

(0) Department for Transport
General Conditions of Contract for Goods

November 2021

(1) The Driver and Vehicle Standards Agency
(DVSA)

And

(2) Vehicle Testing Equipment, S.L.

AGREEMENT

relating to

K280021503

Mobile Enforcement Unit

THIS AGREEMENT is made on 22nd December 2022

Table of contents

- 1 Definitions and interpretations
- 2 Duration of this contract
- 3 Contractor's performance
- 4 Duty of care
- 5 Alteration of requirement
- 6 Invoices and payment
- 7 Value Added Tax
- 8 Meetings and reports
- 9 Quality and inspection
- 10 Acceptance and rejection marks
- 11 Packaging
- 12 Delivery
- 13 Acceptance
- 14 Rejection
- 15 Contractor's Risk
- 16 Warranty
- 17 Conflict of interest
- 18 Corrupt gifts and payments of commission
- 19 Office Secrets Act
- 20 Disclosure of information
- 21 Discrimination
- 22 Assignment, sub contractors and suppliers
- 23 Insurance
- 24 Data protection
- 25 Data Protection – Personal data
- 26 Occupation of Government premises
- 27 Environmental requirements

- 28 Royalties and licence fees
- 29 Delivery of drawings etc
- 30 Production and retention of documentation
- 31 Transfer of responsibility
- 32 Merger, take-over or change of control
- 33 Unsatisfactory performance
- 34 Insolvency of the contractor
- 35 Termination of this contract
- 36 Break
- 37 Consequences of termination or break
- 38 Liability for loss or damage
- 39 Recovery of sums due
- 40 Service of notices
- 41 Dispute resolution
- 42 Law
- 43 Severability
- 44 Waiver
- 45 Rights of third parties
- 46 Transparency
- 47 Monitoring and Management Information
- 48 Force Majeure

1 Definitions and interpretations

1.1 In this Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:

“Article(s)” means all goods to be supplied by the Contractor under the Contract and, where the context requires, includes any Associated Service to be performed by the Contractor;

“Associated Service” means any service which the Contractor is required to provide under the Contract as described in the Specification.

“Award Date” means the date of the award of this Contract by the Department to the Contractor as specified in the Department’s Award Letter;

“Change of Control” means an event where any single person, or group of persons acting in concert, acquires control of the Contractor or any direct or indirect interest in the relevant share capital of the Contractor, as a result of which that person or group of persons has a direct or indirect interest in more than 25% of the relevant share capital of the Contractor. For the purposes of the operation of Condition 32 of this Contract, where the Contractor is a limited company he shall be treated as though he were a public company.

“Change of Ownership” means:

(i) any material change to the direct or indirect legal or beneficial ownership of any shareholding in the Contractor. A change in the ownership is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the Contractor, or

(ii) any material change in the composition of the Contractor’s partnership. A change in the composition of the partnership is material if it directly or indirectly affects the performance of this Contract by the Contractor.

“Change in Law” means any change in Law which impacts on the supply of the goods and performance of this Contract which comes into force after the Commencement Date of this Contract;

“Commercially Sensitive Information” means the information (i) listed in the Commercially Sensitive Information Schedule; or (ii) notified to the Client in writing (prior to the commencement of this Agreement) which has been clearly marked as Commercially Sensitive Information comprised of information:

(i) which is provided by the Contractor to the Department in confidence for the period set out in that Schedule or notification; and/or

(ii) that constitutes a trade secret.

“Comparable Supply” means the supply of goods to another customer of the Contractor that are the same or similar to the Goods;

“Conditions” means the General Conditions of Contract for the Supply of Goods and Associated Services, the Supplementary Conditions of Contract thereto and the Intellectual Property Conditions;

“Contract” means the agreement concluded between the Department and the Contractor, contained in the documents listed in the Department’s Award Letter, the Conditions, the Specification, the Department’s Award Letter and any Programme. In case of inconsistency between the Conditions and other

documents forming part of this Contract, the Conditions shall prevail unless otherwise agreed in writing. In case of inconsistency between the Contractor's offer and the Specification, the Contractor's offer shall prevail unless otherwise agreed in writing;

"Contract Price" means the price or prices (exclusive of Value Added Tax) payable to the Contractor by the Department under this Contract for the full and proper performance by the Contractor of this Contract determined in accordance with the provisions of this Contract;

"Contractor" means the person appointed by the Department for the performance of the Contract (including any successors);

"Contractor's Representative" means such competent person as the Contractor shall from time to time appoint to be his representative in relation to the performance of this Contract, who will receive and act on any directions given by the Contract Manager and whose appointment and contact details shall be notified in writing by the Contractor to the Department;

"Contract Manager" means such official of the Department, or other person, as the Department shall from time to time appoint to act on its behalf for the purpose of managing this Contract, whose appointment and contact details shall be notified in writing by the Department to the Contractor;

"data", "data controller", "personal data" and "processing" shall have the meanings set out in section 1 of the Data Protection Act 1998;

"Department" or "Authority" means the Secretary of State for Transport, persons authorised to act on his behalf, the Department for Transport, and Executive Agencies of the Department;

"Department's Award Letter" means the letter or document confirming award of this Contract to the Contractor by the Department;

"Discrimination Acts" means the Race Relations Act 1976, Sex Discrimination Act 1975 and the Disability Discrimination Act 1995;

"Expiry Date" means the date on which such contract period as has been specified comes to an end;

"Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Contractor's or any sub-contractor's organisation; or
- (b) the failure by any sub-contractor to perform its obligations under any sub-contract.

"General Change of Law" means a change in the Law where the change is of a general legislative nature (including taxation or duties of any sort) affecting the Contractor or which affects or relates to a Comparable Supply;"

"Guarantee" means a deed of guarantee in favour of the Department in the form set out in the Annex 1 to Schedule 5.

"Guarantor" means the person acceptable to the Department to give a Guarantee.

"Key Personnel" means a person who has been identified as fundamental to the performance of this Contract;

"Law" means any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law or directives, or requirements with which the Contractor is bound to comply.

"Management Information" means the information specified in the Monitoring and Management Information Schedule

"Monitoring and Management Information Schedule" means the Schedule containing details of the monitoring arrangements.

"month" means calendar month, unless otherwise stated;

any reference to a "person" shall, as the context may require, include any individual, firm, company, corporation, Government Department, Agency or any association or partnership (whether or not having a separate legal personality);

"Premises" shall have the meaning set out in Condition 26;

"Programme" means any programme or timetable agreed by the Department and Contractor which regulates or specifies the period or periods for the performance of the Contract or any part thereof together with any activities ancillary to the performance of the Contract or the preparation and

"relevant share capital" shall have the meaning set out in section 198(2) of the Companies Act 1985;

“Specification” means the document describing the Articles or Associated Services to be provided under this Contract, as at the Award Date.

“Sub-contractor” shall, as the context may require, include any adviser, consultant or agent engaged by the Contractor to assist in the performance of the Contract.

