

Smart Meters Programme

Agreement for the provision of Billing System Services in relation to the Smart Metering Programme

**DCC Public
Agreement for the provision of Billing System Services in relation to the Smart
Metering Programme**

DATED 28th January 2015

(1) SMART DCC LIMITED

and

(2) CAPITA BUSINESS SERVICES LIMITED

**AGREEMENT for the provision of Billing Services in relation to the
Smart Metering Programme**

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THIS AGREEMENT is made on / /2015 **BETWEEN:**

- (1) **SMART DCC LIMITED**, a company registered in England and Wales under company number 08641679 whose registered office is at 17 Rochester Row, London SW1P 1QT ("**DCC**"); and
- (2) **CAPITA BUSINESS SERVICES LIMITED**, a company registered in England and Wales under company number 2299747 whose registered office is at 71 Victoria Street, Westminster, London SW1H 0XA ("**Contractor**").

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RECITALS

The following recitals (A to E (inclusive)) shall not have contractual or legal effect save as an aid to the background and interpretation of the remainder of this Agreement:

- (A) The UK Government has an objective for every home in Great Britain to have smart energy meters, empowering people to manage their energy consumption and reduce their carbon emissions, and for certain businesses and public sector users to also have smart energy metering. The roll out of smart meters will play an important role in Great Britain's transition to a lowcarbon economy, and help to meet some of the long-term challenges in ensuring an affordable, secure and sustainable energy supply.
- (B) The communication of data to and from smart meters in the domestic sector will be managed centrally by the DCC, a new, GB-wide function covering both the electricity and gas sectors. The DCC may also provide the same or similar functions and services to certain non-domestic customers. The DCC is required to contract with external service providers in relation to the procurement of the relevant data and communications services.
- (C) On the basis of the Contractor's proposals and further clarifications, the DCC has agreed to contract with the Contractor to provide the Services on the terms set out in this Agreement.
- (D) The parties are aware that, pursuant to prohibitions with the force of Law, the DCC is intended to become the sole provider of services communicating relevant information to and from Smart Meters in the domestic sector within Great Britain and will be funded under Industry Codes and Arrangements and subject to the oversight of a Regulatory Body
- (E) Further to the above, the Contractor is also aware that:
 - (i) the DCC is operating in a regulated environment and the DCC is subject to the conditions of the DCC Licence, terms of the SEC and other Mandatory Requirements (including the Industry Codes and Arrangements);
 - (ii) it shall in accordance with the provisions set out in this Agreement, amongst other things, support the DCC's compliance with the DCC Obligations;
 - (iii) it is an integral part of the DCC's end-to-end delivery of the DCC Services and the Smart Metering Programme generally and that its cooperation is required at all times with the DCC Service Providers in order to ensure that the DCC Services are delivered in an efficient, cost-effective, flexible and sustainable way that minimises service disruptions.

OPERATIVE PROVISIONS

IT IS AGREED as follows:

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SECTION A: STRUCTURE, EXECUTION AND COMMENCEMENT

1. STRUCTURE

The clauses in this Agreement consists of the following sections:

Section	Scope
A	Structure, execution and commencement
B	Scope
E	Operational services
F	Contractor's general obligations
G	Payment and other financial matters
H	Contract governance
J	IP, data and confidentiality
K	Contractor and DCC protections
L	Risk protection
M	Indemnities, liability and insurance
N	Termination and exit management
O	Miscellaneous and governing law

2. INTERPRETATION AND DEFINITIONS

2.1 In this Agreement, the definitions and rules of interpretation set out in Schedule 1 (Interpretation and Definitions) shall apply.

2.2 Without limiting the Contractor's obligations pursuant to Clause 7.3, if there is any conflict between any of the Clauses, the Schedules, any Appendices or Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

2.2.1 the Clauses and Schedule 1 (Interpretation and Definitions);

2.2.2 any Schedules and their Appendices and Annexes (except for Schedules 4.1 (Contractor Solution));

2.2.3 Schedule 4.1 (Contractor Solution) (and its Appendices and Annexes).

2.3 The purpose of this Clause 2.3 is to clarify that the DCC is able to recover its Losses notwithstanding that such Losses may ultimately be capable of being passed on by the DCC to the SEC Parties in accordance with the provisions of the SEC. The Contractor accepts that any reference in this Agreement (including in any indemnity) to any Loss incurred by the DCC (or similar phrases) shall include

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all Losses incurred by or on behalf of the DCC regardless of whether or not such Losses are or may be passed on to one or more of the SEC Parties in accordance with the provisions of the SEC.

2.4 Except as expressly stated in this Agreement, the Contractor acknowledges and accepts that any consent, approval, agreement or acceptance (including in relation to any document, proposal or other matter) by any DCC Eco-System Entity shall:

2.4.1 not act as an endorsement of any matter;

2.4.2 not relieve the Contractor of its responsibility for ensuring that the Services are provided in accordance with the requirements of this Agreement;

2.4.3 not give rise to any rights of estoppel or waiver; and

2.4.4 not relieve the Contractor of any other obligation under this Agreement,

except as otherwise expressly stated by the DCC in writing therein with reference to this Clause 2.4 and in compliance with the terms of this Agreement (including Clause 20 (Change Control)).

3. COMMENCEMENT AND DURATION

3.1 Subject to Clause 42 (Consequences of Expiry or Termination), this Agreement shall commence on the Signature Date and, unless terminated at an earlier date by operation of law or in accordance with this Agreement, shall terminate at:

3.1.1 the end of the Initial Term; or

3.1.2 if the DCC elects to extend the Term in accordance with Clause 3.2, at the end of the relevant Extension Period.

3.2 The DCC shall have the option to extend the Term of the Agreement in respect of all Services (subject to the relevant extension provisions in Schedule 7.1 (Charges and Payment)) for one (2) periods of twelve (12) months (an "Extension Period"). If the DCC intends to exercise this option, it shall give

notice to such effect to the Contractor by no later than six (6) months prior to the expiry of the Initial Term.

SECTION B: SCOPE

4. SCOPE OF AGREEMENT

4.1 The Contractor shall, at its own cost, be solely responsible for providing (or procuring the provision by the Contractor Persons of) the Services in accordance with the terms of this Agreement. This Clause 4.1 is without

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prejudice to the DCC's obligation to pay Charges in accordance with this Agreement (including Schedule 7.1 (Charges and Payment)).

4.2 The parties have agreed that the Contractor is not the exclusive or sole supplier of the Services.

4.3 The Contractor agrees that it shall not (and shall procure that none of its Affiliates or Sub-contractors shall) enter into any contract or other arrangement in relation to this agreement that unlawfully prevents or unlawfully restricts competition or is intended to prevent or restrict the DCC from procuring services (including Hardware, IPR and/or ICT) from any third party.

5. OBJECTIVES

5.1 The Contractor acknowledges that, under the SEC and DCC Licence, the DCC is required to comply with certain objectives and principles (together, the "**DCC Objectives**"), being:

DCC Objective	Description
Interim General Objective	To contribute, using all appropriate means within its power, to the achievement of a full, timely, efficient, economical, and secure Completion of Implementation in accordance with such requirements as may be imposed on the Licensee under or by virtue of the Smart Energy Code.
First Enduring General Objective	To carry on the Mandatory Business in the manner that is most likely to ensure the development, operation, and maintenance of an efficient, economical, and co-ordinated system for the provision of Mandatory Business Services under or pursuant to the Smart Energy Code.
Second Enduring General Objective	To carry on the Mandatory Business in the manner that is most likely to facilitate: (a) effective competition between persons engaged in, or in Commercial Activities connected with, the Supply of Energy under the Principal Energy Legislation; (b) such innovation in the design and operation of
	Energy Networks as will best contribute to the delivery of a secure and sustainable Supply of Energy under the Principal Energy Legislation; and (c) the reduction (by virtue of benefits arising from the provision of Value Added Services) of the charges payable for Mandatory Business Services.
Capitalised terms in this table shall have the meanings given in the DCC Licence.	

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5.2 The Contractor shall:

5.2.1 perform its obligations under this Agreement; and

5.2.2 in so far as the Agreement leaves any discretion as to how to perform its obligations under this Agreement:

5.2.2.1 perform its obligations under this Agreement in such a manner as to enable the DCC to comply with the DCC Objectives; and

5.2.2.2 not carry out any activity, or any combination of activities, in a manner which prejudices or impairs, or would be likely to prejudice or impair, the DCC's ability to comply with the DCC Objectives.

5.3 Subject to Clause 2.2, to the extent that the terms of this Agreement do not address a particular circumstance or are unclear or ambiguous, such terms shall be construed in a manner which gives the fullest possible effect to the DCC Objectives, notwithstanding that the provisions of Schedule 8.2 (Change Control) shall apply as appropriate.

5.4 The Contractor acknowledges that, under the DCC Licence, the DCC is required to have regard to the DCC Objectives in the round, balancing them as appropriate in each particular case. Accordingly, if, in relation to the performance of any of its obligations under this Agreement or otherwise, the Contractor (acting reasonably):

5.4.1 requires the guidance of the DCC as to how to comply with the requirements of any of Clauses 5.2 to 5.3 (inclusive);

5.4.2 believes that, in relation to any particular circumstances, there is a conflict or inconsistency between any of the DCC Objectives; and/or

5.4.3 needs to understand, in relation to any particular circumstances, whether one or more of the DCC Objectives are to be prioritised over other DCC Objectives,

it shall notify the DCC accordingly and shall comply with any direction notified by the DCC in response to such request. The Contractor shall not be in breach of this Clause 5 as a result of its compliance with such direction.

SECTION E: OPERATIONAL SERVICES

6. PERFORMANCE MEASURES

6.1 The Contractor shall perform its obligations under this Agreement so as to achieve or exceed the applicable Performance Measures. The parties shall comply with their respective obligations, and may exercise their respective rights, under Schedule 2.2 (Performance Measures and Monitoring).

SECTION F: CONTRACTOR'S GENERAL OBLIGATIONS

7. SERVICES

7.1 The Contractor shall ensure that the Contractor Solution at all times:

7.1.1 complies in all respects with Schedule 2.1 (DCC Requirements) and Schedule 4.1 (Contractor Solution); and

7.1.2 is otherwise supplied in accordance with the terms of this Agreement.

7.2 The Contractor shall perform its obligations under this Agreement (including the Services) in accordance with the following requirements (the "**Core Standards**") (in descending order of priority, except to the extent that a Core Standard lower in the list requires a higher degree of skill, care, prudence, efficiency, foresight or timeliness):

7.2.1 the Standards;

7.2.2 Good Industry Practice (including any applicable Guidance); and

7.2.3 the Contractor's own established procedures and practices.

7.3 The Contractor shall (without prejudice to the generality of its obligations in Clause 5 (Objectives)) promptly notify the DCC of any inconsistency between:

7.3.1 any of the requirements in Clause 7.1 and Clause 7.2 (including between any requirements in the same Clause); and/or

7.3.2 any other obligations (including with Clause 7.1 and/or 7.2) under this Agreement,

and shall comply with any direction notified by the DCC in response to any request under Clause 5 (Objectives). The Contractor's obligations under this Agreement shall thereafter be construed in accordance with such direction.

7.4 Subject and without limitation to any relief from its obligations under Clause 36 but otherwise without prejudice to the DCC's other rights and remedies, the Contractor shall (at the Contractor's sole cost and expense):

7.4.1 promptly remedy any failure to provide the Services or to comply with its obligations in accordance with this Agreement; and

7.4.2 in the event of the Contractor's failure to provide the Services, reperform the Services as required by the DCC.

7.5 The Contractor shall:

7.5.1 at all times allocate sufficient resources to provide the Services in accordance with this Agreement;

7.5.2 obtain, and maintain throughout the Service Period, all Consents it may require and which are necessary to provide the Services (other than those forming part of the DCC Responsibilities, if any); and

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7.5.3 provide the DCC with such assistance as the DCC may reasonably require during the Service Period in respect of the supply of the Services.

8. INDEPENDENCE AND NON-DISCRIMINATION OBLIGATIONS

Obligations regarding no abuse of the DCC's special position

8.1 The Contractor shall at all times manage and perform the Services in a way that is calculated to ensure that it does not unlawfully restrict, prevent, or distort competition:

8.1.1 in any activity (other than the Authorised Activity) that is authorised by an Energy Licence under the Principal Energy Legislation; or

8.1.2 in the provision of, or in any of the markets for, Commercial Activities that are connected with the Supply of Energy under the Principal Energy Legislation.

8.2 In performing any of the Services, the Contractor shall not unlawfully discriminate between any person or any class or description of persons in connection with the provision of the Services.

8.3 The Contractor shall establish and maintain management systems, procedures and arrangements that are designed to secure its compliance with its obligations under Clauses 8.1 to 8.2.

8.4 The Contractor's obligation under Clause 8.3 includes an obligation to ensure that all Sub-contractors establish and maintain arrangements that are equivalent in their effect to those established and maintained by the Contractor under Clause 8.3.

Provision of information under DCC Licence: DCC obligations

8.5 The Contractor acknowledges that, under the DCC Licence:

8.5.1 after receiving a request from the Authority or the Secretary of State (as applicable) for Condition 29 Information that it may reasonably

require or that it considers may be necessary to enable it to exercise any functions given or transferred to it by or under any Mandatory Requirement, the DCC must give that Condition 29 Information to the Authority or the Secretary of State (as applicable) within the time and in the form requested; and

8.5.2 the DCC must not enter into or be a party to any agreement or arrangement with any person who is materially connected with the carrying on of the Authorised Business Activities (including the Contractor) that does not contain rights enabling the DCC to procure from that person and to provide to the Authority or the Secretary of State (as applicable) any Condition 29 Information that is requested under or pursuant to the DCC Licence.

Provision of information under DCC Licence: Contractor

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obligations

8.6 Subject to Clause 8.8:

8.6.1 if the DCC receives a request for Condition 29 Information from the Authority or the Secretary of State (as applicable) under the DCC Licence (each, an "**Information Request**"); and

8.6.2 in order to comply with the Information Request, the DCC requires the Contractor (or any Contractor Person) to provide any Condition 29 Information,

8.6.3 the Contractor shall provide (or, if applicable, shall procure that the relevant Contractor Person provides) the Condition 29 Information requested by the DCC within the time and in the form requested by the DCC.

8.7 The Contractor shall provide any other assistance reasonably requested by the DCC to enable it to comply with the relevant Information Request.

8.8 The DCC agrees that the Condition 29 Information requested by the DCC under Clause 8.6.2 shall not exceed the scope of Condition 29 Information which is required, in turn, from the DCC in order to comply with the relevant Information Request.

8.9 The Contractor acknowledges that the DCC may be obliged to disclose Contractor's Confidential Information under the requirements of the relevant Information Request. The DCC shall be responsible for determining in its absolute discretion whether any Contractor's Confidential Information is required to be disclosed to the Authority and/or the Secretary of State in accordance with the relevant Information Request. The DCC will use reasonable endeavours to consult with the Contractor on any such requirement.

8.10 The Contractor shall not enter into or be a party to any agreement or arrangement with any person who is materially connected with the carrying on of the Services that does not contain rights enabling the Contractor to procure from that person and to provide to the DCC any Condition 29 Information that is requested under or pursuant to this Clause 8.

9. CO-OPERATION WITH THIRD PARTIES

9.1 The Contractor recognises the importance of it co-operating with the DCC and the relevant DCC Service Providers in order to ensure that the DCC is able to provide the DCC Services in a successful and timely manner and in accordance with the DCC Obligations.

10. COMPLIANCE WITH MANDATORY REQUIREMENTS

General

10.1 The Contractor shall at all times provide the Services and perform its other obligations under this Agreement:

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10.1.1 in accordance with all applicable laws and Consents (including the giving of notices and the obtaining of any such Consents) and so as not to prejudice the renewal of any such Consents; and

10.1.2 so as not to knowingly put the DCC (or any DCC Eco-System Entity) in breach of the SEC or the DCC Licence.

10.2 The Contractor shall not (and shall ensure that the Contractor Persons do not) contact or otherwise engage with any Consumers in relation to the provision of the Services other than through, or in accordance with the written instructions of, the DCC.

