



VivaCity

Terms & Conditions

Working with



1 Definitions and interpretation

1.1 Words shall have the meanings given to them in the Table preceding these Terms and as set out below.

Agreement	means the agreement between the parties consisting of these Terms, the Table and the Proposal;
Associate	means in relation to a party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with that party from time to time;
Business Day	means a day, other than a Saturday, Sunday or public holiday, on which clearing banks are open for non-automated commercial business in the City of London;
Change	means any change, amendment or alteration to this Agreement;
Change Control Note	means a note which details the impact the proposed Change will have on any part of this Agreement;
Change Control Procedure	means the procedure for agreeing Changes as set out in Schedule 1 to this Agreement;
Cloud Software	means the Supplier's software on the cloud which is accessible to the Customer by way of the Supplier's API interface;
Commencement Date	means the date of the second signature to this Agreement.
Confidential Information	means any and all confidential information, (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and customers, including without limitation information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any Associate, person, firm, or organisation associated with that party including any confidential Data;
Control	means that a person owns directly or indirectly more than 50% of the shares or securities of the other person representing the right to vote on all or substantially all matters including the election of directors and Controls and Controlled shall be interpreted accordingly;
Data	means the data generated by the Equipment;
Data Protection Legislation	Means (UK)GDPR and any applicable national implementing laws as amended from time to time and (ii) the Data Protection Act 2018 and / or any other successor legislation to the GDPR, (UK)GDPR or the Data Protection Act 2018 and (iii) all applicable Law about the processing of personal data and privacy
Documentation	means any documentation to be provided by the Supplier to Customer as specified in the Proposal;
Embedded Software	means the software which forms part of the Equipment;
Equipment	means the equipment detailed in the Proposal;
Force Majeure	means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including without limitation war, revolution, terrorism, riot or civil commotion, or reasonable precautions against any such; strikes, lock outs or other industrial action; epidemics or pandemics; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions; failure of third party infrastructure and/or services (including GSM mobile networks and AWS/GCP cloud services). Force Majeure does not include, without limitation, inability to pay, over-commitment or market or other circumstances which may make the terms of this Agreement unattractive to a party;
Installation Date	the installation date as mutually agreed via email from time to time during the project planning phase to install the requisite hardware at a specific site or sites, as detailed in the table or proposal

Installation Locations	means the location(s) for the installation of the Equipment as identified in the Proposal;
Intellectual Property Rights	means any and all copyright, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights, rights in the Data or any other data, semiconductor chip topography rights, the right to sue for passing off, utility models, domain names and all similar rights and, in each case: (a) whether registered or not, (b) including any applications to protect or register such rights, (c) including all renewals and extensions of such rights or applications, (d) whether vested, contingent or future and wherever existing;
Proposal	means the proposal addressed to the Customer by the Supplier of which these Terms form part;
Services	means the services detailed in Schedule 3 and the Proposal;
Software	means the Embedded Software and the Cloud Software;
Supplier Personnel	means the people performing Supplier's obligations or exercising its rights under this Agreement;
Update	means a software maintenance update, patch or bug-fix which does not constitute an Upgrade;
Upgrade	means a version or release of software intended to have new or improved functionality including any new version or release of the Software designated by the Supplier as an upgrade;
Validation Date	means the date the software is calibrated and/or verified to ensure its accuracy and reliability in detecting and measuring traffic data. If sensors are not all validated in the same week, there may be several Validation Dates under the contract.
Web Dashboard	means the web dashboard provided by the Supplier as part of the Services.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 references to clauses are to clauses of this Agreement;
- 1.2.3 references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);
- 1.2.4 'including' (or similar words) means including without limitation;
- 1.2.5 clause headings do not affect their interpretation;
- 1.2.6 references to legislation (including any subsidiary legislation) include any modification or re-enactment thereof;
- 1.2.7 no documents agreed by the parties in future which are not referred to in this Agreement shall form part of this Agreement unless expressly incorporated by agreement in writing between the parties in accordance with the terms of this Agreement.

