

DATED

2016

CCTV SUPPLY AND SERVICE AGREEMENT

**CONTRACT FOR THE SUPPLY AND MAINTENANCE
OF DEPLOYABLE CCTV CAMERAS AND ASSOCIATED
SOFTWARE AND EQUIPMENT FOR MOVING TRAFFIC
CONTRAVENTIONS THROUGHOUT THE LONDON
BOROUGH OF BARNET**

Between

LONDON BOROUGH OF BARNET

and

OPENVIEW SECURITY SOLUTIONS LIMITED

CONTENTS

CLAUSE

1.	Definitions and interpretation	04
2.	Term.....	11
3.	Extending the Initial Term	11
4.	Consents, warranty of the Service Provider and due diligence	12
5.	Supply of CCTV Equipment and services	13
6.	Service Levels	16
7.	Service standards	16
8.	Health and safety	17
9.	Not Used	Error!
	Bookmark not defined.	
10.	Disaster recovery	17
11.	Payment.....	18
12.	Service Credits	20
13.	Key Personnel	20
14.	Other personnel used to provide the services	21
15.	Not Used	Error!
	Bookmark not defined.	
16.	Not Used	22
17.	Reporting and meetings	22
18.	Monitoring ...	23
19.	Change control and continuous improvement	23
20.	Dispute resolution	23
21.	Sub-contracting and assignment	25
22.	Indemnities..	26
23.	Limitation of liability	26
24.	Insurance	27
25.	Freedom of information	28
26.	Data protection	29
27.	Confidentiality	30
28.	Audit.....	31
29.	Intellectual Property	33
30.	Termination for breach	33
31.	Not Used	Error!
	Bookmark not defined.	
32.	Force majeure	35
33.	Prevention of bribery	36
34.	Consequences of termination	38
35.	Non-solicitation	39
36.	Waiver.....	39
37.	Cumulation of remedies	39
38.	Severability .	40
39.	Partnership or agency	40

40.	Third party rights	40
41.	Publicity.....	41
42.	Notices	41
43.	Entire agreement	41
44.	Counterparts	41
45.	Governing law	42

SCHEDULES

Schedule 1	Specification	43
Schedule 2	KPIs and Service Levels.....	44
Schedule 3	Service Provider's Tender	47
Schedule 4	Charges and payment	48
Schedule 5	Contract management	49
Schedule 6	Disaster recovery	51
Schedule 7	Change control	52
Schedule 8	Not Used.....	56
Schedule 9	Exit.....	57
Schedule 10	Not Used.....	Error! Bookmark not defined.
Schedule 11	Commercially sensitive information	2600
Schedule 12	Not Used.....	221
Schedule 13	Insurance.....	223

This agreement is dated

2015

PARTIES

- (1) London Borough of Barnet of North London Business Park, Oakleigh Road South, London N11 1NP, United Kingdom (**Authority**).
- (2) OpenView Security Solutions Limited incorporated and registered in England and Wales with company number 3376202 whose registered office is at OpenView House, Chesham Close, Romford, Essex RM7 7PJ (**Service Provider**).

BACKGROUND

- (A) The Authority sought proposals for the supply and maintenance of deployable CCTV cameras for moving traffic contraventions throughout the London Borough of Barnet by means of a public tender exercise. The Authority placed a contract notice on 18 August 2015 in the Official Journal of the European Union reference number 2015/S 162-296996 seeking tenders from potential providers for the supply and maintenance services.
- (B) The Authority has, through a competitive process, selected the Service Provider to supply the equipment and provide these services and the Service Provider is willing and able to supply the equipment and provide the services in accordance with the terms and conditions of this agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause 1 apply in this agreement.

Achieved Service Levels: in respect of any Services in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of the Services in the measurement period in question (calculated and expressed in the same way as the Service Level for the Services are calculated and expressed in 0).

Arquiva Contract: the services concession contract for the provision, installation and maintenance of equipment enabling the provision of a wireless network in streets and open spaces within the Authority's administrative area using specified assets, including assets owned by the Authority

Associated Company: any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company.

Authorised Representatives: the persons respectively designated as such by the Authority and the Service Provider, the first such persons being set out in 0.

Authority Assets: any materials, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Catastrophic Failure: is:

- (a) a failure by the Service Provider for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster.
- (b) any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authorised Representatives has or may cause significant harm to the reputation of the Authority.

CCTV Equipment: redeployable CCTV cameras and all associated equipment that must be able to capture data for Moving Traffic Contravention enforcement and compliance purposes as more particularly described in Schedule 1 (Specification).

Change: any change to this agreement including to any of the Services.

Change Control Note: the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Change Control Procedure: the procedure for changing this agreement, as set out in 0.

Charges: the charges which shall become due and payable by the Authority to the Service Provider in respect of the Services in

accordance with the provisions of this agreement, as such charges are set out in 0.

Commencement Date: 1 February 2016

Commercially Sensitive Information: the information listed in 0 comprising the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Service Provider significant commercial disadvantage or material financial loss.

Consistent Failure: shall have the meaning set out in Part 1 of 0.

Contract Year: a period of 12 months, commencing on the Commencement Date

Crown: the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.

Crown Body: any department, office or agency of the Crown.

Data Processor: has the meaning set out in the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 1998 (**DPA**), the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Default Notice: is a notice served by the Authority under clause 5.2.

Disaster: an event defined as a disaster in the Disaster Recovery Plan.

Disaster Recovery Plan: a plan which sets out the procedures to be adopted by the Service Provider on the occurrence of a Disaster (including the procedures to be taken by the Service Provider in planning and providing for any such event), the Disaster Recovery Plan at the date of this agreement being set out in 0.

Dispute Resolution Procedure: the procedure set out in clause 20.

