specification);

4.4.1.4 comply with all applicable statutory and legal requirements; and

4.4.1.5 comply with all relevant EU or industry adopted standards and best practice.

4.4.2 The Contractor warrants to the Commissioner that:

4.4.2.1 the Services will conform with all descriptions and specifications set out in the Purchase Order;

4.4.2.2 the Contractor will carry out the Services with best practice techniques and standards and execute the Contract with the all the care, skill and diligence reasonably expected of a skilled and experienced supplier of services such as the Services;

4.4.2.3 the Services will be provided in accordance with all applicable legislation from time to time in force, and the Contractor will inform the Commissioner as soon as it becomes aware of any changes in that legislation;

4.4.3 The Contractor will comply with all instructions of the Commissioner in respect of the performance of the Services or Goods to be delivered and where it believes that any such instruction constitutes a change in
requirements of a nature requiring a variation to the Price or times of delivery or performance, or is inconsistent with any other requirement of this Contract, the Contractor shall notify the Commissioner in writing of that (a Change Notice) and await the Commissioner written confirmation of the instruction before complying with it. If the Commissioner confirms its instruction in the absence of any agreement between the parties on the effect of the instruction following receipt of a Change Notice (but not otherwise) the Contractor shall be entitled to a fair and reasonable variation to the Price and extension to any agreed time or times for performance or delivery. The Contractor shall provide its assessment of the effect of an instruction as soon as reasonably practicable as issuing a Change Notice.

4.4.4 The Commissioner rights under these Terms and Conditions are in addition to the statutory terms implied in favour of the Commissioner (so far as not inconsistent with any express terms of this Contract) including (without limitation) those under the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (as amended).

4.5 RIGHT OF AUDIT AND INSPECTION

4.5.1 The Commissioner reserves the right to conduct inspection, auditing and testing of the Goods and/or Services supplied under this Contract, and of the data (financial and non-financial) held by the Contractor, its Staff, agents and sub-contractors, which relates to this Contract, in accordance with the provisions set out below in this Clause 4.5.

4.5.2 The Commissioner reserves the right to inspect and test the Goods to be supplied under the Contract during manufacture, processing or storage at the premises of the Contractor, sub-contractor or any third party, and to inspect the premises and facilities used for manufacture, processing or storage. Visits to carry out such inspections and/or tests shall ordinarily take place during Normal Business Hours, unless alternative times are agreed. The Commissioner shall normally serve a minimum of 24 hours notice of its visit, but reserves the right to conduct inspections upon no notice, where prevailing circumstances justify this.

4.5.3 The Commissioner reserves the right to inspect and test the Services without prior notice at any time and at the premises where they are or have been supplied, whether such premises are owned by the Commissioner, the Contractor, his sub-contractor or any other third party.

4.5.4 The Commissioner shall have the right to conduct audits of data (financial and non-financial) which relate to the supply of Goods and/or Services through the Contract, which is held by the Contractor, its Staff, agents and sub-contractors during Normal Business Hours.

4.5.5 The Contractor shall ensure that all data relating to the Contract can be readily accessed by the commissioners, whether it is in electronic or hard copy format, through electronic means from the Commissioner’s premises or through a visit by its appointed staff, agents or representatives to the Contractor’s premises.

4.5.6 The Commissioner shall normally serve a minimum of 24 hours notice of its visit to the Contractor’s or sub-contractor’s premises, but reserves the right to conduct audits upon no notice.

4.5.7 The Contractor shall facilitate any access arrangements on behalf of the Commissioner to its premises and data and to the premises and data of its Staff, agents and sub-contractors.

4.5.8 The Commissioner reserves the right to use its own staff and/or any agent or representative of its choice to conduct inspections, audits and testing on its behalf. Where an agent or representative is appointed, the Contractor shall be notified in writing or through a letter of authorisation presented by the agent/representative.

4.5.9 The Commissioner reserves the right to share information gathered through inspections, audits and testing with organisations of its choice to check accuracy and to carry out benchmarking exercises.

4.5.10 Where inspection, auditing and testing reveals that the Contractor is failing to fulfil its obligations under the terms of the Contract, the Contractor shall be notified of such default and be required to promptly correct this at no cost to the Commissioner. Where inspection, auditing and testing reveals that the Contractor is in material breach of contract, the Commissioner reserves the right to terminate the Contract in accordance with Clause 4.11.1.
4.6  DELIVERY OF GOODS AND SERVICES

4.6.1 The Contractor shall at its own expense deliver the Goods to the Commissioner at the Premises specified in the Purchase Order and unless otherwise specified in the Purchase Order the Contractor shall at its own risk unload the Goods and place them in a room or location stipulated by the Commissioner.

4.6.2 If specified in the Purchase Order, the Contractor shall take all steps required to render the Goods usable, including, but not limited to, installing and/or assembling the Goods.