2 Priority

- 2.1 In the event of any conflict or inconsistency between different parts of this Agreement, the following descending order of priority applies:
 - 2.1.1 the Table;
 - 2.1.2 the Proposal;
 - 2.1.3 the Terms.
- 2.2 Subject to the above order of priority between documents, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

3 Duration

- 3.1 Subject to earlier termination under clause 19, this Agreement shall continue from the Commencement Date until it is terminated by either party giving at least three months' written notice, such notice to expire on or after the end of the Initial Term.
- 3.2 Renewal of this contract is due at the end of the Initial Term. In the event that the sensors purchased under this contract have different Validation Dates, an average Validation Date may be calculated to enable a single renewal date to be used for the renewed term.

4 Supply of Equipment

- 4.1 The Supplier agrees to provide the Equipment in accordance with this Agreement. Each of the parties agrees to comply with its designated responsibilities in relation to the Equipment set out in the Proposal.
- 4.2 The Supplier shall:
 - 4.2.1 provide the Equipment to Customer;
 - 4.2.2 supply to Customer in reasonable time before the Installation Date such information and assistance as may be necessary to enable Customer to prepare the Installation Locations for the Equipment;
 - 4.2.3 deliver the Equipment (including any Documentation) on the Installation Date to the Delivery Point;
 - 4.2.4 if specified in the Proposal, contract with a third party as the agent of the Customer, to install the Equipment at the Installation Locations on the Installation Date (or within a reasonable period thereafter).
- 4.3 The Customer shall provide or procure at its own cost:
 - 4.3.1 reasonable access to premises and facilities at the locations for delivery of Equipment;
 - 4.3.2 such electrical power supply to the Equipment as is detailed in the Proposal;
 - 4.3.3 any permissions required to install the Equipment at the Installation Locations;
 - 4.3.4 reasonable access to and cooperation by Customer personnel and those of its third party representatives (if any);
 - 4.3.5 that reasonable precautions shall be in place to protect the health and safety of Supplier personnel while on Customer's premises;
 - 4.3.6 any other receivables specified in the Proposal,

in each case as reasonably necessary for the Supplier to perform its obligations under this Agreement.

- 4.4 The Equipment is provided at the Customer's request and the Customer is responsible for verifying that the Equipment is suitable for its own needs.
- 4.5 The Customer shall prepare the Installation Locations and provide proper environmental and operational conditions for the Equipment prior to delivery.
- 4.6 If and only if the Table states that 'Hardware Ownership' is 'Capital Purchase', title in the Equipment (but not the Embedded Software) shall pass from the Supplier to the Customer upon manufacture of the Equipment to the Customer and payment for the Equipment by the Customer in full. Notwithstanding the Customer's ownership, the Supplier shall throughout the Initial Term and any subsequent extensions be entitled to access, modify or replace each item of Equipment as required to deliver the Services provided that the functionality of that item of Equipment is not materially reduced as a result.
- 4.7 Risk in the Equipment shall pass from the Supplier to the Customer upon delivery of the Equipment to the Delivery Point and accordingly the Customer shall be responsible for insuring the Equipment against all normal risks with effect from the time risk passes.
- 4.8 The Customer agrees to make all reasonable efforts to deliver the Customer responsibilities detailed under 4.3 above, ahead of the mutually agreed Installation Date. If the Customer is unable to meet these responsibilities, it shall give not less than ten (10) Business Days' notice before the Installation Date to allow the date to be re-planned, or be liable for the Supplier's full installation costs and an administration fee of £200 for Supplier's wasted time and efforts.

5 Supply of Software and Services

- 5.1 The Supplier shall provide the Services by way of providing access to the Data and any necessary Documentation from the Validation Date, until the end of the Initial Term of this Agreement and any subsequent extensions.
- 5.2 Subject to the terms of this Agreement, the Supplier grants the Customer a non-exclusive licence to use the Cloud Software to the extent necessary to access the Data by way of the Web Dashboard for the term of this Agreement.
- 5.3 Except as expressly permitted under this Agreement or by law, the Customer shall not:
 - 5.3.1 use, copy, modify, adapt, correct errors, or create derivative works from, the Software;
 - 5.3.2 access, download or modify (or attempt to do so) the Embedded Software;

