

SCHEDULE R
LIVESCAN AND EIU'S

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SCHEDULE R**LIVESCAN AND EIUs****1. INTRODUCTION**

- 1.1 The purpose of this Schedule is to set out the terms and conditions ("**EIU Contract**") that shall apply between the relevant Police Forces and the Contractor in relation to the provision of EIU Services that the relevant Police Forces elect to order in accordance with Clause 8 of Schedule B (**Conditions of Contract**). For the avoidance of doubt, in this Schedule "Contract" without the prefix "EIU" continues to mean the IDENT1 Contract as defined in Schedule C (**Definitions**).
- 1.2 All optional EIU Services listed in the Catalogue of systems, services and products (COSSP) of Schedule E (**Pricing**) shall be purchased using this EIU Contract.
- 1.3 The terms and conditions of the EIU Contract that the Contractor shall enter into with the relevant Police Forces described in Clause 1.1 above are set out in Annex R-1 (**EIU Contract**). The terms of the EIU Contract cannot be amended, changed or varied in any way without obtaining the prior written consent of the Authority.
- 1.4 The description of EIU Services that the Contractor shall provide to the Police Forces under the EIU Contract shall be set out in Appendix A (**EIU Services Description**) of Annex R-1 (**EIU Contract**). Such description of Services shall be agreed in accordance with Schedule L (**Change Control Procedures**) save that if the relevant EIU Service is for Livescan Services, then the service description set out in Annex R-2 (**Livescan Services Description**) of this Schedule shall be incorporated into Appendix A (**EIU Services Description**).
- 1.5 The Service Levels that shall be applied to the relevant EIU Service under the EIU Contract shall be set out in Appendix B (**EIU Service Levels**) of Annex R-1(**EIU Contract**). Such EIU Service Levels shall be agreed in accordance with Schedule L (**Change Control Procedures**) save that if the relevant EIU Service is for Livescan Services, the Livescan Service Levels in Part 3 of Schedule F (**Service Level Requirements**) of the Contract shall be incorporated into Appendix B (**EIU Service Levels**).
- 1.6 The pricing that shall be applied to the relevant EIU Service under the EIU Contract shall be set out in Appendix C (**EIU Pricing**) of Annex R-1(**EIU Contract**). Such EIU Pricing shall be agreed in accordance with Schedule L (**Change Control Procedures**) save that if the relevant EIU Service is for Livescan Services, the Livescan pricing in Schedule E (**Pricing**) of the EIU Contract shall be incorporated into Appendix C (**EIU Pricing**).
- 1.7 Nothing in this EIU Contract shall have the effect of negating the provisions of the Contract insofar as they relate to Police Forces.

ANNEX R-1 OF SCHEDULE R

EIU CONTRACT

NOTE: The contract in this Annex R-1 is the draft EIU Contract that shall be used by the Contractor to enter into contracts with the relevant Police Forces for EIU Services under the IDENT1 Contract. This draft EIU Contract represents the position agreed between the Authority and the Contractor at the Effective Date of the IDENT1 Contract. The Parties agree that there are still sections of the draft EIU Contract that require further amendment after the Effective Date, predominantly in the areas of: acceptance, licencing and Intellectual Property Rights, Limits of liability and treatment of Livescan Assets upon expiry/termination. These areas do not materially affect the substance of the draft EIU Contract and the overall IDENT1 Contract is executed on the basis that the Parties shall work in good faith to finalise the draft EIU Contract for incorporation into this Schedule by the 31st of January 2005. If possible, the Parties shall work together to complete the draft EIU Contract earlier than this date to facilitate any orders received from the Police Forces.

ANNEX R-1

TERMS AND CONDITIONS

1. DEFINITIONS

In the EIU Contract:

- (a) interpretations are set out in Schedule C (**Definitions**) of the Contract; and
- (b) unless the contrary intention appears, capitalised terms shall have the meaning set out in Schedule C (**Definitions**).

2. CONTRACTOR PARENT COMPANY GUARANTEE

The Parent Company Guarantee set out in Schedule W (**Parent Company Guarantee**) of the Contract shall apply to this EIU Contract.

3. CONTRACTOR'S PRICING

The rates and prices submitted by the Contractor in Schedule E (**Pricing**) of the Contract and any other prices subsequently agreed for new EIUs shall cover all its obligations, risks and contingencies under the EIU Contract.

4. ACCEPTANCE

- 4.1 In accordance with the agreed implementation and delivery plan and Acceptance Criteria specified in the Order, the Contractor shall make available to the Police Force the relevant EIU Services to be performed.
- 4.2 The Police Force shall accept the EIU Services and any other deliverables in accordance with the procedures stipulated in the Order or where appropriate, as specified in Schedule H (**Acceptance Procedures**).
- 4.3 The Acceptance Procedures shall be recorded as successful and the Contractor notified accordingly where all the Acceptance Criteria are met (such notification shall not be delayed unreasonably).
- 4.4 The Acceptance Procedures shall be recorded as unsuccessful and the Contractor notified accordingly where any of the Acceptance Criteria are not met (such notification shall not be delayed unreasonably).
- 4.5 If the Acceptance Procedures, in respect of the EIU Services or any deliverable, have not been recorded as successful pursuant to Clause 4.5 by the Acceptance Date specified in the Order, the Police Force shall either have the right:
 - 4.5.1 to accept such part of the EIU Services or the deliverable as the Police Force may decide and pay a pro-rated Charge therefor or such other charge, as may be agreed between the parties; or
 - 4.5.2 without prejudice to its other rights and remedies, to extend the Acceptance Procedures period for a period or periods, specified by the Police Force, during which the Contractor shall correct the fault which caused the Acceptance Procedure to be recorded as unsuccessful;

- 4.6 In the event that the Police Force extends the Acceptance Procedures period for a period pursuant to Clause 4.5.2 and the Acceptance Procedures have not been recorded as successful by the end of that period, the Police Force shall have the right either:
- 4.6.1 to accept such part of the EIU Services or the deliverable as the Police Force may decide and pay a pro-rated Charge therefor or such other charge, as may be agreed between the parties; or
 - 4.6.2 to extend the Acceptance Procedures period for a further period in accordance with Clause 4.5.2; or
 - 4.6.3 to terminate this Order in accordance with Clause 30.1.
- 4.7 Further to the provisions of this Clause 4, any acceptance as defined in the Order or where appropriate in Schedule H (Acceptance Procedures) of the Contract is provisional and dependent on a 30-day period of satisfactory operational service unless otherwise stated in the Order. This 30 day period shall start at the date of Acceptance.
- 5. TERM**
- 5.1 Unless otherwise agreed between the Parties or terminated in accordance with the provisions of the EIU Contract or otherwise in accordance with law or equity, the EIU Contract shall take effect on the agreed commencement date and shall continue for an initial term of five (5) years from the said date ("**Initial Term**").
- 5.2 Upon the Police Force giving the Contractor at least six (6) months' written notice prior to the expiry of the Initial Term, the Police Force shall have the ability to extend the Term beyond the Initial Term set forth in Clause 5.1 above for a further twelve (12) month period save that any extension must always have expired by the end of the Contract . Thereafter, the Police Force shall have the ability to extend such extended Term by a further twelve (12) month period by providing the Contractor with at least six (6) months' written notice prior the expiry of the Term save that any extension must always have expired by the end of the Contract. Any extension under this Clause 5.2 shall be on existing terms and conditions upon written notice to Contractor. The pricing for any extension period under this Clause 5.2 shall be in accordance with the indicative pricing specified in Schedule E (**Pricing**) and subject to Schedule L (**Change Control Procedure**). In any event, the EIU Contracts shall not exist beyond the Term of the IDENT1 Contract.
- 5.3 Upon the expiry or Termination of the EIU Contract, the Contractor shall maintain the Services (including any Optional Services) in accordance with the Service Levels detailed in Schedule F (**Service Level Requirements**) until such time as the Police Force has obtained a further service provider, including any Procurement Process during this period.
- 5.4 The Police Force shall have a right to terminate the EIU Contract for convenience at any time during the Term in accordance with Clause 30 below.
- 5.5 On Termination (including, for the avoidance of doubt, expiry) of the EIU Contract, the Contractor shall, if so requested by the Police Force, transfer title (and grant the relevant Software licences) to the EIUs, Software (including Embedded Software), and the relevant Intellectual Property Rights in accordance with Clause 21 of the IDENT1 Contract, and Clauses 15.1.2, 20 and 31 below to enable continued use of the EIUs.

6. SCOPE OF THE SERVICES

- 6.1 In consideration of the payment of the EIU Service Charges, commencing on the commencement date of the EIU Contract,, the Contractor shall provide the EIU Services to the Police Force in accordance with Part 3 of Schedule F (**Service Level Requirements**). Such Services (to be provided by the Contractor) are:
- 6.1.1 the services, functions, requirements, and responsibilities specified in the EIU Contract (including, for the avoidance of doubt, Schedule D (**Detailed Operational Requirements**)) with the exception of Schedule Q (**Contractor's Solution**);
 - 6.1.2 any services, functions, requirements, and responsibilities performed within the twelve (12) month period preceding the relevant Transfer Date by the Incumbent Supplier as part of the NAFIS Services and/or by the Incumbent Supplier's employees or its contractors who were displaced or transitioned to the Contractor or whose functions were displaced as a result of the EIU Contract, even if the service, function or responsibility is not specifically described in the EIU Contract;
 - 6.1.3 any services, functions, requirements, and responsibilities agreed as New Services in accordance with Schedule L (**Change Control Procedure**); and
 - 6.1.4 any services, functions, and responsibilities (including any incidental services, functions or responsibilities) reasonably and necessarily required for, or related to, the proper performance and provision of the services, functions and responsibilities set out in this Clause 6.1 (irrespective of whether such services, functions, and responsibilities are set out in Schedule D (**Detailed Operational Requirements**)).