4.6.3 The Contractor shall ensure that a delivery note shall accompany each Delivery of the Goods. All delivery notes shall be clearly marked with the Commissioners order number and the description and quantity of the Goods concerned.

4.6.4 Any other requirements will be identified in the Special Conditions of Contract (where issued) or in the Purchase Order.

4.6.5 Acceptance of Goods of Services, or any other approval or comment by the Commissioners, shall not affect the Contractor’s obligation to deliver the Goods and Services strictly in accordance with the requirements of the Contract.

4.7  DATE AND TIME OF PERFORMANCE

4.7.1 The Contractor shall deliver the Goods and/or perform the Services on the date or dates set out in the Purchase Order or otherwise agreed in writing. Where no date is specified, delivery of Goods shall, unless agreed otherwise in writing, be within 28 days of the Purchase Order and take place within Normal Business Hours.

4.7.2 Time for delivery of the Goods and/or performance of the Services shall be of the essence.

4.7.3 If the Contractor does not deliver the Goods and/or perform the Services within the specified time, the Commissioner shall be entitled to terminate the Contract in whole or in part, refuse to accept any subsequent delivery of the Goods or performance of the Services which the Supplier attempts to make; and purchase other goods and/or services of the same or similar description to make good such default, without prejudice to any other remedy for breach of contract. The Commissioner shall be entitled to recover from the Contractor the excess cost of purchasing from any third party goods and/or services to replace those rejected, not delivered, cancelled or that are defective together with all charges, costs and expenses in relation thereto.

4.8  ACCEPTANCE AND REJECTION

4.8.1 Any Acceptance of the Goods by the Commissioner shall be without prejudice to any rights that the Commissioner may have against the Contractor.

4.8.2 If any of the Goods, or their packaging, and/or the Services do not comply with any of the terms of the Contract, the Commissioner may (without prejudice to any other right or remedy it may have and irrespective of whether the Goods have been Accepted by the Commissioner):

4.8.2.1 in the case of Goods, reject those Goods or any part of them and return them to the Contractor at the risk and cost of the Contractor on the basis that a full refund of the Goods so returned shall be paid forthwith by the Contractor;

4.8.2.2 refuse to accept further deliveries of the Goods or suspend performance of the Services pending resolution of the non-compliance to the Commissioner’s satisfaction, without liability to the Contractor;

4.8.2.3 at the Commissioner’s option, require the Contractor shall take such steps, at the Contractor’s costs, as are reasonably required by the Commissioner to remedy any defect in the Goods and/or Services and carry out any other work necessary to ensure that the terms of the Contract are complied with, or (in the case of Goods) to supply replacement Goods.

4.9  PROPERTY AND RISK
4.9.1 The Goods shall become the property of the Commissioner when they have been delivered to the Commissioner, but shall pass back to the Contractor if the Goods are returned to the Contractor in accordance with this Contract.

4.9.2 Risk in the Goods shall remain with the Contractor until delivery to the Commissioner (including where relevant off-loading, assembly and/or installation by the Contractor) is complete.

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

4.10 LIABILITY, INDEMNITY AND INSURANCE ARRANGEMENTS

4.10.1 The Contractor shall be liable for all and any claims, actions and Losses howsoever caused and arising from or, in connection with, its performance of any of the Contract obligations including, but not limited to, defective workmanship, quality or materials.

4.10.2 The Contractor shall indemnify the Commissioner against all claims, actions and Losses arising from death and personal injury caused by the Contractor's negligence or breach of contract and any Losses which the Commissioner may suffer, howsoever arising, from the Contractor's breach of the statutory implied terms as to title.

4.10.3 In order to meet its liabilities under the Contract the Contractor shall take out and maintain suitable insurance cover and shall provide a copy of its insurance policies to the Commissioner’s Contract Manager as and when requested.

4.11 TERMINATION

4.11.1 The Commissioner shall be entitled to terminate the Contract immediately by notice in writing without liability to the Contractor if:

4.11.1.1 the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract or any other contract with the Commissioner, or if the like acts shall have been done by any person employed by it or acting on its behalf, whether with or without the knowledge of the Contractor, or if in relation to any contract with the Commissioner the Contractor or any person employed by it or acting on its behalf, shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward to any officer of the Commissioner the receipt of which is an offence under Section 117(2) of the Local Government Act 1972; or

4.11.1.2 the Contractor, being an individual (or, if the Contractor is a firm, any partner in that firm) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or
4.11.1.3 in any of the circumstances set out in clause 4.5.10, clause 4.7.3 or clause 4.13.2; or

4.11.1.4 the Contractor commits a material breach of this Contract which is incapable of remedy or is capable of remedy but has failed to cure such breach within 30 days of the Commissioner’s written notice to it of such breach; or

4.11.1.5 it transpires that the Contractor provided false or misleading information which was used by the Commissioner in its selection of the Contractor and/or of the Goods and/or Services to be supplied under the Contract; or

4.11.1.6 it transpires that the Contractor has been convicted of a criminal offence relating to the conduct of its business or profession, has committed an act of grave misconduct in the course of its business or profession and/or has not fulfilled its obligations relating to the payment of any taxes and/or social security contributions under the laws, or any part, of the United Kingdom

4.11.2 NB – Note for Contract Manager
This clause (or an appropriate adaptation) would be expected to used when the contract is significant in value or importance to the Commissioner. However a longer timeframe can be used in other circumstances.

