

# TERMS & CONDITIONS

## PART A – GENERAL

### • DEFINITIONS AND INTERPRETATION

1.1 In the terms and conditions of the Contract, unless the context otherwise requires, the following expressions shall have the following meanings:

“ACPO”	means the Association of Chief Police Officers;
“Affiliate”	means Gough & Kelly Security Limited (company number 04792830) whose registered office is at Unit 2, Railsfield Mount, Bramley, Leeds, W Yorkshire LS13 3AX;
“Charges”	means the charges payable by the Customer, under the Contract;
“Contract Hourly Rate”	means the per person contract hourly rate as notified by G&K to the Customer in writing from time to time;
“Contract”	means a contract between G&K and the Customer, in relation to the supply of Equipment and/or the System Installation Service and/or the Maintenance Service and/or the Rental Service and/or Monitoring Service and/or Miscellaneous Services, as evidenced by: (i) signature of the Quotation by the Customer; or (ii) the Customer issuing a purchase order; or (iii) G&K issuing an acknowledgement of order;
“Customer”	means the party to the Contract detailed in the Quotation;
“Equipment”	means the equipment (which shall include software) detailed in the Quotation and/or Project Documentation;
“Expenses”	means all travel, accommodation and sustenance expenses incurred by G&K in its performance of the Contract;
“Force Majeure Event”	means any act of government or state, civil commotion, epidemic, fire, flood, industrial action or organised protests by third parties, natural disaster, war, failure of electronic systems, damage to or failure of any third party’s computer equipment, software, connectivity, network or telecommunications systems, or any event beyond the reasonable control of the party claiming to be excused from performance of its obligations;
“G&K”	means Gough & Kelly Limited (company number 02274521) whose registered office is at Unit 2, Railsfield Mount, Bramley, Leeds, W Yorkshire LS13 3AX or the Affiliate as appropriate;
“Maintenance Service”	means the service detailed in the Quotation and/or Project Documentation;
“Miscellaneous Services”	means all services provided by G&K including (but not limited to) static security, man guarding, mobile security patrols, key holding and alarm response <b>except</b> the Monitoring Service, the System Installation Service, the Rental Service and the Maintenance Service;
“Minimum Term”	means the minimum term of the appropriate service as detailed in the Quotation;
“Monitored System”	means the CCTV or alarm system to be monitored which may or may not be a System or include Equipment;
“Monitoring Service”	means the service detailed in the Quotation;
“Normal Working Hours”	means 8:00am till 4:30pm and Monday to Friday, excluding weekends and statutory bank holidays;
“Payment Terms”	means the payment terms detailed in the Quotation;

“Proposal”	means the pre-contract document detailed in the Quotation;
“Project Documentation”	means any documentation associated with the performance of the Contract (if any) including without limitation the Proposal, any programme schedule, design plan or specification;
“Quotation”	means the Quotation detailing the particulars of the Contract, which document, may or may not be attached to these terms and conditions;
“Relevant Event”	means a transmission from the Monitored System (and, in the case of CCTV, the subsequent recognition by G&K of an image received at the monitoring station) which is, or appears to G&K to be an intrusion or unauthorised entry or likely intrusion or unauthorised entry to the premises;
“Rental Service”	means the service relating to the rental of a System;
“System Installation Service”	means the service relating to the installation of a System;
“System”	means the system detailed in the Quotation and/or Project Documentation which may or may not comprise Equipment;
“URN”	means the Unique Reference Number / Police Scheme Number issued by a Police Authority.

1.2 In these terms and conditions:

1.2.1 any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time;

1.2.2 references to any gender includes any other gender and the singular includes the plural and vice versa;

1.2.3 references to a party are references to G&K or the Customer. References to the parties are references to G&K and the Customer;

1.2.3 the headings are for ease of reference only and shall not affect the construction or interpretation.

• **SCOPE**

2.1 The parties shall from time to time enter into Contracts each of which shall constitute separate contractual agreements.

2.2 The specific details of each Contract, including without limitation those relating to what is being supplied, the Charges and Payment Terms, shall be recorded in the relevant Quotation.

2.3 Until further notice, each Contract shall be governed by these terms and conditions.

2.4 The terms and conditions set out in this Part A shall always apply to the Contract.

2.5 If (with reference to the Quotation) the Contract encompasses the supply of:

2.5.1 Equipment, the additional terms and conditions set out in Part B shall also apply;

2.5.2 the Systems Installation Service, the additional terms and conditions set out in Part C shall also apply;

2.5.3 the Maintenance Service, the additional terms and conditions set out in Part D shall also apply;

2.5.4 the Rental Service, the additional terms and conditions set out in Part E shall also apply;

2.5.5 the Monitoring Service, the additional terms and conditions set out in Part F shall also apply;

2.5.6 Miscellaneous Services, the additional terms and conditions set out in Part G shall also apply.

2.6 If there is any conflict between the provisions of this Part A and those of Parts B to G, the provisions of this Part A shall prevail.

2.7 If there is any conflict between the provisions of the Quotation and the Project Documentation, the provisions of the Quotation shall prevail.

2.8 The Contract may encompass the supply of goods or services by third parties other than G&K. In such circumstances, G&K shall have no responsibility or liability for the supply of such goods or services.

#### • **PERFORMANCE**

3.1 Unless otherwise agreed in writing, time for performance of the Contract shall not be of the essence, which shall not be made so by the service of any notice.

3.2 The Contract shall be performed during Normal Working Hours.

3.3 In addition to any other rights it may have under these terms and conditions, G&K may suspend the performance any services under the Contract if the Customer is in breach of any of its obligations under any Contract it has with G&K until such breach has been rectified.

