

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Affiliate	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
Bribery Laws	means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday in England;
Conditions	means the Supplier's terms and conditions of sale set out in this document and the Specification and any schedules to the Specification;
Confidential Information	means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means the agreement between the Supplier and the Customer for the sale and purchase of the Deliverables incorporating these Conditions and the Contract Form;
Contract Form	means the document to be signed by the Customer and the Supplier;
Control	has the meaning given to it in section 1124 of the Corporation Tax Act 2010;
Controller	shall have the meaning given in applicable Data Protection Laws from time to time;
Customer	means the person who purchases the Deliverables from the Supplier and whose details are set out in the Specification;
Data Protection Laws	means, as binding on either party or the Services: (a) the GDPR; (b) the Data Protection Act 2018; (c) any laws which implement any such laws; and (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
Data Subject	shall have the meaning in applicable Data Protection Laws from time to time;
Deliverables	means the Goods or Services or both as the case may be;

Early Termination Fee	means the sums calculated by the Supplier for the loss of the Contract being the sums that would be payable if the Contract had not terminated before the date stated in clause 16.6 less the sums already invoiced by the Supplier and paid by the Customer. If cancellation by the Customer is notified to the Supplier before the installation of the Goods then the fee shall be calculated as 10% of the quoted fee as set out in the Specification;
Force Majeure	means an event or sequence of events beyond any party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;
GDPR	means the General Data Protection Regulation, Regulation (EU) 2016/679;
Goods	means the goods and documentation and Systems and other physical material set out in the Specification to be supplied by the Supplier to the Customer;
Initial Period	means 5 years from the Operative Date;
Intellectual Property Rights	means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: (a) whether registered or not (b) including any applications to protect or register such rights (c) including all renewals and extensions of such rights or applications (d) whether vested, contingent or future (e) to which the relevant party is or may be entitled, and (f) in whichever part of the world existing;
International Organisation	has the meaning given in the applicable Data Protection Laws from time to time;
Location	means the address(es) for delivery of the Goods and performance of the Services as set out in the Specification

on or at which the System or Goods are installed or as to which the Services are provided;

Losses	includes all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses.
Operative Date	means the date on which the Services described in the Specification are first operative;
Order	means the Customer's order for the Deliverables;
Personal Data	has the meaning given in the applicable Data Protection Laws from time to time;
Personal Data Breach	has the meaning given in the applicable Data Protection Laws from time to time;
Pre-Contract Forms	means hazard forms, risk and methods statements, Keyholder information and customer forms;
Price	has the meaning given in clauses 3.1 and 3.3;
processing	has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including process , processed , processing , and processes shall be construed accordingly);
Processor	has the meaning given to it in applicable Data Protection Laws from time to time;
Protected Data	means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract;
Services	means the services set out in the Specification and to be supplied by the Supplier to the Customer, including the installation, servicing and/ or maintenance of the Goods and/or Systems;
Specification	means the description or specification of the Deliverables set out in a document and stated to be a 'Specification' produced by the Supplier;
Sub-Processor	means any agent, subcontractor or other third party (excluding its employees) engaged by the Supplier for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;

Supplier	means Advanced Protective Systems Ltd registered in England and Wales with company number 03260062 and VAT number 683 9679 61;
Supplier Personnel	all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time.
Systems	means the CCTV, access control, fire alarm and/or intruder alarm systems or any other system to be supplied by the Supplier to the Customer as set out in the Specification.
Termination Date	the date of termination or expiry of this agreement howsoever determined.
VAT	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables.
Virus	means any program which contains malicious code or infiltrates or damages a computer system without the owner's informed consent or is designed to do so or which is hostile, intrusive or annoying to the owner or user and has no legitimate purpose and anything or device (including but not limited to any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device, or which may prevent, impair or otherwise adversely affect access to or the operation of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise) or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 In these Conditions, unless the context otherwise requires:

- 1.2.1 a reference to the Contract includes these Conditions, the Contract Form, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
- 1.2.3 a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal

personality) and that person's personal representatives, successors and permitted assigns;

- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes email but not fax;
- 1.2.10 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract; and
- 1.2.11 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing and executed by a director of the Supplier.
- 2.3 No variation of these Conditions or to the Contract, shall be binding unless expressly agreed in writing and executed by a director of the Supplier.
- 2.4 The Supplier may issue quotations to the Customer from time to time. Quotations and the Specification are invitations to treat only. They are not an offer to supply Deliverables and are incapable of being accepted by the Customer.
- 2.5 Upon the Customer receiving the Specification if they wish to proceed with placing an Order the Customer should send a written approval of the Specification.
- 2.6 Following receipt by the Supplier of written approval of the Specification from the Customer, the Supplier shall send an acknowledgement and may request the Pre-Contract Forms be completed by the Customer. The acknowledgement and request for completion of the Pre-Contract Forms and receipt of the Pre-

Contract Forms by the Supplier from the Customer are **not** an Order confirmation or Order acceptance from the Supplier.

- 2.7 The Contract is formed when the Customer and Supplier have signed the Contract Form.
- 2.8 An Order may be withdrawn or amended by the Customer at any time before the Customer and Supplier have signed the Contract Form.
- 2.9 An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the Customer and Supplier have signed the Contract Form.
- 2.10 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.11 Marketing and other promotional material relating to the Deliverables are illustrative only and do not form part of the Contract.

3 Price for the Goods and Charges for the Services

Price for Goods

- 3.1 The price for the Goods shall be as set out in the Specification or in default of such provision, as advised by the Supplier and received and acknowledged by the Customer before the date the Contract is made (**Price**).
- 3.2 The Supplier may increase the Prices at any time by giving the Customer not less than 15 Business Days' notice in writing provided that the increase does not exceed 25% of the Prices in effect immediately prior to the increase.
- 3.3 Notwithstanding clause 3.2, the Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Goods which exceeds 10% and which is due to any factor beyond the control of the Supplier.

Charges for Services

- 3.4 The price for the Services shall (unless the Customer requests and accepts a fixed fee quotation from the Supplier) be on a time and materials basis (**Charges**).
- 3.5 The Charges shall be calculated in accordance with the Supplier's standard daily fee rates in force from time to time and shall be set out in the Specification.
- 3.6 The Supplier's standard daily fee rates are calculated on a basis of an eight-hour day from 8:30am to 5:00pm worked on a Business Day.
- 3.7 The Supplier shall be entitled to charge an overtime rate of up to 200% of the standard daily fee rate on a pro-rata basis for each part day or for any time worked in the performance of the Services outside of the hours referred to in clause 3.6.
- 3.8 The Supplier reserves the right to increase the Charges every anniversary of the Operative Date with effect from the first anniversary of the Operative Date

provided that such charge cannot be increased more than once in any 12-month period (**Increase**).

- 3.9 The Supplier shall give the Customer written notice of the Increase 15 Business Days before such proposed date of Increase.
- 3.10 If the Increase is not acceptable to the Customer, the Customer shall notify the Supplier in writing within 2 weeks of the date of notification by the Supplier of such Increase and the Supplier shall have the right (without limiting its other rights or remedies) to terminate the contract upon giving the Customer 4 weeks' written notice.
- 3.11 The Prices and Charges are exclusive of VAT and any other items as specified in the Specification.
- 3.12 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.

4 Payment

- 4.1 The Payment terms are set out in the Specification.
- 4.2 The Customer shall pay all invoices:
 - 4.2.1 in full without deduction or set-off, in cleared funds within 30 of the date of each invoice; and
 - 4.2.2 to the bank account nominated by the Supplier.

5 Delivery and performance

- 5.1 Subject to clause 5.5, the Goods shall be delivered by the Supplier to the Location on the date(s) specified in the Specification. The Goods shall be deemed delivered by the Supplier only on arrival of the Goods at the Location.
- 5.2 The Services shall be performed by the Supplier at the Location on the date(s) specified in the Specification. The Services shall be deemed delivered by the Supplier on the Operative Date.
- 5.3 The Supplier may deliver or perform the Deliverables in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.4 Each delivery or performance of the Deliverables shall be accompanied by a delivery note stating:
 - 5.4.1 the date of the Order;
 - 5.4.2 the relevant Customer and Supplier details;
 - 5.4.3 if Goods, the product numbers and type and quantity of Goods in the consignment;
 - 5.4.4 if Services, the category, type and quantity of Services performed;
 - 5.4.5 any special instructions, handling and other requests; and

- 5.4.6 in the case of Goods, whether any packaging material is to be returned, in which case the Customer shall, after the Goods are unpacked, make them available for collection by the Supplier at the Supplier's expense.
- 5.5 Time is not of the essence in relation to the performance or delivery of the Deliverables. The Supplier shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are approximate only.
- 5.6 The Supplier shall not be liable for any delay in or failure of performance caused by:
- 5.6.1 the Customer's failure to: (i) make the Location available, (ii) prepare the Location as required for the Deliverables or (iii) provide the Supplier with adequate instructions for performance or delivery or otherwise relating to the Deliverables;
- 5.6.2 Force Majeure.

