

AGREEMENT RELATING TO THE SERVICE AND MAINTENANCE OF FIXED AND MOBILE RN DETECTION EQUIPMENT

Agreement

**relating to the service and maintenance of fixed and mobile RN detection
equipment**

Schedule 7.2 (Financial Distress)

SCHEDULE 7.2

FINANCIAL DISTRESS

1 CREDIT RATING AND DUTY TO NOTIFY

- 1.1 The Supplier warrants and represents to the Authority that as at the Effective Date none of the Risk Levels set out in Annex 1 apply in respect of the Supplier, the Group or the Guarantor.
- 1.2 Where the Guarantor has a credit rating from a Rating Agency then the Supplier shall monitor the Guarantor's credit rating with the relevant Rating Agency and shall notify the Authority promptly (and in any event within 10 Working Days of the relevant event occurring) of any downgrade or upgrade in the credit rating.
- 1.3 Where the Guarantor does not have or ceases to have a credit rating from the Rating Agency as specified in Annex 1, the Authority and the Supplier shall use the financial ratios set out in Annex 1 in substitution to an equivalent credit rating.
- 1.4 The Supplier shall:
- (a) regularly and in any case no less than once every 6 Months monitor the credit ratings of the Supplier, the Guarantor and each Key Sub-contractor with each of the Rating Agencies; and
 - (b) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing (an "**AFE Notice**") following:
 - (i) the occurrence of an Adverse Financial Event; or
 - (ii) any fact, circumstance or matter which could cause an Adverse Financial Event,(each a "**AFE Notice Trigger**")
- and in any event, ensure that the AFE Notice is made within 10 Working Days of the date on which the Supplier first becomes aware of the AFE Notice Trigger. For the avoidance of doubt nothing in this paragraph obliges the Supplier to breach applicable Law or regulation.
- 1.5 An AFE Notice shall include full details of the circumstances giving rise to the event and adverse change of the risk level including:
- (a) the cause;
 - (b) the impact or estimated impact on the Supplier, the Group or the Guarantor (as relevant); and
 - (c) the steps that the Supplier, the Group or the Guarantor (as relevant) are either taking or are intending to take to either rectify or mitigate the effects of the event and adverse change of risk level.
- 1.6 If any one or more of the Adverse Financial Events set out in the attached Annex 1 occur then the Supplier, the relevant Key Sub-contractor, the Group or the Guarantor (as the case may be) shall be determined as having the relevant risk level, irrespective of

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whether the Authority has received notice from the Supplier in accordance with paragraph 1.4. The risk level shall be deemed to be the highest risk level for which the relevant circumstances specified in Annex 1 exist.

- 1.7 The Supplier shall also, from time to time, consider the risk level of its Sub-contractors against the events set out in the attached Annex 1. If an event occurs which will or may trigger a change in the risk level of a Sub-contractor from time to time then the Supplier will immediately notify the Authority.

2 CONSEQUENCES OF AN ADVERSE FINANCIAL EVENT

- 2.1 If the Risk Level of the Supplier, a Key Sub-contractor, the Group and/or the Guarantor is Risk Level 1, Risk Level 2 or Risk Level 3 then the consequences set out in this paragraph 2 shall apply.

2.2 Risk Level 1

- 2.2.1 If the Risk Level of the Supplier, a Key Sub-contractor, the Group and/or the Guarantor is determined to be Risk Level 1 then the Supplier shall meet with the Authority (a "**RL1 Meeting**") promptly (and in any event within 10 Working Days of the relevant event giving rise to Risk Level 1 occurring) to:

- (a) review the events leading to the occurrence of, or change to, Risk Level 1;
- (b) discuss the continued performance of any Services and any potential impacts upon any Services due to the occurrence of Risk Level 1; and
- (c) agree any necessary solution to address any impacts upon any Services identified by the Parties, in a manner that is satisfactory to all Parties, to ensure the continued performance of any Services in accordance with the requirements of this Agreement.

- 2.2.2 The Supplier shall provide such information regarding the matters in paragraph 2.2.1 as the Authority (acting reasonably) shall require, at the Authority's discretion, in advance of, at, or within 10 Working Days following the RL1 Meeting.

- 2.2.3 Following the RL1 Meeting, the Parties shall meet regularly ("**RL1 Follow Up Meetings**") and in any event at no longer intervals than every three months, to review, and, where appropriate, revise, the matters agreed pursuant to paragraph 2.2.1(c).