3.4 G&K will make it clear in the Quotation and/or Project Documentation which G&K entity is providing which element of the goods and/or services in the Contract. Unless certain of the goods and/or services are stipulated to be provided by another entity, it is presumed that all goods and/or services in the Contract will be performed by the entity whose details are on the Quotation. In the absence of any clear notification on the Quotation which entity is providing goods and/or services Gough & Kelly Limited shall be deemed to be providing them.

3.5 G&K may provide the Customer with goods that have at least the same functionality, manufacturer's warranty and quality as those set out in the Quotation and/or Project Documentation in substitution of the quoted goods in its reasonable discretion.

#### • **CUSTOMER CO-OPERATION**

4.1 G&K and the Customer shall each appoint a project manager who is conversant with all aspects of the terms and conditions of the Contract and is reasonably able to deal with all matters of a technical nature as well as arranging and conducting progress meetings.

4.2 The Customer shall co-operate with G&K in:

4.2.1 its performance of the Contract; and

4.2.2 the provision of all assistance, information and documentation reasonably requested by G&K to enable G&K to properly perform the Contract.

4.3 The Customer undertakes and warrants to G&K that any premises it requires G&K to attend at as part of the provision of any of services under the Contract are safe for attendance and inspection by G&K's staff, servants or agents and the Customer shall fully indemnify and keep indemnified G&K against any loss, costs, claims for damages or otherwise G&K may or may be likely to suffer as a result of any breach of this condition.

#### • **CHARGES AND PAYMENT TERMS**

5.1 G&K shall issue invoices for payment of the Charges in accordance with the Payment Terms.

5.2 All invoices shall be paid in accordance with the Payment Terms.

5.3 In the absence of any Payment Terms, all invoices shall be issued on signature of the Quotation by the Customer and paid within thirty (30) days.

5.4 Time for payment of the Charges shall be of the essence.

5.5 No payment shall be deemed to have been received until G&K has received cleared funds.

5.6 The Customer shall make all payments due under the terms and conditions of the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by G&K to the Customer.

5.7 If the Customer fails to pay G&K any sum due pursuant to the terms and conditions of the Contract, the Customer shall be liable to pay interest to G&K on such sum from the due date for payment at the annual rate of 8% above the base rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment.

5.8 The Charges are exclusive of any incurred Expenses, value added tax, import or export duties, which the Customer shall pay in addition when it is due to pay Charges.

#### • **GENERAL WARRANTIES AND LIMITATIONS**

6.1 All warranties, conditions and other terms implied by statute (including the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982) or common law are, to the fullest extent permitted by law, excluded from the Contract.

6.2 All warranties provided under the terms and conditions of the Contract, shall not apply:

6.2.1 in respect of any defect arising from the Customer's wilful damage, negligence, usage in abnormal working conditions, failure to follow G&K's instructions (whether oral or in writing), misuse, alteration or repair without G&K's prior written approval; or

6.2.2 if any of the Charges are outstanding.

6.3 Each party warrants to the other that it:

6.3.1 is lawfully entitled to enter into the Contract;

6.3.2 has unrestricted rights to or under, all intellectual property rights in any materials or components utilised; and

6.3.3 is entitled to use all know-how and confidential information necessary to enable it to fully and effectively perform any obligations.

6.4 G&K shall not be required to enter into any commitment or perform any service that would involve assuming the powers of the Civil Police.

• **LIABILITY**

7.1 The following provisions set out the entire financial liability of G&K (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

7.1.1 any breach of the terms and conditions of the Contract; or

7.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

7.2 Nothing in the terms and conditions of the Contract excludes or limits the liability of G&K:

7.2.1 for death or personal injury caused by G&K's negligence;

7.2.2 for any matter which it would be illegal for G&K to exclude or attempt to exclude its liability; or

7.2.3 for fraud or fraudulent misrepresentation.

7.3 Subject to condition 7.1 and condition 7.2, in respect of the Contract:

7.3.1 G&K's total liability for any claim in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of such Contract shall be limited to a sum of money which is equal to the then current annual Charges under the Contract plus 10% (for the avoidance of doubt being calculated as the total Charges for the month in which the event in question occurred multiplied by 12 plus 10%); and

7.3.2 G&K shall not be liable to the Customer (in each case whether they are direct, indirect or consequential) for each of the following:

(a) loss of profit;

(b) pure economic loss;

(c) loss of business;

(d) revenues or anticipated savings;

(e) depletion of goodwill;

(e) costs, damages and expenses.

7.4 G&K are prepared to increase its potential liability under this condition 7 provided that the Customer pays any increase in G&K's insurance premium but such increase shall only be valid if given in writing by G&K.

#### • **EARLY TERMINATION**

8.1 Notwithstanding anything else contained in the terms and conditions of the Contract, the Contract may only be terminated early by G&K (with immediate effect) if the Customer:

8.1.1 is in material breach of the terms and conditions of the Contract and the breach is not capable of remedy; or

8.1.2 is in material breach of the terms and conditions of the Contract and the breach is capable of remedy and that other party shall have failed to remedy that breach within thirty (30) days of notice, specifying the breach and requiring its remedy; or

8.1.3 shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

#### • **CONSEQUENCES OF TERMINATION**

9.1 Any termination of the Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party hereunder or at law, nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or to continue in force on or after such termination.

9.2 All payments payable to G&K under the Contract shall become due immediately upon its termination.

9.3 Condition 9.1 above, and any condition which is stipulated to do so, shall survive termination of the terms and conditions of the Contract.

