



## **Avon Fire Authority**

### **Standard Terms and Conditions for the supply of Goods, Works and/or Services (25 May 2018)**

#### **1. Interpretation**

1.1. The following words and expressions have the following meaning unless inconsistent with the context:

“the Authority”	means Avon Fire Authority
“the Contract”	means the Contract between the Authority and the Contractor to supply the goods, works and /or services consisting of these Contract Conditions and any such other terms and conditions or Contract Documentation
“the Contractor”	means the person or organisation to provide the goods, works and/or services in accordance with the Contract. This will include anyone acting on their behalf to include (but not limited to) all directors, officers, employees, agents, consultants and contractors of “the Contractor” and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract.
“Party”	a Party to this Contract
“Contract Conditions”	means these Contract Conditions
“Contract Documentation”	includes, amongst other things, the Specification, Invitation to Tender, the Tender and the Contract Conditions, the Special Conditions and the Official Purchase Order
“Data Protection Legislation”	Means the GDPR, LED and any applicable national implementing Laws as amended from time to time; and DPA 2018.
“Invitation to Tender”	means the invitation issued by the Authority to submit a Tender or quotation for the provision of the goods, works and/or services during the Contract period
“Official Purchase Order”	means an order issued by the Authority for the goods, works and/or services during the Contract period
“Specification”	means the detailed Specification for the goods, works and/or services prepared by the Authority
“Special Conditions”	means any additional conditions which the Authority may apply to the Contract and which will form part of the Contract Documentation

“Supporting Documentation”	means such evidence and other information as the Authority may reasonably require from time to time to be submitted in support of an invoice
“Tender Price”	means the price(s) for providing the goods, works and/or services as set out in the Tender and accepted by the Authority
“Tender”	means the tender or quotation submitted by the Contractor for the provision of the goods, works and/or services
“DPA 2018”	Means the Data Protection Act 2018 (when in force but until that event means the Data Protection Act 1998).
“GDPR”	The General Data Protection Regulation (Regulation (EU) 2016/679). The following will take their meaning from the GDPR: Controller, Processor, Data Subject, Personal Data, Personal Data Breach, and Data Protection Officer.
“LED”	LED : Law Enforcement Directive (Directive (EU) 2016/680)
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
“Data Subject Access Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
“Sub-Processor”	any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement
“Schedule of Processing”	this is a written document comprising of a Schedule (or a list) whereby the Authority will set out the parameters of processing for the Personal Data and Data Subject Categories governed by the Contract. Such information in relation to the processing to include (but is not limited to) the following (which all take their meaning from the GDPR) : Subject Matter; Duration; Nature and Purposes; Type of Personal Data, Categories of Data Subject; and instructions for what happens to the Personal Data at the end of the Contract.

1.2. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.3. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

## **2. Parties to the Contract**

2.1. The Contract is between the Contractor and the Authority.

2.2. No person who is not a Party to the Contract (including without limitations any employee, officer, agent, representative or sub-contractor or either the Authority or the Contractor) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on them without the prior agreement in writing of both Parties. For avoidance of doubt, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.

### **3. Contract Period**

3.1. Unless terminated earlier in accordance with these terms and conditions, the period of the Contract shall be as agreed by the Parties in writing.

3.2. Where the goods, works and/or services are to be provided by the Contractor on a “call-off” basis, the Authority shall be entitled to call-off such goods, works and/or services at any time during the Contract Period even though they may not be delivered until after the end of the Contract Period and the Contract Documentation shall be continued accordingly.

### **4. Agreement**

4.1. The Contract Documentation sets out the entire Agreement and understanding between the Parties in respect of the subject matter of the Contract. No variation of the Contract shall be effective unless it is agreed in writing and signed by authorised officers for each Party. No terms and conditions put forward at any time by the Contractor shall form any part of the Contract, unless the Authority has specifically agreed to accept them, in writing.

4.2. These Conditions shall be incorporated in any Contract made by the Authority for the provision of goods, works and/or services unless they are specifically excluded and shall apply to the extent that they are not inconsistent with any Special Conditions.

### **5. Acceptance of Tender**

5.1. The Authority does not bind its self to accept the lowest, most economically advantageous or any Tender received and reserves the right to accept any Tender either wholly or in part.

5.2. Where the Contract makes provision for the Authority to “call-off” goods, works and/or services the Authority gives no guarantee and accepts no liability as to the quantity or value of the goods, works and/or services to be called-off during the Contract Period.

### **6. Contractor to ensure they are fully informed**

6.1. On submitting a Tender, it is the Contractor’s responsibility to ensure it fully understands the requirements. The Contractor shall be deemed to have understood the nature and extent of the goods, works and/or services required.

### **7. Contract standards**

7.1. The Contractor shall provide the goods, works and/or services for the Contract Period in accordance with the Contract Documentation and to the satisfaction of the Authority, using the skill, judgement and experience of a person fully qualified and experienced in all areas of business to do so.