Enforcement Locations: the locations identified and set out at [[Part []] of Schedule [1]] where moving traffic contravention enforcement will take place as may be amended from time to time [*These locations will be confirmed through the mobilisation period of the contract award phase*]

Environmental Information Regulations: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Exit Management Plan: the plan set out in 0.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure Event: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the supply chain of the Service Provider.

Information: has the meaning given under section 84 of FOIA.

Initial Term: the period commencing on the Commencement Date and ending on the date of the second anniversary thereof.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Key Personnel: those personnel identified 0 for the roles attributed to such personnel, as modified pursuant to clause 13.

Management Reports: the reports to be prepared and presented by the Service Provider in accordance with clause 17, Schedule 1 and 0

Moving Traffic Contravention Codes:
<http://www.londoncouncils.gov.uk/services/parking-services/parking-and-traffic/parking-information-professionals/contravention-code>

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

Payment Plan: the plan for payment of the Charges as set out in 0.

Personal Data: has the meaning set out in the Data Protection Act 1998.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this agreement or any other contract with the Authority; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).

Remediation Notice: a notice served by the Authority in accordance with clause 30.1(a).

Replacement Service Provider: any third party Service provider of Replacement Services appointed by the Authority from time to time.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

Service Credits: the sums attributable to a Service Failure as specified in **Error! Reference source not found.** of 0.

Service Failure: a failure by the Service Provider to provide the Services in accordance with any individual Service Level measured on a monthly basis.

Service Levels: the service levels to which the Services are to be provided, as set out in 0.

Service Provider Party: the agents and contractors of the Service Provider, including each Sub-Contractor.

Service Provider's Personnel: all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractor who are engaged in the provision of the Services from time to time.

Service Provider's Tender: the tender submitted by the Service Provider and other associated documentation set out in 0.

Services: the services to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in 0 (Specification).

Services Mobilisation Commencement Date: 20 November 2015

Specification: the Authority's requirements relating to the supply of the CCTV Equipment and the provision of the Services set out at Schedule 1

Sub-Contract: any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractors: the contractors or service providers engaged by the Service Provider to provide CCTV Equipment, services or works to, for or on behalf of the Service Provider for the purposes of providing the Services to the Authority.

Term: the Initial Term and up to a further two (2) Contract Years at the Authority's discretion, and subject to budgetary provision and satisfactory performance by the Contractor

Termination Date: the date of expiry or termination of this agreement.

Warning Notice: a notice served by the Authority on the Service Provider in response to a failure by the Service Provider to rectify a default within the required time set out in a Default Notice

Wireless Network Infrastructure: the electronic equipment which is required to support the provision of wireless network services;

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

Works: includes CCTV Equipment installation and all associated engineering and building works and preventative and reactive maintenance works

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes e-mail.

- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression **so far as the Authority or the Service Provider is aware** or **to the Authority's or the Service Provider's knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.14 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) 0 to this agreement;
 - (c) the remaining schedules to this agreement other than 0;
 - (d) 0 to this agreement;

COMMENCEMENT AND DURATION

2. TERM

This agreement shall take effect on the Services Mobilisation Commencement Date so far as the agreement relates to mobilisation in preparation for delivery of the Services and otherwise on the Commencement Date and shall continue for the Initial Term.

3. EXTENDING THE INITIAL TERM

- 3.1 The Authority may extend this agreement beyond the Initial Term by a further period or periods of up to two year(s) (**Extension Period**). If the Authority wishes to extend this agreement, it shall give the Service Provider at least six months written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.2 If the Authority gives such notice then the Term shall be extended by the period set out in the notice.

3.3 If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 34 shall apply.

4. CONSENTS, WARRANTY OF THE SERVICE PROVIDER AND DUE DILIGENCE

4.1 The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

4.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

4.3 The Service Provider acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to supply the CCTV Equipment and provide the Services in accordance with the terms of this agreement;
- (b) it has received all information subject to the provisions of clause 9.7 requested by it from the Authority pursuant to clause 4.3(a) to enable it to determine whether it is able to supply the CCTV Equipment and provide the Services in accordance with the terms of this agreement;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 4.3(b);
- (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
- (e) it has entered into this agreement in reliance on its own due diligence.

4.4 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Service Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

- 4.5 The Service Provider:
- (a) as at the Commencement Date, warrants and represents that all information contained in the Service Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
 - (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Level.
- 4.6 The Service Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Service Provider in accordance with clause 4.5(b) save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.7 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

THE EQUIPMENT AND SERVICES

5. SUPPLY OF EQUIPMENT AND SERVICES

- 5.1 The Service Provider shall supply the CCTV Equipment and provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including in strict compliance with the Specification.
- 5.2 In the event that the Service Provider does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Service Provider with a notice in writing setting out the details of the default of the Service Provider (a Default Notice).

- 5.3 The Service Provider shall provide technology solutions that enable real time integration of the data captured by the CCTV through to the Authority's back office database, in a digital format, that are used to administer the issuing of Parking Control Notices
- 5.4 The Service Provider must confirm all services and processes are compliant with all legislation governing the operation of CCTV systems and the enforcement of traffic regulations using CCTV cameras, including but not limited to the Department for Transport's Certification of Approved Devices requirement. and the Vehicle Certification Agency (VCA . The system must have the capability to capture contraventions where multiple scenario rules may determine whether a contravention has occurred and discount those that do not meet all of the applicable rules.
- 5.5 The Service Provider shall carry out pre and post installation tests as set out in the Specification
- 5.6 The Service Provider shall carry out maintenance of the CCTV Equipment as set out in the Specification, including preventative and responsive maintenance in accordance with priority categories as set out in the Specification
- 5.7 The Service Provider's responsibilities for re-deployment of camera and processor assemblies include:
- Disconnecting the power supply at an existing Enforcement Location;
 - Safely remove existing brackets and CCTV camera from pole without damaging the pole protective coating, place in protective wrap and transport to the new Enforcement Location.
 - Redeploy the CCTV camera at a new Enforcement Location as instructed by the Authority.
 - Install pre-built camera and processor assemblies on suitable brackets at the new Enforcement Location.
 - Connect power supply to CCTV camera and processor unit.
 - Configure and test and provide evidence that the system is fully operational and complies with the requirement
 - The provision of all access equipment, traffic management and street works permits;
 - Pre and post installation testing;
 - Preventative and responsive maintenance of the CCTV Equipment;
- 5.8 All CCTV Equipment and materials used by the Service Provider in carrying out their obligations under this agreement shall be in accordance with the latest technical specifications appropriate to the

CCTV Equipment and to British Standard Specifications or EU equivalent. Any modifications to the CCTV Equipment must be in accordance with the Department for Transport's type approval of the CCTV Equipment. Any CCTV Equipment used must meet the requirements of the Department for Transport and details entered into the Technical Construction File (TCF).

