
11. CONDITIONS OF CONTRACTS - SERVICES

The Police and Crime Commissioner for Merseyside (PCC) is prepared to receive Tenders for the requirement as detailed in this document and in accordance with these Conditions of Contract and any Special Conditions of Contract.

These conditions shall be incorporated in any contract (or order) made by the PCC for the purchase of services unless they are specifically excluded by the PCC and shall apply to the extent that they are not inconsistent with any special conditions of the contract.

The submission of a Tender for the supply of Services set out in the Form of Tender shall be made only in accordance with these Tender Documents and the PCC shall not be bound by any variation, addition to or waiver of any condition contained in these Tender Documents except as shall have been specifically agreed between the PCC and the Contractor in writing and signed on behalf of the PCC by an Authorised Signatory.

Any clauses in the Contractor's own conditions of sale or contract or any supplementary condition or letter which are at variance with these Tender Documents shall be overridden by these Tender Documents unless specifically agreed in writing in accordance with the above paragraph.

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CONDITIONS OF CONTRACT

These Conditions may only be varied with the written agreement of the PCC. No terms or conditions put forward at any time by the Contractor shall form part of the Contract.

1. Definitions

- (a) Throughout the documentation relating to this contract the masculine shall include the feminine and neuter, the singular shall include the plural and vice versa.
- (b) 'Approved' shall mean approved by the Authorised Officer.
- (c) 'Authorised Officer' shall mean the person or persons duly appointed by the PCC to act as the PCC's representative for the purpose of the contract.
- (d) 'Authorised Representative' shall mean any person who has been authorised by the PCC to order and/or accept delivery of and/or inspect any item the subject of the Tender Documents.
- (e) 'The PCC' shall mean the Police and Crime Commissioner for Merseyside, (and any successor) acting corporately or by its duly Authorised Representative(s),
- (f) 'Completion Date' shall mean the date included in the Contract or where not so specified, the date included in the Programme of Work as the date upon which the Works are to be completed in accordance with the Contract.
- (g) 'Contract' shall mean the agreement between the PCC and the Contractor for the execution of the Works, including therein all documents to which reference may properly be made in order to ascertain the rights and obligations of the parties.

- (h) 'The Contractor' shall mean the person, firm or company whose tender is accepted in whole or in part and, where the context so admits, his or their personal representatives or successors, as the case may be, and permitted assignees.
- (i) 'Contract Period' shall mean the period of the Contract as specified in the Documentation.
- (j) 'Contract Price' shall mean that sum so named in the Contract together with any additions thereto or deductions therefrom agreed in writing under the Contract.
- (k) 'Customer' shall mean the end user, department or internal client.
- (l) 'Documentation' shall mean the manual or manuals and other documents, including the contract document, associated with the works supplied by the Contractor.
- (m) 'Duty' shall mean any value added tax or similar tax payable to the Government which would normally be paid by the purchaser but not further or otherwise.
- (n) 'Equipment' shall mean all materials, plant and hardware supplied by the Contractor, including basic level machine control facilities, for inclusion in the Works.
- (o) 'Expert Determination' shall mean the decision of the expert, to end the argument.
- (p) 'Item' - any item, goods or service, to be delivered or executed as part of the specification.
- (q) 'Premises' shall mean the place or places other than the Contractor's premises to which the items are to be delivered or where work is to be done.
- (r) 'Programme of Work' shall mean the programme of work detailing timing and sequence of events agreed between the PCC and Contractor for the performance of the Contract.
- (s) 'Project' shall mean and include the design, development, supply, delivery, testing and implementation of all works to be carried out by the contractor under the contract.
- (t) 'Service' shall mean preventative and/or corrective maintenance and all other work to be carried out by the Contractor in accordance with the provisions of the Contract.
- (u) 'Service Charge' shall mean the charge specified in the contract, together with any additions thereto or deductions therefrom agreed in writing under the Contract.
- (v) 'Sub-Contractor' shall mean any person, firm or company to whom any part of the Contract has been sub-let in accordance with the Contract and its legal representatives, successors and permitted assigns.
- (w) 'Tender' shall include requests for quotation (in the case of a quotation references to a tender shall mean a quotation).
- (x) 'Tender Documents' shall mean: Those documents listed on the Form of Tender.
- (y) 'Tenderer' shall mean any of those persons, firms, companies or other bodies who have submitted or propose to submit a tender for the business specified in the Tender Documents.

2. Written Agreements

The Contractor shall when required by the PCC execute an Agreement in writing embodying the terms of the Contract.

3. Interpretation of Contract

- (a) Any variation to these Conditions which may be contained in any supplemental or Special Conditions of Contract and/or Specification issued for any particular purchase shall take effect as if the same were contained in these Conditions and any Contract however made supplemental to these Conditions shall be read and construed accordingly.
- (b) The Clause headings contained herein are for convenience of reference only and shall not affect the construction or interpretation of this agreement, which shall be construed in accordance with English law.

4. Contractor's Personnel

- (a) The Contractor shall on request by the Customer comply with the Customer's vetting procedures by completing the Customer's vetting forms to provide various information in respect of every person who is to be engaged in the contract or is likely to attend the PCC's/Customer's premises for the purpose of the contract in respect of the contractors staff and/or agents and the staff and/or agents of any sub-contractor and the PCC/Customer shall carry out vetting procedures in respect of those persons to ensure their security clearance.
- (b) The Contractor shall ensure that no persons employed by the Contractor or its agents or employed by any sub-contractor or their agents or any persons under the control of the Contractor or sub-contractor are engaged on the contract or enter the premises of the PCC/Customer without having been granted security clearance.
- (c) The PCC/Customer are entitled at their absolute discretion and without giving reasons to exclude any person from being engaged in the contract or attending the premises of the PCC/Customer following the completion of vetting procedures and at the request of the PCC/Customer the Contractor shall ensure that any person who has failed the Customer's vetting requirements to the PCC/Customer's satisfaction is not employed on the contract or ceases to be employed on the contract and/or shall not enter or remain on any premises of the PCC/Customer.
- (d) The Contractor shall not permit any employee to bring any unauthorised personnel onto any of the PCC's premises.
- (e) The Contractor shall notify the PCC/Customer when any member of its staff or agent who was engaged in the Contract leaves their employment or the employment of any sub-contractor and shall immediately take steps to ensure that any means of access to the PCC's/Customer's premises which are in their possession are recovered e.g. ID badges/passes etc.
- (f) The provisions (a) to (e) of this clause shall be a condition of the contract and the failure of the Contractor to comply with it or ensure its compliance shall be deemed to be a fundamental breach of contract which shall allow the PCC to terminate this agreement.
- (g) The PCC will not accept any liability in respect of theft, loss or damage to personal property of the Contractor's employees. The Contractor shall bear the cost of any notice, instruction or decision of the PCC under this Condition.

5. Contractors Duties to Employees

- (a) The Contractor shall employ only such persons as are careful, skilled, honest and sufficiently physically fit to undertake the duties required of them. The Contractor shall in respect of all persons employed by him (whether in execution of his contract or otherwise) in every factory workshop or place situated in the United Kingdom and occupied or used by him for the execution of the contract comply with the following conditions.
- (b) The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2006, the Equal Pay Act 1990 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

- (c) The Contractor shall be required to fully comply with the Health & Safety at Work Act 1974 and with all regulations attached thereto. All health and safety information provided by the PCC to the Contractor for this purpose shall be provided to the Contractors staff. If the Contractor is in breach of this condition, the PCC will be entitled to suspend the Contract forthwith without prejudice of any other rights which the PCC may have, until such time as the breach has been rectified.
- (d) The Contractor shall keep proper records necessary for the satisfactory completion of the Contract including wages, records and time sheets, showing the wages paid to and the time worked by the work people in his employ and about the execution of the Contract. All such records shall be produced whenever required for the inspection by a Representative authorised by the PCC.
- (e) The Contractor shall be responsible for the observance of this condition by Sub-Contractors employed within the United Kingdom in the execution of the Contract and shall if required notify the PCC of the names and addresses of all such Sub-Contractors.

