**ORDER FORM SPECIAL TERMS DRAFT**

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| **DPS JOINT SCHEDULE 1 DEFINITIONS** |  |
| **INSERT NEW OR AMEND DEFINED TERM BELOW:** | **NEW DEFINITION OR AMENDMENT** |
| **“Additional Payments”** | all Service Failure Payments, Delay Payments (if applicable), or any other additional payments which the Buyer is paid or is payable to the Buyer by the Supplier under an Order Contract; |
| **“Approval”** | insert in the definition after “the Buyer” the words “and where applicable the Cluster Member”; |
| **“Audit”** | Delete in sub-paragraph a), “of the Charges and any other amounts payable by a Buyer” and insert in its place “of the End User Tariffs received by the Supplier and the Revenue and any other amounts payable to the Buyer”.  Insert at the end additional sub-clause “l)” as follows:-  “verify the Supplier’s compliance with the Grant Funding Agreement”; |
| **“Buyer Premises"** | Delete existing definition and replace with “Means any Location owned by Suffolk County Council and/or forming an adopted public highway for which Suffolk County Council is the Highway Authority” |
| **“CDM Regulations”** | Means the Construction Design and Management Regulations 2015; |
| **“Cluster Member”** | Means a person who is a third party to this Contract who is: -  i) Named as a Host of a Recommended Location in Appendix 1 to the Statement of Requirements (Attachment 3), or  ii) Any other contracting party, who is subsequently agreed to be added as a Host of an additional Further Location pursuant to the Contract and on whom the Supplier agrees to confer the rights for Cluster Members in Order Schedule 12 (Clustering) by agreeing to the provision of the Deliverables at that location pursuant to this Contract and by entering into a Cluster Member Agreement with that Cluster Member. |
| **“Cluster Member Agreement”** | Means the agreement to be entered into between the Buyer, Supplier and any Cluster Member, substantially in the form at Annex A to Order Schedule 12 (Clustering), as a condition precedent to the Supplier being entitled to provide the Deliverables at the location of which the Cluster Member is Host. |
| “**Concession Regulations**” | Means the Concession Contracts Regulations 2016; |
| **"Contract Value"** | delete the definition and insert in its place:-  “The value of the contract shall be the total turnover of the concessionaire generated over the duration of the contract, inclusive of value added tax, as estimated by the Buyer, in consideration for the works and services which are the object of the concession contract and for the supplies incidental to such works and services”. |
| **"Deductions"** | Definition for “Deductions” to be deleted. |
| **“Expiry Date”** | insert at the end of the existing definition in Schedule 1 “as stated in the Order Form for the Standard Locations and Special Locations” |
| **“Grant Funding Agreement”** | Means the grant funding agreement between:   * + Suffolk County Council   + Department for Transport (Local Electric Vehicle Infrastructure Fund – LEVI)   which is dated 13th February 2024 as identified at Appendix 3 to the Statement of Requirements (Attachment 3). |
| **“Grant Funding”** | “Means the grant funding, if any, to be made available to the Supplier pursuant to the Grant Funding Agreement and in accordance with the Pricing Schedule through the Buyer under this Contract, subject to compliance by the Supplier with all the terms of the Grant Funding Agreement and this Contract” |
| **“Impact Assessment”** | In b) insert at the end “where expressly stated in the terms to be applicable to the Variation under this Order Contract”  In c) Delete: [and insert “Not used”][“including any increase or decrease in the DPS Pricing/Charges (as applicable),”] |
| **“Inventory”** | “an inventory of the Goods supplied and installed at each Buyer Premises in the provision of the Deliverables” |
| **“Land Lease”** | Means the lease to be entered into between the Supplier and any Cluster Member, substantially in the form [Annex B] to Order Schedule 12 (Clustering), as a condition precedent to the Supplier being entitled to provide the Deliverables at the location of which the Cluster Member is Host. |
| **“Locations”** | Means the premises owned, controlled or occupied by Cluster Members together with the public highways for which the Buyer is the Highway Authority, which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them) as agreed pursuant to this Contract; |
| **“Losses”** | Delete existing definition and replace with “Means losses (excluding loss of profits, indirect or consequential loss, loss of or damage to goodwill), liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly” |