“Warranty Period” means a period of 24 months from acceptance of the Article unless extended within the parameters of the Contract.

1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

(a) Unless the context requires otherwise, the singular shall include the plural and vice versa, and words expressed in any gender shall include any other gender.

(b) The headings are inserted for convenience only and shall not affect the interpretation of this Contract.

(c) Save where express provision is made to the contrary, any reference to a statute, statutory provision or subordinate legislation shall be construed as a reference to that legislation as amended and in force from time to time, including any re-enactment, consolidation or replacement (with or without modification). In the case of a statute or statutory provision, the reference shall also be construed as a reference to all subordinate legislation made under such statute or statutory provision.

(d) If there is a General Change in Law, the Contractor must bear the risk of the change and is not entitled to ask for an increase to the Contract Price.

2 Duration of this contract

Subject to the Department's rights of termination under the Conditions, this Contract shall be in force from the Award Date until the Expiry Date or, where there is no Expiry Date, until the Contractor has completed the supply of the Articles and any Associated Services including expiry of Warranty Period in accordance with this Contract.

3 Contractor's performance

3.1 The Contractor shall properly manage and monitor performance of the Contract and shall inform the Contract Manager as soon as reasonably practicable if any of the requirements of this Contract are not being or cannot be performed. If any Article or Associated Service is not in accordance with this Contract, other than as a result of default or negligence on the part of the Department, the Contractor shall at his own expense replace or make good to the satisfaction of the Department and, if required, re-supply the Article and re-

schedule and perform the Associated Service within such reasonable time as may be notified by the Department.

3.2 The Contractor shall provide all the necessary facilities, materials and any other equipment as may be necessary to undertake the Contract.

3.3 All personnel deployed on Associated Services shall be appropriately qualified and competent and shall be acceptable to the Department. The Contractor shall supervise and manage all such personnel properly.

3.4 Where the Department has, with the agreement of the Contractor, identified any of the Contractor's personnel as Key Personnel the Contractor shall take all reasonable steps to avoid changes to Key Personnel and give at least one month's notice to the Contract Manager of any proposal to remove or replace Key Personnel, save that the Contractor shall be required to give such notice as is reasonable in the circumstances in the event that Key Personnel are changed as a result of illness, resignation or unusual personal circumstances. The Department must agree any replacement in writing.

3.5 Where Associated Services are undertaken by the Contractor at the Department's Premises, the Department may give the Contractor notice that any of the Contractor's personnel is to be removed from involvement in the Contract and the Contractor shall take immediate steps to comply with that notice. The decision of the Department regarding the Contractor's personnel shall be final and conclusive.

3.6 Where the Contractor is required to undertake Associated Services the Contractor shall:

(a) give the Department, if so requested, the name, role and details of relevant work experience of all persons who are or may be at any time employed performing such services;

(b) comply, and shall procure that his employees and Sub-contractors comply, with any rules, regulations and any safety and security instructions notified by the Department to the Contractor in writing, including completion of any additional security clearance procedures required by the Department, and return of any passes required.

3.7 Unless otherwise agreed by the Department, neither the Contractor nor any of his employees or Sub-contractors shall carry out any business or trading activity within or on the Premises and no advertisement, sign or notice of any description shall be exhibited without prior written approval from the Department.

3.8 The Contractor shall exercise due care and propriety when dealing with third parties in connection with this Contract and ensure that no commitments that might impose any obligations on the Department are entered into (unless expressly required under this Contract) without the Department's prior written consent.

3.9 Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Department and the Contractor.

4 Duty of care

The Contractor shall perform the Contract with all reasonable standards of skill, care and diligence in accordance with all relevant statutory requirements and agreed standards.

5 Alteration of requirement

Each of the parties may by notice to the other request an alteration to the requirements of this Contract, as detailed in the Specification, should this at any time become necessary or desirable. In the event of any such alteration being agreed by both parties, payment under this Contract shall be subject to fair and reasonable adjustment to be agreed between the Department and the Contractor and recorded in writing. The parties shall continue to act in accordance with this Contract until any such alteration and adjustment has been agreed in writing.

6 Invoices and payment

6.1 The Contractor shall submit an invoice to the Department as specified in this Contract or within 28 days of the completion of the Contract. All invoices shall quote the contract number and, where appropriate, the purchase order number.

6.2 The Contractor shall submit with each invoice such records as the Department may reasonably require to verify the information and the amounts referred to in that invoice.

6.3 The Contractor shall provide to the Department the name and address of his bank, the account name and number, the bank sort code and any other details requested by the Department.

6.4 Except where otherwise provided in this Contract, the amount payable to the Contractor for the performance of the Contract shall be inclusive of all costs, including but not limited to staff, facilities, equipment, materials and all other expenses incurred by the Contractor in discharging his obligations under this Contract.

6.5 The Department is committed to prompt payment and shall pay the Contractor within 30 days of the receipt of a valid invoice, provided that that the Articles or Associated Services to which the invoice relates have been supplied fully in accordance with this Contract.

7 Value Added Tax

The Department shall pay to the Contractor the amount of any VAT chargeable in respect of the performance of the Contract.

8 Meetings and reports

8.1 The Contractor shall upon receipt of reasonable notice and during normal office hours attend all meetings arranged by the Department for the discussion of matters connected with the performance of the Contract.

8.2 Without prejudice to any other requirement in this Contract, the Contractor shall provide such reports on the performance of the Contract as the Contract Manager may reasonably require.

9 Quality and inspection

9.1 All Articles supplied and any Associated Services performed under the Contract shall comply with the qualities, standards and requirements set out in the Specification.

9.2 The Contract Manager and the Department shall, on giving reasonable notice to the Contractor, be entitled to inspect and examine the Articles, their place and method of manufacture and any planning, preliminary and preparatory work for their manufacture. The right to inspect and examine the Articles shall not apply to the extent that an inspection or examination would jeopardise the confidentiality of information relating to the Contractor's other clients.

9.3 The Contractor shall provide all facilities required by the Contract Manager and the Department for any inspection and examination free of charge.

10 Acceptance and rejection marks

10.1 If so required by the Contract, the Contractor shall at his own expense mark or permit the Department to mark all approved materials, Articles or parts thereof with the recognised Government or Departmental marks. In the case of materials, Articles or parts thereof which cannot be so marked, the same shall, if required by the Department, be packed in suitable packages or cases, each of which shall be sealed and shall have the Government or Departmental mark placed on the seals.

10.2 If any Article, whether completed or in the course of production, is rejected on inspection by the Department that Article shall, if the Department so requires, be marked in such manner as to ensure its identification as a rejected Article.

11 Packaging

11.1 All Articles are to be securely packed before despatch and each package must be distinctly marked with a description of its contents, the quantity of Articles, the Contractor's name, the name of the Department's ordering officer and the Department's order number.

11.2 Unless otherwise provided by the Contract, the cost of packaging is deemed to be included in the Contract Price and the packaging shall be non-returnable.

