

East Midlands Strategic Commercial Unit



VERSION CONTROL

Version No.	Date	Author	Post	Reason for Issue
V1.0	11 th January 2013	Graeme Unwin	Procurement Policy Manager	
V1.1	24 th March 2014	Pat Stocker (on behalf of Force ISO's)	ISO	Clarification on Police / Personal data
V1.2	26 th June 2014	Michelle Tilston	Solicitor (EMPLS)	Legal review

Data and Systems Handling and Security (Category 4 Suppliers - who supply the Force with goods or services or have access to unclassified Police data)

1. Definitions

1.1 Where used in this Schedule:

- 1.1.1 the term **"Force"** means the Nottinghamshire / Derbyshire / Northamptonshire Police Force and includes any other term used therefor elsewhere in the Contract.
- 1.1.2 the term **"Contractor"** will include the term **"Provider"**, **"Supplier"** or **"Consultant"**, where this term is used elsewhere in the Contract to describe the party contracting with the Force.
- 1.1.3 the term **"Contract"** will be interchangeable with the term **"Agreement"**, where used elsewhere in the Contract or Agreement and shall be deemed to include all schedules and appendices thereto.

1.2 For the purpose of this Schedule the following expressions will have the meanings ascribed to them:

- 1.2.1 **"Breach of Security"** means the occurrence of unauthorised access to or unauthorised use of Force Premises, the Sites, the Services or any ICT or data (including Police Data) used by the Force or the Contractor in connection with the Contract.
- 1.2.2 **"Business Day"** means any day other than a Saturday or Sunday or a public or bank holiday in England.
- 1.2.3 **"Commercially Sensitive Information"** means information notified to the Force in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information comprised of information: (a) which is provided by the Contractor to the Force in confidence for the period set out in that notification; and/or (b) that constitutes a trade secret.
- 1.2.4 **"Confidential Information"** means all information in respect of the business and activities of a party including, without prejudice to the generality of the foregoing, any ideas; business methods; finance; prices; business, financial, marketing, development or manpower plans; customer (including programme participants) lists or details; computer systems and software; products or services, including but not limited to know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by such party, and information concerning such party's relationships with actual or potential clients, customers or suppliers and the needs and requirements of such party and of such persons and any other information which, if disclosed, will be liable to cause harm to such party or which is of a confidential or proprietary nature (including information imparted orally). This definition does not mean the same as "Confidential" as defined in the Government Protective Marking Scheme (GPMS).
- 1.2.5 **"Contracting Authority"** means any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Force.

- 1.2.6 **“Contractor Confidential Information”** means Confidential Information proprietary to the Contractor.
- 1.2.7 **“Contractor Personnel”** means all employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor.
- 1.2.8 **“Crown Body”** means any department, office or agency of the Crown.
- 1.2.9 **“Environmental Information Regulations”** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown Body or Regulatory Body in relation to such regulations.
- 1.2.10 **“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown Body or Regulatory Body in relation to such legislation.
- 1.2.11 **“Force Premises”** means premises owned, controlled or occupied by the Force and made available for use by the Contractor or its sub-contractors for the provision of the Services on the terms set out in the Contract or any separate agreement or licence.
- 1.2.12 **“Force System”** means any computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Force or the Contractor in connection with the Contract and which is owned by, or licensed by a third party to the Force, and which is used by the Force to receive the Services.
- 1.2.13 **“Good Industry Practice”** means the exercise by the Contractor of that degree of skill, diligence, prudence, foresight and operating practice which, at the relevant time, would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same or a similar business as the Contractor, seeking in good faith to comply with its contractual and other obligations.
- 1.2.14 **“ICT”** means information and communications technology.
- 1.2.15 **“Information”** has the meaning given under section 84 of the Freedom of Information Act 2000.
- 1.2.16 **“Law”** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.
- 1.2.17 **“Police Data”** means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:
- 1.2.17.1 is provided to the Contractor by or on behalf of the Force in connection with the Contract,
- 1.2.17.2 the Contractor is required to generate, process, store or transmit pursuant to the Contract.
- 1.2.18 **“Regulatory Bodies”** means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Force and **“Regulatory Body”** shall be construed accordingly.

- 1.2.19 **“Request for Information”** means a request for information or an apparent request for information under the Code of Practice on Access to Force Information, FOIA or the Environment Information Regulations.
 - 1.2.20 **“Services”** means the services to be provided by the Contractor to the Force pursuant to the Contract, including without limitation the supply of goods or products to the Force.
 - 1.2.21 **“Sites”** means any premises from which the Services are provided or from which the Contractor manages, organises or otherwise directs the provision or the use of the Services or where any physical interface with the Force System takes place.
2. **Police Data**
- 2.1 The Contractor will:
- 2.1.1 not delete or remove any proprietary notices contained within or relating to the Police Data;
 - 2.1.2 not in any circumstances store, copy or disclose the Police Data, without the Force’s express prior written authorisation;
 - 2.1.3 not use the Police Data except as necessary for the performance of its obligations under the Contract or as otherwise expressly authorised in writing by the Force; and
 - 2.1.4 be responsible for preserving the integrity, security and confidentiality of the Police Data in its possession or control, or which it uses, and preventing corruption, unauthorised disclosure or loss of the same.
- 2.2 If at any time the Contractor suspects or has reason to suspect that the Police Data has or may become corrupted, disclosed, lost or sufficiently degraded in any way for any reason, then it will notify the Force immediately.
3. **Confidentiality**
- 3.1 Except to the extent set out in this paragraph 3 or where disclosure is expressly permitted elsewhere in the Contract, each party shall:
- 3.1.1 treat the other party's Confidential Information as confidential in accordance with Good Industry Practice, any Security Policy and the Standards; and
 - 3.1.2 not disclose the other party's Confidential Information to any other person without the other party's prior written consent.
- 3.2 Paragraph 3.1 will not apply to the extent that:
- 3.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including without limitation any requirements for disclosure under the FOIA, Code of Practice on Access to Force Information or the Environmental Information Regulations;
 - 3.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the other party;
 - 3.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 3.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 3.2.5 it is independently developed without access to the other party's Confidential Information.