7.2. Work will be done in a good, substantial and professional manner. Anything supplied will be of satisfactory quality. If the Authority has indicated that it requires something for a

specific purpose, it will be provided fit for that purpose. Anything described in the Tender or any other representation made to the Authority will comply with that description and anything sold by reference to a sample will be as good as or better than the sample.

- 7.3. Work will be done and goods delivered in accordance with any timetable that was stipulated by the Authority or formed part of your Tender. If there was no such timetable agreed then the work will be done and goods delivered in a reasonable time. Time shall be of the essence of the Contract unless specifically agreed otherwise.
- 7.4. Where there is a current appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institute or equivalent European standard, all goods and materials used or supplied and all workmanship will meet that standard unless the Authority agrees otherwise.
- 7.5. So long as the Contractor complies with this clause 7 and clause 22.1 the Authority shall pay to the Contractor any monies owed for the proper provision of the goods, works and/or services and any other sums lawfully due under the Contract.

## **8. Supply of goods and property transfer**

- 8.1. The Contractor shall supply the Authority the goods as stated in the Contract Documentation as agreed by the Authority. The property and risk in such goods shall not pass to the Authority until they have been delivered to the specified location and, following a reasonable time for inspection, accepted by the Supervising Officer or his/her authorised representative and deemed to meet quality requirements and deemed to be fit for purpose.
- 8.2. The Contractor shall transfer good title to the Authority for anything supplied, unencumbered and without any reservation to anyone else.

## **9. Rejected goods**

- 9.1. The Authority may reject goods which, in its opinion, do not meet the contract standards, are not what was ordered or which have not been provided in accordance with the Authority's instructions or with what has been agreed between the parties. The Authority shall notify the Contractor in writing of this decision at the earliest opportunity.
- 9.2. Rejected goods shall constitute a breach of contract and shall be remedied by, and at the expense of, the Contractor upon seven days' notice given to the Contractor that the goods are rejected by the Authority. Any remedy offered by the Contractor must be agreed with the Authority in advance and to its satisfaction.

## **10. Delivery, packaging and disposal**

- 10.1. The Contractor shall be responsible for the delivery of goods to the Authority and shall proactively operate to minimise the carbon impact of delivery. No charge will be made for delivery unless this was set out in the Tender and has been agreed by the Authority. If a third party is used to transport or deliver the goods, they are agent to the Contractor and the Contractor is responsible for their actions or failures. Goods remain at the Contractor's risk until delivered in accordance with the Contract.
- 10.2. The Contractor shall use all reasonable efforts to minimise the use of packaging, which shall be preferably recoverable by the Contractor or where this is not practicable shall be reusable or recyclable by the Authority.

10.3. In the event that the Contractor is required to dispose of the Authority's existing assets, by way of example and not limited to; electrical goods, waste products, lighting, consumables, the Contractor must dispose of these in accordance with the relevant legislation and must provide the Authority with copies of documentary evidence of legal compliance.

## **11. Performance of Services**

11.1. The Contractor shall ensure that the services shall be performed in accordance with the highest professional standards and shall conform to any and all codes of practice, performance ratings, and quality standards as are laid down in the Contract Documentation or relate to the nature of the work performed.

11.2. The Contractor shall notify the Supervising Officer promptly of any issue that does or could prevent or hinder the Contractor in the performance of the services or where the Contractor becomes aware of any failure on its part to perform all or part of the Contract.

11.3. The Contractor shall be responsible for any costs incurred in rectifying service faults.

11.4. The Contractor shall at all times perform the services strictly in accordance with the specification.

11.5. The Contractor shall supervise all work, which forms part of the services by management or supervisory staff who satisfy the requirements set out in the specification.

## **12. Failure of delivery or non-attendance**

12.1. Where the Contractor is unable to provide the goods, works and/or services on any particular date (for whatever reason) then the Contractor shall propose an alternative date to be agreed with the Authority, and time shall be of the essence. The Authority reserves the right to engage an alternative supplier to provide the goods, works and/or services in any event and in particular in the event of the Contractor being unable to offer an acceptable date.

## **13. Staffing**

13.1. The Contractor must ensure that it's personnel:

13.1.1. have relevant experience and training and qualifications to enable them to deliver the goods, works and/or services appropriately

13.1.2. maintain strict discipline and good order and shall not engage in behaviour or activities which could be contrary to or detrimental to the Authority's interests;

13.1.3. abide by the standards, rules and regulations established by the Contractor, including completion of time recording requirements and all safety and other regulations;

13.1.4. where provided with details of keys, security codes or other security details, keep the same secure at all times and not release or disclose the same (as the case may be) otherwise than to the Supervising Officer or to another person engaged by Contractor in the provision of the Contract who reasonably requires the release or disclosure in order to perform the Contract.

13.1.5. be available to the Authority, in the case of managers, either by telephone or in person, to discuss and manage issues concerning the provision of the Contract during normal office hours i.e. Monday to Friday, excluding public holidays, between 08 00 hours and 16 30 hours.

