

10 Person accountable for this document

Name	Job title
Paul Richardson	Cyber Security Assurance Manager

11 Definitions

Term	Definition	Source
Operational Technology	A collection of personnel, processes, hardware and software that can affect or influence the safe, secure and reliable operation of a physical process or asset.	Jargon Buster
Conduit	Security groupings for the communications of information into, out of and within the security Zones/networks	Jargon Buster
Cyber Security	Cyber Security is the use of people, process and technology controls to protect electronic devices, networks, software and data from unauthorised access or attacks, to ensure the usability, reliability, confidentiality, integrity, resilience and safety of the network.	Jargon Buster
Internet	This public data network is considered hostile in the context of the ICS.	Jargon Buster
Protection Systems	Protection Systems, Safety-Instrumented System and Emergency Shutdown Systems.	Jargon Buster
Zones	A grouping of electronic assets that share common Cyber Security requirements.	Jargon Buster

12 Abbreviations

Abbreviation	Meaning
CCTV	Closed Circuit Television
CPNI	Centre for the Protection of National Infrastructure
CSPRNG	Cryptographically Secure Pseudorandom Number Generators
DMZ	De-Militarised Zone
FAT	Factory Acceptance Testing
HMI	Human Machine Interface
HR	Human Resources

Printed copies of this document are uncontrolled.
Page 50 of 52

Abbreviation	Meaning
ICS	Industrial Control Systems
IT	Information Technology
LAN	Local Area Network
MFA	Multi Factor Authentication
OS	Operating System
OT	Operational Technology
PLC	Programmable Logic Controllers
RTU	Remote Terminal Units
SCADA	Supervisory Control and Data Acquisition
SIS	Safety-Instrumented System
SMS	Short Messaging System
SPA	Single Point of Accountability
VLAN	Virtual Local Area Network
VPN	Virtual Private Network

13 References

Document no.	Title or URL
R1770	Operational Technology Cyber Security - Framework
S1771	Operational Technology Cyber Security – Projects and Upgrades
S1782	Information Security Classification
S1147	Surveillance and Security Systems
S1747	Physical Security of IT Equipment
G1772	Operational Technology Cyber Security – Operations and Maintenance
G1134	Personnel Security – Insider Threats
Network Security	https://transportforlondon.sharepoint.com/sites/TMSManagementSystem/Management%20System/Forms/NetworkSecurityMS.aspx
N/A	NIS CAF
HSE OG86v2	Cyber Security for Industrial Automation and Control Systems (IACS) Edition 2
IEC 62443-2-1	Industrial communication networks – Network and system security – Part 2-1: Establishing an industrial automation and control system security program
IEC 62443-3-3	Industrial communication networks – Network and system security – Part 3-3: System security requirements and security levels
N/A	CPNI Good Practice Guide – Process Control and SCADA Security
NIST SP800-82	Guide to Industrial Control System (ICS) Security
EN50128	Railway applications - Communication, signalling and processing systems - Software for railway control and Protection Systems



Document no.	Title or URL
EN50129	Railway applications - Communication, signalling and processing systems - Safety related electronic systems for signalling
EN50519	Railway applications - Communication, signalling and processing systems - Safety-related communication in transmission systems

14 Document history

Issue no.	Date	Changes	Author
A1	December 2021	New standard published in accordance with Change Request CR-15204.	Tim Parker



DATED

20[]

(1) [TRANSPORT FOR LONDON]
and

(2) []

LICENCE¹

for the placing, maintenance and operation of electrical vehicle charging apparatus on
highways maintained by Transport
for London

¹

Customisation Note (to be deleted prior to finalising the draft Licence): This form of licence is intended to only apply in respect of a single "Site" for the purposes of the Order Contract. Accordingly, where an Order Contract relates to multiple Sites, each such Site will be subject to a separate Site Agreement in substantially the form of this licence.

THIS LICENCE is made the day of 20[]

BETWEEN:

- (1) TRANSPORT FOR LONDON of 9th Floor 5 Endeavour Square London E20 1JN
 ("TfL"); and
- (2) [xxxxxx] (Company Registration Number;) whose registered office is
 at [] (the "Licensee")

RECITALS:

- (A) TfL is the street authority and the highway authority for those streets/parts of the
 highway listed in Annex 1 of this Licence **and shown on the Plan (the "Highway")**.
- (B) TfL has the power under section 50(1) of the New Roads and Street Works Act
 1991 and sections 178 and 278 of the Highways Act 1980, section 16 of the London
 Local Authorities and Transport for London Act 2013 and all other enabling powers
 to grant this Licence for the placing, maintenance and operation of apparatus on
 or over the Highway.
- (C) TfL is satisfied that this Licence will be of benefit to the public.

OPERATIVE PROVISIONS:

1. Definitions and Interpretation

1.1 In this Licence, the following expressions will have the following meanings
 assigned to them unless otherwise stated:

- (a) "Apparatus" means the equipment and materials of whatsoever nature
 used by the Licensee including without limitation the Charge Point,
 Ducting, Feeder Pillar and cabling and any further apparatus described
 in Annex 1 of this Licence, which the Licensee will install and also
 finance, operate and maintain as part of the Works in order to provide
 the Deliverables, provided that:
- (i) the Apparatus will include any other variation, change,
 replacement addition or omission approved in writing by
 TfL;
- (ii) a variation, change, replacement, addition or omission will
 (without prejudice to the generality of same) include

changes in size, colour, height, thickness, shape and position of the Apparatus; and

- (iii) Apparatus includes (without limitation) foundations and fixings of a description, type, design, specification, material, size, dimensions, height, external colour and external coating as approved by TfL;
- (b) **"Approved Signage" means** directional signs and road markings details of which are to be provided by the Licensee for review and comment by TfL;
- (c) **"Charge Point" means** the charging points, sockets and all links and related infrastructure for the charging of electric vehicles to be financed, installed, operated and maintained by the Licensee in accordance with this Licence;
- (d) **"Deliverables" means** the installation, operation and maintenance of the Apparatus and related services and activities to be undertaken by the Licensee pursuant to the terms of the Order Contract together with any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from the terms of the Order Contract;
- (e) **"DPS" means** the Dynamic Purchasing System (Vehicle Charging Infrastructure Solutions) established by the Crown Commercial Service **with reference "RM6213"** and in respect of which the Licensee is a listed supplier;
- (f) **"DPS Core Terms" has** the meaning given to it in the Order Special Terms
- (g) **"Drawings" means** the drawings referred to in Annex 1 and Annex 2 of this Licence or any variation as approved in writing by TfL;
- (h) **"EV" means** a rechargeable vehicle that is powered entirely or partially by electricity;
- (i) **"EV Users" means** members of the public paying for the use of the Apparatus;