#### • **DISPUTE RESOLUTION**

10.1 In the event of any bona fide dispute or difference arising between the parties in connection with the terms and conditions of the Contract (excluding any dispute relating to non payment of the Charges), the parties shall attempt to resolve such dispute or difference in good faith and without recourse to legal proceedings.

10.2 If the parties are unable to resolve such dispute or difference within fifteen (15) days of initial discussions between the parties taking place, either party may request the other in writing that the matter be referred to senior representatives of the parties with authority to settle the dispute, who shall attempt to resolve the dispute within thirty (30) days of the written request to do so.

10.3 If the dispute or difference is not resolved as a result of a meeting of the senior representatives of the parties pursuant to condition 10.2 above, or if no meeting of

the senior representatives occurs within the prescribed time periods set out in that condition, either party may request the Centre for Dispute Resolution (“CEDR”) in writing to appoint an independent expert.

10.4 If either party so requests CEDR to appoint an independent expert, such party must instruct CEDR to ensure that the expert:

10.4.1 acts as an expert and not an arbitrator;

10.4.2 affords the parties the opportunity within reasonable time limits to make representations to him;

10.4.3 informs each party of the representations of the other;

10.4.4 affords each party the opportunity within reasonable time limits to make submissions to him on the representations of the other; and

10.4.5 notifies the parties of his decision, with reasons as quickly as practicable.

10.5 The fees and expenses of the expert including the cost of his nomination shall be borne equally by the parties who shall bear their own costs as to the submission and determination of the dispute or difference by the expert, save as where otherwise directed by the expert.

10.6 The expert determination is to be conclusive and binding on the parties except where there is fraud or a manifest error or on a matter of law.

#### • **FORCE MAJEURE**

11.1 If G&K is prevented, hindered or delayed from or in performing any of its obligations under the terms and conditions of the Contract by a Force Majeure Event:

11.1.1 G&K's obligations under the terms and conditions of the Contract are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;

11.1.2 as soon as reasonably possible after the start of the Force Majeure Event, G&K shall notify the Customer in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under the terms and conditions of the Contract;

11.2 If G&K does not comply with condition 11.1.2 it forfeits its rights under condition 11.1.1.

11.3 G&K shall:

11.3.1 make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under the terms and conditions of the Contract; and

11.3.2 as soon as reasonably possible after the Force Majeure Event, notify the Customer in writing that the Force Majeure Event has ended and resume performance of its obligations under the terms and conditions of the Contract.

11.4 If the Force Majeure Event continues for more than three (3) months starting on the day the Force Majeure Event starts, either party may terminate the Contract by giving not less than thirty (30) days' notice in writing to the other party.

### • **CONFIDENTIALITY AND SECURITY**

12.1 Each party shall treat as confidential all information obtained from the other pursuant to the terms and conditions of the Contract and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this condition 12 shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the terms and conditions of the Contract, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this condition 12) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this condition 12.

12.2 If G&K shall appoint any sub-contractor then G&K may disclose confidential information to such sub-contractor subject to such sub-contractor giving the Customer an undertaking in similar terms to the provisions of this Condition 12. The foregoing obligations as to confidentiality shall survive any termination of the terms and conditions of the Contract.

### • **INTELLECTUAL PROPERTY RIGHTS**

Unless otherwise provided for in Parts A to G of the terms and conditions of the Contract, all intellectual property rights (including any rights of copyright) created or arising under the Contract shall be the exclusive property of G&K.

### • **RECRUITMENT OF PERSONNEL**

14.1 The Customer shall not during the continuance of the Contract and for a period of twelve (12) months thereafter, solicit or procure the services of any employee or sub-contractor of G&K.

### • **ASSIGNMENT AND SUB-CONTRACTING**

15.1 The Customer shall not assign or deal in any way with all or any part of the benefit of, or its rights or benefits under the terms and conditions of the Contract without the prior written consent of G&K.

15.2 G&K shall have the right to sub-contract the performance of the Contract to any third party.

15.3 For the avoidance of doubt, the Contract is freely assignable by G&K to any third party.

### • **NOTICES**

Any notice given by one party to the other under the terms and conditions of the Contract must be in writing and may be delivered personally or by pre-paid registered post and in the case of post will be deemed to have been given two (2) days after the date of posting. Notices shall be delivered or sent to the addresses specified in the Quotation or to any other address notified in writing by one party to the other for the purpose of receiving notices after the date of the terms and conditions of the Contract. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given unless so addressed.

### • **ANNOUNCEMENTS**

The Customer not shall make or permit any person connected with it to make any announcement concerning the Contract, except as required by law or any competent regulatory body or with the written approval of the other party, such approval not to be unreasonably withheld or delayed.

- **FURTHER ASSURANCE**

Either party shall at the request and cost of the other do or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to the terms and conditions of the Contract.

- **SEVERANCE**

19.1 If any provision of the terms and conditions of the Contract is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the terms and conditions of the Contract which shall remain in full force and effect.

19.2 If any provision of the terms and conditions of the Contract is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

- **THIRD PARTIES**

20.1 Without prejudice to condition 20.2, a person who is not party to the terms and conditions of the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the terms and conditions of the Contract. This condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

20.2 The Affiliate shall have the right to enforce the terms of the Contract against the Customer.

## **21 NO PARTNERSHIP OR AGENCY**

Nothing in the terms and conditions of the Contract is intended to create a partnership or joint venture or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party between the parties, or to authorise either party to act as agent for the other. Save where expressly stated in the terms and conditions of the Contract, neither party shall have authority to make representations, act in the name or on behalf of or otherwise to bind the other.

