

Contract Variation Form No 1

Managing Agent : Automobile Associations Developments Limited	Contract No: 2017/082
Contract Title: Provision of Vehicle Recovery, Disposal & Managed Service for Essex	Original Contract Period: 1st June 2018 to the 31st May 2021

1. . As from 25th May 2018 the Agreement shall be amended by the terms and conditions of the Addendum as follows:
 - 1.1 In consideration of the sum of £1.00 paid by each party to the other party (receipt of which is hereby acknowledged) the parties to this letter hereby agree that:
 - a) notwithstanding the process for varying the Contract contained in the Contract, the terms set out in the annexe to this letter (the “Annexe”) vary the Contract from the Variation Date and the parties agree that this constitutes a valid variation to the Contract from the Variation Date;
 - b) the terms set out in the Annexe are added as a new schedule to the Contract; and
 - c) if there is any conflict between the provisions in the Contract relating to data protection and the provisions contained in the Annexe, the provisions contained in the Annexe take precedence.
 - 1.2 This addendum and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and interpreted in accordance with the law of England and Wales.
 - 1.3 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) that arises out of, or in connection with, this letter or its subject matter or formation.

Annexe

Unless the context otherwise requires the following terms shall have the meanings in this annexe given to them below:

“Authority” means the Police, Fire and Crime Commissioner for Essex.

“Contract” means the agreement between the Authority and the Supplier for the provision of Services howsoever it is defined in the agreement.

“Controller” means, where Personal Data is being processed for Law Enforcement Purposes, as it is defined in the LED; and in all other circumstances, as it is defined in GDPR.

“Data Loss Event” means any event which results, or may result, in unauthorised access to Personal Data held by the Supplier under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data.

“Data Protection Impact Assessment” means an assessment by the Controller of the effect of the envisaged processing on the protection of Personal Data.

“Data Protection Legislation” means:

- (a) the GDPR, the LED and applicable implementing laws;
- (b) the DPA 2018 to the extent that it relates to the processing of Personal Data and privacy;
- (c) all applicable laws relating to the processing of Personal Data and privacy.

“Data Protection Officer” means as it is defined in the GDPR.

“Data Subject” means as it is defined in the GDPR.

“Data Subject Access Request” means a request made by or on behalf of a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“DPA 2018” means the Data Protection Act 2018.

“GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679).

“Law Enforcement Purposes” means as it is defined in DPA 2018.

“LED” means the Law Enforcement Directive (Directive (EU) 2016/680).

“Personal Data” means as it is defined in the GDPR.

“Personal Data Breach” means as it is defined in the GDPR.

“Processor” means, where Personal Data is being processed for Law Enforcement Purposes, as it is defined in the LED; and in all other circumstances, as it is defined in GDPR.

“Protective Measures” means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted.

“Regulator Correspondence” means any correspondence from the Information Commissioner's Office, or any successor body, in relation to the processing of Personal Data under the Contract.

“Services” means the services described in the Contract.

“Staff” means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any of its sub-contractors engaged in the performance of the Supplier's obligations under the Contract.

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Supplier related to the Contract.

“Supplier” means the organisation providing the Services to the Authority howsoever it is defined in the Contract.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

1 Data Protection

1.1 The Parties acknowledge that for the purposes of Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only processing which the Authority has authorised the Supplier to do is described in Clause 2 by the Authority and may not be determined by the Supplier.