- (j) **"Feeder Pillar"** means the cabinet used to house electrical equipment required for the Works and which is to be located separately to the Charge Point;
- (k) **"Go-Live Date"** has the same meaning as Go-Live Date in the Order Contract;
- (l) **"Licensee"** means the Licensee or such person or persons as is entitled by this Licence to do anything permitted by this Licence;
- (m) **"Licence Fee"** means the sum of £[tbc]² referred to in the Order Contract as the Site Charge payable in respect of the location shown on the Plan and described in Annex 2 and in accordance with clause 18 of this Licence;
- (n) **"Licence Period"** means fifteen (15) years;
- (o) **"Licensed Use"** means the purpose of discharging the obligations that the Licensee has under the Order Contract;
- (p) **"Losses"** means all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect and/or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgements;
- (q) **"Order Contract"** means the agreement dated []³ made between (1) TfL and (2) the Licensee pursuant to the DPS;
- (r) **"Order Special Terms"** means the order special terms set out at Appendix 1 to the Order Contract;
- (s) **"Plan"** means the plan attached to this Licence at Annex 1 and Annex 2;

² Customisation Note (to be deleted prior to finalising the draft Licence): The applicable **"Site Charge"** specified in the Order Contract will be reflected here.

³ Customisation Note (to be deleted prior to finalising the draft Licence): Insert the date of the associated Order Contract here.

- (t) "Service Media" means any existing or future media for the passage of substances energy or information and any ancillary equipment or structures that has been approved by TfL;
- (u) "TfL" means Transport for London and its successors as street authority or highway authority for the Highway;
- (v) "Traffic Regulation Orders" means the traffic regulations orders required pursuant to this Licence, made by TfL and confirmed in writing to the Licensee;
- (w) "Works" means the works which are to be carried out and completed in accordance with the Order Contract to install the Apparatus on the Highway.

2. Licence

- 2.1 In consideration of the agreements and conditions contained in this Licence and payment of the Licence Fee, TfL grants permission to the Licensee to install and retain at the location shown on the Plan and described in Annex 1 of this Licence on and over the Highway those elements of the Apparatus required for the installation and operation of the Apparatus from the date of this Licence for the Licence Period subject to the conditions in this Licence unless terminated in accordance with the provisions of Schedule 3 of the New Roads and Street Works Act 1991 as permitted by the provisions of clause 4.2 below.
- 2.2 TfL further grants to the Licensee permission to inspect maintain repair renew or remove the Apparatus and to execute any works required for or incidental to the Works under this Licence provided that the Works (and any such works which are required for or incidental to the Works) continue to comply with this Licence.
- 2.3 The Licensee will:
 - (a) assume all responsibility for the operation, maintenance and repair of the Apparatus for the Licence Period;
 - (b) not use the Apparatus otherwise than for the Licensed Use;
 - (c) ensure that the Apparatus is available to provide the Deliverables to EV Users at all times.

- 2.4 The Licensee may charge for the use of the Apparatus by any EV Users but no charges may be levied in respect of parking on the Highway.
- 2.5 TfL will not be liable to the Licensee or, unless statute provides otherwise, to any EV User for any damage or loss incurred in using the Apparatus except where such damage or loss arises as a result of TfL's negligence or wilful default.
- 2.6 With the exception of:
- 2.6.1 the Approved Signage; and
 - 2.6.2 any notice attached to the Apparatus to inform users it is out of use and/or undergoing repairs
- the Licensee is not permitted to install any signage or other notices on the Highway.
- 2.7 This Licence must be read in conjunction with the Order Contract where relevant.

3. Works

- 3.1 The Licensee will:
- (a) upon completion of this Licence carry out the Works at its own expense and using only such contractors approved by TfL in a good and workmanlike manner to the reasonable satisfaction of TfL and in accordance with its obligations under the Order Contract;
 - (b) undertake the Works in compliance with all necessary planning and other permissions conditions and requirements;
 - (c) carry out the Works in accordance with the Construction (Design and Management) Regulations 2015;
 - (d) install those elements of the Apparatus set out in the Order Contract following agreement with TfL and in accordance with the precise design method and detail of erection and fixing as approved by TfL;
 - (e) take reasonable account of any comments provided by TfL in relation to the Approved Signage;
 - (f) ensure that while any Works are being carried out the Highway is kept free from mud soil and litter arising from the Works;

- (g) ensure that the Apparatus is labelled for identification purposes throughout the term of the Licence and that the labelling complies at all times with TfL's requirements;
- (h) give TfL adequate notice of the date and time of the Works and will comply with any requirements laid down by TfL for the purpose of preventing danger or minimising interference to traffic on the Highway;
- (i) inform TfL that the Works have been completed so that TfL can carry out an inspection of the Works to ensure they comply with the requirements of this Licence;
- (j) not carry out any work to or otherwise interfere with the Apparatus within the boundary of the Highway unless TfL has given prior approval in writing and any such work must be carried out to the reasonable satisfaction of TfL;
- (k) provide TfL with an electronic copy of as-built Drawings of the Works upon completion of the Works (including upon completion of any maintenance or repair works where such maintenance or repair results in a change to what is shown on the as-built Drawings);
- (l) install the Apparatus in such a location so as to cause minimal interference and disturbance to the Highway;
- (m) unless and to the extent TfL notifies the Licensee not to do so, upon termination of this Licence, to comply with all relevant provisions in the Order Contract regarding removal of Apparatus and at its own cost, to remove the Apparatus and re-instate the Highway to the satisfaction of TfL ensuring that all separate supplies of electricity have been removed, properly capped off and made safe.

4. Provisions relating to the Licence

4.1 This Licence:

- (a) is given without prejudice to the provisions of Part III of the New Roads and Street Works Act 1991 to the requirements of any relevant authority or owner of any apparatus affected by the Works or settlement of a plan and section and the execution of Works in accordance with them; and

- (b) does not dispense the Licensee from obtaining any other consent, licence or permission which may be required.
- 4.2 The Licensee acknowledges that the provisions of Schedule 3 to the New Roads and Street Works Act 1991 (Street Works Licences) apply to this licence including, for the avoidance of doubt, paragraph 6 'Withdrawal of Licence' as set out at clause 12.2 below.
- 5. Indemnity
- 5.1 The Licensee will indemnify, keep indemnified and hold harmless TfL and the other members of the TfL group (including their respective employees, sub-contractors and agents) ("Indemnified Party") against all Losses which the Indemnified Party incurs or suffers as a consequence of any breach (whether caused by the Licensee or any of its employees, agents or sub-contractor) or any negligent performance of this Licence by the Licensee (or any of its employees, agents or sub-contractors) (including in each case any non-performance or delay in performance of this Licence) but, subject to clause 5.2, the maximum aggregate liability of the Licensee under this indemnity is limited to £400,000.
- 5.2 Nothing in this Licence will operate to exclude or restrict the Licensee's liability to TfL:
 - (a) for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977);
 - (b) for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
 - (c) for any matter for which it is not permitted by law to exclude or limit, to attempt to exclude or limit, its liability;
 - (d) for any losses which are recoverable from the insurance policies maintained in accordance with clause 8 (or any losses which would have been recoverable from such insurance policies had those policies been maintained in accordance with clause 8); or
 - (e) loss of customers;
 - (f) reimbursing TfL for the price of any third party equipment purchased; or

- (g) loss of reputation.