- **WAIVER AND CUMULATIVE REMEDIES**

22.1 The rights and remedies provided by the terms and conditions of the Contract may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies. A waiver of any breach of any of the terms of the terms and conditions of the Contract or of a default under the terms and conditions of the Contract shall not constitute a waiver of any other breach or default and shall not affect the other terms of the terms and conditions of the Contract.

22.2 The rights and remedies provided by the terms and conditions of the Contract are cumulative and (unless otherwise provided in the terms and conditions of the Contract) are not exclusive of any rights or remedies provided at law or in equity.

- **ENTIRE AGREEMENT**

23.1 The terms and conditions of the Contract, together with the documents referred to in them, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the parties relating to such matters.

23.2 Each of the parties acknowledges and agrees that in entering into the terms and conditions of the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in the terms and conditions of the Contract. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of the terms and conditions of the Contract.

23.3 Nothing in this condition 23 shall operate to exclude any liability for fraud.

- **GOVERNING LAW AND JURISDICTION**

24.1 The terms and conditions of the Contract and any matter arising from or in connection with it shall be governed by and construed in accordance with English law.

24.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with the terms and conditions of the Contract.

## **PART B – SUPPLY OF EQUIPMENT**

- **DELIVERY**

1.1 Delivery or despatch dates shall be approximate only. Time for delivery shall not be of the essence.

1.2 Delivery shall be made to the delivery address specified in the Quotation. The Customer shall notify G&K of any change in delivery address at least seven (7) days before the expected delivery date.

1.3 Delivery shall be deemed to have taken place when the Equipment is delivered to the delivery address or any other location agreed in writing.

1.4 If the Customer refuses or fails to take delivery of the Equipment or fails to take any action necessary on its part for delivery of the Equipment, G&K shall be entitled to terminate that part of the Contract relating to the Equipment with immediate effect to dispose of the Equipment as G&K may determine and to recover from the Customer any loss and additional costs incurred as a result of such refusal or failure including (without limitation) reasonable storage costs from the due date of delivery.

1.5 The Customer shall notify G&K of any shortages or discrepancies within forty eight (48) hours of delivery. G&K shall not be liable to rectify any shortages or discrepancies which have not been notified.

## • RISK AND TITLE

2.1 Unless otherwise agreed in writing, risk in the Equipment shall pass to the Customer at the time of delivery.

2.2 The Equipment shall remain the property of G&K until the Customer pays to G&K the Charges (together with any accrued interest) and all other amounts owed by the Customer in respect of any other Contract or agreement.

2.3 Until title and ownership of the Equipment has passed to the Customer, the Customer shall:

2.3.1 not re-sell the Equipment;

2.3.2 destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment;

2.3.3 take proper care of the Equipment and take all reasonable steps to prevent any damage to or deterioration of them;

2.3.4 keep the Equipment free from any charge lien or other encumbrance and store the Equipment in such a way as to show clearly that they belong to G&K;

2.3.5 give G&K such information relating to the Equipment as G&K may from time to time require.

2.4 G&K reserves the right to repossess and resell any of the Equipment to which it has reserved title, with the re-imbursement to the Customer of any and all monies paid for them. G&K consents to the Customer's possession of the Equipment.

2.5 The Customer grants an irrevocable right and licence to G&K and its employees and agents to enter the Customer's premises or the site at which the Equipment is stored, on reasonable notice during normal business hours for the purpose of inspecting and/or repossessing Equipment to which it has retained title, including any Equipment which has already been fixed.

## • NO WARRANTY

3.1 The status of G&K is that of a re-seller and not a manufacturer of the Equipment. In this respect and to the fullest extent permissible by law, G&K is unable to offer any express warranties of any kind whatsoever in respect of the Equipment.

3.2 G&K shall supply the Equipment on a strictly without warranty, "as is" basis.

3.3 The Equipment may be sold with a manufacturer's warranty, details of which shall be dispatched with the Equipment and may be requested from G&K in advance of delivery.

3.4 G&K shall use its best commercial endeavours to assign the benefit of any manufacturer's warranty to the Customer or any end-user.

3.5 Unless the Contract encompasses the supply of the Maintenance Service, G&K shall have no dealings with the manufacturer on behalf of the Customer in respect of any Equipment which is found to be defective.

## PART C – SYSTEMS INSTALLATION SERVICE

### • SUPPLY OF SERVICE

1.1 G&K shall provide the System Installation Service in accordance with:

1.1.1 the Quotation; and

1.1.2 the Project Documentation.

1.2 The Customer acknowledges that the System shall be based entirely upon the Quotation and/or Project Documentation and that any changes must be communicated and agreed in accordance with condition 3 below.

• **CUSTOMER OBLIGATIONS**

2.1 The Customer shall be entirely responsible, at its sole cost and expense, for the following:

2.1.1 obtaining any easements, way leaves, permissions, consents or licenses which are necessary before G&K can perform the Contract, including without limitation planning permission pursuant to the Town and Country Planning Act 1990 and building regulations consent pursuant to the Buildings Act 1984 and all associated building regulations.

2.1.2 providing such information, drawings or specification within its possession or control as G&K may reasonably request;

2.1.3 providing reasonable welfare facilities;

2.1.4 providing suitable secure space for keeping tools, fittings and materials;

2.1.5 making available electrical power for the operation of tools and testing of the System;

2.1.6 providing access to operational telephone systems;

2.1.7 ensuring that neither the Customer nor its employees, agents or contractors interfere with any materials provided by G&K in connection with the System;

2.1.8 all of that equipment and services supplied by any third party

2.1.9 complying with all obligations and responsibilities under the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999, the Construction (Design & Management) Regulations 2007, any approved codes of practice, industry guidance, standards and best practice as amended from time to time; and

2.1.10 provide at its own expense any necessary cherry picking vehicles or equipment.