| **“Market Value”** | Means the current value of an asset on the EVCP market. |
| **“Necessary Consents”** | Means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Supplier’s obligations under this Contract, whether required in order to comply with Applicable Law or as a result of the rights of any third party.” |
| **“Net Book Value**” | Means the original cost of an asset or liability minus depreciation and amortisation. |
| **“Open Book Data”** | Remove the word “Charges” from existing definition and replace with the word “Revenue”. |
| **“Regulations”** | Delete existing definition and replace with the words “Means the Concession Contracts Regulations 2016” |
| **"Reminder Notice"** | delete the definition and insert in its place:-  “a notice sent in accordance with Clause 10.4.1b) given by the Buyer to the Supplier providing notification that payment of any sums payable to the Buyer under the Contract have not been invoiced by the Supplier, or if invoiced have not been received on time;” |
| **“Service Levels”** | Delete “Service Credits” and substitute “Service Failure Payments” |
| **“Service Period”** | As stated in the Order Form, one month unless stated otherwise in Order Schedule 14; |
| **“Specific Change in Law”** | Delete existing definition and replace with “means a change in Law which comes into effect after the Commencement Date that specifically refers and relates to the provision of services which are the same as or similar to the Services and which directly affects the provision of the Services.” |
| **“Subsidiary Agreement”** | Means any agreement which the Supplier must put in place and enter into in order to provide the Deliverables or which is required with a person with a leasehold interest derived from the Buyer or Cluster Member or any other interest in the land comprising the Buyer Premises in order to be granted a licence, access or other requisite rights for the Supplier to provide the Deliverables at those premises |
| **OTHER TERMS WITH INITIAL CAPITALS** | **WHERE NOT DEFINED IN DPS JOINT SCHEDULE 1) OR IN THIS SCHEDULE ARE DEFINED IN ORDER SCHEDULE 20 (SPECIFICATION, BID ATTACHMENT 3), OR IN THE SCHEDULE IN WHICH THEY APPEAR.** |

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| **RM6213 DPS CORE TERMS** | **AMENDMENT** |
| **Clause 2.4** | delete “buy” and substitute “procure”  delete “Regulations” and insert the words “Concession Regulations as applicable” |
| **Clause 2.11** | delete “Regulations” and insert the words “Concession Regulations as applicable” |
| **New Clause 2.13** | Insert new clause 2.13 as follows:-  The Buyer gives no warranty in relation to any Location as to the Buyer’s or Cluster Member’s title and interest or rights in the same where the Deliverables are or may be provided or that they may lawfully be used, or are physically suitable for, the proposed use, or exercise of the rights and obligations entailed in the provision of the Deliverables. The Supplier must carry out its own due diligence and rely on its own enquires. |
| **Clause 3.1.1** | Insert in the first bullet point after “Specification” the words “(including without limitation, any technical specifications and standards)”  Insert in the fifth bullet point before “policies” the words “any method statements in its Order Tender submission,”  Insert new bullet points at the end as follows:-  “that comply with all Necessary Consents”  “that comply with all Approvals”  “that comply with the Grant Funding Agreement” |
| **Clause 3.1.2** | Warranty period is amended to 36 months in the case of new EVCI installed at the Recommended Locations and Further Locations. |
| **New Clause 3.1.3** | Insert New Clause 3.1.3 as follows:-  “In any period where qualifying construction works (including design) are being carried out under the Contract, the parties acknowledge that the Buyer (and where applicable any Cluster Member) and Supplier will all be a client for the purpose of the CDM Regulations. The Supplier is required in all cases in relation to any Locations forming part of the public highway to act as the sole client in the performance of all the duties of and comply with the obligations of the client under the CDM Regulations in relation to the relevant Deliverables at these Locations, including, without limitation to act as, or appoint a principal contractor and principal designer and other duty holders as required who are competent to and have adequate resources to perform all their obligations under CDM Regulations. |