- 5.9 All replacement parts used to repair the CCTV Equipment must be at least equivalent to the quality and specification of the original manufacturer's part if the replacement part is not the original manufacturer's replacement part.

5.10 **SUPPLY OF CCTV EQUIPMENT**

The Service Provider shall ensure that the CCTV Equipment shall:

- 5.8.1 correspond with its description and the Specification;
- 5.8.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Service Provider or made known to the Service Provider by the Authority, expressly or by implication, and in this respect the Authority relies on the Service Provider's skill and judgment;
- 5.8.3 The CCTV Equipment housing, mountings and functionality must comply with the Specification
- 5.8.4 where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
- 5.8.5 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the CCTV Equipment.
- 5.9 The Authority shall have the right to inspect and test the CCTV Equipment at any time before delivery.
- 5.10 If following such inspection or testing the Authority considers that the CCTV Equipment does not conform or is unlikely to comply with the Service Provider's undertakings at clause 5.8, the Authority shall inform the Service Provider and the Service Provider shall immediately take such remedial action as is necessary to ensure compliance.
- 5.11 Notwithstanding any such inspection or testing, the Service Provider shall remain fully responsible for the CCTV Equipment and any such inspection or testing shall not reduce or otherwise affect the Service

Provider's obligations under this agreement, and the Authority shall have the right to conduct further inspections and tests after the Service Provider has carried out its remedial actions.

5.12 The Service Provider must maintain sufficient stock of spares to enable the rapid resolution of any faults. The Service Provider must maintain an up to date inventory of all spare parts available at all times and provide evidence of this to the Authority's Authorised Representative on a monthly basis.

5.13 The Service Provider shall provide training on the use and support of the CCTV Equipment and supporting documents to the Authority and/or its partners and contractors as appropriate at the Service Provider's cost

6. SERVICE LEVELS

6.1 Where any Services is stated in 0 to be subject to a specific Service Levels, the Service Provider shall provide that Services in such a manner as will ensure that the Achieved Service Levels in respect of that Services is equal to or higher than such specific Service Level.

6.2 As existing Services are varied and new Services are added, Service Levels for the same will be determined and included within 0.

6.3 The Service Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in clause 17.

6.4 In the event that any Achieved Service Levels falls short of the relevant Service Level, without prejudice to any other rights the Authority may have, the provisions of clause 12 shall apply.

7. SERVICE STANDARDS

7.1 Without prejudice to clause 6, the Service Provider shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care and in accordance with the best practice prevailing in the CCTV industry from time to time;
- (b) in all respects in accordance with 0; and
- (c) in accordance with all applicable laws.

7.2 Without limiting the general obligation set out in clause 7.1, the Service Provider shall (and shall procure that the Service Provider's Personnel shall):

- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998; and
- (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

8. HEALTH AND SAFETY

- 8.1 The Service Provider shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the agreement. The Authority shall promptly notify the Service Provider of any health and safety hazards that may exist or arise at the Authority's Premises and that may affect the Service Provider in the performance of the agreement.
- 8.2 While on the Authority's Premises, the Service Provider shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority's Premises.
- 8.3 The Service Provider shall notify the Authority immediately in the event of any incident occurring in the performance of the agreement on the Authority's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 8.4 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Authority's Premises in the performance of the agreement.
- 8.5 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

9. NOT USED

10. DISASTER RECOVERY

- 10.1 The Service Provider shall comply at all times with the relevant provisions of the Disaster Recovery Plan.

- 10.2 Following the declaration of a Disaster in respect of any of the Services, the Service Provider shall:
- (a) implement the Disaster Recovery Plan;
 - (b) continue to provide the affected Services to the Authority in accordance with the Disaster Recovery Plan; and
 - (c) restore the affected Services to normal within the period laid out in the Disaster Recovery Plan,

To the extent that the Service Provider complies fully with the provisions of this clause 10 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Service Provider), the Service Levels to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in clause 6 but shall be the service levels set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

CHARGES AND PAYMENT

11. PAYMENT

- 11.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Service Provider in accordance with the Payment Plan.
- 11.2 The Service Provider shall invoice the Authority for payment of the Charges at the time the Charges are expressed to be payable in accordance with the Payment Plan. All invoices shall reference a valid Purchase Order number and be directed to the Authorised Representatives of the Authority. Any such invoices shall take into account any Service Credits which have been accrued in the previous period.
- 11.3 The Authority shall pay the Charges which have become payable in accordance with the Payment Plan.
- 11.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 20. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until fourteen (14) day(s) after resolution of the dispute between the parties.

- 11.5 Subject to clause 11.4, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 2013 . The Service Provider shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 30.4 for failure to pay undisputed charges.
- 11.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Service Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the failure of the Service Provider to account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.
- 11.7 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for six year(s) from the end of the Contract Year to which the records relate.
- 11.8 Where the Service Provider enters into a Sub-Contract with a Service provider or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contract within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 11.9 The Authority may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this agreement, including the admission agreement, or any other agreement pursuant to which the Service Provider or any associated company of the Service Provider provides CCTV Equipment or services to the Authority.
- 11.10 The Service Provider shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Service Provider.

