



Purchase of Goods and/or Services

Standard Terms and Conditions

1. Basis of Contract

- 1.1 These standard terms and conditions, including any appendices to them ("**Conditions**"): (a) govern the purchase of the Goods or Services, together with any Deliverables, ("**Supply**") described in the Authority's purchase order form, including any description, specification or stipulation attached to or otherwise referenced in the purchase order form ("**Order**"); (b) apply to the exclusion of any and all terms and conditions that the Supplier may seek to impose or incorporate, whether in any Quotation, Tender or otherwise, or which are expressed or implied by trade, custom, practice, course of dealing; and (c) prevail over any conflicting provisions of the Order (if used) or any other conditions from the Authority.
- 1.2 The Order constitutes an offer by the Authority for the Supply in accordance with these Conditions and the offer shall be deemed to be accepted by the Supplier on the earlier of: (a) the Supplier issuing written acceptance of the Order, or (b) signature by both parties as required in the Order, or (c) any act of the Supplier consistent with fulfilling or the intention to fulfil the Order, at which point and on which date a contract, comprised of the Order and these Conditions, ("**Contract**") for the Supply shall come into existence.
- 1.3 All of these Conditions shall apply to the Contract unless otherwise specified and as well as to any original Supply shall extend to any substituted or remedial Services and/or repaired or replacement Goods supplied by the Supplier.
- 1.4 The Contract is the sole and entire contract between the parties for the Supply and, save as expressly provided, supersedes all prior negotiations, submissions, representations or undertakings in respect of the Supply.
- 1.5 No Supply of any kind shall be supplied or carried out unless the Authority has issued the Supplier with an Official Purchase Order.

2. Definitions and Interpretation

- 2.1 In addition to the terms defined in Condition 1:

Authority	Means the legal entity Avon Fire Authority and its operational arm Avon Fire & Rescue Service (AF&RS).
Authority's materials	means all materials, equipment and tools, drawings, specifications and data supplied by the Authority to the Supplier for the purpose of providing the Supply;

“Business Day”	means a day (other than a Saturday, Sunday or a public holiday) when the Authority’s principal offices are open for business;
“Commencement Date”	means the earlier of the date on which the Supply commences or the date on which the first of any obligations required by the Contract to be performed prior to the Supply commences unless and as the parties otherwise agree in writing;
Confidential Information	means information which has been designated as confidential by either Party in writing or ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018.
“Data Protection Legislation”	Means all applicable laws and regulations, in each case pertaining to the security, confidentiality, protection or privacy of Personal Data, as amended or re-enacted from time to time, including (without limitation) the European General Data Protection Regulation (Regulation (EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (“UK GDPR”); the DPA 2018 (and regulations made thereunder); and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended;
“Date of Delivery”	means that date by which the Goods must be Delivered to the Authority, as specified in the Contract;
“Defect”	means any defect, shrinkage or other fault whereby the Services or Goods are not in accordance with the specification or, where no such specification is made, in accordance with good industry practice and to the Authority’s reasonable satisfaction;
“Deliverables”	means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Supply in any form or media, including without limitation items, goods, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
“Deliver”	means hand over the Goods to the Authority at the address and on the date specified in the Contract, which shall include unloading and any other specific arrangements agreed in

accordance with these Conditions. **“Delivered”** and **“Delivery”** shall be construed accordingly;

“Force Majeure Event”

means the occurrence after the Contract is entered into but before it expires or is terminated of:

- (i) war, civil war, armed conflict or terrorism; or
- (ii) nuclear, radioactive, chemical or biological explosion or contamination unless the source or cause of the explosion or contamination is the result of the action of the Supplier; or
- (iii) fire, explosion, storm, riot and civil commotion, tempest, flood, volcanic eruption or earthquake;
- (iv) pandemic, including a resurgence of Covid;
- (v) any other act, omission, event or accident outside the reasonable control of the party;

which directly causes either party to be prevented from or delayed in complying with all or a material part of its obligations under the Contract;

“Goods”

means the goods to be supplied by the Supplier to the Authority under the Contract;

“IPRs”

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

“Living Wage”

Living Wage as defined by the Living Wage Foundation. Charity No. 1107264

“Normal Working Hours”

means 08.00 to 17.30 on all Business Days;

“Quotation

means the Supplier’s quotation, if any, to provide the Supply;

“Order”

Means an Official Purchase Order, provided in advance, for the supply of goods, or services.