7. SERVICE LEVELS

- 7.1 The Contractor shall, at all times, achieve or exceed the Service Levels in accordance with the provisions of Schedule F (**Service Level Requirements**) Part 3. Without prejudice to the first sentence above of this Clause 7.1, as a minimum, the Contractor shall provide the Services:
- 7.1.1 except as expressly documented or referred to in Schedule F (**Service Level Requirements**), at least at the same level of performance to that normally delivered prior to TOR;
 - 7.1.2 with promptness, diligence, and in accordance with Good Industry Practice;
 - 7.1.3 in a professional manner, and in accordance with the practices and professional standards used by, and consistent with levels of performance achieved by, well-managed operations providing services similar to the Services;
 - 7.1.4 consistent with the Contractor's own standards for such services;
 - 7.1.5 using efficiently the Assets, facilities, resources or services necessary to provide the Services;
 - 7.1.6 using adequate numbers of personnel that:
 - (a) are appropriately experienced, qualified and trained;
 - (b) are familiar, where appropriate, with the requirements set out in the EIU Contract; and

(c) shall provide the Services with all reasonable skill, care and diligence; and

7.1.7 in compliance with all applicable Laws.

7.2 The Parties anticipate that the Service Levels shall improve over time and the Parties shall mutually co-operate to identify improvements and efficiencies in the provision of the Services.

7.3 Unless expressly specified otherwise in the EIU Contract, the Contractor shall adopt and comply with the Police Force's technology quality and certification procedures as set out in or implemented pursuant to Schedule D (**Detailed Operational Requirements**), Schedule O (**Documentation**) and Schedule K (**Security**).

7.4 The Contractor shall use the necessary measurement and monitoring tools and procedures required to measure and report the Contractor's performance against the applicable Service Levels. Such measurement and monitoring shall permit reporting at a level of detail sufficient to verify the Contractor's compliance with the Service Levels.

8. FAILURE TO PERFORM

If the Contractor commits a Service Level Failure, the Contractor shall take the steps identified in Schedule F (**Service Level Requirements**). Notwithstanding the provisions of the preceding sentence of this Clause 8, the Contractor shall promptly:

8.1 use Commercially Reasonable Efforts to preserve any data indicating the cause of the Service Level Failure;

8.2 arrange all such additional resources as are necessary to perform the Services in accordance with the Service Levels as early as practicable thereafter and at no additional charge to the Police Force;

8.3 use Commercially Reasonable Efforts to minimise the impact of the Service Level Failure to both the Police Force and all the Police Forces, and to prevent it from recurring; and

8.4 correct the Service Level Failure and meet the relevant Service Level.

9. SERVICE CREDITS

9.1 If the Contractor fails to meet the required Service Levels in accordance with Schedule F (**Service Level Requirements**) Part 3, the Police Force may deduct any Service Credits due from the monthly EIU Service Charges for the applicable month in the next applicable invoice in accordance with Schedule E (**Pricing**) and Schedule F (**Service Level Requirements**).

9.2 The Contractor acknowledges and agrees that the Service Credits are a price adjustment to take into account Services that are not properly delivered to the Police Force and are not an estimate of the loss or damage that may be suffered by the Police Force as a result of the Contractor's failure to meet any Service Level. Payment of any Service Credit by the Contractor under the EIU Contract is without prejudice to any entitlement that the Police Force may have to damages at Law from the Contractor resulting from, or otherwise arising in respect of, any such breach of the EIU Contract, or to any right of the Police Force to terminate the EIU Contract pursuant to Clause 30 below.

10. SERVICE CHARGES, INVOICING, AND TAXES

- 10.1 In consideration for the payment of the EIU Service Charges, the Contractor shall provide the Services and meet and fulfil all the requirements of the Services. All EIU Service Charges are set out in Schedule E (**Pricing**) of the Contract and the Police Force shall only be required to pay to the Contractor those amounts set out therein. The Contractor acknowledges that no additional amounts shall be paid by the Police Force for the provision of the Services unless agreed pursuant to Schedule L (**Change Control Procedure**).
- 10.2 All EIU Service Charges due under the EIU Contract shall be paid in Pounds Sterling and the Police Force shall pay the EIU Service Charges in accordance with the invoicing procedure specified in Schedule E (**Pricing**).
- 10.3 Payment shall be made within thirty (30) days of receipt by the Police Force (at its nominated address for invoices) of a valid invoice from the Contractor, in accordance with the provisions of Schedule E (**Pricing**). Failure to pay within this period shall not constitute a material Default of the EIU Contract.
- 10.4 The Police Force may withhold payment of any portion of the EIU Service Charges that it disputes in good faith, in which case the Police Force shall use its Commercially Reasonable Efforts to notify the Contractor in writing as soon as reasonably practicable from the date of receipt of the relevant invoice under Clause 10.3 above giving its reasons and specifying any additional information required to assist in resolving its concerns.
- 10.5 The Contractor shall continue to perform all its obligations under the EIU Contract, notwithstanding any withholding of payment in accordance with Clause 10.4 above.
- 10.6 The Parties shall use Commercially Reasonable Efforts to resolve any dispute regarding the EIU Service Charges within thirty (30) days of it arising. If the Parties fail to so resolve the dispute, such dispute shall be determined in accordance with Schedule P (**Dispute Resolution Procedure**) of the Contract.
- 10.7 Following resolution of any dispute, any amount agreed or adjudged to be due to the Contractor shall promptly be paid on demand, together with interest thereon (which shall be payable for the period from when such amount would originally have been due had such amount not been withheld until payment) at the rate set out in Clause 10.11 below.
- 10.8 The EIU Service Charges are stated exclusive of VAT. The Police Force shall pay VAT on the EIU Service Charges at the rate and in the manner prescribed by Law, from time to time. The Contractor shall, where applicable, provide the Police Force with a valid VAT invoice and such invoice shall be provided by the Contractor in the format and within the timescales required by Law.
- 10.9 Any legislative requirement to account for the Services in Euro instead of and/or in addition to Pounds Sterling, shall be implemented by the Contractor at nil charge to the Police Force.
- 10.10 Any conversion of EIU Service Charges stated in the EIU Contract from Pounds Sterling to the Euro shall be undertaken at the official rate declared by HM Treasury at the time of the changeover.
- 10.11 If either Party fails to pay any valid amount payable under the EIU Contract by the due date specified in Schedule E (**Pricing**) or elsewhere in the EIU Contract (as applicable), the non-paying Party shall be liable to pay interest on the overdue amount from the due date up to the actual payment date at the rate of two percent (2%) per annum above the Bank of England's base rate from time to time applicable in the United Kingdom.

- 10.12 All expenses that the Contractor incurs in providing the Services (including travel and lodging, document reproduction, shipping, and telephone expenses) are included in the EIU Service Charges as set forth in the EIU Contract. Accordingly, expenses are not separately reimbursable by the Police Force except where otherwise agreed between the Parties.
- 10.13 The Contractor shall be liable for any applicable VAT and other applicable taxes and duties at the prevailing rates payable by the Contractor on any goods and services used or consumed by the Contractor in providing the Services where the tax is imposed on the Contractor's acquisition or use of such goods or services in its provision of the Services.
- 10.14 The Contractor shall be responsible for:
- 10.14.1 any taxes on its property or assets;
- 10.14.2 any taxes on its business; and
- 10.14.3 any taxes based on its net income or gross receipts.
- 10.15 The Contractor shall be liable for VAT, stamp duty and other taxes that are assessed against or incurred on the transfer of assets from the Police Force to the Contractor, including the transfer of Assets, Software, Third Party Contracts, or any other good or service transferred or provided from the Police Force to the Contractor under the EIU Contract.

11. RECOVERY OF SUMS DUE

Save where there is genuine dispute, if any sum of money shall be due from the Contractor, the same may be deducted by the Authority or the Police Force (as applicable) from any sum then due or which at any time thereafter may become due to the Contractor under the EIU Contract.

12. POLICE FORCES

The day-to-day management and operational interfaces between the Contractor and the Police Force shall be as set out in the Memorandum of Understanding or as otherwise agreed between the Parties.

13. USE OF THIRD PARTIES AND COOPERATION WITH OTHER SERVICE PROVIDERS

- 13.1 The Contractor shall be required to permit access (without any change to the EIU Service Charges) to third parties or the Police Force itself in accordance with Clause 13.2 below.
- 13.2 The Contractor shall co-operate (without any change to the EIU Service Charges) to the extent that it is able to do so without impacting on its ability to perform the Services with all relevant parties, including but not limited to the Police Force or third parties under contract to the Police Force to facilitate co-ordination of other services that impact upon or interact with the Services, including by providing access to the Contractor Premises, Equipment, Software and other facilities reasonably necessary to enable such services to be performed subject always, to such third parties complying with the Contractor's reasonable security and confidentiality requirements.
- 13.3 For the avoidance of doubt, the obligations of the Contractor in this Clause 133 shall solely relate to access and co-operation with the third parties described in Clauses 13.1 and 13.2 above and such obligations shall not apply to supporting such third parties nor is the Contractor expected to incur additional costs beyond normal contract management in relation to providing such access and co-operation.