The Commissioner may terminate the Contract at any time and for whatever reason by giving the Contractor written notice, to take effect automatically at the end of the day specified in the notice such day being not less than 7 days after the day of service of the notice (or not less than any longer agreed period of notice, if any, as stated in the Special Conditions of Contract (where issued) or in the Purchase Order, of its intention to terminate under this clause 4.11.2).

4.11.3 Any Declaration of Ineffectiveness or Contract Shortening shall have the same effect (including the operation of the following clause 4.11.4), as if a notice of termination had been given under the above clause 4.11.2 and it expired at the time the declaration is required to take effect or the end of the Contract as so ordered to be shortened. The Commissioner shall have no other liability to the Contractor in respect of any Declaration of Ineffectiveness or Contract Shortening.

4.11.4 Termination of this Contract, however arising (including in consequence of any default by the Commissioner), shall have the following effect as and from the Termination Date:-

4.11.4.1 termination shall bring to an end any further performance of Services or further delivery or other action in respect of Goods which have not been Accepted before the Termination Date, save as expressly required as a consequence of termination under this clause 4.11 but shall not affect the continuation of any rights of the Commissioner under the Contract relevant to it being able to fully and properly enjoy or use any Goods or Services delivered prior to termination and without limiting that general position shall not affect the continuation of:-

4.11.4.1.1 this clause 4.11

4.11.4.1.2 clause 4.3 (Assignment and Third Party Rights)

4.11.4.1.3 clause 4.5 (Right of audit and inspection);

4.11.4.1.4 clause 4.9 (property and risk)

4.11.4.1.5 clause 4.10 (liability, indemnity and insurance arrangements)

4.11.4.1.6 clause 4.13.3 (Indemnity in respect of intellectual property)

4.11.4.1.7 clauses 4.16, 4.17 and 4.18 (official secrets, confidentiality and publicity)

4.11.4.1.8 clauses 4.20 to 4.26 (dispute resolution and general provisions).
4.11.4.2  Termination shall be without prejudice to any other remedy or right in respect of any breach of the Contract prior to termination;

4.11.4.3  If the Contractor supplies any Goods under the Contract, then:

4.11.4.3.1  In respect of any Goods Accepted by the Commissioner before the Termination Date, the Commissioner shall pay the Contractor for any such Goods not yet paid for, according to the provisions of clause 4.12 and within the payment period for such Goods as if the Contract had not terminated;

4.11.4.3.2  In respect of any Goods ordered by the Commissioner but not dispatched by the Contractor before termination, then the Contractor shall not dispatch such Goods and the Commissioner shall not be obliged to pay for such Goods;

4.11.4.3.3  In respect of Goods delivered to the Commissioner but not accepted by the Commissioner at the Termination Date, the Commissioner shall be obliged to return such Goods to the Contractor at its own cost (unless it would have been entitled to decline to accept them), and the Commissioner shall not be obliged to pay the Contractor for such Goods;

4.11.4.3.4  The Contractor shall provide upon request any further information, documents, advice or assistance as the Commissioner may reasonably request to enable it to fully and effectively use Goods Accepted prior to the Termination Date or to confirm title to such Goods as vested in the Commissioner.

4.11.4.3.5  Where any Services are reasonably required to enable the Commissioner to fully and effectively use Accepted Goods the Contractor will if required by the Commissioner agree to their provision for such term and on such terms as are agreed or determined to be reasonable.

4.11.4.4  If the Contractor supplies any Services under the Contract, then:

4.11.4.4.1  In respect of any Services properly supplied before the Termination Date, the Commissioner shall pay for such Services in accordance with clause 4.12 and in so far as provision for payment up to the date of termination is not covered there or elsewhere in this Contract, the Commissioner shall pay a fair and reasonable amount for the Services performed up to the Termination Date having regard to the Price and the proportion of the whole of the Services (to which the Price relates) carried out;

4.11.4.4.2  The Contractor shall as soon as reasonably practicable after the Termination Date submit an invoice for any sums it believes due to it following termination and the Commissioner shall pay the sums due on termination (as agreed or determined) within the Payment Period stated in the Special Conditions of Contract (where issued) or in the Purchase Order;

4.11.4.4.3  The Contractor shall provide upon request any further information, documents, advice or assistance as the Commissioner may reasonably request to enable it to take full benefit of the Services carried out by the Contractor up to the Termination Date or to enable the Commissioner or others to effectively and efficiently continue the Services after the Termination Date.