6 Risk

Risk in the Goods shall pass to the Customer on delivery.

7 Title

- 7.1 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.
- 7.2 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.2.1 hold the Goods as bailee for the Supplier;
- 7.2.2 store the Goods separately from all other material in the Customer's possession;
- 7.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
- 7.2.4 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
- 7.2.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;
- 7.2.6 not remove, alter or deface any mark on or packaging of the Goods;
- 7.2.7 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 16.1.6 to 16.1.17; and
- 7.2.8 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.

- 7.3 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 16.1.3 to 16.1.17, the Supplier may:
- 7.3.1 if the Goods have not been installed, require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and
 - 7.3.2 if the Customer fails to do so promptly or if the Goods have not been installed, enter any premises where the Goods are stored and repossess them.

8 Customer's Obligations

- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Specification, Contract Form and any information the Customer provides in the Pre-Contract Forms or otherwise to the Supplier are complete and accurate;
 - 8.1.2 co-operate with the Supplier in all matters relating to the Deliverables;
 - 8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors as the case may be with such access to the Location as is reasonably required by the Supplier in order to supply and or perform the Deliverables;
 - 8.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply and or perform the Deliverables and must ensure that such information is accurate in all material respects;
 - 8.1.5 prepare the Location for the supply and or performance of the Deliverables and fulfil all other obligations imposed on the Customer in the Specification;
 - 8.1.6 obtain and maintain all necessary licences, permissions and consents that may be required before the date the Supplier is due to carry out the Services;
 - 8.1.7 keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Location in safe custody, at the Customer's own risk, keep the Supplier Materials in good condition until returned to the Supplier and not dispose of or use in any way the Supplier Materials other than in accordance with the Suppliers written instructions;
 - 8.1.8 provide and maintain a dedicated and clean 240V AC power supply located with the control and any secondary control equipment with the mains supply to all parts of the Goods to be fed from the same phase;
 - 8.1.9 configure its own IT and communications systems to enable them to work with any installation of Goods supplied by the Supplier and such responsibility shall be assumed by the Customer from the point at which the Goods are attached or connected to the Customer's or the Customers contractor's system.

- 8.1.10 ensure that all system software is selected, installed and operated correctly and in accordance with its requirements and in the event of a breach or adverse effect to the Suppliers firewall the Customer shall indemnify the Supplier against all Losses and keep the Supplier indemnified against such Losses.
- 8.1.11 reimburse the Supplier in full on written demand by the Supplier for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from any Customer Default as detailed in clause 8.2.
- 8.2 If the Suppliers performance of any of its obligations under these terms and conditions is prevented or delayed by any act, omission or failure by the Customer to perform any of its obligations including but not limited to its obligations under this clause 8 (**Customer Default**) the Supplier shall (without limiting its other rights or remedies available to it):
 - 8.2.1 have the right to suspend performance of the Services until such time as the Customer remedies the Customer Default;
 - 8.2.2 have the right to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent that the Customer Default prevents or delays the Suppliers performance of any of its obligations.

9 Warranty

- 9.1 The Supplier warrants that, for a period of 12 months from delivery (the **Warranty Period**), any new Goods installed shall:
 - 9.1.1 conform in all material respects to any sample, their description and to the Specification;
 - 9.1.2 be free from material defects in design, material and workmanship;
 - 9.1.3 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - 9.1.4 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13;
 - 9.1.5 be fit for purpose and any purpose held out by the Supplier and set out in the Specification; and
 - 9.1.6 any media on which the results of the Services are supplied shall be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 9.2 Subject to clause 9.4, if:
 - 9.2.1 the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 9.1;
 - 9.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