13.2. The Authority reserves the right to require removal from the Contract of any individual or Sub-Contractor used by the Contractor whose continued involvement in the delivery of the goods, works and/or services would in the reasonable opinion of the Supervising Officer be undesirable.

#### **14. Contractor's status**

14.1. In carrying out the Contract, the Contractor shall be acting as principal and not as the agent of the Authority.

#### **15. Advertising**

15.1. The Contractor shall not advertise the fact that it is providing goods, works and/ or services to the Authority under the Contract other than with the written permission of the Supervising Officer.

#### **16. Use of premises**

16.1. The Authority may, during the period of the Contract, permit the Contractor to use free of charge, such storage space, office and welfare facilities and equipment as may from time to time be designated by the Authority for use by the Contractor. In such an event the Parties agree that there is no intention on the part of the Authority to create a tenancy of whatsoever nature in favour of the Contractor or their staff and that no such tenancy shall become into being.

#### **17. The Authority's responsibilities**

17.1. The Authority will from time to time appoint a Supervising Officer and will notify the Contractor the identity and contact details of such person and will also notify the Contractor of all others authorised to act on behalf of or in place of the Supervising Officer.

17.2. The Supervising Officer or his/her authorised representative(s) shall be responsible for commissioning goods, works and/or services and for agreeing related costs.

#### **18. Quality Monitoring**

18.1. The Authority may monitor the performance of the Contractor by any means, which are practical and reasonable.

18.2. The Contractor shall ensure that a suitable member of the Contractor's personnel attends periodic monitoring meetings, together with such other meetings as are reasonably required by the Authority in relation to the performance of the Contractor under the Contract.

#### **19. Complaints Procedure**

19.1. The Contractor shall ensure provision of a procedure that will allow a fast and effective resolution of any problems encountered under the Contract. This could be attained through direct daily contact with the local staff, senior management and regular contract meetings, as appropriate.

- 19.2. The Contractor shall maintain a log of complaints detailing;
- time and date of receipt of complaint and sufficient details to allow the Authority's Supervising Officer to determine to nature of the complaint, location and person who has raised the complaint
  - time at which the complaint was resolved
  - results of investigations
  - actions taken (if any) to remedy the defects
  - responses to the person raising the complaint, including time at which response given to complainant

## **20. Prices**

- 20.1. Prices shall remain fixed and firm as detailed in the Invitation to Tender and the Tender.

## **21. Currency**

- 21.1. The Contract price shall be paid in sterling (GBP).

## **22. Official Purchase Orders and payments**

- 22.1. The Authority will provide the Contractor with an Official Purchase Order, in advance, for the supply of goods, works and /or services. The Official Order number must be quoted on all invoices. No goods, works and/or services shall be supplied or carried out unless the Authority has issued the Contractor with an Official Purchase Order. No payment will be made or liability accepted by the Authority in respect of goods supplied or delivered or works and/or services carried out other than in accordance with this condition.

- 22.2. An invoice accompanied by supporting documentation shall be submitted by the Contractor to the Authority's Finance Department, in arrear, either on completion of the whole order or, if expressly agreed by the Authority, at the end of each month of the Contract Period and thereafter until all goods, works and/or services have been provided. The invoice shall clearly identify separately:

- 22.2.1. the value identified in the Tender of the goods, works and/or services provided during that month then ended in accordance with the Contract Documentation.
- 22.2.2. the calculation of the matters in 22.2.1.
- 22.2.3. the official order number

- 22.3. The Authority shall pay to the Contractor the amount properly due to the Contractor under the terms of this Contract within 30 days of receipt of a valid undisputed invoice and supporting documentation. The Contractor will also be required to ensure that their contracts also state that payment will be made to their own contractors within 30 days of receipt of a valid undisputed invoice and this condition is required to be imitated down the supply chain.

## **23. Value Added Tax**

- 23.1. The Authority shall in addition pay to the Contractor any Value Added Tax properly chargeable on the sums correctly invoiced within the time specified in clause 22.3, subject to the receipt of a valid VAT invoice.

## **24. Force Majeure**

- 24.1. In the event of an Act of God or Force Majeure (which shall include acts of government, fire, tempest, acts of war and related matters, which are both beyond the control of the Contractor and are such that the Contractor with the application of all due diligence and foresight could not prevent) which causes the cessation of or substantial interference with the provision of the goods, works and/or services by the Contractor, the duty of the Contractor to provide the goods, works and/or services shall be suspended until such circumstances have ceased. The Authority shall not be liable to make any payment to the Contractor in respect of such suspension and any such sum already paid in respect of any part of the goods, works and/or services not yet provided shall be held to the credit of the Authority and returned to the Authority.
- 24.2. If the period of suspension under clause 24.1 lasts for longer than one month, either Party may serve upon the other one-month's written notice of termination of the Contract. Unless the Contractor shall have resumed the provision of the goods, works and/or services in accordance with the Contract, the Contract shall terminate in accordance with such notice.