4.11.4.5  The Commissioner shall only be liable upon termination for payment in respect of Accepted Goods and Services up to the Termination Date in accordance with the above clauses plus any Committed Costs but only in so far as they are within the scope and nature contemplated in and subject to and limit stated in the Special Conditions of Contract (where issued) or in the Purchase Order. The Commissioner shall have no further liability to the Contractor for any Losses it may suffer as a result of any termination.

4.11.4.6  The Contractor acknowledges and accepts the limitation on liability of the Commissioner under this Contract as reasonable in the circumstances.
4.12 PAYMENT AND INVOICES

4.12.1 The Contractor shall submit invoices in respect of Goods and/or Services supplied to the address identified by the Commissioner in the Purchase Order. Unless otherwise agreed in writing, invoices shall be submitted after the Goods have been delivered and/or the Services have been performed.

4.12.2 Charges quoted by the Contractor and agreed by the Commissioner shall be deemed to be exclusive of VAT, and VAT at the time of quoting should be set out separately.

4.12.3 All charges levied by the Contractor shall be in accordance with the Price(s) identified and agreed in the Purchase Order.

4.12.4 The Contractor shall provide the Commissioner with bank account details and an appropriate address in order that the Commissioner may make payment to the Contractor by BACS, with a posted remittance advice.

4.12.5 Subject to the above being adhered to, upon its receipt of:

4.12.5.1 a correctly costed invoice; and

4.12.5.2 (where relevant) acceptance of all of the Goods to which it relates;

the Commissioner shall pay each invoice within 30 days. The 30 days shall be counted from the later of the two events identified at clause 4.12.5.1 and clause 4.12.5.2. The Commissioner shall be entitled to withhold or delay payment of any invoice where it disputes the invoice or the Goods and/or Services referred to in it are not in accordance with the Contract.

4.12.6 The Commissioner shall be entitled, but not obliged, to set off any amounts owed to the Commissioner by the Contractor against any sums owed to the Contractor by the Commissioner.

4.12.7 The Commissioner reserves the right to agree alternative payment methods with the Contractor where it offers a financial advantage to the Commissioner (e.g. price reductions in recognition of the reduced payment time for using purchase cards, electronic payments or consolidated invoices).

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

4.12.9 As a party to this contract the Contractor agrees that they will register with the ProcServe Trading Network in order to:

4.12.9.1. Receive electronic RFQs and free text purchase orders as emailed PDF attachments, or

4.12.9.2. Receive electronic RFQs and free text purchase orders and in turn convert electronic purchase orders to electronic invoices for submission through the Trading Network, or

4.12.9.3. Provide electronic catalogue content of the goods and/or services as detailed in the contract with the supplier, or

4.12.9.4. Enable a punch-out link from the marketplace to their own online ordering portal, or

4.12.9.5. Undertake full back office integration with the ProcServe Trading Network in order to transact with the contracting Commissioner through any of the means detailed above.

4.12.9.6. That, upon agreement with the Commissioner, the Contractor agrees to transact through the Trading Network in any or all of the options described above.
4.13 INTELLECTUAL PROPERTY RIGHTS

4.13.1 If at any time an allegation of infringement of Intellectual Property Rights is made by a third party in respect of any Goods and/or Services provided to the Commissioner by the Contractor, or if in the reasonable opinion of the Contractor such an allegation is likely to be made, the Contractor shall at its own expense:

4.13.1.1 obtain the right for the Commissioner to continue using such Goods and/or receive the Services; or

4.13.1.2 modify the Goods and/or Services so as to avoid such infringements, without detracting from their performance;

provided that the above shall be without prejudice to any rights or claims the Commissioner may have under the Contract or otherwise.

4.13.2 If the Contractor cannot replace or modify the Goods and/or Services or procure the Commissioner’s right to their continued use, then the Commissioner shall have the option of terminating the Contract under clause 4.11.

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

4.13.3.1 the Commissioner shall promptly notify the Contractor in writing of any alleged infringement of which it has notice;

4.13.3.2 the Commissioner shall make no admissions without the Contractor’s consent, not to be unreasonably withheld or delayed;

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

4.13.4 The indemnity contained in clause 4.13.3 shall survive the termination (for any reason) or expiry of the Contract.

