

## GDPR- Summary of Amendments to the Civil, CLA and Crime Standard Terms Document- 25<sup>th</sup> April 2018

The table below summarises the amendments made to the following Standard Terms documents to reflect the requirements of the Data Protection Regulations (GDPR), the Law Enforcement Directive (LED) and the Data Protection Act 2018 (subject to Royal Assent):

- 2010 Standard Civil Contract;
- 2013 Standard Civil Contract;
- 2013 Standard Civil Contract (Welfare Benefits);
- 2014 Standard Civil Contract;
- 2015 Standard Civil Contract; and
- 2016 Standard Civil Contract (Welfare Benefits)
- 2017 Standard Crime Contract.

The new Data Protection legislation will come into effect into force with effect from 25 May 2018. Amendments relating to the Law Enforcement Directive (Directive (EU) 2016/680), being implemented via Part 3 of the Data Protection Bill, will come into effect on 6 May 2018.

Paragraph Number	Amendment proposed during consultation	Rationale
1.1 (Interpretation)	<b>New Definition</b> <i>“Controller” means, where Personal Data is being processed for Law Enforcement Purposes, as it is defined in the LED; and in all other circumstances, as it is defined in GDPR;</i>	Amendments have been made to Clause 1.1 (Interpretation) of the Standard Terms. These amendments are consistent with the new legislation and the Procurement Policy Note (03/17) published by the Crown Commercial Service.
	<b>Deleted Definition</b> <del>“Data” means as specified in the Data Protection Act 1998;</del>	
	<b>New Definition</b> <i>“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by you under this Contract,</i>	

	<p>and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;</p>	
	<p><b>Deleted Definition</b></p> <p><del>“Data Controller” means a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any Personal Data are, or are to be, processed, save that where Personal Data is processed only for the purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under the enactment shall be treated as the Data Controller;</del></p>	
	<p><b>Deleted Definition</b></p> <p><del>“Data Processor” means in relation to Personal Data any person (other than an employee of the Data Controller) who processes the Data on behalf of the Data Controller;</del></p>	
	<p><b>New Definition</b></p> <p><i>“Data Protection Impact Assessment” means as specified in the GDPR;</i></p>	
	<p><b>Amended Definition</b></p> <p><i>“Data Protection Legislation” means the Data Protection Act 1998/2018, the EU Data Protection Directive 95/46/EC GDPR, the LED, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Privacy and Electronic Communications Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance</i></p>	

	<p>and codes of practice issued by the Information Commissioner and any generally accepted code of good practice;</p>	
	<p><b>Amended Definition</b></p> <p><i>“Data Subject”</i> means <del>as specified in the GDPR an individual who is the subject of Personal Data;</del></p>	
	<p><b>New Definition</b></p> <p><i>“GDPR”</i> means the General Data Protection Regulation (Regulation (EU) 2016/679);</p>	
	<p><b>New Definition</b></p> <p><i>“Joint Controllers”</i> means as it is defined in the GDPR;</p>	
	<p><b>New Definition</b></p> <p><i>“Law Enforcement Purposes”</i> means as it is defined in the Data Protection Act 2018;</p>	
	<p><b>New Definition</b></p> <p><i>“LED”</i> means the Law Enforcement Directive (Directive (EU) 2016/680);</p>	
	<p><b>Amended Definition</b></p> <p><i>“LAA Data”</i> means:</p> <p>(a) the <del>Data data</del> (including, drawings, diagrams, images or sounds (together with any database made up of any of these which is embodied in any electronic, magnetic, optical or tangible media)) which:</p>	