SEC Modification Arrangements

10.3 The Contractor acknowledges that the SEC contains arrangements relating to the modification of the SEC (the "**SEC Modification Arrangements**"), which are required to be consistent with, and give full and complete effect to, the requirements set out in Part B of Condition 23 of the DCC Licence. Such requirements include that the SEC Modification Arrangements must provide for:

10.3.1 the DCC and all other SEC Parties to meet periodically for the purpose of discussing the continuing development of the SEC;

10.3.2 a timely and efficient process by which the SEC Panel can:

10.3.2.1 formally receive modification proposals from the DCC, any other SEC Party, the Authority, a Consumer Member, or any other person or body that may be designated for such purpose by the Authority;

10.3.2.2 consult on the merits of those proposals with the DCC, other SEC Parties, Consumer Members, and any other persons whose interests are materially affected by the SEC; and

10.3.2.3 evaluate those proposals in the light of that consultation;

10.3.3 the SEC Panel to have a report on any modification proposal ("**Modification Report**") prepared in a timely and efficient manner for submission to the Authority that:

10.3.3.1 sets out the terms proposed for the modification;

10.3.3.2 fairly summarises the representations received during the consultation process referred to in Clause 10.3.2;

10.3.3.3 sets out the conclusions reached by the SEC Panel about the modification proposal in question, including whether, in the SEC Panel's opinion, the modification would better achieve the Relevant SEC Objectives; and

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10.3.3.4 sets out a timetable for implementing the modification, if it were to be made, and the date with effect from which the modification (if made) would take effect;

10.3.4 every Modification Report to include an assessment of the quantifiable impact (if it is likely to be material) of the modification proposal on Greenhouse Gas emissions (and for that assessment to be conducted in accordance with any guidance issued for that purpose by the Authority about the evaluation of such emissions and the appropriate treatment of carbon costs);

10.3.5 the Authority, if it considers that a Modification Report does not adequately analyse or fully consider the matter in question:

10.3.5.1 to remit that Modification Report to the SEC Panel; and

10.3.5.2 to direct the SEC Panel as to the nature of the further analysis or further consideration that the Authority believes is required; and

10.3.6 the Authority to bring forward a modification proposal of its own motion by reference to particular policy considerations specified in the SEC for that purpose (and for any such modification proposal to be initiated, processed, and determined in accordance with such procedures as are set out in the SEC for the purpose of dealing with such a proposal by reason of its special status).

10.4 While the Contractor is not required to directly participate in the SEC Modification Arrangements, it shall support, and otherwise co-operate with, the DCC in relation to the DCC's participation in SEC Modification Arrangements, including as further described in Section H (Governance).

10.5 Without limiting the Contractor's other obligations under this Agreement, the Contractor shall:

10.5.1 provide any information or assistance reasonably requested by the DCC from time to time in relation to the DCC's participation in the SEC Modification Arrangements;

10.5.2 ensure that appropriate representatives of the Contractor including any representatives specifically identified by the DCC, attend any meetings requested by the DCC from time to time in relation to the DCC's participation in the SEC Modification Arrangements (including any of the meetings contemplated by Clause 10.3);

10.5.3 comply with any procedural rules relating to the SEC Modification Arrangements that are applicable to the Contractor (as notified to the Contractor by the DCC); and

10.5.4 otherwise promptly comply with any reasonable instructions from the DCC from time to time in relation to the DCC's participation in the SEC Modification Arrangements. **Availability of resources - general**

10.6 Without limiting its other obligations under this Agreement, the Contractor shall at all times ensure that it has available to itself, either directly or under appropriate contractual arrangements, such operational and financial resources (including management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities) on such terms and with all such rights, as will enable it to properly and efficiently perform the Services.

Obligation to report in respect of adverse circumstances

10.7 The Contractor shall notify the DCC in writing immediately if any directors of the Contractor become aware of any circumstance that causes them no longer to have the reasonable expectation of the Contractor's ability to properly and efficiently perform the Services. Such notification shall not be taken to be an anticipatory breach.

Management Orders: DCC obligations under the DCC Licence

10.8 The Contractor acknowledges that, under the DCC Licence, the Authority may, in the circumstances specified in the DCC Licence, give the DCC a direction that contains a Management Order, which may (amongst other things):

10.8.1 require the removal from office of all of the directors of the DCC, or such directors as are specified in the Management Order and provide for their replacement with individuals specified in or determined in accordance with the Management Order;

10.8.2 require the suspension (either wholly, or in respect only of such functions as are specified in or determined in accordance with the Management Order) of all the directors of the DCC, or such directors as are specified in the Management Order and provide for the functions of the suspended directors to be performed during their suspension by individuals specified in or determined in accordance with the Management Order;

10.8.3 require the DCC to secure that any activity or other function of the DCC that is specified in the Management Order is performed, to the extent specified in the Management Order, on behalf of the DCC and at its expense, by such person as is specified in the Management Order (and is performed in such a way as to achieve such objectives as are so specified);

10.8.4 provide for the Authority to appoint a person to act as adviser, at the DCC's expense, in respect of the performance of any activity or other function of the DCC that is specified in the Management Order and require the DCC to act in accordance with such recommendations or other advice as that person gives it.

10.9 The Contractor acknowledges that, under the DCC Licence, the DCC must do all such things as are necessary to give full effect to the provisions of the Management Order.

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Management Orders: Contractor obligations

10.10 Without limiting the Contractor's other obligations under this Agreement, the Contractor shall:

10.10.1 continue to perform the Services in accordance with this Agreement notwithstanding the DCC being subject to a Management Order;

10.10.2 promptly provide any co-operation, documentation, data, information or other assistance reasonably requested by:

10.10.2.1 the DCC from time to time in relation to its compliance with a Management Order;

10.10.2.2 any of the replacement directors of the DCC, as referred to in Clause 10.8.1;

10.10.2.3 any individuals performing the functions of any of the suspended directors of the DCC, as referred to in Clause 10.8.2;

10.10.2.4 any person performing any activity or other function of the DCC, as referred to in Clause 10.8.3; and

10.10.2.5 any adviser appointed by the Authority, as referred to in Clause 10.8.4;

10.10.3 comply with any directions or instructions from any of the persons referred to in Clause 10.13.1 as if they were directions or instructions of the DCC; and

10.10.4 ensure that appropriate representatives of the Contractor including any representatives specifically identified by any of the persons

referred to in Clause 10.13.1, attend any meetings with any of the persons referred to in Clause 10.13.1 that are requested from time to time.

Revocation or expiry of DCC licence

10.11 The Contractor acknowledges that in the circumstances specified in Part 2 of the DCC Licence:

10.11.1 the Authority is entitled to revoke the DCC Licence; and

10.11.2 the Authority's powers of revocation under the DCC Licence include a power to direct the DCC to cease carrying on any or all of its activities under the DCC Licence while still remaining the holder of the DCC Licence (including for purposes connected with a handover the DCC's business in accordance with Condition 43 of the DCC Licence).

Revocation or expiry of DCC licence: DCC obligations under the DCC Licence

10.12 The Contractor acknowledges that, under the DCC Licence:

10.12.1 during any Expiry Period, the DCC is under a general duty to arrange to cease carrying on the Authorised Business at the Expiry Date in a manner that:

10.12.1.1 is consistent with the DCC's proper performance of its obligations under the DCC Licence;

10.12.1.2 will not prejudice or frustrate the ability of a Successor Licensee to commence carrying on the Authorised Business in accordance with its obligations under its licence; and

10.12.1.3 is most likely to ensure an effective business handover with, in particular, no adverse impact on the quality and efficiency with which the DCC Services are delivered;

10.12.2 within the period specified in the DCC Licence, the DCC must submit to the Authority a Business Handover Plan that details how the DCC will fulfil its general duty referred to in Clause 10.12.1 and which complies with the requirements of the DCC Licence (including Condition 43 of the DCC Licence);

10.12.3 in preparing a Business Handover Plan for submission to the Authority, the DCC must take all reasonable steps to ascertain and take account of the views of External Service Providers and SEC Parties in relation to the matters that are proposed to be included in the Business Handover Plan;

10.12.4 the Authority, after consulting with the DCC, may direct the DCC to modify the contents of the Business Handover Plan in such manner and to such extent as may be specified in the direction from the Authority.

Revocation or expiry of DCC licence: Contractor obligations

10.13 Without limiting the Contractor's other obligations under this Agreement, the Contractor shall:

10.13.1 promptly provide any co-operation, documentation, data, information or other assistance reasonably requested by:

10.13.1.1 the DCC from time to time in relation to the preparation, review and/or modification of the Business Handover Plan; and

10.13.1.2 the DCC, the Authority and/or the Successor Licensee in relation to the handover of the Authorised Business from the DCC to the Successor Licensee;

10.13.2 ensure that appropriate representatives of the Contractor including any representatives specifically identified by the DCC, the Authority

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and/or the Successor Licensee, attend any meetings with any of those persons that are requested from time to time in relation to:

10.13.2.1 the preparation, review and/or modification of the Business Handover Plan;

10.13.2.2 the handover of the Authorised Business from the DCC to the Successor Licensee;

10.13.3 perform any obligations allocated to the Contractor under the Business Handover Plan in accordance with the applicable timescales specified in the Business Handover Plan (or, where no timescales have been specified, as soon as reasonably practicable);

10.13.4 comply with any obligations applicable to the Contractor issued by the Authority in relation to the handover of the Authorised Business from the DCC to the Successor Licensee and/or the execution of the Business Handover Plan;

10.13.5 take no steps that would have the effect, directly or indirectly, of avoiding or circumventing any requirement or objective of the Business Handover Plan;

10.13.6 if requested by the DCC or the Authority, provide such reasonable support and assistance (including information) as may be specified to persons taking part in any competitive tender process to determine the grant of a Successor Licence; and

10.13.7 continue to perform the Services in accordance with this Agreement notwithstanding the handover of the Authorised Business from the DCC to the Successor Licensee.

Additional provisions regarding scope of Contractor's obligations

10.14 Compliance by the Contractor with:

10.14.1 Clause 10.10.1 or 10.10.3 (Management Orders); or

10.14.2 Clause 10.13.5 or 10.13.7 (Revocation or expiry of DCC Licence),

is not intended to increase the scope of the Contractor's obligations under this Agreement. To the extent that compliance by the Contractor with such provisions would amount to a Change, the parties shall comply with the Change Control Procedure.

10.15 To the extent that compliance by the Contractor with:

10.15.1 Clause 10.5 (SEC Modification Arrangements);

10.15.2 Clause 10.10.2 or 10.10.4 (Management Orders); or

10.15.3 Clauses 10.13.1 to 10.13.4 or 10.13.6 (Revocation or expiry of DCC Licence),

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requires the Contractor to incur any material additional costs (being costs which it would not have otherwise incurred under this Agreement), then the Contractor may notify the DCC accordingly and the parties (acting reasonably) shall agree any necessary Change to the Charges in accordance with the Change Control Procedure.

10.16 Any Change under Clause 10.14 or 10.15 shall be deemed to be a Specific Change in Mandatory Requirements.

11. SERVICES IMPROVEMENT

General

11.1 The overall purpose of Services Improvement is to ensure that the parties, together with the other DCC EcoSystem Providers, are able to identify, assess and, where applicable, implement potential improvements in relation to (i) the Contractor Solution, and/or (ii) the Smart Metering Programme generally, which could:

- 11.1.1 increase quality, efficiency or productivity;
- 11.1.2 improve utilisation of relevant assets and/or capacity;
- 11.1.3 reduce operational risks;
- 11.1.4 improve security;
- 11.1.5 offer greater sustainability;
- 11.1.6 generate cost savings and/or other financial gains; and/or
- 11.1.7 otherwise offer increased value for money.

11.2 The Contractor shall at all times during the Service Period:

- 11.2.1 ensure that the Services are performed in the most efficient manner that is reasonably practicable, taking appropriate account of the Contractor's obligations under this Agreement;
- 11.2.2 encourage and promote continuous improvement and innovation in relation to the performance of the Services;
- 11.2.3 pro-actively assess and identify potential improvements in relation to the Contractor Solution; and
- 11.2.4 work pro-actively and co-operatively with the DCC and the other DCC Ecosystem Providers to assess and identify potential improvements in relation to (i) the Contractor Solution, and/or (ii) the Smart Metering Programme generally.

11.3 The Contractor shall

- 11.3.1 ensure that all improvements identified by the Contractor, and other information provided to the DCC,;

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11.3.1.1 are sufficiently clear and detailed to enable the DCC to decide whether to implement the relevant improvement;

11.3.1.2 where applicable, are targeted towards identifying opportunities for the DCC to better achieve the DCC Objectives; and

11.3.1.3 where paragraph 11.3.1.2 applies, clearly demonstrates the manner in which the DCC will be able to better achieve the DCC Objectives; and

11.3.2 promptly provide any clarification or further information reasonably requested by the DCC in relation to any improvements identified by the Contractor.

12. EQUIPMENT

12.1 Unless otherwise agreed in writing by the DCC, all Contractor Equipment and all other components of the Contractor Solution:

12.1.1 shall be located within Great Britain at all times, except as set out in an agreed list in Schedule 4.1 (Contractor Solution); and

12.1.2 that are Exclusive Assets shall be used by the Contractor solely for the purposes of providing the Services to the DCC and shall not be used for the Contractor's own purposes or in providing any other services of any nature to any person except as agreed by the DCC in writing

12.2 Subject to Clause 12.3, all of the Contractor's property, including Contractor Equipment (irrespective of location), shall remain at the sole risk and responsibility of the Contractor.

12.3 The DCC shall be liable to the Contractor for any loss, damage (except fair wear and tear) or theft of Contractor Equipment located at any DCC Premises to the extent such loss, damage or theft has resulted from any breach by the DCC of its obligations under this Agreement.

12.4 Subject to Clause 12.3, the Contractor hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute (and releases the DCC to the same extent from all liabilities or obligations provided by common law or statute) in respect of any loss, damage or theft of any Contractor Equipment. The Contractor agrees that the SEC Parties are to have the benefit of the waiver set out immediately above, which is to be enforceable by such persons in accordance with Clause 57 (Third Party Rights).

13. ENVIRONMENT

Compliance with Law

13.1 The Contractor shall (and shall procure that all other Contractor Persons shall):

13.1.1 perform the Services at all times in compliance with all Environmental Laws applicable to the Services and/or to the Contractor and applicable Standards (including ISO 14001 or an environmental

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management standard which is equivalent in all material respects as to its effect and outcomes) and with proper and full regard to all related Environmental Guidance and shall not cause or knowingly permit any liability to arise under Environmental Law for the DCC or any Contractor Person as a result of the Contractor's performance of the Services;

13.1.2 prepare, execute and maintain all registrations, notices, shipping documents, transfer notes and other records in relation to the production, storage, treatment, disposal and transportation of Waste which are required under Environmental Laws applicable to:

13.1.2.1 the Services; and/or

13.1.2.2 any Contractor Equipment; and

13.1.3 in respect of any equipment shared or provided by a Contractor Person with or to any other person in connection with this Agreement (including the DCC or any DCC Service Provider), be responsible for discharging all obligations arising under Environmental Law relating to the storage, treatment, disposal and transportation of any Waste arising from such equipment.

Notwithstanding the express obligations on the Contractor under this Agreement, the Contractor shall be solely responsible for compliance with Environmental Law(s) applicable to any Contractor Person in relation to the performance of the Services and its other obligations under this Agreement and the DCC accepts no liability for any such matter arising as a result of the Contractor's performance of the Services or any failure to perform the Services.

Compliance with Good Industry Practice

13.2 The Contractor shall at all times use reasonable endeavours to comply with the following requirements in relation to performance of the Services and its other obligations under this Agreement:

13.2.1 the minimum environmental mandatory standards set out in the "Government Buying Standards" (or the equivalent mandatory specifications set by the Government when buying products or services and for applying principles for sustainable procurement from time to time) or a materially equivalent standard or approach in respect of such matter(s); and

13.2.2 the objective of reducing or mitigating any negative impact on the Environment arising in connection with the Services (the "**Sustainability Objectives**"), including:

13.2.2.1 conserving energy and water;

13.2.2.2 reducing carbon emissions and other greenhouse gases;

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13.2.2.3 minimising the use of Harmful Substances;

13.2.2.4 reducing Waste including by using resources more efficiently and reusing and recycling; and 13.2.2.5 reducing negative impact on biodiversity.

13.3 The Contractor shall ensure that all Contractor Personnel with the ability to influence the achievement of the Sustainability Objectives are aware of the Sustainability Objectives and how this Agreement will help support the achievement of those objectives.