4.14 COMPLIANCE WITH STATUTORY DUTIES

4.14.1 The Contractor shall in respect of all persons employed by it (whether in execution of this Contract or otherwise) in every factory, workshop or place situate in the United Kingdom and occupied or used by it for the execution of the Contract comply with the following conditions, namely:

4.14.1.1 the Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976; the Race Equality (Amendment) Act 2000; the Sex Discrimination Acts 1975 and 1986 and 2005 amendment; Disability Discrimination Act 2005 or any statutory modification or re-enactment thereof relating to discrimination in employment;

4.14.1.2 the Contractor shall have due regard for its legal obligations under the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 and any amendments thereto. Particular attention is drawn to requirements of the Act relating to safe working practices, use of safety equipment and the conduct of persons employed;

4.14.1.3 where the Contract requires building related works, the Contractor shall comply with the Construction (Design and Management) Regulations 1994 and, in accordance with the Control of Asbestos at Work Regulations 2002 and any amendments thereto shall refer to the On Site
Asbestos Register, before commencing any work, to ascertain the location of any known asbestos material that may affect any actions to be taken if damaged;

4.14.1.4 the Contractor shall comply in all respects with the provisions of the Data Protection Acts 1984 and 1998 and the Electronic Communications Act 2000 and any statutory modification or re-enactment thereof;

4.14.1.5 the Contractor shall comply in all respects with the provisions of the Proceeds of Crime Act 2002 and any regulations made there under and any statutory modification or re-enactment thereof;

4.14.1.6 The Contractor shall support the Commissioner in its compliance with the Freedom of Information Act 2000;

4.14.1.7 The Contractor shall take all reasonable steps to secure the observance of the provisions of this clause 4.14.1 by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

4.14.2 The Contractor shall indemnify the Commissioner against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Commissioner for breach of any of the above statutory duties which arise from the performance of the Contract.

4.15 SECURITY OF PERSONNEL

4.15.1 The Contractor shall comply with the requirements of the Commissioner’s policy with regard to vetting and security clearance of all Staff as set out in this clause 4.15 or as may be varied by the Commissioner from time to time and notified to the Contractor.

4.15.2 The Contractor shall confirm in advance the identity and eligibility to work of all Staff to be deployed in the execution of the Contract (including those employed by its agents and sub-contractors in the execution of the Contract), and shall supply all such personal details as may be required on behalf of the Commissioner.

4.15.3 The Contractor shall routinely operate Staff checks, which as a minimum shall include:

   Identity check:

   4.15.3.1 a visual examination of the following original documents provided by the individual:

   4.15.3.1.1 Full 10 year current British or EEA Passport, or

   4.15.3.1.2 at least two of the following:

   - British driving licence;
   - Full birth certificate (issued within 6 weeks of birth);
   - P45;
   - Cheque book and bank card with 3 statements and proof of signature;
   - Credit card with 3 statements and proof of signature;
   - Proof of residence (e.g. council tax, gas, electricity, water or landline telephone bills); and

   4.15.3.2 a detailed examination of the documents (and photographs) to ensure they are valid, apply to the individual and match (exactly) the information supplied in the job application; and

   4.15.3.3 provision of a certificate signed by the Contractor to confirm an individual’s identity, together with copies of the documents inspected.

   Nationality check and eligibility to work (for non-British citizens):

   4.15.3.4 inspection of current passport including a check of the individual’s likeness to the photograph and the date of birth; and
4.15.3.5 inspection of visas and work permits (also ensuring they match the period the Contractor intends to employ them); and

Other checks:

4.15.3.6 National Insurance Number.

4.15.3.7 Birth certificate.

4.15.3.8 References from previous employers and a check to confirm their authenticity.

4.15.3.9 Qualifications and a check to confirm their authenticity.

4.15.3.10 Driving licence to confirm validity.

4.15.4 The Contractor shall ensure that members of its Staff complete vetting and security clearance questionnaires, including a declaration about previous convictions or cautions, and an acknowledgment that such checks may extend to close family members.

4.15.5 The Contractor shall support vetting and security clearance reviews and notify the Commissioner of specified variations in the personal circumstances of Staff including:

4.15.5.1 change of address;

4.15.5.2 change of spouse or partner; and

4.15.5.3 arrest, caution or conviction (including traffic offences, and fixed penalty notices where penalty points are awarded).

4.15.6 The Contractor shall update Staff information provided to the Commissioner as and when individual members of Staff are replaced or complemented by others.

4.15.7 The Contractor shall provide the Commissioner in writing with all information required by the Policy (as set out above) not less than seven days before the relevant member of Staff is to start work on the Contract. The Commissioner will review this information and advise the Contractor before the intended start date whether it can consent to the nominated Staff being deployed on the Contract. Such consent should not be unreasonably withheld.

4.15.8 The Contractor shall ensure that all Staff deployed on the Contract, regardless of location, sign a confidentiality declaration and strictly adhere to the principles established within the Data Protection Act 1998 and the Commissioner’s policy to protect information.

