

SCHEDULE B

KEY TERMS

SCHEDULE B**KEY TERMS****PURPOSE**

In addition to the terms and conditions set out in Schedule A (**Form of Contract**), the following Key Terms detail at a high level the draft terms and conditions which the Authority envisages forming the basis upon which it will contract with the successful tenderer.

AUTHORITY'S REQUIREMENTS	TENDERER'S RESPONSE
<p>1. FORM OF THE CONTRACT</p> <p><i>[Note to Tenderer: For the purposes of this Clause 1, "Tenderer" is used rather than "Contractor" as per Section 2.2.5 of Part 1 of the ITT.]</i></p> <p>1.1 The Authority shall require the Tenderer to agree to use the Authority's form of contract which shall include (amongst others) the Key Terms set out in this Schedule B (Key Terms).</p> <p>1.2 The Tenderer must confirm whether it agrees to the following provisions and if it does not, the Tenderer must comply with the requirements of Sections 1 and 2 of Part 2(B) of this ITT. In the event that the Tenderer makes no comment with regards to a particular provision set out below, then this shall be taken by the Authority as the Tenderer's acceptance to that particular provision.</p>	
<p>2. CONTRACTOR PARENT COMPANY GUARANTEE</p> <p>The Contractor shall supply to the Authority a duly executed guarantee by the Contractor's parent company of the Contractor's obligations, in a form specified or approved by the Authority.</p>	
<p>3. SUFFICIENCY OF CONTRACTOR'S RESPONSE TO THE ITT</p> <p>Notwithstanding the provisions of Clause 4 of these Key Terms, the Contractor is deemed to have satisfied itself before submitting its response to the ITT as to the accuracy and sufficiency of the rates and prices submitted by the Contractor in its response to the ITT which shall (except insofar as it is otherwise provided in the Contract) cover all its obligations under the Contract and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other</p>	

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<p>circumstances which might reasonably influence or affect the Contractor's response to the ITT. In addition, the Contractor is deemed to have examined the requirements specified in this Contract. No claims for additional payment shall be allowed on the grounds of misinterpretation of any matter relating to the requirements specified in this Contract on which the Contractor could reasonably have satisfied itself by a visit to the Authority's premises, reference to the Authority, or such other means as may have been appropriate, including due diligence. No additional compensation or time shall be granted on the basis of any related matters arising for which a competent Contractor would have made due allowance.</p>	
<p>4. DUE DILIGENCE</p> <p>4.1 The Contractor shall carry out such due diligence as is necessary in order to ensure that, from the relevant Transfer Date, it shall be able to provide the Services in full compliance with the Contract, including the pricing set out in Schedule E (Pricing) at the Effective Date. Notwithstanding the generality of the foregoing, the Contractor shall ensure that it has made itself aware of, and satisfied itself as to, any other matters relevant to the implementation and fulfilment of the Services by the Contractor.</p> <p>4.2 For all New Services, the Contractor shall perform a similar due diligence exercise to that set out in Clause 4.1 of these Key Terms prior to providing such New Services.</p> <p>4.3 The Contractor acknowledges that the Authority has relied on the Contractor's expertise and professionalism in carrying out its due diligence exercise, its review of the supporting information, and its general enquiries made during due diligence liaison with the Authority and the Incumbent Supplier.</p> <p>4.4 The Contractor's failure to carry out due diligence prior to the Effective Date shall not be used as a reason to increase the Service Charges, alter the Service Levels and/or refuse to provide any of the Services.</p> <p>4.5 The Contractor acknowledges that, except as contemplated by Clause 4.2 of these Key Terms in relation to New Services, there shall not be any due diligence or joint verification with the Authority after the Effective Date.</p>	

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<p>5. TERM</p> <p>5.1 Unless otherwise terminated in accordance with the provisions of the Contract or otherwise in accordance with law or equity, the Contract shall take effect on the date of Effective Date and it shall continue for 8 (eight) years from the date of Transfer of Operational Responsibility.</p> <p>5.2 The Authority shall have the ability to extend the initial Term set forth in Clause 5.1 of these Key Terms for a further 1 (one) year period. Thereafter, the Authority shall have the ability to extend such extended Term by a further 1 (one) year period. Any extension under this Clause 5.2 shall be on existing terms and conditions upon written notice to Contractor.</p> <p>5.3 Upon the expiry of the Term of the Contract and upon giving the Contractor 180 days prior written notice, the Contractor shall maintain the IDENT1 Services and any Optional Services in accordance with the Service Levels detailed in Schedule F (Service Level Requirements) until such time as the Authority has obtained a further service provider, including any procurement process during this period. During this period, the provisions of the Schedule N (Exit Strategy) shall apply.</p> <p>5.4 The Authority shall have a right to terminate the Contract at any time during the Term in accordance with Clause 43 of these Key Terms.</p>	
<p>6. ANNUAL REVIEW OF THE CONTRACT</p> <p>At least every 12 months during the Term, the Contractor shall review the overall operation of the Contract with the Authority to ensure that the Services continue to meet the Authority's strategic Services requirements and shall implement changes to the Services as necessary to meet those requirements. The Contractor shall work with the Authority and provide advice and guidance to the Authority with regard to technology trends and technology planning specific to the Authority's operational requirements.</p>	
<p>7. SCOPE OF THE SERVICES</p> <p>7.1 In consideration of the payment of the Service Charges, commencing on the relevant Transfer Date, the Contractor shall provide the Services to the Authority and the Police Forces (including the</p>	

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<p>IDENT1 Services any Optional Services selected by the Authority or the relevant Police Forces pursuant to Clause 8 below and the Transition Services pursuant to Clause 9 below), as the same may evolve during the Term and as they may be supplemented, enhanced, modified or replaced in accordance with this Contract, but excluding any services, responsibilities or functions that are specifically identified in this Contract as the Authority's responsibility or a third party's responsibility. Such Services are:</p> <p>7.1.1 the services, functions and responsibilities specified in the Contract;</p> <p>7.1.2 any service, function or responsibility performed within the twelve (12) month period preceding the relevant Transfer Date by the Incumbent Supplier's employees or its contractors who were displaced or transitioned to the Contractor or whose functions were displaced as a result of this Contract, even if the service, function or responsibility is not specifically described in this Contract;</p> <p>7.1.3 any services, functions and responsibilities agreed as New Services in accordance with Schedule L (Change Control Procedure); and</p> <p>7.1.4 any services, functions and responsibilities (including any incidental services, functions or responsibilities) not specified in this Contract as within the scope of the Contractor's responsibilities, but reasonably and necessarily required for, or related to, the proper performance and provision of the services, functions and responsibilities set out in this Clause 7.1.</p> <p>7.2 The Contractor shall commence the performance of the Services in line with the Transition Plan detailed in Schedule G (Transition), following the successful completion of the Transition Plan defined in Schedule H (Acceptance Procedures).</p>	
<p>8. OPTIONAL SERVICES</p> <p>8.1 The Contractor shall maintain a catalogue of Systems, Services and Products ("COSSP") ("Catalogue") in Schedule D (Services) of this Contract. Items from the COSSP ("COSSP Items") may be purchased, at the sole discretion of the Authority, from the Contractor by either the</p>	

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<p>Authority or any of the Police Forces. The COSSP Items listed in the Catalogue shall be optional, and therefore, neither the Authority nor the Police Forces are under any obligation to purchase any item in the COSSP.</p> <p>8.2 If the Authority or any of the Police Forces selects any of the COSSP Items, the Contractor shall supply such COSSP Items to the Authority or the relevant Police Forces (as applicable) for the Term of the Contract (unless a shorter period is agreed by the Parties) in accordance with the terms of this Contract.</p> <p>8.3 The Contractor shall be responsible for maintaining the list of COSSP Items detailed in Schedule D (Services) in line with the then-current technology and functionality. Any changes proposed by the Contractor to the content of Schedule D (Services) shall be made in accordance with the Change Control Procedures detailed in Schedule L (Change Control Procedure) and, unless otherwise agreed by the Authority, shall not be subject to any increase in the Service Charges to the Authority.</p>	
<p>9. TRANSITION SERVICES</p> <p>9.1 As used in this Contract, Transition shall relate to either the FOC or TOR (as applicable) (including the transfer of Assets and management) to be conducted in accordance with the Transition Plan. Time shall be of the essence in respect of the Contractor's compliance with the Transition Plan.</p> <p>9.2 Process of Transition</p> <p>9.2.1 The Contractor shall comply with the requirements set out in Schedule G (Transition).</p> <p>9.2.2 The Contractor shall be responsible for the overall management of the Transition and shall:</p> <ul style="list-style-type: none"> a) Keep the Transition on schedule, within cost and in accordance with the timetable and budget set out in the Transition Plan; and b) identify and resolve, or assist the Authority and any Police Forces in the identification and resolution of, any problems encountered in the timely completion of each task identified in the Transition Plan, whether or not the task is the responsibility 	