## **25. Assignment and Subcontracting**

- 25.1. This Contract and all rights under it may be assigned or transferred by the Authority.
- 25.2. The Contractor may not assign or sub-contract any of its rights or duties under this Contract without the express written approval of the Supervising Officer, giving not less than 60 days' notice of its intentions. The Contractor is responsible for ensuring that any sub-contractors used in the performance of the Contract shall comply with all relevant legal provisions, whether in the form of Orders, Regulations, Statutes, Statutory Instruments, Codes of Practice, Byelaws, Directives or the like, to be observed and performed in connection with the services provided under the contract.
- 25.3. The Authority has the right to complete its own due diligence checks to ensure that any assigned sub-contractor complies with the Authority's Data Protection requirements.

## **26. Observance of Statutory Requirements**

- 26.1. The Contractor shall comply with all relevant legal provisions, whether in the form of Orders, Regulations, Statutes, Statutory Instruments, Codes of Practice, Byelaws, Directives or the like, to be observed and performed in connection with the services provided under the Contract, and shall indemnify the Authority accordingly against any loss or damage caused by non-compliance with any such legal provisions.
- 26.2. The Contractor shall operate at all times in such a way so as not to bring the Authority into disrepute.

## **27. Health and Safety**

- 27.1. The Contractor shall at all times, in the provision of the services, comply with the requirements of the Health and Safety at Work etc. Act 1974 and of any other legal provisions pertaining to the health and safety of its own staff, the Authority's employees and others who may be affected by its performance of the services.
- 27.2. The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards which may

exist or arise at the premises and which may affect the Contractor in the performance of its obligations under the Contract.

## **28. Equal Opportunities**

28.1. The Authority has a legal duty to promote equality and:

- 28.1.1. actively work to eliminate discrimination, harassment and victimisation and any other conduct that is prohibited under the Equality Act 2010, which subsumes all previous equality legislation
- 28.1.2. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- 28.1.3. foster good relations between persons who share a relevant protected characteristic and persons who do not share it

Note: The protected characteristics cover race, disability, sex, age, religion or belief, sexual orientation, marriage and civil partnership, gender reassignment and pregnancy & maternity.

28.2. All Contractors providing goods and services for the Authority shall demonstrate their ability to support the Authority in this duty, through effective management throughout the life of the Contract of appropriate equality policies and behaviour, promoting equality and diversity activities through their organisations' practices, providing appropriate training to personnel and ensuring that all individuals are treated fairly and have the opportunity to fulfil their potential.

28.3. The Contractor shall operate an Equal Opportunities Policy which complies with statutory obligations under the Equality Act 2010 (as may be amended), incorporating the equality duties.

28.4. The Contractor shall provide the Authority, on request, with evidence of compliance with statutory obligations and initiatives to promote equalities in its business activities.

## **29. The Environment**

29.1. All Contractors shall operate in an environmentally conscious manner and in accordance with all relevant legislation, taking into consideration the impact of its activities and operations on the environment and actively seeking to minimise or eliminate those impacts.

29.2. The Contractor, its personnel, and any sub-contractors must adhere to all relevant policies and procedures developed by the Authority and shall cooperate with the Authority's officers over implementation of such policies and procedures. This includes the provision of data and information to enable the Authority to monitor, track and report on its activities.

## **30. Intellectual Property**

30.1. All and any intellectual property rights developed under the Contract or arising from the provision of the services by the Contractor shall belong to the Authority and the Contractor agrees that it shall execute or cause to be executed (by its personnel if necessary) all deeds, documents and acts required to vest said intellectual property rights in the Authority.

30.2. The Contractor shall not, in connection with the performance of the Contract, use, manufacture, supply or deliver any process, article, matter or thing where the use, supply or delivery of which would be an infringement of any Intellectual Property Rights.

### **31. Data Protection**

31.1. The Contractor warrants that it will observe all its obligations under the Data Protection Legislation to the extent that it relates to the processing of Personal Data and privacy; and all applicable law about the processing of Personal Data and privacy, which arise in connection with the Contract.

31.2. All parties to this Contract acknowledge for the purpose of the Data Protection Legislation, that the Authority is the 'Data Controller' and the Contractor is the 'Data Processor'.

31.3. The Authority (as Data Controller) will determine the means for processing the Personal Data (as defined by the GDPR) and the Contractor (as Data Processor) will process it on the Authority's behalf, ensuring that it fully complies with the provisions of the Data Protection Legislation. Details of the nature, scope, duration of the data processing and any specific obligations imposed on the Contractor, will be agreed in advance by writing and noted within a Schedule of Processing.

31.4. The contractor will only process the Personal Data as authorised by the Authority (in accordance with the Schedule of Processing) to fulfil its obligations under the Contract and under the Data Protection Legislation.