| **Clause 3.2.2**  **Clause 3.2.3**  **Clause 3.2.4** | 3.2.2 Insert after “assignable to the Buyer” the words “or the Cluster Member on the Buyer’s request at the Contract End Date, or the End Date of the relevant part of it, where the Goods are transferred to the Buyer or Cluster Member pursuant to this Contract”,  3.2.3: Delete standard clause 3.2.3. in its entirety.  Replace with new Amended 3.2.3.as follows:-  “The Supplier shall retain ownership and possession of and be responsible for risk in the Goods following delivery at the Locations, including all the Supplier’s installations below and above ground and until the End Date of the Contract or relevant part of it.”  3.2.4: Delete standard clause 3.2.4. in its entirety.  Insert new amended clause 3.2.4 as follows:  “At the End Date of the Contract or relevant part of it:-  i) Title and risk in any below ground Goods installed pursuant to this Contract shall vest in the Buyer or Cluster Member at the Contract End Date, at no cost to the Buyer. In the event and to the extent that any of the ownership of the aforesaid infrastructure is deemed for any reason not to vest in the Buyer or Cluster Member, the Supplier shall forthwith, free of charge to the Buyer or Cluster Member, assign or otherwise transfer or cause to be assigned or otherwise transferred the same to the Buyer or Cluster Member free of encumbrance or compensation to the Supplier.  ii) The Buyer, or its nominee (including any Replacement Supplier), shall have the right at their option to purchase the above ground Goods at Market Value should the contract terminate prior to the End Date. Where the Supplier has been in receipt of Grant Funding for the provision and installation of the Goods, then the Market Value shall be discounted by the same percentage as the percentage of the original costs funded by the Grant Funding. The Market Value and equivalent grant percentage are to be agreed by the Parties acting reasonably, or failing agreement, to be determined by an independent valuation expert experienced in the valuation of similar goods and assets to the Goods. The Buyer’s right of first refusal shall continue whilst any such determination of the value is carried out.  iii) Risk and title in any above ground goods purchased by the Buyer shall transfer to the Buyer at the End Date, subject to payment of, or credit being given to the Supplier for the purchase price but reverts to the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of the Contract End Date.  iv) The Supplier shall remove the Supplier’s above ground Goods not purchased by the Buyer at End Date of the Contract or the relevant part of it. |
| **Clause 3.2.5** | Delete standard clause 3.2.5 in its entirety and insert new clause 3.2.5 in its place:-  Insert in its place:-  “The Supplier is to warrant that any such assets as are transferred to or are sold to the Buyer or Cluster Member at the End Date are free from any security, charges, lien or other encumbrance. Alternatively, the Supplier shall ensure that the benefit and burden of such arrangements can be assigned to the Buyer, or any Replacement Supplier at the Buyer’s request and on terms no less favourable than those enjoyed by the Supplier.” |
| **3.2.6** | Delete standard clause 3.2.6 in its entirety and insert new clause 3.2.6 in its place:-  “The Supplier must deliver the Goods to the Locations on the dates agreed with the Buyer during the Buyer’s normal working hours”. |
| **3.2.9** | Delete clause and insert “Not used” |
| **Insert new clause 3.2.13** | Insert new clause 3.2.13 as follows:-   1. “The Supplier shall provide on completion of the installation at the Locations an Inventory and an updated Inventory at least every twelve (12) months during the Contract Period and provide a copy of the Inventory upon reasonable request by the Buyer. In addition, the Supplier shall provide the Buyer with a final copy of the Inventory (the “**Final Inventory**”) where possible three (3) months prior to the end of the Contract Period, or as soon as practical after service of a notice to terminate the Contract. The Final Inventory shall contain details of the Market Value of all items of Supplier Goods. 2. Within four (4) weeks of receipt of the Final Inventory, the Buyer shall notify the Supplier of the items it wishes to purchase and if no such notification is received by the Supplier in respect of any item of Supplier Goods the Supplier may treat that item of Supplier Goods as released from the obligation to sell it to the Buyer.” |
| **Clause 3.3.5** | Insert after the word “Buyer’s” the words “or Cluster Member’s, as appropriate,” |
| **Clause 4** | Clause 4 is deleted and New Clause 4 “Payment of Revenue to the Buyer” is substituted as follows:- |
