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Should you have any queries, please contact Commercial@SmartDCC.co.uk

SCHEDULE 19

VARIATION PROCEDURE

1. VARIATION PROCEDURE

1.1 Subject to the provisions of this Schedule 19, either Party may request a variation to this Agreement. Such a variation once implemented is hereinafter called a "**Variation**".

1.1.1 If either Party elects to request a Variation, the following procedure shall apply:-

(a) the requesting Party shall complete and send the Variation Form to the other Party, giving sufficient information for the other Party to assess the extent of the proposed Variation.

(b) the Contractor shall:-

(i) in the case where it receives a Variation Form from the DCC, within ten (10) Business Days of receipt or such other period as specified in the DCC's Variation Form; or

(ii) in the case where the Contractor submits a Variation Form to the DCC, at the same time as it submits the Variation Form,

prepare and provide to the DCC an "**Impact Assessment**" and all information required by the DCC to assess the extent of the proposed Variation.

(c) each Impact Assessment shall be completed in good faith and shall include:-

(i) details of the proposed Variation including the reason for the Variation;

(ii) details of the impact of the proposed Variation on the Services, and the Contractor's ability to meet its other obligations under this Agreement;

(iii) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:-

(1) the Services;

(2) other goods and services provided by other DCC Service Providers required to implement the proposed Variation;

(iv) details of the on-going costs required by the proposed Variation when implemented, including any increase or decrease in any Charges, any alteration in the resources and/or expenditure

required by either Party and any alteration to the working practices of either Party;

- (v) a timetable for the implementation, together with any proposals for the testing of the proposed Variation (if applicable);
- (vi) details of how the proposed Variation will ensure compliance with any applicable Change in Mandatory Requirements; and
- (vii) such other information as the DCC may reasonably request in (or in response to) the proposed Variation.

1.1.2 If the DCC is the receiving Party and the DCC reasonably considers that it requires further information regarding the proposed Variation so that it may properly evaluate the proposed Variation and the Impact Assessment, then it shall notify the Contractor of this fact and detail the further information that it requires. The Contractor shall then re-issue the relevant Impact Assessment to the DCC within ten (10) Business Days of receiving such notification. At the DCC's discretion, the Parties may repeat the process described in this Paragraph 1.1.2 until the DCC is satisfied that it has sufficient information to properly evaluate the proposed Variation and Impact Assessment.

1.1.3 The DCC shall have the sole and absolute right to approve or reject the Contractor's proposed Variation.

1.1.4 The Contractor shall attend any meetings reasonably requested by the DCC to discuss any proposed Variation.

1.1.5 Where a proposed Variation is approved by the DCC, the DCC shall notify the Contractor of its approval of the Variation by signing and returning the Variation Form to the Contractor. A proposed Variation shall not be implemented by the Contractor until such time as the DCC has notified the Contractor of such approval in accordance with this Paragraph.

1.1.6 In the event that the DCC does not approve the proposed Variation, the DCC will notify the Contractor in writing.

1.1.7 In the event that:-

- (a) the DCC requests a Variation and the Contractor rejects the Variation in accordance with the circumstances specified in Paragraph 1.2:-

and/or

- (b) either Party requests a Variation, the Parties are unable to agree a change to the Charges that may be included in a request for a Variation or response to it as a consequence thereof,

the DCC may (in its absolute discretion):-

- (c) choose to have the Contractor continue to perform its obligations under this Agreement without the Variation; or
- (d) in respect of any Variation, other than a Variation rejected by the Contractor under Paragraph 1.2, choose to have the Contractor continue to perform its obligations under this Agreement with the Variation, with any Dispute as to the Charges, costs and impacts of the Variation to be settled in accordance with Clause 26 (*Dispute Resolution Procedure*); or
- (e) terminate this Agreement with immediate effect.