- 3.3 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Force shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 3.4 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Force to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 3.5 Subject to paragraph 3.6, the Contractor may only disclose Confidential Information to Contractor Personnel directly involved in the provision of the Services and who need to know the information, and will ensure that such Contractor Personnel are aware of and comply with these obligations as to confidentiality, except that the Contractor shall not disclose any Confidential Information to any sub-contractor without the prior written consent of the Force.
- 3.6 The Contractor shall not disclose Confidential Information to any sub-contractor without the prior written consent of the Force.
- 3.7 The Contractor will not, and will procure that the Contractor Personnel do not, use Confidential Information received otherwise than for the purposes of the Contract.
- 3.8 Nothing in the Contract will prevent the Force from disclosing Contractor Confidential Information:
- 3.8.1 to any Crown Body or other Contracting Authority, and all Crown Bodies or Contracting Authorities receiving such Confidential Information will be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 3.8.2 to any consultant, contractor or other person engaged by the Force or any person conducting an Home Office or Cabinet Office review;
 - 3.8.3 for the purpose of the examination and certification of the Force's accounts; or
- 3.9 The Force will use all reasonable endeavours to ensure that any Regulatory Body, Crown Body, Contracting Authority, employee, third party or sub-contractor to whom Contractor Confidential Information is disclosed pursuant to paragraph 3.8 is made aware of the Force's obligations of confidentiality.
- 3.10 Nothing in this paragraph 3 will prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of intellectual property rights.
- 3.11 This paragraph 3 survives termination of the Contract and will continue in full force and effect.
- 4. Freedom of Information**
- 4.1 The Contractor acknowledges that the Force is subject to the requirements of the Code of Practice on Force Information, FOIA and the Environmental Information Regulations and will assist and cooperate with the Force to enable the Force to comply with its Information disclosure obligations.
- 4.2 The Contractor will and will procure that its sub-contractors will:

- 4.2.1 transfer to the Force all Requests for Information that it receives as soon as practicable and in any event within two Business Days of receiving a Request for Information;
 - 4.2.2 provide the Force with a copy of all Information in its possession, or power in the form that the Force (acting reasonably) requires within five Business Days (or such other period as the Force may specify) of the Force's request; and
 - 4.2.3 provide all necessary assistance as reasonably requested by the Force to enable the Force to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 4.3 The Force is responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Force Information, FOIA or the Environmental Information Regulations.
- 4.4 In no event will the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Force.
- 4.5 The Contractor acknowledges that (notwithstanding the provisions of paragraph 3) the Force may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 4.5.1 in certain circumstances without consulting the Contractor; or
 - 4.5.2 following consultation with the Contractor and having taken the Contractor's views into account;
- provided always that where paragraph 4.5 applies the Force shall, in accordance with any recommendations of the Code referred to above, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 4.6 The Contractor will ensure that all Information is retained for disclosure as required by Law and will permit the Force to inspect such records as requested from time to time.
- 4.7 This paragraph 4 will survive termination of the Contract and continue in full force and effect.
- 5. Audit**
- 5.1 Without prejudice to any other right of audit or access granted to the Force pursuant to the Contract, the Force may at any time conduct an audit for the purpose of assessing the Contractor's compliance with its obligations under this Schedule. The Force shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services. Subject to the Force's obligations of confidentiality, the Contractor shall (and shall procure that the Contractor Personnel shall) on demand provide the Force (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including without limitation all information requested by the Force within the permitted scope of the audit, reasonable access to any Sites and access to Contractor Personnel.

- 5.2 Where any audit performed pursuant to paragraph 5.1 above reveals any actual or potential security failure or weaknesses, or any other breach by the Contractor of its obligations under this Schedule, the Contractor shall promptly notify the Force of the remedial action which the Contractor proposes in order to remedy such breach. Subject to the Force's written approval, the Contractor shall implement such remedial action in accordance with the timetable agreed with the Force or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where remedial action is to address a non-compliance with obligations under this Schedule, the remedial action shall be at no additional cost to the Force.

6. **General**

- 6.1 The Contractor shall notify the Force immediately upon becoming aware of any Breach of Security including, but not limited to, an actual, potential or attempted breach and, as soon as reasonably practicable, provide to the Force full details thereof (using such reporting mechanism as may be specified by the Force from time to time).
- 6.2 The Contractor shall ensure that all Contractor Personnel who have unescorted access to Force Premises will comply with all visitor requirements and standard policies, rules and regulations relating to such Force Premises as the Force shall require from time to time.