	<p>(i) are supplied to you by us or on our behalf;</p> <p>(ii) you are required to Process pursuant to this Contract; or</p> <p>(b) any Personal Data for which we are the <del>Data</del> Controller but not including the Shared Data;</p>	
	<p><b>Amended Definition</b></p> <p><del>“Personal Data” means as it is defined in the GDPR Data which relates to a living individual who can be identified from those Data or from those Data and other information which is in the possession of, or is likely to come into the possession of, the Data Controller and includes any expression of opinion about the individual and any indication of the intentions of the Data Controller or any other person in respect of the individual;</del></p>	
	<p><b>New Definition</b></p> <p><del>“Personal Data Breach” means as it is defined in the GDPR;</del></p>	
	<p><b>Amended Definition</b></p> <p><del>“Processing” means as it is defined in the GDPR, in relation to Personal Data means obtaining, recording or holding the information or Data or carrying out any operation or set of operations on the Personal Data including:</del></p> <p><del>—— (a) —— organisation, adaptation or alteration of the Personal Data;</del></p> <p><del>—— (b) —— retrieval, consultation or use of the Personal Data;</del></p>	

	<p><del>(c) disclosure of the Personal Data by transmission, dissemination or otherwise making available; or</del></p> <p><del>(d) alignment, combination, blocking, erasure or destruction of the Personal Data,</del></p> <p>and “Processed” and “Process” shall be construed accordingly;</p>	
	<p><b>New Definition</b></p> <p>“<i>Processor</i>” means, where Personal Data is being Processed for Law Enforcement Purposes, as it is defined in the LED; and in all other circumstances, as it is defined in the GDPR;</p>	
	<p><b>New Definition</b></p> <p>“Protective Measures” means the appropriate technical and organisational measures which may include: 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;</p>	
	<p><b>Amended Definition</b></p> <p>“<i>Shared Data</i>” means Personal Data which is Processed in connection with the performance of this Contract by the Provider in respect of which the Provider is a <del>Data</del> Controller either alone or <del>in common</del> jointly with the LAA which will be transferred from the Provider to the LAA or which the LAA is entitled to request in accordance with this Contract including documents held on Contract Work files which are necessary for the conduct of the relevant Matter or case and which we</p>	

	may require in order to assess your compliance with your obligations under this Contract;	
<b>1.26 Interpretation</b>	<p><b>Amended Clause</b></p> <p>The definition of <del>“Data Subject”, “Personal Data”, “Processing”, “Process”, “Processed”, “Data Controller” and “Data Processor” are taken from the Data Protection Act 1998 and</del> the definition of “Information” is taken from the Freedom of Information Act 2000. <del>These</del> This definitions <del>are</del> is set out in full for ease of reference in this Contract and shall be interpreted in the same way as their equivalent terms within <del>these Statutes the Freedom of Information Act 2000.</del></p>	Minor amendment following the addition of the defined terms to Clause 1.1 (Interpretation) as set out above.
<b>16.1 (Yours and our Data Protection Legislation obligations)</b>	<p><b>Amended Clause</b></p> <p>For the purposes of the Data Protection Legislation it is the understanding of the parties that:</p> <ul style="list-style-type: none"> <li>(a) <del>in respect of Personal Data comprised within the Shared Data,</del> LAA and you are <del>Joint Data</del> Controllers <del>“in common” or “alone” (but not “jointly”) in respect of the Shared Data;</del> A description of the Joint Controller relationship and related Processing activity is set out in the Data Security Guidance;</li> <li>(b) <del>in respect of Personal Data comprised within the LAA Data,</del> LAA is a Controller and you are a <del>Data</del> Processor. <del>in respect of Personal Data comprised within the LAA Data</del> The only Processing that you are authorised to do in respect of the LAA Data is listed in the Data Security Guidance by us and may not be determined by you;</li> <li>(c) you may be a <del>Data</del> Controller or <del>Data</del> Processor on behalf of Clients and Former Clients in respect of other Personal Data.</li> </ul>	This amendment sets out the obligations of the parties in relation to the statutory roles of Controller and Processor for the LAA Data, the Shared Data and other data.