6. TUPE

TUPE is anticipated to apply and therefore the following terms and conditions will apply, as set out in the paragraphs below.

- (a) The PCC and the Contractor agree that it is their belief and understanding that the commencement of provision of the Services by the Contractor will give rise to a relevant transfer within the meaning of the TUPE Regulations and that the respective contracts of employment between the Outgoing Contractor(s) and the Initially Transferring Employees shall have effect from and after the Initial Transfer Date as if originally made between the Contractor and the Initially Transferring Employees (except in so far as such contracts relate to any old age, invalidity or survivors' benefits provided under any occupational pension scheme). The Contractor shall comply with its obligations under the TUPE Regulations and shall provide such co-operation and assistance as the PCC may reasonably request in the period up to the Initial Transfer Date in relation to the transfer of the Initially Transferring Employees.
- (b) The Contractor shall indemnify and keep indemnified the PCC from and against all and any costs, expenses, liabilities, damages and losses (including legal costs) arising out of any claim, demand, action or proceeding which is made or brought against the PCC at any time:
 - i. by an Initially Transferring Employee to the extent that it relates to circumstances or events occurring or arising on or after the Initial Transfer Date but before the Terminal Transfer Date;
 - ii. in relation to a failure or alleged failure of the Contractor to comply with its obligations under Regulation 13 of the TUPE Regulations in respect of the Initially Transferring Employees; or
 - iii. in relation to any substantial change made or proposed by the Contractor in the working conditions of any of the Initially Transferring Employees where that change is to the material detriment of all or any of the Initially Transferring Employees.
- (c) During the period of six (6) months preceding the expiry of this Contract or at any time after the PCC or the Contractor has given notice to terminate this Contract or to cease the provision of some or all of the Services, the Contractor shall within fourteen (14) days of the PCC's request provide the PCC and/or (if so directed by the PCC) any person who has been invited to tender for the provision of the Services which are to be terminated with the Tender Information and shall ensure that all such information is complete and accurate in all material respects as at each date that it is provided.
- (d) Where any Employee Tender Information has been provided to the PCC and/or any person who has been invited to tender for the provision of the Services which are to be terminated:
 - i. the Contractor shall promptly inform the PCC and (if so directed by the PCC) any such prospective Tenderer of any material change to the Employee Tender Information and provide as soon as reasonably practicable thereafter revised Employee Tender Information reflecting such change;
 - ii. the PCC shall request that any such prospective Tenderer treats the Employee Tender

Information in the strictest confidence and does not use it for any purpose other than tendering for the provision of the Services.

- (e) During the Tender Information Period, the Contractor shall not, and shall use all reasonable endeavours to procure that any third party shall not, materially vary the terms and conditions of employment or engagement of any individual employed or engaged in providing the Services or redeploy, replace or dismiss any of the individuals so employed or engaged, or employ or engage any additional individual in the provision of the Services, without the prior written consent of the PCC (such consent not to be unreasonably withheld), provided that this condition shall not apply to the termination of the employment or engagement of any of the relevant individuals due to misconduct, serious poor performance or retirement.
- (f) Where the Contractor ceases for whatever reason, whether directly or indirectly, to provide any of the Services and any contract of employment of any individual then engaged in the provision of such Services has effect by virtue of the TUPE Regulations as if originally made between such person (a "Terminally Transferring Employee") and the PCC or a Replacement Provider (as the case may be) the Contractor shall indemnify the PCC and the Replacement Provider and keep each of them indemnified against all and any costs, expenses, liabilities, damages and losses (including reasonable legal costs) arising out of:
 - i. any claim, demand, action or proceeding which is made or brought by a Terminally Transferring Employee or an appropriate representative (within the meaning of the TUPE Regulations) of a Terminally Transferring Employee against the PCC or the Replacement Provider at any time to the extent that it relates to circumstances or events occurring or arising from the Initial Transfer Date up to the Terminal Transfer Date;
 - ii. any failure by the Contractor (or any other employer of a Terminally Transferring Employee) to comply with its obligations under Regulation 11 of the TUPE Regulations to notify the PCC or the Replacement Provider (as the case may be) of employee liability information or to comply with its obligations under Regulation 13 of the TUPE Regulations.
- (g) The Contractor shall co-operate with the PCC and any Replacement Provider in relation to the orderly transfer of employment of any Terminally Transferring Employees and shall take all reasonable steps to mitigate any costs relating to any Terminally Transferring Employees which the PCC or any Replacement Provider may incur as a result of the Contractor ceasing to provide some or all of the Services.

7. Liens

The Contractor shall protect and shall hold all property of the PCC free from all liens, charges and other encumbrances.

8. Inspection by Authorised Representative

- (a) The Tenderer shall permit any duly authorised representative of the PCC either before or during the Contract period to undertake inspections and/or investigations and/or tests as the PCC shall consider necessary upon giving reasonable notice to the Tenderer so as to ensure that the Tenderer is able to fulfill all of his obligations under any Contract which the PCC may be considering awarding or has awarded to him.
- (b) In addition, the Contractor will be subject to contract management and monitoring as detailed in the Tender Documents.

9. Specification

- (a) Where an appropriate Standard Specification or Standard Code of Practice issued by the British Standards Institution or EU is current one calendar month before the date of tender, all goods and materials used or supplied and/or all workmanship is to be at least in accordance with that standard or such higher standard as may be specified. During the course of the Contract the PCC may wish to make amendment to the specification. The successful Tenderer will use all reasonable endeavours to comply and advise the PCC of any variation in price, which may occur as a result of any amendments.

- (b) The Good/Services shall be of the quality or to the standard required by the Goods/Service Standards but otherwise shall be in accordance with any specifications of the British Standard Institution (*BSI*) or the International Organisation for Standardisation (*ISO*) or the European Committee for Standardisation (*CEN*) relating to the services and current at the date of the tender.

10. Variations

- (a) The Contract shall not be varied unless the PCC and the Contractor agree in writing authorised on behalf of the Head of Finance and on behalf of the Contractor by the appointed Contract Manager or Company Director.
- (b) In the event of an emergency the PCC shall have the right to vary the Contract by oral instructions given by the PCC's representative, which shall be confirmed in writing within seven days.
- (c) The price for any variation shall, unless otherwise agreed between the parties, be adequately detailed.
- (d) The Contractor will either approve or reject in writing any variation proposed by the PCC, this will be in writing. When a variation is rejected a valid reason will be provided in writing with such rejection
- (e) The PCC may remove any item that is no longer required, giving 28 days notice and written confirmation.
- (f) The authorised representatives will be notified upon contract award; any correspondence should be addressed to the Police and Crime Commissioner for Merseyside at Allerton Police Station, Rose Lane, Allerton, Liverpool, L18 6JE and any Notices so served shall be deemed properly served.

11. Patents

The Contractor shall not, in connection with the Contract, use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any patent or patent rights, and the Contractor shall indemnify the PCC from all proceedings, damages, costs, charges, expenses, loss and liability which the PCC may sustain, incur, or be put to by reason or in consequence directly or indirectly of any breach of this provision (whether willful or inadvertent), and against the payment of any royalties or other monies which the PCC may have to make to any person or body entitled to patent rights in respect of any process, article, matter or thing used, manufactured, supplied or delivered by the Contractor in connection with the Contract.