6. Maintenance of the Apparatus

6.1 The Licensee will:

- (a) maintain the Apparatus in good repair and condition to the satisfaction of TfL;
- (b) renew the Apparatus where necessary;
- (c) use all commercially reasonable efforts to protect the Apparatus from vandalism and/or damage and be responsible for the repair or replacement of any damaged or vandalised Apparatus;
- (d) use reasonable endeavours to keep the Apparatus clean, tidy and free from graffiti and fly-posting;
- (e) ensure that the Apparatus is safely and securely fixed, installed, erected, adjusted, maintained in position and regularly serviced in accordance with the manufacturer's recommendations to ensure continued unimpaired functioning of the Apparatus;
- (f) use all reasonable endeavours to ensure there is a constant uninterrupted supply of electricity to the Apparatus and in the event of any interruption to the electricity supply, and in the event of any negligence, act or omission by the Licensee, the Licensee will take all necessary steps to restore the supply as soon as reasonably practicable;
- (g) ensure that the Apparatus or any part of it does not cause or become a nuisance to the owners or occupiers of any premises in the vicinity or to any member of the public on or passing along the Highway and that if any nuisance arises the Apparatus or the relevant part is removed as soon as reasonably practicable from the Highway or the nuisance is immediately abated save in an emergency or where there is a danger to persons when it must be immediately;
- (h) remove and or dismantle the Apparatus at the end of the Licence (whether by surrender or effluxion of time) in accordance with methods approved by TfL;

- (i) so far as possible carry out all inspections, maintenance, repair and other works under this Licence without disturbance to the Highway so that the Highway remains unobstructed for use by traffic at all times;
- (j) Where the Highway cannot remain unobstructed or undisturbed at all times during the carrying out of inspections, maintenance, repair or other works the Licensee must:
 - (i) not obstruct the Highway or cause disturbance to it without first:
 - (a) obtaining written consent from TfL, including obtaining any permits which TfL confirms are required and paying any lane rental charges that may be applicable;
 - (b) paying TfL's costs in giving its consent or issuing any permits pursuant to (i)(a) above; and
 - (c) only carry out works which require obstruction of or disturbance to the Highway under the supervision and direction of a traffic manager who has been appointed or approved by TfL in writing;
- (k) make good any damage arising out of the placing or presence on the Highway of the Apparatus or the execution of any Works authorised by the Licence at the Licensee's own expense;
- (l) take all reasonable precautions for preventing contact between the Apparatus and any building structure or apparatus in close proximity to the Apparatus and comply with all reasonable requirements of TfL in that regard; and

6.2 Should TfL as the Highway Authority consider that the Apparatus is deteriorating the Licensee will make good the Apparatus within 28 days of being put on notice by TfL.

6.3 If at any time the Apparatus or any part of it are in the reasonable opinion of TfL in a condition and/or position to make the Highway or any part of it obstructed or rendered dangerous so that urgent work is required to remove the obstruction or danger which TfL considers necessary as a matter of urgency (regardless of whether or not the Licensee is in the opinion of TfL in breach of any provision of

this Licence) TfL may without giving any advance notice remove the obstacle or danger and the reasonable costs incurred by TfL in undertaking such works will be paid to TfL by the Licensee on demand.

7. Inspection of the Works and Apparatus

7.1 The Licensee will:

- (a) inspect the Apparatus in compliance with the Licensee's security and maintenance obligations in the Order Contract throughout the Licence Period;
- (b) record details of the inspections in logbooks which will be readily available for TfL to inspect stating the date, time, piece of Apparatus and status of the Apparatus at the time of inspection;
- (c) report to TfL immediately the particulars of any defect or lack of repair in or affecting the Apparatus and/or its installation which is apparent or suspected as a result of the inspection and which poses a danger to users of the Highway or which would require traffic management in order to repair;
- (d) afford TfL the facilities it may require to inspect the Apparatus and any Works and to ensure compliance with this Licence; and
- (e) comply immediately with any reasonable requirements stipulated by TfL to remedy any defects or lack of repair.

8. Insurance

8.1 The Licensee will hold and retain public liability insurance to cover:

- (a) all Losses against which the Licensee is obliged to indemnify TfL in accordance with this Licence and paragraph 8 of Schedule 3 of the New Roads and Street Works Act 1991 Act; and
- (b) all Losses to third parties in respect of injury damage or loss arising out of any of the matters referred to in this Licence or paragraph 8 referred to in clause 8.1(a) above.

8.2 The Licensee will also hold and retain:

- 8.2.1 a fully comprehensive product liability insurance policy for the Apparatus
 - 8.2.2 **employer's liability insurance; and**
 - 8.2.3 professional indemnity insurance.
- 8.3 The insurance set out in this clause 8 will be in the sum of:
- 8.3.1 £2,000,000 (two million pounds) per claim in respect of the public liability insurance referred to at clause 8.1;
 - 8.3.2 £2,000,000 (two million pounds) per individual claim or series of claims arising from the same incident and in the annual aggregate in respect of the product liability insurance policy referred to at clause 8.2.1;
 - 8.3.3 £5,000,000 (five million pounds) per claim in respect of the **employer's liability insurance** policy referred to at clause 8.2.2; and
 - 8.3.4 £1,000,000 (one million pounds) per individual claim or series of claims arising from the same incident and in the annual aggregate in respect of the professional indemnity insurance referred at clause 8.2.3.

in each case in respect of any individual incident arising out of:

- (a) the use of the Apparatus;
- (b) the provision by the Licensee (and/or by any permitted sub-contractor) of the Deliverables; and
- (c) the inspection, maintenance, repair, adjustment, renewal or removal of the Apparatus or any other works required for or incidental to Works under this Licence,

or any other sum as TfL may from time to time stipulate acting reasonably.