<p><b>16.3 (Yours and our Data Protection Legislation obligations)</b></p>	<p><b>Amended Clause</b></p> <p>In respect of the Shared Data:</p> <ul style="list-style-type: none"> <li>(a) <del>Y</del>you will be responsible for and will at all times comply with the <del>Data</del> Controller's obligations, under the Data Protection Legislation in respect of Processing carried out in connection with the performance of this Contract, including in respect of the confidentiality, integrity and security of that <del>Shared</del> Data and the transfer of that <del>Shared</del> Data to LAA as envisaged under this Contract;</li> <li>(b) LAA will be responsible for compliance with the Data Protection Legislation in respect of that Shared Data which is actually received and Processed by LAA as a <del>Data</del> Controller;</li> <li>(c) it is not expected that either us or you will be responsible under the Data Protection Legislation for a breach of the Data Protection Legislation by the other party. <b>Each party shall be solely responsible for its own compliance with the Data Protection Legislation.</b></li> </ul>	<p>Minor amendment following the addition of the defined terms to Clause 1.1 (Interpretation) as set out above.</p>
<p><b>16.4 (Yours and our Data Protection Legislation obligations)</b></p>	<p><b>Existing Clause</b></p> <p>You will not Process the LAA Data or Shared Data except as necessary for the performance by you of your obligations under this Contract (including the performance of Contract Work) or as otherwise expressly authorised in writing by the LAA.</p>	<p>Not Part of the Consultation</p>
<p><b>16.6 (Yours and our Data Protection Legislation obligations)</b></p>	<p><b>Amended Clause</b></p> <p>You will ensure that you obtain and maintain all consents, licences and registrations required to enable you to provide Personal Data to LAA as envisaged by this Contract, including consents from Clients, Former Clients, and <del>Data</del> Controllers (other than us) and such notifications</p>	<p>Minor amendment following the addition of the defined terms to Clause 1.1 (Interpretation) as set out above.</p>

	with the Information Commissioner's Office as are required for you to comply with the Data Protection Legislation.	
<b>16.7 (Yours and our Data Protection Legislation obligations)</b>	<p><b>Amended Clause</b></p> <p>You will not transfer the LAA Data or Shared Data outside of the European <del>Economic Area</del> Union <del>without</del> unless you have obtained our express prior written approval and meet the following conditions;</p> <p>(a) you, have provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the LED) as determined by the LAA;</p> <p>(b) the Data Subject has enforceable rights and effective legal remedies;</p> <p>(c) you comply with your obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if you are not so bound, use your best endeavours to assist us in meeting our obligations); and</p> <p>(d) you comply with any reasonable instructions stipulated as a condition of giving our approval.</p>	These amendments set out the relevant provisions of legislation that must be adhered to when performing work under the Contract. These amendments are consistent with the Generic Standard GDPR Clauses in Annex A of the Procurement Policy Note (03/17) published by the Crown Commercial Service.
<b>16.8 (Yours and our Data Protection Legislation obligations)</b>	<p><b>Amended Clause</b></p> <p>You will supply originals or copies of the LAA Data and Shared Data to us in accordance with Clause 9.1. You will not assert proprietary or other rights in law or in equity as a reason for not supplying LAA Data and Shared Data in accordance with this Contract. <b>At our written direction, you will delete or return the LAA Data (and any copies of it) to us on expiry or termination of this Contract unless you are required by law to retain the LAA Data.</b></p>	A minor amendment to clarify the requirement on the provider to delete or return personal data to the LAA (in line with the new Data Protection Legislation) where the contract comes to an end.