1.1.8 In respect of any Variation, Contractor shall:-

- (a) take reasonable steps to minimise any increase in its costs (and, where applicable, maximise any reduction in its costs) arising from the Variation, including by ensuring that, where possible:-
 - (i) existing resources are used in relation to the implementation and/or ongoing operation of the Variation; and
 - (ii) any existing or new resources used in relation to the Variation are used in a reasonably efficient manner and in accordance with Good Industry Practice;
- (b) take reasonable steps to mitigate any risks or other adverse effects of the Variation (and, where applicable, to take advantage of any positive or beneficial effects of the Variation); and
- (c) provide reasonable evidence to the DCC (as part of the relevant Impact Assessment) in relation to:-
 - (i) where applicable, how the Variation has affected the costs of providing any Services affected by the Variation;
 - (ii) any alteration in the resources used to provide the Services (including any new resources to be used in relation to the Variation);
 - (iii) how the Contractor has minimised any increase in its costs (and, where applicable, maximised any reduction in its costs) arising from the Variation in accordance with Paragraph 1.1.8(a) above;
 - (iv) how the Contractor has mitigated any risks or other adverse effects of the Variation (and, where applicable, taken advantage of any positive or beneficial effects of the Variation) in accordance with Paragraph 1.1.8(b) above; and

- (v) how any expenditure that has been avoided as a result of the Variation has been taken into account in adjusting the Charges.

Contractor's right of rejection

1.2 Following an Impact Assessment, if

1.2.1 the Contractor reasonably believes that any proposed Variation which is requested by the DCC would:-

- (a) materially and adversely affect the risks to the health and safety of any person; or
- (b) require the Services to be performed in a way that infringes any Law; or

1.2.2 the Contractor demonstrates to the DCC's reasonable satisfaction that the proposed Variation is technically impossible to implement or the Contractor does not have the technical capacity and flexibility required to implement the proposed Variation,

then the Contractor shall be entitled to reject the proposed Variation and shall notify the DCC of its reasons for doing so within five (5) Business Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 1.1.1(b).

2. COSTS

2.1 Each Party shall bear its own costs in relation to the preparation and agreement of each Variation (including the preparation of the Variation Form and Impact Assessment), save that if the DCC has submitted a Variation Form to the Contractor (other than as a result of any breach by the Contractor), the Contractor will provide a quote to the DCC for the costs of preparing, negotiating and finalising the Impact Assessment for the DCC's approval. If the DCC approves the quote, the Contractor shall be entitled to invoice the DCC for the amount quoted on delivery of the final Impact Assessment.

2.2 All Variations shall be calculated and charged in accordance with the principles and rates set out in Schedule 22 (*Charges and Invoicing*).

2.3 In all cases and at all times the Contractor shall ensure resources are used (working with optimum efficiency and in accordance with Good Industry Practice) in the most efficient possible manner and so as to ensure the lower possible Charges or increase in Charges.

2.4 The DCC shall be entitled to a reduction in the Charges in respect of any Variation to the extent that resources used by the Contractor to provide the Services after the Variation are (or would reasonably be, if the Services were being provided with optimum efficiency and in accordance with Good Industry Practice) less than those used by the Contractor on an equivalent basis prior to the Variation.

2.5 It is agreed that both Parties' costs incurred in respect of any use of this Variation Procedure as a result of any breach by the Contractor shall be paid

for by the Contractor and the Contractor shall not be entitled to increase any Charges (or any other sum) in connection with such Variation.

3. RELATED VARIATION PROCEDURES

- 3.1 The Contractor acknowledges that the Variation Procedure may need to be consistent with, and interoperate with, the variation and change control procedures of the DCC and other Relevant Service Providers (each a "**Related Variation Procedure**").
- 3.2 The Contractor shall promptly provide any co-operation (which may include attendance at workshops with the DCC and the Relevant Service Providers), documentation, data, information or other assistance reasonably requested by the DCC or any Relevant Service Provider in relation to any Related Variation Procedure and its alignment with the Variation Procedure.

APPENDIX 1
VARIATION FORM

Title:			
Date raised:		Unique Identifier:	

Raising Party:		Contact address:	Email	
Raised by:		Contact Telephone number:		

The proposed change request:
Brief description of the change required:
Deliverables requested (if any):
Target dates (if any):
Other (if any):

Variation Approval

Charges (if any):
Changes to the Contract (if any):
Other Relevant Information (if any):

For SMART DCC Limited	For Contractor
Signature	Signature
Name	Name
Title	Title
Date	Date