31.5. The Contractor will only act on written instructions of the Authority in accordance with the Schedule of Processing

31.6. The processing may not be determined by the Contractor unless with the prior approval of the Authority or is deemed by law.

31.7. The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions (or instructions received from elsewhere) infringe the Data Protection Legislation or any other law (unless notifying is prohibited by law) of the EU or a member state.

31.8. In fulfilment of its obligations under this Contract and the Data Protection Legislation's principle for processing information securely, the Contractor shall:

31.8.1. ensure that it has in place protective measures for appropriate technical (including measures that are in compliance with the National Cyber Security Centre (NSNC)) and organisational security which may include (but is not limited to): pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it. In addition, the Contractor is also responsible for putting in place physical security measures to protect the processing of the Authority's Personal Data.

- 31.8.2. acknowledge that the Authority has the right to complete its own due diligence checks and seek evidence. In doing so the Contractor will allow the Authority reasonable access to such information or a site visit to confirm the Contractor's compliance with the Data Protection Legislation, particularly those measures cited within 31.8.1, which will protect against a data breach (Data Loss Event), taking into account the following:
- i. nature of the data to be protected;
  - ii. harm that might result from the data breach;
  - iii. state of technological development; and
  - iv. cost of implementing such measures.
- 31.8.3. where required, as part of the specification for the service, to put in place and maintain an Information Security Management Plan.
- 31.8.4. ensure that its personnel do not process the personal data except in accordance with this Contract (and in particular to the agreed Schedule of Processing) and it takes all reasonable steps to ensure the reliability and integrity of any personnel who have access to the Authority's Personal Data. In particular that a Contractor's personnel:
- i. are aware of and comply with the Contractor's duties under this clause;
  - ii. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-Processor;
  - iii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
  - iv. have undergone adequate training in the use, care, protection and handling of Personal Data.
- 31.9. The Contractor shall not transfer personal data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
- i) the Authority and/or the Contractor has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation). Such appropriate safeguards may consist of making use of binding corporate rules, standard data protection clauses or contractual clauses adopted by the Information Commissioners Office (ICO);
  - ii) the Data Subject has enforceable rights and effective legal remedies;
  - iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
  - iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data.

31.10. The Contractor shall **notify** the Authority immediately (and not more than the required timescale) if it directly receives the following types of request (but not limited to):

- a) a Data Subject Access Request (or purported Data Subject Access Request) and to notify the Authority within no more than **3 working days**. Please note that the Contractor must not respond directly to the applicant of such requests unless instructed by the Authority;
- b) a request to rectify, block or erase any Personal Data and must notify the Authority of this within no more than **3 working days**;
- c) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation and to notify the Authority within no more than **3 working days**;
- d) any communication from the Information Commissioner's Office (ICO) or any other regulatory authority in connection with personal data processed under this Contract and to notify the Authority in no more than **3 working days**;
- e) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law and to notify the Authority in no more than **3 working days**; and / or
- f) the Contractor becomes aware of a Data Loss/Breach Event and **MUST notify the Authority within 24 hours** of discovering the Data Loss/Breach or a near miss.

31.11. The Contractor's obligation to notify under clause 31.10 shall include the provision of further information to the Authority in phases, as details become available.

31.12. Taking into account the nature of the processing, the Contractor shall provide the Authority with full co-operation and assistance (free of charge) in relation to either Party's obligations under Data Protection Legislation, and any complaint, communication, or a request made under clause 31.10 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing the required information / and or assistance for the following:

- a) to provide the Authority with full details and copies of the complaint, communication or request (or within **5 working days**);
- b) to provide such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request (SAR) within the relevant timescales set out in the Data Protection Legislation (**within 5 working days**);
- c) to provide the Authority, at its request, with any Personal Data it holds in relation to a Data Subject (**within 5 working days**);
- d) to provide assistance as requested by the Authority following any Data Loss/Breach Event (**within 24 hours if identifying the breach/loss**);

- e) to provide assistance as requested by the Authority with respect to any request from the ICO, or any consultation by the Authority with the ICO (**within 5 working days**) and
- f) to provide assistance as requested to compile the Authority's own Record of Processing Activities (ROPA) in order to meet its Accountability Requirements under the Data Protection Legislation.

31.13. The Contractor shall co-operate and provide reasonable assistance (free of charge) to the Authority in order to conduct any audits, inspections and provide the Authority with whatever information it requires in order to ensure that all Parties meet their obligations under the Data Protection Legislation. This will include assistance to complete a Data Protection Impact Assessment (DPIA), which is an assessment conducted by the Authority (prior to commencing any processing) to assess the impact of the envisaged processing on the protection of Personal Data. Such assistance may, at the discretion of the Authority, include:

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

31.14. The Contractor shall maintain and complete accurate records and information to demonstrate its compliance with this clause (31.14). This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- a) the Authority determines that the processing is not occasional;
- b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

31.15. The Contractor shall maintain its own record of all categories of processing activities carried out on behalf of the Authority in accordance with The Data Protection Legislation and will be obliged to cooperate with the ICO and on request, make those records available.