14. CONSENTS AND LICENCES

- 14.1 The Contractor agrees to obtain and maintain throughout the Term at its own cost, all consents and licences which are necessary for the Contractor to provide the Services and Police Force to receive the benefits of the Services.
- 14.2 The Contactor agrees that the pricing in Schedule E (**Pricing**) covers all consents and licences required to deliver the Services and the Contractor's Solution in Schedule Q (**Contractor's Solution**).

15. THIRD PARTY CONTRACTS

15.1 Third Party Contracts

- 15.1.1 The Contractor shall obtain all Required Consents to perform the EIU Services. Unless the Police Force otherwise agrees in writing, the Contractor shall pay any fees (e.g. transfer or upgrade fees) that may be required to obtain a Required Consent for any of the Third Party Contracts listed in Schedule S (**Software, IPR and Third Party Contracts**). Subject to the Police Force's approval, if a Required Consent cannot be obtained, the Contractor may adopt any alternative approaches or workarounds that are necessary and sufficient to provide the Services without the relevant Required Consent.
- 15.1.2 Without prejudice to Clause **Error! Reference source not found.**(?) below, the Contractor shall use its Commercially Reasonable Efforts to structure its arrangements with any third party providers of services, including, by way of example, software licences, maintenance contracts and equipment leases, so that the relevant contracts may be transferred, assigned or novated to the Police Force or a Successor Contractor (as applicable) as required pursuant to Termination Assistance without the need for further consent, licence or payment of charges applicable to such transfer, assignment or novation (as applicable), and that any on-going fees under those arrangements payable by the Police Force after the Termination of the EIU Contract are consistent with and no higher than the fees payable by the Contractor prior to such Termination.

16. PERSONNEL ACCESS

- 16.1 The Police Force reserves the absolute right under the EIU Contract to refuse to admit to any Police Force Premises, any person employed or engaged by the Contractor, or by a Subcontractor, whose admission to such Police Force Premises would be, in the sole opinion of the Police Force or the applicable Police Force, undesirable. The Police Force shall provide the Contractor with an explanation for such refusal wherever reasonably possible. However, notwithstanding the foregoing, the Police Force reserves the right, at its sole discretion, to withhold such explanation from the Contractor.
- 16.2 If and when directed by the Police Force, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the performance of the EIU Contract to any Police Force Premises, specifying the capacities in which they are concerned with the EIU Contract and giving such other particulars as the Police Force may reasonably require from time to time.
- 16.3 The Contractor's representatives, when engaged within the boundaries of the Police Force Premises, shall comply with such rules, regulations and requirements (including those relating to security) as may be in force from time to time for the conduct of personnel when at the Police Force Premises and when outside the Police Force Premises.

- 16.4 If the Contractor fails to comply with Clauses 16.2 and 16.3 above and the Police Force (whose decision shall be final and conclusive) decides, at its sole discretion, that such failure is prejudicial to the interests of the Police Force, then if the Contractor does not comply with the provisions of Clause 16.2 or Clause 16.3 above (as applicable) within a reasonable time of written notice from the Police Force requesting the Contractor's compliance with Clauses 16.2 and 16.3, then the Police Force shall be entitled to terminate the EIU Contract for material Default in accordance with Clause 30.1.1 below due to the EIU Contract's failure to comply with this Clause 16.

17. DISCRIMINATION

The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all current UK employment Laws or European Union employment Laws or directives or any statutory modification or re-enactment thereof relating to discrimination in employment or otherwise. The Contractor shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Contractor and all Subcontractors employed in the execution of the EIU Contract.

18. RESPONSIBILITY FOR SUBCONTRACTORS AND CONTRACTOR AFFILIATES

- 18.1 Notwithstanding any other provision of this Clause 18, the Contractor shall remain responsible and liable at all times for the acts and omissions of its employees, Subcontractors (including the Material Subcontractors) and Contractor Affiliates.
- 18.2 The Contractor shall use its Commercially Reasonable Efforts to ensure that all Subcontractors' equipment rental or lease agreements, software licences and/or Intellectual Property Rights, and all other (non-employment) contracts which are necessary to the performance of the Services, are assignable to the Police Force (without any transfer charge) upon the Termination of the EIU Contract and the Contractor shall notify the Police Force of the results of its efforts under this Clause 18.1.2 within one (1) month of the entry into of any such agreement with the applicable Subcontractor.

19. CONFIDENTIALITY

- 19.1 The Contractor shall abide by the provisions of the Official Secrets Acts 1911 to 1989. The Contractor shall, by display of notices or by other appropriate means, ensure that all persons engaged on any work in connection with the EIU Contract have notice that these statutory provisions apply to them and shall continue so to apply after the Termination of the EIU Contract. Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Contractor acknowledges that any Confidential Information obtained by or provided to the Contractor in relation to the EIU Contract remains the property of the Police Force, its servants or agents, operational partners or members as appropriate.
- 19.2 Each Party shall, on behalf of itself, ensure that:
- 19.2.1 it and any person employed or engaged by the relevant Party (in connection with the EIU Contract in the course of such employment or engagement) shall only use Confidential Information for the purposes of and the extent necessary, enabling it to perform (or cause to be performed) or to enforce any of its rights or obligations under the EIU Contract;
 - 19.2.2 any person employed or engaged by either the Contractor or the Police Force, as applicable, (in connection with the EIU Contract in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without the prior written consent of the other Party;

- 19.2.3 it shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of the EIU Contract by their employees, servants, agents or Subcontractors; and
- 19.2.4 without prejudice to the generality of the foregoing neither Party nor any person engaged by them whether as a servant or a consultant or otherwise shall use the Confidential Information for the solicitation of business from the other or by their servants or consultants or by any third party.
- 19.3 The Contractor shall obtain from all Subcontractors, prior to their commencing work on the Services or receiving any Confidential Information, a signed non-disclosure agreement.
- 19.4 The Contractor shall inform the Police Force of all third parties (including Subcontractors and all Contractor Personnel) to whom it intends to disclose Confidential Information and the Police Force shall have the right to veto the disclosure of Confidential Information to any such persons, and in the event of such veto being exercised by the Police Force, the Contractor shall not disclose any Confidential Information to any such vetoed person.
- 19.5 The provisions of Clause 19.2 above shall not apply to any information which:
- 19.5.1 is or becomes public knowledge other than by breach of this Clause 19;
- 19.5.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
- 19.5.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 19.5.4 is independently developed without access to the Confidential Information;
- 19.5.5 is required to be disclosed by Law or pursuant to the rules or any order having the force of law of any court, association or agency of competent jurisdiction or any government agency; or
- 19.5.6 in the case of Contractor's Confidential Information, the Police Force is obliged to disclose under the Freedom of Information Act 2000 ("FOIA") except where the Parties agree that certain specified categories of information shall be protected from disclosure under the FOIA in accordance with Clause 19.9 below.
- 19.6 Without limiting either Party's right to disclose Confidential Information as described under Clause 19.5.5 or 19.5.6 above (as applicable), prior to the either Party disclosing information pursuant to Clauses 19.5.5 and 19.5.6 above (as applicable) and as soon as it is apparent that such a disclosure may be necessary, the disclosing Party shall first contact the other Party to enable that other Party to oppose such requirement for disclosure should that Party so wish.
- 19.7 Nothing in Clause 19 of this Schedule shall be deemed or construed to prevent the Police Force from disclosing any Confidential Information obtained from the Contractor to:
- 19.7.1 any other department, office or agency of the Government (including the National Audit Office) or other entity where required for its proper departmental, parliamentary, governmental, statutory or judicial purposes provided that the Police Force shall first advise that department, office or agency of the confidentiality undertakings set out within Clause 19 of this Schedule; or

- 19.7.2 any consultant, professional adviser or other person engaged by the Police Force in connection with the EIU Contract provided that the Police Force shall first obtain confidentiality undertakings commensurate to those within Clause 19 of this Schedule. The Police Force shall notify the Contractor of the identity of such consultant, professional adviser or other person as soon as is reasonably practicable.
- 19.8 Nothing in the EIU Contract shall prevent either Party from using techniques, ideas and know-how gained during the Term in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by such Party of any Intellectual Property Right of the other Party (and for the purposes of this Clause 19.8, in the case of the Police Force, "other Party" shall include the Police Forces).
- 19.9 Nothing in the EIU Contract shall operate in any way to adversely affect any obligation and/or rights of the Police Force under the FOIA. However, the Parties may expressly agree in writing that certain specified categories of information shall be protected from disclosure under the FOIA on the grounds that disclosure of such information is likely to prejudice the commercial interests of the Contractor (or on other permissible grounds of exception from disclosure under the FOIA).
- 19.10 Without prejudice to any other rights and remedies whether under the EIU Contract or at Law, each Party agrees that damages would not be an adequate remedy for any breach of this Clause 19 and that the other Party shall be entitled to apply for the remedies of injunction, specific performance and/or other equitable relief for any threatened or actual breach of this Clause 19.
- 19.11 The obligations with respect to Confidential Information disclosed under the EIU Contract shall survive Termination of the EIU Contract and continue for as long as such information remains confidential.