11.3 The Contractor shall:

- (a) use the minimum packaging necessary to protect Articles in transit,
- (b) make maximum use of recycled materials in the manufacture of crates, pallets, cartons, cushioning and other forms of packaging, and
- (c) ensure that packaging is capable of recovery for reuse or recycling.

11.4 Where required by the Department the Contractor shall remove from the Premises all packaging and temporary fixings necessary for delivery and leave the delivery area clear of waste.

12 Delivery

The Contractor shall deliver the Articles to the Department as specified in the Contract or as notified to him by the Contract Manager.

13 Acceptance

13.1 Without prejudice to Condition 13.2 the Department shall be deemed to have accepted an Article if:

- (a) the Department has taken the Article into use; and
- (b) the Department has not exercised its right of rejection of the Article under Condition 14 within 30 days after use of that Article has commenced.

13.2 The Department may store Articles for a period of up to 6 months from the date of delivery prior to taking them into use.

14 Rejection

14.1 Without prejudice to any of its other rights under the Contract, the Department may by notice in writing (a "rejection notice") reject any Article, whether completed or in the course of production, which in its opinion does not conform to the Contract.

14.2 Where the Department rejects any Article under this Condition, the Contractor shall, subject to the provisions of Condition 14.5, at his own expense remove from the Department each and every rejected Article and shall do so within 8 working days (or such other period as may be notified by the Contract Manager) after receiving the Department's rejection notice.

14.3 If the Contractor fails to remove any Article in accordance with Condition 14.2, the Department may return any rejected Article to the Contractor at the Contractor's expense and at the Contractor's risk.

14.4 When under this Condition the Department rejects any Article, the Contractor shall, if required by the Department, deliver in its place and at his own expense, an Article which conforms with the requirements of the Contract and shall do so within the period for delivery stipulated in the Contract or within such further reasonable period as the Department may allow.

14.5 If the Contractor does not agree with a rejection by the Department under this Condition, he may give the Department a written notice of objection. Such a notice of objection shall be given within 8 working days from receipt of the Department's rejection notice and before removal of any rejected Article in accordance with Condition 14.2. Where the Contractor has given a valid notice of objection any dispute regarding the quality of that Article shall be subject to Condition 41 and an Article shall not be removed until the Department so directs.

15 Contractor's Risk

15.1 The Contractor is responsible for an Article and any materials, equipment, fittings or things acquired or allocated by him for incorporation therein-

(a) until acceptance of the Article by the Department in accordance with Condition 13, provided that where the Department stores the Article prior to acceptance it shall do so in a place and manner acceptable to the Contractor, and

(b) where he is in receipt of a rejection notice issued by the Department in accordance with Condition 14.1, from the date on which he receives such a notice.

15.2 Without prejudice to Condition 14.4 the Contractor shall make good any loss of or damage to an Article and any such materials, equipment, fittings or things however caused which may occur before delivery to the Department.

15.3 These provisions of this Condition 15 shall apply notwithstanding that the Articles concerned have been inspected in accordance with the Contract.

16 Warranty

16.1 The Contractor shall with all due diligence and at his own expense make good any defects arising from the defective design, materials or workmanship or from any act or omission of the Contractor that may develop in an Article under proper use, provided that the defect arises or the act or omission occurs within 24 months of the date the Article was taken into use.

16.2 Where the Department extends the warranty period in accordance with the terms and conditions the warranty term under Condition 16.1 shall reflect the period of extended warranty.

16.3 The Contractor will be required to carry out the inclusive Associated Service as per Section 8 of the Specification.

17 Conflict of interest

It shall be the Contractor's responsibility to ensure that no conflict of interest arises in connection with the performance of this Contract. The Department should be consulted if there is any uncertainty about whether any such conflict of interest may exist or arise and its decision on the matter shall be final.

18 Corrupt gifts and payments of commission

18.1 The Contractor shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown.

18.2 The Contractor shall not conspire with any person to do any of the acts mentioned in Condition 18.1.

18.3 Any:

(a) breach by the Contractor of this Condition; or

(b) commission of any offence by the Contractor under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other contract with the Department, or any other government body or department

shall entitle the Department to terminate this Contract and recover from the Contractor the amount of any loss resulting from such termination and recover from the Contractor the amount of value of any such gift, consideration or commission.

18.4 The decision of the Department in relation to this Condition shall be final and conclusive.

19 Office Secrets Act

The Contractor shall take all reasonable steps to ensure that all his employees and any Sub contractor employed by him in connection with this Contract are aware of the Official Secrets Acts 1911 to 1989, and understand that these Acts apply to them during and after performance of this Contract.

20 Disclosure of information

20.1 The Contractor acknowledges that the Department may receive requests for information relating to this Contract (“disclosure requests”) pursuant to the Freedom of Information Act 2000 (“the FOI Act”), the Environmental Information Regulations 2004 (“the EIRs”) or otherwise.

20.2 The Contractor further acknowledges that the Department may be obliged (subject to the application of any relevant exemption(s) and, where applicable, the public interest test) to disclose information pursuant to such a request. Where the Department consults the Contractor in accordance with section VII (consultation with third parties) of the Code of Practice issued under section 45 of the FOI Act (or, as the case may be, any Code of Practice issued under powers contained in the EIRs), the Contractor hereby agrees to respond to any such consultation promptly and within any deadline set by the Department and acknowledges that it is for the Department to determine whether or not such information should be disclosed.

20.3 Subject to Conditions 20.4 and 20.5 below, the Contractor shall not disclose to any third party, publish, disseminate, or use other than for the purposes of this Contract:

(a) any information relating to this Contract; or

(b) any other information that has come into his possession during or as a result of his performance of this Contract relating to the business, affairs, properties, assets, operations, practices, policies, developments, trade secrets or know-how, of the Department, its personnel, customers and suppliers

without the prior written consent of the Department, which shall not be unreasonably withheld.

20.4 Condition 20.3 above shall not apply to any information which:

(a) is or becomes public knowledge (otherwise than by breach of this Contract);

(b) is in the possession of the Contractor, without restriction as to its disclosure, before he receives it from the Department; or

(c) is received by the Contractor from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

20.5 Condition 20.3 above shall not prevent the Contractor from disclosing, without the Department’s consent, any information:

(a) which is required to be disclosed by law or by any professional or regulatory obligation, provided that prior to disclosure the Contractor consults the Department and takes full account of the Department's views about whether (and, if so, the extent to which) the information should be disclosed;

(b) to such persons and to such extent as may be necessary for the performance of this Contract;

(c) for the purpose of complying with his obligations under Condition 30 of this Contract.

20.6 The Contractor shall take all reasonable steps to ensure the observance of the provisions of Conditions 20.3 to 20.5 inclusive above by all his employees, office holders, workers and Sub-contractors.

20.7 Nothing in this Agreement shall prevent the Department from disclosing the Contractor's Confidential Information (including the Management Information obtained under Condition 47).