1.2 The Supplier shall:

1.2.1 notify the Authority immediately if it considers any Authority instructions infringe the Data Protection Legislation;

1.2.2 provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to starting any processing. Such assistance may, at the Authority's discretion, include:

- i) a systematic description of the envisaged processing operations and the purpose of the processing;
- ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
- iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data

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1.2.3 in relation to any Personal Data processed in connection with its obligations under the Contract:

- i) process that Personal Data only in accordance with Clause 2, unless the Supplier is required to do otherwise by law. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by law;
- ii) ensure that it has in place Protective Measures which have been approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the nature of the data to be protected, harm that might result from a Data Loss Event, the state of technological development and the cost of implementing any measures

1.2.4 ensure that:

- i) Staff do not process Personal Data except in accordance with the Contract (and in particular, Clause 2);
- ii) it takes all reasonable steps to ensure the reliability and integrity of Staff who have access to Personal Data and ensure that they:
 - a) are aware of and comply with the Supplier's duties in this schedule;
 - b) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by the Contract; and
 - d) have undergone adequate training in the use, care, protection and handling of the Personal Data

1.2.5 not transfer Personal Data outside the UK and EU unless approved by the Authority and:

- i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
- ii) the Data Subject has enforceable rights and effective legal remedies;
- iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

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- iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data

1.2.6 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Supplier is required by law to retain the Personal Data;

1.2.7 subject to paragraph 1.3, notify the Authority immediately if it:

- i) receives a Data Subject Access Request (or purported Data Subject Access Request);
- ii) receives a request to rectify, block or erase any Personal Data;
- iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
- v) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
- vi) becomes aware of a Data Loss Event.

1.3 The Supplier's obligation to notify under paragraph 1.2.7 includes the provision of further information to the Authority in phases as details become available.

1.4 Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under paragraph 1.2.7 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

1.4.1 the Authority with full details and copies of the complaint, communication or request;

1.4.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

1.4.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

1.4.4 assistance as requested by the Authority following any Data Loss Event; and

1.4.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office or any consultation by the Authority with the

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Information Commissioner's Office.

- 1.5 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this schedule. This requirement does not apply if the Supplier employs fewer than 250 people unless the Authority determines that the processing:
 - 1.5.1 is not occasional;
 - 1.5.2 includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 1.5.3 is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.6 The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- 1.7 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 1.8 Before allowing any Sub-processor to process any Personal Data in connection with the Contract, the Supplier shall:
 - 1.8.1 notify the Authority in writing of the intended Sub-processor and processing;
 - 1.8.2 obtain the Authority's approval;
 - 1.8.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this schedule such that they apply to the Sub-processor; and
 - 1.8.4 provide the Authority with such information regarding the Sub-processor as the Authority reasonably requires.
- 1.9 The Supplier remains fully liable for the acts and omissions of any Sub-processor.
- 1.10 The Authority may, at any time on not less than 30 Working Days' notice, revise this schedule by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
- 1.11 The Parties shall take account of any guidance published by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance published by the Information Commissioner's Office.
- 1.12 In relation to Personal Data processed for Law Enforcement Purposes, the Supplier shall:
 - 1.12.1 maintain logs for its processing operations in respect of:
 - i) collection;
 - ii) alteration;

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- iii) consultation;
- iv) disclosure (including transfers);
- v) combination; and
- vi) erasure.

(together the “**Logs**”).

1.12.2 ensure that:

- i) the Logs of consultation make it possible to establish the justification for, and date and time of, the consultation; and as far as possible, the identity of the person who consulted the data;
- ii) the Logs of disclosure make it possible to establish the justification for, and date and time of, the disclosure; and the identity of the recipients of the data; and
- iii) the Logs are made available to the Information Commissioner’s Office on request

1.12.3 use the Logs only to:

- i) verify the lawfulness of processing;
- ii) assist with self-monitoring by the Authority or (as the case may be) the Supplier, including the conduct of internal disciplinary proceedings;
- iii) ensure the integrity of Personal Data; and
- iv) assist with criminal proceedings

1.12.4 as far as possible, distinguish between Personal Data based on fact and Personal Data based on personal assessments; and

1.12.5 where relevant and as far as possible, maintain a clear distinction between Personal Data relating to different categories of Data Subject, for example:

- i) persons suspected of having committed or being about to commit a criminal offence;
- ii) persons convicted of a criminal offence;
- iii) persons who are or maybe victims of a criminal offence; and
- iv) witnesses or other persons with information about offences.