12. Intellectual Property Rights and Indemnity

- (a) The Supplier grants the Customer a perpetual, royalty-free, irrevocable, non-exclusive licence (with the right to sub-licence) to use all intellectual property rights in the Goods or in any materials accompanying the Goods to the extent that it is necessary to fulfil its obligations under this Agreement.
- (b) The Supplier shall indemnify, and keep indemnified, the Customer in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.
- (c) The Customer shall promptly notify the Supplier of any infringement claim made against it relating to any Goods and, subject to any statutory obligation requiring the Customer to respond, shall permit the Supplier to have the right, at its sole discretion to assume, defend,

settle or otherwise dispose of such claim. The Customer shall give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

13. Purchase from an Alternative Supplier

Notwithstanding the provisions of Clause 31 (Termination) hereof, should the Contractor for any reason whatever fail to deliver any item the subject of this Contract at any time throughout the Contract period or be otherwise in breach of or fail to fulfill any obligation imposed upon him by virtue of this Contract, the PCC may purchase from another source any item required by them to make good any failure or breach on the part of the Contractor or, in the event of this Contract being wholly determined, any items which but for the breach or failure of the Contractor might otherwise have been ordered from him. In addition, the Contractor may be liable for liquidated damages at a rate to be agreed prior to the start of Contract.

14. Contractor Liable for Excess Cost

Any excess of cost over the contract price incurred by the PCC in exercising its rights under Clause 13 (Purchase from an Alternative Supplier) hereof together with all charges and expenses attending such purchase which may be incurred because of any failure or breach on the part of the Contractor shall be recoverable by the PCC from the Contractor by action at law or in accordance with the provisions of Clause 15 (Recovery of Sums Due) of this Agreement.

15. Recovery of Sums Due

- (a) Wherever under this Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at a later time may become due, to the Contractor under this Contract or under any other agreement or contract with the PCC.
- (b) Exercise by the PCC of his rights under this Clause shall be without prejudice to any other rights or remedies available to the PCC under the Contract.

16. Liquidated Damages

- (a) If the Contractor fails to meet any milestones in the Contract by its own default, the Contractor shall pay or allow the PCC a sum calculated at the rate stated in the Contract as liquidated and ascertained damages for the period from the milestone in the Contract until the date the milestone is met and the PCC may deduct such sum from any monies due to the Contractor under the Agreement or to recover the sum as a debt due from the Contractor.
- (b) Damages will be in the sum of 10% of the value of the late order per week. This will be calculated pro rata for periods of less than, or more than, one week.
- (c) The PCC shall have the right to deduct the appropriate amount from the amount owed to the contractor/invoice received. Contracts completed late may result in no further work being given to the Contractor.
- (d) The PCC may require and take sufficient security or guarantee for the due performance of every Contract unless such security or guarantee is provided for by general arrangements made by the PCC.

17. Assignments and Sub-Contracting

- (a) The Contractor shall not assign or sub-contract any portion of the Contract without the prior written consent of the PCC. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to him under the Contract or these conditions.
- (b) The Contractor shall be responsible for the acts, defaults and omissions of its sub-Contractors, whether approval has been given to their appointment under this Clause or not, as if they were

his own and any consent given under this Clause shall not relieve the Contractor of any of his obligations under the Contract.

18. Copyright

- (a) Copyright in the documents comprising the Contract shall vest in the PCC but the Contractor may obtain or make at his own expense any further copies required for use by the Contractor in performing the Contract.
- (b) All reports and other documents and materials and the copyright or similar protection therein arising out of the performance by the Contractor of his duties hereunder are hereby assigned to and shall vest in the PCC absolutely.
- (c) The provisions of this Condition shall apply during the continuance of this Contract and after its termination howsoever arising.

19. Publicity

- (a) Except with the written consent of the other party, neither party shall make any press announcements or publicise this Contract in any way.
- (b) Both parties shall take all reasonable steps to ensure the observance of the provisions of this Clause by all their servants, employees, agents and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of this Clause by its sub-contractors.
- (c) Notwithstanding the provisions of this Clause, the PCC shall be entitled to publicise this Contract in accordance with any legal or quasi legal obligation upon the PCC, including, but without limitation, obligations under the General Agreement on Tariffs and Trade Agreement on Government Procurement.
- (d) The Contractor is advised that he or his sub-contractors shall not, without the prior written consent of Merseyside Police, use the Merseyside Police logo on any contract or publicity material. Neither will any Contractor or his sub-contractors advertise or publicly announce that they are undertaking work for any PCC, the Police Service or their partners, without first obtaining the written permission of the Customer.

20. Indemnities and Insurance

- (a) The Contractor shall indemnify and keep indemnified the PCC, its servants and agents against injury [including death] to any persons or loss of or damage to any property which may arise out of the act, default or negligence of the Contractor, a subcontractor, their employees or agents in consequence of the Contractor's obligations under the contract and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- (b) The Contractor shall indemnify and keep indemnified the PCC, its servants and agents against injury including death from and against all and any actions, proceedings, costs, claims, demands, charges, expenses and/or loss (which it may sustain, incur, be put to or become in any way liable for either directly or indirectly by reason or in consequence of any of the matters set out below), and the Contractor shall insure against and pay and discharge all costs, charges and expenses which may be or become properly payable by reason of any such happening and the PCC may recover from the Contractor any amount which it has paid arising out of such proceedings costs, claims, demands, liability, damages, charges, expenses and/or loss as aforesaid.
- i. the infringement by the Contractor, his employees, agents or suppliers of any copyright, patent, patent rights, design, trade-mark, name or other protected rights of third parties;

- ii. damage to any property whatsoever or the death of or injury to any person whomsoever which in the absence of this agreement would not otherwise have arisen and in particular, damage to property or the death or injury of any person whomsoever which is due to the defect of any item supplied under this agreement (fair wear and tear after delivery to the PCC excepted);
 - iii. failure by the Contractor to comply in all respects with the appropriate requirements of all and any Statutes, Bye-Laws, Notices and Regulations in force from time to time throughout the Contract Period about which he is or should have been aware;
 - iv. any claim, which may be made in respect of employer's liability by any workpeople, employed by the Contractor and any sub-contractor, underlessee, transferee or assignee;
- (c) The Contractor (if an individual) represents that he is regarded by both the Inland Revenue and the Department of Social Security as self-employed, he shall indemnify the PCC against any tax, national insurance contributions or similar impost for which the PCC may be liable in respect of the Contractor by reason of this Contract.
 - (d) The Contractor shall effect with an insurance company or companies acceptable to the PCC 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 in the sum of £5 million at least in respect of any one incident, unlimited in total in respect of death and to a minimum of £2 million in respect of professional indemnity, unless otherwise agreed by the PCC in writing.
 - (e) If requested, a certificate evidencing the existence of such policies shall be provided by the Contractor to the PCC.
 - (f) Any Sub-Contractor appointed by the Contractor must undertake that if selected will enter into a contract with the main Contractor on terms which indemnify the main contractor/supplier and the PCC against his own obligations under the main contract included in the sub-contract unless provision is made to the contrary under the conditions of contract.
 - (g) If the Contractor either neglects or fails to insure as provided here the PCC may effect such insurance itself and shall charge the cost of the premium of such insurance to the Contractor together with a sum representing 5% of the premium or the sum of £25000 (whichever shall be the lesser sum) as liquidated damages. The Contractor shall pay to the PCC the said insurance premium and the added sum referred to within fourteen days of being notified of the same and in default interest shall run on such monies at the rate of 4% above the base rate (for the time being of HSBC) until payment.

21. Consequential Loss

Save as expressly stated elsewhere in the Contract and except as regards liability for death or personal injury caused by its negligence, neither party shall be liable to the other for consequential loss or damage, loss of revenue, opportunity or contract or goodwill.

22. Observance of Statutory Requirements

- (a) The Contractor shall comply with all statutory and other provisions to be observed and performed in connection with the Contract and shall indemnify the PCC against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever made as a result of any failure in such compliance.
- (b) The Contractor warrants that the design, construction and quality of goods to be supplied under the Contract comply in all respects with all relevant requirements of any Act of Parliament, statutory instrument, order, regulation, bye-law or other enactment in force when the goods are delivered.
- (c) The Contractor shall ensure that in the execution of the Contract that it complies with all UK statutes, regulations and all applicable directives of the European Community.