21 Discrimination

21.1 The Contractor shall not discriminate directly or indirectly or by way of victimisation or harassment against any person:

(a) on grounds of colour, race, nationality, or ethnic or national origin contrary to the Race Relations Act 1976; or

(b) on grounds of sex contrary to the Sex Discrimination Act 1975; or

(c) on grounds of disability contrary to the Disability Discrimination Act 1995; or

(d) on grounds contrary to The Equality Act 2010

21.2 Where any employee or Sub-contractor employed by the Contractor is required to carry out any activity on the Premises or alongside the Department's employees on any other premises the Contractor shall ensure that each such employee and Sub-contractor complies with the Department's employment policies and codes of practice relating to discrimination and equal opportunities.

21.3 The Contractor shall notify the Contract Manager and the Department in writing as soon as he becomes aware of any investigation or proceedings brought against the Contractor under the Discrimination Acts in connection with the Contractor's performance of this Contract. Where there is such an investigation or proceedings the Contractor shall free of charge:

(a) provide any information requested by the investigating body, court or tribunal in the timescale allotted;

(b) attend, and permit a representative from the Department to attend, any associated meetings;

(c) promptly allow access to any documents and information relevant to the investigation or proceedings;

(d) co-operate fully and promptly with the investigatory body, court or tribunal.

21.4 The Contractor shall indemnify the Department against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Department arising out of or in connection with any such investigation or proceedings.

21.5 The Contractor shall impose obligations on its Sub-contractors in terms substantially similar to those set out in Conditions 21.1 to 21.4.

22 Assignment, sub contractors and suppliers

22.1 The Contractor shall not sub contract or transfer, assign, charge, or otherwise dispose of this Contract or any part of it without the prior written consent of the Department.

22.2 The Contractor shall ensure that any Sub contractor complies with the Conditions of this Contract, so far as they are applicable. Any sub-contract shall not relieve the Contractor of his obligations under this Contract.

22.3 Where the Contractor enters into a contract with a supplier or Sub contractor for the purpose of performing this Contract or any part of it, he shall cause a term to be included in such contract which requires payment to be made by the Contractor to the supplier or Sub contractor within a specified period not exceeding 30 days from receipt of an invoice properly issued in accordance with that contract.

23 Insurance

23.1 The Contractor shall effect and maintain an adequate level of insurance cover in respect of all risks that may be incurred by him in the performance of this Contract.

23.2 The Contractor shall hold Employer's Liability Compulsory Insurance in respect of his employees and of any Sub-contractors used by him in the performance of this Contract.

23.3 Where the Contractor sub-contracts part of this Contract, he shall procure that any Sub-contractor effects and maintains insurance to cover its liabilities under that sub-contract.

23.4 When requested by the Department the Contractor shall produce documentary evidence showing that the insurance required by Conditions 23.1, 23.2 and 23.3 has been effected and is being maintained.

23.5 If, for whatever reason, the Contractor fails to effect and maintain the insurance required by this Condition the Department may make alternative arrangements necessary to protect its interests and recover the costs thereof from the Contractor.

23.6 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract.

23.7 The Contractor shall impose obligations on its Sub-contractors in terms substantially similar to those set out in Conditions 23.1 to 23.6, but this shall not relieve the Contractor of any of his obligations and liabilities under this Contract.

24 Data protection

24.1 Where the Data Protection Act 1998 applies to any aspect of this Contract, the Contractor shall take such measures as are necessary to comply with its terms.

24.2 Without prejudice to Condition 24.1, the Contractor shall:

(a) only accept instructions in respect of data processing from the Department;

(b) adopt all technical and organisational measures necessary to protect all personal data processed by him on behalf of the Department against unauthorised or unlawful processing, and accidental loss, damage or destruction; and

(c) ensure that all employees and Sub-contractors involved in data processing are suitable for the task.

25 Data Protection – Personal data

25.1 The data controller in respect of such personal data as is held or acquired by the Department in relation to this Contract is the Secretary of State for Transport.

25.2 The data controller's nominated representative for the purposes of the Data Protection Act 1998 is the Department's Data Protection Officer.

25.3 The Department shall use such personal data only for purposes relating directly to:

(a) the management and performance of this Contract by the Contractor; and

(b) the provision by the Department of references within the Department and to other Government Departments.

25.4 The Contractor hereby agrees and shall procure from any relevant individual agreement to the publication by the Department in any format of the following personal data: name and contact details. The Contractor shall provide a copy of any relevant individual's consent to the Department on request.

25.5 If, having regard to the circumstances in which the Department processes such personal data, the Department requires the Contractor or any relevant individual to provide additional information to enable the Department to process that personal data fairly it shall notify the Contractor in writing and the Contractor shall provide or procure the additional information within 7 days of receipt of the request.

26 Occupation of Government premises

Any land or premises (including temporary buildings) made available to the Contractor by the Department in connection with this Contract ("the Premises") shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purposes of performing this Contract. The Contractor shall have the use of the Premises as licensee and shall vacate the same upon completion or determination of this Contract. Any utilities required by the Contractor shall be subject to such charges as are set out elsewhere in this Contract.

27 Environmental requirements

27.1 In performing the Contract the Contractor shall comply with the Department's environmental policy, which is to conserve energy, water and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

27.2 The Contractor shall ensure that the Articles and their packaging are manufactured using biodegradable substances wherever they are available and appropriate. Where the Articles, their packaging or their manufacturing process include timber or timber products, the Contractor shall procure timber and wood-containing products from sustainable and legal sources.

27.3 All written work, including reports delivered in connection with this Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post-consumer waste and used on both sides where appropriate.

27.4 All timber or wood-derived products procured as part of this contract must originate from either legal and sustainable or FLEGT licensed or equivalent sources, as set out in the Specification. The timber condition will also apply.

28 Royalties and licence fees

The Contractor shall ensure that all royalties, licence fees and similar expenses in respect of all intellectual property or intellectual property rights used in connection with this Contract have been paid and are included in the Contract Price.

29 Delivery of drawings etc

29.1 The final version of any data, calculations, written reports, specifications, plans, designs, or drawings provided in connection with this Contract (each a "Deliverable") shall be delivered up to the Department on completion (or, if sooner, termination) of the Contract, subject to the retention of proper professional records. The Deliverables shall be supplied by the Contractor in an agreed format.

29.2 If this Contract is terminated by the Department pursuant to the provisions of Conditions 34, 35, or 36 the provisions of Condition 29.1 shall apply to each Deliverable that has not been completed as at the date of termination of this Contract. The Department acknowledges that Deliverables may be incomplete and agrees that should it choose to rely upon any Deliverable that reliance shall be at its own risk.

30 Production and retention of documentation

30.1 The Contractor shall produce such accounts, documents (including working documents) and records related to this Contract as the Department, or the Contract Manager, may request at any time during this Contract. Subject to the provisions of Condition 20, the Department's right to request the production of documents shall not apply to the extent that production of the documents would cause the Contractor to breach confidentiality obligations to his other clients.