- 9.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,
- 9.2.4 the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 9.3 The Customer warrants that it has provided the Supplier with all relevant, full and accurate information as to the Customer's business and needs.
- 9.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 9.1 if:
 - 9.4.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 9.2;
 - 9.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 9.4.3 the defect arises as a result of the Supplier following any instructions, drawing, design or Specification supplied by the Customer;
 - 9.4.4 the defect arises because of the adding to, changing, installing or incorporation of the Goods with or into another component, product or goods provided or used by the Customer;
 - 9.4.5 the Customer or any person other than the Supplier alters or repairs such Goods without the written consent of the Supplier;
 - 9.4.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - 9.4.7 the Goods differ from the Specification as a result of changes made by the Customer or to ensure they comply with applicable statutory or regulatory standards;
 - 9.4.8 there is an accident, act of god, wilful default, improper use of the Goods or failure by the Customer to properly follow any operating instructions;
 - 9.4.9 there is a misalignment of CCTV cameras, improper adjustment of monitor brightness and contrast tuning dials or failure by the Customer to comply with clause 9.1 or any instructions in the Specification;
 - 9.4.10 there is a failure of consumable items with a finite life linked to usage including (without limitation) batteries (except where any defect is notified to the Supplier within 90 days of the Operative Date) hard drives and any moving parts;
 - 9.4.11 there is misalignment or tampering with computer monitors, keyboards, or micro-processors or the use of unauthorised disks or software; or
 - 9.4.12 there is a Virus.
- 9.5 The Customer acknowledges that:

- 9.5.1 the Supplier does not warrant or represent that any of the Systems will prevent any occurrence that they are designed to detect and that the Supplier shall not be liable for any loss or damage in consequence of such occurrence;
 - 9.5.2 that the Systems may not be compatible with other receiving equipment and that the Supplier is under no obligation to maintain, repair, service, replace, operate or assure the operation of any equipment or device not supplied by the Supplier to which the Systems are connected;
 - 9.5.3 where a System is connected to other equipment or devices not supplied by the Supplier the Supplier is under no obligation to make or recommend any alteration to the System or Services or any alteration to the Location.
- 9.6 The provisions of these Conditions shall apply to any Goods that are corrected, repaired, remedied or re-performed with effect from delivery or performance of those Goods.
- 9.7 Except as set out in this clause 9:
- 9.7.1 the Supplier gives no warranty and makes no representations in relation to the Goods; and
 - 9.7.2 shall have no liability for their failure to comply with the warranty in clause 9.1,

and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

10 Indemnity and insurance

- 10.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.
- 10.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

11 Limitation of liability

- 11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.
- 11.2 Subject to clauses 11.5 and 11.6, the Supplier's total liability shall not exceed the lesser of the sum of £1,000,000 or the actual proceeds received under any insurance policy or policies for the liability in question.

- 11.3 Subject to clauses 11.5 and 11.6, the Supplier shall not be liable for consequential, indirect or special losses.
- 11.4 Subject to clauses 11.5 and 11.6, the Supplier shall not be liable for any of the following (whether direct or indirect):
- 11.4.1 loss of profit;
 - 11.4.2 loss or corruption of data;
 - 11.4.3 loss of use;
 - 11.4.4 loss of production;
 - 11.4.5 loss of contract;
 - 11.4.6 loss of opportunity;
 - 11.4.7 loss of savings, discount or rebate (whether actual or anticipated);
 - 11.4.8 harm to reputation or loss of goodwill.
- 11.5 The limitations of liability set out in clauses 11.2 to 11.4 shall not apply in respect of any indemnities given by either party under the Contract.
- 11.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 11.6.1 death or personal injury caused by negligence;
 - 11.6.2 fraud or fraudulent misrepresentation;
 - 11.6.3 any other losses which cannot be excluded or limited by applicable law.

12 Intellectual property

- 12.1 The Customer acknowledges that:
- 12.1.1 All Intellectual Property Rights in or arising out of or in connection with the Deliverables shall be owned by the Supplier;
 - 12.1.2 In respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to licence such rights to the Customer;
 - 12.1.3 All Supplier Materials are the exclusive property of the Supplier.
- 12.2 If a third party successfully claims that the Goods or Services infringe that third party's Intellectual Property Rights (**IPR Claim**) the Supplier shall at its sole discretion:
- 12.2.1 replace the Goods (or the part of the Goods that infringes the third party's Intellectual Property Rights);
 - 12.2.2 re-supply the Services free of charge;

12.2.3 refund the price of the Goods or Services (or a proportionate part of the price)

provided that the Supplier shall not be liable to the Customer for any losses, damages, liability, costs and expenses (including professional fees) incurred by it as a result of the IPR Claim and the Supplier hereby excludes any other liability that may arise out of any such IPR Claim.