- 5.3.3 decode, reverse engineer, disassemble, decompile or otherwise translate or convert the Software;
- 5.3.4 assign, sub-license, lease, resell, distribute or otherwise deal in or encumber the Software;
- 5.3.5 remove or modify any copyright or similar notices, or any of the Supplier's or any other person's branding, that the Software causes to be displayed when used or that is displayed in the Documentation;
- 5.3.6 install or use the Software, or permit it to be installed or used, on behalf of any third party or otherwise than with the Equipment or through the Web Dashboard and as contemplated by the Proposal; or
- 5.3.7 attempt to circumvent or interfere with any security features of the Software.
- 5.4 The Customer acknowledges and agrees that:
 - 5.4.1 the nature of the Software and Services are such that it will have no need to decompile the Software in order to create an independent program to allow the interoperability of the Software with other software nor to take back-ups of the Software;
 - 5.4.2 it has no right to access or use the Embedded Software;
 - 5.4.3 it shall be responsible for keeping secure and confidential any passwords necessary to access the Data; and
 - 5.4.4 unless specified otherwise in the Proposal, the Data will only be accessible via the Web Dashboard or standard APIs provided by VivaCity from time to time.
- 5.5 The Customer shall use the Software at all times in accordance with the Proposal and all other terms of this Agreement.
- 5.6 The Customer shall notify the Supplier in writing as soon as it becomes aware of any actual or suspected unauthorised installation or use of the Software, including any tampering with or theft of any of the Equipment.
- 5.7 Unless otherwise agreed in the Proposal, the Customer shall not be entitled to receive Updates or Upgrades to the Software but the Supplier shall be entitled to install Updates and Upgrades at any time and without notice to the Customer provided that such Updates and Upgrades do not materially adversely affect the functionality of the Equipment and/or the Cloud Software.
- 5.8 The provisions of clause 5.7 do not apply to any Updates provided by the Supplier pursuant to its warranty and other express obligations under this Agreement.

6 Data licence

- 6.1 The Supplier owns any and all Data, and grants the Customer a licence to use the Data (including any Intellectual Property Rights in the Data), subject to the terms set out below.
 - 6.1.1 **Licence scope:** the licence includes the right to use any Intellectual Property Rights in the Data where necessary or desirable for Customer to make use of the licensed Data in accordance with this Agreement.
 - 6.1.2 **Licence transferability:** this licence is non-transferable by the Customer and cannot be sublicensed other than to Customer's Associates without Supplier's consent (such consent not to be unreasonably withheld or delayed).
 - 6.1.3 **Permitted disclosures:** Customer and its Associates shall be free to disclose the Data in whole or in part to its consultants and other third party advisers where such disclosure is consistent with the licensed use and other licence restrictions set out in this clause and any confidentiality obligations under this Agreement.
 - 6.1.4 **Licence duration:** perpetual.
 - 6.1.5 **Limitations on Copying and Backup:** None. The Customer shall be permitted to make such backups and copies of the Data as it sees fit, providing that the copies are only disclosed in accordance with clause 6.1.3.

7 Data Supply and Use

- 7.1 The format, timing of supply and location for supply of the Data will be as specified in the Proposal.
- 7.2 Customer acknowledges and agrees that it uses the Data at its own risk and that Supplier shall have no liability in respect of that use.
- 7.3 Except as expressly set out in this Agreement or otherwise expressly agreed in writing by the parties, no Intellectual Property Rights of either party in the Data or otherwise are assigned or transferred.

8 Fees and expenses

- 8.1 Customer shall pay Supplier the Price in the instalments specified in the Table and on the Payment Terms.
- 8.2 All amounts due under this Agreement are exclusive of VAT, sales or other tax applicable which shall be paid in addition by Customer at the rate and in the manner for the time being prescribed by law.
- 8.3 Supplier shall invoice Customer electronically to the email address to which the Proposal was sent or as notified by Customer in writing to Supplier from time to time for all sums due under this Agreement.
- 8.4 Customer shall pay such sums in full without set-off or counterclaim within 30 days from the date of invoice or on the due date for payment specified in this Agreement if earlier.

- 8.5 Where sums due are not paid in full by the due date, Supplier may, without limiting its other rights, charge interest on such sums at the Late Payment of Commercial Debts rate OR 4% a year above the base rate of the Bank of England from time to time in force.
- 8.6 Interest will apply from the due date for payment until actual payment in full, whether before or after judgement.
- 8.7 Customer will be liable for costs regarding missed Installation Date(s) as detailed under 4.8 above.