- (d) The Contracts (Rights of Third Parties Act, 1999) will not apply unless specifically agreed. Nothing in this Contract shall confer, nor is it intended to confer, any enforceable right on any third party under the Contracts (Rights of Third Parties) Act 1999 except as otherwise expressly so stated.
- (e) The Contractor shall in all matters relating to the performance of the Contract comply with all Acts of Parliament and with all orders, regulations and bye-laws made with statutory authority by Government Departments or by local or other authorities. The Contractor shall also observe through his staff and work people any rules applicable to the Premises where the Works are carried out. The PCC shall on request afford all reasonable assistance to the Contractor in obtaining information as to local conditions. The Contractor shall not in the performance of the Contract in any manner endanger the safety or unlawfully interfere with the convenience of the public. The cost to the Contractor in meeting the requirements of this Sub-Clause shall be included in the Contract Price.
- (f) The Contractor shall give the PCC such prior written notice as the PCC may require of the delivery under the Contract of any items having a toxic hazard or other hazard to the safety or health of persons or property, identifying those hazards and giving full details of any precautions to be taken by the PCC on the delivery of such goods and their subsequent storage or handling.
- (g) In the event that either party incurs costs to which he would not otherwise be liable due to the other party's failure to comply with any law or any order, regulation or bye-law having the force of law, the amount of such costs shall be reimbursed by the other party.
- (h) The Contractor undertakes that it and its employees, agents and sub-Contractors will at all times comply with all health and safety requirements relating to the carrying out of the work under the Contract. Such requirements include in addition to statutory laws and regulations, any codes of practice and British Standards or their equivalent relating to Health or Safety which may be applicable to the performance of the Contract. In the performance of the Contract the Contractor shall conform to all relevant environmental standards, guidelines and Codes of Practice and shall take all practical steps in the design of the work to be performed under the Contract to minimise any risk to the environment.
- (i) The Contractor warrants that the design construction and quality of items to be supplied under the Contract comply in all respects with all relevant requirements of any Act of Parliament, statutory instrument, order, regulation, bye-law or other enactment in force when the items are supplied.

23. Quantities

The quantities stated in the Specification are those, which are estimated as the probable requirements of the user for the period of the Contract, but the user may at its option require the supply and delivery under any item in the Specification of any quantity greater or less than the quantity specified in such item. The quantities stated in the Tender Documents do not oblige the user to purchase such quantity of good and/or services.

24. Official Secrets Act and Confidentiality

- (a) The Contractor undertakes to ensure that its employees abide by the provisions of the Data Protection Act 1984 and 1998 and the Official Secrets Act 1911 and 1989 and any act amending, replacing or renewing the same. The Contractor shall, by the display or notices or by other appropriate means, ensure that all persons engaged in connection with the Contract (including any maintenance agreement) have notice that these statutory provisions apply.
- (b) The Contractor shall keep secret and not disclose and shall ensure that its employees keep secret and do not disclose any information of a confidential nature obtained by him by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

- (c) The Contractor shall ensure that its employees, agents and sub-contractors treat all information obtained or received in connection with the Contract as confidential and are aware of the provisions of the Data Protection Act 1984 and 1998 and that any personal information shall not be disclosed without the consent of the PCC.
- (d) The Contractor shall indemnify and keep indemnified the PCC against any actions, claims, losses, proceedings or costs arising from any breach of this condition.
- (e) If the Contractor is in breach of the conditions of Clause 22, the PCC will be entitled to cancel the Contract forthwith.
- (f) Where the Contractor is required as part of the delivery of this contract with the PCC to handle or process protectively marked information in accordance with the HMG Protective Marking Scheme the Contractor shall do so in compliance with the HMG Security Policy Framework and the forces Information Security Policy.
- (g) Notwithstanding clause 24 (b), a Party may disclose Confidential Information which it receives from the other Party:
 - i. where disclosure is required by applicable law or by a court of competent jurisdiction;
 - ii. to its auditors or for the purposes of regulatory requirements;
 - iii. on a confidential basis , to its professional advisers;
 - iv. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
 - v. where the receiving party is the Supplier, to the Staff on a need to know basis to enable performance of the Suppliers obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 24 (g) (v) shall observe the Suppliers confidentiality obligations under the Agreement; and
- (h) where the receiving Part is the Customer:
 - i. on a confidential basis to the employees, agents, consultants and contractors of the Customer;
 - ii. on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
 - iii. to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions
 - iv. and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 24.

25. Competition Clause

If during the contract period the PCC learns that it is possible to obtain the identical item(s) at a lower price than the contract price quoted for this contract then the PCC may request the Contractor to review the contract price and should the Contractor be unwilling to do so the PCC shall be free to purchase such item(s) from the cheapest source without incurring any liability.

26. Progress Reports

Where progress reports and/or other management information is to be submitted under this Contract, the Contractor shall render such reports and management information as to the progress of the mutual obligations under this Contract at the time and in such form as may be specified or

as otherwise agreed between the PCC and the Contractor. The provision and acceptance of such reports shall not prejudice the rights of either party under this Agreement.

27. Payment

- (a) The PCC agrees to pay all invoices within thirty days of receipt. Invoices must only be submitted after delivery of the Items. The PCC will not make any interim payment unless there is a previous written agreement between the PCC and the Contractor. All invoices must be clearly marked with the relevant order number. The PCC will not pay any invoice that has an outstanding credit note against it.
- (b) The PCC's method of payment is by BACS.
- (c) Value Added Tax, where applicable, shall be shown separately on all invoices.
- (d) The Contractor shall be entitled to invoice the PCC at the times and in the manner specified in the Contract. Provided an invoice is one, which under the Contract the Contractor is entitled to submit, the PCC shall pay the contractor within the period of days specified in the Contract from the date of receipt of invoice, and in the default of such specification 30 days from the date of invoice, subject to any right of deduction which the PCC may have by way of setoff or abatement. If the PCC does make any deduction, he shall notify the Contractor in writing with reasons.
- (e) As regards any works included in the Contract, or any component part or ingredient of such works, which may be or become subject to the payment of duty, any new duty, or an increase or decrease in duty existing at the date of the Tender payable in respect of such goods supplied under the Contract, or in respect of any component part or ingredient thereof, shall, in the case of a new duty or increased duty, be allowed to the Contractor subject to written agreement of the PCC and, in the case of a decreased duty, be allowed to the PCC.

28. Corrupt Gifts or Payments

The Contractor shall not:

- (a) Offer to give, or agree to give to any nominated person, employee or representative of the PCC, any gift or consideration or any kind of inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the PCC or for showing or refraining from showing favour or disfavour to any person in relation to this Contract;
- (b) Offer to sell goods or services to any nominated person, employee or representative of the PCC on the terms specified under the Contract between the PCC and the Contractor;
- (c) Commit an offence under the Prevention of Corruption Acts 1889 and 1916, the Bribery Act 2012 or to pay or offer any fee or reward contrary to Section 117(2) of the Local Government Act 1972.

If the Contractor, his employees, agents or sub-contractors contravene this clause the PCC shall be entitled to cancel the Contract and recover from the Contractor the amount of any loss resulting from such cancellation.

29. Cartels

The Contractor shall not be a party to a cartel, whether by price-fixing, market sharing or otherwise. If however, it becomes established that the Contractor is a party to a cartel (of any kind) the PCC will promptly report the fact (with details of the surrounding circumstances) to the Office of Fair Trading, the PCC will terminate the Agreement forthwith and if any relevant account or accounts of the Contractor has/have already been paid in full the PCC reserves the right to seek compensation from the Contractor and, if necessary, to sue for damages of such amount as may be advised.