“Prohibited Act”

means:

- (a) directly or indirectly offering, promising or giving any elected member of the Authority or any person working for or engaged by the Authority a financial

or other advantage to induce that person to perform improperly a relevant function or activity or rewarding that person for improper performance of a relevant function or activity;

- (b) directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) committing any offence under the Bribery Act 2010;
- (d) committing any offence of fraud;
- (f) defrauding, attempting to defraud or conspiring to defraud the Authority.
- (g) placing the Supplier or any member of staff 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 Supplier and the duties owed to the Authority under the provisions of the Contract.

“Services”	means the works and services to be supplied by the Supplier to the Authority under the Contract;
“Specification”	means the description of the Authority’s requirement for the Supply as set out or referred to in the Order;
“Supervising Officer”	The Contract manager and supervisor appointed by the Authority and point of contact for the Supplier.
“Supplier”	means the party to whom the Order is addressed or, if different, by whom the Order is accepted, including any employee, worker, agent or subcontractor through whom it acts in the course of fulfilling its obligations under the Contract;
“Supply”	means the performance by the Supplier of its obligations pursuant to this Contract, including the supply of Deliverables, Goods and Services.
“Tender”	means the Supplier’s tender.

2.2 In these Conditions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa and words importing the masculine include the feminine and the neuter;
- (b) reference to a Condition is a reference to the whole of that Condition and reference to an Appendix is a reference to an Appendix to these Conditions unless stated otherwise;
- (c) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as

- amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (d) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - (e) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
 - (f) headings are included for ease of reference only and shall not affect the interpretation or construction of these Conditions.

3. Goods

- 3.1 Where the Supply consists of or includes the provision of Goods, the Supplier shall ensure that the Goods:
- (a) conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
 - (b) are free from defects (manifest or latent) in design, materials and workmanship and remain so for 12 months after Delivery;
 - (c) are of satisfactory quality (within the meaning of the Consumer Rights Act 2015) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
 - (d) are fit for any purpose held out by the Supplier or made known to the Supplier by the Authority expressly or by implication, and in this respect the Authority relies on the Supplier’s skill and judgement.
- 3.2 Notwithstanding any Supplier Inco-Term to the contrary, the Supplier shall Deliver the Goods to the Authority on or by the relevant Date of Delivery. Unless otherwise agreed in writing by the Authority, Delivery shall be on the date and to the address specified in the Contract. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and the Authority has signed for the Delivery.
- 3.3 The Supplier shall not Deliver Goods in instalments without the Authority’s prior written consent. Where it is agreed that Goods are Delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to Deliver any one instalment on time or at all or any defect in an instalment shall entitle the Authority to the remedies set out in Condition 3.7.
- 3.4 Any access to the Authority’s premises and any labour and equipment that may be provided by the Authority in connection with Delivery of Goods shall be provided without acceptance by the Authority of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Authority or its servant or agent. The Supplier shall indemnify the Authority in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Authority may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course

of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.

- 3.5 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered. Any packaging material the Supplier requires to be returned to it by the Authority shall be clearly identified on the delivery note and shall be returnable only at the cost of the Supplier.
- 3.6 Unless otherwise expressly stipulated by the Authority in the Contract, Deliveries shall only be accepted by the Authority on Business Days and during Normal Working Hours.
- 3.7 Where (i) the Supplier fails to Deliver the Goods or part of the Goods or (ii) the Goods or part of the Goods do not comply with the provisions of Condition 3.1, then without limiting any of its other rights or remedies listed below or implied by statute or common law, the Authority shall be entitled:
- (a) to terminate the Contract or the Contract as it relates to the Goods in question;
 - (b) request the Supplier, free of charge and within 14 days, to deliver substitute Goods within the timescales specified by the Authority;
 - (c) to require the Supplier, free of charge and within 14 days, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - (d) to reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and the Authority shall be entitled to a full refund within 14 days on those Goods or part of Goods duly returned;
 - (e) to buy the same or similar Goods from another supplier;
 - (f) to recover any expenses incurred in respect of buying the Goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs; and/or
 - (g) to claim damages for any additional costs, loss or expenses incurred by the Authority arising from the Supplier's failure to supply Goods in accordance with Condition 3.1.
- 3.8 Without prejudice to any other rights or remedies of the Authority, title and risk in the Goods (or such part of them) shall pass to the Authority when Delivery of the Goods (or such part of them) is complete (including off-loading and stacking).
- 3.9 The Authority shall have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been Delivered to the Authority. The cancellation shall be made in writing.
- 3.10 Without prejudice to the generality of the foregoing Condition 3.9, the Authority shall pay such price or that part of the price for those Goods that have been Delivered to the Authority or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt the Authority shall not be liable for any loss of anticipated profits or any consequential loss.

4. Services

- 4.1 The Supplier shall from the Commencement Date and for the duration of the Contract provide the Services to the Authority in accordance with the terms of the Contract including any service levels.