9 Limits on liability

- 9.1 Subject to the following subclauses, in no event shall the aggregate liability of either party to the other (whether in contract, tort (including negligence) or otherwise) and in respect of all claims, losses and damages arising under this Agreement exceed:
- 9.1.1 Where the claim relates to a defect in the Equipment and/or the Software, the price paid by Customer for the defective Equipment and/or Software
- 9.1.2 Where the claim relates to a defect in the Data, the aggregate amount due in respect of the licence fees over the period for which the Data was defective the Price; and
- 9.2 provided that this shall be subject to an overall limit of one and a half times the Price in respect of any and all claims, losses and damages arising under this Agreement. Each party's liability to the other in contract, tort (including negligence), misrepresentation (whether innocent or negligent), breach of statutory duty or otherwise arising out of or in connection with this Agreement shall not extend to any loss of profits; loss of business opportunity; loss of goodwill; loss of data; loss of anticipated savings; or any special, indirect or consequential loss or damage whatsoever.
- 9.3 The parties agree that the limitations on liability in this Agreement are reasonable given their respective commercial positions and ability to purchase relevant insurance in respect of risks under this Agreement.
- 9.4 Notwithstanding the above or other limitations and exclusions of liability set out in this Agreement, neither party excludes or limits any liability for:
- 9.4.1 personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of a party or its employees; or
- 9.4.2 fraud or fraudulent misrepresentation; or
- 9.4.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 9.4.4 any other liability to the extent the same cannot be excluded or limited by law.

10 Insurance

- 10.1 VivaCity will maintain the insurance detailed in Schedule 4 for the duration of the Initial Term and any subsequent extensions to that term.

11 Costs

- 11.1 Except for the payments specifically agreed in this Agreement, each party is responsible for its legal and other costs in relation to the preparation and performance of this Agreement.

12 Warranties

- 12.1 Supplier warrants and represents to Customer that:
- 12.1.1 Supplier has the right, power and authority to enter into this Agreement and grant to Customer the rights contemplated herein;
- 12.1.2 Supplier is the owner (or licensee) of the Software and all Intellectual Property Rights in the Software;
- 12.1.3 the Data shall be Supplier's original creation;
- 12.1.4 the Data contain nothing defamatory, indecent or otherwise unlawful or which infringe the statutory or common law rights of any third party;
- 12.1.5 at the Installation Date and for 5 years after the Installation Date, the Equipment and the Software will comply with any specification in the Proposal provided the Licence, Data backhaul, Database, Operation and Maintenance Fee continues to be paid as detailed in Schedule 3.
- 12.2 The warranties and representations specified in the above clause are subject to Customer giving notice to Supplier as soon as it is reasonably able upon becoming aware of the breach of warranty or representation. When notifying Supplier of a breach Customer shall use its reasonable endeavours to provide Supplier with such documented information, details and assistance as Supplier may reasonably request.
- 12.3 All other warranties and representations, whether statutory or implied, are hereby expressly excluded to the fullest extent permitted by law.

- 12.4 Supplier will not be liable under this clause or be required to remedy any problem arising from or caused by any modification (whether by way of alteration, deletion, addition or otherwise) made to any part of the licensed Data or Intellectual Property Rights by anyone other than Supplier without its express prior written consent.