- 8.4 The insurance will be effected with an insurance office or underwriters of good financial standing and good reputation in the international insurance market.

- 8.5 It will be a term and condition of all insurance that the insurer will not cancel the policy or allow the policy to lapse unless the insurer gives TfL at least 5 (five) days' written notice.
- 8.6 The Licensee will upon request by TfL produce satisfactory documentary evidence that the insurance set out in this clause 8 has been properly effected.
- 8.7 If the Licensee at any time fails to insure or pay the insurance premium in accordance with these requirements, TfL may elect to insure instead and to pay the premiums payable from time to time, and the amount of such payments and any related costs incurred must be repaid by the Licensee to TfL on demand.
- 8.8 If the Licensee becomes entitled to any insurance money in respect of public liability risks of the Apparatus, then the Licensee will apply to the Losses in relation to which it will have been received and in respect of any indemnity for such risks given by the Licensee to TfL under this Licence.
- 8.9 The Licensee is to observe and perform the conditions of the insurance policy and not without TfL's written consent and sanction of the insurers (such sanction to be produced to TfL) to do or suffer to be done to or in respect of the Apparatus anything which would be likely to increase the risks to be insured against.
- 8.10 In the event of any conflict between paragraphs 1 to 7 (inclusive) of Joint Schedule 3 (*Insurance Requirements*) to the Order Contract and this clause 8, the terms of this clause 8 will prevail.

9. Licensee's Rights

This Licence grants to the Licensee:

- 9.1 the right with or without workmen, plant and machinery to carry out the Works and to operate and maintain the Apparatus and to remain on so much of the Highway under TfL's control as TfL will agree is reasonably required for the purpose of carrying out and completing the Works in accordance with its obligations under the Order Contract PROVIDED THAT in the exercise of this right the Licensee must make good immediately any physical damage caused to the Highway or the Apparatus by the carrying out of the Works to the satisfaction of TfL;
- 9.2 the right to use the Apparatus for the Licensed Use;

- 9.3 subject to the prior written approval of TfL the right to connect into any other Service Media as may be required to enable the Licensee to use the Apparatus as permitted under this Licence; and
- 9.4 subject to giving reasonable prior notice to TfL and obtaining TfL's prior written approval and provision of a new specification where required, the right to enter onto such other parts of Highway with or without workmen and equipment so far as is reasonably necessary to inspect, repair, maintain, install or replace the Apparatus or to carry out any works to the Apparatus required or permitted by this Licence.

10. TfL's Rights

This Licence grants to TfL:

- 10.1 the right upon reasonable prior notice to the Licensee (and without notice in emergency **to be determined in TfL's absolute discretion**) with or without workmen, tools, appliances and materials to remedy any breach of the Licensee's obligations under this Licence provided that the person entering causes as little interference, damage and inconvenience as reasonably possible and makes good at its expense any damage caused by such entry; and
- 10.2 the right upon reasonable prior notice to the Licensee (and without notice in an **emergency to be determined in TfL's absolute discretion**) the right to temporarily suspend the use of the Highway in such a manner as to prevent the operation of the Apparatus SAVE THAT TfL is not liable to the Licensee for any loss suffered by the Licensee in relation to the suspension of the Highway.

11. Partial termination of the Order Contract

- 11.1 Without prejudice to clauses 12.2 and 16, TfL and the Licensee acknowledge:

11.1.1 clauses 10.8.3 and 10.8.4 (*Partially ending and suspending the contract*) of the DPS Core Terms which entitle TfL to partially terminate the Order Contract in circumstances where:

- (a) TfL has the right to otherwise terminate the Order Contract as a whole; and
- (b) the remaining parts of the Order Contract can still be used to effectively deliver the intended purpose; and

that in practice a partial termination of the Order Contract in accordance with clauses 10.8.3 and 10.8.4 (*Partially ending and suspending the contract*) of the DPS Core Terms may involve TfL requiring the termination of this Licence in accordance with clause 12.2 (and in such circumstances the provisions of paragraph 3.2.2 of the Order Special Terms shall apply).

12. Breach of the Licence

12.1 If in the reasonable opinion of TfL the Licensee is in breach of any provision of this Licence, TfL may undertake such works as appear expedient to ensure compliance with that provision, and the reasonable costs incurred by TfL in undertaking the works will be paid to TfL by the Licensee on demand.

12.2 If the Licence is breached or TfL otherwise requires the termination of the Licence, TfL, at its absolute discretion, may terminate it in accordance with the Order Contract or paragraph 6 Schedule 3 of the New Roads and Street Works Act 1991.

13. Compliance with Laws

13.1 The Licensee must comply with all laws including those which may come into force during the operation of this Licence (including regulations and other statutory instruments) relating to the installation, provision and operation of the Apparatus including (without limitation):

- (a) the use and operation of the electricity supply to the Apparatus;
- (b) the use of the Apparatus by the EV Users;
- (c) Approved Signage;
- (d) any Traffic Regulation Orders; and
- (e) Sections 17 & 18 of the London Local Authorities and Transport for London Act 2013.

14. Co-operation

14.1 The Licensee will fully and promptly co-operate with TfL, and any other relevant third party in relation to the Apparatus and any points of integration or interface between the Apparatus and any data collection system that TfL may have or operate or any such requirements set out in the Order Contract. The Licensee

acknowledges that TfL will upon reasonable prior notice inspect the operation and maintenance of the Apparatus and monitor compliance by the Licensee of its obligations under both this Licence and the Order Contract.

15. Surrender of the Licence

15.1 The Licensee will not surrender this Licence except in accordance with the terms of the Order Contract.

15.2 If the Order Contract is terminated or brought to an end for any reason then TfL has the right to terminate this Licence.

15.3 If the Licensee is wound up or enters into liquidation other than for the purpose of a reconstruction or amalgamation or makes any arrangement with its creditors or if a receiver is appointed in respect of the whole or any part of the Licensee's assets then the Licence will cease to operate immediately.

15.4 Any surrender, withdrawal or other determination of this Licence will be without prejudice to any rights of the Licensee or TfL arising from anything done or omitted to be done before the date of surrender, withdrawal or other determination.

16. Service of Notices

16.1 Any notice or other document served under this Licence will be sufficiently served on the following conditions:

- (a) prior to the Go-Live Date, upon TfL if emailed to EVIDProject@TfL.gov.uk with the **Licensee's name in the subject and the subject heading 'EV CHARGING APPARATUS LICENCE'**;
- (b) after the Go-Live Date, upon TfL if emailed to EVIDOPPS@TfL.gov.uk **with the Licensee's name in the subject and the subject heading 'EV CHARGING APPARATUS LICENCE'**;
- (c) in respect of as-built Drawings only, to be uploaded to the dedicated TfL SharePoint site pursuant to the invitation from TfL to the Licensee;
- (d) on the Licensee if delivered at or posted to the Secretary of the Licensee at its registered office or to such email address as nominated by the Licensee.