12.3 The Supplier's obligations under clause 12.2 shall not apply to Goods modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.

13 Confidentiality and announcements

13.1 The Customer shall keep confidential all Confidential Information of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

13.1.1 any information which was in the public domain at the date of the Contract;

13.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

13.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier; or

13.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

except that the provisions of clauses 13.1.1 to 13.1.3 shall not apply to information to which clause 13.4 relates.

13.2 This clause shall remain in force in perpetuity after termination of the Contract.

13.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

13.4 To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any provisions of clause 14.

14 Processing of personal data

14.1 The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Supplier in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Laws.

- 14.2 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.
- 14.3 The Customer shall indemnify and keep indemnified the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 14.
- 14.4 The Supplier shall:
- 14.4.1 only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with the Contract (and not otherwise unless alternative processing instructions are agreed between the parties in writing) except where otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
 - 14.4.2 without prejudice to clause 14.1, if the Supplier believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall promptly inform the Customer and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.
- 14.5 The Supplier shall:
- 14.5.1 process any Customer CCTV footage (**Footage**) as part of performing the Services only and shall process such Footage for the purpose of ensuring that the CCTV system is functioning correctly;
 - 14.5.2 if a device incorporating biometrics is installed, process, but not store biometric data, as part as performing the Services only and shall process such biometric data for the purpose of ensuring that the device is functioning correctly or to assist with setting up the device; and
 - 14.5.3 keep a list of the Customer's keyholders as part of performing the Services only and shall securely dispose of such information in accordance with clause 14.12.
- 14.6 In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with the Contract, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, the Supplier shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.

- 14.7 The Supplier shall:
- 14.7.1 not permit any processing of Protected Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the written authorisation of the Customer;
 - 14.7.2 except in the case of the police, fire or any other emergency services, prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 14 that is enforceable by the Supplier and ensure each such Sub-Processor complies with all such obligations;
 - 14.7.3 remain fully liable to the Customer under the Contract for all the acts and omissions of each Sub-Processor as if they were its own; and
 - 14.7.4 except in the case of the police, fire or any other emergency services, ensure that all persons authorised by the Supplier or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.
- 14.8 The Customer consents to the appointment of the following Sub-Processors: -
- 14.8.1 East Midlands Central Station Limited or any other monitoring station for the purposes of monitoring the Customer's CCTV footage and storing the Customer's keyholder information and if required contacting the Customer's keyholders; and
 - 14.8.2 The police, fire and other emergency services for the purposes of storing the Customer's keyholder information.
- 14.9 The Supplier shall (at the Customer's cost):
- 14.9.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to the Supplier; and
 - 14.9.2 taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 14.10 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom or to any International Organisation without the prior written consent of the Customer.
- 14.11 The Supplier shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is

necessary to demonstrate the Supplier's compliance with the obligations placed on it under this clause 14 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this clause 14.11) provided that the Customer (or auditor mandated by the Customer) shall not use such information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement and keeps all information obtained confidential unless disclosure is required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.12 On the end of the provision of the Goods and/or Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, the Supplier shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Supplier to store such Protected Data. This clause 14 shall survive termination or expiry of the Contract.

15 Force Majeure

15.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

15.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and

15.1.2 uses best endeavours to minimise the effects of that event.

15.2 If, due to Force Majeure, a party:

15.2.1 is or shall be unable to perform a material obligation; or

15.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 8 weeks;

the other party may, within 30 days, terminate the Contract on immediate notice.