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<p>of the Contractor or the Incumbent Suppliers.</p> <p>9.2.3 From the Effective Date until completion of Transition, the Contractor shall provide the Authority with weekly progress reports that:</p> <ul style="list-style-type: none"> a) describe, in reasonable detail, the current status of the Transition; b) indicate the progress of the work being performed; c) identify any actual or anticipated problems or delays; d) assess the impact of such problems or delays on the Contractor's provision of the Services; and e) describe all actions being taken or to be taken to remedy such problems or delays. <p>9.2.4 Subject to Clause 9.2.5 of these Key Terms, if Transition is delayed or any Milestone in the Transition Plan is not met, the Authority may withhold the Service Charges and the Authority may claim payment for, or set off against future invoices, all costs and expenses incurred by the Authority that relate to such delay, including costs paid to the Incumbent Suppliers and third parties.</p> <p>9.2.5 If the Contractor fails to fulfil any of its obligations with respect to Transition in accordance with the Transition Plan and Clause 9 of these Key Terms by the dates specified in the Transition Plan, the Contractor shall, at Authority's request and without prejudice to the Authority's other rights and remedies in Law and under the Contract, arrange (at the Contractor's own cost) all such additional resources as are necessary to fulfil said obligation as early as practicable thereafter.</p>	
<p>10. SERVICE LEVELS</p> <p>10.1 The Contractor shall, at all times, achieve or exceed the Service Levels in accordance with the provisions of Schedule F (Service Level Requirements). In addition, the Contractor shall provide the Services with promptness, diligence, in accordance with Good</p>	

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<p>Industry Practice, in a professional manner, and in accordance with the practices and professional standards used by, and consistent with levels of performance achieved by, well-managed operations providing services similar to the Services.</p> <p>10.2 At least annually during the Term, the Authority and the Contractor shall review the Service Levels and shall make adjustments to them as appropriate to reflect improved performance capabilities associated with advances in the technology, processes and methods used to provide the Services.</p> <p>10.3 The Parties anticipate that the Service Levels shall improve over time and the Parties shall mutually cooperate to identify improvements and efficiencies in the provision of the Services.</p>	
<p>11. FAILURE TO PERFORM</p> <p>If the Contractor commits a Service Level Failure, the Contractor shall take the steps identified in Schedule F (Service Level Requirements) and shall promptly:</p> <p>11.1 investigate the underlying causes of the failure to meet the Service Level and use Commercially Reasonable Efforts to preserve any data indicating the cause of the Service Level Failure;</p> <p>11.2 arrange all such additional resources as are necessary to perform the Services in accordance with the Service Levels as early as practicable thereafter and at no additional charge to the Authority; and</p> <p>11.3 prepare and deliver to the Authority a report identifying the Service Level Failure and its causes in accordance with Schedule F (Service Level Requirements);</p> <p>11.4 use Commercially Reasonable Efforts to minimize the impact of the Service Level Failure to both the Authority and all the Police Forces, and to prevent it from recurring;</p> <p>11.5 correct the Service Level Failure and meet the relevant Service Level; and</p> <p>11.6 advise the Authority, as and to the extent requested by the Authority, of the status of remedial efforts being undertaken.</p>	

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<p>12. SERVICE CREDITS</p> <p>12.1 If the Contractor fails to meet a Service Level Threshold, the Authority may deduct Service Credits from the Service Charges on the next applicable invoice in accordance with Schedule F (Service Level Requirements).</p> <p>12.2 The Contractor acknowledges and agrees that the Service Credits are a price adjustment to take into account services that are not properly delivered to the Authority and are not an estimate of the loss or damage that may be suffered by the Authority and Police Forces as a result of the Contractor's failure to meet any Service Level. Payment of any Service Credit by the Contractor under this Contract is without prejudice to any entitlement that the Authority may have to damages at Law from the Contractor resulting from, or otherwise arising in respect of, any such breach of this Contract, or to any right of the Authority to terminate this Contract pursuant to Clause 43 of these Key Terms.</p>	
<p>13. VOLUME OF SERVICES</p> <p>The Authority shall be permitted to reduce or increase the volume / scope of the Services provided by the Contractor in the event that Authority's operational requirements change during the Term, in accordance with the principles set out in Schedule E (Pricing).</p>	
<p>14. CHANGES TO THE SERVICES</p> <p>14.1 New Services</p> <p>Changes to the Services and the introduction of New Services shall be agreed and implemented in accordance with Schedule L (Change Control Procedure).</p> <p>14.2 Removal of Services/Bureaux</p> <p>By written notice to the Contractor, the Authority may, from time to time, remove any category (or part thereof) of the Services (including any Bureaux) from the scope of the Contract, in which case:</p> <p>14.2.1 those removed services shall no longer be part of the Services from the date specified in the notice;</p> <p>14.2.2 if necessary, the Service Charges shall be equitably adjusted in accordance with the</p>	

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<p>procedure set out in Schedule E (Pricing) to reflect the reduced scope and/or volume of the Services; and</p> <p>14.2.3 the Contractor shall provide Termination Assistance in relation to the removed services, as requested by the Authority.</p> <p>14.3 Removal of Police Forces</p> <p>From time to time, the Authority may inform the Contractor that a Police Force will no longer receive the Services (or part of the Services). In such circumstances, the Authority may at its sole discretion:</p> <p>14.3.1 provide written notice to the Contractor to remove that Police Force from the scope of the Contract as of the date specified by the Authority;</p> <p>14.3.2 if necessary, request that the Service Charges be equitably adjusted in accordance with the procedure set out in Schedule E (Pricing) to reflect the reduced scope and/or volume of the Services;</p> <p>14.3.3 request that the Contractor provide Termination Assistance (including continuing the benefit of any licences granted to the said Police Force under this Contract) in relation to the removed Police Force; and</p> <p>14.3.4 if a Police Force is removed from the scope of the Contract pursuant to this Clause 14.3 as a result of any UK government reorganisation, the Contractor shall, if requested by the Authority, provide the Services to any new government entity designated by the Authority under the terms of this Contract for a reasonable period designated by the Authority, which for the avoidance of doubt, may include Termination Assistance.</p>	
<p>15. SERVICE CHARGES</p> <p>15.1 All Service Charges are set out in Schedule E (Pricing) and the Authority shall only be required to pay to the Contractor those amounts set out therein. The Contractor acknowledges that no additional amounts shall be paid by the Authority for the provision of the Services unless agreed pursuant to</p>	

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<p>Schedule L (Change Control Procedure).</p> <p>15.2 All Service Charges due under this Contract shall be paid in Pounds Sterling and the Authority shall pay the Service Charges in accordance with the invoicing procedure specified in Schedule E (Pricing).</p> <p>15.3 Payment shall be made within thirty (30) days of receipt by the Authority (at its nominated address for invoices) of a valid invoice from the Contractor, in accordance with the provisions of Schedule E (Pricing). Failure to pay within this period shall not constitute a Material Default of this Contract.</p> <p>15.4 The Service Charges are stated exclusive of VAT. The Authority shall pay the VAT on the Service Charges at the rate and in the manner prescribed by Law, from time to time.</p> <p>15.5 Any legislative requirement to account for the Services in Euro instead of and/or in addition to Pounds Sterling, shall be implemented by the Contractor at nil charge to the Authority.</p> <p>15.6 Any conversion of Service Charges stated in the Contract from Pounds Sterling to the Euro shall be undertaken at the official rate declared by HM Treasury at the time of the changeover.</p> <p>15.7 If either Party fails to pay any valid amount payable under this Contract by the due date specified in Schedule E (Pricing) or elsewhere in this Contract (as applicable), the non-paying Party shall be liable to pay interest on the overdue amount from the due date up to the actual payment date at the rate of 2% per annum above the base rate of the National Westminster Bank from time to time applicable in the United Kingdom.</p>	
<p>16. RECOVERY OF SUMS DUE</p> <p>Save where there is genuine dispute, if any sum of money shall be due from the Contractor, the same may be deducted by the Authority or the Police Forces (as applicable) from any sum then due or which at any time thereafter may become due to the Contractor under this Contract.</p>	
<p>17. REFINANCING</p> <p><i>[Note to Tenderer: The Authority reserves the right to introduce a refinancing Clause if it appears necessary to the Authority depending on the nature of the responses submitted by the Tenderer.]</i></p>	