- 4.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Authority.
- 4.3 In providing the Services, the Supplier shall:
- (a) perform them with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (b) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
 - (c) ensure that the Services and any Deliverables will conform with all descriptions and specifications set out in the Order, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Authority;
 - (d) provide all equipment, tools and vehicles and such other items as are required to provide services;
 - (e) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used or transferred to the Authority, will be free from defects in workmanship, installation and design;
 - (f) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
 - (g) observe all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
 - (h) ensure that all personnel comply with the Authority's behaviour policies and guidance (a copy of which is available upon request) and that all personnel conduct themselves appropriately when dealing with the Authority and its staff including when attending on site and responding to requests for sight of permits and licences; and
 - (i) hold all the Authority Materials in safe custody at its own risk, maintain the Authority Materials in good condition until returned to the Authority, and not dispose or use the Authority Materials other than in accordance with the Authority's written instructions or authorisation.

5. Confidentiality

- 5.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Contract, each Party will:
- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 5.2 Clause 0 will not apply to the extent that:
- (a) such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR or to comply with the provisions of the Local Government Transparency Code 2015;
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;

- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or it is independently developed without access to the other Party's Confidential Information.
- (e) The Supplier may only disclose the Authority's Confidential Information to the personnel who are directly involved in the provision of the Services and who need to know the information, and will ensure that such personnel are aware of and will comply with these obligations as to confidentiality.
- (f) The Supplier will not, and will procure that the personnel do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.
- (g) In discharging its obligations under this clause 5.1 **Error! Reference source not found.**, the Supplier will observe all further or particularised requirements in respect of confidentiality as may be set out in the Specification.

6. General

- 6.1 The Supplier shall co-operate with the Authority in all matters relating to the Contract or the Supply, including any Delivery, and comply with all the Authority's instructions. The Supplier shall make the Supervising Officer (as may be changed from time to time) as their point of contact in relation to any of their performance obligations under the Contract.
- 6.2 At its own expense, the Supplier shall provide the Authority with such reports, summaries and other information in relation to the Supply or the Contract and with such frequency or at such intervals as is set out in the Order.
- 6.3 In so far as this Contract involves the Supplier in processing data within the meaning of the Data Protection Legislation, the Supplier shall;
 - (a) act only on the instructions of the Authority when processing such data
 - (b) shall put in place and maintain appropriate security measures to protect against unauthorised or unlawful processing or accidental loss or destruction of personal data as set out in the Data Protection Legislation and any UK associated guidance
 - (c) not transfer any Personal Data outside of the EU unless the prior written consent of the Authority has been obtained
 - (d) notify the Authority immediately if it receives a Data Subject Access Request or any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation.
 - (e) delete or return (at the discretion of the Authority) Personal Data and any copies of it to the Authority on termination of the Contract unless the Supplier is required by Law to retain the Personal Data.
 - (f) enter into a Data Processing Agreement in the form required by the Authority at Appendix A.
- 6.5 The Supplier shall inform the Authority of any application for information it receives pursuant to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 within 2 Business Days of receipt and shall promptly assist and cooperate with the Authority to enable the Authority to comply with its disclosure obligations in respect of such information.
- 6.6 The Supplier shall adopt a policy to comply with the requirements of the Equality Act 2010 ("the Act") and all statutory provisions subsidiary to that Act and shall take all reasonable steps

to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act and, further, shall seek to promote equality among its personnel and generally. The Supplier shall set out its equal opportunities policy in instructions to those concerned with recruitment, training or promotion, in documents available to its personnel and recognised trade unions or other representative groups of its personnel and in its advertisements and literature. The Supplier shall take all reasonable steps to ensure that its personnel engaged in the provision of the Supply comply with the requirements of the Act when dealing with Authority personnel or members of the public.

- 6.7 If requested to do so by the Authority, the Supplier 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 Deliverables. 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.
- 6.8 The Supplier shall have in place a process by which its employees may report in confidence any alleged malpractice on the part of the Supplier 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. 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/22governance>.
- 6.9 The Supplier shall promptly provide to the Authority or any subsequent supplier of the Deliverables (as appropriate) such information and records as it shall reasonably require to ensure a smooth transition and continued efficient provision of the Deliverables to the Authority by a subsequent supplier. At the end of the Contract all records and documents relating to the provision of the Deliverables shall vest in the Authority.
- 6.10 The Contractor shall provide to the Authority a copy of a Disaster Recovery or a Business Continuity Plan within 14 days of entering into the Contract for approval. If requested by the Authority, the Supplier shall make such changes as are reasonably required within 28 days of the date upon which the request is made. The Disaster Recovery or Business Continuity Plan shall include: measures necessary for the continuation of the Supplier's organisation, premises and operations, the continued supply of Goods, Services and any Deliverables to the Authority according to the conditions specified within the Contract.
- 6.11 If requested to do so by the Authority, the Supplier 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 Deliverables, and the Supplier shall if requested by the Authority, give evidence in such inquiries, arbitration, proceeding or hearings.