• **CHANGE CONTROL**

3.1 The provisions of this condition 3 shall apply if:

3.1.1 at any time the Customer wishes to alter all or any part of the System in which case the Customer shall provide G&K with full written breakdown of such alterations and with such further information as G&K may reasonably require;

3.1.2 G&K identifies that the System being delivered is outside the scope of the Quotation and/or Project Documentation.

3.2 G&K shall submit to the Customer as soon as reasonably practicable a full written quotation for such alterations specifying what changes (if any) will be required to the System and Charges.

3.3 Upon receipt of such quotation the Customer may elect either:

3.3.1 to accept such quotation in which case the Contract shall be amended in accordance therewith; or

3.3.2 to withdraw the proposed alterations in which case the Contract shall continue in force unchanged.

3.4 Neither party shall be obliged to consider or make any alterations to the System save in accordance with this condition 3.

3.5 G&K shall be entitled, without implementing the change control procedure detailed in this condition 3, to replace any part or parts of any System provided that:

3.5.1 such parts of the System shall provide the same or materially similar functions, facilities or functional utility as the part or part of the System being replaced; and

3.5.2 such replacement shall not adversely affect the remaining parts of the System.

- **ADDITIONAL CHARGES**

4.1 The Charges are based on the Systems Installation Service being performed during Normal Working Hours.

4.2 G&K shall be entitled to charge the Customer on a time and materials basis (with reference to the Contract Hourly Rate for:

4.2.1 any part of the System Installation Service which is performed outside Normal Working Hours;

4.2.2 works in addition to the System Installation Service necessary as a result of:

- (a) delays which are attributable to the Customer or any third party;
- (b) the failure of the Customer to comply with its obligations under condition 2;
- (c) the failure of the Customer to disclose relevant details which might impact on the performance of the System.

4.3 Unless otherwise expressly stated, the Charges are exclusive of any of the following:

4.3.1 measures required to protect the System from adverse environmental conditions and/or harmful substances whose presence was not previously notified by G&K or was not reasonably apparent to G&K at the time of entering into the Contract; or

4.3.2 work with asbestos or any other toxic or hazardous substances.

4.4 The Customer shall fully reimburse G&K in respect of any charges not included in the Quotation but necessarily incurred or expended by G&K as a result of the Customer failing to carry out all or any of its obligations under the Contract.

4.5 All Charges incurred pursuant to this condition 4 shall be notified by G&K to the Customer before they are incurred.

## **5 ACCEPTANCE**

5.1 The System shall be deemed to have been accepted to the complete satisfaction of the Customer:

- 5.1.1 at such time that the Customer signs a certificate of completion;
- 5.1.2 after the elapse of fourteen (14) days from the date of G&K communicating to the Customer that the System is operationally ready, provided that there are no known defects; or
- 5.1.3 if the System is placed into live operational use by the Customer.

5.2 For the avoidance of doubt, following acceptance pursuant to condition 5.1, all outstanding Charges which are payable under the Contract shall become immediately due for payment.

- **LIMITED WARRANTY**

- 6.1 G&K warrants that it shall perform the System Installation Service:
  - 6.1.1 using reasonable skill and care;
  - 6.1.2 in accordance with the Quotation and any Project Documentation.
- 6.2 G&K warrants that the quality of the workmanship provided as part of the Systems Installation Service shall be of satisfactory quality and fit for a purpose for a period of twelve (12) months from the date on which the works were performed.

## **PART D – MAINTENANCE SERVICE**

- **SUPPLY OF MAINTENANCE SERVICE**

- 1.1 G&K shall provide the Maintenance Service in accordance with:
  - 1.1.1 the Quotation; and
  - 1.1.2 any Project Documentation.
- 1.2 The Customer acknowledges that the Quotation and/or Project Documentation accurately reflect the nature of the Maintenance Service to be provided.
- 1.3 In the event the customer does not have a monitored intruder service G&K agree to attend no later than the next working day.

- **TERM**

- 2.1 The Maintenance Service shall commence upon the signature of the Quotation and shall continue for the Minimum Term.
- 2.2 Upon expiry of the Minimum Term, the Maintenance Service shall continue (subject to earlier termination in accordance with the Contract) for further rolling periods of time equal to the Minimum Term, subject to either party being able to serve the other with three (3) months written notice prior to the end of the Minimum Term and such subsequent terms.

2.3 G&K shall have the right to increase the Charges and Contract Hourly Rate with effect from the anniversary of the commencement of the Minimum Term. Such increase shall not exceed any percentage increase in the retail price index.

- **TYPE OF MAINTENANCE SERVICE**

- 3.1 The type of maintenance services are detailed as follows;

**3.1.1 Fully comprehensive** – All parts and labour costs are covered in the event of a system failure (subject to exclusions). You will receive two maintenance visits per year unless otherwise stated in the Quotation or the Project Documentation.

**3.1.2 Standard 1** – No parts or labour costs are covered in the event of a system failure, you will receive priority support and a reduced engineer call out rate (as stated in the quotation) should you have a system failure. You will receive one maintenance visit per year, any parts or additional labour required as a result of the maintenance visit will be charged separately.

**3.1.3 Standard 2** – No parts or labour costs are covered in the event of a system failure, you will receive priority support and a reduced engineer call out rate (as stated in the quotation) should you have a system failure. You will receive two maintenance visit per year, any parts or additional labour required as a result of the maintenance visit will be charged separately.