Compliance with Contractor's own Environmental Management Plans

13.4 The Contractor shall:

13.4.1 have in place at all times environmental policies and plans (together, the "**Environmental Management Plans**") which (as a minimum) shall:

13.4.1.1 set out the basis upon which the Contractor shall consider and address (i) environmental factors, risks and impacts and (ii) Sustainability Objectives in connection with the performance of the Services;

13.4.1.2 establish an environmental management system in accordance with or to a standard materially equivalent to ISO 14001 and utilise all applicable ISO 14000 series standards or materially equivalent standards; and

13.4.1.3 reflect the obligations of this Clause 13 (Environment) and Good Industry Practice;

13.4.2 develop and carry out the Services in full compliance with the Environmental Management Plans;

13.4.3 bring to the attention of the DCC any material concerns relating to the implementation of the Environmental Management Plans in connection with any aspect of the Services as soon as practicable. **Provision of information**

13.5 The Contractor shall provide:

13.5.1 copies of any Environmental Consents (to the extent such Consents are required to be obtained by any Contractor Person in connection with the performance of any of the Services) requested by the DCC for auditing purposes from time to time within twenty (20) Working Days of such request (except to the extent any such disclosure would place the Contractor in breach of applicable Laws); and

13.5.2 the DCC with notice in writing as soon as practicable and in any event within five (5) Working Days, in the event of:

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13.5.2.1 the revocation, termination, variation or modification of any Environmental Consents;

13.5.2.2 any involvement, investigation or complaint by any Regulatory Body under any Environmental Law; or

13.5.2.3 any other event, investigation, complaint, third party Claim or action arising in connection with any Environmental Matter(s),

which in any way materially impacts or has the potential to impact materially on the Contractor's ability to provide the Services or comply with any provision of this Agreement.

SECTION G: PAYMENT AND OTHER FINANCIAL MATTERS

14. CHARGING AND INVOICING

14.1 In consideration of the Contractor carrying out its obligations, including the provision of the Services, under this Agreement, the DCC shall pay the Charges to the Contractor in accordance with Schedule 7.1 (Charges and Payment).

14.2 If either party (acting in good faith) disputes all or any part of the Charges invoiced under this Agreement, or any other amount that the other party Claims is payable to it under this Agreement, then:

14.2.1 the undisputed portion of the Charges or other amount shall be paid by the relevant party in accordance with this Agreement;

14.2.2 the relevant party shall be entitled to retain the disputed portion of the Charges or other amount pending resolution of the Dispute in accordance with this Clause 14.2;

the parties shall use all reasonable endeavours to resolve the Dispute within ten (10) days of the Dispute arising. Following resolution of the Dispute in accordance with this Clause 14.2 and Clause 21, any amount agreed or determined to have been payable shall be paid by the relevant party within thirty (30) days, together with interest on such amount calculated in accordance with Clause 14.4.

14.3 The Contractor shall not suspend the provision of any Services except to the extent the Contractor is entitled to do so under Clause 40.10.

14.4 Each party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not made in accordance with the terms of this Agreement by the final date for payment calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the original final date for payment (as opposed to the date of judgment or resolution of a Dispute in accordance with the Dispute Resolution Procedure up to and including the date of payment (whether before or after judgment or resolution of a Dispute in accordance with the Dispute Resolution Procedure.

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14.5 Except as expressly stated in this Agreement, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Agreement.

15. TAX

15.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the DCC following delivery of a valid VAT invoice.

15.2 The Contractor shall indemnify the DCC on a continuing basis against any liability, including any interest, penalties or costs incurred which are levied, demanded or assessed on the DCC at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Agreement. Any amounts due under this Clause 15.2 shall be paid in cleared funds by the Contractor to the DCC not less than five (5) Working Days before the date upon which the tax or other liability is payable by the DCC.

15.3 Notwithstanding any provision of this Agreement to the contrary, the impact of any change in:

15.4 any Taxes applicable to any Contractor Entity or the Services (other than VAT);

15.5 any Taxes applied outside the United Kingdom (or applicable due to any nonUK residence or tax status of any Contractor Entity); and/or

15.6 currency exchange rates,

15.7 shall be at the sole cost and expense of the Contractor.

SECTION H: CONTRACT GOVERNANCE

16. GOVERNANCE

"Relevant Providers" means any other External Service Provider or DCC Service Provider that the DCC by notice to the Contractor elects to be included in such definition for the purposes of any provision of this Agreement.

"Relevant Contracts" means each agreement in connection with which a Relevant Provider acts as a Provider to the DCC.

16.1 The purpose of this Governance section is to ensure the effective operation and management of this Agreement and the Smart Metering Programme generally, including:

16.1.1 partnering and relationship management generally;

16.1.2 monitoring of the Contractor's performance under this Agreement;

16.1.3 management of the Services ;

16.1.4 management of Change Requests;

16.1.5 ensuring continuing value for money;

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- 16.1.6 ensuring effective co-operation, integration and interface management between the Relevant Providers;
 - 16.1.7 management of technology change, innovation and future proofing;
 - 16.1.8 management of security issues;
 - 16.1.9 the management of Disputes in accordance with the Dispute Resolution Procedure; and
 - 16.1.10 management of the Termination Assistance Services.
- 16.2 The objectives of the Governance Framework are to:
- 16.2.1 facilitate formal management of this Agreement;
 - 16.2.2 ensure that relevant discussions and decisions relating to this Agreement are carried out at appropriate levels of seniority and at nominated intervals;
 - 16.2.3 distinguish clearly between the strategic and operational management activities and relationship levels;
 - 16.2.4 ensure appropriate representation from the DCC and the applicable Relevant Providers (including the Contractor) in each governance forum;
 - 16.2.5 provide a mechanism for leadership, direction and control to activities within the scope of this Agreement;
 - 16.2.6 provide effective decision making and escalation processes in the event of a disagreement or Dispute between the parties and/or Relevant Providers (including escalation of Disputes between the DCC and the Contractor, as well as disputes between different Relevant Providers);
 - 16.2.7 facilitate the coordination and integration of the Relevant Providers to deliver a coherent end-to-end service and a coherent and integrated End-to-end Smart Metering System; and
 - 16.2.8 enable the Relevant Providers to be engaged and focused on developing opportunities to provide additional benefits to the DCC.
- 16.3 The Contractor shall within 5 working days of Signature Date notify the DCC of a nominated person or persons that has the authority to represent the Contractor on all matters; and
- 16.3.1 shall be sufficiently senior within the Contractor's organisation, and granted sufficient authority by the Contractor, to ensure full cooperation with the DCC and, where applicable, the other Relevant Providers in relation to the operation and the management of this Agreement and the Smart Metering Programme generally;
 - 16.3.2 dedicates a reasonable amount of their time and efforts to the performance of this Agreement; and

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16.3.3 responds to any enquiries from the DCC Operational Management Team, and the operational management teams of the other Relevant Providers, as soon as reasonably practicable; and

16.3.4 supports all the activities listed above under 16.1 and 16.2.

16.4 SEC GOVERNANCE FRAMEWORK

16.4.1 The Contractor acknowledges that the DCC is subject to the SEC Governance Framework (which is further described in the SEC and the DCC Licence);

16.4.2 the following entities (as further described in the SEC) will be involved in the SEC Governance Framework:

16.4.2.1 the SEC Panel, which shall be responsible for the governance and administration of the SEC and which may establish various sub-committees from time to time;

16.4.2.2 the Secretariat, which shall be responsible for providing services to the SEC Panel in connection with certain governance and administration matters relating to the SEC;

16.4.2.3 the Code Administrator, which shall advise and assist the SEC Panel, SEC Parties and other interested parties with respect to the policy and administration of the SEC; and

16.4.2.4 any sub-committee of the SEC Panel which is responsible for security issues.

16.4.3 While the Contractor is not required to directly participate in the SEC Governance Framework, it shall support, and otherwise co-operate with, the DCC in relation to the DCC's participation in the SEC Governance Framework.

16.4.4 Without limiting the Contractor's other obligations or responsibilities under this Agreement, the Contractor shall:

16.4.4.1 provide any information or assistance requested by the DCC from time to time in relation to the DCC's participation in the SEC Governance Framework, including impact assessments and/or cost benefit analyses (in the form requested by the DCC from time to time);

16.4.4.2 ensure that appropriate representatives of the Contractor, including any representatives specifically identified by the DCC, attend any meetings requested by the DCC from time to time in relation to the DCC's participation in the SEC Governance Framework;

16.4.4.3 without limiting paragraph 16.4.4.2, ensure that an appropriately skilled and experienced security professional representative of the Contractor attends such meetings of the SEC Panel (or an appropriate sub-committee), together

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with representatives of the DCC, as may be requested by the DCC from time to time;

- 16.4.4.4 comply with any procedural rules relating to the SEC Governance Framework that are applicable to the Contractor (as notified to the Contractor by the DCC);
 - 16.4.4.5 notify the DCC in writing of any security matter which the Contractor believes should be escalated to the SEC Panel (or an appropriate sub-committee) and, where the DCC elects to escalate such matter to the SEC Panel (or an appropriate sub-committee), provide any information or assistance requested by the DCC in relation to such escalation process;
 - 16.4.4.6 provide any information or assistance requested by the DCC from time to time in relation to the development of security requirements relating to the End-to-end Smart Metering System by the DCC and the SEC Panel (or an appropriate sub-committee); and
 - 16.4.4.7 otherwise promptly comply with any reasonable instructions from the DCC from time to time in relation to the DCC's participation in the SEC Governance Framework.
- 16.4.5 To the extent that compliance by the Contractor with Clause 16.4 requires the Contractor to incur any material additional costs (being costs which it would not have otherwise incurred under this Agreement), then the Contractor may notify the DCC accordingly and the parties (acting reasonably) shall agree any necessary Change to the Charges in accordance with the Change Control Procedure.
- 16.4.6 Any Change under paragraph 16.4.5 shall be deemed to be a Specific Change in Mandatory Requirements.
- 16.4.7 The Contractor shall use reasonable endeavours to provide the information and assistance requested under paragraph 16.4.4 above within the timescales specified by the DCC (as determined by the DCC acting reasonably and taking appropriate account of the DCC's obligations under the SEC and the DCC Licence regarding the provision of such information and assistance).
- 16.4.8 Where the Contractor (acting reasonably and in good faith) considers that it would be beneficial to the provision of the DCC Services and/or the Smart Metering Programme generally, it may suggest to the DCC items for discussion at meetings of the SEC Panel (or other relevant entities within the SEC Governance Framework). The DCC shall be entitled to determine, in its sole discretion, whether to propose such items as part of the SEC Governance Framework.

17. SUPPLY CHAIN RIGHTS

17.1 The Contractor shall (and shall ensure that each Sub-contractor shall):

17.1.1 satisfy itself, before entering into any Sub-contract (including in connection with the replacement of any Sub-contractor pursuant to Clauses 17.3 to 17.5 (inclusive)), that the proposed Sub-contractor is capable of satisfying the requirements imposed on it and/or the Contractor pursuant to this Agreement (including security and other requirements), including by conducting a security assessment of the proposed Sub-contractor;

17.1.2 procure its Sub-contracts in a manner that secures value for money in terms of the combination of quality and cost over the lifetime of the Sub-contract, employing transparent and objective procurement processes;

17.1.3 prior to entering into any Sub-contract, determine (acting reasonably) which of the obligations of the Contractor relating to security and integrity of systems and information under this Agreement will need to be imposed on the relevant Sub-contractor (together, the "Sub-contractor Security Obligations"), taking account of the nature and scope of the obligations to be performed by the relevant Sub-contractor in relation to this Agreement;

17.1.4 ensure that the Sub-contractor Security Obligations are clearly specified in the relevant Sub-contract and that such Sub-contractor is not an Unsuitable Sub-contractor (unless otherwise agreed by DCC);

17.1.5 provide the relevant Sub-contractor, for information purposes, with appropriate details of any Standards, Security Requirements and/or other obligations of the Contractor relating to security and integrity of systems and information under this Agreement which are not required to form part of the Sub-contractor Security Obligations, but which are nonetheless relevant to the obligations under this Agreement to be performed by the relevant Sub-contractor; and

17.1.6 put in place such arrangements with the relevant Sub-contractor as necessary to ensure the Contractor can comply with its obligations to provide such information and rights of access and assistance to the DCC (or any Regulatory Body) as are required under this Agreement.

17.1.7 be entitled to enter into a Sub-contract with any person, provided the Contractor has notified the DCC of the following information required to be provided to the DCC within five (5) Working Days of entering into a Sub-Contract;

17.1.7.1 Sub-contractor name, registered office and company registration number;

17.1.7.2 the purposes for which the proposed or existing Subcontractor will be or is employed, including the scope of any services provided or to be provided by the proposed or existing Sub-contractor;

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17.1.7.3 where the proposed or existing Sub-contractor is also an Affiliate of the Contractor, evidence that demonstrates to the reasonable satisfaction of the DCC that the proposed or existing Sub-contract has been agreed on "arms-length" terms and any further information reasonably requested by the DCC; and

17.1.7.4 all information required by the DCC to determine whether the Sub-contractor may be an Unsuitable Sub-contractor.

17.1.8 not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written consent of the DCC (such consent not to be unreasonably withheld or delayed). **Retention of legal obligations**

17.2 The Contractor shall remain responsible for all acts and omissions of Contractor Persons, and the acts and omissions of those employed or engaged

by the Contractor Persons, as if they were its own acts and omissions. Any obligation on the Contractor to do, or to refrain from doing, any act or thing under this Agreement or otherwise shall include an obligation upon the Contractor to procure that all Contractor Persons also do, or refrain from doing, such act or thing.

DCC rights to require termination/replacement of Sub-contracts

17.3 The DCC may, by written notice, require the Contractor to terminate any Subcontract and/or remove the relevant Sub-contractor from the performance of the Services within ninety (90) days if;

17.3.1 the acts or omissions of the relevant Sub-contractor have given rise to any right for the DCC to terminate this Agreement;

17.3.2 without prejudice to any other provision of this Clause 17.3, the Contractor has failed to comply (or procure compliance) with any requirement and/or is in breach of any warranty set out in any of

17.3.2.1 this Clause 17; or

17.3.2.2 with respect to the relevant Sub-contractor and has not remedied such failure within thirty (30) days after receipt of a notice from the DCC requiring the Contractor to do so;

17.3.3 the relevant Sub-contractor causes the Contractor to be in material breach of:

17.3.3.1 Clause 28 (DCC Data);

17.3.3.2 Clause 29 (Protection of Personal Data);

17.3.3.3 Clause 30 (Confidentiality);

17.3.3.4 Clause 34 (Security Requirements);

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and, if remediable, the Contractor has failed to remedy such breach within thirty (30) days after receipt of a notice from the DCC requiring the Contractor to do so;

17.3.4 the Sub-contractor's acts or omissions give rise to any of the circumstances referred to in Clause 48.6 (regardless of whether or not the DCC may terminate this Agreement pursuant to Clause 48.7).

17.4 If any Sub-contract shall at any time during the Service Period expire, terminate or otherwise cease to be in full force and effect, the Contractor shall:

17.4.1 immediately itself provide suitable replacement services or appoint a replacement Sub-contractor; and

17.4.2 ensure that the relevant Sub-contractor shall, where relevant, comply with the applicable provisions of this Agreement, including Clause

34.18, Clause 42.5 and Part H of Schedule 8.5 (Exit) as if the relevant Sub-contractor were the Contractor at the end of the Service Period.

17.5 If the DCC exercises its rights under Clause 17.3, the Contractor shall:

17.5.1 ensure the Services continue to be provided without interruption (including without any degradation in quality or performance against the Performance Measures);

17.5.2 ensure the Services are provided at no additional Charge to the DCC (and any extra costs or expense shall be borne by the Contractor);

17.5.3 immediately put forward proposals for the interim management or provision of the relevant Services until such time as an alternative Sub-contractor can be engaged by the Contractor in accordance with this Agreement. If the Contractor fails to put forward such proposals (or if such proposals, if implemented, are not reasonably likely to ensure provision of the relevant Services in accordance with this Agreement) then, without prejudice to the DCC's other rights or remedies, the DCC may perform, or procure a third party to perform, such Services and

17.5.4 shall not be entitled to any relief or forbearance as a result of any delay in the appointment of a replacement Sub-contractor (unless and to the extent that the DCC has withheld or delayed its consent contrary to an express provision of this Agreement).

17.6 The Contractor shall not be entitled to any reimbursement, costs or expenses (including in connection with termination compensation payments to Subcontractors) in connection with the performance of any obligation under this Clause 17.