30. Invalidity and Severability

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

The parties hereby agree to attempt to substitute for any invalid or unenforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

31. Termination

This Agreement may be terminated by either party giving the other party [three months' prior written notice]. Without prejudice to the foregoing the PCC may terminate this Agreement at any time without notice, and without liability in respect of any period of time after such termination, in any of the following circumstances:

- (a) In the event that the Contractor becomes insolvent or bankrupt or has a receiving order or administration order made against it or compounds with its creditors, or being a corporation commences to be wound up (not being a member's voluntary winding up for the purposes of reconstruction or amalgamation), or carries on its business under an administrator or administrative receiver for the benefit of its creditors or any of them.
- (b) In the event of the Contractor(s) or one of its employees divulging information which in the opinion of the PCC is deemed to be prejudicial to the continuation of the contractual relationship of the parties.
- (c) There is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Contractor or its Parent Company.
- (d) The PCC may at any time by notice in writing terminate this Agreement forthwith, if the Contractor is in Default of any obligation under this Agreement where:-
 - i. The Default is capable of remedy and the Contractor shall have failed to remedy the Default within thirty (30) days of written notice to the Contractor specifying the Default and requiring its remedy; or
 - ii. The Default is not capable of remedy.
- (e) Termination in accordance with this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- (f) The clauses below shall survive termination of this Agreement from any cause:
 - i. Confidentiality
 - ii. Publicity
 - iii. Waiver
 - iv. Indemnity
 - v. Governing Law and Jurisdiction
 - vi. Conditions and warranties relating to the good / services provided under the Contract
 - vii. Copyright

32. Termination Consequences

In the event of this agreement being determined whether by effluxion of time, notice, breach or otherwise:

- (a) Termination or expiry of this agreement shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination or expiry including the

right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

- (b) Either party shall be entitled to exercise any one or more of the rights and remedies given under the terms of this agreement and the determination of this agreement shall not affect or prejudice such rights and remedies.
- (c) Any right or remedy to which either party is or may become entitled under this agreement or in consequence of the other's conduct may be enforced from time to time separately or concurrently with any right or remedy given by this agreement or now or afterward provided for and arising by operation of law so that such rights and remedies are not exclusive of the others but are cumulative.

33. Force Majeure

- (a) For the purposes of this Agreement the expression "force majeure" shall mean any matter affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including:-
 - i. war and other hostilities including terrorist activities, (whether war be declared or not) invasion, act of foreign enemies, mobilisation, requisition or embargo
 - ii. rebellion, revolution, insurrection, military or usurped power or civil war
 - iii. riot, commotion or disorder except where solely restricted to employees of the Contractor or its sub-Contractors or sub-suppliers
 - iv. earthquake, flood, fire or other natural physical disasters except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming force majeure.
- (b) Force majeure shall not include a general industrial dispute or failure by approved sub-contractors.
- (c) If either party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations then he shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event.
- (d) Neither party shall be considered to be in default of its obligations under the Contract to the extent that it can establish that the performance of such obligations is prevented by any circumstance of Force Majeure which arises after the date of the Contract and which was not foreseeable at the date of the Contract.
- (e) If the performance of the obligations of either party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period of less than 30 days then during that period the Contract shall be considered as suspended. Upon the ending of the Force Majeure event the Contractual obligations of the parties shall be reinstated with such reasonable modifications to take account of the consequences of the Force Majeure event as may be agreed between the parties or, in default of such agreement, as may be determined by an Expert appointed under this Agreement. Notwithstanding such suspension the Contractor shall use his reasonable endeavours to assist the PCC in the performance of the Contract.
- (f) If performance of the obligations of either party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 30 days then the Contract shall be terminated by mutual consent and, subject to sub-clause (f) below neither party shall be liable to the other as a result of such termination.
- (g) If the Contract is so terminated then subject to the transfer to the PCC of the benefit referred to in sub-Clause (g) below the PCC shall pay to the Contractor such reasonable sum as may be

agreed between the parties or in default of agreement as may be determined by Expert Determination in accordance with this Agreement in respect of costs incurred and commitments already entered into by the Contractor at the date of the Force Majeure notice, less the amount of any payments already made to the Contractor at the date of the Force Majeure notice. If the amount of such advance payments made to the Contractor exceeds the sum due to the Contractor under this sub-Clause then the Contractor shall repay the balance to the PCC.

- (h) The Contractor shall transfer to the PCC the benefit of all work done by him or his approved sub-Contractors if any and sub-suppliers in the performance of the Contract up to the date of the Force Majeure notice, so far as the rights in the same have accrued to the Contractor prior to the Force Majeure notice or will do so on the payment under sub-clause (f) above.
- (i) Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to "force majeure" if it is not attributable to the willful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.
- (j) If either of the parties shall become aware of circumstances of "force majeure" which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- (k) It is expressly agreed that any failure by the Contractor to perform or any delay by the Contractor in performing its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Contractor shall have entered into any contract supply arrangement or sub-contract or otherwise, shall be regarded as a failure or delay due to "force majeure" only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of "force majeure".
- (l) Should the "force majeure" continue for more than 28 days, or other such period as determined by the PCC the parties shall enter into discussions with a view to agreeing alternative supply arrangements for the longer term, as may be fair and reasonable to the parties and any alternative suppliers called upon to supply products/services during the remaining period of the "force majeure".

34. Free-Issue Materials

Where the PCC for the purpose of the Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the PCC. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify the PCC of any surplus materials remaining after completion of the Contract and shall dispose of them as the PCC may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of its servants, agents or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any of the rights of the PCC, the Contractor shall deliver up such materials whether processed or not to the PCC on demand.

35. Audit

The Contractor shall keep and maintain, until two years after the Contract has been completed, records to the satisfaction of the PCC of all expenditures which are reimbursable by the PCC and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by the PCC on a time charge basis. The Contractor shall on request afford the PCC or its representatives such access to those records as may be required by the PCC in connection with the Contract.

36. Designated Representatives

- (a) The PCC may, by written notice to the Contractor, appoint an Authorised Representative who shall have the power to act on behalf of the PCC on such matters in connection with the Contract as shall be specified in such notice. The PCC may, by further written notice or notices to the Contractor, revoke or amend the authority of the Authorised Representative or appoint a replacement Authorised Representative.
- (b) The Authorised Representative may from time to time, by written notice to the Contractor, delegate all or any part of his/her authority to an assistant or assistants who shall be known as 'Assistant Authorised Representative'. The Authorised Representative may, by further written notice to the Contractor, revoke or amend the delegated authority of any Assistant Authorised Representative or appoint a new Assistant Authorised Representative.
- (c) The Contractor may by written notice to the PCC, appoint an Account Manager who shall have the authority to act on behalf of the Contractor on such matters in connection with the Contract as shall be specified in such notice.
- (d) The PCC reserves the right to seek regular progress meetings with the Contractor. These shall be arranged at the instigation of the Authorised Representative.
- (e) There shall be no contact with the PCC by any sub-contractor appointed by the Contractor. All contact with the PCC shall be handled directly by the Contractor, unless agreed otherwise in writing by the PCC.

37. Freedom of Information Act 2000

- (a) The Contractor shall provide all reasonable assistance to enable the PCC to comply with any request received under the Freedom of Information Act.
- (b) The Contractor shall indemnify the PCC and hold it harmless from and against all liability, costs, claims, actions, losses, damages and expenses whatsoever arising directly or indirectly as a result of any decision by the Information Commissioner that information classed by the Contractor as confidential should be disclosed under the Freedom of Information Act 2000.

38. Environmental Consideration

The Contractor shall take action to minimise any adverse effect on the environment from the products used in fulfillment of the Contract or from their manufacture, storage and supply in accordance with legislation and best practice at the time.