- **CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall at its sole cost and expense:

4.1.1 provide G&K with full, safe and prompt access to the System to enable G&K to carry out its obligations under the Contract;

4.1.2 provide adequate working space around the System for the use of G&K's personnel and make available all reasonable facilities as may be requested from time to time by G&K for the storage and safe keeping of any test equipment and spare parts;

4.1.3 use all reasonable endeavours to provide a suitable vehicle parking facility for use by G&K's personnel which is free from any legal restrictions and which is immediately close to the System;

4.1.4 ensure, in the interest of health and safety, that G&K's personnel are met promptly by a member of the Customer's staff and while on the Customer's premises for the purposes of the Contract, are at all times accompanied by a member of the Customer's staff familiar with the Customer's premises and safety procedures;

4.1.5 make available to G&K, free of charge, all facilities and services reasonably required by G&K to enable G&K properly to provide the Maintenance Services;

4.1.6 provide such telecommunication facilities as are reasonably required;

4.1.7 make sure that proper environmental conditions (in particular those (if any) defined in the relevant user manuals) are maintained for the System and shall further maintain in good condition the place where the System are situated, the cables and fittings to the System and associated with the System, and the electricity supply thereto

4.1.8 save for discrete additions generally recognised as being compatible with the System, not make any modifications to the System without G&K's prior consent.

4.1.9 ensure that the System is used in a proper manner, in accordance with the relevant user manuals and by competent trained employees only or by persons under their supervision.

4.1.10 ensure that the external surfaces of the System are, where appropriate, kept clean and in good condition and shall carry out any minor maintenance

requirements recommended by G&K (or recommended in the relevant Product user manual) from time to time.

4.1.11 save as aforesaid, and except when operating under instructions from G&K not attempt to adjust, repair, support or maintain the System and shall not request, permit or authorise anyone other than G&K or the manufacturer of the System (where such System are under a warranty from a manufacturer other than G&K) to carry out any adjustments, repairs, support or maintenance of the System;

4.1.12 use on or with the System only such accessory, attachment, component or additional equipment or System as G&K recommends, or are recommended in accordance with the relevant user manuals, or are commonly and properly used on or with the System.

4.1.13 not use in conjunction with the System any accessory, attachment, component or additional equipment or System other than those which have been supplied or approved by G&K for use in the manner proposed, or which are specifically approved as compatible by the relevant user manuals.

4.1.14 promptly notify G&K if the System needs service or is not operating correctly (and failure by the Customer to notify G&K within two weeks of the Customer first becoming aware of such failure or incorrect working shall free G&K from all obligations to investigate or correct such failure or incorrect working);

4.1.15 make available to G&K, free of charge, such information as may be necessary to enable G&K properly to conduct telephone diagnosis as part of any telephone support service; and

4.1.16 provide at its own expense any necessary cherry picking vehicles or equipment.

#### **• EXCLUSIONS FROM MAINTENANCE SERVICES**

5.1 The Maintenance Services do not include support which is necessitated as a result of:

5.1.1 failure or fluctuation of electric power, air conditioning, humidity control or other environmental conditions;

5.1.2 accident, transportation, neglect, misuse, abuse or default of or by the Customer, its employees or agents or any third party;

5.1.3 any fault in attachments or associated components (whether or not supplied by G&K) which do not form part of the System covered by the Contract;

5.1.4 any attempt by any person other than G&K personnel or any person authorised by G&K (via the telephone or otherwise) or an authorised G&K sub-contractor, to adjust, repair or support the System; or

5.1.5 user error.

5.2 In addition, the Maintenance Services do not include:

5.2.1 the provision of Maintenance Services at a place other than the location detailed in the Quotation;

5.2.2 electrical or other environmental work external to the System; and

5.2.3 the support of any attachments or associated components which do not form part of the System.

- **ADDITIONAL CHARGES**

6.1 G&K shall be entitled to charge the Customer on a time and materials basis (with reference to the Contract Hourly Rate for work performed:

5.1.1 pursuant to conditions 3 or 4;

6.1.2 which in the reasonable opinion of G&K, were not necessary; or

6.1.3 which arises as a consequence of the Customers failure to comply with its obligations under the Contract.

6.2 All Charges incurred pursuant to this condition 5 shall be notified by G&K to the Customer before they are incurred.

## **PART E – RENTAL SERVICE**

- **SUPPLY OF RENTAL SERVICE**

1.1 G&K shall provide the Rental Service in accordance with:

1.1.1 the Quotation; and

1.1.2 any Project Documentation.

1.2 The Customer acknowledges that the Quotation and/or Project Documentation accurately reflect the nature of the System to be provided.

1.3 The terms of Part E shall also apply to all Systems rented as part of the Rental Service as Maintenance Service is always included in the Charges.

- **TERM**

2.1 The Rental Service shall commence upon the signature of the Quotation and shall continue for the Minimum Term.

2.2 Upon expiry of the Minimum Term, the Rental Service shall continue (subject to earlier termination in accordance with the Contract) for further rolling periods of time equal to the Minimum Term, subject to either party being able to serve the other with three (3) months written notice prior to the end of the Minimum Term and such subsequent terms.

2.3 G&K shall have the right to increase the Charges and Contract Hourly Rate with effect from the anniversary of the commencement of the Minimum Term. Such increase shall not exceed any percentage increase in the retail price index.