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 Save as set out herein, the EIU Contract shall not be deemed to assign or otherwise transfer to any Party any Intellectual Property Rights of the other Party existing at the Effective Date. Neither Party shall contest the ownership of any such Intellectual Property Rights belonging to the other Party prior to the Effective Date.
- 20.2 For the purposes of this EIU Contract, and to the extent relevant to the EIU Contract, the rights and obligations of the Contractor and the Police Force set out in Clause 29 (**Intellectual Property Rights**) of the Contract shall apply.

21. REGULATORY AND LEGAL COMPLIANCE

- 21.1 Save to the extent the Contractor is prevented from doing so due to any applicable United States of America export laws or regulations (to the extent such laws or regulations apply to the EIU Contract) and without prejudice to Clause 21.2, the Contractor shall provide the Services consistent with regulatory requirements to which the Police Force is subject, and the Contractor shall make any necessary changes to the Services to comply with such requirements (without any increase to the EIU Service Charges). Regulatory requirements include (among others) data protection legislation, import and export restrictions and requirements imposed by UK regulatory authorities. The Contractor shall ensure that any such change shall be implemented by the Contractor so as not to have an adverse effect on, or give rise to increased inconvenience in, the receipt of the Services or cause the Services to cease to fulfil the requirements and specifications of the Police Force.

- 21.2 The Parties acknowledge that any costs relating to the compliance of any material Discriminatory Change in Law after the Effective Date shall be subject to the Change Control Procedures set out in Schedule L (**Change Control Procedure**). All other changes in Law shall be at the Contractor's cost.

22. DATA PROTECTION

- 22.1 The Parties shall each comply with their respective obligations under the DPA. Neither Party shall do any act that puts the other Party in breach of its obligations under the DPA and nothing in the EIU Contract shall be deemed to prevent any Party from taking the steps it reasonably deems necessary to comply with the DPA.

- 22.2 The Parties acknowledge that:

22.2.1 the Police Force alone shall determine the purposes for which and the manner in which Police Force Personal Data is, or is to be, processed in the performance of the Services;

22.2.2 the Police Force shall be the "**Data Controller**" (as defined in the DPA) in respect of all Police Force Personal Data; and

22.2.3 the Contractor shall be the "**Data Processor**" (as defined in the DPA) in respect of Police Force Personal Data.

- 22.3 In a manner that conforms to any time-scales set out in the DPA, and, in any event, as soon as reasonably practicable, the Contractor shall, and shall procure that any relevant Subcontractors shall, comply with any reasonable written request by the Police Force to:

22.3.1 correct or delete inaccurate Police Force Personal Data;

22.3.2 provide a copy of Police Force Personal Data relating to a "**Data Subject**" (as defined in the DPA) that is stored in any form of retrieval or storage facilities in the possession or control of the Contractor;

22.3.3 provide information about the Police Force's processing of Police Force Personal Data;

22.3.4 provide information to enable the Police Force to maintain its registration as required under the DPA;

22.3.5 assist in respect of any request or notice, or any anticipated request or notice, by or on behalf of any Data Subject in respect of Police Force Personal Data; and

22.3.6 otherwise provide reasonable assistance to the Police Force as necessary to allow the Police Force to comply with the DPA.

- 22.4 All Police Force Personal Data shall remain the property of the Police Force (which may be withheld or withdrawn by the Police Force at the Police Force's sole discretion). The Contractor shall not, without the Police Force's prior written authorisation:

22.4.1 use Police Force Personal Data for the Contractor's or Subcontractors' own purposes, including marketing purposes; or

22.4.2 transfer, disclose, assign, sell lease or otherwise provide any of Police Force Personal Data to third parties or transfer the Police Force Personal Data across any country's

border except solely to the extent such Police Force Personal Data is transferred to countries or territories within the European Economic Area or the United States of America for the sole purpose of providing the Services required under the EIU Contract.

- 22.5 The Contractor shall promptly notify the Police Force if any complaints are received about the processing of Police Force Personal Data from third parties, and the Contractor shall not make any admissions or take any action which may be prejudicial to the defence or settlement of any such complaint and shall provide to the Police Force such reasonable assistance as it may require in connection with such complaint.

22.6 DPA – Seventh Data Protection Principle

The Contractor acknowledges that it is obliged to comply with the “**Seventh Data Protection Principle**” in respect of Police Force Personal Data (as set out in the DPA) and, in particular, that it shall comply with the following obligations:

- 22.6.1 taking appropriate technical and organisational security measures (including those measures set out in Schedule D (**Detailed Operational Requirements**), Schedule K (**Security**) and in accordance with any other security requirements expressly set out in the EIU Contract) to safeguard against unauthorised and unlawful processing of Police Force Personal Data and against accidental loss or destruction of, or damage to, Police Force Personal Data. In doing so, the Contractor shall have regard to the state of technological development and cost of implementing any measures in order to comply with the legislation in determining which measures are appropriate;
- 22.6.2 only processing Police Force Personal Data in accordance with written instructions given by the Police Force, including as set out in the EIU Contract;
- 22.6.3 taking reasonable steps to check the reliability of those Contractor Personnel that have access to Police Force Personal Data;
- 22.6.4 and ensuring that all of the Contractor Personnel involved in processing Police Force Personal Data have undergone reasonably adequate training in the care and handling of Police Force Personal Data.

23. DATA LOSS

- 23.1 The Contractor shall use its Commercially Reasonable Efforts to preserve the integrity of the Police Force Data held or controlled by the Contractor pursuant to the performance of the EIU Contract and to prevent any misuse, corruption, destruction or loss of the same.
- 23.2 The Contractor shall ensure that the Police Force can recover all Police Force Data in accordance with this Clause 23.
- 23.3 The Contractor and the Police Force shall each take reasonable precautions (having regard to the nature of their other respective obligations under the EIU Contract) to preserve the integrity of the Police Force Data and to prevent any corruption or loss of the Police Force Data.
- 23.4 The Contractor shall not, without the prior written agreement of the Police Force, insert or allow the insertion into any Software of any code which would have the effect of disabling or otherwise shutting down all or any portion of the Contractor’s Solution, including during any period of Termination Assistance. For the avoidance of doubt, this Clause 23.4 is not

intended nor should be interpreted in any manner as being to prevent normal operation and maintenance activities, including prudent responses to emergency situations.

23.5 The Contractor shall not delete or remove any copyright notices contained within or relating to the Police Force Data.

23.6 As part of the Services, the Contractor shall:

23.6.1 take such steps as are necessary to ensure that, in the event of any corruption or loss of the Police Force Data howsoever caused, the Contractor is in a position to restore or procure the restoration of the Police Force Data; and

23.6.2 at the request of the Police Force in the event of any corruption or loss of the Police Force Data and without prejudice to any other remedies that may be available to it either under the EIU Contract or otherwise, restore or procure the restoration of the Police Force Data to its state immediately prior to the said corruption or loss, or, at the direction of the Police Force, the data should be restored to another state, that is technically possible, as the Police Force sees fit to specify. The Contractor shall be entitled to reasonable costs unless the corruption or loss of data was due to the Contractor's Default.

24. DISPUTE RESOLUTION PROCEDURE

The Parties shall comply with the provisions of Schedule P (**Dispute Resolution Procedure**).

25. SECURITY REQUIREMENTS

The Contractor shall comply with the Security requirements as set out in Schedule K (**Security**).

26. ACCOMMODATION / ACCESS TO PREMISES

26.1 Save where the Police Force or an MOU between the Contractor and a Police Force indicates otherwise, any Police Force Premises made available to the Contractor by the Police Force in connection with the EIU Contract shall be made available to the Contractor free of charge and such Police Force Premises shall be used by the Contractor solely for the purpose of performing the EIU Contract. The Contractor shall have the use of such Police Force Premises as licensee and shall vacate the same upon the Termination of the EIU Contract or at such earlier date as the Police Force may determine in its sole discretion, or temporarily in the event of urgent operational need. Subject to the provisions of any relevant MOU, if the Police Force requests the Contractor to vacate such Police Force Premises, reasonable additional Contractor costs resulting from the Police Force's actions shall be negotiated in accordance with Schedule L (**Change Control Procedure**), save that such costs shall be to the account of the Contractor if the Police Force's request to vacate such Police Force Premises is due to the default of the Contractor under the EIU Contract or under the terms of the relevant MOU. The Contractor shall use its Commercially Reasonable Efforts to minimise the costs incurred due to any relocation under this Clause 26.1.

26.2 Without prejudice to the terms of any MOUs or applicable security policies, the Contractor shall comply with all reasonable security requirements of the Police Force while on any and all of the Police Force Premises, and shall procure that all of its employees, agents and Subcontractor shall likewise comply with such requirements.