4.15.9 The Commissioner reserves the right to reject any of the Contractor’s Staff without giving any reason or explanation. The Commissioner also reserves the right to remove the right of Contract participation from any of the Contractor’s Staff at any time during the lifetime of the Contract, without giving any reason or explanation.

4.15.10 The Contractor shall ensure that all agents and sub-contractors it deploys in the execution of the Contract shall comply with the requirements of this clause.

4.16 OFFICIAL SECRETS ACTS AND CONFIDENTIALITY

The Contractor shall, and shall ensure that its Staff shall, abide by the provisions of the Official Secrets Acts 1911 to 1989 or any act amending, replacing or renewing the same.

4.17 CONFIDENTIALITY

4.17.1 The Contractor shall treat as confidential all information relating to:

4.17.1.1 the business and operations of the Commissioner;
4.17.1.2 all the terms of the Contract; and

4.17.1.3 all information relating to third parties obtained through the Contractor’s provision of the Goods and/or Services to the Commissioner

and shall not disclose or use such information except as may be necessary for the proper provision of the Goods and/or Services.

4.17.2 The Contractor shall ensure that all Staff comply with the confidentiality obligations set out in clause 4.17.1.

4.17.3 The provisions of clause 4.17.1 and 4.17.2 shall not apply to:

4.17.3.1 any information in the public domain otherwise than through any act or default of (or on behalf of) the Contractor and;

4.17.3.2 disclosure of any information where this is required by law.

4.17.4 On termination (for any reason) or expiry of the Contract, the Contractor shall, at the Commissioner’s direction, return or destroy and certify the destruction of, all confidential information it obtains as a result of the Contract.

4.17.5 The Contractor acknowledges that, in responding to requests for information in relation to this Contract which are made under the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof or any related guidelines or codes of practice ("FOIA"), the Commissioner shall be entitled to provide information in relation to this Contract, save such information which in the Commissioner’s opinion is exempt information as described within any provisions of Part II of the Freedom of Information Act 2000, and where it is in the public interest to maintain the exemption. For the avoidance of doubt, the designation of any information as being "confidential" does not mean that the Commissioner is under any obligation not to provide that information in response to a request for information under the Freedom of Information Act, nor that the disclosure of such information is a breach of any obligation of confidentiality that the Commissioner may otherwise have.

4.17.6 Where the Commissioner from time to time serves on the Contractor an information notice requiring the Contractor within such time and in such form as is specified in the information notice, to furnish to the Commissioner such information as the Commissioner may reasonably require relating to any requests for information in relation to the Contract which are made to the Commissioner in connection with the FOIA, the Contractor shall assist the Commissioner promptly, and at no additional charge in meeting such requests to enable the Commissioner to respond to an information request in accordance with the FOIA.

4.17.7 The Contractor hereby consents to the Commissioner providing the Prices of the Goods and/or Services or other details of the Contract to any other police Commissioner solely for the purpose of enabling that Commissioner to evaluate any potential contract which it may enter into with the Contractor.

4.18 PUBLICITY

4.18.1 Except with the consent in writing of the Commissioner, which shall not be unreasonably withheld, the Contractor shall not make any press announcement or publicise the Contract in any way.

4.18.2 The Contractor is not authorised to use or display the Commissioner’s logos or crests unless it has received the express written permission of the Commissioner.

4.19 COMPLIANCE WITH COMMISSIONER POLICIES

The Contractor shall, and shall procure that all Staff shall, when on the Commissioner’s Premises, comply at all times with Commissioner policies in force at such Premises and as notified from time to time to the Contractor, including those relating to health, safety and environment.

4.20 DISPUTE RESOLUTION
4.20.1 If any dispute or difference arises between the Commissioner and the Contractor in connection with or arising out of the Contract the Contract Managers will, within ten Normal Business Days of a request from one party to the other, meet in a good faith effort to resolve the dispute.

4.20.2 If the dispute is not resolved at such meeting, the parties shall, unless otherwise agreed between the parties, attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (an “ADR Notice”) to the other party requesting mediation. A copy of the ADR Notice should be sent to CEDR. The mediation will start no later than 20 Normal Business Days after the date of the ADR Notice. If the dispute is not resolved by mediation then clause 4.20.3 shall apply.

4.20.3 Following the application of clause 4.20.2 the Commissioner shall have the option to choose arbitration as a means of resolving the dispute. When arbitration is chosen by the Commissioner, the dispute shall be referred to a single arbitrator to be agreed between the Commissioner and the Contractor, or in the event of a failure to agree, an arbitrator appointed by the president for the time being of the Law Society of England and Wales. Any such reference shall be deemed to be a submission for arbitration within the meaning of the Arbitration Act 1996 (unless otherwise specified in the Contract) or any statutory re-enactment or amendment thereof for the time being in force. Where the Commissioner does not choose arbitration the dispute shall be referred to litigation.