2.4 In addition the Customer may bring the contract to an end at any time during the Minimum Term subject to the Customer, (by way of compensation for early termination), paying G&K a sum of money which is equal to the Charges payable had the Minimum Term run its course, LESS a sum of money which is equal to the proceeds of any sale of the System. If the System has not been sold after two (2) months, it shall be deemed to have a nil value.

2.5 Upon expiry or termination of the Minimum Term the Customer shall return the System to G&K in full working order and without delay.

- **TITLE AND RISK**

3.1 Legal, beneficial and equitable title and ownership of the System shall always remain with G&K and shall never pass to the Customer.

3.2 All risk in the Equipment vests with the Customer.

3.3 The Customer shall always take good care of the System. Where necessary, any repair or replacement of the System shall be the responsibility and cost of the Customer

- **INSURANCE**

4.1 The Customer shall insure the System for its full replacement value against the risks of fire, theft and damage, accidental or otherwise.

4.2 The Customer shall hold the proceeds of any claim on the insurance policy relating to such System, on trust for G&K.

4.3 The Customer shall provide G&K with evidence of any insurance referred to in this condition 4.

## **PART F – MONITORING SERVICE**

- **SUPPLY OF MONITORING SERVICE**

1.1 G&K shall provide the Monitoring Service in accordance with:

1.1.1 the Quotation; and

1.1.2 any Project Documentation

1.2 The Customer acknowledges that the Quotation and/or Project Documentation, accurately reflect the nature of the Monitoring Service to be provided.

- **TERM**

2.1 The Monitoring Service shall commence upon the signature of the Quotation or final system commissioning or such other date as specified in the quotation, whichever is the later date and shall continue for the Minimum Term.

2.2 Upon expiry of the Minimum Term, the Monitoring Service shall continue (subject to earlier termination in accordance with the Contract) for further rolling periods of time equal to the Minimum Term, subject to either party being able to serve the other with three (3) months written notice prior to the end of the Minimum Term and such subsequent terms.

2.3 G&K shall have the right to increase the Charges and Contract Hourly Rate with effect from the anniversary of the commencement of the Minimum Term. Such increase shall not exceed any percentage increase in the retail price index.

2.4 In addition the Customer may bring the contract to an end at any time during the Minimum Term subject to the Customer, (by way of compensation for early termination), paying G&K a sum of money which is equal to the Charges payable had the Minimum Term run its course.

- **CUSTOMER OBLIGATIONS**

3.1 The Customer shall provide G&K with such information as is required to provide the Monitoring Service, the Customer shall be responsible for the accuracy of such information and G&K may rely upon the accuracy of the same.

3.2 The Customer shall without delay notify G&K in writing of any changes in any information including key holders, codes or duress words or numbers and no variation to any information or instruction will be accepted unless confirmed in writing prior to the variation taking place.

3.3 G&K will provide remote monitoring services compliant with the requirements of the National Security Inspectorate (NSI) Codes of Practice, relevant British Standards (BSI), and ACPO Intruder Alarms Policy and in accordance with the operational procedures of G&K (details of which can be obtained on written request from G&K).

3.4 The Customer shall give authority to G&K to operate a policy of alarm signal filtering in accordance with NSI and ACPO requirements currently in force and shall indemnify G&K for any loss which may occur as a result of G&K's actions in the filtering of alarm signals.

3.5 In the event of police response being withdrawn from a security system any activations received will only be passed to nominated key holders and it shall be the Customer's responsibility to notify the G&K in writing of the restoration of police response.

3.6 Where the Police Authority issue a URN G&K will only attempt to alert the Police to any alarm signals from any premises where those signals are verified in accordance with current policy. Key holder only will be contacted where the URN has been withdrawn or where no URN has been issued.

3.7 The Customer agrees that where monitoring of lone worker portable devices designed to transmit emergency signals is carried out G&K will only action alert signals to the Police via the "999" call system or to the Police switchboard of the associated force if available. Where no URN has been approved for the lone worker portable device G&K will not pass calls directly to the Police.

3.8 To facilitate G&K's provision of the Monitoring Service, if the Customer does not have the benefit of the Maintenance Service the Customer shall at all times:

3.8.1 keep and operate the Monitored System in a proper and prudent manner, fully maintained and serviced and in accordance with the instructions and advice of the manufacturer and supplier of the same;

3.8.2 provide a clean electrical supply and a dedicated telephone/broadband line/s (as required) for the transmission of data to and from the monitoring station;

3.8.3 provide and maintain in full working order such adequate lighting as G&K shall reasonably deem necessary for effective illumination of the premises to enable G&K to adequately fulfill its obligations under the Contract; and

3.8.4 provide and maintain in full working order such other security measures as shall reasonably be specified by G&K from time to time to enable G&K to adequately fulfill its obligations under the Contract.

3.9 At no time shall G&K have any liability whatsoever to the customer or to any third party in respect of the content of any image (whether it be a Relevant Event or

otherwise) caught and/or recorded by G&K, and the Customer shall fully and wholly indemnify G&K in respect of any claim by a third party in respect of the same.

#### • **G&K OBLIGATIONS**

4.1 G&K shall provide the Customer and/or subscriber with a monitoring service compliant with the procedures laid down in the current British Standards BS5979 BS8418, PD6662, and DD243, the NSI Codes of Practice, the ACPO Policy and G&K operational procedures.

4.2 G&K shall notify appropriate authorities or nominated key holder of signals received.

4.3 G&K shall maintain a record of any signals received and maintain such for a period of 2 years minimum.

4.4 Monitored Systems shall be subject to a 7 day period of test by G&K to ensure satisfactory performance before G&K will accept responsibility for the monitoring but G&K shall not be held responsible for poor image quality unless they have also provided the System Installation Service.