27. WARRANTIES AND REPRESENTATIONS

27.1 The Contractor warrants and represents that, throughout the Term of the EIU Contract:

- 27.1.1 at all times, the Contractor has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of the Contractor Parent Company) to enter into and to perform the EIU Contract and that the EIU Contract is executed by a duly authorised representative of the Contractor;
- 27.1.2 the Contractor has the full capacity and authority to grant the licences referred to in Clause 29 of Schedule B (**Conditions of Contract**) and/or shall secure such authorisation from third parties relative to their products;
- 27.1.3 the Contractor is not aware as at the Effective Date of anything within its reasonable control which might or will adversely affect its ability to fulfil its obligations under the EIU Contract;
- 27.1.4 the Contractor's signing, delivery and performance of the EIU Contract shall not constitute:
- (a) a violation or any law, judgement, order or decree;
 - (b) a material default under any material contract by which it or any of its assets are bound; or
 - (c) an event that would, with notice or lapse of time, or both, constitute such a default.
- 27.1.5 the Services shall be supplied and rendered with all due skill, care, promptness and diligence by appropriately experienced, qualified and trained personnel and executed in a professional manner;
- 27.1.6 the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause 27.1.6) in accordance with its own established internal procedures; and
- 27.1.7 the EIU Service Charges were independently established by the Contractor and proposed to the Police Force without any collusion with any third party or any employee, adviser or representative of the Police Force; and
- 27.1.8 all statements and representations made by or on behalf of the Contractor in writing or recorded in written form shared between the Parties during the procurement process were, to the best of the Contractor's knowledge and belief, true, complete and accurate at the time that they were made or given, and that by the Effective Date the Contractor advised the Police Force in writing of any material fact, matter or circumstance of which the Contractor has been aware since making such proposals or responses which would render any such statement or representation false or misleading.
- 27.2 Each warranty shall be construed as a separate warranty and shall not be limited or restricted by reference to or inference, from, the terms of any other warranty or any other terms of the EIU Contract. Except as expressly stated in the EIU Contract, all warranties and conditions, whether express or implied by statute, common-law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by Law.

28. INDEMNITIES

28.1 Indemnity by the Contractor

28.1.1 Subject always to the Police Force's proper observance of its obligations under Clause 28.2.3 to Clause 28.2.5 below (if applicable) and the provision of Clause 29.6 below, the Contractor shall indemnify, defend and hold the Police Force, its respective officers, directors, employees, successors and assignees harmless from and against any Losses (including, where applicable, Losses resulting from Claims brought by third parties) arising from or in connection with any of the following:

- (a) any Claim by a third party that the performance or receipt of the Services (except in so far as it relates to Police Force Software or Police Force Material or the Claim is based on or attributable to the fact that the Police Force has Modified the Contractor Software, Contractor Material, or Work Product contrary to the terms such Contractor Software, Contractor Material or Work Product is provided to the Police Force under the EIU Contract), any Contractor Software, any Contractor Material, any Work Product or any other resource provided or used by the Contractor or by any Subcontractor or other third party on behalf of the Contractor in performing the Services, or the possession, use, Modification, reproduction or exploitation of any of the same by or on behalf of the Police Force in the intended manner actually or allegedly infringes a third party's Intellectual Property Rights, moral rights or rights in respect of its confidential information;
- (b) any Claim by a third party that any Police Force Software or Police Force Material infringes a third party's Intellectual Property Rights if the Claim is based on or attributable to the fact that the Contractor or any Subcontractor has Modified, or has had Modified by a third party, any of the Police Force Software or Police Force Material, or has used, Modified, reproduced or exploited Police Force Software or Police Force Material in contravention of any term or condition that the Police Force has disclosed to the Contractor;
- (c) any fine or penalty imposed by Law arising as a result of any Default by the Contractor;
- (d) compensation and interest paid to a third party due to a Default by the Contractor;
- (e) any Default committed by the Contractor, or by any Subcontractor, or by Contractor Personnel in respect of the Contractor's confidentiality obligations under the EIU Contract;
- (f) death or personal injury caused by a negligent act or omission of the Contractor or any of Subcontractors where the Contractor or any of the Subcontractors is legally liable or responsible for that death or personal injury;
- (g) loss or damage to real or tangible personal property belonging to a third party, where the Contractor or any of the Subcontractors is legally liable or responsible for that loss or damage;
- (h) any Claim for damages or compensation payable to any person employed by the Contractor or any of its Subcontractors where the Contractor or any of the Subcontractors is legally liable or responsible for that loss or damage;
- (i) any Claim by third parties arising out of any wilful, deliberately or intentionally wrongful, negligent or reckless act or omission of the Contractor which causes any breach by the Police Force of any of its statutory duties;

- (j) any Claim by third parties arising out of any act or omission of the Contractor which causes any breach by the Police Force of any of its duties under the DPA; and
- (k) without prejudice to Clause 28.1.1 above, any reasonably foreseeable Loss or Claim by third parties in connection with the loss or corruption or any of the data held or controlled by the Contractor in connection with the Services, whether arising out of the act, neglect or omission of the Contractor, employees, personnel, agents, contractors, Subcontractors or otherwise

28.2 Indemnity by the Police Force

28.2.1 Subject always to the Contractor's proper observance of its obligations under Clause 28.2.3 to Clause 28.2.5 below (if applicable) and the provision of Clause 29.6 below, the Police Force shall indemnify, defend and hold the Contractor and its respective officers, directors, employees, successors, and assignees harmless from and against any Losses arising from or in connection with any of the following:

- (a) any Claim by a third party that any Police Force Software or Police Force Material provided to or used or reproduced by or on behalf of the Contractor under the EIU Contract, in the intended manner, infringes a third party's Intellectual Property Rights or right of that third party in respect of its confidential information, unless such Claim is based on or attributable to the fact that the Contractor has Modified the same, or has had the same Modified by a third party;
- (b) death or personal injury caused by negligent act or omission of the Police Force where the Police Force is legally liable or responsible for that death or personal injury;
- (c) any fine or other penalty imposed by Law on the Contractor arising as a result of any breach by the Police Force of the EIU Contract;
- (d) any Default by the Police Force in respect of its confidentiality obligations under the EIU Contract; and
- (e) any Claim by third parties arising out of any act or omission of the Police Force which causes any breach by the Contractor of any of its duties under the DPA.

28.2.2 The Contractor's liability to the Police Force under the indemnities referred to in Clause 28.2.1 of this Schedule and the indemnities set out elsewhere in the EIU Contract shall be without prejudice to any other right or remedy available to the Police Force.

28.2.3 Anticipation of Infringement

- (a) If any item or component used by the Contractor to provide the Services becomes, or in either Party's reasonable opinion is likely to become, the subject of an infringement or misappropriation Claim, the Contractor shall, in addition to its obligation to indemnify the Police Force (and in addition to the other rights the Police Force may have under the EIU Contract) promptly at the Contractor's expense, and in relation to Clause 28.2.3(a) and 28.2.3(b) below at the Contractor's sole discretion:

- (i) use its Commercially Reasonable Efforts to secure the right to continue using the item on terms which are reasonable acceptable to the Police Force, such acceptance not to be unreasonably withheld; or
- (ii) replace or Modify the item to make it non-infringing, provided that any such replacement or Modification shall not degrade the performance or quality of the affected component of the Services; or
- (iii) if, and only if, the Contractor cannot comply with either Clause 28.2.3(a) or Clause 28.2.3(b) above, the Contractor shall remove the item from the Services and the EIU Services Charges shall be refunded to the Police Force or reduced to reflect that removal.

28.2.4 Enforcement of Indemnities

It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by the EIU Contract.

28.2.5 Indemnification Procedures

- (a) Each Party shall notify the other in writing as soon as it knows or becomes aware of any event arising in connection with the EIU Contract which it believes may give rise to a Claim under the provisions of the indemnity obligations in the EIU Contract.
- (b) Each Party shall promptly notify the other Party if any Claim or demand is made or action brought against the first mentioned Party to which the above may apply. The indemnifying Party shall at its own expense conduct any litigation and/or any negotiations arising there from and shall have the exclusive right to defend, conduct and settle all claims or proceedings in connection therewith provided that where there is an impact upon the indemnified Party, the indemnifying Party shall consult with the indemnified Party and provided further that an indemnifying Party shall not settle such claim or demand without the indemnified Party's consent unless the settlement incorporates an absolute release of the indemnified Party from all liability in connection with such claim or demand.
- (c) The indemnified Party shall at the request of the indemnifying Party afford to the indemnifying Party all reasonable assistance for the purpose of contesting any Claim or demand made or action brought against the indemnified Party to which the above may apply. The indemnifying Party shall reimburse the indemnified Party for all reasonable costs and expenses (including but not limited to legal costs and disbursements) incurred in so doing.
- (d) The indemnified Party shall not make any admissions which may be prejudicial to the defence or settlement of any Claim, demand or action in connection with any indemnities given in the EIU Contract.

29. LIABILITY AND LIMITATION OF LIABILITY

29.1 Liability Cap for this EIU Contract

Subject to Clauses 29.3 (overall liability cap), 29.5 and 29.6 below, the annual aggregate liability of either Party to the other (including the Direct Loss of the Police Forces as set out in Clause 29.4 below) for any Loss relating to or arising in

connection with the EIU Contract, and whether based on an action or claim in contract, equity, negligence, intended conduct, tort or otherwise shall be limited per annum to the greater of:

29.1.1 the previous 12 month's EIU Service Charges paid or payable by the Police Force under the EIU Contract immediately preceding the time at which the Direct Loss occurred; or

29.1.2 £500,000 (five hundred thousand pounds).

29.2 Property Loss

29.2.1 Notwithstanding the liability cap set out in Clause 29.1 above but subject to overall liability cap in Clause below, Losses relating to real or tangible property shall be limited per annum to the greater of:

(a) the previous 12 months Service Charges paid or payable by the Police Force under the EIU Contract immediately preceding the time at which the property Loss occurred; or

(b) £5 million pounds.