39. Human Rights

- (a) The Contractor shall not do or (in so far as any act lies within the reasonable power of the Contractor to prevent) permit or allow anything to be done which is incompatible with the rights contained within the European Convention on Human Rights and/or the Human Rights Act, 1998.
- (b) The Contractor shall not do or (in so far as any act lies within the reasonable power of the Contractor to prevent) permit or allow anything to be done which may result in the PCC acting incompatibly with the rights contained within the European Convention on Human Rights and/or the Human Rights Act 1998.
- (c) The Contractor shall indemnify the PCC against any loss, claims and expenditure resulting from the Contractors breach of this clause.
- (d) The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) or any statutory modification or re-enactment thereof

relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

40. Additional Terms and Conditions

The Contractor is to instruct all his agents, subcontractors, staff and employees not to send additional contract terms subsequent to the issue of this Contract. Any terms and conditions sent on the back of delivery notes, timesheets or provided to contract participants to sign will be invalid.

41. Contract Extensions

- (a) The PCC shall have the option to extend the Term of this agreement. On each occasion the PCC exercises this option it shall give written notice to such effect to the Contractor no later than 9 months prior to the expiry of the Initial Term in the case of the first option and no later than 9 months prior to the end of the first extended period in respect of the second option.
- (b) Once the contracts initial period has expired any possible extensions to the agreed period will be subject to:
 - i. Both parties agreeing;
 - ii. The price being acceptable and in accordance with Clause 47 (Pricing/Service Charges/Price Variation);
 - iii. The performance of the Contractor being satisfactory to the PCC.

42. Waiver

Failure by the PCC 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 PCC to enforce any provision in accordance with these terms.

43. Arbitration

All disputes, differences or questions at any time arising between the parties as to the construction of the Contract or as to any matter or thing arising out of the Contract or in any way connected therewith shall be referred to the arbitration of a single arbitrator who shall be agreed between the parties or who failing such agreement, shall be appointed at the request of either party by the President of the Chartered Institute of Arbitrators. The arbitration shall be in accordance with the Arbitration Act 1979 and any statutory modification or re-enactment thereof for the time being in force.

Alternatively, the PCC may consider mediation as a means of dispute resolution.

44. Notices

- (a) Any notice or other communication which either party is required by the Contract to serve on the other party shall be sufficiently served if sent to the other party at its address as specified in the Contract either:
 - i. by hand
 - ii. by registered or recorded delivery, or
 - iii. by facsimile or electronic mail transmission confirmed by registered first class post or recorded delivery within 24 hours of transmission.

- iv. if the notice is to the Contractor at his last known address or if to a limited company at its Registered Office, or
- v. to the PCC and addressed to Police and Crime Commissioner for Merseyside, Allerton Police Station, Rose Lane, Allerton, Liverpool, L18 6JE and any Notices so served shall be deemed properly served.

(b) Notices are deemed to have been served as follows: delivered by hand; on the day when they are actually received, sent by recorded delivery; two working days after posting, sent by facsimile or electronic mail; on the day of transmission if transmitted before 16.00 hours on the working day, but otherwise 09.00 hours on the following working day, provided in each case that the required confirmation is sent.

45. Governing Law

These Conditions shall be governed by and construed in accordance with the law of England and Wales.

46. Smoking Policy

The PCC operates a non-smoking policy in all its vehicles, buildings and premises. Smoking for all personnel is totally prohibited whilst at work or on the PCC's premises. Smokers who wish to smoke will have to leave the PCC's premises entirely - including all car parks and grounds. **This ruling applies to all suppliers and contractors whilst on the PCC's premises or using vehicles belonging to the PCC.**

47. Pricing, Service Charges and Price Variation.

- (a) The Tenderer shall comply with all the terms and conditions contained herein relating to pricing and price variations. No price variation will be considered otherwise than in accordance with the price variations detailed in this clause.
- (b) Tendered prices must include all costs incurred in providing the Service as specified in the Tender Documents but shall, unless otherwise indicated in the Tender Documents, exclude Value Added Tax, where applicable.
- (c) As regards any services comprised in the Contract, All costs associated with the provision of the Service are deemed to be included in the Service Charge. The Service Charge must be all inclusive of staffing costs, training, travel expenses and administration. No additional charges will be paid by the PCC for the provision of the Service throughout the night, at weekends or during public holidays unless agreed at the commencement of this contract.
- (d) As regards any services payment by the PCC will be made monthly in arrears.
- (e) Any claim for a price increase must be fully substantiated and proved to the satisfaction of the PCC by the production of purchase invoices, full details of Service costs or such other evidence as is considered essential to the examination of the claim. Any such claim by the Contractor shall be notified to the PCC, in writing, at least 28 days prior to the effective date of such an increase. The imposition of Price Increases will not be carried out until formal acceptance in writing is given by the PCC. The Contractor will be limited to one price increase per annum.
- (f) All payments will be made in Pounds Sterling. However The PCC reserves the right to pay in Euros should they so wish at a future date.

48. Assignment, Sub-Letting and Novation

- (a) The PCC shall be entitled to;

- i. assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Contract; or
 - ii. novate this Contract to any other body established by the Crown or under statute or statutory instrument in order substantially to perform any of the functions that previously had been performed by the PCC provided that any such novation shall not increase the burden of the Contractor's obligations pursuant to this Contract; or
 - iii. novate this Contract to any private sector body which performs a function of the PCC provided that any such novation shall not increase the burden of the Contractor's obligations pursuant to this Contract.
- (b) The Contractor shall not;
- i. without the written consent of the PCC, which shall not be unreasonably withheld, sub-let the Contract or any part thereof or make any sub-Contract with any person or persons for the execution of any part of the Service(s), but the restriction contained in this Clause shall not apply to the supply of materials or minor details nor to any part of the Service(s) for which a Sub-Contractor is named in the Contract. Any such consent shall not relieve the Contractor from any of his obligations under the Contract; or
 - ii. assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Contract without the prior written consent of the PCC.
 - iii. The Contractor shall be liable for all acts and omissions of its Sub-Contractors, their servants and agents, as if such acts and omissions were acts and omissions of the Contractor.
 - iv. The Contract, or any part, share or interest in it, shall not be transferred or assigned by the Contractor, directly or indirectly to any person whomsoever without the written consent of the PCC.

49. Standard of the Works

- (a) The standard of work shall be as specified in the Contract. To the extent that the standard of work has not been specified the Contractor shall use good quality materials, the best applicable techniques and standards and execute the Contract with care, skill and diligence in accordance with best practice.
- (b) The Contractor warrants and represents that all staff assigned to the performance of the Contract shall possess such skill and experience as is necessary for the proper performance of the Contract.
- (c) The Contractor shall provide the PCC with such reports of his work at such intervals and in such form as the PCC may require from time to time.

50. The Service

The Contractor shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the Service. The Service supplied shall in every respect conform to the quality, standard and Specification incorporated hereto. The PCC at all times relies on the skill and judgment of the Contractor in that it purports to be competent in the supply of the Service and the execution of the Order. If any part of the work is found to be defective or in any way differing from the Contract requirement, other than as a result of a default or negligence of the PCC or his authorised representatives, the Contractor shall at his own expense perform the work correctly within such reasonable time as may be specified.

51. Performance and Variation of the Service

The Contractor shall perform the Service to the standard as specified in the Contract. The PCC reserves the right by notice to the Contractor to modify the quality or quantity of the Service and any alteration to the quality or quantity or to the Contract price or the completion date arising by reason of such modification shall be agreed between the parties. Such modification shall be subject to the provisions of this agreement.