13 Intellectual Property Rights indemnity

- 13.1 Supplier shall indemnify and keep indemnified and hold harmless Customer from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by Customer as a result of or in connection with any action, demand or claim that use or possession of any of the Software, Data or Intellectual Property Rights licensed under this Agreement, infringes the Intellectual Property Rights of any third party ('Supplier IPR Claim'), provided that Supplier shall have no such liability if Customer:
- 13.1.1 does not notify Supplier in writing setting out full details of any Supplier IPR Claim of which it has notice as soon as is reasonably possible;
 - 13.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant Supplier IPR Claim without the prior written consent of Supplier (which shall not be unreasonably withheld or delayed);
 - 13.1.3 does not let Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from Supplier IPR Claim; or
 - 13.1.4 does not, at Supplier's request and own expense, give Supplier all reasonable assistance in the circumstances described above.
- 13.2 If any Supplier IPR Claim is made or is reasonably likely to be made against Customer, Supplier shall promptly and at its own expense either:
- 13.2.1 procure for Customer the right to continue using and possessing the relevant licensed Software and/or Data and associated Intellectual Property Rights; or
- modify or replace the infringing part of the licensed Software and/or Data or associated Intellectual Property Rights and without adversely affecting the benefit of this Agreement for Customer so as to avoid the infringement or alleged infringement, provided that if Supplier having used its reasonable endeavours, neither of the above can be accomplished on reasonable terms, Supplier shall (without prejudice to the indemnity above) refund the Price paid by Customer in respect of the affected Software, Data or Intellectual Property Rights.
- 13.2.2 provided that if, Supplier having used its reasonable endeavours, neither of the above can be accomplished on reasonable terms, Supplier shall (without prejudice to the indemnity above) refund the Price paid by Customer in respect of the affected Software, Data or Intellectual Property Rights.

14 Rights of third parties

- 14.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions. However, this does not affect any right or remedy of such a person that exists or is available apart from that Act.

15 Mitigation

- 15.1 In respect of any indemnity given by either party under this Agreement, the party which receives the benefit of the indemnity shall take all reasonable steps so as to reduce or mitigate the loss covered by the indemnity.

16 Entire agreement

- 16.1 This Agreement contains the whole agreement between the parties relating to its subject matter and supersedes any prior agreements, representations or understandings between them unless expressly incorporated by reference in this Agreement. Each party acknowledges that it has not relied on, and shall have no remedy in respect of, any representation (whether innocent or negligent) made but not expressly embodied in this Agreement. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.
- 16.2 For the avoidance of doubt, Supplier Agreement shall take precedence over any Customer supplied agreement or terms and/or terms and conditions.

17 Force Majeure

- 17.1 A party will not be liable if delayed in or prevented from performing its obligations hereunder due to Force Majeure, provided that it:
- 17.1.1 promptly notifies the other of the Force Majeure event and its expected duration, and
 - 17.1.2 uses reasonable endeavours to minimise the effects of that event.
- 17.2 If, due to Force Majeure, a party:
- 17.2.1 is unable to perform a material obligation, or

17.2.2 is delayed in or prevented from performing its obligations for a continuous period of more than 90 days, the other party may, within a further ten days terminate this Agreement on notice, otherwise this Agreement shall continue in full force and effect.

18 Further assurance

18.1 Each party will, at its own cost, do all further acts and execute all further documents necessary to give effect to this Agreement.

19 Termination

19.1 Either party may without prejudice to its other rights and remedies by notice in writing to the other party immediately terminate this Agreement if the other:

19.1.1 is in material or persistent breach of any of its obligations under this Agreement (and if that breach is capable of remedy and the other has failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach); or

19.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction.

19.2 Termination of this Agreement for whatever reason shall not operate to affect any provisions that expressly or by implication survive termination.

19.3 If the Table states that 'Hardware Ownership' is 'Rental', then at any time after termination the Supplier shall be entitled to remove each item of Equipment from its Installation Location (or any subsequent location) and to take such steps in relation to it as it shall in its discretion determine. The Customer shall allow (or procure) such access to the Equipment as the Customer shall require to exercise its rights under this clause.

19.4 On termination, a copy of all Data stored on the Supplier's system will be provided to the Client upon request.

20 Notices

20.1 Notices under this Agreement must be in writing and sent to the other party's Contact at the address specified in the Table (or such other applicable address for service in any other Schedules or agreed by the parties from time to time in writing). Notices may be given, and will be deemed received if correctly addressed:

20.1.1 by first-class post: two Business Days after posting;

20.1.2 by airmail: seven Business Days after posting;

20.1.3 by hand: on delivery;

20.1.4 by email: on receipt of a read return mail from the correct address within 24 hours from delivery if no notice of delivery failure is received.