| **Clause 4.1** | Delete 4.1 in its entirety and insert in its place new clause 4.1 as follows:-  4.1 The Supplier has agreed to provide the Deliverables under this Order Contract on a concession basis. The Supplier will not be entitled to payment of any Charges under the Order Contract and any reference to the same shall be deemed to be deleted. In consideration for the grant of all the rights under this concession Contract and the performance of their respective obligations set out in this Contract:-  4.1.1. The Supplier in consideration for its provision of the Deliverables at its cost (save for payment to it of any Grant Funding agreed as payable in respect of the same under a Grant Funding Agreement) in accordance with the Contract, shall be entitled to retain the End User Tariff payments paid for use by customers of the EVCPs. The initial End User Tariff is stated in the Pricing Schedule (Attachment 4) and is to be adjusted in accordance with the procedures identified in section 46 of Order Schedule 20 (Specification).  4.1.2 the Supplier will pay the Revenue to the Buyer or Cluster Member (as appropriate) as specified in section 45 of Order Schedule 20 (Specification). 4.1.3The Revenue is to be adjusted on the Revenue Adjustment Date and each anniversary thereof in line with the Consumer Price Index, as stated in the Order Schedule 20 (Specification).4.1.4 The Supplier must pay to the Buyer and any relevant affected Cluster Member the Additional Payments, to which the Buyer or Cluster Member(s) are entitled under the Contract. |
| **Clause 4.3** | Delete “Charges” and substitute “Revenue” |
| **Clause 4.4** | Delete in its entirety and substitute new clause 4.4 for this Order Contract as follows;-  4.4.1 The Buyer will and the Cluster Member will sign a “self-billing agreement”, pursuant to which the Supplier must prepare invoices addressed to itself on behalf of the Buyer or Cluster Member (to whom copies are to be sent) for the applicable Location in respect of the Revenue payable by the Supplier to the Buyer or relevant Cluster Member in respect of:-  4.4.1.1 the Annual Concession Fees in advance from the date of commissioning of each charging space at each Location which is a Group B Location as identified on the Price Schedule, on or before the start of each financial year thereafter  4.4.1.2 the Revenue Share at the end of each month  4.4.1.3 the reimbursement of the electricity used by the Equipment for the preceding month (applicable to some Group B locations only)  Stating in addition to the information required in Clause 4.5 and anything required by HMRC or the Buyer’s internal procedures:-   * a unique identification number * the full name of the Buyer or Cluster Member, address, the registered VAT number, and contact information * the company name and address of the Supplier who is being invoiced * a clear description of what is being charged for * the period to which the relevant element of the Revenue for the concession relates (supply date) * the date of the invoice * the amount(s) being charged * VAT amount if applicable * the total amount owed.   And provide a copy both to the Buyer, and to the relevant Cluster Member.  The Supplier will also pay the Buyer the annual indexed fee at the start of every year, as detailed in section 45 of Order Schedule 20 (Specification). |
| **Clause 4.5** | After “Supplier” insert “generated” |
| **Clause 4.8** | Delete clause and insert “Not used” |
| **Clause 4.9** | Delete clause and insert “Not used” |
| **Clause 4.10** | Delete clause and insert “Not used” |
| **New Clause 4.12** | New Clause 4.12:-  “Where the parties agree to Further Locations being added to the list of Recommended Locations identified Price Schedule pursuant to the terms of the Specification (Order Schedule 20), the pricing for the Revenue, Concession Fees and End User Tariffs shall be as set out in the Price Schedule for the Recommended Locations listed, save as may be adjusted in accordance with the Contract. Where the Host of a Further Location is a third party Cluster Member the provisions of Order Schedule 12 (Clustering) shall apply.  Equally where the parties agree the omission and substitution of an alternative Recommended Location or Further Location that delivers a comparable solution for the locality,  or the Buyer requires the relocation of the EVCPs pursuant to Clause 10.9 hereof, the End User Tariffs, Concession Fees and Revenue prices in the Price Schedule shall apply at the new Location (adjusted only as provided for in the Contract) under the Variation. In other respect, the procedure in Core Clause 24, in Order Schedule 15 and the Specification shall apply for approval of the programme and plan proposed by the Supplier and any other matters required to be agreed pursuant to the Contract. The addition of the Buyer Premises and where applicable new Cluster Member shall be added to the Order Contract in a written Variation to the Contract executed by both Parties. |