30.2 The Contractor shall retain and produce such accounts, documents (including working documents) and records related to this Contract as the Department, or the Contract Manager, may request for a period of 2 years from the Expiry Date or termination of this Contract, or such longer period as may be agreed between the Department and the Contractor in writing at or before the commencement of this Contract.

30.3 The Contractor shall afford such facilities as the Department may reasonably require for its representatives to visit the Contractor's premises and examine the records held under this Condition. The right to these records shall not apply to the extent that an examination would jeopardise the confidentiality of information relating to the Contractor's other clients.

30.4 Subject to the provision of reasonable notice to the Contractor, and for the purpose of:

- (a) examining and certifying Department's accounts; or
- (b) any examination, pursuant to section 6(1) of the National Audit Act 1983, of the economy, efficiency and effectiveness with which the Department has used its resources

the Comptroller and Auditor General shall have a right of access to such relevant documents as are owned, held or otherwise within the control of the Contractor.

30.5 The Contractor shall assist the Comptroller and Auditor General to understand such documents and provide any oral and/or written information and explanation of the documents as may reasonably be requested.

30.6 For the avoidance of doubt, nothing in this Condition constitutes a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the Contractor.

31 Transfer of responsibility

In the event that a different organisation is required to take over the supply of the Articles or Associated Services at the expiry or termination of this Contract, the Contractor shall co-operate in the transfer, under arrangements notified to him by the Department.

32 Merger, take-over or change of control

32.1 The Contractor shall obtain the Department's written consent (which shall not be unreasonably withheld, but may be given subject to conditions) prior to any Change of Control of the Contractor, provided that where a Change of Control arises from any change in the beneficial or legal ownership of shares that are listed on the stock exchange, such approval shall be obtained promptly as soon as the Contractor becomes aware of the same. If such consent is not obtained when required by this Condition 32.1, the Department has the right to terminate this Contract at its election as set out in Condition 35 (Termination of this Contract).

32.2 The Contractor shall inform the Department immediately of any Change of Ownership of the Contractor.

32.3 The Contractor shall inform the Department of any change, or proposed change in the name of or status of the Contractor.

33 Unsatisfactory performance

33.1 Where in the opinion of the Department the Contractor has failed to perform the whole or any part of this Contract the Department may:

(a) give the Contractor a notice specifying the way in which his performance falls short of the requirements of this Contract, or is otherwise unsatisfactory, or

(b) withhold or reduce payments to the Contractor, in such amount as the Department deems appropriate.

33.2 Any notice served by the Department pursuant to Condition 33.1 may require from the Contractor that he re-supplies the Articles and re-schedules and performs the Associated Services to the Department's satisfaction within such period as shall be specified by the Department in the notice and at his own expense.

33.3 Any notice served by the Department pursuant to Conditions 33.1 and 33.2 shall be without prejudice to the Department's rights under these Conditions.

34 Insolvency of the contractor

34.1 If the Contractor:

(a) being an individual (or if the Contractor is a partnership any individual being a partner of such partnership) has a bankruptcy order made against him; applies to court for an interim order or makes an arrangement or composition with his creditors; is subject to any distress, execution or other similar process in relation to his assets; takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors; takes any step or any step is taken towards any of the matters referred to in this Condition 34.1(a): or

(b) being a company, a limited liability partnership or a partnership has an order made or a resolution passed for the winding up of the Contractor or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order; is subject to an order made by a court of competent jurisdiction or a resolution passed for the administration of the Contractor or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Contractor or its directors or by a qualifying floating charge holder (as defined by Paragraph 14 of Schedule B1 to the Insolvency Act 1986); has a receiver, administrative receiver or manager appointed (or any step is taken to make such appointment)

in respect of the whole or any part of the assets and undertaking of the Contractor; is subject to any distress, execution or other similar process in relation to any of its assets; makes any arrangement or composition with its creditors;

(c) takes or is subject to any similar or analogous action to any of the matters referred to in Conditions 34.1(a) and (b) above in any other jurisdiction;

then without prejudice to any other rights available to it, the Department may give notice in writing at any time to the Contractor terminating this Contract with immediate effect.

34.2 The Contractor shall give notice in writing to the Department of the occurrence of any of the events referred to in Conditions 34.1 (a) to (c) above immediately on becoming aware of the same.

35 Termination of this contract

Without prejudice to any other power of termination, the Department may by notice in writing terminate this Contract with immediate effect for any of the following reasons:

(a) breach by the Contractor of any of Conditions 18 (Corrupt Gifts & Payments of Commission), 19 (Official Secrets Acts), 20 (Disclosure of Information) of this Contract, or any other material breach of contract;

(b) failure by the Contractor to comply with a notice given under Condition 33 (Unsatisfactory Performance);

(c) the Contractor ceases or proposes to cease to carry on his business;

(d) a Change of Control occurs without the prior approval of the Department.

36 Break

The Department shall in addition to its powers under any other of these Conditions have power to terminate this Contract at any time by giving to the Contractor one month's written notice.

37 Consequences of termination or break

37.1 Upon the expiry of any notice period this Contract shall be terminated without prejudice to any right of action or remedy which shall have accrued or shall thereupon accrue to the parties. Termination shall not affect the continued operation of Conditions 18, 19, 20, 23, 24, 30, 31 and 38.

37.2 Where this Contract is terminated under Condition 34 (Insolvency of the Contractor) or 35 (Termination of this Contract), the following provisions shall apply:

(a) Pending final ascertainment of such sums as are payable under this Contract any sum due or accruing from the Department to the Contractor may be withheld or reduced by such amount as the Department in either case considers reasonable and appropriate;

(b) The Department may make all arrangements which are in its view necessary to procure the orderly completion of the Contract, including the letting of another contract or contracts. In the event that a different organisation is required to take over the Contract the Contractor shall co-operate in the transfer and with any arrangements notified to him by the Department. The transfer shall be arranged between the Department and the Contractor so as to reduce to a minimum any interruption in the performance of the Contract;

(c) Where the total costs reasonably and properly incurred by the Department by reason of any arrangements made under Condition 37.2(b) exceed the amount that would have been payable to the Contractor for the completion of the Contract the excess shall be recoverable from the Contractor and the Department reserves the right to recover such excess by way of set-off as provided for under Condition 39 (Recovery of Sums Due).

37.3 Without prejudice to Condition 37.1, where this Contract is terminated under Condition 36 (Break), the Department shall pay to the Contractor all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Contract, including any commitments, liabilities or expenditure which have been reasonably and properly incurred, and would otherwise represent an unavoidable loss by the Contractor by reason of the termination of this Contract. For the avoidance of doubt the Department shall not indemnify the Contractor against loss of profit or consequential losses. The Department shall in no case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under this Contract, exceeds the total Contract Price.

37.4 Where this Contract is terminated pursuant to Condition 36 (Break), during the notice period the Department may direct the Contractor to supply the Articles, or any part or component thereof, or to perform the Associated Services, or any part thereof, and the Department shall pay the Contractor the agreed Contract Price or, where no price has been agreed or is applicable to an element of the Contract, a fair and reasonable price.