4.20.4 Nothing in this clause 4.20 shall prevent either party exercising its right to terminate this Contract or to seek interim, interlocutory or other equitable relief without having first followed the procedure referred to at clauses 4.20.1 and 4.20.2 above.

4.21 GOVERNING LAW AND JURISDICTION

This Contract shall be governed and construed in accordance with the Laws of England. The Parties agree to submit to the exclusive jurisdiction of the English Courts in relation to all matters arising out of or in connection with this Contract.

4.22 SERVICE OF NOTICES

NB – Note for Contract Manager
You may create a new special condition to permit the use of email or fax. If you do, remember to reference it to this clause (4.22.1) and identify the email addresses and fax numbers concerned.

4.22.1 Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to the party required to receive the notice at its address as set out below:

4.22.1.1 the Commissioner: the address set out in clause 1.3;

4.22.1.2 the Contractor: the address set out in the Purchase Order

or as otherwise specified by the relevant party by notice in writing to the other party.

4.22.2 Any notice shall be deemed to have been duly received:

4.22.2.1 if delivered personally, when left at the address and for the contact referred to in this clause; or

4.22.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Normal Business Day after posting; or

4.22.2.3 if delivered by commercial courier, on the date and at the time that the courier’s delivery receipt is signed.

4.22.3 A notice required to be given under the Contract shall not be validly given if sent by e-mail.

4.22.4 The provisions of this clause 4.22 shall not apply to the service of any proceedings or other documents in any legal action.
4.23 AGENCY

4.23.1 The Contractor is not and shall in no circumstances represent itself as being the servant or agent of the Commissioner, otherwise than in circumstances expressly permitted by these Terms and Conditions and shall ensure that its Staff do not represent themselves likewise;

4.23.2 The Contractor shall have no Commissioner whatsoever to incur any debt for or on behalf of the Commissioner other than in the circumstances provided for in the Contract.

4.24 WAIVER

Failure of the Commissioner at any time to enforce the provisions of the Contract or to require performance by the Contractor of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Commissioner to enforce any provision in accordance with its terms.

4.25 SEVERANCE

If any provision of the Contract shall become or be directed by any Court or competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision, all of which shall remain in full force and effect.

4.26 ENTIRE AGREEMENT

The Contract sets out the entire agreement and understanding between the parties relating to the matters contemplated within it, and supersedes any previous arrangement relating to the subject matter of this Contract.

Part 5.

CONTRACT PARTICIPANTS

NB – Note for Contract Manager
This Part is only required when the contract is collaborative. DELETE this Part if it is not required and renumber Part 6.

5.1 THE CONTRACT PARTICIPANTS ARE:

5.1.1 Any Police Commissioner/Force (including Kent Police Commissioner/Essex Police Commissioner) located within the United Kingdom.
NB – Provide a link to a web site where reader can see the list

OR

5.1.2 The Police Authorities/Forces listed below:
NB – List Contract Partipants here, or provide an appropriate web link.

5.1.3 Any publicly owned organisation, located within the United Kingdom and engaged in the administration of criminal justice. NB – IDENTIFY APPROPRIATE SECTOR.
NB – Provide a link to a web site where reader can see the list.

5.1.3 Any organisation affiliated to those identified in 'a' and 'b' above (e.g. staff associations, collaborative and partnership bodies) located within the United Kingdom

5.2 FURTHER INFORMATION

Further information about Contract Participants can be found in clause 3.8.
Part 6.
TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS
(TUPE)

NB – Note for Contract Manager
This Part is only required when TUPE applies to the contract. DELETE this Part if it is not required.

Additional text will be required when the contract is to be available for other forces to use as reference will need to be made to Contract Participants.

Each Contract Participant to this Framework will need to separately scope the TUPE implications of providing this Service and provide information for the outgoing definitions below.

For the purposes of this Contract the costings presented in the Contractor’s tender may be based on providing the Service to meet the requirements of the Kent Police Commissioner/Essex Police Commissioner.

6.1 ADDITIONAL DEFINITIONS

6.1.1 Outgoing Contractor [NAME of previous contractor]

6.1.2 Transferring Employees Those employees identified in Schedule [1] by reference to their names and dates of birth.

6.1.3 Transfer Date [DATE – [when Services commence]]

6.1.4 TUPE Transfer of Undertakings (Protection of Employment) Regulations 2006

6.2 PROVISIONS

6.2.1 The Contractor shall engage all the Transferring Employees with effect from the Transfer Date on the same terms and conditions (including as to previous periods of continuous employment) whether they are legally enforceable, as those on which they were previously employed by the Outgoing Contractor.