| **Clause 5.1** | In second bullet point:-  Delete “Deduction under this Contract” and substitute “Service Failure Payment”. |
| **Clause 5.2** | In second bullet point:-  Insert “written” before “notice”  In third bullet point:-  Insert “demonstrates it has” at the start. |
| **New Clause 5.3** | Insert new Clause 5.3:-  “5.3.1. The Supplier as a condition precedent to its right to provide the Deliverables at Locations of which a Cluster Member is the Host shall enter into a separate legally binding Cluster Member Agreement and Land Lease with the relevant Cluster Member for the same and with the Buyer. The purpose of the Cluster Member Agreement is for the Cluster Member to grant a licence and right of access to the Supplier at the Location of which it is Host for the purpose of providing the Deliverables at the times and dates to be agreed between the parties and the Cluster Member during the Contract Period, subject to compliance by the Supplier with the obligations imposed on it by the Buyer in relation to this Contract. The purpose of the Land Lease is for the Cluster Member to grant a fixed-term tenancy to the Supplier for the use of the agreed land for the specified purposes and duration under this Contract.  5.3.2 The Supplier shall limit access to the Locations to such of the Supplier’s Staff as is necessary to enable it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that the Supplier’s cooperate) with such other persons working concurrently on such Locations as the Buyer or Cluster Member may reasonably require.    5.3.3 Save in relation to such actions identified by the Supplier in accordance with clause 5.3.3 should the Supplier require modifications to the Locations, such modifications shall be subject to Approval to be obtained from the Buyer (and Cluster Member where applicable) and shall be carried out at the Supplier's expense. Any such modification work is to be approved by the Buyer (and the Cluster Member where applicable) pursuant to this clause 5.3.4 without undue delay and will be carried out by the Supplier unless the Buyer and relevant Cluster Member decide otherwise. Ownership of such modifications shall rest with the Buyer (or the Cluster Member as applicable).  5.3.4 The Supplier shall (and shall ensure that the Supplier’s Staff) and their contractors’ staff observe and comply with such rules and regulations as may be in force at any time for the use of such Locations and conduct of personnel at the Locations as determined by the Buyer (and Cluster Member as applicable), and the Supplier shall pay for the cost of making good any damage caused by the Supplier or the Supplier’s Staff. 5.3.5 No approval or acknowledgement given by or on behalf of the Buyer or a Cluster Member shall relieve the Supplier of any of his obligations under the Order Contract. |
| **Insert new Clause 5.4** | Where the Buyer, or under the Cluster Member Agreement the Cluster Member, fails to provide access to the Supplier at the Locations which prevents it from providing the Deliverables, or the Buyer (or Cluster Member where applicable) causes a blockage at the Locations which prevents the operation of the agreement by the Supplier, or the use of the EVCPs by the customers, the Supplier shall, subject to notifying the Buyer/Cluster Member promptly and evidencing the same, be entitled to:-   1. be relieved of its obligations for the period of the prevention of access or blockage; and 2. claim any direct costs incurred by it which as a result which are wasted costs, from the Buyer (or Cluster Member as applicable); and 3. be relieved from paying the proportion of the Annual Concession Fee in respect of any operational EVCP for the period for which access to it is so prevented or blocked, and 4. claim compensation for loss of the End User Tariff for the period for which access to an operational EVCP is so prevented or blocked, calculated based on the average of a comparable period in the previous 3 months. |
| **Clause 7.1** | Third bullet point; replace word “on the Buyer’s premises” to “working at the Locations” |
| **Insert new clause 8.8** | Insert new clause 8.8  8.8 The Supplier will indemnify the Buyer (and any Cluster Member for the avoidance of doubt) against breaches in respect of any matter arising from the provision of the Deliverables resulting in any claim by any third party to the extent of the Supplier’s Default, including, without limitation:-  8.8.1. any damage to property to the extent that such damage is caused by or relates to or arises from the provision of the Deliverables;  8.8.2 any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, demands, proceedings or judgments, joint or several, threatened, brought or established against the Buyer (or any Cluster Member) in respect of any liability, loss, damage, cost or expense