37.5 Where the Contract is terminated for any of the reasons set out under Clause 34 and clause 35, the Contractor shall indemnify the Department for costs due under this Contract. This indemnity shall be covered under a Guarantee as set out under Annex 1 of Schedule 5. The Guarantee shall also enable the Department to recover costs incurred (limited to invoices paid to date against the Contract) from the Guarantor upon notice.

37.6 Where the Contractor fails to perform its obligations under Milestone 2 of Schedule 3 and clause 33.1, and under Milestone 4 of Schedule 3, the Contractor shall indemnify the Department for costs due under this Contract in accordance with clause 37.5.

37.7 Upon completion of Milestone 5 of Schedule 3 the Guarantee cover shall be limited to the delivery of the Warranty services. The value of the Guarantee may be reduced to 15% of the total Guarantee value and subsequently reduced by 5% each year upon completion of the Warranty services.

38 Liability for loss or damage

38.1 The Contractor shall indemnify the Department, its servants and agents against all actions, claims, demands, costs, expenses, charges, payments and liabilities incurred by or made against the Department, its servants or agents, in respect of any loss or damage which arises out of or in connection with this Contract which is caused directly or indirectly by any act or omission of the Contractor.

38.2 In this Condition loss or damage includes, without limitation:

- (a) loss or damage to property;
- (b) personal injury and death;
- (c) loss of use; and
- (d) any other loss.

38.3 Without prejudice to any other exclusion or limitation of liability in this Contract, the liability of the Contractor for any claim or claims under this Contract shall be limited to such sums as it would be just and equitable for the Contractor to pay having regard to the extent of his responsibility for the loss or damage giving rise to such claim or claims ("the loss and damage") and on the assumptions that:

- (a) all other contractors, sub-contractors or advisers engaged in connection with the performance of the Contract have provided contractual undertakings on terms no less onerous than those set out in these Conditions to the Department in respect of the carrying out of their obligations; and
- (b) there are no exclusions or limitations of liability nor joint insurance or co-insurance provisions between the Department and any other party referred to in this Condition and any such other party who is responsible to any extent for the loss and damage is contractually liable to the Department for the loss and damage; and
- (c) all such other contractors, sub-contractors or advisers have paid to the Department such sum as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.

39 Recovery of sums due

Whenever under this Contract any sums of money shall be recoverable from or payable by the Contractor to the Department, that amount may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other contract with the Department or with any other Department, Agency or Office of Her Majesty's Government.

40 Service of notices

Any notice required to be given or served under this Contract shall be in writing and shall be served by:

- (a) (i) delivery to the Contractor's Representative, when it shall be deemed served at the time of delivery, or
 - (ii) sending it to the Contractor's Representative by first-class post, when it shall be deemed served on the second working day after posting; or
- (b) (i) delivery to the Contract Manager, when it shall be deemed served at the time of delivery, or
 - (ii) sending it to the Contract Manager by first-class post, when it shall be deemed served on the second working day after posting.

41 Dispute resolution

41.1 Where any dispute, difference or question ("Dispute") between the Department and the Contractor arising out of or in connection with this Contract cannot be resolved by the Contract Manager and Contractor's Representative, either may refer the Dispute to a senior representative of the Department (a member of the Senior Civil Service) and of the Contractor (a director or other senior office holder) ("the Senior Representatives").

41.2 Without prejudice to Condition 41.5, if any Dispute is not resolved within 14 days of the referral to the Senior Representatives then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") model conditions. To initiate the mediation a party must give a notice in writing ("the Mediation Notice") to the other party requesting a mediation in accordance with this Condition. The referring party must send a copy of the Mediation Notice to CEDR.

41.3 Any mediation is to take place not later than 28 days after service of the Mediation Notice. If there is any issue on the conduct of the mediation which the parties cannot agree within 14 days of the Mediation Notice then CEDR will, at the request of either party, decide the issue. If the Dispute is not resolved within 42 days of service of the Mediation Notice then the parties may litigate the Dispute in accordance with Condition 42.

41.4 Except where required to preserve the legal rights of the Department or the Contractor, or to obtain interim relief, or where the Dispute concerns a

matter upon which the Department's decision is final, neither the Department nor the Contractor shall commence Court proceedings unless the Dispute remains unresolved after having been referred to the Senior Representatives, to mediation or to any other alternative means of resolving the Dispute chosen by the parties pursuant to 41.5.

41.5 After a failure of the Senior Representatives to resolve the Dispute the parties may by agreement in writing elect to pursue any means of alternative dispute resolution.

42 Law

This Contract shall be governed by and interpreted in accordance with English law and, subject to Condition 41, any dispute arising out of or in connection with it shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

43 Severability

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court, such provision shall be severed and the remainder of the provisions of this Contract shall continue in full force and effect. In the event that an invalid, illegal or unenforceable Clause is fundamental to the performance of this Contract, the Department and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity.

44 Waiver

44.1 Any failure by the Department or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.

44.2 No waiver shall be effective unless it is communicated to either the Department or the Contractor in writing.

44.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Contract.

45 Rights of third parties

Nothing in this Contract confers or purports to confer on any third party any right to enforce any term of this Contract.

46 Transparency

46.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of

this Contract (including, but not limited to, any documents subsequently developed to monitor delivery and performance of the contract) are not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

46.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Department to publish the Contract (and any documents subsequently produced by either party as part of management of the contract – including, but not limited to, performance against key performance indicators and plans to rectify the same etc.) in their entirety, including from time to time agreed changes to the Agreement, to the general public.

46.3. The Department may consult with the Contractor to inform its decision regarding any redactions that may be required to keep information which is exempt from disclosure under the FOIA from being disclosed but the Department shall have the final decision in its absolute discretion. The Contractor shall assist and cooperate with the Department to enable the Department to publish this Contract.

47 Monitoring and Management Information

47.1 The Contractor shall comply with the monitoring arrangements set out in the Monitoring and Management Information Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

47.2 Where requested by the Department, the Contractor shall supply the Management Information to the Department and to Cabinet Office in the form set out in the Monitoring and Management Information Schedule date to be agreed during the Contract Period.

47.3 The Contractor agrees that the Department may provide Cabinet Office with information relating to the Services procured and any payments made under the Contract.

47.4 Upon receipt of the Management Information supplied by the Contractor in response to a request under 47.2 above or receipt of information provided by the Department to Cabinet Office under 47.3, the Department and the Contractor hereby consent to Cabinet Office:

- (a) storing and analysing the Management Information and producing statistics; and

- (b) sharing the Management Information or any statistics produced using the Management Information, with any other Contracting Department.

47.5 In the event that Cabinet Office shares the Management Information or information provided under clause 47.3 in accordance with 47.4(b), any Contracting Department receiving the Management Information shall be informed of the confidential nature of that information and shall be requested not to disclose it to anybody who is not a Contracting Department (unless required by law).