4.5 G&K shall use its reasonable endeavours to identify a Relevant Event.

4.6 G&K shall maintain a computer recording of each Relevant Event for a period of 30 days from each Relevant Event and shall supply the Customer with a copy of the recording if requested to do so in writing in the format of a DVD or similar.

4.7 After the expiry of the period of thirty days from a Relevant Event G&K shall be at liberty to erase the recording, without maintaining any form of copy, unless it has received a written request from the Customer to ask it to maintain a copy beyond this period in which case it shall still be entitled to erase the computer recording after a further period of thirty days without any form of liability.

4.8 In the event that a failure of the Monitored System shall be (or should reasonably be expected to be) identified by G&K, G&K will notify the Customer as soon as reasonably practicable. During the period of any such failure, the Monitoring Service shall be suspended and G&K shall be under no liability whatsoever to the Customer for the duration of the failure (unless the failure shall have been caused as a result of G&K's own acts or omissions).

4.9 The onus shall at all times be upon the Customer to notify G&K when a failure of the Monitored System has been rectified and the Monitoring Service can be resumed by G&K.

4.10 G&K's response procedure to a Relevant Event shall be as detailed in the Quotation and/or Project Documentation or what G&K feels is reasonably appropriate in the circumstances (in G&K's ultimate discretion) but shall at least notify the Customer of the occurrence of a Relevant Event and confirm the nature of the same by post, facsimile transmission, or by electronic mail.

4.11 In the event of an intruder alarm activation G&K will attend site within 4 hours of being informed about the fault or failure to assess and rectify.

4.12 The Customer is responsible at all times for ensuring that G&K is provided with an accurate record of the nominated key holders' contact telephone number/s.

4.13 Should the response procedure involve G&K contacting a nominated key holder in the event of a Relevant Event, G&K will attempt to contact up to a maximum of three nominated key holders only, but will not make more than one telephone attempt to contact each nominated key holder. Where the nominated key holder is not available to speak with, sufficient notice shall be deemed to have been given by G&K relaying information to that nominated key holder's answering machine or leaving a message with whichever third party individual shall answer the telephone.

4.14 The words and expressions used by G&K in an audio warning during a Relevant Event shall be at the discretion of G&K.

- **NOTICE – PLEASE READ CAREFULLY**

5.1 The Monitoring Service is designed to minimise the risk to the Customer of suffering loss. No guarantee can be given that the monitoring systems will activate or report correctly at all times and under all circumstances. G&K is not an insurance company and has no way of knowing or evaluating the value of any risk which is only known to the Customer. Consequently because of the extent of any claim that could otherwise be made against G&K from a failure of the G&K's systems or from some act of negligence on the part of G&K, its employees or agents in comparison to the sum payable by the Customer for the Monitoring Services provided, G&K has placed a limit on its liability as per Part A of these terms and conditions.

5.2 The Customer shall have the sole responsibility to comprehensively insure and protect any property monitored by G&K, its contents and persons using the same on an "all risks" basis.

## **PART G – OTHER SERVICES**

- **SUPPLY OF MISCELLANEOUS SERVICE**

1.1 G&K shall provide Miscellaneous Services in accordance with:

1.1.1 the Quotation; and

1.1.2 any Project Documentation.

- **TERM**

2.1 The Miscellaneous Services shall commence upon the signature of the Quotation and shall continue for the Minimum Term.

2.2 Upon expiry of the Minimum Term, the Miscellaneous Services shall continue (subject to earlier termination in accordance with the Contract) for further rolling periods of time equal to the Minimum Term, subject to either party being able to serve the other with three (3) months written notice prior to the end of the Minimum Term and such subsequent terms.

2.3 G&K shall have the right to increase the Charges and Contract Hourly Rate with effect from the anniversary of the commencement of the Minimum Term. Such increase shall not exceed any percentage increase in the retail price index.

2.4 In addition the Customer may bring the Contract to an end at any time during the Minimum Term subject to the Customer, (by way of compensation for early termination), paying G&K a sum of money which is equal to the Charges payable had the Minimum Term run its course.

- **MOBILE PATROL SERVICE**

3.1 Where the Miscellaneous Services include a mobile patrol service such service may be supplied to other customers of G&K simultaneously and accordingly temporary interruptions or delays may arise if an incident occurs at the premises of another client during the course of a patrol officer's tour of duty.

- **KEYS**

4.1 If requested by the Customer in writing, keys held by G&K for the provision of a mobile patrol service shall be immediately surrendered to an authorised representative of the Customer.

4.2 If, after cessation of the Contract for whatever reason, the keys have not been reclaimed by the Customer G&K will destroy the keys.

- **ALARM RESPONSE SERVICES**

5.1 In the event of an intruder alarm activation the response service is charged from the time the alarm response officer is despatched from G&K's central control room until the time the response officer reports to the duty controller that he is satisfied that property in question is secure.

5.2 The service is provided at all times when the client's intruder alarm is armed, irrespective of day or night.

- **REQUIRED FACILITIES**

6.1 To the extent that the following are reasonably required by G&K to facilitate the provision of the Miscellaneous Services the Customer shall provide G&K with:

6.1.1 all necessary lighting, heating, toilet, water and other facilities which may be required by G&K;

6.1.2 suitable lockable and accessible storage space for such equipment as the G&K deems reasonably necessary to leave on the Customers premises; and

6.1.3 access to a telephone in order to that G&K's employees or agents can make check calls to the control room and summons assistance if necessary.

**VERSION 2.2, APRIL 2012**