52. Manner of Carrying out the Service

- (a) The Contractor shall make no delivery of materials, plant or other things nor commence any work on the PCC premises without obtaining the PCC's prior consent.
- (b) Access to the PCC premises shall not be exclusive to the Contractor but only such as shall enable him to carry out the Service concurrently with the execution of work by others. The Contractor shall cooperate with such others as the PCC may reasonably require.
- (c) The PCC shall have the power at any time during the progress of the Service to order in writing:
 - i. the removal from the PCC premises of any materials which in the opinion of the PCC are either hazardous, noxious or not in accordance with the Contract; and/or
 - ii. the substitution of proper and suitable materials; and/or
 - iii. the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work which in respect of material or workmanship is not in the opinion of the PCC in accordance with the Contract.
- (d) On completion of the Service the Contractor shall remove its plant, equipment and unused materials and shall clear away from the PCC premises or other specified location all rubbish arising out of the Service and leave the PCC premises or other specified location in a neat and tidy condition.

53. Time of Performance

- (a) The Contractor shall begin performing the Service on the date stated in the Contract and complete it by the date or time stated in the Contract. Time is of the essence of the Contract. The PCC may by written notice require the Contractor to execute the Service in such order as the PCC may decide.
- (b) The Contractor shall at the request of the PCC supply a programme for the completion of the Service by the date specified in the Contract and shall provide the PCC with progress reports on a periodic basis as required by the PCC which will show progress against programme.

54. Licences and Permits

If the performance of the Contract requires any Licences or other permits, it shall be the responsibility of the Contractor to ensure that such Licence or other permits are available at no cost to the PCC at the place and at the time to enable unrestricted use by the PCC.

55. Acceptance

Acceptance of the Service shall take place when the PCC confirms acceptance of it or the PCC shall be deemed to have accepted the Service without prejudice to any other remedies, if the PCC has not exercised right of rejection within any period specified for that purpose in the Contract.

56. Approvals

Any approvals required or given by the PCC during the execution of the Service in respect of samples, standards, patterns, specifications, procedures, modifications, drawings or other documents or materials shall not relieve the Contractor of his obligations under the Contract.

57. Health & Safety

- (a) The Contractor represents and warrants to the PCC that the Contractor has satisfied itself that all necessary tests and examinations have been made or will be made prior to delivery of the Service to ensure that the Service is designed and performed so as to be safe and without risk to the health or safety of persons using the same, and that he has made available to the PCC adequate information about the Service and about any conditions necessary to ensure that when put to us, the Service will be safe and without risk to health.
- (b) The Contractor shall indemnify the PCC against all actions, suits, claims, demands, losses, charges, costs and expenses which the PCC may suffer or incur as a result of or in connection with any breach of this Condition.
- (c) The Contractor shall notify the PCC of any health and safety hazards of which it is aware (having made all reasonable enquiries) and which may arise in connection with the performance of this contract.
- (d) The PCC recognises that contract work on Merseyside Police premises remains part of Merseyside Police undertaking. The duties to ensure that work is carried out in a safe manner cannot be totally delegated to the Contractor. In the spirit of co-operation and partnership, Merseyside Police will endeavour to work with the Contractor to ensure the highest standards of health and safety at all times.
- (e) The PCC will require that the Contractor takes all reasonable steps to carry out the work safely. The Health and Safety Policy, Risk Assessments and, where necessary, Method Statements must be supplied and complied with in all respects. The Contractor must be fully aware of, and comply with, all Health and Safety legislation and best practice applicable to the work being undertaken. The Contractor will take steps to monitor Health and Safety compliance, and will promptly act to correct shortcomings in organisation or arrangements. Participating Authorities may issue guidelines to Contractors, which they would be expected to observe.
- (f) It may be considered necessary for Risk Assessments and Method Statements be available not only for the initial contract bid purposes, but are also developed and applied on all future work on Merseyside Police premises. To this end, tenderers may be required to submit a generic Risk Assessment/Method Statement, together with one site-specific Risk Assessment/Method Statement with this tender submission.

58. Flexibility of Service Provision

- (a) The specification lists the basic requirements of the Contract. However, the successful Contractor(s) may be required to vary service provision according to the PCC's needs either by variations to the original services/ tasks/processes or by taking on new services/ tasks/processes, provided they are 'reasonable' and fall within the overall scope of what the Contractor(s) would reasonably be expected to be capable of delivering.
- (b) So long as the cost to the Contractor(s) of providing varied or additional services does not change, then the PCC would not expect the contract price to change. Where a business change requirement of the project would involve additional costs to the Contractor(s), each Contracting Authority recognise that, and in those types of instances only, the contract price may be revised by mutual agreement.
- (c) The Customer's Authorised Representative shall be entitled to issue the Contractor(s) instructions which shall always be confirmed in writing requiring the Contractor(s) to do all or any of the following:
 - i. to omit or cease to provide any part of the Service for such period or periods as an Authorised Representative of the Customer may determine, such period or periods may be either a temporary or permanent arrangement.

- ii. to provide the Service or any part thereof in such a manner as an Authorised Representative or the Customer may reasonably require.
- iii. to provide such Services additional to the Services as an Authorised Representative of the Customer may reasonably require, provided that such additional Services fall within the general scope of Service provision.
- iv. to meet changing needs in the performance of the contract to vary the Service to be provided as may be appropriate.

59. Compliance with Legislation

The Contractor(s) warrants that the Services to be supplied comply in all respects with all relevant requirements of any Statute, Statutory Rule, or Order or other instrument having the force of law or Code of Practice which may be in force at the time when the same are supplied.

60. Data Protection Act 1998 and any new Data Protection legislation that is current during the course of the contract

In respect of the Data Protection Act 1998, the Customer shall assume responsibility as 'Data Controller' while the Contractor(s) assumes the role of 'Data Processor'. From time to time as the Customer may deem it necessary. As 'Data Controller', the contracting Authority will provide written instructions to the Contractor(s) pertaining to the use or 'processing' of any 'personal data' owned or controlled by the Customer and to which the Contractor(s) may have access to for the purposes of this Agreement. In performing any Services under this Agreement, where the Contractor(s) will assume the role of 'Data Processor' on behalf of the Customer and will comply with any such written instructions provided by the Customer. The Customer will choose a 'Data Processor' providing sufficient guarantees in respect of the technical and organisational security measures governing the processing to be carried out; and reserves the right to take reasonable steps to ensure compliance with those measures; and will ensure that the processing by the 'Data Processor' is carried out under contract, which is made or evidenced in writing (known as a Data Processing Agreement), under which the 'Data Processor' is to act only on instruction from the Customer and; the Data processing Agreement must require the 'Data Processor' to comply with obligations equivalent to those imposed on the Customer by the seventh Data Protection Principle.

61. Standard of the Services

- (a) In addition to providing the Services in accordance with the Service Standards the Services shall be conducted with reasonable care and skill and if there is a difference in these standards the Contractor shall provide the Services to the higher of such standards.
- (b) The Contractor warrants and represents that all its staff, agents and sub-contractor assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.

62. Default by Contractor

- (a) If the Services to be supplied under the Contract shall not be duly supplied by the Contractor when and as ordered by or for the PCC, or if the services delivered shall not in every respect be in the opinion of the PCC of the quality contracted for, or if the services shall be deficient in the quality charged for, the PCC may reject the Services. In every such case the PCC without prejudice to any other remedy for breach of contract may purchase at such prices and on such terms and conditions as the PCC thinks fit a fresh supply or employ any other person to supply the PCC with the services during the remainder of the term of the Contract or any part of that term in the place of the Contractor and in such case the Contractor shall pay to the PCC or it shall be lawful for the PCC to deduct from any sum that is due or may become due to the Contractor under the Contract or otherwise to recover all costs, charges and expenses of such additional supply or arising from such failure to perform the Contract over and above the rate or price at which such services are under the Contract to be supplied.

- (b) The PCC shall have the right to reject any Temporary Staff upon the grounds of unsuitability or unsatisfactory performance at any time in accordance with the provisions detailed in the contract complaints process.