7. Authority's Obligations

- 7.1 The Authority shall appoint a Supervising Officer for the purposes of oversight of the Supplier's performance of its obligations under the Contract.
- 7.2 The Authority shall provide the Supplier with reasonable access at reasonable times to the Authority's premises for the purpose of providing the Supply.

- 7.3 If required, the Authority shall monitor and inspect the Goods and Services and any Deliverables as necessary for acceptance.

8. Charges and Payment

8.1 The price for the Supply:

- (a) shall be the price set out in the Order; and
- (b) shall be inclusive of the costs of packaging, insurance, carriage and delivery of the Goods, customs duties, taxes and customs' clearance, unless otherwise agreed in writing by the Authority.
- (c) no extra charges shall be effective unless agreed in writing and signed by the Authority. The Supplier shall not have the right to increase the price by an annual or other metric.
- (d) the Supplier shall provide the Authority with the most favourable price by comparison to similar supplies to third parties.

- 8.2 In respect of Goods, the Supplier shall invoice the Authority on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Authority on completion of them.

- 8.3 Each invoice shall include such supporting information required by the Authority to verify the accuracy of the invoice, including but not limited to the relevant purchase order number. No payment will be made or liability accepted by the Authority in respect of Goods supplied or delivered or Services carried out other than in accordance with this condition.

- 8.4 In consideration of the Supply, the Authority shall pay each valid invoice, subject to any permissible deductions and together with Value Added Tax at the appropriate rate, within 30 days of receipt.

9. Title and IPR

- 9.1 In respect of items transferred to the Authority as part of the Supply, including without limitation Goods or Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Authority, it will have full and unrestricted rights to sell and transfer all such items to the Authority.

- 9.2 The Supplier assigns to the Authority, with full title guarantee and free from all third-party rights, all IPR in the products of Services, including for the avoidance of doubt the Deliverables.

- 9.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

- 9.4 The Supplier shall, promptly at the Authority's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Authority may from time to time require for the purpose of securing for the Authority the full benefit of the Contract, including all right, title and interest in and to the IPR assigned to the Authority.

- 9.5 All Authority Materials are the exclusive property of the Authority.

10. Indemnity and Insurance

- 10.1 The Supplier shall be liable for and shall indemnify and keep indemnified the Authority against all liabilities, actions, damages, costs, losses, claims, expenses, demands and proceedings whatsoever either arising directly from the breach by the Supplier of any of its obligations under the Contract or which the Supplier ought reasonably to have foreseen as being the probable result of its breach of any of its obligations under the Contract.
- 10.2 For the duration of the Contract the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Authority's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance. The insurance shall include sufficient cover 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 Deliverables 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 Supplier or their employees or their agents.
- 10.3 The amount of cover provided by insurances referred to in clause 10.2 shall be at least the legal minimum and, where possible, shall be notified to the Authority in advance of the Supply for their approval. In any event, the amount of cover provided shall not be less than £2.5 million.
- 10.4 This clause 10 shall survive termination or expiry of the Contract.

11. Termination

- 11.1 The Authority may terminate this Contract at any time by giving the Supplier not less than one month's notice in writing.
- 11.2 If the Supplier commits a material breach of any of its obligations under the Contract, the Authority may give the Supplier not less than 10 Business Days' notice to remedy the breach. If the breach is not remedied within that time, or if the breach is not capable of remedy, the Authority may terminate the Contract by giving the Supplier not less than 10 Business Days' notice in writing.
- 11.3 The Authority may terminate the Contract immediately by giving the Supplier notice in writing if:
- (a) the Supplier becomes bankrupt or insolvent, is in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver, manager or administrative receiver, has a provisional liquidator appointed or has a winding-up order made;
 - (b) the Supplier (or anyone acting on behalf of the Supplier, with or without the Supplier's knowledge) commits any Prohibited Act in connection with the Contract or the Authority.
- 11.4 If the Supplier fails to perform or (in the reasonable opinion of the Authority) inadequately performs the Supply by the applicable date, the Authority shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;

- (b) to refuse to accept any subsequent performance of the Supply which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Authority in obtaining substitute goods or services from a third party;
- (d) where the Authority has paid for Goods or Services that have not been Delivered, provided, performed or made good by the Supplier, to have such sums refunded within 14 days by the Supplier; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Authority which are in any way attributable to the Supplier's failure to meet such dates.