- 2.2.4 If:

- (a) the Supplier does not provide the information required in accordance with paragraph 2.2.2; and/or
- (b) the Authority is not satisfied (acting reasonably) with the Supplier's plans to ensure continued performance of any Services; and/or
- (c) the Parties reach an agreement in accordance with paragraph 2.2.1 above and the Supplier fails fully and promptly to implement such agreement,

then the Authority shall be entitled to treat such event as being risk level two (2) and paragraph 2.3 shall apply.

- 2.2.5 If and to the extent that:

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- (a) Risk Level 1 arises due to the Guarantor's credit rating and the Guarantor's credit rating then improves to above the levels specified as the level of credit rating for Risk Level 1; or
- (b) Risk Level 1 arises due to the financial ratio of the Group and the Group's financial ratio then improves to above the levels specified as the level of the financial ratios for Risk Level 1; or
- (c) Risk Level 1 arises due to factors other than due to the Guarantor's credit rating and at the RL1 Meeting or at any of the RL1 Follow Up Meetings the Authority (acting reasonably) determines that the factors no longer constitute any type of financial, performance, or reputational risk to the Authority or to the provision of any Services (such decision being revocable where it considers new or varied information gives rise to such risk to the Authority and/or the provision of any Services),

and in all circumstances above no new factors have arisen which would give rise to a Risk Level 1 determination, then the Authority shall notify the Supplier that Risk Level 1 no longer applies (an "**RL1 Resolution Notice**").

2.3 Risk Level 2

2.3.1 If the risk level of the Supplier, a Key Sub-contractor, the Group and/or the Guarantor is determined to be Risk Level 2, then paragraphs 2.2.1 to 2.2.5 shall apply, and in addition, at the Authority's request:

- (a) the Supplier shall, at its own expense, set up a joint escrow account (the "**Financial Distress Escrow Account**") in the name of the Supplier and the Authority with a reputable bank reasonably acceptable to the Authority;
- (b) the Authority shall pay any charges due to the Supplier pursuant to any Agreement from the point at which any Risk Level 2 circumstance arises into the Financial Distress Escrow Account;
- (c) monies in the Financial Distress Escrow Account shall be released into the Supplier's general bank account only if and to the extent that the Supplier demonstrates to the satisfaction of the Authority that each Sub-contractor has been paid in accordance with the terms of the Sub-contract. Payment to Sub-contractors will be demonstrated by an officer of the Supplier warranting, with appropriate supporting documentation (including receipted invoices), that such payments have been made from the Supplier's general account;
- (d) subject to the provisions above in this paragraph 2.3.1, any interest which accrues on any amounts in the Financial Distress Escrow Account shall be apportioned to the Supplier. Any penalties or charges incurred or overdraft in respect of the Financial Distress Escrow Account shall be the sole responsibility of the Supplier, who shall promptly pay such penalties or charges and repay such overdraft in full.

2.3.2 If and to the extent that the Supplier fails to comply with any of its obligations as specified in paragraph 2.3.1 above, without limiting its rights under paragraph 2.2.4 the Authority shall treat such event as being Risk Level 3 and paragraph 2.4 shall apply.

2.3.3 If and to the extent that:

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- (a) Risk Level 2 arises due to the Guarantor's credit rating being downgraded, and the Guarantor's credit rating is then upgraded to a credit rating which is classified by this Schedule as a Risk Level 1 or better; or
- (b) Risk Level 2 arises due to the financial ratio of the Group and the Group's financial ratio then improves to above the levels specified as the level of the financial ratio for Risk Level 2; or
- (c) Risk Level 2 arises due to factors other than due to the Guarantor's credit rating and at the RL1 Meeting or at any of the RL1 Follow Up Meetings:
 - (i) the Parties agree that the factors no longer continue; or
 - (ii) the Authority decides that the factors no longer constitute any type of financial, performance, or reputational risk to the Authority or to the provision of any Services (such decision to be made by the Authority acting reasonably, and being revocable where it considers new or varied information gives rise to such risk to the Authority and/or the provision of any Services),

and in all circumstances above no new factors have arisen which would give rise to a Risk Level 2 (or Risk Level 3) determination, then if this improvement in financial position lasts for a period of at least six consecutive Months, the Authority shall notify the Supplier that Risk Level 2 no longer applies (a "**RL2 Resolution Notice**").