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<p>18. POLICE FORCES</p> <p>During the Term, the Contractor shall provide the Services to the Authority and the Police Forces. All of the Police Forces shall have the right to benefit from the Services under the Contract and shall be deemed third party beneficiaries under this Contract. In particular, the Police Forces shall be deemed third party beneficiaries in respect of any indemnity or any limitation or exclusion of liability in favour of the Authority which are hereby intended by the Parties to be a right or benefit enforceable by such Police Forces.</p>	
<p>19. USE OF THIRD PARTIES AND COOPERATION WITH OTHER SERVICE PROVIDERS</p> <p>19.1 The Contractor shall be required to permit access to third parties or the Authority itself in accordance with Clause 19.2 of these Key Terms.</p> <p>19.2 The Contractor shall co-operate to the extent that it is able to do so without impacting on its ability to perform the Services with all relevant parties, including but not limited to the Authority or third parties under contract to the Authority to facilitate co-ordination of other services that impact upon or interact with the Services, including by providing access to the Contractor Premises, Equipment, Software and other facilities reasonably necessary to enable such services to be performed subject always, to such third parties complying with the Contractor's reasonable security and confidentiality requirements.</p>	
<p>20. CONSENTS AND LICENCES</p> <p>The Contractor agrees to obtain and maintain throughout the Term at its own cost, all consents and licences which are necessary for the Contractor to provide the Services and Authority to receive the benefits of the Services.</p>	
<p>21. REQUIRED CONSENTS</p> <p>The Contractor shall obtain all Required Consents necessary to complete the Transition and to perform the Services. Unless the Authority otherwise agrees in writing, the Contractor shall pay any fees (e.g. transfer or upgrade fees) that may be required to obtain a Required Consent. Subject to Authority's</p>	

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<p>approval, if a Required Consent cannot be obtained, the Contractor may adopt any alternative approaches or work-arounds that are necessary and sufficient to provide the Services without the relevant Required Consent. Contracts that are the subject of a Required Consent shall be transferred from Authority to the Contractor by appropriate mechanisms.</p>	
<p>22. THIRD PARTY CONTRACTS</p> <p>22.1 Without prejudice to Clause 29.4.1 of these Key Terms, the Contractor shall structure its arrangements with any third party providers of services, including, by way of example, software licences, maintenance contracts and equipment leases, so that the relevant contracts may be transferred, assigned or novated to the Authority or a Successor Contractor (as applicable) as required pursuant to Termination Assistance without the need for further consent, licence or payment of charges applicable to such transfer, assignment or novation (as applicable), and that any ongoing fees under those arrangements payable by Authority after the Termination of the Contract are consistent with and no higher than the fees payable by the Contractor prior to such Termination.</p> <p>22.2 For the avoidance of doubt, Clause 22.1 of these Key Terms shall not apply to the Authority's third party contract arrangements already in place prior to the Effective Date.</p>	
<p>23. CONTRACTOR PERSONNEL</p> <p>The Contractor shall comply with the requirements set out in Schedule M (HR and TUPE Information) regarding Key Contractor Personnel and the approval of personnel.</p>	
<p>24. TUPE</p> <p>If any of the Authority's staff, the Incumbent Supplier's staff or any other staff employed or engaged in the provision of the NAFIS Services and/or SAFR Services (as applicable) transfer as a result of TUPE, the applicable provisions of Schedule M (HR and TUPE Information) shall apply.</p>	
<p>25. PERSONNEL ACCESS</p> <p>25.1 On behalf of itself and/or any Police Force, the</p>	

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<p>Authority reserves the absolute right under this Contract to refuse to admit to any Authority Premises, any person employed or engaged by the Contractor, or by a Subcontractor, whose admission to such Authority Premises would be, in the sole opinion of the Authority or the applicable Police Force, undesirable.</p> <p>25.2 If and when directed by the Authority, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the performance of this Contract to any Authority Premises, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Authority may reasonably require from time to time.</p> <p>25.3 The Contractor 's representatives, engaged within the boundaries of the Authority Premises shall comply with such rules, regulations and requirements (including those relating to security contracts) as may be in force from time to time for the conduct of personnel when at the Authority Premises and when outside the Authority Premises.</p> <p>25.4 If the Contractor shall fail to comply with Clauses 25.2 and 25.3 of these Key Terms and if the Authority (whose decision shall be final and conclusive) shall decide, at its sole discretion, that such failure is prejudicial to the interests of the Authority and if the Contractor does not comply with the provisions of Clause 25.2 or Clause 25.3 of these Key Terms (as applicable) within a reasonable time of written notice so to do, then the Authority may terminate this Contract</p>	
<p>26. DISCRIMINATION</p> <p>The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all current UK employment Laws or European Union employment Laws or directives or any statutory modification or re-enactment thereof relating to discrimination in employment or otherwise. The Contractor shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Contractor and all Subcontractors employed in the execution of the Contract.</p>	
<p>27. RESPONSIBILITY FOR SUBCONTRACTORS</p> <p>27.1 The Contractor shall not delegate or subcontract any of its responsibilities without prior written approval</p>	

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<p>of the Authority.</p> <p>27.2 The Contractor shall ensure that Subcontractors comply with the terms and conditions of this Contract as they apply to the Contractor and the Contractor Personnel.</p> <p>27.3 The Authority may require the Contractor to cease using a Subcontractor if it has concerns about the Subcontractor's performance.</p> <p>27.4 The Contractor shall remain responsible for the acts and omissions of its employees and Subcontractors.</p> <p>27.5 The Contractor shall use all reasonable efforts to ensure that all Subcontractors' equipment rental or lease agreements, software licences and/or Intellectual Property Rights, and all other (nonemployment) contracts which are necessary to the performance of the Services, are assignable to the Authority (without any transfer charge) upon the Termination of the Contract and the Contractor shall notify the Authority of the results of its efforts under this Clause 27.5 within one (1) month of the entry into of any such agreement with the applicable Subcontractor.</p>	
<p>28. CONFIDENTIALITY</p> <p>28.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Contractor acknowledges that any Confidential Information obtained by or provided to the Contractor in relation to the Contract remains the property of the Authority, its servants or agents, operational partners or members as appropriate.</p> <p>28.2 Each Party shall, on behalf of itself, ensure that:</p> <p>28.2.1 it and any person employed or engaged by the relevant Party (in connection with this Contract in the course of such employment or engagement) shall only use Confidential Information for the purposes of and the extent necessary, enabling it to perform (or cause to be performed) or to enforce any of its rights or obligations under this Contract;</p> <p>28.2.2 any person employed or engaged by either the Contractor or the Authority, as applicable, (in connection with this Contract in the course of such employment or engagement) shall not disclose any Confidential</p>	

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<p>Information to any third party without the prior written consent of the other Party;</p> <p>28.2.3 it shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Contract by their employees, servants, agents or Subcontractors; and</p> <p>28.2.4 without prejudice to the generality of the foregoing neither Party nor any person engaged by them whether as a servant or a consultant or otherwise shall use the Confidential Information for the solicitation of business from the other or by their servants or consultants or by any third party.</p> <p>28.3 The Contractor shall obtain from all Subcontractors, prior to their commencing work on the Services or receiving any Confidential Information, a signed non-disclosure agreement.</p> <p>28.4 The Contractor shall inform the Authority of all third parties (including Subcontractors and all Contractor Personnel) to whom it intends to disclose Confidential Information and the Authority shall have the right to veto the disclosure of Confidential Information to any such persons, and in the event of such veto being exercised by the Authority, the Contractor shall not disclose any Confidential Information to any such vetoed person.</p> <p>28.5 The provisions of Clause 28.2 of these Key Terms shall not apply to any information which:</p> <p>28.5.1 is or becomes public knowledge other than by breach of Clause 28 of these Key Terms;</p> <p>28.5.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;</p> <p>28.5.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;</p> <p>28.5.4 is independently developed without access to the Confidential Information; or</p> <p>28.5.5 is required to be disclosed by Law or pursuant to the rules or any order having the</p>	

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<p>force of law of any court, association or agency of competent jurisdiction or any government agency.</p> <p>28.6 Nothing in Clause 28 of these Key Terms shall be deemed or construed to prevent the Authority from disclosing any Confidential Information obtained from the Contractor to any consultant, professional adviser or other person engaged by the Authority in connection with this Contract provided that the Authority shall notify the Contractor of the identity of such consultant, professional adviser or other person as soon as reasonably practicable.</p> <p>28.7 Nothing in Clause 28 of these Key Terms shall prevent the Authority from using techniques, ideas and know-how gained during the performance of this Contract (or afterwards if terminated or on expiry of the Contract) in the furtherance of its normal business.</p> <p>28.8 The obligations with respect to Confidential Information disclosed under this Contract shall survive Termination of this Contract and continue for as long as such information remains confidential.</p>	
<p>29. INTELLECTUAL PROPERTY RIGHTS</p> <p>29.1 Intellectual Property Rights existing at the Effective Date</p> <p>Save as set out herein, this Contract shall not be deemed to assign or otherwise transfer to any Party any Intellectual Property Rights of the other Party existing at the Effective Date. Neither Party shall contest the ownership of any such Intellectual Property Rights belonging to the other Party prior to the Effective Date.</p> <p>29.2 Authority Software and Authority Material</p> <p>29.2.1 The Authority shall retain all right, title and interest in and to all Authority Software and Authority Material, including all Intellectual Property Rights therein.</p> <p>29.2.2 The Authority hereby grants the Contractor a fully paid-up, non-exclusive, nontransferable licence during the Term to use the Authority Software and the Authority Material, only to the extent necessary and for the sole purpose of fulfilling the Services and/or performing its other obligations under this Contract, with</p>	