18. AUDITS

18.1 SCOPE OF DCC AUDITS

The DCC may conduct an audit ("**DCC Audit**") for the following purposes:

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- 18.1.1 to verify the accuracy of the Charges (and proposed or actual variations to them in accordance with this Agreement), including all invoices issued by the Contractor under this Agreement;
 - 18.1.2 to verify the Contractor's compliance with its obligations under this Agreement;
 - 18.1.3 to verify the Contractor's performance against any Milestones imposed under this Agreement from time to time;
 - 18.1.4 to verify the Contractor's compliance with applicable Law and any obligations of the Contractor under this Agreement which are intended to enable or support the DCC's compliance with the DCC Obligations;
 - 18.1.5 to verify that the Contractor has maintained accounts and records as are required under this Agreement and review the same;
 - 18.1.6 to carry out any internal or statutory audit and/or certification of the DCC's accounts;
 - 18.1.7 to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DCC has used its resources;
 - 18.1.8 to verify the accuracy and completeness of any information or reports delivered by the Contractor under this Agreement;
 - 18.1.9 to verify that the Contractor's risk and other controls and operating procedures (as such matters relate to the Services) are operating effectively;
 - 18.1.10 to inspect the Contractor System (or any part of it) and any other Assets to verify compliance with the requirements of this Agreement; and/or
 - 18.1.11 to review the accuracy and completeness of the Asset Register.
- 18.2 The Contractor shall provide the DCC and its agents with all reasonable cooperation and assistance in relation to each DCC Audit.
- 18.3 The DCC may conduct DCC Audits no more than once per Contract Year during the Service Period and, for up to twenty-four (24) months after the Termination Date.
- 18.4 The parties shall bear their own respective costs and expenses incurred in a DCC Audit, unless any DCC Audit identifies any material breach by the Contractor or any other Contractor Person of this Agreement, or any of the provisions of this Agreement referred to in Clauses 40.2.1.3 to 40.2.1.6, in which case, the Contractor shall reimburse the DCC for the reasonable costs incurred by the DCC in relation to the relevant DCC Audit.
- 18.5 If any DCC Audit identifies any overcharging by the Contractor in relation to any invoice issued by the Contractor under this Agreement, the Contractor shall pay to the DCC, within twenty (20) Working Days after the date of a notice from the DCC requesting repayment of such overcharge:

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- 18.5.1 the amount of the overcharge; and
- 18.5.2 interest (calculated at the Default Interest Rate) in respect of the period between the date on which the overcharged amount was originally received by the Contractor until the date of its repayment to the DCC.
- 18.6 If any DCC Audit identifies any undercharging by the Contractor in relation to any invoice issued by the Contractor under this Agreement, the DCC shall issue a notice to the Contractor identifying such undercharge and the Contractor shall invoice the DCC the amount of the undercharge within twenty (20) Working Days after the date of the relevant notice from the DCC.
- 18.7 If any DCC Audit identifies:
- 18.7.1 any material breach by the Contractor or any other Contractor Person as further described in Clause 40 (Termination Rights), the DCC shall be entitled to exercise its applicable rights and remedies under this; or
- 18.7.2 any other failure by the Contractor to comply with its obligations under this Agreement, the Contractor shall promptly (and at its own cost) rectify such failure.
- 18.8 The Contractor will need to support the DCC in its regulatory audit obligations as detailed in Appendix 1 (Audit Regulatory Requirements) to this Agreement.
- 19. RECORDS**
- 19.1 The Contractor shall (during the Service Period and, save as where expressly provided otherwise under this Agreement, a period of at least 7 years following the Termination Date, maintain, or cause to be maintained, complete and accurate documents and records in relation to the provision of the Services (the "**Records**").
- 19.2 The Contractor shall retain and maintain the Records (including superseded versions of the Records):
- 19.2.1 in accordance with the requirements of Good Industry Practice;
- 19.2.2 in accordance with any reasonable instructions of the DCC from time to time (and the Contractor acknowledges that any instructions of the DCC which are intended to ensure compliance with any Mandatory Requirements shall be deemed to be reasonable);
- 19.2.3 in chronological order;
- 19.2.4 in a form that is capable of audit; and
- 19.2.5 at its own expense.
- 19.3 The Contractor shall make the Records available for inspection by the DCC and/or the Authority on request subject to the DCC giving reasonable notice to the Contractor.

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20. CHANGE CONTROL

20.1 Any requirement for a Change shall be subject to the Change Control Procedure and the parties shall comply with their obligations under Schedule 8.2 (Change Control).

21. DISPUTE RESOLUTION PROCEDURE

21.1 The parties shall (unless otherwise expressly stated in this Agreement) resolve all Disputes in accordance with this Clause 21.

21.2 If a dispute arises between the DCC and the Contractor in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

21.3 If a dispute is not resolved within fourteen (14) days of referral under clause 21.2 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.

21.4 Provided that both parties consent, a dispute not resolved in accordance with clauses 21.2 and 21.3, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.

21.5 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

SECTION I: PERSONNEL

22. CONTRACTOR PERSONNEL

22.1 The Contractor shall ensure that, at all times:

22.1.1 each of the Contractor Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

22.1.2 there is an adequate number of Contractor Personnel to provide the Services in accordance with this Agreement;

22.1.3 only those people who are authorised by the Contractor (and who comply with the obligations on the Contractor and Sub-contractors under this Agreement) are involved in providing the Services; and

22.1.4 all of the Contractor Personnel comply with all of the Core Standards and the Contractor's other obligations in connection with this Agreement, including those that apply to persons who are allowed access to any of the DCC Premises.

22.2 The DCC may:

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22.2.1 require that any Unsuitable Staff shall not be (or shall cease to be) engaged or employed in the provision of the Services in any capacity; and/or

22.2.2 refuse admission to any of the DCC Premises to any Unsuitable Staff.

The Contractor shall comply (and shall ensure all Contractor Persons comply) with any such decision by the DCC except to the extent that doing so would place any Contractor Person in breach of any Laws. The DCC shall provide the Contractor with the reasons for any decision under this Clause 22.2 within a reasonable time after a written request to do so from the Contractor.

22.3 Following the removal of any of the Contractor Personnel under Clause 22.2 or otherwise, the Contractor shall ensure that such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

22.4 For the purposes of Clause 22.2, "**Unsuitable Staff**" means any class of individuals generally or individual Contractor Personnel whom the DCC (acting reasonably) decides:

22.4.1 have failed to carry out their duties with reasonable skill and care;

22.4.2 have placed or is reasonably likely to place the Contractor in breach of any obligation under this Agreement or any Co-operation Agreement;

22.4.3 represents a security risk;

22.4.4 does not have the required levels of training and expertise; or

22.4.5 should be removed or denied admission to the DCC Premises for another reasonable reason.

22.5 The Contractor shall provide training on a continuing basis for all Contractor Personnel (including those of its Sub-contractors) employed or engaged in the provision of the Services in relation to compliance with the DCC Security Policy and the Contractor Security Documents.

23. **STAFF TRANSFER**

The parties acknowledge that the commencement, expiry or termination of this Agreement or any Services and the provision of certain services during the Service Period may constitute a relevant transfer for the purposes of the Employment Regulations. However, the DCC and the Contractor agree that it is the intention of the parties that at the Signature Date and at all times during the Service Period, and upon termination or expiry (for whatever reason whether in whole or in part), the Employment Regulations shall not apply in such a way so as to transfer the employment (or any associated or related liabilities) of any employees or former employees of the DCC, any DCC Service Provider, any DCC Service User or any DCC Service User Provider to the Contractor or any Contractor Person in connection with the commencement or provision of any DCC Service.

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24. HEALTH AND SAFETY

24.1 The Contractor shall comply (and ensure that all Contractor Personnel comply) with the Health and Safety Regime.

24.2 To the extent necessary, the DCC will be responsible for procuring that its employees and agents also comply with the Health and Safety Regime.

24.3 Either party shall notify the other as soon as practicable of any health and safety hazards at the DCC Premises or the Sites of which it becomes aware. The Contractor will draw these hazards to the attention of the Contractor Personnel and will instruct those persons in connection with any necessary associated safety measures.

25. EQUALITY AND DIVERSITY

25.1 The Contractor shall, and shall procure that the Contractor Persons shall, comply with:

25.1.1 any applicable anti-discrimination Laws (including the Equality Act 2010); and

25.1.2 with the equality and diversity policies adopted from time to time by the Contractor's Group.

26. NON-SOLICITATION

26.1 Except in respect of any Staff Transfer, the Contractor shall not during the Service Period and for a period of twelve (12) months thereafter, either directly or indirectly solicit or entice away (or attempt to solicit or entice away) any person employed or engaged in a managerial or technical capacity by the DCC or any Replacement Contractor in relation to:

26.1.1 the provision of the Services (or Replacement Services); and/or

26.1.2 the receipt and/or administration of the Services or Replacement Services,

26.1.3 during the preceding twelve (12) month period. This provision shall not apply to offers of employment resulting from general recruitment advertising.

26.2 Except in respect of any Staff Transfer, the DCC shall not during the Service Period, and for a period of twelve (12) months thereafter, either directly or indirectly solicit or entice away (or attempt to solicit or entice away) any person employed or engaged in a managerial or technical capacity by the Contractor in the provision of the Services during the preceding twelve (12) month period. This provision shall not apply to offers of employment resulting from general recruitment advertising.

SECTION J: IP, DATA AND CONFIDENTIALITY

27. INTELLECTUAL PROPERTY RIGHTS AND LICENCES GRANTED

27.1 The Contractor recognises the importance of ensuring that the DCC EcoSystem Entities and Consumers have, at all times during the Service Period, the necessary rights to use the Software and any other IPRs provided by or on behalf of the Contractor under this Agreement.

IPR OWNERSHIP PRINCIPLES

27.2 Except as expressly set out in this Agreement, the DCC shall not acquire any right, title or interest in or to the Intellectual Property Rights in any of the following:

- 27.2.1 the Contractor Software;
- 27.2.2 the Third Party Software;
- 27.2.3 the Specially Written Software;
- 27.2.4 the Project Specific IPRs; or
- 27.2.5 the Contractor's Background IPRs, (together, the "**Contractor IPR**").

27.3 Except as expressly set out in this Agreement, none of the Contractor, any of its Affiliates, any Contractor Person or any Affiliate of any Contractor Person shall acquire any right, title or interest in or to the Intellectual Property Rights in any of the following:

- 27.3.1 the DCC Software;
- 27.3.2 the DCC Data.

27.4 Where either party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in paragraph 27.2 or 27.3, it shall promptly do all acts and things as may be necessary, and execute all necessary documents, to assign such Intellectual Property Rights as it has acquired to the other party and, pending such assignment, shall hold all such Intellectual Property Rights on trust for the other party.

27.5 Where any of the Contractor Entities acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in paragraph 27.3, the Contractor shall procure that:

- 27.5.1 the relevant Contractor Entity shall promptly do all acts and things as may be necessary, and execute all necessary documents, to assign such Intellectual Property Rights as it has acquired to the DCC; and
- 27.5.2 pending such assignment, the relevant Contractor Entity shall hold all such Intellectual Property Rights on trust for the DCC.

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IPR SCOPE

27.6 The Contractor represents and warrants that none of the DCC, the DCC Service Users, the SEC Parties, the DCC Service Providers (or the other entities referred to in Clause 27.14) will need to Use any of the Contractor IPR (other than the Project Specific IPRs) during the Service Period in order to:

27.6.1 receive the benefit of the Services;

27.6.2 (in relation to the DCC only) exercise any of its rights under this Agreement;

27.6.3 integrate the Services with any other services provided pursuant to (or otherwise related to) the Smart Metering Programme or otherwise as envisaged by this Agreement; and/or

27.6.4 carry out any of the other activities referred to in Clause 27.14 , (together, the "**Permitted Purposes**").

27.7 Accordingly, paragraphs 27.8, 27.13 and 27.14 shall only apply to the extent that, at any time during the Service Period, any of the entities referred to in paragraph 27.61 do, for any reason, need to Use any of the Contractor IPR (other than the Project Specific IPRs) in relation to any of the Permitted Purposes.

LICENCES GRANTED BY THE CONTRACTOR Contractor Software and Specially Written Software

27.8 Where necessary in accordance with paragraph 27.7, the Contractor shall grant to the DCC (including where necessary for DCC to receive the Services from the Contractor hereunder the right for DCC to sublicense, the relevant DCC Service User(s) and/or the relevant SEC Parties (as applicable) a royaltyfree and non-exclusive licence during the Service Period to use;

27.8.1 the Contractor Software provided to DCC by the Contractor.

The sub-licensing arrangements applicable to this paragraph 27.8 are set out in paragraph 27.14.

Project Specific IPRs

27.9 The Contractor hereby grants to the DCC, the DCC Service Users and the SEC Parties a perpetual, royalty-free, irrevocable and non-exclusive licence to Use the Project Specific IPRs (including any Contractor's Background IPRs or IPRs owned by a third party that are embedded in, form an integral part of, or are otherwise necessary for the Use of, the Project Specific IPRs) for the Permitted Purposes.

27.10 The DCC may sub-licence its rights under paragraph 27.9 to:

27.10.1 any DCC Service Provider (including any replacements for such persons from time to time);

27.10.2 any Replacement Contractor;

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27.10.3 any Regulatory Body (or any third party representative acting on behalf of any Regulatory Body from time to time) to the extent necessary for such persons to:

27.10.3.1 exercise any of the rights of such Regulatory Body under the terms of any applicable Mandatory Requirements, including the DCC Licence and/or the SEC; and

27.10.3.2 otherwise fulfil any of the statutory duties of such Regulatory Body under the terms of any applicable Mandatory Requirements regarding the Smart Metering Programme; and

27.10.4 any other third party to the extent necessary for such person to provide any goods or services to the DCC, provided that the DCC has complied with its obligations under Clause 30 (Confidentiality).

27.11 Each DCC Service User and SEC Party may sub-licence its rights under paragraph 27.9 to any of its Providers.

27.12 As of the date of the contract signing the parties acknowledge that there are no Project Specific IPRs.

THIRD PARTY SOFTWARE Licence of Third Party Software

27.13 Where necessary in accordance with paragraph 27.7 the Contractor shall promptly procure that the owners or the authorised licensors of any applicable Third Party Software provided to DCC by the Contractor grant to the DCC, the relevant DCC Service User(s) and/or the relevant SEC Parties (as applicable) a direct, royalty-free and non-exclusive licence during the Service Period to use the Third Party Software. The sub-licensing arrangements applicable to this paragraph 27.13 are set out in paragraph 27.140.

SUB-LICENSING

27.14 Where necessary for DCC to receive the Services from the Contractor under this Agreement and subject to paragraph 27.16, the DCC may sub-licence its rights under paragraphs 27.8 and/or 27.13 to:

27.14.1 any DCC Service Provider (including any replacements for such persons from time to time);

27.14.2 any Regulatory Body (or any third party representative acting on behalf of any Regulatory Body from time to time) to the extent necessary for such persons to:

27.14.2.1 exercise any of the rights of such Regulatory Body under the terms of any applicable Mandatory Requirements, including the DCC Licence and/or the SEC; and

27.14.2.2 otherwise fulfil any of the statutory duties of such Regulatory Body under the terms of any applicable Mandatory Requirements regarding the Smart Metering Programme; and

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27.14.3 any other third party to the extent necessary for such person to provide any goods or services to the DCC, provided that the DCC has complied with its obligations under Clause 30 (Confidentiality).

27.15 Where necessary in accordance with paragraph 27.7 and subject to paragraph 27.16, each relevant DCC Service User and SEC Party may sub-licence its rights under paragraphs 27.8 and/or 27.13 to any of its Providers.

27.16 If the Contractor cannot obtain the necessary sub-licensing rights under paragraph 27.14 and/or 27.15 in respect of any of the Third Party Software, the Contractor shall promptly obtain (at its own cost) a direct licence in favour of the relevant sub-licensee which complies with the relevant requirements of this Clause 27.

SUCCESSORS

27.17 The Contractor acknowledges and agrees that if this Agreement is novated, assigned or otherwise transferred to any person in accordance with Clause 45.3 (the "**Transferee**"), then:

27.17.1 the licences granted by the Contractor, and the other rights of the DCC shall automatically transfer to the Transferee on a royalty-free, payment-free and non-exclusive basis; and

27.17.2 each Transferee shall be entitled, in perpetuity, to transfer such licences and rights to any person who is subsequently licensed to carry on the Authorised Activity.