21 Survival

21.1 Provisions which by their terms or intent are to survive termination of this Agreement will do so.

22 Announcements

22.1 Except as required by law, by any court or by any governmental, regulatory or supervisory authority or body of competent jurisdiction or except as expressly agreed by the parties no announcement or disclosure relating to or in connection with this Agreement or any matters contained in it shall be issued by or on behalf of a party without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned or delayed) during the term of this Agreement provided that the Supplier shall, without prejudice to clause 24, be entitled to publicise the existence of this Agreement and to identify the Customer as its customer (by name and/or by use of its logo including on the Supplier's website and marketing materials).

23 Data protection

23.1 In this Agreement, 'personal data', 'data subject' and 'processing' have the meanings given to them in the Data Protection Legislation unless otherwise stated.

23.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 23 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

23.3 If the Table details that the Customer will not receive any personal data from the Services, but that the Supplier will need to process data in order to deliver the anonymous Data to the Customer, the parties acknowledge that for the purpose of the Data Protection Legislation, the Supplier will be the data controller (as defined in the Data Protection Legislation).

23.4 If the Table details that the Customer will receive any Personal Data from the Services, the parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller for the supplied Data and the Supplier is the

data processor (where data controller and data processor have the meanings given in the Data Protection Legislation). Schedule 2 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation) and categories of data subject.

- 23.5 Without prejudice to the generality of clause 23.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful collection of the Personal Data by the Supplier for the duration and purposes of this Agreement.
- 23.6 If Schedule 2 states that the Supplier may gather any Data in connection with the performance by the Supplier of its obligations under this Agreement, without prejudice to the generality of clause 23.2, the Supplier shall:
- 23.6.1 process Personal Data gathered in connection with the performance by the Supplier of its obligations under this Agreement only on the written instructions of the Customer (written instructions deemed to be given by way of the terms of this Agreement) unless the Supplier is required by the laws of England and Wales or any member of the European Union or by the laws of the European Union or any other local data protection law dependent on the Customer's geographical location Union applicable to the Supplier to process Personal Data (Applicable Laws). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- 23.6.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it). The Customer confirms that the Supplier will complete the following as part of its compliance with this clause 23.6.2:
- (a) carrying out a Privacy Impact Assessment in respect of the processing of the data and providing it to the Customer; and
- (b) not storing data for longer than is necessary to provide the Services;
- 23.6.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 23.6.4 not transfer any Personal Data outside the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- (b) the data subject has enforceable rights and effective legal remedies;
- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 23.6.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 23.6.6 notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 23.6.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Law to store the Personal Data; and
- 23.6.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 23 and allow for audits by the Customer or the Customer's designated auditor.
- 23.7 The Customer consents to the Supplier appointing each of Google Cloud Platform and AWS as a third-party processor of Personal Data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 23. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 23.7.
- 23.8 Either party may, at any time on not less than 30 days' notice, revise this clause 23 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

24 Confidential Information

- 24.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.
- 24.2 Each party undertakes to:
- 24.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors (including Supplier Personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and
- 24.2.2 to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.
- 24.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 24.4 The provisions of this clause shall not apply to information which:
- 24.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
- 24.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
- 24.4.3 is independently developed by the recipient, without access to or use of such information; or
- 24.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 24.5 The obligations under this clause shall survive the variation, expiry or termination of this Agreement for a period of three years thereafter.

25 Freedom of Information

- 25.1 'Information' and 'Request for Information' shall have the meanings set out in Freedom of Information Act 2000 (FIA 2000) or the Environmental Information Regulations 2004, SI 2004/3391 (EI Regs 2004) as relevant.
- 25.2 Supplier acknowledges that Customer may be subject to the requirements of the FIA 2000 and the EI Regs 2004 and shall promptly and fully assist and cooperate with Customer to enable Customer to comply with its obligations in respect of those requirements.
- 25.3 Supplier shall not respond directly to a Request for Information unless expressly authorised to do so by Customer in writing.
- 25.4 Customer acknowledges that information relating to Supplier or this Agreement may be commercially sensitive and should not be disclosed as part of a Request for Information without the prior written consent of Supplier.