sustained by the Buyer (and any Cluster Member) employees, Sub-Contractors or agents or by any third party to the extent that such liability loss damage cost or expense is caused by or relates to or arises from the Goods or the provision of Deliverables;  8.8.3 any negligent act, recklessness, tortious acts or omission of the Supplier or its employees' agents or Sub-Contractors in providing the Goods and/or Services which causes financial loss to the Buyer (and any Cluster Member); or  8.8.4 any default, unauthorised act or wilful misconduct of the Supplier, its employees, agents or Sub-Contractors; or  8.8.5 any liability which the Buyer (and any Cluster Member) incurs under the Consumer Protection Act 1987 as a result of the acts or omissions of the Supplier in providing the Goods and/or Services,  Whether during or after the applicable Contract Period. |
| **Clause 9.5** | Insert after “each Buyer” the words “and Cluster Member”, |
| **Clause 10.1** | After “ends on” insert “the relevant” before “End Date”. After “End Date” insert “as stated in the Order Form”. |
| **Clause 10.2** | Insert after “the Contract” the words “or the relevant part of it”. Amend “3 Months’ written notice” to “6 Months’ written notice” |
| **Clause 10.3** | Delete clause and insert “Not Used” |
| **Clause 10.4.1** | 10.4.1 in the seventh bullet point: insert after “(DPS Management)” the words “or a Critical Service Level Failure as defined in this Order Contract”  10.4.1 delete wording of eighth bullet point and replace with “"there’s a Change of Control of the Supplier which isn’t pre-approved by the Relevant Authority in writing, such approval not to be unreasonably withheld, or delayed.".  10.4.1 in the tenth bullet point delete “57 (1) or 57(2) of the Regulations” and insert the words “in regulation [38(8)](https://www.legislation.gov.uk/uksi/2016/273/regulation/38/8/made), including where relevant as a result of regulation [38(9)](https://www.legislation.gov.uk/uksi/2016/273/regulation/38/9/made), of the Concession Regulations, as may be applicable”.  10.4.1 in the eleventh bullet point: delete the word “Regulations” and insert the words “the Concession Regulations, as applicable”. |
| **Insert new Clause 10.4.1A** | Insert new clause as follows:-  “10.4.1A The Buyer can terminate a Contract if the Supplier fails to pay an undisputed invoiced sum or sums by the date for payment and worth over REDACTED TEXT under FOIA Section 43 Commercial Interests, within 30 days of the date of the reminder notice given by the Buyer to the Supplier.” |
| **Clause 10.4.6** | In clause 10.4.6: delete “Regulations” and insert the words “ Regulation 44(1) (a)-(c) of the Concession Regulations, as applicable”. |
| **Insert new Clause 10.4.7** | Delete standard clause 10.5.7 in its entirety and replace with new clause 10.4.7:  “Any reference to a right to terminate the Contract or the termination of the Contract shall mean to the Contract as a whole or any part of it. For the avoidance of doubt, where the Contract is terminated in part, any rights of exclusivity granted to the Supplier under the Contract in relation to that part terminated shall end.” |
| **Insert new Clause 10.4.8** | Insert new clause 10.4.8:  “Where the Supplier is in Default of the Contract, and the Buyer exercises its right under 10.8.3 to engage an alternative supplier to rectify the Default, the Supplier shall reimburse the Buyer or Cluster Member for any costs so incurred in remedying the Default. In this event any rights of exclusivity granted to the Supplier in relation to the performance of the Deliverables in relation to the relevant Buyer Premises shall end.” |
| **Clause 10.5** | In 10.5 delete “Where the Relevant Authority terminates a Contract” and substitute “Where the Buyer terminates an Order Contract or any part of it”; and after “Clause 10.4.1” insert “or Clause 10.4.1A”. |
| **Clause 10.5.2** | In 10.5.2 Delete in its entirety and substitute:-  “Subject to 10.5.3, the Supplier’s right to receive payments of End User Tariffs shall stop immediately together with the Supplier’s obligation to provide the Deliverables and to make payment of the Revenue to the Buyer of relevant Cluster Member for the period which postdates the End Date of the terminated Contract or relevant part terminated. The Buyer’s obligation to make any payments to the Supplier (where applicable) shall cease immediately pending any accounting reconciliation between the Parties.”  At the end of clause 10.5 insert a new paragraph as follows:-  “And where the Buyer terminates an Order Contract on account of a breach by the Supplier of the Grant Funding Agreement pursuant to Clause 10.3.4 the provisions in that clause shall apply at the End Date”. |