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<p>the right to grant sublicences thereunder to Subcontractors only for such purpose.</p> <p>29.2.3 The Contractor and Subcontractors shall cease any and all use of the Authority Software and Authority Material upon Termination of this Contract.</p> <p>29.3 Contractor Software and Contractor Material</p> <p>29.3.1 Subject to Clause 29.5.3 of these Key Terms, the Contractor shall retain all right, title and interest in and to the Contractor Software and Contractor Material, including all Intellectual Property Rights therein.</p> <p>29.3.2 The Contractor shall not use any Contractor Software or Contractor Material as part of, or in the provision of, the Services without first demonstrating to the Authority that the Contractor Software or Contractor Material (as applicable) proposed to be used satisfies the Authority's requirements, including the Authority's security requirements (as set out in Schedule K (Security) and its requirements in connection with the Authority's ability to exit from this Contract as set out in Schedule N (Exit Strategy). The Contractor shall be responsible for installing, operating and maintaining the Contractor Software or Contractor Material (as applicable) at its own expense.</p> <p>29.3.3 The Contractor hereby grants to the Authority, the Police Forces, their contractors, agents and employees a licence to use, operate, and copy the Contractor Software and Contractor Material for the purpose of the Authority and the Police Forces receiving the benefit of the worldwide, fully paid-up, non-exclusive Services during the Term. The licence granted under this Clause 29.3.3 shall take effect on the date that the relevant Contractor Software or Contractor Material is first used by or on behalf of the Contractor to provide the Services.</p> <p>29.3.4 Subject to the terms agreed pursuant to Clause 29.3.5 of these Key Terms, with effect from the Termination Date, the Contractor grants to the Authority, Police Forces, Successor Contractor, and their contractors,</p>	

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<p>agents and employees, a perpetual, worldwide, fully paid-up, nonexclusive licence to use, operate, adapt, copy, maintain, support, modify and enhance all the Contractor Software (including, for the avoidance of doubt, the Contractor Software Source Code) and Contractor Material for the purpose of the Authority or the Police Forces (as applicable) receiving and/or the Successor Contractor(s) and their contractors agents and employees providing services similar to those provided by the Contractor prior to the Termination Date.</p> <p>29.3.5 Prior to the Termination Date of this Contract, the Parties shall use Commercially Reasonable Efforts to agree the terms pursuant to which the Contractor shall support the Contractor Software and Contractor Material after Termination, provided that such terms shall be no more restrictive than those offered by the Contractor to other customers.</p> <p>29.4 Third Party Software and Third Party Material</p> <p>29.4.1 Subject to Clause 29.9 of these Key Terms, the Contractor shall provide such Third Party Software and Third Party Material as is necessary or appropriate to supply the Services or otherwise in accordance with any technology planning agreed by the Authority. Before installing any Third Party Software or Third Party Material (as applicable), the Contractor shall obtain or provide (as applicable) a licence on terms agreed with the Authority (“Licence”) enabling the Authority, the Police Forces, or their Subcontractors or their permitted assignees, rights to use the Third Party Software and/or Third Party Material (as applicable), as appropriate, during the Term and from the Termination Date for the purposes obtaining the Services and/or to perform the Services or engage a third party to do so, as applicable. The Contractor shall be liable for any additional costs associated with the above.</p> <p>29.4.2 The Contractor shall ensure that Third Party Software and Third Party Material acquisitions (including Modifications to any Third Party Software that was already in use as at the Effective Date) shall be in the</p>	

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<p>Contractor's name, provided that prior to the introduction of such Third Party Software or Third Party Material.</p> <p>a) the Contractor shall use Commercially Reasonable Efforts to obtain the right to grant to the Authority, all Police Forces and their respective agents and employees, a perpetual, worldwide, fully paid, non-exclusive licence to use, operate, adapt, copy, maintain, support, modify and enhance such Software or Material at the Termination of this Contract and at no additional charge to the Authority; and</p> <p>b) the Contractor shall not use any Third Party Software as part of, or in the provision of, the Services without first demonstrating to the Authority that the Third Party Software proposed to be used satisfies the Authority's requirements, including the Authority's security requirements (as set out in Schedule K (Security) and its requirements in connection with its ability to exit from this Contract as set out in Schedule N (Exit Strategy).</p> <p>29.5 Work Product</p> <p>29.5.1 Subject to Clause 29.5.3 of these Key Terms and provided the Authority pays for the creation of the relevant Work Product, the Authority shall own all rights, title and interest (including all Intellectual Property Rights) in and to all Work Product, together with all copies thereof, subject, in the case of Modifications to Third Party Software or Third Party Material included in such Work Product, to the terms of the relevant licences or contracts for such Third Party Software or Third Party Materials.</p> <p>29.5.2 The Authority hereby grants to the Contractor a world-wide, fully paid-up, nonexclusive, non-transferable licence during the Term to use the Work Product, only to the extent necessary and for the sole purpose of fulfilling the Services and/or performing its other obligations under this Contract, with the right to grant sub-licences thereunder to Subcontractors only for such purpose.</p>	

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<p>29.5.3 Unless the Parties expressly agree otherwise, all Modifications to Contractor Software and Contractor Material shall be deemed to be Work Product for the purposes of this Contract. The Contractor may request that particular Modifications to the Contractor Software and/or Contractor Material (as applicable) should be deemed to be Contractor Software or Contractor Material (as applicable) rather than Work Product (such request to be supported by a demonstration to the Authority of the benefits, financial or otherwise, that could accrue to the Authority from such a position) in which case the Parties shall discuss such request and attempt to agree through the Change Control Procedure set out in Schedule L (Change Control Procedure) the impact of such request.</p> <p>29.6 Non-Infringement, Conformation to Specification and Conformation of Ownership</p> <p>29.6.1 The Contractor shall ensure that the Contractor Software, Contractor Material Work Product, or any other product provided by the Contractor or any Subcontractor, and its use by the Authority, Police Forces, and any Successor Contractors in the intended manner, shall not infringe any Intellectual Property Rights or moral right of any third party.</p> <p>29.6.2 Subject to Clause 29.6.1 of these Key Terms, the Contractor and all relevant Subcontractors confirm that:</p> <ul style="list-style-type: none"> a) they own or have the right to use or otherwise exploit, and shall, at all relevant times, own or have the right to use or otherwise exploit, the Equipment, Material, Software and all Intellectual Property Rights necessary to provide the Services; b) they shall not infringe any third party's Intellectual Property Rights in supplying the Services; and c) they have, and shall at all relevant times have, full right to grant the licences and provide any Assets, Work Product and/or 	

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<p>Software to the Authority as set out in this Contract.</p> <p>29.7 Escrow</p> <p>The Contractor shall keep the Source Code of all Software produced as part of the Work Product and of all Contractor Software current, and shall, upon receipt of a written request by the Authority, place the Source Code of all such Software in escrow with the National Computing Centre, Manchester, on the terms of its tripartite agreement or on such other terms as the Contractor and the Authority shall from time to time mutually agree.</p> <p>29.8 Cataloguing</p> <p>The Contractor shall maintain a continuously updated inventory of all Contractor Software, Contractor Material, Authority Software, Authority Material, Third Party Software, Third Party Material and all Work Product which are used as part of, or in the provision of, the Services hereunder from time to time.</p> <p>29.9 Third Party Legacy Software and Materials</p> <p>For the avoidance of doubt, the obligations of the Contractor in Clauses 29.4.1 and 29.4.2 of these Key Terms shall not apply in relation the Third Party Software and the Third Party Material existing at the Effective Date.</p>	
<p>30. REGULATORY AND LEGAL COMPLIANCE</p> <p>30.1 The Contractor shall provide the Services consistent with regulatory requirements to which the Authority is subject, and the Contractor shall make any necessary changes to the Services to comply with such requirements. Regulatory requirements include (among others) data protection legislation, import and export restrictions and requirements imposed by UK regulatory authorities. The Contractor shall ensure that any such change shall be implemented by the Contractor so as not to have an adverse effect on, or give rise to increased inconvenience in, the receipt of the Services or cause the Services to cease to fulfil the requirements and specifications of the Authority.</p> <p>30.2 The Parties acknowledge that any costs relating to the compliance of any material Discriminatory Change in Law shall be subject to the Change Control Procedures set out in Schedule L (Change</p>	