12. SERVICE CREDITS

- 12.1 If the Service Provider fails to provide the Services in accordance with any individual Service Level measured on a monthly basis, the Service Provider shall pay to the Authority the Service Credits set out in **Error! Reference source not found.** of 0.
- 12.2 The parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Authority. The Service Provider has taken the Service Credit into account in setting the level of the Charges.

STAFF

13. KEY PERSONNEL

- 13.1 Each party shall appoint the persons named as such in 0 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 13.2 The Service Provider shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Authority; or
 - (b) the person is on long-term sick leave; or
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the satisfaction of the Authority; or
 - (d) the person resigns from their employment with the Service Provider; or
 - (e) the Service Provider obtains the prior written consent of the Authority.
- 13.3 The Service Provider shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 10 Working Days of being informed of or

meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

- 13.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 10 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Service Provider or the Authority becoming aware of the role becoming vacant.
- 13.5 The Authority may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 13.6 If the Service Provider replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Service Provider.

14. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

- 14.1 At all times, the Service Provider shall ensure that:
- (a) each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Service Provider's Personnel to provide the Services properly;
 - (c) only those people who are authorised by the Service Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services;
 - (d) all of the Service Provider's Personnel comply with all of the policies of the Authority including those that apply to persons who are allowed access to the applicable Authority's Premises;
 - (e) all of the Service Provider's Personnel are able to work in the United Kingdom and hold necessary paperwork and work permits, to do so, and
 - (f) all of the Service Provider's Personnel hold appropriate security checks, including appropriate Disclosure and Barring Service clearance

- 14.2 The Authority may refuse to grant access to, and remove, any of the Service Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 14.3 The Service Provider shall replace any of the Service Provider's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 14.4 The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 14.5 The Service Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

15. **NOT USED**

16. **TUPE**

Not Used

CONTRACT MANAGEMENT

17. **REPORTING AND MEETINGS**

- 17.1 The Service Provider shall provide the Management Reports in the form and at the intervals set out in the Specification and 0.
- 17.2 Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in 0 and the Service Provider shall, at each meeting, present its previously circulated Management Reports and financial reports in the format set out in 0.

18. MONITORING

18.1 The Authority may monitor the performance of the Services by the Service Provider and the Service Provider's Sub-Contractors.

18.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 18.1 at no additional charge to the Authority.

19. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

19.1 Any requirement for a Change shall be subject to the Change Control Procedure.

19.2 The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Service Provider shall identify and report to the Authorised Representatives quarterly in the first Contract Year and six monthly for the remainder of the Term on:

- (a) the emergence of new and evolving relevant technologies which could improve the Services;
- (b) new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms, customer support services in relation to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
- (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Authority.

19.3 Any potential Change highlighted as a result of the reporting of the Service Provider in accordance with clause 19.2 shall be addressed by the parties using the Change Control Procedure.

20. DISPUTE RESOLUTION

20.1 Either party may call an extraordinary meeting of the parties by service of not less than five days written notice and each party agrees to procure that its Authorised Representatives together with any other member of Key Personnel requested to attend by the Authority (if any)

shall attend all extraordinary meetings called in accordance with this clause.

- 20.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the dispute fails to be resolved by the senior officers in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution.
- 20.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution for the exchange of relevant information and for setting the date for negotiations to begin.
- 20.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 21 days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 20.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representatives of each of the parties, shall remain binding on the parties.
- 20.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 20.7 While the Dispute Resolution Procedure referred to in this clause 20 is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a

clearing bank and such payment shall be a good discharge of the parties' payment obligations under this agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

21. SUB-CONTRACTING AND ASSIGNMENT

21.1 Subject to clause 21.3, the Service Provider shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the Authority, neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.

21.2 In the event that the Service Provider enters into any Sub-Contract in connection with this agreement it shall:

- (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Authority, of any such Sub-Contractor on receipt of a request for such by the Authorised Representatives of the Authority.

21.3 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

21.4 Payment of Sub-Contractors

The Service Provider shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Service Provider to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice; and

- (b) where such Sub-Contractor is a SME Company, requiring the Service Provider to pay any undisputed sums, which are due from it to the Sub-Contractor within a specified period not exceeding 14 days from the receipt of a valid invoice; and
- (c) a right for the Authority to publish the Service Provider's compliance with its obligation to pay undisputed invoices within the specified payment period.

21.5 The Service Provider shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within 30 days from the receipt of a valid invoice;
- (b) where such Sub-Contractor is a SME Company, pay any undisputed sums which are due from it to a Sub-Contractor within 14 days from the receipt of a valid invoice
- (c) provide a summary of its compliance with Clause 21.5 (a), such data to be certified each Quarter by a director of the Service Provider as being accurate and not misleading.

21.6 Notwithstanding any confidentiality provisions in this agreement, if the Service Provider notifies the Authority that the Service Provider has failed to pay a Sub-Contractor's undisputed invoice within 30 days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

LIABILITY

22. INDEMNITIES

The Service Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Authority or its representatives (excluding the Service Provider).

23. LIMITATION OF LIABILITY

23.1 Subject to clause 23.44, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or

damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

23.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.

23.3 Subject to clause 23.44, the total aggregate liability of the Authority

(a) in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), shall in no event exceed 100% of the aggregate Charges paid under or pursuant to this agreement in the previous Contract Year in respect of which the claim arises.

(b) .

23.4 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation; or
- (b) death or personal injury caused by its negligence; or
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

24. INSURANCE

24.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the levels of cover set out in 0 (**Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Service Provider, arising out of the performance of the agreement by the Service Provider, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.

24.2 The Service Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place,

together with receipts or other evidence of payment of the latest premiums due under those policies.