16.2 Service by post will be effected by addressing, prepaying and sending the notice or other document by registered post or by recorded delivery and will be deemed to have been sent at the time the letter is delivered in the ordinary course of the post.

17. Non-novation of Licence

The Licence may only be novated with the prior written consent of TfL.

18. Cost of Licence

18.1 The Licensee will pay to TfL on execution of this Licence and on the anniversary each year of this date thereafter the Licence Fee.

18.2 The provisions of this clause 18 will remain in effect notwithstanding termination or expiry of the Licence and Order Contract until the settlement of all subsisting claims by the Licensee.

19. Counterparts

The Licensee may be executed in one or more counterparts each of which will constitute one and the same document.

Annex 1

Detailed Description of Apparatus

[please insert detailed description of Apparatus by reference to Drawings, photographs, and description]

Annex 2

Site Location Plan

SIGNED on behalf of

TRANSPORT FOR LONDON by

SIGNED on behalf of

[]



Crown
Commercial
Service

Core Terms – DPS

Addendum to Core Terms

The following Core Terms are modified in respect of the Order Contract (but are not modified in respect of the DPS Contract).

A. For Lot 1

Clause	Amendment
3.1.2	Warranty period is amended to 36 months.
3.2.2	Amended to "All manufacturer warranties covering the Goods must either be assignable to the Buyer on request and for free, or the Supplier must make claims under the warranties for the Buyer whenever asked to do so for free."
3.2.3	Amended to "The Supplier transfers risk of the Goods on Delivery and ownership or possession of the Goods on payment for those Goods, whichever is earlier."
3.2.11	Amended to "The Buyer can cancel any order or part order of Goods which has not been Delivered. The Buyer will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs."
10.3.2	Amended to Each Buyer has the right to terminate their Order Contract at any time without reason or liability by giving the Supplier not less than 90 days written notice, unless specified in the Order Contract. If the Order Contract is terminated clauses 10.5.2 to 10.5.7 will apply.
11.2	Amended to "Each Party's total aggregate liability in each Contract Year under each Order Contract (whether in tort, contract or otherwise) is no more than the greater of £1 million or 150% of the Estimated Yearly Charges unless otherwise specified in the Order Form."
11.5	Clause 11.5 of the CCS Core Terms is varied with deletions marked as strikeout and insertions underlined as follows: "11.5 In spite of Clauses 11.1 and 11.2, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3, 9.5, <u>or 12.2</u> or 14.8 or Call-Off Schedule 2 (Staff Transfer) of a Contract."
11.5	In spite of Clauses 11.1, 11.2 but subject to Clauses 11.3 and 11.4, the Supplier's aggregate liability in each and any Contract Year under each Contract under Clause 14.8 shall in no event exceed £10 million.

16.1	Amended to “The Supplier must tell the Relevant Authority within two (2) working days if it receives a Request For Information.”
------	---

1. Definitions used in the contract

1.1 Interpret this Contract using Joint Schedule 1 (Definitions).

2. How the contract works

2.1 The Supplier is eligible for the award of Order Contracts during the DPS Contract Period.

2.2 CCS doesn't guarantee the Supplier any exclusivity, quantity or value of work under the DPS Contract.

2.3 CCS has paid one penny to the Supplier legally to form the DPS Contract. The Supplier acknowledges this payment.

2.4 If the Buyer decides to buy Deliverables under the DPS Contract it must use DPS Schedule 7 (Order Procedure) and must state its requirements using DPS Schedule 6 (Order Form Template and Order Schedules). If allowed by the Regulations, the Buyer can:

- make changes to DPS Schedule 6 (Order Form Template and Order Schedules)
- create new Order Schedules
- exclude optional template Order Schedules
- use Special Terms in the Order Form to add or change terms

2.5 Each Order Contract:

- is a separate Contract from the DPS Contract
- is between a Supplier and a Buyer
- includes Core Terms, Schedules and any other changes or items in the completed Order Form
- survives the termination of the DPS Contract

2.6 Where the Supplier is approached by an eligible buyer requesting Deliverables or substantially similar goods or services, the Supplier must tell them about this DPS Contract before accepting their order. The Supplier will promptly notify CCS if the eligible buyer won't use this DPS Contract.

2.7 The Supplier acknowledges it has all the information required to perform its obligations under each Contract before entering into a Contract. When information is provided by a Relevant Authority no warranty of its accuracy is given to the Supplier.

2.8 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:

- verify the accuracy of the Due Diligence Information
- properly perform its own adequate checks

2.9 CCS and the Buyer won't be liable for errors, omissions or misrepresentation of any information.

2.10 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

2.11 An Order Contract can only be created using the electronic procedures described in the OJEU Notice as required by the Regulations.

2.12 A Supplier can only receive Orders under the DPS Contract while it meets the basic access requirements for the DPS stated in the OJEU Notice. CCS can audit whether a Supplier meets the basic access requirements at any point during the DPS Contract Period.

3. What needs to be delivered

3.1 All deliverables

3.1.1 The Supplier must provide Deliverables:

- that comply with the Specification, the DPS Application and, in relation to an Order Contract, the Order Tender
- to a professional standard
- using reasonable skill and care
- using Good Industry Practice
- using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract
- on the dates agreed
- that comply with Law

3.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects.¹

3.2 Goods clauses

3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.

3.2.2 All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.²

¹ Clause amended – see Addendum to Core Terms

² Clause amended – see Addendum to Core Terms

3.2.3 The Supplier transfers ownership or possession of the Goods on Delivery or payment for those Goods, whichever is earlier.³

3.2.4 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.

3.2.5 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership or possession.

3.2.6 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.

3.2.7 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.

3.2.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.

3.2.9 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.

3.2.10 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.

3.2.11 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.⁴

3.2.12 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.

3.3 Services clauses

3.3.1 Late Delivery of the Services will be a Default of an Order Contract.

3.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects

³ Clause amended – see Addendum to Core Terms

⁴ Clause amended – see Addendum to Core Terms

connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions.

3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.

3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to each Contract.

3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.

3.3.6 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.

3.3.7 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Order Contract.

4 Pricing and payments

4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Order Form.

4.2 CCS must invoice the Supplier for the Management Levy and the Supplier must pay it using the process in DPS Schedule 5 (Management Levy and Information).