31.16. The Contractor shall allow for audits of its data processing activity by the Authority or the Authority's designated auditor

31.17. The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation and provide their contact details to the Authority.

- 31.18. Appoint (in writing) a representative within the European Union if required in accordance with the Data Protection Legislation.
- 31.19. Before allowing any Sub-Processor (sub-contractor) to process any personal data related to this Contract, the Contractor must:
- a) notify the Authority in writing of the intended Sub-Processor and processing;
  - b) obtain the written consent of the Authority;
  - c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause 31 as such that they apply to the Sub-Processor;
  - d) provide the Authority with such information regarding the Sub-Processor as the Authority may reasonably require to carry out its own due diligence tasks; and
  - e) take any other reasonable steps to ensure that the Authority's data meets the requirements of the Data Protection Legislation.
- 31.20. The Contractor shall remain fully liable for all acts or omissions of any Sub-Processor.
- 31.21. The Contractor recognises that under the Data Protection Legislation, Data Processors now have direct responsibilities and liabilities for compliance and may be subject to investigative and corrective powers of the ICO. Furthermore, if a Contractor fails to meet its obligations, maybe subject to penalties under the regulations and obligations to pay compensations.
- 31.22. No term within this Contract will relieve the Contractor (as Data Processor) of its own direct responsibilities and liabilities under the Data Protection Legislation.
- 31.23. The Contractor shall indemnify the Authority for any breach (as defined as a 'Data Loss Event') of the Data Protection Legislation which renders the latter liable for any costs, claims or expenses
- 31.24. Any breach of any provision of the Data Protection Legislation concerning that processing by the Contractor (as the Data Processor) or any other 3rd party acting on their behalf, will be deemed as being a breach of Contract
- 31.25. The Authority will instruct the Contractor on how to dispose or return the data either once the data is no longer required for purpose or at the end of the Contract. In the event of disposing of the data, the Contractor will ensure compliance with the 'information security data processing principle' of the Data Protection Legislation.
- 31.26. The Authority may, at any time on not less than 30 Working Days' notice, revise this clause (31) by replacing it with any applicable Controller to Processor Standard Clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement)

31.27. The parties agree to take account of any guidance issued by the Information Commissioner's Office (ICO). The Authority may on not less than 30 Working Days' notice to the Contractor amend this clause 31 of this Contract to ensure that it complies with any guidance issued by the ICO.

31.28. The provisions contained in this clause 31 shall survive the expiry or termination of the Contract howsoever caused and shall continue thereafter in full force and effect.

### **32. Fraud and Corruption and the Bribery Act 2010.**

32.1. The Contractor shall operate a policy which complies with statutory obligations under the Bribery Act 2010, which shall be supported and lead by its senior management.

32.2. The Contractor shall have in place and operate proportionate procedures to risk assess and mitigate the bribery risks that it may face and shall conduct due diligence when engaging personnel, consultants, representatives, agents and suppliers, in local and overseas markets, communicate and train its staff on their obligations and regularly monitor and review the effectiveness of the practices in place.

32.3. The Authority shall be entitled to cancel the Contract and to 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 having done or forborne to do any action in relation to the obtaining or execution of the Contract or any other Contract with the Authority or for showing favour or forbearing to show disfavour to any person in relation to the Contract or any other Contract with the Authority, or if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor), or if in relation to any Contract with the Authority the Contractor or any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

32.4. The Contractor shall provide the Authority, on request, with evidence of compliance with statutory obligations.

32.5. The provisions contained in this clause 32 shall survive the expiry or termination of this Contract howsoever caused and shall continue thereafter in full force and effect.

### **33. Conflicts of Interest**

33.1. The Contractor shall operate a system for dealing with potential conflicts of interest. The Contractor shall take appropriate steps to ensure that neither the Contractor nor any staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

33.2. The Contractor shall ensure that, in accordance with the requirements of the specification and the system, it is loyal to the Authority and avoids any situation, which might be seen

to put its loyalty in doubt. If necessary it will amend its procedures relating to conflicts of interest to take account of this stricter duty.

- 33.3. The provisions contained in this clause 33 shall survive the expiry or termination of this Contract howsoever caused and shall continue thereafter in full force and effect.

#### **34. Provision of information**

- 34.1. The Contractor shall recognise that the Authority has obligations to third parties to provide information concerning the proper performance of its functions and is subject to the requirements of the Freedom of Information Act 2000 and Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these information disclosure requirements.
- 34.2. The Contractor acknowledges and accepts that the Authority may be obliged to publish information, from time to time, relating to contracts that it has entered and payments made to contractors.