12. Consequences of Termination

On termination of the Contract or any part of it for any reason:

- 12.1 the Supplier shall immediately deliver to the Authority all Deliverables, whether or not then complete, and return all Authority Materials. If the Supplier fails to do so, then the Authority may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
- 12.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- 12.3 Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

13. TUPE

- 13.1 The Supplier shall indemnify and hold harmless the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs suffered or incurred by the Authority arising out of or in connection with any claim, dispute or decision) that the Transfer of Undertakings (Protection of Employment) Regulations 1981 and the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("The TUPE Regulations") apply to this Contract, the Services or Deliverables or to the Authority as a result of this Contract.

14. Miscellaneous

14.1 Force Majeure

- (a) Neither party shall be considered in breach of its obligations under the Contract, or be responsible for any delay in the performance of such obligations, if such performance is prevented or delayed wholly or in material part as a direct or indirect consequence of a Force Majeure Event.
- (b) If the performance any party's obligations under this Contract is, in the reasonable opinion of that party, delayed or affected by a Force Majeure Event, then that party shall promptly notify the other party in writing, giving details of the Force Majeure Event and, in so far as it can be reasonably ascertained, the anticipated length of delay.

- (c) If the Force Majeure Event shall, or if it is reasonably anticipated at any time that the Force Majeure Event shall, subsist for a period of 30 days or more, then either party may terminate the Contract on written notice to the other.

14.2 Assignment and subcontracting

- (a) The Supplier shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations (other than obligations of a minor or administrative nature) under the Contract without the prior written consent of the Authority.
- (b) The Authority may at any time assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

14.3 Notices

Any formal demand, notice or other communication required to be given pursuant to this Contract shall be sufficiently served if sent by recorded delivery post (or equivalent) and shall (subject to proof to the contrary) be deemed to have been received by the addressee (in the case of transmission by post) on the second Business Day after the date of posting. Notices shall be addressed to the “Head of Procurement” at Avon Fire & Rescue Services, Police & Fire Headquarters, PO Box 37, Valley Road, Portishead, Bristol, BS20 8JJ (or as otherwise notified to the Supplier in writing) and to the address of the Supplier at the beginning of this Contract.

14.4 Severance

If any provision of this Contract shall become or shall be declared by any Court 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, all of which shall remain in full force and effect.

14.5 Third parties

A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.6 Variation

Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Authority.

14.7 No waiver

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.

14.8 Dispute Resolution

Any dispute arising out of the Contract shall be referred for resolution first to a senior officer of the Authority and an equivalent director of the Supplier. If the dispute cannot be resolved

by those two persons by a meeting within 20 Business Days of referral, then the dispute If the dispute remains unresolved after the above process has been followed, the dispute shall then be referred to mediation within 10 Business Days of the failure of the previous resolution stage. Mediation shall take place in Bristol, at a location and through a recognised mediator as agreed by both parties.

14.9 Governing law and jurisdiction

The Contract shall be governed by the laws of England and subject to the exclusive jurisdiction of the Courts of England.

14.10 Survival of the Contract

Insofar as any of the rights and obligations of the parties in the Contract shall or may be exercised after expiry or determination of the Contract, the provisions of the Contract conferring such rights and powers shall survive and remain in full force and effect notwithstanding such expiry or determination.

APPENDIX A DATA PROCESSING AGREEMENT

DATA PROCESSING AGREEMENT

BETWEEN:

1. The Supplier of the Goods or Services ("**Supplier**"); and
2. **Avon Fire Authority of** Avon Fire Authority, Police & Fire Headquarters, PO Box 37, Valley Road, Portishead, Bristol, BS20 8JJ ("**Authority**").

(each a "**Party**" and together the "**Parties**")

BACKGROUND:

- (a) The Authority and the Supplier entered into a contract that may require the Supplier to access Personal Data on behalf of the Authority.
- (b) This Agreement sets out the additional terms, requirements and conditions on which the Supplier will process Authority Personal Data when providing services under Contract to ensure compliance with the Applicable Data Protection Laws.

AGREED TERMS:

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this Agreement.

Applicable Law: means:

- a) To the extent the UK GDPR applies, English Law or a part of it, which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, EU Law or a part of it, which relates to the protection of personal data.

Authority Personal Data: means any information relating to an identified or identifiable living individual that is processed by the Supplier on behalf of the Authority as a result of, or in connection with, the provision of the services under the Contract; an identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

Applicable Data Protection Laws: all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the Data Protection Act 2018, the UK General Data Protection Regulation; the General Data Protection Regulation (EU) 2016/679 ("GDPR"), Directive (EU) 2016/680, Directive 2002/58/EC (as amended), European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 ("UK GDPR"); the DPA 2018 (and regulations made thereunder); and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended; and any other laws and regulations relating to the processing and use of Personal Data and privacy which apply to a Party and, if applicable, the guidance and codes of practice issued by the relevant supervisory authority as well as any other rules, procedures, standards and guidelines which applies to either party under law.