29.3 Overall Liability Cap

29.3.1 Subject to the exclusion set out in Clause 29.6 below, the Contractors total liability per annum under all EIU Contracts shall not exceed the Liability Cap referred to in Clause 41 of Schedule B (**Conditions of Contract**).

29.4 Direct Loss of the Police Forces

Any action by the Police Force for any Direct Loss suffered in connection with the Services shall be conducted by the Authority on behalf of the Police Force in accordance with Clause 41.2 of Schedule B (**Conditions of Contract**) and shall be subject to the limitations set out in this Clause 29.

29.5 Consequential Loss

Subject to Clause 29.4 above, neither Party shall be liable for indirect or consequential loss or damage. Nothing in this Clause 29 shall affect the Police Force's rights under Clause 41 of Schedule B (**Conditions of Contract**).

29.6 Exclusions

29.6.1 The Liability Cap shall not apply to, and each Party accepts unlimited liability for any Direct Losses suffered or incurred by the other Party (the "**Aggrieved Party**") resulting from:

(a) death or personal injury caused by the negligent acts or omissions of either Party, its employees, agents or subcontractors;

(b) any breach of 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 any subsequent amendment or replacement thereof);

(c) any Claim for which the Contractor must indemnify pursuant to Clause 28.1.1(a) (Services/Contractor Software/Contractor Material/Work Product

and Intellectual Property Rights) above; Clause 28.1.1(b) (Police Force Software/Police Force Material and Intellectual Property Rights) above; Clause 28.1.10 (Confidential Information) above; and Clause 28.1.10 (death and personal injury) above;

- (d) any Claim for which the Police Force must indemnify pursuant to Clauses 28.2.128.2.1(a) (Intellectual Property Rights), 28.2.128.2.1(b) (death or personal injury) and 28.2.128.2.1(d) (Confidential Information) above;
- (e) any fraudulent pre-contractual misrepresentation made by either Party upon which the other Party can be shown to have relied;
- (f) any Claim for fraud or other criminal acts;
- (g) any Losses suffered by the Aggrieved Party resulting from an intentional or wilful act or omission of the Party amounting to misconduct;
- (h) any Default by the Contractor in respect of its obligations under Schedule K (**Security**);
- (i) the wrongful Termination, repudiation or abandonment of the EIU Contract in whole or in part; or
- (j) any other liability which cannot be excluded by Law.

29.7 Misrepresentation

29.7.1 Save as provided in this Clause 29.7 and without prejudice to the warranties set out in Clause 27 of this Schedule, neither Party shall have any remedy in respect of any untrue statement (whether written or oral) made to it upon which it relied in entering into the EIU Contract and which is not expressly incorporated into the EIU Contract ("**Misrepresentation**") and neither Party shall have any liability to the other Party other than pursuant to the express terms of the EIU Contract.

29.7.2 Nothing in the EIU Contract shall exclude or limit either Party's liability for any fraudulent Misrepresentation.

29.8 Duty to Mitigate

Each Party shall have a duty to mitigate Losses for which the other Party is responsible.

29.9 Increase of the EIU Service Charges

The Contractor acknowledges that in the event that the EIU Service Charges paid or payable by the Police Force significantly increase at any time during the Term, the Contractor agree to discuss, in good faith with the Authority, an upwards adjustment to the Liability Cap set out in Clause 29.1.2 above.

30. TERMINATION

30.1 Police Force's Right to Terminate

30.1.1 The Police Force may at any time by notice in writing terminate the EIU Contract (in whole or in part) as from the date of service of such notice if:

- (a) the Contractor commits a material Default of the EIU Contract and the Contractor shall have failed to remedy such material Default within thirty (30) days of notice by the Police Force (or such longer period if agreed by the Parties);
 - (b) the material Default is not capable of being cured;
 - (c) the Contractor commits repeated Defaults of its duties or obligations under the EIU Contract, the cumulative effect of which shall be deemed to be a material Default of the EIU Contract, and the Contractor shall have failed to remedy such material Default within thirty (30) days of notice by the Police Force (or such longer period if agreed by the Parties);
 - (d) the Contractor becomes Insolvent;
 - (e) if a Force Majeure Event occurs and the Police Force exercises its option to terminate the EIU Contract in accordance with Clause 33.3.3 below;
 - (f) there is a Change of Control of the Contractor or the Contractor Parent Company, which in the Police Force's reasonably opinion is to the Police Force's detriment or is likely to be to the detriment of the Police Force;
- 30.1.2 the Police Force, by giving written notice to the Contractor, may terminate the EIU Contract for convenience (in whole or in part) at any time during the Term, as of the date specified in the notice of Termination. For the avoidance of doubt, any removal of Services/Bureaux or Police Forces as described in Clause **Error! Reference source not found.** (?) of Schedule B (**Conditions of Contract**) shall not be deemed a termination for convenience under this Clause 30.1.2.

30.2 The Contractor's Right to Terminate For Payment Disputes

- 30.2.1 The Contractor shall not be entitled to terminate the EIU Contract if there is a dispute between the Parties in respect of any invoice payable under the EIU Contract. Due to the reliance by the Police Force on the Services, the Contractor shall not be permitted to terminate the EIU Contract unless the Police Force fails to pay an undisputed valid invoice for the relevant EIU Service Charges within ninety (90) days of the due date in accordance with Clause 30.2.2 below.
- 30.2.2 The Contractor shall not terminate the EIU Contract in accordance with Clause 30.2.1 above unless the Contractor has give the Police Force:
- (a) a further ninety (90) days of notice of the Police Force's failure to make such payment; and
 - (b) a further written notice to the notice in Clause 30.2.20 above to the Police Force of not less than fourteen (14) days prior to the expiry of such ninety (90) days.
- 30.2.3 The Contractor acknowledges and agrees that failure by the Police Force to pay an undisputed valid invoice, as described in Clause 30.2.1 above, is the only ground upon which the Contractor may terminate the EIU Contract.

31. CONSEQUENCES OF TERMINATION

31.1 Termination

In the event that the EIU Contract is Terminated as provided for herein, the following provisions shall apply:

31.1.1 Default of the Contractor / Termination under Clause 30.1.1 of this Schedule: where Termination is due to the Default of the Contractor as identified in Clause 30.1.1 above or as otherwise set out in Clause 30.1.1 above (save for Termination due to a Force Majeure Event which is subject to Clause 31.1.3 below):

- (a) the Contractor shall repay forthwith to the Police Force all EIU Service Charges paid up to and including such Termination Date other than EIU Service Charges in respect of any Services or part thereof properly performed in accordance with the EIU Contract;
- (b) subject to Clause **Error! Reference source not found.** above, the Police Force shall not have any liability to the Contractor for the period after and from the Termination Date; and
- (c) the Police Force shall be entitled, at its option, to:
 - (i) if appropriate, buy the EIUs for the Fair Market Value of such EIUs as calculated in accordance with the formula in Schedule T (Assets); or
 - (ii) refuse to buy the EIUs and in such event, the Police Force shall not have any liability to the Contractor for the period after and from the Termination Date;

31.1.2 Termination for Convenience by the Police Force/Police Force Default: subject to Clause 31.1.4 below, where Termination is due to the Police Force terminating for convenience in accordance with Clause 30.1.2 above or the Termination is due to the Contractor terminating in accordance with Clause 30.2 above, any liability of the Police Force to the Contractor arising under Clauses 31.1.21.2(a), 31.1.2 and 31.1.2(b) below shall be paid by the Police Force to the Contractor. The Parties shall calculate if any, cash amount needs to be paid by the Police Force to the Contractor, in addition to the sums paid under Clauses 31.1.2(a), 31.1.2(b), and 31.1.2(b) below, to restore (but not exceed) the Contractor's IRR as set out in Schedule E (**Pricing**) at the Effective Date. Such calculation shall determine the Contractor's projected expenditure and projected revenues (as identified in Schedule E (**Pricing**)) under the EIU Contract up to the date of Termination, and the Contractor's obligation to make expenditure after the date of Termination shall be deducted from such calculation. The Police Force's liability to the Contractor under Clause 31.1.2(a), 31.1.2(b), and 31.1.2(b) below is as follows:

- (a) the Police Force shall be liable to the Contractor for any reasonable Subcontractor break costs actually incurred by the Contractor that arise due to the Police Force terminating for Convenience or the Contractor terminating for the Police Force's default in accordance with Clause 30.2 above (as applicable), save that in the case of a Material Subcontractor(s), liability under this Clause 31.1.2(a) shall not arise unless the Contractor has already complied with Clause 18 above;
- (b) the Police Force shall, if relevant and appropriate, be entitled to buy the EIUs (and the Contractor shall sell such EIUs to the Police Force) for the Fair Market Value of such EIUs as calculated in accordance with the formula in Schedule T (**Assets**);