#### **35. Confidentiality, Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR)**

- 35.1. Without prejudice to the application of Freedom of Information Act 2000 and the Environmental Information Regulations, information obtained by the Contractor and its employees shall be treated as confidential.
- 35.2. In accordance with the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulations, the Authority is obliged to release information to individuals, upon request, under their right to obtain recorded information held by public authorities, unless covered by an exemption to protect certain information. This right is retrospective regardless of the date the information was generated and must be provided within 20 working days of a request.
- 35.3. **The Contractor agrees to provide assistance to any requests from the Authority for information under the Acts at no additional cost within five working days of receipt.** Any requests received for information directly from other sources must be passed to the Authority within three working days of receipt. The Contractor must not respond directly to requests unless authorised by the Authority to do so.
- 35.4. The Contractor must clearly identify any information or documents to the Authority which they consider to be commercially confidential or covered by one of the exemptions under the Freedom of Information Act 2000 or Environmental Information Regulations, and which the Authority should not release to a third party without the prior agreement of Contractor. Even where a potential provider has indicated that information is commercially sensitive, the Authority may be required to disclose it under the above Acts if a request is received.
- 35.5. The Contractor will treat as confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any information, materials or documents relating to the Authority's business received in connection with the Contract and upon termination for whatever reason the Contractor shall to the extent allowed by law deliver up to the Authority all working papers, computer disks and tapes or other material and copies provided to or prepared by the

Contractor pursuant either to this Contract or any previous obligation owed to the Authority.

- 35.6. The provisions contained in this clause 35 shall survive the expiry or termination of this Contract howsoever caused and shall continue thereafter in full force and effect.

### **36. Local Government Transparency Code 2015**

- 36.1 In accordance with the provisions of the Local Government Transparency Code 2015, local authorities in England are required to publish information related to a number of themes. Amongst other requirements, these themes include: spend over £500; government procurement card transactions; and procurement information. The Authority will publish this information in order to comply with this requirement.

### **37. Information on Re-tendering and Migration of Services**

- 37.1. If requested to do so by the Supervising Officer, the Contractor shall, at its own expense, provide to the Authority any and all relevant information to permit the Authority to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the services. The information required shall be sufficient to enable the Authority to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise.
- 37.2. The Contractor shall promptly provide to the Authority or any subsequent provider of the services (as appropriate) such information and records as it shall reasonably require to ensure a smooth transition and continued efficient provision of the services to the Authority by a subsequent provider. At the end of the Contract Period all records and documents relating to the provision of the services shall vest in the Authority.
- 37.3. The Contractor shall at no cost to the Authority co-operate fully with the Authority to ensure an orderly migration of the services or replacement services to the Authority, or, at the Authority's request, to a new service provider.
- 37.4. Where it has been identified that Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply on the migration to a new Contractor of services under the Contract, the Contractor shall, at its own expense, promptly provide to the Authority any and all relevant and accurate information as the Authority may reasonably require at any time during a tendering exercise in relation to employees of the Contractor engaged in performing the Contract.

### **38. Assistance in Legal Proceedings**

- 38.1. If requested to do so by the Supervising Officer, the contractor shall co-operate fully with the Authority (including, but not limited to the provision of documentation and statements from staff) in connection with any legal proceedings, Ombudsman enquiries, inquiry, arbitration tribunal or court proceedings in which the Authority may become involved, or any relevant disciplinary hearing internal to the Authority, arising out of the provision of the services, and the contractor shall if requested by the Supervising Officer give evidence in such inquiries, arbitration, proceeding or hearings.

### **39. Insurance, Liability and Indemnities**

- 39.1. Neither Party excludes or limits liability to the other Party for: death or personal injury caused by its negligence; or fraud; or fraudulent misrepresentation; or any breach of any obligations implied by the Supply of Goods and Services Act 1982.
- 39.2. The Contractor shall indemnify and keep indemnified the Authority from and against any liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the execution of the Contract, and from and against any action, claims, demands, damages, loss, costs or expenses whatsoever or howsoever which may be brought against the Authority or which the Authority may be called upon to pay arising out of or in connection with the Contract unless caused by the negligence of the Authority or its employees.
- 39.3. In compliance with this and before commencing the execution of any work under the Contract the Contractor shall effect a Policy of Insurance against liability to pay compensation under the Fatal Accidents Act 1976 or the Employer's Liability (Compulsory Insurance) Act 1969 or Common Law in respect of all work personnel or other persons who may be employed by it and engaged in the provision of services under the Contract and shall also effect a Policy of Insurance against all claims which may be made by a third person arising out of or occasioned by the negligent or improper performance of the contract by the contractor or their employees or their agents.
- 39.4. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or willful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- 39.5. The requirements imposed by this clause 39 shall continue in full force and effect and be enforceable by the Authority for a minimum period of twelve months (or as agreed by the parties) after the Contract Period has expired or after termination of the Contract for whatever reason.