28. DCC DATA

The parties agree that as at the signature date, the provisions of clause 28.1 below do not apply to this agreement on the basis that the contractor will not receive either any transactional data or industry registration data in the performance of its services. In the event that a future requirement arises which means that the contractor will need to come into possession of either transactional data and / or industry registration data, then this clause 28.1 would become applicable once an appropriate Change Authorisation Note has been agreed between the parties for the requirement concerned.

28.1 The Contractor shall not at any time be entitled:

28.1.1 to copy, disclose or use any Transactional Data or Industry Registration Data except in compliance with all the Contractor's obligations under this Agreement (including Clause 30.8) and to the extent strictly required to comply with its obligations under this Agreement; and

28.1.2 to store (or retain) any Transactional Data or Industry Registration Data except in compliance with all the Contractor's obligations under this Agreement (including Clause 30.8) and to the extent strictly required to comply with any:

28.1.2.1 applicable Law of Scotland or England and Wales; or

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28.1.2.2 express provisions of this Agreement that require the Contractor to retain such data on a non-persistent basis.

28.2 The Contractor shall (and shall ensure all Contractor Persons shall) not (unless expressly agreed by the DCC in writing) delete or remove any proprietary notices contained within or relating to the DCC Data, Documentation or DCC Software.

28.3 Subject to the opening paragraph of the Clause 28 the Contractor shall comply with Clause 28.1 in all circumstances and in addition shall (and shall ensure all Contractor Persons shall) not store, copy, disclose, or use any DCC Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the DCC (whether in this Agreement or otherwise, including pursuant to Clauses 30.4 to 30.7 (inclusive), 30.11, 30.13, 30.14 or 30.16).

28.4 To the extent that any DCC Data is held and/or processed by or on behalf of the Contractor, the Contractor shall supply that DCC Data to the DCC as requested by the DCC from time to time.

28.5 Subject to Clause 34.10, the Contractor shall, at all times during the Service Period, preserve the integrity of all DCC Data, Contractor Systems Data and Contractor CMDB Data (including preventing the loss, corruption or degradation of such Data) in the possession or control of any Contractor Person.

28.6 The Contractor shall:

28.6.1 perform (or procure) secure back-ups of:

28.6.1.1 all Contractor CMDB Data as required pursuant to its obligations under this Agreement; and

28.6.1.2 any other Data as required pursuant to its obligations under this Agreement; and

28.6.2 ensure that up-to-date back-ups of all Data backed up pursuant to Clause 28.6.1.1 are:

28.6.2.1 stored securely at a Site;

28.6.2.2 (also) stored securely in a separate geographical location at least ten (10) miles from the relevant first Site referred to in Clause 28.6.2.1;

28.6.2.3 in all cases stored at all times in accordance with the requirements of this Agreement; and

28.6.2.4 promptly available to the DCC at all times upon request and in accordance with any express obligation under this Agreement.

28.7 Subject to Clause 34.10, the Contractor shall ensure that any System on which any Contractor Person holds, processes or transmits DCC Confidential Information,

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including Transactional Data, is a secure system that complies with the requirements of this Agreement, including Schedule 2.1 (DCC Requirements).

28.8 Without prejudice to Clauses 34.13 or 34.14, if any DCC Data, Contractor CMDB Data and/or Contractor Systems Data is corrupted, lost or degraded in breach of (or as a result of any breach of) the Contractor's obligations in connection with this Agreement, the DCC may (without prejudice to any other right or remedy) require the Contractor (at the Contractor's expense) to restore, or procure the restoration of the relevant DCC Data, Contractor CMDB Data and/or Contractor Systems Data as soon as practicable (and in any event within the timescales required by any part of this Agreement).

28.9 Save for the data that is service management incident recording and prioritisation, the Contractor shall ensure that any DCC Data in the possession or under the control of any Contractor Entity is not processed, exported or transferred to any place outside the European Economic Area at any time.

28.10 The indemnity in Clause 32.7.1 shall not apply to any failure by the Contractor to comply with Clause 28.8 unless and to the extent that such non-compliance is also a breach of Clause 29 (Protection of Personal Data).

29. PROTECTION OF PERSONAL DATA

The parties agree that as at the Signature Date, the provisions of Clause 29 in their entirety do not apply to this agreement on the basis that the Contractor will not receive or process any Personal Data as a Data Processor for in the performance of its Services.

29.1 To the extent that personal data is processed and with respect to the parties' rights and obligations under this Agreement, the parties agree that the DCC is either the Data Controller or the Data Processor and that the Contractor is the Data Processor.

29.2 To the extent that the Contractor processes Personal Data as the Data Processor for DCC, the Contractor shall:

29.2.1 Process the Personal Data only in accordance with instructions from the DCC as to the manner and purpose of the processing of this Personal Data (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the DCC to the Contractor during the Service Period). Any such instructions which are inconsistent with the parties' rights and obligations under this Agreement shall be dealt with in accordance with the Change Control Procedure;

29.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law;

29.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental

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loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- 29.2.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- 29.2.5 obtain prior written consent from the DCC in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services, such consent not to be unreasonably withheld or delayed;
- 29.2.6 ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 29;
- 29.2.7 ensure that none of the Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the DCC;
- 29.2.8 notify the DCC (within five (5) Working Days) unless not permitted by law or regulation if it receives:
 - 29.2.8.1 a request from a Data Subject to have access to that person's Personal Data of which DCC is the Data Controller and Contractor is the Data Processor; or
 - 29.2.8.2 a complaint or request relating to the DCC's obligations under the Data Protection Legislation;
- 29.2.9 provide the DCC with full co-operation and assistance in relation to any complaint or request made, including by:
 - 29.2.9.1 providing the DCC with full details of the complaint or request;
 - 29.2.9.2 enabling the DCC to comply with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the DCC's instructions;
 - 29.2.9.3 providing the DCC with any Personal Data it holds as Data Processor in relation to a Data Subject as a result of this Agreement (within the timescales required by the DCC); and
 - 29.2.9.4 providing the DCC with any reasonable information requested by the DCC;
- 29.2.10 provide a written description of the technical and organisational methods employed by the Contractor for Processing Personal Data (with DCC providing no less than 30 days notice); and
- 29.2.11 not Process or otherwise transfer any Personal Data outside the European Economic Area without the consent of the DCC (not to be unreasonably withheld or denied).

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29.2.11.1 the Contractor shall submit a Change Request to the DCC which shall be dealt with in accordance with the Change Control Procedure and this Clause 29.2.11;

29.2.11.2 the Contractor shall set out in its Change Request and/or Impact Assessment appropriate details of the following:

- (a) the Personal Data which will be Processed and/or transferred outside the European Economic Area;
- (b) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
- (c) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
- (d) how the Contractor will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the DCC's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;

29.2.11.3 in providing and evaluating the Change Request and Impact Assessment, the parties shall ensure that they have regard to and comply with then current Guidance on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally; and

29.2.11.4 the Contractor shall comply with such other instructions and shall carry out such other actions as the DCC may notify in writing, including:

- (a) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Agreement or a separate data processing agreement between the parties; and
- (b) procuring that any Sub-contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the DCC on such terms as may be required by the DCC, which the Contractor acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation). The Contractor shall comply at

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all times with the Data Protection Legislation as applicable and shall not perform its obligations under this Agreement in such a way as to cause the DCC to breach any of its applicable obligations under the Data Protection Legislation.

29.3 DCC shall comply at all times with the Data Protection Legislation and shall not Process Personal Data for the purposes of this Agreement in such a way as to cause the Contractor to breach any of its applicable obligations under the Data Protection Legislation.

30. CONFIDENTIALITY

DCC Confidential Information

30.1 Subject to Clauses 30.4, 30.5, 30.7, 30.11, 30.13, 30.16 and 34.10, the Contractor undertakes to the DCC that it (and each Contractor Person) shall:

30.1.1 keep all DCC Confidential Information completely and strictly confidential and keep in safe custody all documentation and media recording of the same;

30.1.2 not disclose, copy, reproduce, publish or distribute the whole or any part of any DCC Confidential Information to any person unless authorised in writing by the DCC (provided that the Contractor may copy DCC Confidential Information to the extent strictly necessary for the performance of its obligations in accordance with this Agreement);

30.1.3 use the DCC Confidential Information only for the performance of its obligations under this Agreement;

30.1.4 not use any DCC Confidential Information for its own benefit or for the benefit of anyone other than the DCC;

30.1.5 comply with any reasonable restrictions relating to the DCC Confidential Information (including as regards its disclosure, storage, use or copying) notified by the DCC to the Contractor from time to time; and

30.1.6 maintain the DCC Confidential Information as the DCC's property.

Contractor's Confidential Information

30.2 Subject to the terms of this Agreement (including Clauses 30.4, 30.5, 30.7 to 30.10 (inclusive), 30.13 and 30.16), the DCC undertakes to the Contractor that it shall:

30.2.1 keep all Contractor's Confidential Information in its possession completely and strictly confidential and keep in safe custody all documentation and media recording of the same;

30.2.2 not disclose, copy, reproduce, publish or distribute the whole or any part of any Contractor's Confidential Information to any person unless authorised in writing by the Contractor (except that any DCC Eco-System Entity may copy, reproduce and use any Contractor's

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Confidential Information for any DCC Purpose and as otherwise expressly provided in this Clause 30); and

30.2.3 maintain such Contractor's Confidential Information as the Contractor's property.

30.3 The parties have agreed that:

30.3.1 subject to the terms of this Agreement (including Clauses 30.4, 30.5, 30.7 to 30.12 (inclusive), 30.16 and 30.19), the DCC shall ensure that all Contractor's Confidential Information in any medium or format provided by or on behalf of the Contractor to any DCC Eco-System Entity in connection with the provision of the Services is at all times treated by the recipient DCC Eco-System Entity in compliance with equivalent confidentiality obligations to those imposed on the DCC under this Clause 30 (regardless of whether such Confidential Information was (or was not) first passed to the DCC);

30.3.2 Contractor's Confidential Information may be disclosed by any DCC Eco-System Entity to (and used by, including reproduction, copying and other use) any DCC Eco-System Entities in accordance with this Clause 30 provided such person(s) comply with equivalent confidentiality obligations to those imposed on the DCC under this Clause 30;

30.3.3 the DCC shall be liable to the Contractor in damages for breach of contract in respect of any breach of such equivalent confidentiality obligations referred to in 30.3.1 and 30.3.2 (above) as if such breach were a breach by the DCC of this Clause 30; and

30.3.4 consequently, to the extent this Agreement provides that any obligation of the Contractor is subject to the Contractor having agreed confidentiality arrangements with a third party the Contractor agrees that such confidentiality arrangements shall be deemed to be in place provided the DCC would be liable for the acts or omissions of the relevant third party in respect of Confidential Information in accordance with this Clause 30.3. **Exceptions – general**

30.4 If:

30.4.1 a party receives Confidential Information of another party; or

30.4.2 a person in respect of whom a party has liability in the event of noncompliance with any confidentiality obligation (pursuant to Clause 30.1 to 30.3 (inclusive), 30.9, 30.12 or 30.11 (as appropriate)) receives Confidential Information of another party,

then that receiving party or other receiving person shall be a "**Receiving Party**" for the purposes of this Clause 30.

30.5 The obligations on the parties in respect of the Receiving Party maintaining the confidentiality of, and the prohibitions and restrictions on use of, the Confidential Information of the other party (the "**Disclosing Party**") set out in this Clause 30 shall (subject to Clause 30.19) not apply to Confidential Information of the Disclosing Party:

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- 30.5.1 which the Disclosing Party confirms in writing is not required to be treated as Confidential Information;
 - 30.5.2 which is in or comes into the public domain otherwise than through any disclosure which is prohibited by this Agreement, any separate confidentiality undertaking between the DCC and Contractor and/ or the SEC;
 - 30.5.3 which was received by the Receiving Party, free of any obligation of confidence, from a third party which itself was not under any obligation of confidence in relation to that information;
 - 30.5.4 which was independently developed by or on behalf of the Receiving Party without reference to the Confidential Information of the Disclosing Party; or
 - 30.5.5 which was in the possession of the Receiving Party prior to its disclosure by the Disclosing Party.
- 30.6 For the purpose of this Clause 30, no Confidential Information shall be deemed to be in the public domain merely because such information is embraced by more general information or, in the case of a complex body of information, because one or more elements of it are separately available in the public domain.

Disclosures required by Law and disclosures to Stock Exchanges

- 30.7 The Receiving Party (and any person to whom the Receiving Party is permitted to disclose Confidential Information under this Clause 30) may:
- 30.7.1 where the Receiving Party is a DCC Eco-System Entity or a person to whom Contractor's Confidential Information may be disclosed in accordance with Clauses 30.9 or 30.10, disclose any Confidential Information to any Regulatory Body, law enforcement agency or other third party if it or any Affiliate is required to do so by Law, the DCC Licence, any energy licence, any other laws, the SEC or by any stock exchange on which the DCC Eco-System Entity or other person

or an Affiliate of the relevant DCC Eco-System Entity or other person is listed; and/or
 - 30.7.2 where the Receiving Party is a Contractor Person:
 - 30.7.2.1 disclose any Confidential Information which is (or which relates to):
 - (a) any technical aspects of any Systems used within Great Britain in connection with the provision or receipt of the Services or DCC Services;
 - (b) Data that the Contractor is not permitted to store, transmit and/or process outside of Great Britain;

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(c) any aspect of the security of any part(s) of the End-to-end Smart Metering System or any Other Energy Industry Systems; and/or

(d) any DCC Data,

("GB Restricted Information")

to any British Regulatory Body, British law enforcement agency or other third party if it is required to do so by Laws applicable in Great Britain;

30.7.2.2 disclose any DCC Confidential Information that is not GB Restricted Information but which the Contractor is permitted to transfer, store or process only within permitted jurisdictions (which may be described specifically (e.g. one particular country) or generically (e.g. the European Economic Area)) to any Regulatory Body, law enforcement agency or other third party if it is required to do so by mandatory law applicable in the relevant permitted jurisdiction(s) in which such storage or processing has been permitted under this Agreement; and

30.7.2.3 disclose any Confidential Information other than to which Clauses 30.7.2.1 and/or 30.7.2.2 relate, to any Regulatory Body, law enforcement agency or other third party if it or an Affiliate is required to do so by mandatory law or by the New York Stock Exchange or Toronto Stock Exchange.

30.8 In the circumstances referred to in Clause 30.7:

30.8.1 where the Receiving Party is a DCC Eco-System Entity, the DCC shall (if it is practical and lawful to do so) notify the Contractor in writing as soon as practicable before the disclosure or, if it is unable to do so, fully inform the Contractor immediately afterwards in writing of the circumstances of the disclosure and the Contractor's Confidential Information which has been disclosed;

30.8.2 where the Receiving Party is a Contractor Person, the Contractor shall (if it is practical and lawful to do so) notify the DCC in writing as soon as practicable before the disclosure or, if it is unable to do so, fully inform the DCC immediately afterwards in writing of the circumstances of the disclosure and the DCC Confidential Information which has been disclosed;

30.8.3 the parties shall (if it is practical and lawful to do so) consult with each other and shall use all reasonable endeavours (acting in good faith) to agree the timing, manner and extent of any disclosure under Clause 30.7; and

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30.8.4 the DCC (in relation to Clause 30.8.1) and Contractor (in relation to Clause 30.8.2) shall ensure that the person required to disclose the relevant Confidential Information shall use all reasonable endeavours to obtain written confidentiality undertakings in its favour from the third party to whom disclosure is made under this Clause 30.8. **Disclosure to DCC Service Providers etc**

30.9 The DCC (or any person acting on its behalf) may:

30.9.1 disclose, or permit the disclosure of, any Contractor's Confidential Information except Commercially Sensitive Information to (and permit its use by) any of the following persons:

30.9.1.1 any DCC Service Provider (including any External Service Provider) solely in relation to any DCC Purpose;

30.9.1.2 any person as reasonably required by the DCC for the exercise of its rights and remedies in connection with Clause 42 (Consequences of Expiry or Termination), Clause 44 (Exit Management) and/or Schedule 8.5(Exit); and

30.9.2 disclose, or permit the disclosure of, any Contractor's Confidential Information (including Commercially Sensitive Information to (and permit its use by)) any of the following persons:

30.9.2.1 the Compliance Officer (solely in relation to any DCC Purpose;

30.9.2.2 any person to whom any rights or obligations of the DCC under this Agreement are or are to be assigned, novated or otherwise transferred in accordance with Clause 66 (Assignment and Novation) and/or any proposed or actual Successor Licensee solely in relation to any DCC Purpose; and/or

and such person shall be treated as a DCC Eco-System Entity and the DCC shall have liability to the Contractor for the acts and/or omissions of such persons on the same basis as it has liability for DCC EcoSystem Entities pursuant to Clause 30.3.