2. The Supplier shall comply with any further written instructions with respect to processing by the Authority. Any such further instructions shall be incorporated into this Clause 2.

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Description	Details
Subject matter of the processing	The Police are committed to tackling Crime and Disorder across their regions, on a regular basis with the Processor and its sub-contractor garages in order to provide a framework for action in relation to vehicle recovery.
Duration of the processing	The contract commenced on 1 st of June 2018 for an initial term of three years with an option to extend by two periods of twelve months. The ultimate end date is the 31 st of May 2023 (subject to earlier expiry or termination).
Nature and purposes of the processing	<p>To facilitate a Vehicle Recovery Scheme. It will incorporate measures aimed at:</p> <ul style="list-style-type: none"> • Facilitating the collection and exchange of relevant information • Notifying registered keepers of the location of their recovered vehicle • The services of statutory notices • Pursuing lawful charges on behalf of the Chief Constable <p>The Controller will provide the Processor with details of the registered keeper of the vehicle which they have been requested to recover via ELVIS; a web-based system owned by the Processor to manage the recovery, storage and administration of the vehicle recovery process.</p> <p>The Processor will be responsible for the appointment, deployment and quality assurance of sub-contractors.</p> <p>The sub-contractors will retrieve and store vehicles on behalf of the Controller and will act as agents when sending out official notices. The official notices will acknowledge that the recovery agent works with the Police. The sending of the notice will be logged on ELVIS and the record will be made accessible to the Controller.</p> <p>A maximum of three nominated ELVIS operators will be authorised at each site used by the Processor.</p> <p>Before any access to ELVIS is granted, all nominated</p>

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Description	Details
	<p>persons will be vetted.</p> <p>All data will be shared with the Processor and sub-contractor garages directly through ELVIS following a validation check on the Vehicle Identification Number (VIN).</p> <p>Further personal data will be restricted and will not be visible to non-police users of ELVIS.</p> <p>The personal data of vetted employees will only be made available to the Processor and police users; it will not be shared with sub-contractor garages.</p> <p>All access rights to ELVIS will be provided to the Controller by AADL. The Controller will be responsible for ensuring that the Police staff and Officers who have been granted access have the correct level of permissions and will ensure that access is removed once no longer needed. Details provided by the Controller to the Processor to facilitate account set up for ELVIS are personal and unique and must not be divulged to any other person than that authorised to set up the account.</p> <p>The Processor will provide monthly and annual reports. Monthly checks will be completed at the Recovery Operator Premises to ensure contract conditions are complied with.</p>
Type of Personal Data	<ul style="list-style-type: none"> • Registration numbers • DVLA keeper and owners' details • Insurance details • Finance company details • Personal details of claimants and third-party claimants (names, email addresses, addresses and driving licence numbers) • Personal details of vetted employees (names, addresses and driving licence numbers)
Categories of Data Subject	<ul style="list-style-type: none"> • Police officers

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Description	Details
	<ul style="list-style-type: none"> • Employees • Members of the public • Suspects • Victims of Crime
<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>Data on ELVIS:</p> <ul style="list-style-type: none"> • Auto delete (after 7 years from closure date) all non-significant jobs such as Police vehicles, Police vehicles, Owners Requests, RTC, Section 165, Section 59, DVLAs, Obstructions, breakdown, burnouts etc.) • Mark for review before deletion (after 7 years from closure date) for PACE, Used in Crime, Fatality and Crime jobs. <p>In the latter circumstance, a review will be carried out by the Controller. The Processor will set up a functionality for 2 users to authorise before deletion will take place.</p> <p>Paper records held at Recovery Operator premises:</p> <ul style="list-style-type: none"> • To be destroyed after 7 years (as per contract)

Signed for and on behalf of the

Police, Fire & Crime Commissioner for Essex _____

Name _____

Position _____

Date _____

Signed for and on behalf of the

Managing Agent

Name

Position

Date