<p><b>16.9 (Yours and our Data Protection Legislation obligations)</b></p>	<p><b>Amended Clause</b></p> <p>Without prejudice to Clause 16.3(a) in respect of the Shared Data and LAA Data Processed by you or on your behalf:</p> <ul style="list-style-type: none"> <li>(a) you will take responsibility for preserving the confidentiality and integrity of LAA Data and Shared Data which is Processed by you and preventing the unauthorised disclosure, corruption or loss of such LAA Data or Shared Data;</li> <li>(b) you will take responsibility for ensuring that up-to-date backups of the LAA Data and Shared Data which is in electronic format are stored offsite;</li> <li>(c) you <b>must ensure that Protective Measures (including but not limited to compliance with the Data Security Requirements) are in place to protect against a Data Loss Event, having taken into account of the nature of the data to be protected, the harm that might result from a Data Loss Event, the state of technological development and the cost of implementing any measures;</b></li> <li>(d) you will have regard to the Data Security Guidance <b>and any guidance issued by the Information Commissioner's Office;</b></li> <li>(e) you will ensure that any system on which you hold any LAA Data and Shared Data, including backup information, is a secure system that complies with your obligations under Clause 16.9(c) and you will provide us with a written description of the technical and organisational methods employed by you for Processing such <b>Data data</b> (within the timescales required by us) if so requested by us;</li> </ul>	<p>Amendments have been made to this clause to reflect the requirements of the incoming legislation.</p> <p>These amendments are consistent with the Generic Standard GDPR Clauses in Annex A of the Procurement Policy Note (03/17) published by the Crown Commercial Service.</p>
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	<p>(f) in respect of any of your personnel and any third parties appointed by you pursuant to Clause 3 who have access to Personal Data:</p> <p>(i) you will take all reasonable steps to ensure the reliability and integrity of any of your such personnel and any or third parties so appointed who have access to Personal Data;</p> <p>(ii) pursuant to Clause 3 who have access to such data and you will ensure that such personnel are informed of it's 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 LAA or as otherwise permitted by this Contract;</p> <p>(iii) and you will ensure that such personnel are aware and comply with your obligations under Clauses 15, 16 and 17 and comply with those obligations; and</p> <p>(iv) you will ensure that sure any such personnel or third parties so appointed have undergone adequate training in the use, care, protection and handling of Personal Data; and</p> <p>(v) you will ensure that any such personnel or third parties so appointed are subject to appropriate confidentiality undertakings with you or any such third party.</p> <p>(g) you will immediately report to the LAA any incident that results in the disclosure of LAA Data and Shared Data to unauthorised recipients Data Loss Event of which you become aware.</p>	
<p><b>16.12 (Yours and our Data Protection</b></p>	<p><b>Amended Clause</b></p> <p>You will notify us (within five Business Days) if you receive:</p>	<p>Amendments made to this clause to reflect the requirements of the incoming legislation.</p>

<p><b>Legislation obligations)</b></p>	<ul style="list-style-type: none"> <li>(a) a request from a Data Subject to have access to that person's Personal Data within the LAA Data or Shared Data; or</li> <li>(b) a request to rectify, block or erase and Personal Data contained within the LAA Data or Shared Data, or</li> <li>(c) a complaint, request or any other communication relating to our obligations or yours under the Data Protection Legislation in connection with the LAA Data or Shared Data; or</li> <li>(d) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract <del>a request (other than an access request under section 7 of the Data Protection Act 1998) relating to our Processing under the Data Protection Legislation in connection with the LAA Data or Shared Data.</del></li> </ul>	<p>These amendments are consistent with the Generic Standard GDPR Clauses in Annex A of the Procurement Policy Note (03/17) published by the Crown Commercial Service.</p>
<p><b>16.13 (Yours and our Data Protection Legislation obligations)</b></p>	<p><b>Amended Clause</b></p> <p>You will provide us with full co-operation and assistance <del>in relation to any complaint or request made,</del> in respect of LAA Data or Shared Data upon request including by:</p> <ul style="list-style-type: none"> <li>(a) providing us with full details of <del>the any</del> complaint, <del>or</del> request or communication if it is received by you;</li> <li>(b) complying with any request by a Data Subject <del>data-subject access request</del> within the relevant timescales set out in the Data Protection Legislation in respect of the Shared Data where you are the <del>Data</del> Controller receiving the request;</li> <li>(c) providing us with any other information or assistance as requested by us;</li> </ul>	<p>Amendments made to this clause to reflect the requirements of the incoming legislation.</p> <p>These amendments are consistent with the Generic Standard GDPR Clauses in Annex A of the Procurement Policy Note (03/17) published by the Crown Commercial Service.</p>