Disclosures to DCC Service Users / SEC Panel

30.10 The DCC (or any person acting on its behalf) may without prejudice to the generality of Clauses 30.7, 30.9 or 30.13:

30.10.1 disclose, or permit the disclosure of, the Contractor's Confidential Information (except Commercially Sensitive Information) to (and permit its use by) any DCC Service User (or any person acting on their behalf) to the extent reasonably required in relation to any DCC Purpose; and

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30.10.2 to the extent required by the SEC, DCC Licence or any other Mandatory Requirement, disclose, or permit the disclosure of, the Contractor's Confidential Information (including Commercially Sensitive Information) to (and permit its use by):

30.10.2.1 the SEC Panel (including all panels, committees, subpanels and sub-committees));

30.10.2.2 SECCo (as defined in the SEC);

30.10.2.3 the Secretariat; and

30.10.2.4 the Code Administrator,

and such person shall be treated as a DCC Eco-System Entity and the DCC shall have liability to the Contractor for the acts and/or omissions of such persons on the same basis as it has liability for DCC Eco-System Entities pursuant to Clause 30.3.

Further disclosures – Contractor

30.11 Subject to Clause 30.19, the Contractor shall:

30.11.1 be permitted to disclose (or to permit any Permitted Person to disclose) the DCC Confidential Information to:

30.11.1.1 financial institutions to the extent strictly necessary in connection with the provision of funding by such financial institutions to the Contractor's Group in connection with the performance of the Contractor's obligations under this Agreement which shall, in no event, comprise Transactional Data and/or Industry Registration Data;

30.11.1.2 to Contractor Personnel who are directly involved in the provision of the Services and need to know the relevant DCC Confidential Information in connection with the provision of the Services; and

30.11.1.3 its Sub-contractors who are directly involved in the provision of the Services and need to know the relevant DCC Confidential Information in connection with the provision of the Services,

(each a "**Permitted Person**").

30.12 If any default, act or omission of any other Contractor Person causes or contributes (or could cause or contribute) to the Contractor being in breach of its obligations as to confidentiality under or in connection with this Agreement, the Contractor shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures or other enforcement action. The Contractor shall provide such evidence to the DCC as the DCC may reasonably require to demonstrate that the Contractor is taking appropriate steps to comply with this Clause 30.12, including:

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30.12.1 copies of any written communications with the relevant Contractor Person to the extent permitted by the Data Protection Act 1998 and any successor legislation;

30.12.2 minutes of meetings with the relevant Contractor Person; and

30.12.3 any other records which provide an audit trail of any discussions or exchanges with the relevant Contractor Person in connection with obligations as to confidentiality.

Disclosure to professional advisors

30.13 The Receiving Party (and any person to whom the Receiving Party is permitted to disclose Confidential Information under this Clause 30) may disclose such information (excluding in all cases any Transactional Data and/or Industry Registration Data) to any professional advisors (meaning any lawyers, auditors or accountants, but excluding any other sub-contractors, agents or representatives) solely for the purposes of the supply of advice or services to the relevant person or body provided such person(s) comply with equivalent confidentiality obligations to those imposed under this Clause 30 on the relevant party and that:

30.13.1 the DCC in the case of any such disclosure by any DCC Eco-System Entity; and

30.13.2 the Contractor in the case of any such disclosure by Contractor Person(s),

shall be liable to the other party in damages for breach of contract in respect of any breach of such equivalent confidentiality obligations as if such were a breach by that party of this Clause 30.

Return and destruction of Confidential Information

30.14 Subject to Clause 30.16, if directed to do so by the DCC at any time in writing and promptly following the Termination Date (and in any event within twelve (12) months of the Termination Date), the Contractor shall (at the DCC's option):

30.14.1 securely and confidentially return (or procure the return of) all DCC Confidential Information to the DCC; and/or

30.14.2 securely, confidentially and permanently destroy, delete and erase (or procure such destruction, deletion and erasure of) all DCC Confidential Information,

and shall certify that it and any Contractor Person does not retain any such DCC Confidential Information. Following the Termination Date, if the DCC does not elect within three (3) months of written request by the Contractor to do so, the DCC shall be deemed to have elected that such information shall be returned under Clause 30.14.1 (and any duplicate copies destroyed, deleted and erased in accordance with Clause 30.14.2).

30.15 Subject to Clause 30.16, if directed to do so by the Contractor at any time in writing following the Termination Date, the DCC shall (at the DCC's option):

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30.15.1 securely and confidentially return (or procure the return of) all Contractor's Confidential Information to the Contractor; and/or

30.15.2 securely, confidentially and permanently destroy, delete and erase (or procure such destruction, deletion and erasure of) all Contractor's Confidential Information, in its possession following the Termination Date. **Retention of Confidential Information**

30.16 Subject to Clause 28.1, notwithstanding the termination or expiry of this Agreement (in whole or in part), the Receiving Party (and those third parties to whom disclosures have been made in accordance with this Clause 30) shall be entitled to store (and retain), copy and use Confidential Information of the Disclosing Party (subject to an on-going obligation on the party to this Agreement that is not the Disclosing Party to continue to comply with (or ensure compliance with) this Clause 30 in respect of all such Confidential Information and to comply with Clause 30.14 and 30.15 in the event the relevant circumstance in this Clause 30.16 ceases to apply):

30.16.1 in order to comply with any applicable Mandatory Requirements;

30.16.2 in the case of the Contractor's Confidential Information, for any DCC Purpose (including receipt of any outstanding Services to the extent it is necessary to have access to such information for the continued receipt of the Services);

30.16.3 in the case of the DCC Confidential Information, to the extent necessary to comply with any continuing obligations of the Contractor under this Agreement, and in the event of Partial Termination, for the purposes of the provision of the remaining Services;

30.16.4 in order to enforce any of its rights or remedies under or in connection with this Agreement (including licence rights); or

30.16.5 solely in order to maintain a record of the Confidential Information to enable it to establish its continuing confidentiality obligations.

No restriction on reuse of ideas etc.

30.17 Nothing in this Clause 30 shall prevent any person from using any techniques, ideas or know-how of generic application gained during the performance of the Agreement in the course of its normal business to the extent that such person does not:

30.17.1 infringe the Intellectual Property Rights of the other party or any third party; or

30.17.2 breach its obligations of confidentiality under this Agreement or under agreements with third parties. **Remedies for breach of confidentiality**

30.18 The parties acknowledge that damages may not be an adequate remedy for any breach of this Clause 30 by either party (or by any DCC Eco-System Entity, any of the Contractor's Permitted Persons or Contractor Persons) and, in addition to damages and any other rights and remedies of the parties under this

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Agreement, the parties may be entitled to obtain any legal and/or equitable relief, including an injunction, in the event of any breach or potential breach of this Clause 30.

Relationship with other Provisions

30.19 All of the Contractor's obligations, duties and responsibilities under this Agreement relating to:

30.19.1 the protection, security or maintenance of DCC Confidential Information and other Data (including DCC Data); and

30.19.2 restrictions on the processing, storage, transmission or disclosure of DCC Confidential Information and other Data (including DCC Data),

shall be construed as separate and cumulative obligations, duties and responsibilities. The rights of the Contractor (and Permitted Persons) to disclose DCC Confidential Information or other Data (including DCC EcoSystem Data, DCC Data and/or Personal Data) set out in this Clause 30 are subject to all other applicable restrictions set out elsewhere in this Agreement, including Clause 29 (Protection of Personal Data).

Compliance

30.20 The Contractor must put in place and at all times maintain managerial and operational practices, systems and procedures to ensure that it complies with the requirements of this Clause 30.

30.21 The Contractor shall ensure that no circumstances arise that it knows (or ought reasonably to have known) would put the DCC in breach of Clause 30 (for example, through inclusion of Commercially Sensitive Information in documentation that will be shared with DCC Service Providers).

SECTION K: CONTRACTOR AND DCC PROTECTIONS

31. WARRANTIES

Mutual warranties

31.1 Each party warrants, represents and undertakes as at the Signature Date that:

31.1.1 it has full capacity and authority to enter into and to perform this Agreement and it has (and shall have) undertaken all requisite corporate and other action to approve the signature and performance of this Agreement or any Change to it;

31.1.2 this Agreement is executed by a duly authorised representative of that party;

31.1.3 there are no actions, suits or proceedings or Regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement ; and

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31.1.4 once duly executed, this Agreement will constitute its legal, valid and binding obligations. **Contractor warranties**

31.2 The Contractor warrants, represents and undertakes that:

31.2.1 all information provided by or on behalf of the Contractor at the Signature Date is true and accurate in all respects;

31.2.2 as at the Signature Date it is not aware of:

31.2.2.1 any circumstances which will or are reasonably likely to lead to a Insolvency Event in respect of itself; and/or

31.2.2.2 any matter that will or is reasonably likely to adversely affect their ability to perform any relevant part(s) of the Services in accordance with this Agreement, including any matter that will or is reasonably likely to adversely affect full compliance with the warranties referred to in Clause 31.3; and

31.2.3 as at the Signature Date, all statements and representations set out in:

31.2.3.1 the Contractor's commercial proposal to DCC's RFP as issued on 18/12/2013 or updated by the responses referred to in Clause 31.2.3.2) (the "RFP Response"); and

31.2.3.2 the Contractor's documented responses to all clarification questions raised by DCC in connection with the RFP Response, were true and accurate in all respects.

31.3 The Contractor warrants and undertakes for the duration of the period from the Signature Date to the end of the Service Period that:

31.3.1 it has and will have authority to grant any rights to be granted hereunder and has and will have obtained valid licences to any Intellectual Property Rights necessary for the fulfilment of all its obligations under this Agreement, including that it has and will continue to have all necessary rights

31.3.1.1 in and to any other materials made available by any Contractor Person to the DCC under this Agreement;

31.3.2 in performing its obligations under this Agreement, all Software used by or on behalf of the Contractor will:

31.3.2.1 unless otherwise agreed under the Change Control Procedure, at all times be fully supported versions of that Software.; and

31.3.2.2 perform in all material respects in accordance with its specification;

31.3.3 the Contractor Solution and assets used in the performance of the Services will be:

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31.3.3.1 free of all encumbrances which could affect the performance of the Contractor's obligations under this Agreement;

31.3.3.2 Date Compliant; and

31.3.3.3 Euro Compliant;

31.3.4 it has obtained and complied with and will maintain and comply with all applicable Consents,

DCC Warranty

31.4 The DCC warrants that it has and will continue to have all necessary rights in and to the DCC Data and the DCC Software expressly made available by the DCC to the Contractor pursuant to the terms of this Agreement.

General

31.5 Except as expressly stated in this Agreement, all warranties and conditions (whether express or implied by statute, common law or otherwise) are hereby excluded to the extent permitted by law.

31.6 The fact that any provision in this Agreement is expressed as a warranty shall not preclude any right of termination the DCC may have in respect of breach of that provision by the Contractor.

32. INDEMNITIES – GENERAL

Unless separately provided for elsewhere in the Agreement, all indemnities provided by the Contractor under this Agreement are on the basis that:-

32.1 The DCC shall promptly notify the Contractor in writing of any indemnity Claim on becoming aware of the same.

32.2 The DCC shall (and shall procure that any DCC Eco-System Entity to which the indemnity Claim relates shall):

32.2.1 allow the Contractor subject to clause 32.3 and 32.4 to have conduct of all negotiations and proceedings regarding the indemnity Claim;

32.2.2 provide the Contractor with such assistance (at the Contractor's cost) as is reasonably required by the Contractor regarding the indemnity Claim; and

32.2.3 not without the agreement of the Contractor make any admission of liability relating to the indemnity Claim.

32.3 The Contractor shall consider and defend the indemnity Claim diligently using competent counsel and shall use reasonable endeavours to handle this in such a way as not to bring the reputation of the DCC or any other DCC Eco-System Entity into disrepute

32.4 At any time, the Contractor fails to comply with its obligations under Clause 32.3 in any material respect, the DCC may defend the indemnity Claim at the Contractor's expense in such manner as it may deem appropriate.

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32.5 The DCC may terminate this Agreement with immediate effect by written notice to the Contractor if:

32.5.1 the Contractor has failed to take the action referred to in Clause 37.7.1 within six (6) months after the date of the DCC's notice under Clause 37.2;

32.6 The DCC shall use all reasonable endeavours to mitigate its losses in relation to such claims

32.7 The Contractor shall, on demand, indemnify and keep the DCC indemnified at all times against any Losses incurred by the DCC in connection with:

32.7.1 any breach by the Contractor of its obligations under Clause 29 (Protection of Personal Data);

32.7.2 any breach by the Contractor of its obligations under Clause 30 (Confidentiality).

32.8 The Contractor shall, on demand, indemnify and keep the DCC indemnified at all times against any Losses incurred by the DCC arising out of or in connection with any Claim under the SEC for loss of or damage to physical property (including loss of or damage to Systems and loss or corruption of Data) as a result of any breach by the Contractor of this Agreement.

32.9 This Clause 32 is without prejudice to Clauses 37 (IPR Indemnity), Schedule 8.5 (Exit) and any other indemnities expressed in this Agreement.

33. CHANGE IN MANDATORY REQUIREMENTS

General Change in Mandatory Requirements

33.1 The Contractor shall not be entitled to any relief from its obligations under this Agreement as a result of a General Change in Mandatory Requirements.

Specific Change in Mandatory Requirements

33.2 If a Specific Change in Mandatory Requirements occurs or will occur during the Service Period:

33.2.1 the DCC shall notify the Contractor accordingly, providing reasonable details of:

33.2.1.1 the scope of the Specific Change in Mandatory Requirements; and

33.2.1.2 to the extent that such information is known by the DCC, the likely impact of the Specific Change in Mandatory Requirements on the Contractor's obligations under this Agreement (including the provision of the Services);

33.2.2 as soon as reasonably practicable after receipt of a notice from the Contractor under Clause 33.2.1, the Contractor shall notify the DCC whether any relief from its obligations under this Agreement is required as a result of the Specific Change in Mandatory

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Requirements, including any obligation to Achieve a Milestone and/or to achieve any of the Performance Measures.

Any relief from the Contractor's obligations as a result of a Specific Change in Mandatory Requirements shall be agreed by the parties (acting reasonably). Any Dispute relating to such matters shall be referred to the Dispute Resolution Procedure.

Changes required by a Change in Mandatory Requirements

33.3 Either party may give written notice to the other of the need for a Change which is necessary in order to enable the Contractor, the DCC or any DCC Service User to comply with any Change in Mandatory Requirements in which event:

33.3.1 the parties shall meet within ten (10) days to consult in respect of the effect of the Change in Mandatory Requirements and any Change required as a consequence; and

33.3.2 within five (5) days of the meeting referred to in Clause 33.3.1 the DCC shall, if a Change is required in order to comply with the Change in Mandatory Requirements, issue a Change Request except that:

33.3.2.1 the Contractor may give a Change Rejection Notice (as defined in Schedule 8.2 (Change Control)) only on the grounds that the implementation of the Change would not give effect to or comply with the Change in Mandatory Requirements;

33.3.2.2 where the Change in Mandatory Requirements is a Specific Change in Mandatory Requirements, the Contractor shall, subject to the remaining provisions of this Clause 33, be entitled to an adjustment to Charges (to be agreed in accordance with the Change Control Procedure); and

33.3.2.3 in respect of any General Change in Mandatory Requirements or associated Change (or the consequences of either) the Contractor shall:

(a) not be entitled to an increase in the Charges in relation to the Change; and

(b) bear its own costs associated with the preparation, negotiation and finalisation of any Impact Assessment.

33.4 The Contractor shall, without prejudice to its general obligation to comply with the terms of this Agreement:

33.4.1 use all reasonable endeavours to mitigate the adverse effects of any Specific Change in Mandatory Requirements and take all reasonable steps to minimise any increase in costs arising from such Specific Change in Mandatory Requirements;

33.4.2 use all reasonable endeavours to take advantage of any positive or beneficial effects of any Specific Change in Mandatory Requirements

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and take all reasonable steps to maximise any reduction in costs arising from such Specific Change in Mandatory Requirements;

- 33.4.3 provide evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
- 33.4.4 give evidence as to how the Specific Change in Mandatory Requirements has affected the cost of providing the Services; and
- 33.4.5 demonstrate that any expenditure that has been avoided has been taken into account in amending the Charges.