6.2.2 The Contractor acknowledges that the Commissioner may wish to, prior to, on or after termination of this Agreement to invite persons who may include the Contractor to tender for the right to provide some or all of the Services (“Retendering”). Accordingly, the Contractor agrees that at any time during the period of 6 months preceding the expiry of this Agreement or after the Commissioner has given notice to terminate this Agreement, and within 14 working days of being so requested by the Commissioner, the Contractor shall fully and accurately disclose to the Commissioner such information as is reasonably requested by the Commissioner in relation to the Staff including but not necessarily restricted to the following:

6.2.2.1 The total number of employees employed by the Contractor;

6.2.2.2 The total number of agency workers, agents and independent contractors engaged by the Contractor;

6.2.2.3 The total payroll bill (i.e. total taxable pay and allowances including employer’s contributions to pension schemes) of those personnel;

6.2.2.4 The total annual payments made or due to any agents or independent contractors;

6.2.2.5 The total terminal redundancy liability to the Staff

6.2.2.6 In respect of each of the Staff, their general terms and conditions of employment or engagement, their sex, date of birth, current salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement;
6.2.2.7 Details of all changes to matters concerned in this clause [6.2.2] promised, or discussed with any Current Employee or their employee representatives;

6.2.2.8 Details of all dismissals or terminations of anyone employed or engaged in connection with the provisions of the Services in the previous 12 months;

6.2.2.9 Details of all agreements or arrangements (whether or not legally binding) entered into in relation to Staff or any trade union or organisation or body of Staff including any employee representatives;

6.2.2.10 Details of all trade disputes and industrial action (official or unofficial) to which any member of Staff was a party. For the avoidance of doubt, this shall include any dispute between any Staff member individually and the Contractor, or any member of Staff who has left employment in the previous 12 months;

6.2.2.11 Details of all claims or disputes or potential claims and disputes arising from their employment, including, for the avoidance of doubt, any matters raised under the Statutory Disciplinary and Dismissal Procedure or the Statutory Grievance Procedure; and

6.2.2.12 Any other information required under Regulation 11 of TUPE.

The Contractor shall permit the Commissioner to use and disclose the information for informing any tenderer in the Retendering process and shall enable and assist the Commissioner and such other persons as the Commissioner may determine to communicate with and permit either of them to meet the Staff and their trade union or employee representatives as the Commissioner may reasonably request.

The Contractor shall indemnify and keep indemnified the Commissioner for itself and the Future Service Provider from and against all losses, actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever connected with or arising from or relating to the provision of information under the terms of this clause [6.2.2].

In the event that the information provided by the Contractor in accordance with this clause [6.2.2] becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify the Commissioner of the inaccuracies and provide the amended information.

6.2.3 During the period of three months preceding the expiry of the Contract or after the Commissioner has given notice to terminate the Contract the Contractor shall not, without the prior consent of the Commissioner:-

6.2.3.1 vary or purport or promise to vary the terms and conditions of employment of any Staff;

6.2.3.2 employ or offer or promise employment to any person to be employed in connection with the provisions of the Services. Where the Commissioner consents to such employment being offered, the Transferee shall not offer to employ the potential employee on terms and conditions of employment which are materially different in any respect to the terms and conditions of employment then applicable to the relevant category of Staff; and

6.2.3.3 increase the number of employees engaged in providing or assigned to the Services during the term.

6.2.4 The Contractor shall indemnify and keep indemnified the Commissioner and any third party that succeeds the Contractor in the provision of some or all of the Services as a result of Retendering (“the Future Service Provider”) from and against all costs demands claims liabilities awards or expenses (including legal expenses on an indemnity basis) arising from:

6.2.4.1 Any act or omission by the Contractor affecting any Staff;

6.2.4.2 Any claim arising from the Contractor failing to comply with obligations as regards employee liability information arising under Regulation 11 and 12 of TUPE;
6.2.4.3 Any claim arising from the Contractor failing to comply with the obligations to inform and consult arising under Regulation 13 and 14 of TUPE;

6.2.4.4 Any employment costs and liabilities arising as a result of the Contractor's breach of clause [6.2.3] – changes for which consent is required.]

6.2.5 The Contractor shall ensure that all monies, salary, benefits, tax and National Insurance contributions due to be paid to the Staff or Inland Revenue shall be paid up to and including the last day of this Agreement, and fully indemnify the Commissioner or any successor Future Service Provider after Re-tendering.

6.2.6 The Contractor shall indemnify and keep indemnified the Commissioner from and against all liabilities costs claims fines demands and expenses (including legal expenses on an indemnity basis) whatsoever arising in connection with or as a result of any claim by a Transferring Employee that his or her rights or those of any person (including but not limited to a surviving spouse or dependent child) claiming through such an employee have been lost, harmed, damaged, reduced or adversely affected in any way as a result of the Transferring Employee arising from any failure on the part of the Purchaser to comply with ss257 and 258 Pension Act 2004 and Transfer of Employment (Pension Protection) Regulations 2005.