Services: means the services to be provided by or on behalf of the Supplier to the Authority, which includes the Services as contained in the Contract.

Supplier Personal Data: any personal data which the Supplier processes in connection with this Agreement, in the capacity of a Controller.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018 (and regulations made thereunder).

1.2 For the purposes of this Agreement, the terms "**Commissioner**", "**Controller**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**", "**Processor**" and "**Processing**", shall have the meanings given to them in the GDPR.

1.3 Both Parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 0 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

1.4 The Parties have determined that, for the purposes of Applicable Data Protection Laws:

1.4.1 the Authority is the Controller and the Supplier is the Processor.

1.4.2 the Authority retains control of the Personal Data and remains responsible for its compliance obligations under the Applicable Data Protection Laws, including but not limited to, providing any required notices and obtaining any required consents, and for the written processing instructions it gives to the Supplier.

1.4.3 the Supplier shall process the Authority Personal Data set out in **Error! Reference source not found.**, as a Processor on behalf of the Authority in respect of the processing activities set out in **Error! Reference source not found.**;

1.5 Should the determination in clause 1.4 change, then each Party shall work together in good faith to make any changes which are necessary to this Agreement or the related schedules.

2. SUPPLIER'S PRIVACY POLICY

2.1 Without prejudice to the generality of clause 1.4:

2.1.1 the Supplier shall process all Supplier Personal Data strictly in accordance with its privacy policy in the form it appears at the time of execution of this Agreement (**the Supplier Privacy Policy**).

2.1.2 the Supplier shall not amend the Supplier Privacy Policy without the Authority's prior written consent;

2.1.3 the Supplier shall promptly comply with all reasonable instructions of the Authority in connection with the Supplier Privacy Policy, and any amendments, shall promptly provide copies of the same to the Authority on request in a commonly available electronic format, and hereby consents to the Authority making the Supplier Privacy Policy available to any applicable Data Subjects;

2.1.4 the Supplier hereby undertakes, warrants and represents that the Supplier Privacy Policy, and any amendments, will at all times comply with Applicable Data Protection Laws and that it will not make any amendments to the Supplier Privacy Policy where this would be in contravention of Applicable Data Protection Laws;

2.1.5 as between the parties, the Supplier is solely responsible for ensuring that the processing of Supplier Personal Data complies with Applicable Laws, including

Applicable Data Protection Laws, and in particular, that all required fair processing information is provided to the relevant data subjects; and

- 2.1.6 in the event of any inconsistency or conflict between the terms of the Supplier Privacy Policy and this Agreement, this Agreement will take precedence.

3. SUPPLIER'S OBLIGATIONS

- 3.1 The Supplier is fully responsible for complying with Applicable Data Protection Laws when processing Authority Personal Data.

- 3.2 The Supplier shall promptly comply with any reasonable instructions received from the Authority to display or otherwise make available the Authority's then-current version of its privacy policy via the goods or services provided by the Supplier. Such instructions may include implementing a reasonable process to certify that the Data Subject has acknowledged its terms.

- 3.3 In relation to the Authority Personal Data, **Error! Reference source not found.** sets out the scope, nature and purpose of Processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject. The Supplier shall process the Authority Personal Data only (i) for the specific purpose(s) of the processing, as set out in Schedule 1, unless it receives further instructions from the Authority and (ii) for the duration specified in Schedule 1.

- 3.4 Without prejudice to the generality of clause 3.1 the Supplier shall, in relation to Authority Personal Data:

- 3.4.1 process Authority Personal Data only on the documented instructions of the Authority, unless the Supplier is required by Applicable Laws to otherwise process that Authority Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Authority Processor Data, the Supplier shall promptly notify the Authority of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Authority on important grounds of public interest. The Supplier shall immediately inform the Authority if, in the opinion of the Supplier, the instructions of the Authority infringe Applicable Data Protection Legislation;

- 3.4.2 implement and maintain appropriate technical and organisational measures to ensure and protect against unauthorised or unlawful processing of Authority Personal Data and against its accidental loss, damage or destruction, including inter alia as appropriate in accordance with Article 32 GDPR (including but not limited to the security measures set out in Schedule 2), and specifically:

- 3.4.2.1 the pseudonymisation and encryption of Authority Personal Data;

3.4.2.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

3.4.2.3 the ability to restore the availability and access to Authority Personal Data in a timely manner in the event of a physical or technical incident; and

3.4.2.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

In assessing the appropriate level of security the Supplier shall take into account in particular of the risks that are presented by the Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Authority Personal Data transmitted, stored or otherwise processed.