- 31.1.3 **Termination for Force Majeure:** where Termination is due to a Force Majeure Event, the Police Force shall be entitled, at its option, to:
- (a) if appropriate, buy the EIUs (and the Contractor shall sell such EIUs to the Police Force) for the Fair Market Value of such EIUs as calculated in accordance the formula in Schedule T (**Assets**) or;
 - (b) refuse to buy the EIUs and in such event, the Police Force shall not have any liability to the Contractor for the period after and from the Termination Date;
- 31.1.4 if the Police Force terminates for convenience in accordance with Clause 30.1.2 above or the Contractor terminates for the Police Force's default in accordance with Clause 30.2 above (as applicable), the Contractor shall:
- (a) cancel all capital and recurring costs and commitments in connection with the provision of the Services;
 - (b) without prejudice to the obligations of the Contractor under Clause 18 above, terminate all contracts with its Subcontractors in connection with the provision of the Services on the best possible terms which can reasonably be negotiated; and
 - (c) reduce labour costs by the redeployment or release of staff; and
- in the event that the Contractor does not take any of the actions described in this Clause 31.1.4, the Police Force shall not pay any sums in excess of those which the Police Force would have paid, had such actions been taken by the Contractor;
- 31.1.5 the Contractor shall deliver up to the Police Force or destroy, at the sole discretion of the Police Force, all property owned by the Police Force, including but not restricted to the Police Force Data and the Police Force Personal Data, in its possession; and
- 31.1.6 the Contractor shall use all Commercially Reasonable Efforts to assign or novate in favour of the Police Force or to any person or Successor Contractor as may be designated for the purpose by the Police Force all relevant resources, including any equipment leases, third party hardware, network services, maintenance agreements, support agreements as the Police Force may designate which are relevant and necessary for the provision of the Services including agreements relating to the Third Party Software, Third Party Material, and the Work Product.
- 31.2 The Contractor shall use Commercially Reasonable Efforts to mitigate the amount of any sums payable by the Police Force under Clause 31.1 above.
- 31.3 The Parties acknowledge and agree that in respect of any Termination under the EIU Contract, each Party's total liability arising from such Termination shall be limited to the amounts payable by the relevant Party under Clauses 31.1.1, 31.1.2, and 31.1.3 above (as applicable).
- 31.4 The Termination of the EIU Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.
- 31.5 All terms of the EIU Contract (including the applicable provisions of Schedule N (**Exit Strategy**)) shall continue to have full force and effect for as long as is necessary to protect the interests of either Party.

32. THE POLICE FORCE'S FAILURE TO PERFORM ITS OBLIGATIONS

- 32.1 Save as otherwise set out in Clause 30.2.1 above, the failure by the Police Force to perform any of its responsibilities set forth in the EIU Contract shall not be deemed to be grounds for Termination by the Contractor provided, however, that the Contractor's non-performance of its obligations under the EIU Contract shall be excused (and the Contractor shall have no obligation to pay Service Credits in respect thereof) if and to the extent that such non-performance by the Contractor results from the failure by the Police Force to perform its responsibilities and obligations under the EIU Contract.
- 32.2 Without prejudice to the provisions of Clause 32.1 above, the Contractor agrees to provide the Police Force with written notice within five (5) working days from the date the Contractor knows (or reasonably should have known) of such non-performance by the Police Force and agrees to use Commercially Reasonable Efforts to perform, to the extent possible, the Services to be performed by the Contractor notwithstanding the failure by the Police Force to perform its responsibilities and obligations under the EIU Contract.
- 32.3 The Police Force agrees to pay the Contractor for any additional reasonable and actual expenses over and above the EIU Service Charges, incurred as a result of the Contractor complying with Clause 32.2 of this Schedule.
- 32.4 In the event of any delay arising due to the Police Force's failure to perform any of its responsibilities as described in Clause 32.1 above, both Parties shall use all reasonable endeavours to mitigate the impact of such delay and the Parties shall discuss if any change is required to be made to any affected plan or timetable as a result of such delay.

33. FORCE MAJEURE

- 33.1 Save to the extent the Contractor is under an obligation to provide the Disaster Recovery Services set out in Schedule D (**Detailed Operational Requirements**) and subject to Clause 33.3 below, neither Party shall be liable for any Default or delay in performance of its obligations under the EIU Contract if and to the sole extent the Default or delay is caused, directly or indirectly, by a Force Majeure Event, but in each case only if and to the sole extent that the non-performing Party is without fault in causing the Default or delay, and the Default or delay could not have been prevented by reasonable precautions.

33.2 Actions upon Force Majeure Event Occurring

Upon the occurrence of a Force Majeure Event, the defaulting Party shall:

- 33.2.1 immediately notify the other Party of the occurrence of the Force Majeure Event, describe, at a reasonable level of detail, the circumstances causing such delay of performance and give an estimate of when performance will recommence; and
- 33.2.2 use Commercially Reasonable Efforts to perform (or recommence performing) its obligations as soon as, and to the extent, possible, including the use of alternative sources, workarounds, and plans.
- 33.3 If a Force Majeure Event substantially prevents or delays the Contractor's performance necessary for the performance of a function reasonably identified by the Police Force as critical for more than 3 consecutive days, then without limiting any other rights of the Police Force, the Police Force may at its option:
- 33.3.1 direct the Contractor to procure that function from a third party service provider, in which case the Contractor shall be liable for payment for the provision of those

Services by the third party service provider for as long as the delay in performance continues; and

- 33.3.2 remove the affected function from the scope of the EIU Contract without any increase in EIU Service Charges for the remaining Services; or
 - 33.3.3 terminate the EIU Contract in whole or in part, without liability to the Police Force as of a date specified by the Police Force in a written notice of Termination to the Contractor and the provisions of Clause 30 of this Schedule shall apply.
- 33.4 The Contractor shall not have the right to any additional payments from the Police Force as a result of any Force Majeure Event or the performance of its obligations under this Clause 33.
- 33.5 The failure of any of the Subcontractors to perform any obligation owed to the Contractor shall only constitute a Force Majeure Event with respect to the Contractor's performance of the Services if and to the sole extent that the failure by the Subcontractor is itself caused by a Force Majeure Event.
- 33.6 For the avoidance of doubt, nothing in this Clause 33 shall affect the Contractors obligations to provide the Disaster Recovery Services described in Schedule D (**Detailed Operational Requirements**) or any disaster recovery services that the Contractor has agreed to provide to the Police Force or the Police Forces under any agreement for such disaster recovery services.

34. HEALTH AND SAFETY

- 34.1 Nothing in the EIU Contract shall release either Party from their obligations under any requirements of Law in relation to health and safety to provide prior written notice of any health or safety hazards associated with equipment, material or other substances supplied by either Party, or facilities used in the performance of work under the EIU Contract.
- 34.2 The Contractor shall notify the Police Force of any health and safety hazards which may arise in connection with the performance of the EIU Contract.
- 34.3 The Police Force shall notify the Contractor of any health and safety hazards which may exist or arise at the Police Force Premises and which may affect the Contractor. The Contractor shall draw these hazards to the attention of its employees and Subcontractors or any persons engaged by the Contractor in the performance of the EIU Contract at the Police Force Premises.
- 34.4 The Police Force reserves the right to exclude from the Police Force Premises any employee or agent or representative of the Contractor on safety grounds.
- 34.5 The Contractor warrants that any equipment, materials or other substances which it requires to bring on to the Police Force Premises, or is required to provide, for the purposes of the EIU Contract, are not a safety hazard.
- 34.6 The Police Force reserves the right to inspect such equipment, materials or other substances and to refuse them entry to the Police Force Premises if it considers them to be unsafe or pose unacceptable risks of injury or damage to persons or property. Neither Party shall be liable to the other for any additional costs or delays to the EIU Contract resulting from any decision under this condition.
- 34.7 The Contractor shall inform all persons engaged in the performance of the EIU Contract at the Police Force Premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

35. CORRUPT GIFTS AND PAYMENTS OF COMMISSION**35.1** The Contractor shall neither:

35.1.1 offer or give or agree to give any person employed by the Police Force any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of the EIU Contract or any other agreement with the Police Force or for showing or forbearing to show favour or disfavour to any person in relation to the EIU Contract; nor

35.1.2 enter into the EIU Contract if in connection with it commission has been paid or agreed to be paid to any person employed by the Police Force or acting on its behalf by the Contractor or on the Contractor's behalf or to the Contractor's knowledge, unless before the EIU Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Police Force.

35.2 In the event of any breach of this Clause 35 by the Contractor or by anyone employed by the Contractor or acting on the Contractor's behalf, including Subcontractors, (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by the Contractor or acting on behalf of the Contractor under the Prevention of Corruption Acts, 1889 to 1916 in relation to the EIU Contract or any other contract with the Police Force, the Police Force may summarily terminate the EIU Contract for material Default in accordance with Clause 30.1.1 above by notice in writing to the Contractor. Provided always that such Termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Police Force and provided always that the Police Force may recover from the Contractor the amount or value of any such gift, consideration or commission.

35.3 The decision of the Police Force shall be final and conclusive in any dispute, difference or question arising in respect of:

35.3.1 the interpretation of this Clause 35 (except so far as the same may relate to the amount recoverable from the Contractor under Clause 35.2 in respect of any loss resulting from such Termination of the EIU Contract); or

35.3.2 the right of the Police Force under this Clause 35 to terminate the EIU Contract; or the amount or value of any such gift, consideration or commission.

36. NOTICES

36.1 Notices given under the EIU Contract shall be in writing in the English language and made by an authorised officer of the Police Force or the Contractor as the case may be. The Parties shall, from time to time, provide each other with a list of personnel designated as "authorised officers".

36.2 Notices issued pursuant to Clause 36.1 shall be addressed to:

36.2.1 **for The Police Force:**

(a) for commercial matters:

TBC

Telephone:

Fax:

E.mail:

(b) for all technical matters affecting the EIU Contract:

TBC

Telephone:

Fax:

E.mail:

36.2.2 **for the Contractor:**

(a) for commercial matters:

Karen Hatcher, Northrop Grumman Information Technology Inc., Mail Station FP1/6190, 12900 Federal Systems Park Drive, Fairfax, VA 22033 USA.