26 Compliance with Anti-Slavery and Human Trafficking

- 26.1 In performing its obligations under this Agreement, the Supplier shall:
- 26.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
- 26.1.2 have and maintain throughout the Initial Term and any subsequent extensions of this agreement its own policies and procedures to ensure its compliance;
- 26.1.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- 26.1.4 notify the Customer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.
- 26.2 The Supplier represents and warrants that at the date of this agreement neither the Supplier nor any of its officers, employees or other persons associated with it:
- 26.2.1 has been convicted of any offence involving slavery or human trafficking; and
- 26.2.2 having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 26.3 The Supplier shall implement due diligence procedures for its subcontractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 26.4 The Supplier represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Anti-slavery Policy.

27 Anti-bribery and anti-corruption

27.1 The Supplier shall:

- 27.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010 (**Relevant Requirements**);
 - 27.1.2 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
 - 27.1.3 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement;
 - 27.1.4 within three months of the date of this agreement, and annually thereafter, certify to the Customer in writing signed by an officer of the Supplier, compliance with this clause 27 by the Supplier and all persons associated with it under clause 27.2. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.
- 27.2 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 27 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.
- 27.3 Breach of this clause 27 shall be deemed a material breach of this Agreement.
- 27.4 For the purpose of this clause 27, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 27 a person associated with the Supplier includes any subcontractor of the Supplier.

28 Relationship

28.1 The parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.

29 Compliance with law

29.1 Each party shall comply and shall (at its own expense unless expressly agreed otherwise) ensure that in the performance of its duties hereunder, its employees, agents and representatives will comply with all applicable laws and regulations, provided that neither party shall be liable for any breach to the extent that such breach is directly caused or contributed to by any act or default of the other party or its employees, agents and representatives.

30 Variation

30.1 No amendment or variation of this Agreement will be valid unless agreed in writing by an authorised signatory of each party.

31 Waiver

- 31.1 Any rights, powers or remedies conferred upon a party by this Agreement shall be in addition to and without prejudice to all other rights, powers and remedies available to the party under general law (except expressly excluded in this Agreement).
- 31.2 Unless otherwise expressly agreed, no delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

32 Set-off

- 32.1 Neither party may set off any amount the other owes it against any amount it owes the other party in relation to this Agreement unless otherwise agreed.
- 32.2 All payments under this Agreement will be made without set-off or counterclaim, free and clear of and without deduction of any taxes, levies, duties, charges and withholdings of any kind now or in future imposed in any jurisdiction. If a party is compelled by law to deduct or withhold any taxes, levies, duties, charges and withholdings of any kind, it will pay to the other such additional amount as will ensure that the other is paid the full amount it would have received but for such deduction or withholding.

33 Dispute resolution

33.1 If either party believes in good faith that the other party (the 'other party') has breached any term of this Agreement, then the first party shall notify the other Party, in writing setting forth in reasonable detail the nature of the alleged breach (a 'Notice of Breach'). If the other party does not dispute the validity of the Notice of Breach, then it shall promptly undertake to cure the breach. If however, the other party disputes the validity of the Notice of Breach, then the parties shall comply with the following provision in order to expedite the review, verification, cure and remedy of any such breach.

33.2 Any dispute to be resolved pursuant to this Agreement shall first be submitted for resolution to the Contacts of each party detailed in the Table. If such Contacts are unable to resolve the dispute within five days after the date on which the Notice of Breach is received by the other party (or such longer time as is mutually agreed in writing), then the dispute shall be submitted to the directors (or persons of comparable authority) of each party for resolution. If such directors are unable to resolve the dispute within 10 days after the date on which the Notice of Breach is received by the other party (or such longer time as is mutually agreed in writing), then each party shall be free to pursue whatever remedies hereunder, at law or in equity may be available to it in respect of the subject matter of the dispute.

34 Language

34.1 The language of this Agreement is English. All documents, notices, waivers and other written communications between the parties in relation hereto will be in English.

34.2 If this Agreement is translated, the English version will prevail.

35 Governing law and jurisdiction

35.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter is governed by and shall be construed in accordance with the laws of England and Wales. Subject to any disputes which the parties agree to resolve in accordance with the Agreement, the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any disputes and claims which may arise out of, or in connection with, this Agreement.

36 Counterparts

36.1 This Agreement may be signed in any number of counterparts and by the parties on separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement. This Agreement shall not be effective until each party has signed one counterpart.