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<p>Control Procedure). All other changes in Law shall be at the Contractor's cost.</p>	
<p>31. DATA PROTECTION</p> <p>31.1 The Parties shall each comply with their respective obligations under the DPA. Neither Party shall do any act that puts the other Party in breach of its obligations under the DPA and nothing in this Contract shall be deemed to prevent any Party from taking the steps it reasonably deems necessary to comply with the DPA.</p> <p>31.2 The Parties acknowledge that:</p> <p>31.2.1 the Authority alone shall determine the purposes for which and the manner in which Authority Personal Data is, or is to be, processed in the performance of the Services;</p> <p>31.2.2 the Authority shall be the "Data Controller" (as defined in the DPA) in respect of all Authority Personal Data; and</p> <p>31.2.3 the Contractor shall be the "Data Processor" (as defined in the DPA) in respect of Authority Personal Data.</p> <p>31.3 In a manner that conforms to any time-scales set out in the DPA, and, in any event, as soon as reasonably practicable, the Contractor shall, and shall instruct any Subcontractors to, comply with any reasonable written request by the Authority to:</p> <p>31.3.1 correct or delete inaccurate Authority Personal Data;</p> <p>31.3.2 provide a copy of Authority Personal Data relating to a "Data Subject" (as defined in the DPA) that is stored in any form of retrieval or storage facilities in the possession or control of the Contractor;</p> <p>31.3.3 provide information about the Authority's processing of Authority Personal Data;</p> <p>31.3.4 assist in respect of any request or notice, or any anticipated request or notice, by or on behalf of any Data Subject in respect of Authority Personal Data; and</p> <p>31.3.5 otherwise provide reasonable assistance to the Authority as necessary to allow the</p>	

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<p style="text-align: center;">Authority to comply with the DPA.</p> <p>31.4 All Authority Personal Data shall remain the property of the Authority (which may be withheld or withdrawn by the Authority at the Authority's sole discretion). The Contractor shall not, without the Authority's prior written authorisation:</p> <p>31.4.1 use Authority Personal Data for the Contractor's or Subcontractors' own purposes, including marketing purposes; or</p> <p>31.4.2 transfer, disclose, assign, sell lease or otherwise provide any of Authority Personal Data to third parties or transfer the Authority Personal Data across any country's border except to countries or territories within the European Economic Area.</p> <p>31.5 The Contractor shall promptly notify the Authority if any complaints are received about the processing of Authority Personal Data from third parties, and the Contractor shall not make any admissions or take any action which may be prejudicial to the defence or settlement of any such complaint and shall provide to the Authority such reasonable assistance as it may require in connection with such complaint.</p> <p>31.6 DPA – Seventh Data Protection Principle</p> <p>the Contractor acknowledges that it is obliged to comply with the “Seventh Data Protection Principle” in respect of Authority Personal Data (as set out in the DPA) and, in particular, that it shall comply with the following obligations:</p> <p>31.6.1 taking appropriate technical and organisational security measures, in accordance with the requirements of this Contract, to safeguard against unauthorized and unlawful processing of Authority Personal Data and against accidental loss or destruction of, or damage to, Authority Personal Data. In doing so, the Contractor will have regard to the state of technological development and cost of implementing any measures in order to comply with the legislation in determining which measures are appropriate;</p> <p>31.6.2 only processing Authority Personal Data in accordance with written instructions given by the Authority, including as set out in this</p>	

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<p>Contract;</p> <p>31.6.3 taking reasonable steps to check the reliability of those Contractor Personnel that have access to Authority Personal Data; and</p> <p>31.6.4 ensuring that all of the Contractor Personnel involved in processing Authority Personal Data have undergone reasonably adequate training in the care and handling of Authority Personal Data.</p>	
<p>32. DATA LOSS</p> <p>32.1 The Contractor shall ensure that the Authority can recover all Authority Data in accordance with this Clause 32.</p> <p>32.2 The Contractor and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Contract) to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data. 32.3</p> <p>32.3 The Contractor shall not delete or remove any copyright notices contained within or relating to the Authority Data.</p> <p>32.4 As part of the Services, the Contractor shall:</p> <p>32.4.1 take such steps as are necessary to ensure that, in the event of any corruption or loss of the Authority Data howsoever caused, the Contractor is in a position to restore or procure the restoration of the Authority Data; and</p> <p>32.4.2 at the request of the Authority in the event of any corruption or loss of the Authority Data and without prejudice to any other remedies that may be available to it either under the Contract or otherwise, restore or procure the restoration of the Authority Data to its state immediately prior to the said corruption or loss, or, at the direction of the Authority, the data should be restored to another state, that is technically possible, as the Authority sees fit to specify. The Contractor shall be entitled to reasonable costs unless the corruption or loss of data was due to the Contractor's Default.</p>	

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<p>33. CONTRACT MANAGEMENT</p> <p>The Contractor and the Authority shall undertake their respective obligations with relation to the contract management activities ("Contract Management") detailed in Schedule I (Contract Management).</p>	
<p>34. BENCHMARKING</p> <p>34.1 From time to time during the Term, the Authority may have the Service Charges, Service performance or Pass-through Expenses reviewed by an independent organisation with demonstrated benchmarking expertise, methodology and data sources ("the Benchmark") to measure the Service Charges, Service performance or Passthrough Expenses to determine if the Service Charges are competitive, the Service performance efficient, effective and productive and the Passthrough Expenses are competitive in the market place.</p> <p>34.2 The Contractor shall provide full co-operation and documentation to the Benchmark in order for the Benchmark to carry out the tasks described above, (subject to the Benchmark meeting reasonable confidentiality requirements).</p> <p>34.3 The benchmarking costs shall be split equally between the Authority and the Contractor.</p> <p>34.4 If the benchmarking shows that the Service Charges or Pass-through Expenses are not price competitive and if they are higher than charges for services comparable to the Services, the Contractor shall assist the Authority in determining the causes of the uncompetitive pricing and to the extent that the uncompetitive pricing is not caused by the Authority's unique requirements as identified by the Benchmark, the Contractor shall take the following corrective action, as applicable:</p> <p>34.4.1 in respect of the Service Charges, the Contractor shall lower the Service Charges to match the identified lower charges for the comparable services; or</p> <p>34.4.2 in respect of the Pass-through Expenses, the Contractor shall put in place new arrangements immediately in order to secure lower Pass-through Expenses in order to match the lower charges for comparable pass-</p>	

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<p>through expenses.</p> <p>34.5 If the benchmarking shows that the Service performance is not efficient, effective and productive, the Contractor shall lower the Service Charges accordingly in order to reflect the actual value of the Service performance being received by the Authority.</p> <p>34.6 As an alternative to Clauses 34.4 or 34.5 of these Key Terms, and at the discretion of the Authority, the Authority may obtain the relevant Services from a third party or perform the Services itself and in such circumstances those Services shall no longer be in scope and no Service Charges or Pass-through Expenses for such Services shall be payable.</p>	
<p>35. AUDIT RIGHTS AND ACCESS</p> <p>The Parties shall comply with the provisions of Schedule J (Access and Inspection of Records).</p>	
<p>36. DISPUTE RESOLUTION PROCEDURE</p> <p>The Parties shall comply with the provisions of Schedule P (Dispute Resolution Procedure).</p>	
<p>37. SECURITY REQUIREMENTS</p> <p>The Contractor shall comply with the Security requirements as set out in Schedule K (Security).</p>	
<p>38. ACCESS TO PREMISES</p> <p>38.1 Save where the Authority indicates otherwise, any Authority Premises made available to the Contractor by the Authority in connection with this Contract shall be made available to the Contractor free of charge and such Authority Premises shall be used by the Contractor solely for the purpose of performing this Contract. The Contractor shall have the use of such Authority Premises as licensee and shall vacate the same upon the Termination this Contract or at such earlier date as the Authority may determine in its sole discretion, or temporarily in the event of urgent operational need.</p> <p>38.2 The Contractor shall comply with all reasonable security requirements of the Authority while on the Premises, and shall procure that all of its employees, agents and Subcontractor shall likewise comply with such requirements.</p>	

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<p>39. WARRANTIES AND REPRESENTATIONS</p> <p>39.1 The Contractor warrants and represents that, throughout the term of this Contract:</p> <p>39.1.1 at all times, the Contractor has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of the Contractor Parent Company) to enter into and to perform this Contract and that this Contract is executed by a duly authorized representative of the Contractor;</p> <p>39.1.2 the Contractor has the full capacity and authority to grant the licences referred to in Clause 29 of these Key Terms and/or shall secure such authorisation from third parties relative to their products;</p> <p>39.1.3 the Contractor is not aware as at the Effective Date of anything within its reasonable control which might or will adversely affect its ability to fulfill its obligations under this Contract;</p> <p>39.1.4 the Contractor's signing, delivery and performance of this Contract will not constitute:</p> <ul style="list-style-type: none"> a) a violation or any law, judgement, order or decree; b) a material default under any material contract by which it or any of its assets are bound; or c) an event that would, with notice or lapse of time, or both, constitute such a default. <p>39.1.5 the Services shall be supplied and rendered with all due skill, care, promptness and diligence by appropriately experienced, qualified and trained personnel and executed in a professional manner;</p> <p>39.1.6 the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures; and</p>	