47.6 The Department may make changes to the Management Information which the Contractor is required to supply and shall give the Contractor at least one (1) Month's written notice of any changes.

48 Force Majeure

48.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

48.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

48.3 For the purposes of this contract, Force Majeure is understood to be any circumstance of an unforeseeable and unavoidable nature affecting the performance of the contractual obligations of either Party, such as, ad exemplum, extraordinary natural events such as floods, earthquakes and lightning strikes.

48.4 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause 48.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

SCHEDULE 1 – Specification

Specification as per ITT document 04. K280021503 – Specification v0.3.doc



04. K280021503 -
Specification v0.3.doc

SCHEDULE 2 – Pricing

Supply of following Articles:

Prices are fixed for the duration of the contract.

Article	Article description	Unit of measure	Quantity	Unit Price £
Mobile enforcement unit	As per document Specification K280021503 Attachment 2 - Specification	Each	1	XXXXXX redacted under FOIA section 43
Shipping	Delivery Duty Paid to DVSA named site in Great Britain*	Each	1	XXXXXX redacted under FOIA section 43
Commissioning	Commissioning of equipment at named site in Great Britain*	Each	1	XXXXXX redacted under FOIA section 43
Training (On-site)	See specification	Each	1	XXXXXX redacted under FOIA section 43
Extended Warranty	Extended warranty +1 year after the initial inclusive 2-year warranty. As per specification 6.3.3	Annual	1	XXXXXX redacted under FOIA section 43
Optional extras included**	Wheel play detectors. As per specification 6.3.5	each	1	XXXXXX redacted under FOIA section 43
Optional extras included**	Tachograph interrogation equipment (latest technology). As per specification 6.3.7	each	1	XXXXXX redacted under FOIA section 43
Optional extras included**	Under Vehicle Inspection system, broad vision with intelligent deformation correction, dust-proof camera housing, uniform and extensive lighting, Automatic digital data recording	each	1	XXXXXX redacted under FOIA section 43
Total Contract Value				£279,631.71

*Site to be confirmed by the Contract Manager prior to shipping

** Optional extra's as per details supplied with technical pricing response to ITT.

Optional Goods (Articles) /Services

Optional extras priced below are not included within the requirement to supply. A Variation to the Contract shall be raised to include any of the following Articles. Any Variations must not impact the delivery schedule of the Articles without prior formal agreement with the Contract Manager.

Optional Goods/ Articles

Article	Article description	Unit of measure	Quantity	Unit Price £	Notes
Optional extras	Vehicle weighing facility that complies with weighing code of practice. As per specification 6.3.4	each	1	XXXXXX redacted under FOIA section 43	Portable Vehicle weighing facility WWS DTRF/10000 with Touch Screen weight indicator and Aluminium Levelling Modules for up to 6 axle vehicles
Optional extras	Jacking facility. As per specification 6.3.6	each	1	XXXXXX redacted under FOIA section 43	DK120Q A/C Hydraulic Jacking Trolley
Optional extras	Emissions testing (latest technology). As per specification 6.3.8	each	1	XXXXXX redacted under FOIA section 43	Premier Diagnostics DS2 Diesel Smokemeter
Optional extras	On board diagnostics (OBD) interrogation equipment. As per specification 6.3.9	each	1	XXXXXX redacted under	TEXA OBD Truck solution

				FOIA section 43	
Optional extras	License Plate Recognition System (including IP IR Camera and Software License)	each	1	XXXXXX X redacted under FOIA section 43	VTEQ LPR 3000
Optional extras	Emissions Particle Number Counter - Ionisation particle emission tester TEN AEM	each	1	XXXXXX redacted under FOIA section 43	Particle Number Counter AEM

SCHEDULE 3 – Payment and Delivery

Milestone Payment schedule

The Contractor may invoice for the applicable % of total contract value upon completion of the following milestones. Prior to submitting an invoice, the Contractor must complete and submit a delivery schedule certificate (see Schedule 4) to the Contract Manager for acceptance. Proposed evidence (under schedules 4) format/ type, including testing procedure, where applicable, must be submitted to the Department for agreement no more than 20 working days from Contract signing. The Department reserves the right, at its sole discretion, to pay against target completion dates of Milestones if the date is sooner than actual completion date. Payment against a target completion date does not infer acceptance or delivery against the Milestone by the Department. Failure to deliver against the Milestone will result in termination as per Clause 35 and recovery of costs against the Guarantee under Clause 37.

The Department require the Contractor to provide a Guarantee to indemnify the Department for costs due under Clause 37. The Guarantee must also enable the Department to recover costs incurred (limited to invoices paid to date against the Contract) from the Guarantor upon notice.

Milestone #	Description	% of total contract value	Target Completion date
Milestone 1	Upon sign off by Department of final design and receipt of Guarantee.	30	w/e 10 th December 2021
Milestone 2	Upon TUV certification of unit and equipment meeting Department specification.	20	w/e 25 th February 2022
Milestone 3	Upon delivery to DVSA site.	20	w/e 11 th March 2022
Milestone 4	Upon commissioning and handover to Authority including receipt of documents.	20	w/e 25 th March 2022*
Milestone 5	Upon 90, consecutive, days fault free running	10	w/e 25 th June 2022**

	following completion of milestone 4.		
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* Guarantee shall not be triggered under Milestone 4 until 30th September 2022.

** The target completion date shall be determined by the actual completion date of Milestone 4 plus 90 days. Where a fault is raised to the Contractor the 90 days fault free running will start again from the date the fault is rectified.

Consequence of missed milestone

The Department may issue notice to remedy unsatisfactory performance as per Clause 33.1. Failure to remedy notice may result in termination as per Clause 35 and notice to recoup invoiced paid costs against the Guarantee.

SCHEDULE 4 – Delivery schedule certificate [template]

[Note – Delete prior to submission – completed delivery schedule certificates must be submitted through the messaging facility in the DfT sourcing portal against the contract. Failure to do so may result in delays in response and payment.]

Contract reference: K280021503

Contract title: Mobile enforcement unit

Date: [insert date]

On behalf of Vehicle Testing Equipment, S.L. I confirm completion of the following payment milestone:

[Delete milestones as appropriate]

Milestone #	Description	% of total contract value
Milestone 1	Upon sign off by Department of final design and receipt of Guarantee.	30
Milestone 2	Upon TUV certification of unit and equipment meeting Department specification.	20
Milestone 3	Upon delivery to DVSA site.	20
Milestone 4	Upon commissioning and handover to Authority including receipt of documents.	20
Milestone 5	Upon 90, consecutive, days fault free running	10

I enclose the following supplementary evidence:

[Evidence 1]

[Evidence 2]....

Upon receipt of confirmation of acceptance of milestone delivery from the Authority, Contract Manager, Vehicle Testing Equipment, S.L. shall invoice the Authority for the value [Insert value] in accordance with Section 6 and Schedule 3 of the Contract.