### **40. Notices**

- 40.1. No notice to be served upon the Authority shall be valid or effective unless it is addressed by name to the Supervising Officer and sent to him/her at Headquarters, Police & Fire Headquarters, PO Box 37, Valley Road, Portishead, Bristol, BS20 8JJ (or as otherwise notified to the Contractor in writing) by Recorded Delivery post or left for him/her at Headquarters.
- 40.2. Any notice to be served upon the Contractor shall be valid and effective if it is addressed to the Contractor and sent by Recorded Delivery post or delivered by hand to the Registered Office or principal place of business of the Contractor, or to the premises of the Contractor from which the provision of the goods, works and/or services are organised; or is delivered by hand to a partner, director, or other appropriate member of the Contractor's staff.

### **41. Business Continuity Plan and Disaster Recovery**

- 41.1. The Contractor shall ensure that a Disaster Recovery Plan, acceptable to the Authority, is in place for its own organisation, premises and operations.

- 41.2. The Contractor shall ensure that Business Continuity Plans, acceptable to the Authority, are in place to ensure the continued supply of goods, works and/or services to the Authority according to the quality and timelines specified within the Contract.
- 41.3. The Contractor shall provide the Authority, on request, with a copy of its Disaster Recovery and Business Continuity Plans.

#### **42. Confidential reporting 'whistleblowing'.**

- 42.1. The Contractor shall have in place a process by which its employees may report in confidence any alleged malpractice on the part of the Contractor and/or the Authority as regards any part of the Contract and not take any action against any employee where that employee has reported alleged malpractice in good faith.
- 42.2. The Authority's procedure for Confidential Reporting is available for Contractors to access. The procedure is published at <https://www.avonfire.gov.uk/documents/category/22-governance>.

#### **43. Dispute resolution**

- 43.1. If there is any dispute concerning either Party's material non-conformance with its obligations or interpretation of the Contract the parties shall use their reasonable endeavours to reduce the time to reach a resolution of the dispute.
- 43.2. The dispute shall be referred to the first management level (the Supervising Officer) for discussion and resolution and that meeting shall take place within five (5) working days of the written request by the requesting Party.
- 43.3. If the dispute is not resolved at this level at the meeting, the dispute shall be referred to the second management level, who must meet within five (5) working days of the reference to attempt to resolve the dispute.
- 43.4. If any of the above is unable to attend a meeting, a substitute shall attend and such substitute will have at least the same seniority and be authorised to settle the unresolved dispute.
- 43.5. If the dispute remains unresolved after the above process has been followed, the dispute shall then be referred to mediation. Mediation shall take place in Bristol, at a location and through a recognised mediation provider, such as ACAS, as agreed by both parties. Neither Party shall seek to refer the dispute to an Expert or to the Courts unless the mediation process fails to resolve the dispute.
- 43.6. The provisions contained in this clause 43 shall survive the expiry or termination of this contract howsoever caused and shall continue thereafter in full force and effect.

#### **44. Termination**

- 44.1. This Contract shall terminate at the end of the Contract Period unless terminated earlier by either Party giving not less than three months notice in writing to terminate at any time.
- 44.2. Without prejudice to any other rights and remedies it may possess the Authority shall be entitled forthwith upon the happening of any of the following events to terminate this Contract by notice in writing, such events being:

- 44.2.1. discovery of a material misrepresentation by the Contractor during the tendering process;
  - 44.2.2. persistent minor breaches of the Contract by the Contractor;
  - 44.2.3. the Contractor having failed to perform a substantial part of the services or having committed any other breach of contract which in the reasonable opinion of the Supervising Officer justifies termination of the Contract;
  - 44.2.4. the Contractor suffering any distress or process of execution to be levied on its goods; or if the Contractor consists of one or more individuals, any one of them committing any act of bankruptcy or having a bankruptcy order made against him/her; entering into (whether an individual or a body corporate) any arrangement, agreement or composition with and for the benefit of its creditors (including a voluntary arrangement under the provisions of the Insolvency Act 1986); or if the Contractor consists of a body corporate, the Contractor or its parent company having a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution passed for voluntary winding-up; or having an application made for the appointment of an administrator, administrative receiver or receiver having been appointed over the whole or any part of its business and/or assets; or having a provisional liquidator, receiver or manager of the whole or any part of its business appointed; or having possession taken of any of its property comprised in a floating charge by or on behalf of the holders of any debentures secured by the floating charge.
- 44.3. Termination of the Contract for any reason shall not affect any rights, which have accrued to either Party at the date of termination.
- 44.4. The provisions contained in this clause 44 shall survive the expiry or termination of this contract howsoever caused and shall continue thereafter in full force and effect.

#### **45. Severability**

- 45.1. If any part of the Contract is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of the Contract which will continue to be valid and enforceable to the fullest extent permitted by law.

#### **46. Waiver**

- 46.1. The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

#### **47. Applicable Law**

- 47.1. The Contract shall be governed by English Law in every particular including formation and interpretation and shall be deemed to have been made in England.

#### **48. Survival of Terms**

- 48.1. No term shall survive expiry or termination of this Contract unless expressly provided.