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<p>39.1.7 the Service Charges were independently established by the Contractor and proposed to the Authority without any collusion with any third party or any employee, adviser or representative of the Authority.</p> <p>39.2 Each warranty shall be construed as a separate warranty and shall not be limited or restricted by reference to or inference, from, the terms of any other warranty or any other terms of the Contract. Except as expressly stated in this Contract, all warranties and conditions, whether express or implied by statute, common-law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by Law</p>	
<p>40. INDEMNITIES.</p> <p>40.1 Indemnity by the Contractor</p> <p>40.1.1 The Contractor shall indemnify, defend and hold the Authority, the Police Forces and their respective officers, directors, employees, agents, advisers, independent contractors, successors and assignees harmless from and against any Losses arising from or in connection with any of the following:</p> <p>a) any Claim by a third party that the performance or receipt of the Services, any Contractor Software, any Material, any Work Product or any other resource provided or used by the Contractor or by any Subcontractor or other third party on behalf of the Contractor in performing the Services, or the possession, use, Modification, reproduction or exploitation of any of the same by or on behalf of the Authority in the intended manner actually or allegedly infringes a third party's Intellectual Property Rights, moral rights or rights in respect of its confidential information;</p> <p>b) any Claim by a third party that any Authority Software or Authority Material infringes a third party's Intellectual Property Rights if the Claim is based on or attributable to the fact that the Contractor or any Subcontractor has Modified, or has had Modified by a third party, any of the Authority Software or</p>	

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<p>Authority Material, or has used, Modified, reproduced or exploited Authority Software or Authority Material in contravention of any term or condition that the Authority has disclosed to the Contractor;</p> <p>c) any fine or other penalty imposed by Law arising as a result of any Default by the Contractor;</p> <p>d) any unrecovered overpayment made to a third party as a result of any Default by the Contractor;</p> <p>e) compensation and interest paid to a third party due to a Default by the Contractor;</p> <p>f) any Default committed by the Contractor, or by any Subcontractor, or by Contractor Personnel in respect of the Contractor's confidentiality obligations under this Contract;</p> <p>g) death or personal injury caused by a negligent act or omission of the Contractor or any of Subcontractors where the Contractor or any of the Subcontractors is legally liable or responsible for that death or personal injury;</p> <p>h) loss or damage to real or tangible personal property, where the Contractor or any of the Subcontractors is legally liable or responsible for that loss or damage;</p> <p>i) any Claim for damages or compensation payable to any person employed by the Contractor or any of its Subcontractors;</p> <p>j) any Claim by third parties arising out of any act or omission of the Contractor which causes any breach by the Authority of any of its statutory duties.</p> <p>k) any Claim by third parties arising out of any act or omission of the Contractor which causes any breach by the Authority of any of its duties under the DPA; and</p> <p>l) any Loss or Claim by third parties in</p>	

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<p>connection with the loss or corruption or any of the data held or controlled by the Contractor in connection with the Services, whether arising out of the act, neglect or omission of the Contractor, employees, personnel, agents, contractors, Subcontractors or otherwise.</p> <p>40.2 Indemnity by the Authority</p> <p>40.2.1 The Authority shall indemnify, defend and hold the Contractor and its respective officers, directors, employees, agents, advisers, independent contractors, successors, and assignees harmless from and against any Losses arising from or in connection with any of the following:</p> <ul style="list-style-type: none"> a) any Claim by a third party that any Authority Software or Authority Material provided to or used or reproduced by or on behalf of the Contractor under this Contract, in the intended manner, infringes a third party's Intellectual Property Rights or right of that third party in respect of its confidential information, unless such Claim is based on or attributable to the fact that the Contractor has Modified the same, or has had the same Modified by a third party; b) death or personal injury caused by negligent act or omission of the Authority where the Authority is legally liable or responsible for that death or personal injury; c) any fine or other penalty imposed by Law on the Contractor arising as a result of any breach by the Authority of this Contract; and d) any Default by the Authority in respect of its confidentiality obligations under this Contract. 	
<p>41. LIABILITY AND LIMITATION OF LIABILITY</p> <p>41.1 Liability Cap</p> <p>Subject to Clauses 41.3 and 41.4 of these Key Terms, the annual aggregate liability of either Party to the other (including the Direct Loss of the Police Forces</p>	

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<p>as set out in Clause 41.2 of these Key Terms) for any Direct Loss relating to or arising in connection with this Contract, and whether based on an action or claim in contract, equity, negligence, intended conduct, tort or otherwise shall be limited per annum to the greater of:</p> <p>41.1.1 the previous 12 month's Service Charges paid or payable by the Authority under this Contract immediately preceding the time at which the Direct Loss occurred; or</p> <p>41.1.2 £20,000,000 (twenty million pounds), (the "Liability Cap").</p> <p>41.2 Direct Loss of the Police Forces</p> <p>41.2.1 The Authority and the Contractor agree that the Authority shall have the right to bring actions against the Contractor for any Direct Loss suffered by each of the Police Forces in connection with the Services. Where the Authority brings an action on behalf of a Police Force, the Parties also agree that the Direct Loss of each such Police Force shall be deemed the actual and Direct Loss of the Authority and shall be subject to the limitations set out in this Clause 41.</p> <p>41.2.2 For the avoidance of doubt both Parties acknowledge that the Contractor's obligations and liabilities under this Clause 41 shall include any liabilities incurred whilst performing any of the Services at the Authority Premises.</p> <p>41.3 Consequential Loss</p> <p>Subject to Clause 41.2 of these Key Terms, neither Party shall be liable for indirect or consequential loss or damage.</p> <p>41.4 Exclusions</p> <p>The Liability Cap shall not apply to, and each Party accepts unlimited liability for, and hereby agrees to fully indemnify the other Party ("the Aggrieved Party") against, and on demand make good to the Aggrieved Party, any losses suffered or incurred by the Aggrieved Party resulting from:</p> <p>41.4.1 death or personal injury caused by the negligent acts or omissions of either Party, its</p>	

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<p>employees, agents or subcontractors;</p> <p>41.4.2 any breach of obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 (or any subsequent amendment or replacement thereof);</p> <p>41.4.3 the breach by a Party, its employees agents or Subcontractors (as applicable) of any restriction on the disclosure of Confidential Information of the other Party as set out in this Contract;</p> <p>41.4.4 any Claim for which either Party must indemnify the other pursuant to Clauses 40.1 or 40.2 of these Key Terms, as the case may be;</p> <p>41.4.5 any indemnity from one Party to the other in respect of the indemnities set out in Schedule M (HR and TUPE Information).</p> <p>41.4.6 any fraudulent pre-contractual misrepresentation made by either Party upon which the other Party can be shown to have relied;</p> <p>41.4.7 any Claim for fraud or other criminal acts;</p> <p>41.4.8 any Losses suffered by the Aggrieved Party resulting from an intentional or wilful act or omission of the Party; 41.4.9</p> <p>41.4.9 any Default by the Contractor in respect of its obligations under Schedule K (Security);</p> <p>41.4.10 the wrongful Termination, repudiation or abandonment of the Contract in whole or in part; or</p> <p>41.4.11 any other liability which cannot be excluded by Law.</p> <p>41.5 Misrepresentation</p> <p>41.5.1 Save as provided in this Clause 41.5 and without prejudice to the warranties set out in Clause 39 of these Key Terms, neither Party shall have any remedy in respect of any untrue statement (whether written or oral) made to it upon which it relied in entering into this Contract and which is not expressly</p>	

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<p>incorporated into this Contract (“Misrepresentation”) and neither Party shall have any liability to the other Party other than pursuant to the express terms of this Contract.</p> <p>41.5.2 Nothing in this Contract shall exclude or limit either Party’s liability for any fraudulent Misrepresentation.</p> <p>41.6 Duty to Mitigate</p> <p>Each Party shall have a duty to mitigate Losses for which the other Party is responsible.</p> <p>41.7 Increase of the Service Charges</p> <p>The Parties acknowledge that in the event that the Service Charges paid or payable by the Authority significantly increase at any time during the Term, the Parties agree to discuss in good faith an upwards adjustment the Liability Cap set out in Clause 41.1 of these Key Terms.</p>	
<p>42. INSURANCE</p> <p>The Contractor shall effect with a reputable insurance company or companies acceptable to the Authority a policy or policies of insurance covering all the matters which are the subject of the indemnities and undertakings on the part of the Contractor contained in this Contract to a level of cover acceptable to the Authority. If requested by the Authority, a certificate evidencing the existence of such policies shall be provided by the Contractor to the Authority.</p>	
<p>43. TERMINATION</p> <p>43.1 Authority’s Right to Terminate</p> <p>43.1.1 The Authority may at any time by notice in writing terminate this Contract (in whole or in part) as from the date of service of such notice if:</p> <ul style="list-style-type: none"> a) the Contractor commits a Material Default of the Contract not cured within thirty (30) days of notice by the Authority; b) the Material Default is not capable of being cured; c) the Contractor commits repeated Defaults 	