- 24.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 24.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.
- 24.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

INFORMATION

25. FREEDOM OF INFORMATION

- 25.1 The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority (at expense of the Service Provider) to enable the Authority to comply with these information disclosure requirements.
- 25.2 The Service Provider shall and shall procure that its Sub-Contractor shall:
 - (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 25.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 25.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 25.5 The Service Provider acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
 - (a) without consulting with the Service Provider; or
 - (b) following consultation with the Service Provider and having taken its views into account, provided always that where clause 25.5(b) applies the Authority shall, in accordance with any recommendations of the code of practice issued under section 45 of the FOIA, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the attention of the Service Provider after any such disclosure.
- 25.6 The Service Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 25.7 The Service Provider acknowledges that any lists or Schedules provided by it outlining confidential information are of indicative value only and that the Authority may nevertheless be obliged to disclose confidential information in accordance with clause 25.5.

26. DATA PROTECTION

- 26.1 The Service Provider shall (and shall procure that any of its Service Provider's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.
- 26.2 Notwithstanding the general obligation in clause 26.1, where the Service Provider is processing Personal Data as a Data Processor for the Authority, the Service Provider shall ensure that it has in place

appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the DPA;
- (b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 26.2; and
- (c) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the obligations of the Authority under the DPA.
- (d) Comply with the Information Commissioner's CCTV Code of Practice as updated from time to time and any and all related Orders

26.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

27. CONFIDENTIALITY

27.1 Subject to clause 27.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

27.2 Clause 27.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 25.1 shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;
- (d) by the Authority of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;

- (e) to enable a determination to be made under clause 20;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Authority to any other department, office or agency of the Government; and
- (h) by the Authority relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

27.3 On or before the Termination Date, the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of employees of the Authority, rate-payers or service users, are delivered up to the Authority or securely destroyed.

28. AUDIT

28.1 During the Term and for a period of 12 year(s) after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all Service providers (including Sub-Contractors) of the Services at the level of detail agreed in 0 (Payment);
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (c) to review the compliance of the Service Provider with the DPA, the FOIA, in accordance with clause 26 (Data Protection) and clause 25 (Freedom of Information) and any other legislation applicable to the Services;
- (d) to review any records created during the provision of the Services;
- (e) to review any books of account kept by the Service Provider in connection with the provision of the Services;
- (f) to carry out the audit and certification of the accounts of the Authority;
- (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

- 28.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 28 more than twice in any calendar year.
- 28.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 28.4 Subject to obligations of confidentiality of the Authority, the Service Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Service Provider's Personnel.
- 28.5 The Authority shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 28.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Authority for all the reasonable costs of the Authority incurred in the course of the audit.
- 28.7 If an audit identifies that:
- (a) the Service Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the failure of the Service Provider relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the costs of the Service Provider, then the remedial plan shall include a requirement for the provision of all such information;
 - (b) the Authority has overpaid any Charges, the Service Provider shall pay to the Authority the amount overpaid within 20 days.

The Authority may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and

- (c) the Authority has underpaid any Charges, the Authority shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Service Provider in relation to invoicing within 20 days.

29. INTELLECTUAL PROPERTY

- 29.1 The Service Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property by the availability of the Services, except to the extent that they have been caused by or contributed to by the acts or omissions of the Authority.

TERMINATION

30. TERMINATION FOR BREACH

- 30.1 The Authority may terminate this agreement with immediate effect by the service of written notice on the Service Provider in the following circumstances:
 - (a) if the Service Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 30.1 if the Service Provider has failed to remedy such breach within 28 days of receipt of notice from the Authority (a Remediation Notice) to do so;
 - (b) if a Consistent Failure has occurred;
 - (c) on service of a third Warning Notice on the Service Provider
 - (d) if a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the property or equipment of the Service Provider;
 - (e) if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom; and

- (f) if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Service Provider to which the Authority reasonably objects.
- 30.2 The Authority may terminate this agreement in accordance with the provisions of clause 32 and clause 33.
- 30.3 If this agreement is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Service Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause, including for the avoidance of any doubt the costs to the Authority of retendering the Services and/or making any interim alternative arrangements to ensure continuity of Services..
- 30.4 The Service Provider may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, notice of the Service Provider to terminate this agreement shall be deemed to have been withdrawn.

31. NOT USED

TERMINATION REQUIRED BY THE PUBLIC CONTRACTS REGULATIONS 2015

- 31.1 The Authority may terminate this agreement with immediate effect by the service of written notice on the Service Provider in the following circumstances:
 - (a) the agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
 - (b) the Service Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2) of the Public Contracts Regulations 2015, and should therefore have been excluded from the procurement procedure; or
 - (c) the agreement should not have been awarded to the Service Provider in view of a serious infringement by the Authority of its

obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty on the Functioning of the European Union 2012.

- 31.2 If this Agreement is terminated by the Authority pursuant to clause 31.1(a), the Authority and the Service Provider shall act towards each other in good faith in determining any costs of termination incurred by the Parties in accordance with the principles of open-book accounting and commercial fair mindedness and they shall mitigate any potential losses so far as reasonably practicable.
- 31.3 If this Agreement is terminated by the Authority pursuant to clause 31.1(b), such termination shall be at no loss or cost to the Authority and the Service Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause. The Authority shall mitigate any potential losses so far as reasonably practicable.
- 31.4 If this Agreement is terminated by the Authority pursuant to clause 31.1(c), such termination shall be at no loss or cost to the Service Provider and the Authority hereby indemnifies the Service Provider against any such losses or costs which the Service Provider may suffer as a result of any such termination for cause. The Service Provider shall mitigate any potential losses so far as reasonably practicable.

32. FORCE MAJEURE

- 32.1 Subject to the remaining provisions of this clause 32, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.
- 32.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and

- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 32.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 32.4 The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
- 32.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 32.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 32.7 The Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than ten Working Days.