2.3.4 If the Authority issues an RL2 Resolution Notice, following service of the RL2 Resolution Notice:

- (a) the Supplier shall be entitled to close the Financial Distress Escrow Account and to receive all monies held at that time in the Financial Distress Escrow Account; and
- (b) unless and until circumstances giving rise to Risk Level 2 or Risk Level 3 arise after service of the RL2 Resolution Notice, the Authority shall pay any charges due to the Supplier under this Agreement directly to the Supplier in accordance with the terms of this Agreement.

2.3.5 If the Supplier fails to notify the Authority of a change to Risk Level 2, the Authority shall be entitled to terminate this Agreement pursuant to Clause 38.1.1(b).

2.3.6 If Risk Level 2 ceases to apply in accordance with paragraph 2.3.3, Risk Level 1 and the remedies specified in paragraph 2.2 will continue to apply unless Risk Level 1 is also determined not to apply in accordance with paragraph 2.2.5 and an RL1 Resolution Notice is issued.

2.4 Risk Level 3

2.4.3 If the Risk Level of the Supplier, a Key Sub-contractor, the Group and/or the Guarantor is determined to be Risk Level 3 then paragraphs 2.2.1 to 2.3.6 shall apply and, in addition, the Supplier shall:

- (a) arrange for its Chief Financial Officer to provide the Authority with a written report on its financial standing on a monthly basis unless and until the Authority provides a RL3 Resolution Notice to the Supplier;

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- (b) provide the Authority with a plan setting out how the Supplier and/or the Guarantor will ensure the continuity of the provision of any Services if the Supplier and/or its Guarantor becomes insolvent (an “**AFE Continuity Plan**”); and
- (c) instruct the bank where the Financial Distress Escrow Account is held (or is to be opened in the event that the same circumstances give rise to a Risk Level 2 and Risk Level 3) to retain in the Financial Distress Escrow Account for the benefit of the Authority such part of any charges which may be payable under the Agreement as the Authority shall specify for six consecutive months.

2.4.4 If:

- (a) the Supplier fails to comply with its obligations as specified in paragraph 2.4.3;
- (b) the Supplier fails to notify the Authority of a change to Risk Level 3; or
- (c) the Authority is not satisfied (acting reasonably) with the AFE Continuity Plan;

then the Authority shall be entitled to terminate this Agreement pursuant to Clause 38.1.1(b) and on the termination date the Authority will be entitled to withdraw the balance of any monies in the Financial Distress Escrow Account as payment for any amounts owing to the Authority.

2.4.5 If and to the extent that:

- (a) Risk Level 3 arises due to the Guarantor's credit rating and the Guarantor's credit rating then improves to above the levels specified as the level of credit rating for Risk Level 3; or
- (b) Risk Level 3 arises due to the financial ratios of the Group and the Group's financial ratio then improves to above the levels specified as the level of the financial ratio for Risk Level 3; or
- (c) Risk Level 3 arises due to factors other than due to the Guarantor's credit rating and at the RL1 Meeting or at any of the RL1 Follow Up Meetings:
 - (i) the Parties agree that the factors no longer continue; or
 - (ii) the Authority decides that the factors no longer constitute any type of financial, performance, or reputational risk to the Authority or to the provision of any Services (such decision to be made by the Authority acting reasonably, and being revocable where it considers new or varied information gives rise to such risk to the Authority and/or the provision of any Services),

and in all circumstances above no new factors have arisen which would give rise to a Risk Level 3 determination, then if this improvement in financial position lasts for a period of at least six consecutive Months, the Authority shall notify the Supplier that Risk Level 3 no longer applies (an “**RL3 Resolution Notice**”).

2.4.6 Where the Authority issues an RL3 Resolution Notice to the Supplier, Risk Level 2 and/or Risk Level 1 and their remedies specified paragraphs 2.3 and 2.2 respectively shall continue to apply, as the case may be, unless the respective Risk Levels are also

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determined not to apply in accordance with paragraphs 2.3.3 and/or 2.2.5 and the relevant RL2 Resolution Notice and/or RL1 Resolution Notice is issued.