Telephone: +1.703.968.1871

Fax: +1.703.968.1633

E.mail: Karen.hatcher@ngc.com

(b) for all technical matters affecting the EIU Contract:

Rodney Forry, Program Manager, Northrop Grumman Information Technology Inc., Mail Station FP1/6189, 12900 Federal Systems Park Drive, Fairfax, VA 22033 USA.

Telephone: +1.703.803.-5534

Fax: +1.703.968.1633

E.mail: Rodney.forry@ngc.com

and such address of either Party may be altered by notice given in accordance with Clause 36.1 above and this Clause 36.2.

36.3 A notice given in accordance with Clauses 36.1 and 36.2 above; shall deemed to be received:

36.3.1 if left at the recipient's address during normal business hours, on the date of delivery;

36.3.2 if sent by prepaid registered post, two (2) days after the date of posting;

36.3.3 if sent by an express courier with a reliable system for tracking delivery, on the date of delivery to the recipient; and

36.3.4 if sent by fax or electronic mail to the fax number or electronic mail address specified below (as may be altered by giving notice in accordance with this Clause 36) during normal business hours, and provided that a confirmation copy is sent by the Party giving notice in accordance with a method specified above, upon receipt as evidenced by production of a satisfactory transmission report by the fax machine which sent the fax or receipt by the notifying Party of a confirmation of receipt report in respect of

the electronic mail sent, as appropriate, or if outside the normal business hours of the recipient, then at the beginning of the recipient's next working day.

37. GENERAL PROVISIONS

- 37.1 Save as otherwise expressly stated in the Contract, the Contractor may not assign, novate or otherwise transfer its rights or transfer its obligations under the EIU Contract without the prior written consent of the Authority.
- 37.2 The Police Force shall be entitled to:
- 37.2.1 assign, novate, or otherwise transfer its rights or obligations under the EIU Contract or any part thereof to any contracting authority (as defined in Regulation 3(1) of the Public Services Contracts Regulations 1993, as amended) (a **"Contracting Police Force"**) provided that any such assignment, novation or transfer shall not increase the burden of the Contractor's obligations pursuant to the EIU Contract; or
- 37.2.2 novate the EIU Contract to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by any Contracting Police Force.
- 37.3 Notwithstanding the provisions of Clause 19 of this Schedule, in the event of an assignment, novation or transfer (as applicable) pursuant to Clauses 37.1 or 37.2 above, the Police Force shall be entitled to disclose to any transferee any Confidential Information of the Contractor which relates to the performance of the Services by the Contractor or their replacement or successors. In such circumstances, the Police Force shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Services.
- 37.4 Any change in the legal status of the Police Force shall not affect the validity of the EIU Contract. In such circumstances, the EIU Contract shall bind and inure to the benefit of any successor body to the Police Force.
- 37.5 Except with the written consent of the other Party neither Party shall make any press announcements or publicise the EIU Contract in any way, such consent shall not be unreasonably held or delayed. Both Parties shall take all reasonable steps to ensure the observance of the provisions of this Clause 37.5 by all their servants, employees, agents and consultants. The Police Force shall be entitled to publicise the EIU Contract in accordance with any legal or quasi legal obligation upon the Police Force, including any examination of the EIU Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.
- 37.6 In the event of there being a change to any statutes, enactments, orders, regulations or other similar instruments where any such change necessitates a change to the Services as specified in Schedule D (**Detailed Operational Requirements**), the Parties shall enter good faith negotiations to make such adjustments to the EIU Service Charges as may be necessary to compensate the Contractor for such additional costs as are both reasonably and necessarily incurred by the Contractor in accommodating such changes.
- 37.7 Save as provide in Clause **Error! Reference source not found.(?)** of the Contract, a person who is not a Party to the EIU Contract has no right to under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the EIU Contract save that the Contractor acknowledges that the Police Force shall enter into the EIU Contract for the benefit of the Police Forces and such Police Forces shall be third party beneficiaries under the EIU Contract. For the avoidance of doubt, the Police Forces shall have the right to enforce any term of the EIU Contract pursuant to the Contracts (Rights of Third Parties) Act 1999. The

Police Force and the Contractor may agree to rescind or vary the EIU Contract without the consent of the Police Forces or any other third party.

37.8 Independent Contractor and Relationship between the Parties

37.8.1 The Contractor, in providing the Services, shall be acting as an independent contractor. Nothing in the EIU Contract, including references to “partnership”, shall create any relationship of agent and principal, partnership, or employer and employee between the Parties or between one of the Parties and the other Party’s personnel, agents, employees or subcontractors.

37.8.2 Nothing in the EIU Contract shall give either Party any authority to act or make representations or commitments on behalf of the other Party or to create any contractual liability to a third party on behalf of the other Party.

37.9 Electrical Requirements

37.9.1 Where the Police Force is providing Premises in accordance with that specified in the Order:

- (a) the Contractor shall be responsible for the electrical connections to be made to the EIU Services in accordance with the provisions specified in the Order;
- (b) the Police Force shall make available the Electricity Supply in accordance with the Order;
- (c) the Contractor warrants that the EIU Services shall function on the Electricity Supply in accordance with the provisions of this Order.

37.9.2 The Contractor warrants that the system when operating shall not cause electrical interference beyond the limits laid down in the relevant standard specified in the Order. For the purpose of this Clause 37.9.2 the system shall be deemed to include any testing and monitoring instruments supplied under this Order.

37.10 Damage to Plant, Tackle and Tools

37.10.1 All plant, tackle and tools at the Premises provided by or on behalf of the Contractor shall stand at the risk and be in the sole charge of the Contractor unless damaged due to the negligence of the Police Force.

37.10.2 The Contractor shall be required to remove all such plant, tackle and tools which it brings to the Premises.

37.10.3 The Contractor shall ensure that all such plant, tackle and tools shall meet minimum safety standards required by law.

37.11 Amendments and Variations

The EIU Contract Terms and Conditions shall not be varied or amended unless such variation or amendment is agreed in writing by duly authorised representatives of the Authority and the Contractor.

37.12 Entirety of EIU Contract

The EIU Contract constitutes the entire agreement between the Parties as to its subject matter; and in relation to that subject matter, and, in the absence of fraud, supersedes any prior

warranties, indemnities, undertakings, conditions, understanding, commitments or agreements between the Parties, whether oral or written.

37.13 Governing Law

37.13.1 The construction, performance and validity of the EIU Contract shall be governed by English law.

37.13.2 Subject to Clause 19 above and the procedures set out in Schedule P (**Dispute Resolution Procedure**) (to the extent such procedures are applicable), the Parties irrevocably agree that the courts of England shall have, and the Parties shall submit to, the exclusive jurisdiction of the courts of England to settle any disputes which may arise out of or in connection with the EIU Contract and that accordingly any proceedings arising out of or in connection with the EIU Contract shall be brought in such courts located in London, England and the Parties waive any objection to proceedings in any such courts on the ground of venue or on the ground that the proceedings have been brought in an inconvenient forum.

37.13.3 For the purposes of serving any Claims, proceedings or notices on the Contractor in connection with the EIU Contract, the Contractor hereby irrevocably appoints the Company Secretary of Northrop Grumman Information Overseas, Inc. (a company registered in England and Wales as an overseas company under Company Number: FC018485) to accept service of such Claims, proceedings, or notice on behalf of the Contractor at the following branch address in the UK:

Company Secretary of Northrop Grumman Information Overseas, Inc, Northrop Grumman Mission Systems International, Inc., 16 Charles II Street, London SW1Y 4QU.

37.13.4 Solely for the purposes of providing the Contractor with a copy of any Claims, proceedings or notices served under Clause 37.13.3 above, the Police Force shall, at the same time of serving any Claims, proceedings or notices under Clause 37.13.3 above, send a copy of such Claims, proceeding or notices to the person responsible for commercial matters at the address set out in Clause 36.2.20 above.

37.14 No delay, neglect or forbearance on the part of either Party in enforcing against the other Party any term or condition of the EIU Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that Party under the EIU Contract.

37.13 If any provision of the EIU Contract 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 the EIU Contract had been executed with the invalid provisions eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the EIU Contract, the Police Force and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

APPENDIX A - EIU CONTRACT**EIU SERVICE DESCRIPTION**

[Note: If Livescan is the EIU Service, then use the “Livescan Service Description” in Annex R-2 below and incorporate those provisions in this Annex A. If a different EIU Service, then the relevant service description will need to be agreed with the Police Force via Schedule L (Change Control Procedures).]

APPENDIX B - EIU CONTRACT**EIU SERVICE LEVELS**

[Note: If Livescan is the EIU Service, then use the Livescan Service Levels identified in Schedule F (Service Level Requirements) of the IDENT1 EIU Contract. If a different EIU Service, the service levels required will need to be agreed with the Police Force via Schedule L (Change Control Procedures).]

APPENDIX C – EIU CONTRACT**EIU PRICING**

[Note: If Livescan is the EIU Service, then use the Livescan pricing identified in Schedule E (Pricing) of the IDENT1 EIU Contract. If a different EIU Service, the pricing will need to be agreed with the Police Force via Schedule L (Change Control Procedures).]