4.3 All Charges and the Management Levy:

- exclude VAT, which is payable on provision of a valid VAT invoice
- include all costs connected with the Supply of Deliverables

4.4 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Order Form.

4.5 A Supplier invoice is only valid if it:

- includes all appropriate references including the Order Contract reference number and other details reasonably requested by the Buyer
- includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any)
- doesn't include any Management Levy (the Supplier must not charge the Buyer in any way for the Management Levy)

4.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.

4.7 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, CCS or the Buyer can publish the details of the late payment or non-payment.

4.8 If CCS or the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then CCS or the Buyer may either:

- require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items
- enter into a direct agreement with the Subcontractor or third party for the relevant item

4.9 If CCS or the Buyer uses Clause 4.8 then the Charges must be reduced by an agreed amount by using the Variation Procedure.

4.10 CCS and the Buyer's right to enter into a direct agreement for the supply of the relevant items is subject to both:

- the relevant item being made available to the Supplier if required to provide the Deliverables
- any reduction in the Charges excluding any unavoidable costs that must be paid by the Supplier for the substituted item, including any licence fees or early termination charges

4.11 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

5. The Buyer's obligations to the supplier

5.1 If Supplier Non-Performance arises from an Authority Cause:

- neither CCS or the Buyer can terminate a Contract under Clause 10.4.1
- the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract
- the Supplier is entitled to additional time needed to make the Delivery
- the Supplier cannot suspend the ongoing supply of Deliverables

5.2 Clause 5.1 only applies if the Supplier:

- gives notice to the Party responsible for the Authority Cause within 10 Working Days of becoming aware
- demonstrates that the Supplier Non-Performance only happened because of the Authority Cause
- mitigated the impact of the Authority Cause

6. Record keeping and reporting

6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Order Form.

6.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for 7 years after the End Date.

6.3 The Supplier must allow any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit.

6.4 The Supplier must provide information to the Auditor and reasonable co-operation at their request.

6.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:

- tell the Relevant Authority and give reasons
- propose corrective action
- provide a deadline for completing the corrective action

6.6 The Supplier must provide CCS with a Self Audit Certificate supported by an audit report at the end of each Contract Year. The report must contain:

- the methodology of the review
- the sampling techniques applied
- details of any issues
- any remedial action taken

6.7 The Self Audit Certificate must be completed and signed by an auditor or senior member of the Supplier's management team that is qualified in either a relevant audit or financial discipline.

7. Supplier staff

7.1 The Supplier Staff involved in the performance of each Contract must:

- be appropriately trained and qualified
- be vetted using Good Industry Practice and the Security Policy
- comply with all conduct requirements when on the Buyer's Premises

7.2 Where a Buyer decides one of the Supplier's Staff isn't suitable to work on a contract, the Supplier must replace them with a suitably qualified alternative.

7.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 27.

7.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.

7.5 The Supplier indemnifies CCS and the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

8. Rights and protection

8.1 The Supplier warrants and represents that:

- it has full capacity and authority to enter into and to perform each Contract
- each Contract is executed by its authorised representative
- it is a legally valid and existing organisation incorporated in the place it was formed
- there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform each Contract
- it maintains all necessary rights, authorisations, licences and consents to perform its obligations under each Contract
- it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform each Contract
- it is not impacted by an Insolvency Event
- it will comply with each Order Contract

8.2 The warranties and representations in Clauses 2.10 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.

8.3 The Supplier indemnifies both CCS and every Buyer against each of the following:

- wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract
- non-payment by the Supplier of any tax or National Insurance

8.4 All claims indemnified under this Contract must use Clause 26.

8.5 CCS or a Buyer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.

8.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify CCS and every Buyer.

8.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

9. Intellectual Property Rights (IPRs)

9.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:

- receive and use the Deliverables
- make use of the deliverables provided by a Replacement Supplier

9.2 Any New IPR created under a Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.

9.3 Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

9.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing.

9.5 If there is an IPR Claim, the Supplier indemnifies CCS and each Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

9.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:

- obtain for CCS and the Buyer the rights in Clause 9.1 and 9.2 without infringing any third party IPR
- replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables

10. Ending the contract

10.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law.

10.2 The Relevant Authority can extend the Contract for the Extension Period by giving the Supplier no less than 3 Months' written notice before the Contract expires.

10.3 Ending the contract without a reason

10.3.1 CCS has the right to terminate the DPS Contract at any time without reason or liability by giving the Supplier at least 30 days' notice and if it's terminated Clause 10.5.2 to 10.5.7 applies.

10.3.2 Each Buyer has the right to terminate their Order Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice and if it's terminated Clause 10.5.2 to 10.5.7 applies.⁵

10.4 When CCS or the Buyer can end a contract

10.4.1 If any of the following events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Supplier:

- there's a Supplier Insolvency Event
- there's a Contract Default that is not corrected in line with an accepted Rectification Plan
- the Relevant Authority rejects a Rectification Plan or the Supplier does not provide it within 10 days of the request
- there's any material Default of the Contract
- there's any material Default of any Joint Controller Agreement relating to any Contract
- there's a Default of Clauses 2.10, 9, 14, 15, 27, 32 or DPS Schedule 9 (Cyber Essentials) (where applicable) relating to any Contract
- there's a consistent repeated failure to meet the Performance Indicators in DPS Schedule 4 (DPS Management)
- there's a Change of Control of the Supplier which isn't pre-approved by the Relevant Authority in writing
- there's a Variation to a Contract which cannot be agreed using Clause 24 (Changing the contract) or resolved using Clause 34 (Resolving disputes)
- if the Relevant Authority discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded

⁵ Clause amended – see Addendum to Core Terms

- the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations
- the Supplier or its Affiliates embarrass or bring CCS or the Buyer into disrepute or diminish the public trust in them

10.4.2 CCS may terminate the DPS Contract if a Buyer terminates an Order Contract for any of the reasons listed in Clause 10.4.1.

10.4.3 If there is a Default, the Relevant Authority can, without limiting its other rights, request that the Supplier provide a Rectification Plan.

10.4.4 When the Relevant Authority receives a requested Rectification Plan it can either:

- reject the Rectification Plan or revised Rectification Plan, giving reasons
- accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties

10.4.5 Where the Rectification Plan or revised Rectification Plan is rejected, the Relevant Authority:

- must give reasonable grounds for its decision
- may request that the Supplier provides a revised Rectification Plan within 5 Working Days

10.4.6 If any of the events in 73 (1) (a) to (c) of the Regulations happen, the Relevant Authority has the right to immediately terminate the Contract and Clause 10.5.2 to 10.5.7 applies.