63. Contractor's Status

- (a) The Contractor shall in no circumstances hold himself out as being, the servant or agent of the PCC otherwise than in circumstances expressly permitted by these Conditions.
- (b) The Contractor shall in no circumstances hold himself out as being, authorised to enter into any contract on behalf of the PCC or in any way bind the PCC in the performance, variation, release or discharge of any obligation.
- (c) The Contractor shall in no circumstances hold himself out as having the power to make, vary, discharge or waive any by-law or regulation of any kind.
- (d) The Employees of the Contractor are not and shall not hold themselves out to be and shall not be held out by the Contractor as being servants or agents of the PCC for any purpose whatsoever.
- (e) In carrying out the Services the Contractor shall be acting as principal and not as the agent of the PCC and accordingly:-
 - i. the Contractor shall not (*and shall procure that his agents and servants do not*) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the PCC, and
 - ii. nothing in this Contract shall impose any liability on the PCC in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the PCC to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the PCC's staff or agents.

64. Premises

The Contractor agrees to follow Merseyside Police's Health and Safety Regulations. This document has been produced for the PCC in compliance with current regulations.

65. Compliance with relevant Merseyside Police Policies

The Contractor agrees to comply with the PCC's Health and Safety Policy, Smoking Policy, Substance Misuse Policy, Remote Working Policy, Sustainability Policy, any control measures connected with lone working risk assessments and any future amendments to these policies and procedures.

66. Acknowledgements on Documents

Any and all acknowledgements on documents, graphics or photographs produced will be those of the PCC and not the Contractor. The information/documentation will remain the property of the PCC and will not be used in any portfolios without the prior written consent of the PCC.

67. Environmental Requirements

The Contractor shall, when working on the PCC's premises, perform the contract in accordance with the PCC's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

68. Fees and Expenses

- (a) Fees tendered/quoted are to be fully inclusive of all disbursements, general and office overheads. No additional costs will be considered by the PCC.
- (b) VAT, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

69. Equipment

- (a) The Contractor shall provide all the equipment necessary for the provision of the Services.
- (b) The Contractor shall make no delivery of Equipment nor commence any work on the PCC's premises without obtaining the Authorised Officer's prior approval.
- (c) All equipment brought onto the PCC's premises shall be at the Contractor's own risk. The Contractor shall provide for the haulage or carriage thereof to the premises and the removal of equipment when no longer required at its sole cost. The Contractor shall ensure that the PCC's premises are appropriate to contain and operate the Equipment.
- (d) The Contractor shall maintain all items of equipment used in connection with this contract within the PCC's premises in a safe, serviceable and clean condition.
- (e) All equipment shall be at the risk of the Contractor and the PCC shall not be liable for any loss of or damage to any equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the PCC.
- (f) The PCC shall have the power at any time during the progress of the services to order in writing:
 - i. the removal from the PCC's Premises of any equipment which in the opinion of the PCC are either hazardous, noxious or not in accordance with the Contract;
 - ii. the substitution of proper and suitable materials, plant or equipment;
 - iii. the removal and proper re-execution (notwithstanding any previous test thereof or interim payment therefore) of any work which, in respect of material or workmanship, is not in the opinion of the Authorised Officer in accordance with the Contract.
- (g) On completion of the Services the Contractor shall remove the equipment and unused materials and shall clear away from the PCC's premises all rubbish arising out of the Services, make good any damage caused to the PCC's premises by the removal of the equipment and leave the PCC's premises in a neat and tidy condition.

70. PCC Compulsory Conditions of Contract

If these terms and conditions conflict with the General or Special Terms and Conditions of this Contract, these conditions shall take precedence.

1. Every contract shall comply with any relevant directives of the European Union for the time being in force in the UK.
2. Every contract to which the Public Services (Social Value) Act 2012 applies shall comply with the requirements of the Act.

3. Nominated Sub-Contractors/Suppliers

- (i) This Standing Order shall have effect where a sub-contractor/supplier is to be nominated to a main contractor/supplier.
- (ii) The terms of any tender or quotation by a nominated sub-contractor/supplier shall require an undertaking that, if he is selected, he will be willing to enter into a contract with the main contractor/supplier on terms which indemnify:-

- (a) the main contractor/supplier and authority against his own obligations under the main contract included in the sub-contract unless provision is made to the contrary under the conditions of contract; and
- (b) the authority against any third party claims arising out of any act or omission by the said nominated sub-contractor/suppliers.

4. Cancellation of Contracts in Case of Corruption

The PCC may cancel a contract and recover from the Contractor the amount of any loss resulting from such cancellation if 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 obtaining execution of the contract or any other contract with the PCC or for showing or forbearing to show any favour or disfavour to any person in relation to the contract or any other contract with the PCC or, if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or if in relation to any contact with the PCC the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010 or shall have given any fee or reward, the receipt of which is an offence under Sections 117(2) and 117(3) of the Local Government Act 1972.

If a contract is determined under this provision the Contractor shall be debarred from tendering for a period of five years unless in the meantime the PCC otherwise determines.

5. Withdrawal of Tenders or Failure to Sign or Execute a Contract

In the event of any person in the opinion of the PCC without proper reason withdraws a tender, or refuses to sign or execute a contract after a tender has been accepted such person shall not be allowed to tender for a period of three years thereafter, unless in the meantime the PCC otherwise determines.

6. The Contractor shall indemnify the PCC against:-

- (a) any claim which may be made in respect of Employer's liability against the PCC or the Contractor by any PCC employee or by any workman employed by the contractor or any sub-contractor arising out of or in connection with the execution of the work; and
- (b) any claim for bodily injury to or damage to property of third parties, including the PCC's employees;

And the Contractor shall produce, before any work commences, evidence that he is satisfactorily insured against any such claim.

7. Conditions to be Observed by Contractors and Sub-Contractors

Where the work is to be executed wholly or in part in the United Kingdom or the goods or materials to be supplied will be manufactured or made wholly or in part of the factory, workshop or place situate in the United Kingdom the Contractor shall in respect of all persons employed by him (whether in execution of his contract or otherwise) in every factory, workshop or place situate in the United Kingdom and occupied or used by him for the execution of the contract, comply with the following conditions, namely:-

- (a) The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the equality laws;
- (b) the Contractor shall keep proper records necessary for the satisfactory completion of the Contract including wages, records and time sheets, showing the wages paid to and the time worked by the work people in his employ and about the execution of the

contract, and all such records shall be produced whenever required for inspection by any officer authorised by the PCC;

- (c) the Contractor shall be responsible for the observance of this provision by sub-contractors employed within the United Kingdom in the execution of the contract and shall if required notify the PCC or Customer of the names and addresses of all such sub-contractors; and
- (d) in the event of any question arising as to whether the foregoing conditions are being observed, the question shall, if not otherwise disposed of, be referred to an independent tribunal for decision.

Any contracts made by or on behalf of the PCC incorporating the Standard Form of Building Contract (1998 Editions as revised) in which Clause 17(a) or any revision thereof, stands without amendment, shall be deemed to comply with the provisions of these provisions.

8. Breach of Contract

- (i) In the event of a fundamental breach by the Contractor, or by any person to whom the contract or any part thereof may have been assigned or underlet, or any of the conditions and provisions of these Standing Orders, the PCC may absolutely determine the contract; and that furthermore, the PCC may proceed to complete the works or obtain or dispose of the materials elsewhere as the case may be, either by contract or otherwise.
- (ii) Any sums which may be incurred or sustained by the PCC by reason of the determination of the contract as aforesaid shall be borne by the Contractor and at the discretion of the PCC may be deducted from any monies due or to become due to him under the contract or recovered by action.
- (iii) If a contract is determined under this condition, the Contractor shall be debarred from tendering for a period of five years unless in the meantime the PCC otherwise determines.

9. Assignment and Sub-Letting

The Contractor shall not assign this contract or any part thereof without the prior consent of the PCC or sub-let the same or part thereof without the written consent of the Chief Constable or appropriate Chief Officer which shall not unreasonably be withheld