33. PREVENTION OF BRIBERY

- 33.1 The Service Provider:
 - (a) shall not, and shall procure that any Service Provider Party and all Service Provider's Personnel shall not, in connection with this agreement commit a Prohibited Act;
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this

agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this agreement.

- 33.2 The Service Provider shall:
- (a) if requested, provide the Authority with any reasonable assistance, at reasonable cost of the Authority, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - (b) within twenty working day(s) of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 33 by the Service Provider and all persons associated with it or other persons who are supplying CCTV Equipment or services in connection with this agreement. The Service Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 33.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Service Provider Party or Service Provider's Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 33.4 If any breach of clause 33.1 is suspected or known, the Service Provider must notify the Authority immediately.
- 33.5 If the Service Provider notifies the Authority that it suspects or knows that there may be a breach of clause 33.1, the Service Provider must respond promptly to the enquiries of the Authority, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for twelve year(s) following the expiry or termination of this agreement.
- 33.6 The Authority may terminate this agreement by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider's Personnel (in all cases whether or not acting with the knowledge of the Service Provider) breaches clause 33.1. In determining whether to exercise the right of termination under this clause 33.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or

Service provider not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:

- (a) with the authority; or,
- (b) with the actual knowledge;
of any one or more of the directors of the Service Provider or the Sub-Contractor (as the case may be); or
- (c) in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.

33.7 Any notice of termination under clause 33.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this agreement will terminate.

33.8 Despite clause 20, any dispute relating to:

- (a) the interpretation of clause 33; or
- (b) the amount or value of any gift, consideration or commission, shall be determined by the Authority and its decision shall be final and conclusive.

33.9 Any termination under clause 33.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

34. CONSEQUENCES OF TERMINATION

34.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Service Provider shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the request of the Authority, a Replacement Service Provider.

34.2 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Service Provider shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority

forthwith and the Authorised Representatives of the Service Provider shall certify full compliance with this clause.

- 34.3 The provisions of clause 6.3 (provision of records), clause 22 (Indemnities), clause 24 (Insurance), clause 25 (Freedom of Information), clause 26 (Data Protection), clause 28 (Audit), clause 30 (Termination for Breach) and this clause 34 (Consequences of Termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

35. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

36. WAIVER

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Service Provider in respect of the Services or any omission on the part of the Authority to communicate such prior acceptance or approval shall not relieve the Service Provider of its obligations to deliver the Services in accordance with the provisions of this agreement.

37. CUMULATION OF REMEDIES

Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

38. SEVERABILITY

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

39. PARTNERSHIP OR AGENCY

Nothing in this agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this agreement.

40. THIRD PARTY RIGHTS

40.1 Except as provided in sub-clauses 40.3 and 40.4 below and **Error! Reference source not found.**, no term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

40.2 Notwithstanding clause 40.1 and Schedule 10, it is expressly agreed that the parties to this agreement may by agreement rescind or vary this agreement or any term of this agreement without the consent of any person who has a right to enforce this agreement or the term in question, notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

40.3 The Authority has entered into, or will be entering into, the Arquiva Contract. The Service Provider hereby acknowledges and agrees that the Authority has granted Arquiva exclusive rights under the Arquiva Contract, more specifically a services concession contract for the provision, installation and maintenance of equipment enabling the provision of a wireless network in streets and open spaces within the Authority's administrative area using specified assets, which may include the Authority Assets.

40.4 For the avoidance of any doubt the Service Provider agrees that it shall not do or omit to do anything that might cause the Authority to be in breach of the Arquiva Contract and that it shall not interfere with the Authority's right to use or authorise any third parties, including but not limited to Arquiva, to use the Authority Assets for any purpose whatsoever.

40.5 The Service Provider also agrees that any revenue generation or other commercial opportunities given to it under this agreement are restricted to the provision of the Services only. For the avoidance of doubt the

Service Provider shall not propose the provision of any wider commercial services including but not limited to the provision of Wi-fi services, which could cause the Authority to be in breach of the Arquiva Contract.

41. PUBLICITY

The Service Provider shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the name or brand of the Authority in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority.

42. NOTICES

Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this agreement. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed. facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

43. ENTIRE AGREEMENT

This agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

44. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

45. GOVERNING LAW

45.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

45.2 The parties irrevocably agree to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of this agreement.

The **Common Seal** of
The Mayor and Burgesses of The London Borough of Barnet
Was hereunto affixed
In the presence of

Authorised Signatory

Authorised Signatory

Executed as a Deed by
OpenView Security Solutions Limited
Director (Signature)

In the presence of:

Witness

Name

Title

Signature

Date

Schedule 1 Specification

[Attached]

Schedule 2 KPI's and Service Levels

Part 1. Service Levels

1. SERVICE LEVELS Key Performance Indicators

KPI Value Level	Ref.	Measure name	Linked to Departmental Objective	Target 2015/2016	Monthly
1	LBBCCTV1	Maintain spares levels throughout the level of the contract	Quality	Achieve 100%	Monthly
2	LBBCCTV2	Response times in line with Minimum Response Criteria	Performance	Achieve 100%	Monthly
2	LBBCCTV3	Completed planned maintenance for period	Performance	100%	Monthly
1	LBBCCTV4	Accuracy read rate for Vehicle Identity Detection (VID) on ANPR Cameras	Quality	Expected 98%	Monthly
3	LBBCCTV5	Continued update of TCF file	Quality	100%	Monthly
1	LBCCTV6	Monthly reports	Quality	100%	Monthly

1. The Authority and the Service Provider will compile a record of Achieved Service Levels and Default Notices issued. These will be assessed monthly and a Service Credit shall be applied by the Authority from the next payment in accordance with the number of Default Notices issued as set out in the table below. This Service Credit shall be included on the next invoice.