| **Clause 10.6.1** | Delete existing clause 10.6.1 and substitute new clause 10.6.1 as follows:-  “The Supplier may terminate if the Buyer is in material breach of the Contract and:-   * The material breach is irremediable * The Supplier has given the Buyer written notice of the breach requiring it be remedied within not less than [30] days and the Buyer has failed to remedy it within that period to the satisfaction of the Buyer.” |
| **Clause 10.6.2** | Delete first bullet point in its entirety.  In the second bullet point:-  Delete from and including the words “the maximum value.” to the end of the bullet point.  In third bullet point: -  Delete “10.5.4” in the third bullet point in its entirety and substitute “10.5.3”. |
| **Clause 10.8.5** | Insert at the start “Save to the extent the consequences of the exercise of the Buyer’s rights under clause 10.8 are expressly provided for elsewhere in this Order Contract,”  10.8.5 delete second bullet point.  Insert at the end of clause 10.8.5:-  “Where the termination is for a Default then the Supplier shall not be entitled to any compensation for its Losses, save for the payment for any Goods which the Buyer elects to purchase and which do not automatically transfer to it (at no cost) at the End Date under the Contract, at the Market Value with credit given for any grant funding received by the Supplier on the basis set out in 3.2.4.1. ii”. |
| **Insert new Clause 10.9** | Insert new Clause 10.9 as follows:-  10.9.1 Suffolk County Council may give a notice from time to time during the Contract Period to the Supplier as set out below in this clause 10.9 (the “**Relocation Notice**”):   * + 1. designating all or any of the following:        1. an alternative specific location as the alternative to the Buyer Premises for the provision by the Supplier of the Supplier’s Goods and Deliverables;        2. an alternative route or routes for any of the Supplier's Goods; and     2. specifying:        1. Suffolk County Council’s reasonable requirements as to the method and manner in which the Supplier must carry out and complete the works to be carried out by the Supplier to relocate the Supplier's Goods for and the provision of the Deliverables at the alternative location or routes designated in a Relocation Notice (the “Relocation Works”), or requesting the Supplier’s proposals in respect of those Relocation Works; and        2. a reasonable period in the event of the receipt by the Supplier of written confirmation from Suffolk County Council to proceed to perform the Relocation Works during which the Supplier must carry out and complete the Relocation Works (except in case of emergency where the Buyer may specify that the Supplier must carry out and complete the Relocation Works immediately); and     3. requesting the Supplier provide a quote for its reasonable and proper costs of performing the Relocation Works.   10.9.2 Suffolk County Council may following receipt of the information required from the Supplier in the Relocation Notice (if any), issue a notice to the Supplier confirming the Buyer’s instructions to proceed with the Relocation Works specified in its notice.  10.9.3 Except in case of emergency, Suffolk County Council may only serve a Relocation Notice if the relocation of the Supplier's Goods or any of them to the alternative location(s) or routes specified in the Relocation Notice is reasonably required to enable Suffolk County Council to:   * + 1. carry out works for redevelopment, repair, maintenance, reinstatement or renewal of any part of the Buyer Premises;     2. comply with any applicable laws, or regulations, order or requirement of any government agency or authority;     3. improve the arrangement of the Goods and infrastructure at the Buyer Premises; or     4. accommodate the reasonable requirements of any other supplier or occupier of the Buyer Premises.     5. Suffolk County Council must use reasonable endeavours to ensure that the alternative location(s) and routes specified in the Relocation Notice are not materially less convenient for the Supplier.     6. Suffolk County Council must pay the reasonable and proper costs and expenses incurred by the Supplier in connection with the carrying out of any Relocation Works on a full indemnity basis (including any irrecoverable VAT) within [30] working days of demand.     7. The Supplier shall not be entitled to any other recompense for the termination of the requirement for the provisions of the Deliverables at the relevant Buyer Premises on account of the substitution of the requirement for their provision at the alternative Buyer Premises on the basis in clause 10.9.5 above, save to the extent the same number of EVCPs and any associated equipment cannot be accommodated at the new location(s) in which event Suffolk County Council shall pay the Supplier the Market Value of any EVCPs and associated equipment which cannot be redeployed elsewhere. |