Name: [Authorised representative name]

Signed:

Date:

Schedule 5 – Guarantee

1. Guarantee

- 1.1 Where the Department has notified the Contractor that the award of the Contract by the Department shall be conditional upon receipt of a valid Guarantee, then, on or prior to the execution of the Contract, as a condition for the award of that Contract, the Supplier shall deliver to the Department:
 - 1.1.1 an executed Guarantee from a Guarantor; and
 - 1.1.2 a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.
- 1.2 Where the Department has procured a Guarantee from the Supplier under Paragraph 1 above, the Department may terminate the Contract for material Default where:
 - 1.2.1 the Guarantor withdraws the Guarantee for any reason whatsoever;
 - 1.2.2 the Guarantor is in breach or anticipatory breach of the Guarantee;
 - 1.2.3 an Insolvency Event occurs in respect of the Guarantor;
 - 1.2.4 the Guarantee becomes invalid or unenforceable for any reason whatsoever; or
 - 1.2.5 the Supplier fails to provide the documentation required by Paragraph 2.1 by the date so specified by the Department;
 - 1.2.6 and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Department.

Annex 1 – Form of Guarantee

[Guidance Note: this is a draft form of guarantee which can be used to procure a Guarantee, but it will need to be amended to reflect the Beneficiary's requirements.]

[INSERT NAME OF THE GUARANTOR]

- AND -

DRIVER & VEHICLES STANDARDS AGENCY

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

PROVIDED BY:

[Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**")

WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees for the benefit of the Beneficiary as follows:

1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:

"Beneficiary(s)"	1 means all the Department(s) under a Contract Driver & Vehicles Standards Agency and "Beneficiaries" shall be construed accordingly;
"Goods"	2 has the meaning given to it in the Contract and may also be referred to as Article(s);
"Guaranteed Agreement"	3 means the contract with Contract Reference K280021503 for the Goods and/or Services dated on or about the date hereof made between the Beneficiary and the Supplier ;
"Guaranteed Obligations"	4 means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
"Services"	5 has the meaning given to it in the Guaranteed Agreement;

“Supplier”

means VEHICLE TESTING EQUIPMENT SL,
CONCA DE BARBERA STREET, 1908211
CASTELLAR DEL VALLES (BARCELONA) SPAIN,
Registration Number: ESB62707047.

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2. GUARANTEE AND INDEMNITY

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed

Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.

If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

2.2.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

2.2.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

2.3 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. OBLIGATION TO ENTER INTO A NEW CONTRACT

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4. DEMANDS AND NOTICES

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

[Insert] Address of the Guarantor in England and Wales]

[Insert] Facsimile Number]

For the Attention of **[Insert]** details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5. EXEMPTION FROM COMPLIANCE WITH THIS DEED OF GUARANTEE

5.1 The Guarantee Clause contained in this Annex and its consequences may not be activated when the Supplier's breach of contract is due to an impediment of performance arising from any of the causes of Force Majeure set out in point 48.3 of this Contract., which is transcribed below:

5.2 "For the purposes of this contract, Force Majeure is understood to be any circumstance of an unforeseeable and unavoidable nature affecting the performance of the contractual obligations of either Party, such as, ad exemplum, extraordinary natural events such as floods, earthquakes and lightning strikes."

6. BENEFICIARY'S PROTECTIONS

6.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the

Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

6.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

6.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;

6.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;

6.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

6.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

6.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

6.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means

of payment shall prejudice or affect the liability of the Guarantor hereunder.

- 6.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 6.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 6.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.
- 6.8 The Guarantor shall afford any auditor of the Beneficiary appointed under the Guaranteed Agreement access to such records and accounts at the Guarantor's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Beneficiary's auditors from time to time, in order that the Auditor may identify or investigate any circumstances which may impact upon the financial stability of the Guarantor.

7. GUARANTOR INTENT

Without prejudice to the generality of Clause 6 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

8. RIGHTS OF SUBROGATION

- 8.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
 - 8.1.1 of subrogation and indemnity;
 - 8.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and

8.1.3 to prove in the liquidation or insolvency of the Supplier, only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

9. DEFERRAL OF RIGHTS

9.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

9.1.1 exercise any rights it may have to be indemnified by the Supplier;

9.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;

9.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;

9.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

9.1.5 claim any set-off or counterclaim against the Supplier;

9.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

10. REPRESENTATIONS AND WARRANTIES

10.1 The Guarantor hereby represents and warrants to the Beneficiary that:

10.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

10.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

10.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its

obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3, have been duly authorised by all necessary corporate action and do not contravene or conflict with:

- 10.1.3.1 the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
- 10.1.3.2 any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
- 10.1.3.3 the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 10.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 10.1.5 this Deed of Guarantee is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

11. PAYMENTS AND SET-OFF

- 11.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 11.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 11.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

12. GUARANTOR'S ACKNOWLEDGEMENT

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether

express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

13. ASSIGNMENT

13.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

13.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

14. SEVERANCE

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

15. THIRD PARTY RIGHTS

Other than the Beneficiary, a person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

16. SURVIVAL

This Deed of Guarantee shall survive termination or expiry of the Guaranteed Agreement.

17. GOVERNING LAW

17.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

17.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

17.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

17.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue

or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

17.5 The Guarantor hereby irrevocably designates, appoints and empowers the Supplier a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

SCHEDULE 6 – ITT Tender

The Contract takes precedence unless any parts of the ITT Tender that offer a better commercial position for the Authority (as decided by the Authority).

Copies of the full Tender response can be found on the Jaggaer portal.

SCHEDULE 7: SCHEDULE OF PROCESSING, PERSONAL DATA & DATA SUBJECTS

This Schedule shall be completed by the Controller. The Controller may take account of the view of the Processor(s), however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Relevant Authority's Data Protection Officer are

The DPO is XXXXX from the Department for Transport, XXXXX.
Email: XXXXX redacted under FOIA section 40.

The Representative of the DPO at DVSA is the Data Protection Manager, XXXXX, XXXXX. Email: XXXXX redacted under FOIA section 40.
2. The contact details of the Processor's Data Protection Officer are:

XXXXX, XXXXX

Email: XXXXX redacted under FOIA section 40.
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor.
Subject matter of the processing	In delivery of the Goods and Services it is expected that the Contractor will require access to Personal Data controlled by the Authority.
Duration of the processing	As required throughout the Contract Period.
Nature and purposes of the processing	The nature of the processing is expected to include: <ul style="list-style-type: none">• Collection - as part of the delivery of the good, contact details will be required• Recording - details on processor database• Storage – on Contractors own network

	<ul style="list-style-type: none"> Destroyed - only if accreditation subsides, for example if individual does not continue membership.
Type of Personal Data being Processed	Type of Personal data is expected to include Name, Address, DoB, E-mail Address and Phone Number
Categories of Data Subject	Categories of Data Subject are expected to include: Staff (including volunteers, agents, and temporary workers).
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	The Contractor shall – at the written direction of the Controller – delete or return all Personal Data (and any copies of it) upon Termination, evidencing electronic deletion if necessary.