33.5 In relation to a Specific Change in Mandatory Requirements, any adjustment to the Charges pursuant to this Clause 33 shall be calculated on the basis that the Contractor shall be placed in no better or worse position than it would have been in had the Specific Change in Mandatory Requirements not occurred. Any assessment of whether the Contractor is in a better or worse position shall include consideration of:

- 33.5.1 the matters referred to in Clauses 33.4 and 33.6; and
- 33.5.2 any decrease in its costs resulting from any Specific Change in Mandatory Requirements.

The Contractor shall not be entitled to any other compensation or payment in respect of such Specific Change in Mandatory Requirements or associated Change (or the consequences of either).

33.6 Any adjustment to the Charges under Clause 33.5 shall not take into account any amounts incurred or to be incurred as a result of the Contractor's failure to comply with Clause 33.4.

SECTION L: RISK PROTECTION

34. SECURITY REQUIREMENTS

34.1 The Contractor acknowledges that the DCC places great emphasis on the confidentiality, integrity and availability of the DCC Data, and consequently on the security of:

- 34.1.1 the Contractor Solution; 34.1.2
- the DCC Environment; and
- 34.1.3 the DCC Services.

The Contractor also acknowledges the critical and confidential nature of the DCC Data.

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- 34.2 The Contractor shall be responsible for:
- 34.2.1 the security of the Contractor Solution;
 - 34.2.2 the security of the Sites;
 - 34.2.3 the security of Contractor Personnel;
 - 34.2.4 the security of all Sub-contractors (including their systems, solutions and services) in respect of their involvement in the provision of the Services; and
 - 34.2.5 the implementation and on-going management of, and compliance with, the Contractor Security Documents.
- 34.3 The Contractor shall comply at all times with the DCC Security Policy as provided to the Contractor from time to time, and Contractor Security Architecture.
- 34.4 The Contractor shall, at all times during the Service Period, ensure that the Contractor Solution provides and ensures a level of security which:
- 34.4.1 is in accordance with Good Industry Practice including any applicable Guidance;
 - 34.4.2 complies with all applicable Laws and the requirements of this Agreement;
 - 34.4.3 appropriately manages security threats to the Contractor Solution;
 - 34.4.4 appropriately manages security threats to the DCC Environment and/or the DCC Services (as such threats emerge or change from time to time), to the extent that such security threats are due to a failure by (i) the Contractor, (ii) the Contractor Solution or (iii) any of the Contractor Security Documents to comply with the requirements of this Agreement;
 - 34.4.5 complies with the Security Requirements.
- 34.5 Without limiting paragraph 34.4, the Contractor shall:
- 34.5.1 at all times ensure that the level of security employed in relation to the Contractor Solution is appropriate and adequate to ensure that the risk of any Breach of Security occurring is maintained in accordance with the applicable risk level specified in the relevant Contractor Security Document(s) (and is otherwise consistent with the Contractor's obligations under this Agreement);
 - 34.5.2 implement and maintain physical security controls which are intended to prevent any unauthorised access to any of the Sites (and taking into

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account any Sites which are identified as being critical in the BCDR Plan).

34.6 The DCC shall provide the Contractor with a copy of the DCC Security Policy and any updates to the DCC Security Policy as soon as reasonably practicable.

34.7 The DCC Security Policy (as provided to the Contractor under paragraph 34.6) is not intended to increase the scope of the Contractor's obligations under this Agreement. However, to the extent that compliance with the DCC Security Policy would require:

34.7.1 a change in relation to any of the Contractor's obligations under this Agreement; and/or

34.7.2 the Contractor to incur any material additional costs (being costs which it would not have otherwise incurred under this Agreement),

then the Contractor shall notify the DCC accordingly and the parties (acting reasonably) shall agree any necessary Change to this Agreement in accordance with the Change Control Procedure.

34.8 Without prejudice or limitation to the generality of its other obligations under this Agreement the Contractor shall not transfer any Data that pertains in any way to the Production Environment (including any Data than can be used in connection with or has been generated by the Production Environment) outside of the EEA such that it results in a persistent storage of that Data outside of its original physical location.

Malicious Software and hacking

34.9 Subject to Clause 34.10, the Contractor shall ensure that the security and integrity of all parts of the Contractor System (and all DCC Data and (to the extent such Data is required to perform or comply with any obligation of the Contractor) any other Data used or created on the Contractor System) is maintained at all times and shall ensure that:

34.9.1 no hacker or unauthorised person gains access to any part of the Contractor System (or any DCC Data and (to the extent such Data is required to perform or comply with any obligation of the Contractor) any other Data) held on the Contractor System);

34.9.2 no Malicious Software is introduced into the Contractor System;

34.9.3 it complies with its obligations under this Agreement to avoid, overcome and mitigate security threats including from hackers, unauthorised persons and Malicious Software; and

34.9.4 neither it nor any Contractor Person will insert or include, or permit or cause any third party to insert or include, any Malicious Software into any part of the End-to-end Smart Metering System or any Other Energy Industry System.

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34.10 The Contractor shall not be in breach of Clauses 28.5, 28.7, 30, 29.2.3, 34.9 to the extent any circumstance which (but for this provision) would otherwise be a breach of any of such Clauses is caused by:

34.10.1 any hacker or unauthorised person gaining access to the Contractor System to the extent that (or its effects) could not have been avoided, overcome or mitigated by compliance by the Contractor with its obligations under this Agreement (including those in Clause 34.11); and

34.10.2 any Malicious Software contained in any Transactional Data to the extent the presence of such Malicious Software (or its effects) could not have been avoided, overcome or mitigated by compliance by the Contractor with its obligations under this Agreement (including those in Clause 34.11).

34.11 The Contractor shall, throughout the Service Period, in respect of the Contractor System use the latest versions as tested and approved by the Contractor of up-to-date anti-Malicious Software definitions and software available from an industry accepted anti-Malicious Software vendor which are intended to:

34.11.1 prevent any Malicious Software being introduced onto the End-to-end Smart Metering System or any Other Energy Industry System; and

34.11.2 check for, contain the spread of, block entry to, delete from, quarantine or otherwise render ineffective and minimise the impact of Malicious Software in the End-to-end Smart Metering System or any Other Energy Industry System. **Availability of relief**

34.12 If:

34.12.1 any Malicious Software is discovered on any part of the End-to-end Smart Metering System or any Other Energy Industry System; and/or

34.12.2 any hackers or other unauthorised person(s) gain access to any part of the End-to-end Smart Metering System or any Other Energy Industry System,

(either of the above being, collectively for the purposes of this Clause 34, an "**intrusion**") and the Contractor can demonstrate that compliance by it with all obligations (including Clause 34.9) under this Agreement could not have prevented the intrusion then, subject to Clause 34.13 to 34.15 (inclusive). The Contractor shall be entitled to relief from any breach of its obligations under this Agreement in the period until the Services are restored to the extent that such breach results from the intrusion. **Intrusion of Contractor System**

34.13 If an intrusion of the Contractor System occurs the Contractor shall (without prejudice to Clause 28.8) promptly take all necessary steps in respect of the Contractor System to mitigate the effect of such occurrence on the Contractor System and to avoid any re-occurrence of such intrusion of the Contractor System, including all necessary steps to restore the Services to their required operating standards (including restoration of all Contractor CMDB Data, System Audit Data and Contractor Systems Data and the re-migration and reloading of any DCC Data). Any cost arising out of the actions by or on behalf

of the Contractor taken in compliance with the provisions of this Clause 34.13 shall be borne by the Contractor.

Assistance with intrusions affecting other systems

34.14 In addition to its obligations in Clause 34.13, if an intrusion occurs then the Contractor shall promptly take all necessary steps in respect of the Contractor System to mitigate the effect of such occurrence on the DCC Services, restore the DCC Services to their required operating standards and avoid the reoccurrence of such intrusion. Any cost arising out of the actions by or on

behalf of the Contractor taken in compliance with the provisions of Clause 34.14 shall be borne by the Contractor except as provided in Clause 34.15.

34.15 To the extent the Contractor can demonstrate that compliance by it with all obligations (including Clause 34.9) under this Agreement could not have prevented or mitigated the relevant intrusion, any reasonable costs unavoidably arising out of the actions by or on behalf of the Contractor taken in compliance with the provisions of Clause 34.14 (excluding any costs of any actions required pursuant to Clause 34.13) shall be borne by the DCC provided that the DCC has given its prior written consent to such costs being incurred. **Control of physical security**

34.16 The Contractor shall at all times have in place a system of controls that is designed to ensure the security of all equipment, processes, procedures, and data used in or for the purposes of performing the Services so as to minimise opportunities for theft, fraud, or other unauthorised interference or misuse that, whether directly or indirectly, could cause any interruption to, loss of, or cessation of, the Services. Such system of controls shall include measures designed to ensure that:

34.16.1 any equipment installed and/or operated by the Contractor for the purposes of the performance of the Services cannot be accessed by unauthorised persons;

34.16.2 the supply, repair and maintenance of such equipment, and the supply of spare parts for it, is at all times under the control of the Contractor; and

34.16.3 the security of the Contractor's premises is maintained.

Clauses 34.16.1 and 34.16.2 shall not apply to any equipment installed at Consumer Premises.

34.17 Without limiting Clause 34.16, if any of the Sites are occupied by any other person, the Contractor shall at all times maintain an appropriate level of security, including by ensuring that no person gains access to, or enters, the relevant Site(s) unless it is a person whose name is on a register that is maintained by the Contractor for that purpose, or who is supervised by such a person.

34.18 The Contractor shall ensure that no Contractor Person shall dispose of, reassign or re-use any equipment or any electronic, magnetic or other medium which is or has been used to process or store DCC Confidential Information without

ensuring that such information has been entirely removed or otherwise obliterated in accordance with Schedule 2.1

Communication and training of security requirements

34.19 The Contractor shall provide training on a regular basis to all Contractor Personnel employed or engaged in the provision of the Services in relation to:

34.19.1 the Contractor's obligations under this Agreement relating to security matters;

34.19.2 the plans, policies and procedures of the Contractor which are intended to ensure that the Contractor complies with its obligations referred to in Clause 34.19.1 (including the Contractor Security Documents); and

34.19.3 the allocation of security roles and responsibilities within the Contractor's organisation.

34.20 Without limiting Clause 34.19, the Contractor shall ensure that the plans, policies and procedures referred to in Clause 34.19.2 (including any changes or updates from time to time) are communicated to all applicable Contractor Personnel on a regular basis.

34.21 The Contractor shall at all times have a nominated person responsible for ensuring compliance with the Contractor's obligations under Clauses 34.19 and 34.20.

Register of Security Incidents

34.22 The Contractor shall:

34.22.1 maintain a register of every Breach of Security (the "**Register of Security Incidents**");

34.22.2 record each such Breach of Security in the Register of Security Incidents immediately upon becoming aware of it;

34.22.3 immediately inform the DCC of the Breach of Security as soon as the Contractor has become aware of it;

34.22.4 within such timescale as is specified by the DCC, provide the DCC with a report that details:

34.22.4.1 the nature, cause, and impact (or likely impact) of the Breach of Security;

34.22.4.2 the action taken by the Contractor to remedy or minimise the immediate or expected consequences of the Breach of Security; and

34.22.4.3 the action taken (or proposed to be taken) by the Contractor to ensure that the Breach of Security does not recur, or that the risk of recurrence is minimised;

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34.22.5 make the Register of Security Incidents available to the DCC (and, if requested by the DCC, to the Authority) for its inspection at all times; and

34.22.6 provide the DCC (and, if requested by the DCC, the Authority) with a copy of the Register of Security Incidents on the expiry or termination of this Agreement and/or the expiry or revocation of the DCC Licence.

35. BUSINESS CONTINUITY AND DISASTER RECOVERY

The Contractor will develop, review, test, change and maintain an appropriate and effective business continuity and disaster recovery plan in respect of the Contractor Solution (the "**BCDR Plan**"), it will deliver this plan to the DCC as agreed by the Parties.

The BCDR Plan will form part of the E2E BCDR Plan owned by the DCC. The E2E BCDR Plan is a business continuity and disaster recovery plan which covers the whole of the End-to-End Smart Metering System. The E2E BCDR Plan will be formed of Contractor's BCDR Plan and the Related BCDR Plans (and any equivalent BCDR plans of the DCC).

35.1 The BCDR Plan shall detail the processes and arrangements which the Contractor shall follow to ensure continuation of the DCC business processes and operations (including the provision of the DCC Services) supported by the Contractor Solution where a Service Disruption or Disaster occurs and recovery of the DCC business processes and operations (including the provision of the DCC Services) supported by the Contractor Solution where a Service Disruption or Disaster occurs.

35.2 The Contractor acknowledges that in relation to certain operational matters, the BCDR Plan may need to be consistent with, and interoperate with, the disaster recovery and/or business continuity plans of the DCC and certain of the DCC Service Providers (as notified to the Contractor by the DCC from time to time) (each, a "Related BCDR Plan");

35.2.1 The DCC shall provide any information or assistance reasonably requested by the Contractor in relation to the preparation of the BCDR Plan.

35.3 The BCDR Plan shall be designed so as to ensure that:

35.3.1 the Services are provided in accordance with this Agreement (including each of the DCC Requirements) at all times during and after the invocation of the BCDR Plan;

35.3.2 the adverse impact of any Disaster or Service Disruption on the operations of the DCC (including the provision of the DCC Services) is minimised as far as reasonably possible;

35.3.3 there is a process for the management of disaster recovery testing detailed in the BCDR Plan;

35.3.4 there will be no Breach of Security as a result of any Disaster or Service Disruption;

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- 35.3.5 that there will be no loss of any DCC Data as a result of any Disaster or Service Disruption in excess of the relevant Recovery Point Objective; and
- 35.3.6 the integrity of all DCC Data shall be preserved notwithstanding any Disaster or Service Disruption.
- 35.4 The Business Continuity Plan shall address the various possible levels of Service Disruptions and the services to be provided, and the steps to be taken, to remedy the different levels of Service Disruption.
- 35.5 The Disaster Recovery Plan shall be designed so as to ensure that, upon the occurrence of a Disaster, the Contractor can ensure continuity of the business operations of DCC (including the provision of the DCC Services) supported by the Contractor Solution with, as far as reasonably possible, minimal adverse impact.
- 35.6 The Contractor shall, at its own cost, review the BCDR Plan (and the risk analysis on which it is based) on a regular basis and, as a minimum, once every six (6) months
- 35.7 The Contractor shall test the BCDR Plan on a regular basis (and, in any event, not less than once in every Contract Year) in accordance with the testing arrangements set out in the BCDR Plan and the specific test plan approved by the DCC from time to time.
- 35.8 The Contractor acknowledges that its testing activities shall, if requested by the DCC, be co-ordinated with the equivalent testing activities of certain DCC Service Providers relating to the applicable Related BCDR Plans and/or certain DCC Service Users.
- 35.9 The Contractor shall ensure that it is able to invoke the BCDR Plan at any time in accordance with its terms.
- 36. FORCE MAJEURE**
- 36.1 Subject to the remaining provisions of this Clause 36, either party may claim relief from liability for non-performance of its obligations under this Agreement to the extent such non-performance is due to a Force Majeure Event. If the Affected Party has complied with its obligations in Clause 36.4 then:
- 36.1.1 Milestone Dates directly affected by the Force Majeure Event shall be postponed by such time as shall be reasonable, taking into account the likely effect of the delay;
- 36.1.2 the Affected Party shall be relieved of liability under this Agreement to the extent to which that liability would otherwise have arisen solely as a result of the Force Majeure Event (in particular, the Contractor shall be relieved from its Service Credits obligation to the extent that the Services are so affected by the Force Majeure Event and the DCC shall be relieved of any obligations that would otherwise have arisen on the occurrence of a DCC Cause); and

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- 36.1.3 the Charges in respect of any Services not actually delivered solely as a result of Force Majeure Event shall continue unaffected.
- 36.2 An Affected Party cannot claim any relief from liability under this Clause 36:
- 36.2.1 in relation to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event;
- 36.2.2 in relation to any circumstances resulting from a failure or delay by any other person in the performance of that person's obligations under a contract with the Affected Party (unless that person is itself prevented from or delayed in complying with such obligations as a result of a Force Majeure Event); and/or
- 36.2.3 as a result of any shortage of labour, material or other resources unless caused by circumstances which are themselves a Force Majeure Event, and in any event, the Contractor shall not be entitled to relief under this Clause 36 if and to the extent that it is required to comply with the BCDR Plan but has failed to do so (unless such failure is also due to a Force Majeure Event affecting the operation of the BCDR Plan).
- 36.3 The Affected Party shall as soon as practicable and in any event within five (5) days, give the other party written notice of the occurrence of a Force Majeure Event. The notification shall include full details of:
- 36.3.1 the Force Majeure Event;
- 36.3.2 the effect of the Force Majeure Event on the obligations of the Affected Party under this Agreement;
- 36.3.3 the action which the Affected Party is taking, or proposes to take, in order to mitigate the effect of the Force Majeure Event; and
- 36.3.4 any relief that the Affected Party wishes to claim under this Clause 36 in relation to the Force Majeure Event.
- 36.4 To obtain relief under this Clause 36, the Contractor shall demonstrate to the satisfaction of the DCC (acting reasonably) that:
- 36.4.1 the Force Majeure Event directly caused the non-performance of obligations for which relief is claimed;
- 36.4.2 the Contractor could not have avoided or overcome the occurrence of the Force Majeure Event (or its consequences) by taking steps which the Contractor:
- 36.4.2.1 was required to take, or procure, under this Agreement or any relevant Co-operation Agreement; or
- 36.4.2.2 might reasonably be expected to have taken in accordance with Good Industry Practice; and

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36.4.3 the Contractor is taking all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force

Majeure Event on the performance of its obligations under this Agreement.