| **Clause 11.1** | Amended to:-  “Subject to clauses 11.2.2, 11.4 and 11.5, each Party's total aggregate liability in each Contract Year under this DPS Contract (whether in tort, contract or otherwise) is no more than REDACTED TEXT under FOIA Section 43 Commercial Interests |
| **Clause 11.2** | Amended to:-  11.2.1  “Subject to clauses 11.2.2, 11.4 and 11.5, 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 REDACTED TEXT under FOIA Section 43 Commercial Interests of the Estimated Yearly Charges unless otherwise specified in the Order Form."  11.2.2  “Subject to clause 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 REDACTED TEXT under FOIA Section 43 Commercial Interests |
| **Clause 11.5** | Amended to:-  “Notwithstanding Clauses 11.1 and 11.2, but subject to clause 11.3, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5 or 9.5, or Call-Off Schedule 2 (Staff Transfer) of a Contract.” |
| **Clause 11.7** | In first bullet point insert after “Deductions” the word “or Additional Payments as applicable to the Contract”. |
| **Clause 13** | Insert the number 13.1 before the existing paragraph under this clause.  Insert new sub-clause, as follows:-  13.2. At the written request of Buyer, the Supplier shall provide the Buyer with a copy of each insurance policy. On the renewal of each policy, the Supplier shall promptly send a copy of the receipt of the premium paid by the Supplier to the Buyer.   * 1. The Supplier shall, during the term of this Agreement, and for a period of one (1) year after that:      1. administer the insurance policies and the Supplier's relationship with its insurers at all times to preserve the benefits for Buyer set out in this Contract;   13.3.2 do nothing to invalidate any insurance policy or to prejudice Buyer's (or Cluster Member’s) entitlement under those policies; and   * + 1. procure that the terms of such policies are not altered in such a way as to diminish the benefit of the policies for the Buyer (or Cluster Member) which are provided as at the Order Start Date. |
| **Clause 14.7** | Delete “clause 14.7” in clause and substitute “Clause 14.6”. |
| **New Clause 14.9** | Insert New Clause 14.9:-  “The Supplier warrants it has in place appropriate technical and organisational measures to meet the requirements of the Data Protection Legislation”. |
| **Clause 19** | At the start of the clause delete “No” and insert in its place “Save as expressly stated otherwise in this Contract, no” |
| **Clause 22** | Insert new sentence at the end.  **“**[No waiver](https://www.lawinsider.com/clause/time-is-of-the-essence-waiver) by either party of any of its rights or remedies under the Order Contract or otherwise shall be considered a waiver of any other subsequent right or remedy. Except as expressly provided herein, no waiver by either party of any of its rights or remedies hereunder or otherwise shall be effective unless such waiver is evidenced in a written instrument executed by the waiving party. |
| **Clause 24.5** | At the end delete “for an increase to the DPS Pricing or the Charges” and substitute “for a decrease in the Revenue”. |
| **Clause 24.6** | Delete “the DPS Pricing”  Insert at the end of the clause after the bullet points, the following:-  “The Supplier is to propose adjustments to the End User Tariff to manage any additional costs it incurs as a result of a Specific Change in Law, which proposals are to be reviewed and are to be approved by the Buyer, in line with any appropriate benchmarking such approval not to be unreasonably withheld or delayed. |
| **Clause 24.7** | Delete “in the DPS Pricing” and after “Clauses 24.1” delete to 24.4” and insert in its place “and 24.2” |
| **Clause 27.1** | In the first bullet point delete “Regulations 57(1) and 57(2)” and insert the words “in Regulation 38(8)-(10) of the Concession Regulations as applicable”. |
| **Clause 28.1** | Insert after “age” the words “, marriage or civil partnership”. |

**ORDER SCHEDULES AMENDED:-**

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| --- | --- |
| Order Schedule 6  (ICT Services) | **amended** |
| Order Schedule 11 (Processing Data) | **amended version to be agreed post award** |
| Order Schedule 12 (Clustering) | **amended version** |
| Order Schedule 13 (Implementation Plan and Testing) | **amended version** |
| Order Schedule 14 (Service Levels) | **amended version** |
| Order Schedule 15 (Contract Management) | **amended version** |
| Order Schedule 24  (Grant Funding) | **new** |
| Joint Schedule 3 (Insurance Requirements) | **amended version** |
| Joint Schedule 7  (Financial Difficulties) | **amended version** |