2. The Service Credit system is a graded system such that the Authority will be compensated for poor performance by a reduction in the next monthly payment at the following rates.
 - Less than 2 defaults in any 1 month 0%
 - 2 defaults in any 1 month 25%

- Between 3 and 4 in any 1 month 50%
- Over 5 defaults in any 1 month 75%

2. Termination

The default system will provide grounds for termination of contract where a Consistent Failure has occurred. A Consistent Failure is where:

- the Service Provider accumulates more than 5 defaults in a month for 3 consecutive months.
- the Service Provider accumulates more than 20 defaults in any 6 consecutive months.
- the Service Provider incurs Service Credits for any consecutive 6 month period.
- the Service Provider incurs Service Credits more than 5 times in any 12 month period.
- the Service Provider is issued with two Warning Notices in any 12 month period.

2. DEFAULT AND WARNING NOTICES

- 2.1 If the Service Provider fails to attend and rectify a fault or carry out a piece of work within a required time, the Authority will issue a Default Notice to the Service Provider. Subsequent failure to complete the work within the time specified in the Default Notice will automatically invite a Warning Notice.
- 2.2 The Service Provider is obliged to give a written response to a Warning Notice, giving full details of reasons for delay. This response will be considered by the Authorised Officer who shall have the discretion to waive the non-performance Service Credit if there was justifiable reason for the delay and if appropriate, withdraw the Notice.
- 2.3 Issue of a Warning Notice is a formal response to the Service Provider for breaching his obligations under the agreement, whereby the Authority could exercise its rights to terminate the agreement. Any persistent failure of the Service Provider without satisfactory justification will lead to termination. On issuing a second Warning Notice within the Term of the agreement, the Authorised Officer will also give Notice that the issue of a further Warning Notice will lead to termination.

2.4 At the discretion of the Authorised Officer, Default and Warning Notices can be issued in any situation where the Authorised Officer is concerned at the Service provider's progress and or quality. Regardless of reason for the issuing of these Notices, all Default Notices will count towards the issuing of a Warning Notice, and with any issuing of a Warning Notice the Authority may exercise its right to terminate the agreement as stated above and on the issuing of a third Warning Notice within the Term of the agreement the Authority will terminate the agreement.

Schedule 3 Service Provider's Tender

[Attached]

SCHEDULE 4 - Service Charges and Payments

THE PAYMENT PLAN AND PRICING SCHEDULE ARE AGREED AT THE COMMENCEMENT DATE WITH BOTH PARTIES AGREEING TO WORK TOGETHER IN GOOD FAITH WITH OPEN BOOK ACCOUNTING PRINCIPLES TO IDENTIFY EFFICIENCIES AND OPPORTUNITIES AS THESE ARISE THROUGHOUT THE LIFETIME OF THE CONTRACT

- 1. **CHARGES BASED ON A FIXED PRICE STANDARD SERVICE REQUIREMENT**

- 2. **MENU PRICING VARIANT OPTION PRICING (INCLUDING ELEMENT BREAKDOWN OF COSTS)**

Type of fixed cost	Charges (£)
---------------------------	--------------------

- 3. **SIGN OFF AND INVOICE AUTHORISATION**
.

- 4. **PAYMENT PLAN**

Pricing Schedule

SCHEDULE 5 - CONTRACT MANAGEMENT

Note that named Authorised Representatives and Key Personnel are subject to change by written notice and deputies and substitutes may attend in place of named individuals subject to prior written agreement between the parties

1. AUTHORISED REPRESENTATIVES

- 1.1 The initial Authorised Representatives of the Authority:
- 1.2 The initial Authorised Representatives of the Service Provider:

2. KEY PERSONNEL

3. MEETINGS

Monthly

The Service Provider will attend monthly service review meetings.

To be attended by:

4. MONTHLY REPORTS

THROUGHOUT THE CONTRACT THE SERVICE PROVIDER SHALL MAINTAIN FULL RECORDS OF ALL ATTENDANCES AND REPAIRS MADE UNDER THE CONTRACT. THESE SHOULD BE SIGNED OFF BY THE AUTHORITY. THE SERVICE PROVIDER WILL ALSO BE REQUIRED TO PRODUCE MONTHLY REPORTS CONFIGURED FROM THE INFORMATION GATHERED DURING THE PREVENTATIVE MAINTENANCE, RESPONSE AND RECTIFICATION OF FAULTS AS OUTLINED IN SECTION 4.2. OF THE SPECIFICATION. THE REPORTS SHALL AS A MINIMUM INCLUDE THE FOLLOWING INFORMATION:

- A monthly management suite of KPI reporting; actuals vs targets and annual historic to date to show trends
- Detailed preventative maintenance carried out
- Every fault reported with ID number, including third party reports
- List of agreed minimum spares items and actual stock levels
- The list of the top ten most common repairs vs stock levels comparison
- Response times, actual, average & maximum.
- Number of urgent & non-urgent faults.
- Number of Vehicle Identification checks
- Number of cases, reviewed, disregarded and actioned
- Number of files by camera and location

- Number of captures/files lost due to a malfunction/defect (unable to transfer, exceed storage capacity)
- Rectification times, actual, average & maximum
- No of Default Notices issued, including KPI failures
- A detailed plan for the next period of camera deployment
- Rejection reason analysis
- Number of out of hours call out received

All Reports will be circulated to named contract managers at the Authority. All quarterly reports will be circulated to the contract managers at the Authority, and to the Procurement Team at the Authority.

SCHEDULE 6 - Disaster recovery/ Business Continuity

SCHEDULE 7 – Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Authority or the Service Provider sees a need to change this agreement, the Authority may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Service Provider.

2. PROCEDURE

- 2.1 Discussion between the Authority and the Service Provider concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this agreement by the Authority; or
 - (c) a recommendation to change this agreement by the Service Provider.
- 2.2 Where a written request for an amendment is received from the Authority, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Service Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Service Provider at the time of

such recommendation. The Authority shall give its response to the Change Control Note within three weeks.