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<p>of its duties or obligations under the Contract, the cumulative effect of which will be deemed to be a Material Default of the Contract;</p> <p>d) the Contractor becomes Insolvent;</p> <p>e) if a Force Majeure Event occurs and the Authority exercises its option to terminate the Contract in accordance with Clause 47.3.3 of these Key Terms;</p> <p>f) there is a Change of Control of the Contractor or the Contractor Parent Company;</p> <p>43.1.2 the Authority, by giving written notice to the Contractor, may terminate this Contract for convenience at any time during the Term, as of the date specified in the notice of Termination. <i>[Note to the Tenderer: As identified in Section 1.3.4 of Part 2(B) of the ITT, the Tenderer shall indicate in its response to the ITT if there are any costs or consequences associated with the Authority's right to terminate for convenience pursuant to this Clause.]</i></p> <p>43.2 The Contractor's Right to Terminate</p> <p>43.2.1 The Contractor shall not be entitled to terminate this Contract if there is a dispute between the Parties in respect of any invoice payable under this Contract. Due to the reliance by the Authority on the Services, the Contractor shall not be permitted to terminate the Contract unless the Authority fails to pay an undisputed valid invoice for the relevant Service Charges within ninety (90) days of the due date in accordance with Clause 43.2.2 of these Key Terms.</p> <p>43.2.2 The Contractor shall not terminate the Contract in accordance with Clause 43.2.1 of these Key Terms above unless the Contractor has give the Authority:</p> <p>a) further ninety (90) days of notice of the Authority's failure to make such payment; and</p> <p>b) a further written notice to the notice in Clause 43.2.2(a) above to the Authority</p>	

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<p>of not less than fourteen (14) days prior to the expiry of such ninety (90) days.</p> <p>43.2.3 The Contractor acknowledges and agrees that Clause 43.2.1 of these Key Terms sets out the only grounds upon which the Contractor may terminate this Contract.</p>	
<p>44. CONSEQUENCES OF TERMINATION</p> <p>44.1 In the event that the Contract is Terminated as provided for herein:</p> <p>44.1.1 where Termination is due to the Default of the Contractor, the Contractor shall repay forthwith to the Authority all monies paid up to and including such Termination Date other than monies in respect of any Services or part thereof properly performed in accordance with the Contract;</p> <p>44.1.2 the Contractor shall deliver up to the Authority or destroy, at the sole discretion of the Authority, all property owned by the Authority, including but not restricted to the Authority Data and the Authority Personal Data, in its possession;</p> <p>44.1.3 the Authority shall have the option to purchase for its Fair Market Value, less the value of any outstanding Service Credits and less any monies already paid in respect of those items, all Equipment/Assets (including but not restricted to equipment, hardware, and supply of documentation) owned by the Contractor which is being used by the Contractor solely for the purpose of providing the Services;</p> <p>44.1.4 the Contractor shall use all Commercially Reasonable Efforts to assign or novate in favour of the Authority or to any person or Successor Contractor as may be designated for the purpose by the Authority all relevant resources, including any equipment leases, third party hardware, network services, maintenance agreements, support agreements as the Authority may designate which are relevant and necessary for the provision of the Services including agreements relating to the Third Party Software, Third Party Material, and the Work Product;</p>	

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<p>44.1.5 the Contractor shall provide Termination Assistance in accordance with Clause 46 of these Key Terms; and</p> <p>44.1.6 the Authority or a Successor Contractor shall be entitled to offer employment to any employee of the Contractor who has been within 6 months of the Termination Date involved in performing the Contractor's obligations hereunder. The Contractor agrees that if such person accepts such an offer, the Contractor shall release such employee from any breach of his/her employment contract with the Contractor which such acceptance may otherwise involve.</p> <p>44.2 The Termination of this Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.</p> <p>44.3 In the event of the Termination of this Contract by the Authority, the provisions of Clauses <i>[Note to Tenderer: The relevant Clause cross-references will be added by the Authority prior to signature]</i> and the provisions of Schedule <i>[Note to Tenderer: Any relevant Schedule provisions shall be crossreferenced by the Authority prior to signature.]</i> shall survive the Termination of this Contract by the Authority.</p>	
<p>45. THE AUTHORITY'S FAILURE TO PERFORM ITS OBLIGATIONS</p> <p>45.1 Save as otherwise set out in Clause 43.2.1 of these Key Terms, the failure by the Authority to perform any of its responsibilities set forth in this Contract shall not be deemed to be grounds for Termination by the Contractor provided, however, that the Contractor's non-performance of its obligations under this Contract shall be excused (and the Contractor will have no obligation to pay Service Credits in respect thereof) if and to the extent that such non-performance results from the failure by the Authority to perform its responsibilities and obligations under this Contract.</p> <p>45.2 Without prejudice to the provisions of Clause 45.1 of these Key Terms, the Contractor agrees to provide the Authority with written notice within five (5) working days of such non-performance by the Authority and agrees to use Commercially Reasonable Efforts to perform, to the extent possible,</p>	

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<p>the Services to be performed by the Contractor notwithstanding the failure by the Authority to perform its responsibilities and obligations under this Contract.</p> <p>45.3 The Authority agrees to pay the Contractor for any additional reasonable and actual expenses over and above the Service Charges, incurred as a result of the Contractor complying with Clause 45.2 of these Key Terms.</p>	
<p>46. TERMINATION ASSISTANCE</p> <p>Upon Termination in whole or in part of this Contract, the Contractor will provide Termination Assistance in accordance with Schedule N (Exit Strategy). <i>[Note to Tenderer: Schedule N (Exit Strategy) shall contain a) exit provisions as currently described in Schedule N (Exit Strategy); and b) termination assistance required by the Authority on Termination or removal of any Part of the Services as provided for under this Contract.]</i></p>	
<p>47. FORCE MAJEURE</p> <p>47.1 Neither Party will be liable for any Default or delay in performance of its obligations under this Contract if and to the sole extent the Default or delay is caused, directly or indirectly, by a Force Majeure Event, but in each case only if and to the sole extent that the non-performing Party is without fault in causing the Default or delay, and the Default or delay could not have been prevented by reasonable precautions.</p> <p>47.2 Actions upon Force Majeure Event Occurring Upon the occurrence of a Force Majeure Event, the defaulting Party shall:</p> <p>47.2.1 immediately notify the other Party of the occurrence of the Force Majeure Event, describe, at a reasonable level of detail, the circumstances causing such delay of performance and give an estimate of when performance will recommence; and</p> <p>47.2.2 use Commercially Reasonable Efforts to perform (or recommence performing) its obligations as soon as, and to the extent, possible, including the use of alternative sources, workarounds, and plans.</p> <p>47.3 If a Force Majeure Event substantially prevents or</p>	

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<p>delays the Contractor's performance necessary for the performance of a function reasonably identified by the Authority as critical for more than 3 consecutive days, then without limiting any other rights of the Authority, the Authority may at its option:</p> <p>47.3.1 direct the Contractor to procure that function from a third party service provider, in which case the Contractor will be liable for payment for the provision of those Services by the third party service provider for as long as the delay in performance continues; and</p> <p>47.3.2 remove the affected function from the scope of this Contract without any increase in Service Charges for the remaining Services; or</p> <p>47.3.3 terminate this Contract in whole or in part, without liability to the Authority as of a date specified by the Authority in a written notice of Termination to the Contractor and the provisions of Clause 43 of these Key Terms shall apply.</p> <p>47.4 The Contractor shall not have the right to any additional payments from the Authority as a result of any Force Majeure Event or the performance of its obligations under this Clause 47.</p> <p>47.5 The failure of any of the Subcontractors to perform any obligation owed to the Contractor will only constitute a Force Majeure Event with respect to the Contractor's performance of the Services if and to the sole extent that the failure by the Subcontractor is itself caused by a Force Majeure Event.</p> <p>47.6 For the avoidance of doubt, nothing in this Clause 47 shall affect the Contractors obligations to provide the disaster recovery services described in the DOR or any disaster recovery services that the Contractor has agreed to provide to the Authority or the Police Forces under any agreement for such disaster recovery services.</p>	
<p>48. STEP IN RIGHTS</p> <p>48.1 General Right of Step-in</p> <p>48.1.1 The Services provided under this Contract are vital to the Authority and the Police Forces. As a result, the Authority and/or the Police</p>	