10.5 What happens if the contract ends

Where the Relevant Authority terminates a Contract under Clause 10.4.1 all of the following apply:

10.5.1 The Supplier is responsible for the Relevant Authority's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.

10.5.2 The Buyer's payment obligations under the terminated Order Contract stop immediately.

10.5.3 Accumulated rights of the Parties are not affected.

10.5.4 The Supplier must promptly delete or return the Government Data except where required to retain copies by law.

DPS Ref: RM6213

Project version: v2.0

Model version

10.5.5 The Supplier must promptly return any of CCS or the Buyer's property provided under the terminated Contract.

10.5.6 The Supplier must, at no cost to CCS or the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).

10.5.7 The following Clauses survive the termination of each Contract: 3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35 and any Clauses and Schedules which are expressly or by implication intended to continue.

10.6 When the supplier can end the contract

10.6.1 The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate an Order Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the annual Contract Value within 30 days of the date of the Reminder Notice.

10.6.2 If a Supplier terminates an Order Contract under Clause 10.6.1:

- the Buyer must promptly pay all outstanding Charges incurred to the Supplier
- the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated
- Clauses 10.5.4 to 10.5.7 apply

10.7 When subcontracts can be ended

At the Buyer's request, the Supplier must terminate any Subcontracts in any of the following events:

- there is a Change of Control of a Subcontractor which isn't pre-approved by the Relevant Authority in writing
- the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 10.4
- a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Relevant Authority

10.8 Partially ending and suspending the contract

10.8.1 Where CCS has the right to terminate the DPS Contract it can suspend the Supplier's ability to accept Orders (for any period) and the Supplier cannot enter into any new Order Contracts during this period. If this happens, the Supplier must still meet its obligations under any existing Order Contracts that have already been signed.

10.8.2 Where CCS has the right to terminate a DPS Contract it is entitled to terminate all or

part of it.

10.8.3 Where the Buyer has the right to terminate an Order Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends an Order Contract it can provide the Deliverables itself or buy them from a third party.

10.8.4 The Relevant Authority can only partially terminate or suspend a Contract if the remaining parts of that Contract can still be used to effectively deliver the intended purpose.

10.8.5 The Parties must agree any necessary Variation required by Clause 10.8 using the Variation Procedure, but the Supplier may not either:

- reject the Variation
- increase the Charges, except where the right to partial termination is under Clause 10.3

10.8.6 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clause 10.8.

11. How much you can be held responsible for

11.1 Each Party's total aggregate liability in each Contract Year under this DPS Contract (whether in tort, contract or otherwise) is no more than £100,000.

11.2 Each Party's total aggregate liability in each Contract Year under each Order Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified in the Order Form⁶

11.3 No Party is liable to the other for:

- any indirect Losses
- Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect)

11.4 In spite of Clause 11.1 and 11.2, neither Party limits or excludes any of the following:

- its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors
- its liability for bribery or fraud or fraudulent misrepresentation by it or its employees
- any liability that cannot be excluded or limited by Law

⁶ Clause amended – see Addendum to Core Terms

- its obligation to pay the required Management Levy

11.5 In spite of Clauses 11.1 and 11.2, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3, 9.5, 12.2 or 14.9 or Order Schedule 2 (Staff Transfer) of a Contract.⁷

11.6 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities.

11.7 When calculating the Supplier's liability under Clause 11.1 or 11.2 the following items will not be taken into consideration:

- Deductions
- any items specified in Clause 11.5

11.8 If more than one Supplier is party to a Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

12. Obeying the law

12.1 The Supplier must use reasonable endeavours to comply with the provisions of Joint Schedule 5 (Corporate Social Responsibility).

12.2 The Supplier indemnifies CCS and every Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law to do with a Contract.

12.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 12.1 and Clauses 27 to 32.

13. Insurance

The Supplier must, at its own cost, obtain and maintain the Required Insurances in Joint Schedule 3 (Insurance Requirements) and any Additional Insurances in the Order Form.

14. Data protection

14.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Joint Schedule 11 (Processing Data).

14.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.

⁷ Clause amended – see Addendum to Core Terms

14.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.

14.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.

14.5 If at any time the Supplier suspects or has reason to believe that the Government Data provided under a Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Relevant Authority and immediately suggest remedial action.

14.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Relevant Authority may either or both:

- tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Relevant Authority receives notice, or the Supplier finds out about the issue, whichever is earlier
- restore the Government Data itself or using a third party

14.7 The Supplier must pay each Party's reasonable costs of complying with Clause 14.7 unless CCS or the Buyer is at fault.

14.8 The Supplier:

- must provide the Relevant Authority with all Government Data in an agreed open format within 10 Working Days of a written request
- must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading
- must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice
- securely erase all Government Data and any copies it holds when asked to do so by CCS or the Buyer unless required by Law to retain it
- indemnifies CCS and each Buyer against any and all Losses incurred if the Supplier breaches Clause 14 and any Data Protection Legislation.

15. What you must keep confidential

15.1 Each Party must:

- keep all Confidential Information it receives confidential and secure
- not disclose, use or exploit the Disclosing Party's Confidential Information

DPS Ref: RM6213

Project version: v2.0

Model version

without the Disclosing Party's prior written consent, except for the purposes anticipated under the Contract

- immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information

15.2 In spite of Clause 15.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

- where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure
- if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party
- if the information was given to it by a third party without obligation of confidentiality
- if the information was in the public domain at the time of the disclosure
- if the information was independently developed without access to the Disclosing Party's Confidential Information
- to its auditors or for the purposes of regulatory requirements
- on a confidential basis, to its professional advisers on a need-to-know basis
- to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010

15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Relevant Authority at its request.

15.4 CCS or the Buyer may disclose Confidential Information in any of the following cases:

- on a confidential basis to the employees, agents, consultants and contractors of CCS or the Buyer
- on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that CCS or the Buyer transfers or proposes to transfer all or any part of its business to
- if CCS or the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions
- where requested by Parliament
- under Clauses 4.7 and 16

15.5 For the purposes of Clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 15.

15.6 Transparency Information is not Confidential Information.

15.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Relevant Authority and must take all reasonable steps to ensure that Supplier Staff do not either.

16. When you can share information

16.1 The Supplier must tell the Relevant Authority within 48 hours if it receives a Request For Information.⁸

16.2 Within the required timescales the Supplier must give CCS and each Buyer full co-operation and information needed so the Buyer can:

- publish the Transparency Information
- comply with any Freedom of Information Act (FOIA) request
- comply with any Environmental Information Regulations (EIR) request

16.3 The Relevant Authority may talk to the Supplier to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Relevant Authority's decision, which does not need to be reasonable.