2.4 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including
 - (i) the timetable for the provision of the Change
 - (ii) the personnel to be provided
 - (iii) the Charges
 - (iv) the documentation to be provided
 - (v) the training to be provided
 - (vi) working arrangements
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Authority and the Service Provider.

2.5 For each Change Control Note submitted by the Service Provider, the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information; or
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Service Provider; or

(iii) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Service Provider shall constitute an amendment to this agreement.

2.7 Change Control Note (CCN) pro-forma:



CCN Pro-forma

Variation Number: 0001

LBB Contract Manager to insert new number rising from 0001 for each variation requirement

Contract title and reference: CCTV Service

Variation title:

LBB Contract Manager to insert title for variation requirement

Number of pages attached:

LBB Contract Manager to insert number of pages with variation form

WHEREAS the Service Provider and the Authority entered into a Contract for the supply and maintenance of deployable CCTV cameras for moving traffic contraventions throughout the London Borough of Barnet dated **[INSERT DATE]** (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

With effect from [date] the Original Contract shall be amended as set out in this Contract Change Note:

Change requestor/originator:	
Summary of change:	
Reason for change:	
Revised contract price:	
Revised payment schedule:	
Revised specification:	
Revised contract period:	
Revised programme of work:	
Change in Authorised Representative(s):	

Other change:	
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Schedule 8 - Benchmarking

NOT USED

SCHEDULE 9 – Exit Management

1. General obligations

- 1.1 The Service Provider shall ensure a smooth migration of the Services to the Authority or another party chosen by the Authority (the "**Successor**") with minimal disruption to the Authority's business within the timescales agreed.
- 1.2 The Service Provider shall during the Exit Period and for a period of six months thereafter provide assistance to the Authority to facilitate the orderly transfer of Services to the Successor. The remaining provisions of this Schedule will not prejudice or restrict the generality of this obligation.
- 1.3 "**Exit Period**" means the period commencing upon (i) the service by a party of notice to terminate this agreement; or (ii) the period commencing 6 months prior to the expiry of this agreement (whichever is the earlier) and ending on the termination or expiry of this agreement.

2. Continuation of the provision of the Services

During the Exit Period the Service Provider shall continue to provide the Services in accordance with this agreement (as such Services may be amended in accordance with this agreement or the Exit Plan).

3. Plans, procedures and documentation

- 3.1 During the Term, the Service Provider will produce and maintain generic plans and procedures demonstrating the manner in which the Service Provider will fulfil its obligations under this agreement. Such plans and procedures may be inspected by the Authority on reasonable notice.
- 3.2 Upon commencement of the Exit Period, the Service Provider shall appoint an individual who shall be responsible for ensuring that the Service Provider complies with the terms of this agreement and shall be the key liaison with the Authority during the Exit Period.
- 3.3 The Service Provider shall produce detailed plans and procedures (an "**Exit Plan**") within 14 days of the commencement of the Exit Period which shall be subject to the approval of the Authority (such approval not to be unreasonably withheld). Such plans and documentation shall include:
 - minimising the impact to the Authority's business of any transition;
 - provide for the seamless handover of the Services to the Successor;
 - transfer of access to third party contracts used in the provision of the Services and licences used to develop software (if applicable);
 - assignment / novation of third party agreements exclusively used in the provision of the Services to the extent possible and subject to any applicable transfer fees;
 - post-termination ownership and licence rights for software used and developed as part of the Services;

- comprehensive hand-over documents to relating to each of element of the Services.

Wherever reasonably possible the Service Provider will use the personnel assigned on a full time basis for providing the Services for the production, agreement, maintenance and implementation of the Exit Plan.

4. Information

- 4.1 During the Exit Period, the Service Provider shall provide (without additional charge) to the Successor all Service Information (being all documents, reports, analyses and other information required to be compiled by the Service Provider under this agreement and any other materials arising out of the provision of the Services), access to materials and personnel and such other assistance as may be requested by the Authority to ensure an orderly and seamless transition to the Successor.
- 4.2 The Service Provider shall grant to the Successor all necessary access to the Service Provider Personnel and training and support services as may be required by the Successor to ensure an orderly handover of the Service Provider's responsibilities.

5. Equipment

- 5.1 All hardware and other equipment owned by the Authority in the possession of the Service Provider (including the Authority Assets and all inventories of the same) shall be returned to the Authority at the end of the Exit Period.
- 5.2 Where the Services provided to the Authority are dependent on equipment which is not used exclusively for the provision of the Services to the Authority (and which is not owned by the Authority) the Service Provider will (without prejudice to its statutory or regulatory obligations) use its best endeavours to ensure the necessary migration of programs, data and other materials from such equipment to similar equipment owned by the Successor.

6. Third party contracts

The Service Provider shall use its best endeavours to procure that any third party contracts relating to the provision of the Services are novated in favour of the Successor.

7. Premises

Any right of access granted to the Service Provider in respect of Authority's Premises under this Agreement will cease at the end of the Exit Period.

9. The parties may by written agreement at any time agree to terminate this agreement for convenience whether or not either party is in breach of any term or condition of this agreement subject to such terms as to payment and otherwise and to the smooth transition of the Services or otherwise as the parties may agree.

SCHEDULE 10 – TUPE

Not Used

SCHEDULE 11 - Commercially sensitive information

SCHEDULE 12 - Not Used

SCHEDULE 13 - Insurance

Insurance Details	
The level of indemnity for public liability insurance is not less than:	£10,000,000
The level of indemnity for employer liability insurance is not less than, compulsory statutory:	£5,000,000
The level of indemnity for professional indemnity insurance is not less than:	£1,000,000
The level of indemnity for product liability insurance is not less than:	£
<p>Note: Vandalism liability is provided through all risk cover by the Authority. Subject to asset list to be provided to the Authority's Insurance Service</p>	