	<p>(d) assisting us in relation to any Data Loss Event or any event giving rise to a notification by you under Clause 16.11;</p> <p>(e) assisting us in relation to any communication from the Information Commissioner’s Office or any other regulatory authority;</p> <p>(f) assisting us in the preparation of any Data Protection Impact Assessment.</p>	
16.15 (Yours and our Data Protection Legislation obligations)	<p><b>Amended Clause</b></p> <p>Where you are Processing <del>You will in relation to</del> LAA Data, you will:</p> <p>(a) Process such LAA Data only in accordance with written instructions from us (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by us to you during the Contract Period);</p> <p>(b) implement such technical and organisational measures as are required to enable you to Process such LAA Data in compliance with <del>obligations equivalent to those imposed on us by the Seventh Principle of</del> the Data Protection Act 1998 Legislation and to protect such LAA Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures will be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the LAA Data and having regard to the nature of the LAA Data which is to be protected and shall meet the requirements of the Data Protection Legislation (including the requirements of Article 32 (Security of Processing) of the GDPR).</p>	Minor amendments to reflect the changes in legislation.
16.16 (Yours and our Data)	<b>New Clause</b>	The LAA is falls under the definition of a “Competent Authority” as set

<p><b>Protection Legislation obligations)</b></p>	<p>In relation to Personal Data comprised within the LAA Data and the Shared Data which is Processed for Law Enforcement Purposes, you will:</p> <p>(a) maintain logs for your processing operations in respect of:</p> <ul style="list-style-type: none"> <li>(i) collection;</li> <li>(ii) alteration;</li> <li>(iii) consultation;</li> <li>(iv) disclosure (including transfers);</li> <li>(v) combination; and</li> <li>(vi) erasure,</li> </ul> <p>(together the “<b>Logs</b>”);</p> <p>(b) ensure that:</p> <ul style="list-style-type: none"> <li>(i) the Logs of consultation make it possible to establish the justification for, and date and time of, the consultation; and as far as possible, the identity of the person who consulted the data;</li> <li>(ii) the Logs of disclosure make it possible to establish the justification for, and date and time of, the disclosure, and the identity of the recipients of the data; and</li> <li>(iii) the Logs are made available to us, including for us to provide to the Information Commissioner’s Office, on request;</li> </ul>	<p>out in Schedule 7 of the LED. This clause has been inserted to reflect the requirements which apply when processing personal data for law enforcement purposes.</p> <p>These amendments are consistent with the Generic Standard GDPR Clauses in Annex A of the Procurement Policy Note (03/17) published by the Crown Commercial Service.</p>
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	<p>(c) use the Logs only to:</p> <ul style="list-style-type: none"> <li>(i) verify the lawfulness of Processing;</li> <li>(ii) assist with our self-monitoring or (as the case may be) your self-monitoring, including the conduct of internal disciplinary proceedings;</li> <li>(iii) ensure the integrity of Personal Data; and</li> <li>(iv) assist with criminal proceedings;</li> </ul> <p>(d) as far as possible, distinguish between Personal Data based on fact and Personal Data based on personal assessments; and</p> <p>(e) where relevant and as far as possible, maintain a clear distinction between Personal Data relating to different categories of Data Subject, for example:</p> <ul style="list-style-type: none"> <li>(i) persons suspected of having committed or being about to commit a criminal offence;</li> <li>(ii) persons convicted of a criminal offence;</li> <li>(iii) persons who are or maybe victims of a criminal offence; and</li> <li>(iv) witnesses or other persons with information about offences.</li> </ul>	
<p><b>16.167 (Yours and our Data Protection Legislation obligations)</b></p>	<p><b>Amended Clause</b></p> <p>Without prejudice to <del>Clause 4.4 and</del> Clause 19, you indemnify us and keep us indemnified, without delay, against all losses, costs, claims, damages, actions, expenses, <del>fin</del>es, <del>administrative penalties</del> and other liabilities of whatever nature incurred by us as a result (directly or</p>	<p>Minor amendment to ensure that the clause includes reference to fines and administrative penalties which could be imposed following a failure to comply with the new legislation, against which the</p>

	indirectly) of your failure to comply with Clauses 16.1 to 16.1 <del>65</del> <b>-or any of your obligations under the Data Protection Legislation.</b>	provider must indemnify the LAA if such a fine or administrative penalty is imposed following a breach by the Provider of their obligations.
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