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<p>Force shall be entitled to exercise step-in rights in accordance with this Clause 48.</p> <p>48.1.2 Notwithstanding any other provision of this Contract and without prejudice to any other right or remedy of the Authority:</p> <ul style="list-style-type: none"> a) if the Authority considers that a Default or failure by the Contractor of an obligation under this Contract may create an immediate and serious threat to the business and operational effectiveness of the Authority; or b) if it appears to the Authority necessary in the interests of carrying out its business, or in order to secure the carrying out of any statutory function or obligation; or c) in any circumstances entitling the Authority to Terminate all or any part of the Contract for Material Default in accordance with Clause 43, <p>the Authority may give notice requiring the Contractor to take such reasonable steps as the Authority considers necessary or expedient in the circumstances to mitigate or preclude such state of affairs forthwith. If the Contractor fails to take such reasonable steps as the Authority may think necessary and within such time as the Authority thinks fit, then the Authority may take such steps itself or engage others to take such steps.</p> <p>48.1.3 Unless the Authority exercises its step-in rights pursuant to this Clause 48, the Contractor shall reimburse the Authority for all costs reasonably incurred by it in taking the steps or engaging others to take the steps referred to this Clause 48 (including the relevant administrative expenses of the Authority, with an appropriate sum in respect of general staff costs and overheads).</p>	
<p>49. HEALTH AND SAFETY</p> <p>49.1 Nothing in the Contract shall release either Party from their obligations under any requirements of Law in relation to health and safety to provide prior written notice of any health or safety hazards associated with equipment, material or other substances supplied by either Party, or facilities used</p>	

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<p>in the performance of work under the Contract.</p> <p>49.2 The Contractor shall notify the Authority of any health and safety hazards which may arise in connection with the performance of this Contract.</p> <p>49.3 The Authority shall notify the Contractor of any health and safety hazards which may exist or arise at the Authority Premises and which may affect the Contractor. The Contractor shall draw these hazards to the attention of its employees and Subcontractors or any persons engaged by the Contractor in the performance of this Contract at the Authority Premises.</p> <p>49.4 The Authority reserves the right to exclude from the Authority Premises any employee or agent or representative of the Contractor on safety grounds.</p> <p>49.5 The Contractor warrants that any equipment, materials or other substances which it requires to bring on to the Authority Premises, or is required to provide, for the purposes of the Contract, are not a safety hazard.</p> <p>49.6 The Authority reserves the right to inspect such equipment, materials or other substances and to refuse them entry to the Authority Premises if it considers them to be unsafe or pose unacceptable risks of injury or damage to persons or property. Neither Party shall be liable to the other for any additional costs or delays to the Contract resulting from any decision under this condition.</p> <p>49.7 The Contractor shall inform all persons engaged in the performance of this Contract at the Authority Premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.</p>	
<p>50. CORRUPT GIFTS AND PAYMENTS OF COMMISSION</p> <p>50.1 The Contractor shall neither:</p> <p>50.1.1 offer or give or agree to give any person employed by the Authority 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 act in relation to the obtaining or performance of this Contract or any other agreement with the Authority or for showing or forbearing to</p>	

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<p>show favour or disfavour to any person in relation to this Contract; nor</p> <p>50.1.2 enter into this Contract if in connection with it commission has been paid or agreed to be paid to any person employed by the Authority or acting on its behalf by the Contractor or on the Contractor 's behalf or to the Contractor 's knowledge, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Authority.</p> <p>50.2 In the event of any breach of this Clause 50 by the Contractor or by anyone employed by the Contractor or acting on the Contractor 's behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by the Contractor or acting on behalf of the Contractor under the Prevention of Corruption Acts, 1889 to 1916 in relation to this Contract or any other contract with the Authority, the Authority may summarily terminate this Contract by notice in writing to the Contractor. Provided always that such Termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and provided always that the Authority may recover from the Contractor the amount or value of any such gift, consideration or commission.</p> <p>50.3 The decision of the Authority shall be final and conclusive in any dispute, difference or question arising in respect of:</p> <p>50.3.1 the interpretation of this Clause 50 (except so far as the same may relate to the amount recoverable from the Contractor under Clause 50.2 in respect of any loss resulting from such Termination of this Contract); or</p> <p>50.3.2 the right of the Authority under this Clause 50 to terminate this Contract; or</p> <p>50.3.3 the amount or value of any such gift, consideration or commission</p>	
<p>51. NOTICES</p> <p>51.1 Notices given under this Contract shall be in writing in the English language and made by an authorized officer of the Authority or the Contractor as the case</p>	

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<p>may be. The Parties shall, from time to time, provide each other with a list of personnel designated as "authorised officers".</p> <p>51.2 Notices issued pursuant to Clause 51.1 shall be addressed to:</p> <p>51.2.1 for The Authority:</p> <p>a) for commercial matters:</p> <p>Marc Roffey, Purchasing Manager, Police Information Technology Organisation, Commercial Directorate, New King's Beam House, London SE1 9QY.</p> <p>Telephone: 020 8358 5465.</p> <p>Fax: 020 8358 5536</p> <p>E.mail: marc.roffey@pito.pnn.police.uk</p> <p>b) for all technical matters affecting the Contract:</p> <p><i>[insert relevant name]</i> Police Information Technology Organisation, New King's Beam House, London SE1 9QY. Tel: <i>[insert relevant telephone number]</i></p> <p>Telephone: <i>[insert relevant telephone number]</i></p> <p>Fax: <i>[insert relevant telephone number]</i></p> <p>E.mail: <i>[insert relevant telephone number]</i></p> <p>51.2.2 for the Contractor:</p> <p>a) for commercial matters: <i>[insert relevant address and contact details, including telephone, fax and email]</i>; and</p> <p>b) for all technical matters affecting the Contract: <i>[insert relevant address and contact details, including telephone, fax and e-mail]</i>,</p> <p>and such address of either Party may be altered by notice given in accordance with Clauses 51.1 and Clause 51.2 of these Key Terms.</p> <p>51.3 A notice given in accordance with Clauses 51.1 and 51.2 of these Key Terms; shall deemed to be received:</p>	

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<p>51.3.1 if left at the recipient's address during normal business hours, on the date of delivery;</p> <p>51.3.2 if sent by prepaid registered post, two (2) days after the date of posting;</p> <p>51.3.3 if sent by an express courier with a reliable system for tracking delivery, on the date of delivery to the recipient; and</p> <p>51.3.4 if sent by fax or electronic mail to the fax number or electronic mail address specified below (as may be altered by giving notice in accordance with Clause 51 of these Key Terms) during normal business hours, and provided that a confirmation copy is sent by the Party giving notice in accordance with a method specified above, upon receipt as evidenced by production of a satisfactory transmission report by the fax machine which sent the fax or receipt by the notifying Party of a confirmation of receipt report in respect of the electronic mail sent, as appropriate, or if outside the normal business hours of the recipient, then at the beginning of the recipient's next working day.</p>	
<p>52. GENERAL PROVISIONS</p> <p>52.1 The Contractor may not assign, novate or otherwise transfer its rights or transfer its obligations under the Contract without the prior written consent of the Authority.</p> <p>52.2 The Authority shall be entitled to:</p> <p>52.2.1 assign, novate, or otherwise transfer its rights or obligations under this Contract or any part thereof to any contracting authority (as defined in Regulation 3(1) of the Public Services Contracts Regulations 1993, as amended) (a "Contracting Authority") provided that any such assignment, novation or transfer shall not increase the burden of the Contractor's obligations pursuant to this Contract; or</p> <p>52.2.2 novate this Contract to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by any Contracting Authority.</p> <p>52.3 Notwithstanding the provisions of Clause 28 of these</p>	

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<p>Key Terms, in the event of an assignment, novation or transfer (as applicable) pursuant to Clauses 52.1 or 52.2 of these Key Terms, the Authority shall be entitled to disclose to any transferee any Confidential Information of the Contractor which relates to the performance of the Services by the Contractor or their replacement or successors. In such circumstances, the Authority shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Services.</p> <p>52.4 Any change in the legal status of the Authority 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 Authority.</p> <p>52.5 Except with the written consent of the other Party neither Party shall make any press announcements or publicise the Contract in any way. Both Parties shall take all reasonable steps to ensure the observance of the provisions of this Clause 52.5 by all their servants, employees, agents and consultants. The Authority shall be entitled to publicise this Contract in accordance with any legal or quasi legal obligation upon the Authority, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.</p> <p>52.6 In the event of there being a change to any statutes, enactments, orders, regulations or other similar instruments where any such change necessitates a change to the Services as specified in Schedule D (Services), the Parties shall enter good faith negotiations to make such adjustments to the Service Charges as may be necessary to compensate the Contractor for such additional costs as are both reasonably and necessarily incurred by the Contractor in accommodating such changes.</p> <p>52.7 A person who is not a Party to the Contract has no right to under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract save that the Contractor acknowledges that the Authority shall enter into the Contract for the benefit of the Police Forces and such Police Forces shall be third party beneficiaries under this Contract. For the avoidance of doubt, the Police Forces shall have the right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999. The Authority and the Contractor may agree to rescind or vary the Contract without the consent of the Police Forces or any other third party.</p>	

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<p>52.8 No delay, neglect or forbearance on the part of either Party in enforcing against the other Party any term or condition of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that Party under the Contract.</p> <p>52.9 If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Contract had been executed with the invalid provisions eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this contract, the Authority and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.</p>	