16 Termination

16.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:

16.1.1 the Supplier determines on a site inspection the Customer's property does not meet the Supplier's health and safety requirements;

16.1.2 the Supplier discovers an error in the price of goods or services in the Specification;

16.1.3 the Customer commits a material breach of the Contract and such breach is not remediable;

- 16.1.4 the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
 - 16.1.5 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 14 days after the Supplier has given notification that the payment is overdue; or
 - 16.1.6 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
 - 16.1.7 the Customer stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 16.1.8 the Customer is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
 - 16.1.9 the Customer becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 16.1.10 the Customer has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 16.1.11 the Customer has a resolution passed for its winding up;
 - 16.1.12 the Customer has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 16.1.13 the Customer is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 16.1.14 the Customer has a freezing order made against it;
 - 16.1.15 the Customer is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
 - 16.1.16 the Customer is subject to any events or circumstances analogous to those in clauses 16.1.7 to 16.1.15 in any jurisdiction;
 - 16.1.17 the Customer takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 16.1.7 to 16.1.16 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 16.2 The Supplier may terminate the Contract at any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a

change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.

- 16.3 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 16, it shall immediately notify the Supplier in writing.
- 16.4 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.
- 16.5 Without limiting its other rights or remedies available to it, either party may terminate the Contract for Services at the end of the Initial Period or on any subsequent anniversary of the Operative Date after the Initial Period has expired by not less than 90 days written notice expiring on the relevant anniversary.
- 16.6 If the Customer terminates this Contract for Services before the end of the Initial Period or before the date otherwise stated in clause 16.5 it shall be entitled to do so provided the Customer pays without deduction the Early Termination Fee to the Supplier. The Early Termination Fee shall be in full and final settlement of all liabilities of the Customer arising out of the termination of this Contract but without prejudice to clause 17. Unless expressly stated in this clause 16, this clause 16.6 replaces any common law rights that the Customer may have to terminate this Contract and any common law rights are excluded to the extent permitted.

17 Consequences of Termination

17.1 On the Termination Date:

17.1.1 the Customer shall pay to the Supplier all of the Supplier's unpaid invoices and interest and, where no invoice has been submitted for the Deliverables supplied and or performed, the Supplier may submit an invoice which will be immediately payable by the Customer upon receipt.

17.1.2 if the Contract has been terminated by the Supplier due to a breach of contract by the Customer or any other cause due to the Customers fault, the Supplier shall invoice the Customer the Early Termination Fee.

17.1.3 the Customer shall (at the Customers expense) return all of the Supplier Materials and any Goods which have not been paid for to the Supplier. If the Customer fails to do so promptly, the Supplier may enter any premises where the Supplier Materials and/or Goods are stored and repossess them. Until such time as the Supplier Materials and/or Goods have been returned to the Supplier, the Customer shall be solely responsible for their safe keeping and shall not dispose or use them for any purpose not connected with this Contract.

17.2 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of either party at any time up to the date of termination.

17.3 Those clauses which expressly or by implication survive termination shall continue in full force and effect.

18 Notices

- 18.1 Any notice or other communication given by a party under these Conditions shall:
- 18.1.1 be in writing and in English;
 - 18.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
 - 18.1.3 be sent to the relevant party at the address set out in the Contract
- 18.2 Notices may be given, and are deemed received:
- 18.2.1 by hand: on receipt of a signature at the time of delivery;
 - 18.2.2 by first class post or other next working day delivery service: at 9.00 am on the second Business Day after posting;
- 18.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 18.1 and shall be effective:
- 18.3.1 on the date specified in the notice as being the date of such change; or
 - 18.3.2 if no date is so specified, two Business Days after the notice is deemed to be received.
- 18.4 All references to time are to the local time at the place of deemed receipt.
- 18.5 This clause does not apply to notices given in legal proceedings or arbitration.

19 Cumulative remedies

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

20 Time

Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Customer's obligations only.

21 Further assurance

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

22 Entire agreement

- 22.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 22.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set

out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

22.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

23 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by a director on behalf of the Supplier.

24 Assignment

24.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, which it may withhold or delay at its absolute discretion.

24.2 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract.

25 Set off

25.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.

25.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

26 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

27 Equitable relief

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

28 Severance

28.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

28.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

29 Waiver

29.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

29.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

30 Compliance with law

The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

31 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Specification, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail.

32 Costs and expenses

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

33 Third party rights

33.1 Except as expressly provided for in clause 33.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

33.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

34 Governing law

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

35 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

The Customer has read and accepts the Order and Contract subject to the Conditions above and on the Specification

Signed by or on behalf of the Supplier.....Date.....201[]

Name.....Position.....
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Signed by or on behalf of the Customer.....Date.....201[]

Name.....Position.....
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