SCHEDULE 1 CHANGE PROCEDURE

- 1.1 Discussion between the Customer and the Supplier concerning a Change shall result in any one of the following:
- (a) no further action being taken; or
 - (b) a request to change this agreement by the Customer; or
 - (c) a recommendation to change this agreement by the Supplier.
- 1.2 Where a written request for an amendment is received from the Customer, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the Customer within three weeks of the date of the request.
- 1.3 A recommendation to amend this agreement by the Supplier shall be submitted directly to the Customer in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The Customer shall give its response to the Change Control Note within three weeks.
- 1.4 Each Change Control Note shall contain:
- (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;
 - (c) the reason for the Change;
 - (d) full details of the Change, including any specifications;
 - (e) the price, if any, of the Change;
 - (f) a timetable for implementation, together with any proposals for acceptance of the Change;
 - (g) a schedule of payments if appropriate;
 - (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Price;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements; and
 - (vii) other contractual issues;
 - (i) the date of expiry of validity of the Change Control Note; and
 - (j) provision for signature by the Customer and the Supplier.
- 1.5 For each Change Control Note submitted by the Supplier the Customer shall, within the period of the validity of the Change Control Note:
- (a) allocate a sequential number to the Change Control Note; and
 - (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information; or
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Customer and return one of the copies to the Supplier; or
 - (iii) notify the Supplier of the rejection of the Change Control Note.
- 1.6 A Change Control Note signed by the Customer and by the Supplier shall constitute an amendment to this agreement.

SCHEDULE 2 PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. Processing by the Supplier

1.1 Scope

Edge processing of videos to extract anonymous data. This process will not produce any personal data, however the following ancillary processes may contain personal data (although this is not their intent):

- 1.1.1. Gathering of short (less than 1 hour) videos to validate the accuracy of the data anonymisation. These will be at a low resolution such as to avoid them containing any personal data. Provided they do not contain personal data, or have been blurred to remove personal data, they can be shared with the Customer.
- 1.1.2. Only for Customers purchasing the “near miss” feature, very short videos (about 1 minute) will be recorded automatically of “near miss” events to enable the context of the hazard to be assessed. These videos will be blurred prior to sharing with the Customer.
- 1.1.3. Gathering of occasional photos to ensure that the sensor field of view is clear from obstruction and clean. Provided they do not contain personal data, or have been blurred to remove personal data, they can be shared with the Customer.
- 1.1.4. Gathering of occasional photos or videos (e.g. “near miss” videos) to test and improve the anonymisation algorithms

None of these processes require any personal data to be shared with the Customer. Any image or video data shared with the Customer will be blurred to remove any incidental personal data that may be present.

The Supplier will carry out a Privacy Impact Assessment covering each of the four processes. Where possible these processes will be carried out in such a way that they will not include personal data.

1.2 Nature

Anonymising data and validation of anonymised data accuracy.

1.3 Purpose of processing

Provision of the Services and generation of anonymised data.

1.4 Duration of the processing

Completion of the Services to a maximum of six months after the Customer last uses the data. Any images or videos gathered pursuant of scope item 1.1.4 shall be retained while the Supplier is continuing to improve its anonymization algorithms.

1.5 Fair Processing

If any personal data will be gathered by the sensor, a Privacy Impact Assessment will be carried out, and signage provided at the site of the sensor to indicate the processing that is taking place. If the table indicates that clause 23.3 is applicable and 23.4 is not, then the Supplier shall be responsible for this signage. If the table indicates that clause 23.4 is applicable and clause 23.3 is not then the Client shall be responsible for providing the signage suitable for the purpose of data collection and processing that they wish to carry out.

2. Types of personal data

Images of roads which may include images of number plates of vehicles, pedestrians and drivers.

3. Categories of data subject

Vehicle drivers and road users

SCHEDULE 3: DEFINITION OF SERVICES

Services including the Installation process, warranty, maintenance and operational SLA are defined in the Proposal attached.

SCHEDULE 4: TABLE OF INSURANCE

Insurance Type	Cover level	Cover restrictions
Employer's Liability	£10,000,000	Per Claim
Public Liability	£10,000,000	Per Claim
Product Liability	£10,000,000	Per Calendar Year
Professional Indemnity	£5,000,000	Per Claim