ANNEX 1: ADVERSE FINANCIAL EVENTS

ANNEX 1			
Adverse Financial Event	Risk Level		
	1	2	3
Financial Capacity	<p>Risk level 1 shall be triggered where the Supplier or the Guarantor's financial ratio is as follows:</p> <p>The ratio of Consolidated Net Debt to EBITDA is greater than 3.0 to 1 and less than 4.0 to 1; and/or</p> <p>The ratio of EBIT to Net Interest Payable is greater than 3.0 to 1 and less than 4.0 to 1.</p> <p>OR</p> <p>In the event the Guarantor obtains a credit rating, the Guarantor's credit rating is as follows:</p> <p>D&B Failure Score: 26 - 50 or if not available one of the following:</p> <p>Standard and Poor's: BB</p> <p>Moody's: Ba</p> <p>Fitch: BB</p> <p>Ratings & Investment: BB</p>	<p>Risk level 2 shall be triggered where the Supplier or the Guarantor's financial ratio is as follows:</p> <p>The ratio of Consolidated Net Debt to EBITDA is greater than 4.0 to 1 and less than 5.0 to 1; and/or</p> <p>The ratio of EBIT to Net Interest Payable is between greater than 2.0 to 1 and less than 3.0 to 1.</p> <p>OR</p> <p>In the event the Guarantor obtains a credit rating, the Guarantor's credit rating is as follows:</p> <p>D&B Failure Score: 16 - 25 or if not available one of the following:</p> <p>Standard and Poor's: B</p> <p>Moody's: B</p> <p>Fitch: B</p> <p>Ratings & Investment: B</p>	<p>Risk level 3 shall be triggered where the Supplier or the Guarantor's financial ratio is as follows:</p> <p>The ratio of Consolidated Net Debt to EBITDA is equal to or greater than 5.0 to 1; and/or</p> <p>The ratio of EBIT to Net Interest Payable is equal to or less than 2.0 to 1.</p> <p>OR</p> <p>In the event the Guarantor obtains a credit rating, the Guarantor's credit rating is as follows:</p> <p>D&B Failure Score: below 15 or if not available one of the following:</p> <p>Standard and Poor's: CCC or lower</p> <p>Moody's: Caa or lower</p> <p>Fitch: CCC or lower</p> <p>Ratings & Investment: CCC or lower</p>

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ANNEX 1			
Adverse Financial Event	Risk Level		
	1	2	3
Profit warning	The Guarantor issues a profits warning to a stock exchange and the Supplier fails promptly to (which in any event shall not be more than ten (10) Working Days) demonstrate to the Authority's satisfaction (not to be unreasonably withheld) that the profit warning relates to a general reduction in trade in the relevant industry sector and that it will not result in the Supplier becoming unable, within the next twelve (12) months, to pay any amounts due to its Sub-contractors.		
Public investigation	There is a public investigation into improper financial accounting and reporting, suspected fraud and/or other impropriety of the Supplier, a Key Sub-contractor and/or the Guarantor.		
Breach of lenders' covenants	There is a material breach by the Supplier, a Key Sub-contractor and/or its Guarantor of covenants to its lenders		
Non-payment of a Sub-contractor by the Supplier		A Sub-contractor (which for the purpose of this provision shall include the sub-contractor of a Key Sub-contractor) demonstrates to the Authority that the Supplier or a Key Sub-contractor has failed to pay the Sub-contractor	

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ANNEX 1			
Adverse Financial Event	Risk Level		
	1	2	3
		an amount properly due to the Sub-contractor and not subject to a genuine dispute, and the Supplier or Key Sub-contract fails to rectify this situation promptly (which in any event shall not be more than 10 Working Days) or demonstrate that the claim by the Sub-contractor is unfounded.	
Commencement of legal proceedings against the Supplier and/or its Guarantor			Commencement of any material litigation against the Supplier or its Guarantor with respect to financial indebtedness or obligation under a service contract, non-payment of any financial indebtedness, any financial indebtedness becoming due as a result of an event of default, the cancellation or suspension of any financial indebtedness. Material litigation will be measured as any amount which has a value above three per cent. (3%) of the Group's annual revenue from its most recent published set of audited financial statements.

Note: The expressions which are used to determine the Group's financial ratios are defined in Annex 1 and Schedule 1 (Definitions), and for the purpose of the financial ratio calculations EBIT, EBITDA, Net Interest Payable and Consolidated Net Debt shall be calculated without double counting and interpreted on a consolidated basis in accordance with the GAAP applicable to the Original Financial Statements of the Guarantor and shall be expressed in pounds sterling.

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Annex 2

List of Ratings Agencies

- 1. Dunn & Bradstreet**
- 2. Standard and Poor's**
- 3. Moody's**
- 4. Fitch**
- 5. Experian**
- 6. Ratings & Investment**