3.4.3 ensure, and procure, that any personnel engaged and authorised by the Supplier to process Authority Personal Data are subject to binding confidentiality obligations and shall keep the Authority Personal Data confidential. The Supplier shall actively enforce such obligations and bring them to the attention of its personnel and ensure that such personnel have undergone appropriate data protection training.

3.4.4 promptly assist the Authority, at the Supplier's expense, in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Commissioner, supervisory authorities or other regulators and, in particular, the Supplier shall promptly notify the Authority (no later than 48 hours) if it receives any complaint, data subject request, notice or communication (whether from the Commissioner, any data subject, supervisory authority or other third party) which relates to processing of Authority Personal Data;

3.4.5 immediately notify the Authority without undue delay (and no later than 24 hours) after becoming aware of a personal data breach and on suspecting the same, the Supplier shall promptly conduct an initial assessment to determine, with a reasonable degree of certainty, whether the event or incident qualifies for notification to the Authority under this clause 3.4.5 and shall provide a copy of this initial assessment along with such notification. The Supplier shall also provide the Authority with sufficient information to allow the Authority to meet any obligations to report or inform supervisory authorities or Data Subjects of the Personal Data Breach under Applicable Data Protection Laws. Such notification shall at a minimum:

- a) describe the nature of the Personal Data Breach, the categories and the numbers of Data Subjects concerned and the categories and numbers of Personal Data records concerned;
- b) communicate the name and contact details of the Supplier's data protection officer and / or other relevant contact from whom more information may be obtained;
- c) describe the likely consequences of the Personal Data Breach; and
- d) describe the measures taken or proposed to be taken by the Supplier to address the Personal Data Breach.

Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay. The Supplier shall co-operate with Authority and take such reasonable steps, at its own cost, as are directed by the Authority to assist in the investigation, mitigation and remediation of such Personal Data Breach.

3.4.6 at the written direction of the Authority, delete or return to the Authority all Authority Personal Data on termination or expiry of the agreement, and certify to the Authority in writing it has done so, unless the Supplier is required by Applicable Law to continue to process that Authority Personal Data, in which case the Supplier shall promptly notify the Authority, in writing, of what that Applicable Law is and shall only be permitted to process that Authority Personal Data for the specific purpose so-notified, and all other requirements set out in this clause 0 shall continue to apply to such Authority Personal Data notwithstanding the termination or expiry of this agreement for as long as such Authority Personal Data is processed by the Supplier. For the purposes of this clause 3.4.6 the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and

3.4.7 maintain adequate records, and, on the Authority's request, make available such information as the Authority may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Authority or the Authority's designated auditor, to demonstrate its compliance with Applicable Data Protection Laws and this clause 3.

3.5 The Supplier shall, at the direction of the Authority, fully cooperate and assist the Authority in conducting a data protection impact assessment and related consultations with any supervisory authority, if applicable, pursuant to Articles 35 and 36 of the GDPR, respectively.

- 3.6 The Supplier shall make available to the Authority all information necessary to demonstrate compliance with the obligations under this Agreement and Article 28 GDPR and shall allow for and contribute to audits, including inspections at the premises or physical facilities of the Supplier, which may be carried out by the Authority or another auditor mandated by the Authority and shall, where appropriate, be carried out with reasonable notice. The Authority may make a written request, or request in the course of an audit or inspection, for a copy of all Authority Personal Data and related activity logs from the Supplier and such information shall be provided by the Supplier without unreasonable delay in the format and on media as reasonably specified by the Supplier.
- 3.7 The Supplier shall not, without the prior written consent of the Authority (and in any event subject to the Supplier providing the Authority with reasonable evidence that such activity is being undertaken in full compliance with Applicable Data Protection Laws):
- 3.7.1 appoint or replace (or change the terms of the appointment of) any other processor in relation to Authority Personal Data or transfer any Authority Personal Data to the same; or
 - 3.7.2 carry out, via itself or via any other processor, any processing of Authority Personal Data, or transfer any Authority Personal Data, outside of the Republic of Ireland, including processing Authority Personal Data on equipment situated outside of the Republic of Ireland.
- 3.8 Either party may, at any time on not less than 30 days' notice, revise this Agreement by replacing it (in whole or part) with any applicable standard clauses approved by the EU Commission or the Irish Data Protection Commissioner's Office or forming part of an applicable certification scheme or code of conduct (**Amended Terms**). Such Amended Terms shall apply when replaced by attachment to this agreement, but only in respect of such matters which are within the scope of the Amended Terms.
- 3.9 The Supplier hereby indemnifies, and shall keep indemnified and defend it at its own expense, the Authority against any and all costs, damages (including non-material damage), fines, penalties, losses and expenses of any kind arising from any claim or demand brought by any person, Data Subject, Commissioner or supervisory authority as a result of any breach or alleged breach by the Supplier (or that of its employees, sub-processors or agents) of any Applicable Data Protection Law or its obligations under this clause 3. This indemnity shall not be subject to any limits or exclusions of liability that may otherwise apply, or be imposed, under any subscription agreement, MSA, standard terms or order of the Supplier and shall operate independently, notwithstanding any limitations or exclusions of the supplier's liability in those agreements.
- 3.10 Nothing in this clause 3 shall operate to limit or exclude the Supplier's liability for:
- 3.10.1 any of its direct statutory obligations under Applicable Data Protection Laws;
 - or