17. Invalid parts of the contract

If any part of a Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

18. No other terms apply

The provisions incorporated into each Contract are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

19. Other people's rights in a contract

No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third

⁸ Clause amended – see Addendum to Core Terms

party rights and remedies that exist independently from CRTPA.

20. Circumstances beyond your control

20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under a Contract while the inability to perform continues, if it both:

- provides a Force Majeure Notice to the other Party
- uses all reasonable measures practical to reduce the impact of the Force Majeure Event

20.2 Either party can partially or fully terminate the affected Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

20.3 Where a Party terminates under Clause 20.2:

- each party must cover its own Losses
- Clause 10.5.2 to 10.5.7 applies

21. Relationships created by the contract

No Contract creates a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

22. Giving up contract rights

A partial or full waiver or relaxation of the terms of a Contract is only valid if it is stated to be a waiver in writing to the other Party.

23. Transferring responsibilities

23.1 The Supplier can not assign a Contract without the Relevant Authority's written consent.

23.2 The Relevant Authority can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Relevant Authority.

23.3 When CCS or the Buyer uses its rights under Clause 23.2 the Supplier must enter into a novation agreement in the form that CCS or the Buyer specifies.

23.4 The Supplier can terminate a Contract novated under Clause 23.2 to a private sector body that is experiencing an Insolvency Event.

23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

23.6 If CCS or the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:

- their name
- the scope of their appointment
- the duration of their appointment

24. Changing the contract

24.1 Either Party can request a Variation to a Contract which is only effective if agreed in writing and signed by both Parties.

24.2 The Supplier must provide an Impact Assessment either:

- with the Variation Form, where the Supplier requests the Variation
- within the time limits included in a Variation Form requested by CCS or the Buyer

24.3 If the Variation to a Contract cannot be agreed or resolved by the Parties, CCS or the Buyer can either:

- agree that the Contract continues without the Variation
- terminate the affected Contract, unless in the case of an Order Contract, the Supplier has already provided part or all of the provision of the Deliverables, or where the Supplier can show evidence of substantial work being carried out to provide them
- refer the Dispute to be resolved using Clause 34 (Resolving Disputes)

24.4 CCS and the Buyer are not required to accept a Variation request made by the Supplier.

24.5 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the DPS Pricing or the Charges.

24.6 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give CCS and the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, DPS Pricing or a Contract and provide evidence:

- that the Supplier has kept costs as low as possible, including in Subcontractor costs

- of how it has affected the Supplier's costs

24.7 Any change in the DPS Pricing or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 24.1 to 24.4.

25. How to communicate about the contract

25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.

25.2 Notices to CCS must be sent to the CCS Authorised Representative's address or email address indicated on the Platform.

25.3 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Order Form.

25.4 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

26. Dealing with claims

26.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.

26.2 At the Indemnifier's cost the Beneficiary must both:

- allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim
- give the Indemnifier reasonable assistance with the claim if requested

26.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which can not be unreasonably withheld or delayed.

26.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.

26.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

26.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

26.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

- the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money
- the amount the Indemnifier paid the Beneficiary for the Claim

27. Preventing fraud, bribery and corruption

27.1 The Supplier must not during any Contract Period:

- commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2)
- do or allow anything which would cause CCS or the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them

27.2 The Supplier must during the Contract Period:

- create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same
- keep full records to show it has complied with its obligations under Clause 27 and give copies to CCS or the Buyer on request
- if required by the Relevant Authority, within 20 Working Days of the Start Date of the relevant Contract, and then annually, certify in writing to the Relevant Authority, that they have complied with Clause 27, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures

27.3 The Supplier must immediately notify CCS and the Buyer if it becomes aware of any breach of Clauses 27.1 or 27.2 or has any reason to think that it, or any of the Supplier Staff, has either:

- been investigated or prosecuted for an alleged Prohibited Act
- been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency
- received a request or demand for any undue financial or other advantage of any kind related to a Contract
- suspected that any person or Party directly or indirectly related to a Contract has

committed or attempted to commit a Prohibited Act

27.4 If the Supplier notifies CCS or the Buyer as required by Clause 27.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

27.5 In any notice the Supplier gives under Clause 27.4 it must specify the:

- Prohibited Act
- identity of the Party who it thinks has committed the Prohibited Act
- action it has decided to take

28. Equality, diversity and human rights

28.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:

- protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise
- any other requirements and instructions which CCS or the Buyer reasonably imposes related to equality Law

28.2 The Supplier must take all necessary steps, and inform CCS or the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

29. Health and safety

29.1 The Supplier must perform its obligations meeting the requirements of:

- all applicable Law regarding health and safety
- the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier

29.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of a Contract.

30. Environment

30.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

DPS Ref: RM6213

Project version: v2.0

Model version

30.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

31. Tax

31.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. CCS and the Buyer cannot terminate a Contract where the Supplier has not paid a minor tax or social security contribution.

31.2 Where the Charges payable under a Contract with the Buyer are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify CCS and the Buyer of it within 5 Working Days including:

- the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant
- other information relating to the Occasion of Tax Non-Compliance that CCS and the Buyer may reasonably need

31.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under an Order Contract, the Supplier must both:

- comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions
- indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff

31.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

- the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 31.3, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding
- the Worker's contract may be terminated at the Buyer's request if the Worker

fails to provide the information requested by the Buyer within the time specified by the Buyer

- the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 31.3 or confirms that the Worker is not complying with those requirements
- the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management

32. Conflict of interest

32.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.

32.2 The Supplier must promptly notify and provide details to CCS and each Buyer if a Conflict of Interest happens or is expected to happen.

32.3 CCS and each Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

33. Reporting a breach of the contract

33.1 As soon as it is aware of it the Supplier and Supplier Staff must report to CCS or the Buyer any actual or suspected breach of:

- Law
- Clause 12.1
- Clauses 27 to 32

33.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 33.1 to the Buyer or a Prescribed Person.

34. Resolving disputes

34.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.

34.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to

DPS Ref: RM6213

Project version: v2.0

Model version

34.5.

34.3 Unless the Relevant Authority refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- determine the Dispute
- grant interim remedies
- grant any other provisional or protective relief

34.4 The Supplier agrees that the Relevant Authority has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

34.5 The Relevant Authority has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 34.3, unless the Relevant Authority has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 34.4.

34.6 The Supplier cannot suspend the performance of a Contract during any Dispute.

35. Which law applies

This Contract and any issues arising out of, or connected to it, are governed by English law.

Order Schedule 4 (Order Tender)

Order Ref:

Crown Copyright 2019

Order Schedule 4 (Order Tender)