3.10.2 any liability imposed under Article 82 of the GDPR.

4 TERMINATION

4.1 This Agreement shall terminate automatically upon (i) the termination of the Supplier's obligations in relation to the Goods or Services or Deliverables under the Contract or (ii) upon the termination or expiration of the Contract whichever is the earlier.

4.2 The Authority shall be entitled to terminate this Agreement by notice in writing to the Supplier if (i) the Supplier is in a material or persistent breach of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied within twenty one (21) days from the date of receipt by the Supplier of a notice from Authority identifying the breach and requiring its remedy; or (ii) the Supplier fails to comply with a binding decision of a competent court or the competent supervisory authority/ies regarding its obligations pursuant to this Agreement or Applicable Data Protection Laws.

5 POST-TERMINATION OBLIGATIONS

5.1 Subject to the instructions of Authority, the Supplier and each sub-processor shall promptly and in any event within thirty (30) days of the date of termination of any services involving the Processing of Authority Personal Data (the "Termination Date"):

5.1.1 return a complete copy of all Authority Personal Data to the Authority by secure file transfer in such format as is reasonably notified by Authority to the Supplier; or

5.1.2 delete and procure the deletion of all copies of Authority Personal Data held by the Supplier and each sub-processor.

5.2 The Supplier and each sub-processor may retain Authority Personal Data to the extent required by Applicable Data Protection Laws and only to the extent and for such period as required by Applicable Data Protection Laws and always provided that the Supplier and each sub-processor shall ensure the confidentiality of all such Authority Personal Data and shall ensure that such Authority Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Data Protection Laws requiring its storage and for no other purpose.

5.3 The Supplier shall provide prompt written certification to the Authority that it and each sub-processor has fully complied with this Clause 5 upon request.

6 MISCELLANEOUS

- 6.1 The Supplier cannot assign or otherwise transfer this Agreement without the prior written consent of all Parties.
- 6.2 No variation to this Agreement will be valid or binding unless it is recorded in writing and signed by or on behalf of the Parties.
- 6.3 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 6.4 Parties' failure at any time to require strict performance of any provision of this Agreement shall not waive or diminish Parties' rights subsequently to demand strict performance of any part of this Agreement.
- 6.5 Provisions which by their intent or terms are meant to survive the termination of this Agreement will do so.
- 6.6 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision will, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement will not be affected.
- 6.7 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 6.8 Any notice to be delivered under this Agreement must be in writing and delivered by pre-paid first class post to or left by hand delivery at the registered address or place of business of the notified party, or sent by email to an authorised representative. Notices sent by post shall be deemed to be delivered on the second business day after posting; notices delivered by hand will be deemed to have been received at the time the notice is left at the proper address; Notices sent by email will be deemed to have been received on the next business day after transmission.
- 6.9 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of Ireland. Each Party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims), arising out of or in connection with this Agreement or its subject matter or formation.

Schedule 1 Processing Personal Data and Data Subjects

Description	Details
Subject matter of the processing	<i>The subject matter of the Contract</i>
Duration of the processing	<i>For the term of the Contract</i>
Nature and purposes of the processing	<i>any operation such as collection, recording, organisation, structuring, storage, adaption or alteration, retrieval, consultation, use disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) for the purpose of the fulfilment of the Contract</i>
Type of Personal Data	<i>names, address, date of birth, , telephone numbers email addresses, images, biometric data and similar information</i>
Categories of data Subject	<i>staff, (including volunteers, agents and temporary workers, members of the public, users of the Authority's website and IT</i>
Plan for Return	<i>Destruction at the end of the Contract</i>

Schedule 2:

APPROPRIATE TECHNICAL AND ORGANISATIONAL SECURITY MEASURES

Supplier to insert description of its technical and organisational data security measures such as:

- Physical access controls.
- System access controls.
- Data access controls.
- Transmission controls.
- Input controls.
- Data backups.
- Data segregation.