36.5 As soon as practicable following the occurrence of any Force Majeure Event, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate arrangements to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

36.6 The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notice, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event (unless agreed otherwise by the parties in accordance with the Change Control Procedure).

36.7 Except as provided in Clause 40.13 (Termination for continuing Force Majeure), Clause 43 (Payments Made on Termination):

36.7.1 the rights and relief set out in Clause 36 shall be the Affected Party's sole and exclusive remedy in respect of any Force Majeure Event and each party waives all rights to claim:

36.7.1.1 any other extension or allowance of time;

36.7.1.2 any other relief from its obligations under this Agreement;

36.7.1.3 any other payment or compensation whatever (including for breach of contract or in tort or negligence or under any other legal theory); and/or

36.7.1.4 to be entitled to terminate this Agreement, in respect of any Force Majeure Event; and

36.7.2 neither party shall have any liability to the other in relation to any Loss or Claim which the other party suffers or incurs as a result of any Force Majeure Event.

SECTION M: INDEMNITIES, LIABILITY AND INSURANCE

37. IPR INDEMNITY

IPR indemnity from Contractor

37.1 The Contractor shall, on demand, indemnify and keep indemnified the DCC (on the DCC's own behalf and on behalf of each of the other DCC Eco-System Entities) at all times against any Losses incurred by the DCC or any other DCC Eco-System Entities in connection with any IPR Claim.

37.2 The DCC shall promptly notify the Contractor in writing of any IPR Claim on becoming aware of the same.

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37.3 The DCC shall (and shall procure that any DCC Eco-System Entity to which the IPR Claim relates shall):

37.3.1 allow the Contractor subject to clause 37.4 and 37.5 to have sole conduct of all negotiations and proceedings regarding the IPR Claim;

37.3.2 provide the Contractor with such assistance (at the Contractor's cost) as is reasonably required by the Contractor regarding the IPR Claim; and

37.3.3 not, without the agreement of the Contractor make any admission of liability relating to the IPR Claim.

37.4 The Contractor shall consider and defend the IPR Claim diligently using competent counsel and shall use reasonable endeavours to handle this in such a way as not to bring the reputation of the DCC or any other DCC Eco-System Entity into disrepute

37.5 At any time, the Contractor fails to comply with its obligations under Clause 37.4 in any material respect, the DCC may defend the IPR Claim at the Contractor's expense in such manner as it may deem appropriate.

37.6 The Contractor shall not settle or compromise any IPR Claim in a manner which adversely affects DCC without the DCC's prior written consent (such consent not to be unreasonably withheld or delayed).

37.7 If an IPR Claim is made, or the Contractor anticipates that an IPR Claim might be made, the Contractor may, at its option and at no additional cost to the DCC, either:

37.7.1 procure for the DCC and all relevant DCC Eco-System Entities the right to continue to Use any Software, Services, IPRs or other aspects of the Contractor Solution which is the subject matter of the IPR Claim ("**Infringing Item**") on terms that are no less beneficial to the DCC and all relevant DCC Eco-System Entities than the terms of this Agreement; or

37.7.2 replace or modify the Infringing Item(s) with non-infringing substitutes provided that:

37.7.2.1 the performance and functionality of the replaced or modified substitute is at least equivalent to the performance and functionality of the original Infringing Item; and

37.7.2.2 the replaced or modified substitute does not have an adverse effect or impact on any of the Services, any DCC Eco-System Entity, the DCC Services or the Smart Metering Programme generally.

Unless otherwise agreed by the parties in writing, the terms of the Agreement shall apply equally to the replaced or modified substitute as they did to the original Infringing Item.

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37.8 The DCC may terminate this Agreement with immediate effect by written notice to the Contractor if:

37.8.1 the Contractor has failed to take any of the actions referred to in Clause 37.7.1 or 37.7.2 within six (6) months after the date of the DCC's notice under Clause 37.2;

37.9 The indemnity in Clause 37.1 and provisions of Clause 37.1 to 37.8 (inclusive) shall not apply to the extent that the IPR Claim is caused by (i) any use of the Contractor IPR by the DCC or any other DCC Eco-System Entity which is in breach of any applicable licences or (ii) any software, documents, specifications, drawings or instructions supplied to Contractor by or on behalf of the DCC or any DCC Eco-system Entity.

38. LIMITATIONS ON LIABILITY

38.1 Notwithstanding any other provision in this Agreement, neither party limits its liability for:

38.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable); or

38.1.2 fraud or fraudulent misrepresentation by it or its employees and, in the case of the Contractor, any Contractor Person; or

38.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

38.1.4 any other obligation in respect of which such limitation or exclusion is prohibited by applicable law.

38.2 The Contractor's liability in respect of:

38.3 any intentional (as opposed to reckless) act or omission by the Contractor (as opposed to by any Sub-contractor or individual member of the Contractor Personnel) in breach of any provision of this Agreement which has a material impact on the DCC, where the Contractor does not or could not reasonably have a good faith belief that such act or omission is in compliance with the terms of this Agreement; and/or

38.4 any wilful repudiation or wilful abandonment of this Agreement, shall be unlimited.

38.5 The Contractor's liability:

38.5.1 in respect of any indemnity given under this Agreement (other than under Clause 32.8) shall be unlimited;

38.5.2 in respect of the indemnity given under Clause 32.8, shall in no event exceed (in aggregate) ten million pounds sterling (£10,000,000) (subject to indexation).

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38.6 The parties agree that the Contractor's liability for Service Credits under this Agreement is limited in accordance with paragraph 5 of Schedule 7.1 (Charges and Payment) and shall not be taken into account for the purposes of the limitations on liability set out in this Clause 38.

38.7 Subject to Clauses 38.1 and excluding any liability of the Contractor under, or referred to in, Clauses 38.2 to 38.4 (inclusive):

38.7.1 subject to Clause 38.5.2, the Contractor's total aggregate liability under or in connection with this Agreement, whether arising from tort (including negligence), breach of contract or otherwise, arising in any Contract Year shall in no event exceed an amount equal to 125% of the Charges payable in respect of that Contract Year (to be ascertained at the end of that Contract Year and including any such Charges which are payable in respect of that Contract Year but which are invoiced or paid in a subsequent Contract Year).

38.7.2 The Contractor's total aggregate liability under or in connection with this Agreement, whether arising from tort (including negligence), breach of contract or otherwise shall in no event exceed 11 million pounds sterling (£11,000,000) (subject to indexation).

38.8 The DCC's total aggregate liability for any Termination Payments and Compensation Payments under this Agreement shall not exceed the amounts stated in Schedule 7.2 (Payments on Termination).

38.9 Subject to Clause 38.6 the DCC's total aggregate liability under or in connection with this Agreement, whether arising from tort (including negligence), breach of contract, liability under indemnities or otherwise, but excluding its obligation to pay the Charges in accordance with Schedule 7.1 (Charges and Payment):

38.9.1 in respect of all loss of, or damage to, any assets or other property (including technical infrastructure, assets or equipment) of the Contractor or any Contractor Person arising in any Contract Year as a result of any act(s) or omission(s) of the DCC, shall in no event exceed (in aggregate) xxxxx pounds sterling (£xxxxxx) (subject to indexation); and

38.9.2 in respect of all other liabilities arising in each Contract Year, shall in no event exceed xxxxx pounds sterling (£xxxxxx) (subject to indexation).

38.10 Subject to Clause 38.1, neither party shall be liable to the other party for any of the following types of Loss arising under or in connection with this Agreement, whether arising from tort (including negligence), breach of contract, or otherwise:

38.10.1 any indirect or consequential loss or damage and

38.10.2 in all circumstances, including under any indemnity, any:

38.10.2.1 loss of profits, turnover, revenue
or business opportunities;

38.10.2.2 damage to goodwill or reputation; or

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38.10.2.3 anticipated savings that have not expressly been referred to in the relevant Change, Project or other contractual documents(s),

(regardless of whether any of these types of loss or damage are direct, indirect or consequential), except to the extent such exclusions would conflict with any obligation of the DCC to pay the Charges or any Termination Payment in accordance with this Agreement. **Direct loss**

38.11 Subject to Clause 38.11 to 38.13 (inclusive), the DCC may, subject to the overall cap contained within the Agreement, recover as a direct loss (and the Contractor assumes responsibility for) the following types of Loss incurred by the DCC as a result of a breach of this Agreement by the Contractor ("**Relevant Breach**"):

38.11.1 additional operational, financing and/or administrative costs and expenses incurred by the DCC as a result of the Relevant Breach (including costs of stationery and correspondence and time spent by the DCC's management and employees in dealing with the consequences of the Relevant Breach);

38.11.2 wasted expenditure or charges rendered unnecessary and incurred by the DCC arising from the Relevant Breach;

38.11.3 the costs of implementing a temporary workaround in respect of a failure to provide all or any part of the Services as a result of the Relevant Breach;

38.11.4 where applicable, fees payable to third parties in order to rectify the Relevant Breach together with costs incurred in the process of appointing any such third parties;

38.11.5 the additional cost of procuring Replacement Services, substitute items and services for the remainder of the Service Period but excluding on-going costs of such Replacement Services);

38.11.6 the costs of reconstituting or recovering DCC Data and any other relevant Data (to the point at which it should have last been backed up in accordance with the Contractor's obligations), and all Losses arising from any inability of the DCC to use any DCC Data and other relevant Data which the Contractor was obliged to have backed-up but which has been lost or corrupted as a result of a Relevant Breach; and

38.11.7 fines, charges and penalties and punitive loss incurred by the DCC as a result of a Relevant Breach whether arising under statute, contract

or at common law or in connection with judgments, proceedings and the monetary effect of any other form of sanction suffered or incurred.

Invalidity etc

38.12 Without prejudice to the generality of Clause 50 (Severance), the parties expressly agree that if any limitation or provision contained or expressly referred to in this Clause 38 is held to be invalid, unenforceable or illegal under any law, it will be deemed omitted to that extent, and if any party becomes liable

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for Losses to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 38.

Mitigation

38.13 Nothing in this Agreement shall act to reduce or affect a party's general duty to mitigate its Loss.

38.14 Each party shall take all reasonable steps to minimise and mitigate any Loss for which it is entitled to bring a Claim against the other party under this Agreement. This obligation to mitigate shall apply to any Losses arising under any indemnity under this Agreement. **No double recovery**

38.15 Neither party shall be entitled to recover Losses or make a Claim under this Agreement in respect of any Loss that it has incurred to the extent that it has already recovered such Losses or otherwise been compensated in respect of such Losses under this Agreement or otherwise. This Clause 38.13 shall not apply in respect of any Losses incurred by the DCC which have been passed on to SEC Parties as charges in the manner referred to in Clause 2.3 (SEC Funding).

39. INSURANCE

39.1 The Contractor shall at its own expense take out and maintain the following types of insurance policies for the specified amounts with an independently regulated insurance company of good financial standing properly licensed to underwrite insurance risks of the type in question and on terms that are reasonably adequate and customary in the international insurance market::

39.1.1 Public liability insurance with limits of at least £10m per occurrence and unlimited in respect of the number of occurrences during any one insurance period providing coverage in respect of the liability of the Contractor for death injury or disease of third parties and loss or damage to third party property including the vicarious liability under this agreement of the Contractor for the acts or omissions of the Contractor's personnel.

39.1.2 Employers' liability and/or workers' compensation insurance as required by relevant law, including cover for legal liability to make payment in respect of death, personal injury and/or disability of Contractor personnel and with limits no less than the minimum statutory amount for each and every claim and unlimited in respect of the number of occurrences covered by such insurance during any one insurance period.

39.1.3 Professional indemnity Insurance with limits of at least £5m per occurrence and for all occurrences in the aggregate during any one insurance period providing coverage in respect of the liability of the Contractor to third parties for financial loss caused by a breach of the Contractor's obligations and/or duties including the vicarious liability under this agreement of the Contractor for the acts or omissions of the Contractor's personnel.

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General insurance provisions

39.2 Notwithstanding the terms of any other clause in this agreement, the insurance policies shall meet the following requirements:

39.2.1 Not used.

39.2.2 In respect of insurance policies in which the applicable policy trigger is the date of the occurrence giving rise to a claim, the insurances shall be maintained for the term of the agreement. In respect of insurance policies in which the applicable policy trigger is the date of any claim notified to the Contractor, the insurances shall be maintained for the term of the agreement and a further period of six years thereafter.

39.2.3 In the case of insurance which are subject to an aggregate limit for all claims made during the period of insurance, the Contractor shall ensure that additional insurance is purchased in the event that the cover is eroded by other claims so that the total amount of the cover never falls below the minimum limits specified in this agreement.

Insurance documentation

39.3 The Contractor shall, upon DCC's request, furnish to DCC certificates of insurance or such other reasonable evidence to confirm that all coverages referenced in this agreement are being maintained in force and are fully compliant with all the terms of the agreement.

39.4 Such cancellation or material alteration of the insurances shall not relieve the Contractor of its continuing obligation to maintain insurance coverage in accordance with this clause.

39.5 The amounts of required insurance specified above are minimum requirements and the Contractor shall be responsible for providing any additional insurance that may be reasonably necessary to protect the Contractor's interests from other hazards or claims in excess of the minimum coverage. The liability of the Contractor to DCC shall not be limited to the Contractor insurance coverage.

SECTION N: TERMINATION AND EXIT MANAGEMENT

40. TERMINATION RIGHTS

Termination for cause by the DCC

40.1 The DCC may (immediately or on such notice period as the DCC may elect in its absolute discretion, subject to any minimum notice period expressly specified herein) terminate this Agreement without liability by giving written notice of termination to the Contractor if any of the circumstances in Clause 40.2 occur.

40.2 The circumstances giving rise to the DCC's right to terminate under Clause 40.1 are:

40.2.1 the Contractor commits a material breach (other than due to a Force Majeure Event, Unavoidable Breach or Unavoidable Delay) of:

40.2.1.1 this Agreement;

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40.2.1.2 Clause 28 (DCC Data);

40.2.1.3 Clause 29 (Protection of Personal Data);

40.2.1.4 Clause 30 (Confidentiality);

40.2.1.5 Clause 34 (Security Requirements);

40.2.1.6 any Contractor Security Document; or 40.2.1.7

the Security Requirements,

which it has failed to remedy in accordance with the Remedial Plan Process (in which case, the DCC may terminate in accordance with Clause 41), except where such material breach is irremediable, or stated in this Agreement to be irremediable, in which case DCC may terminate this Agreement immediately;

40.2.2 the Contractor fails to Achieve any Milestone by its associated Milestone Date other than due to an Unavoidable Delay and

40.2.2.1 a Correction Plan in respect of the relevant Milestone has not been agreed by the parties (which agreement shall not be unreasonably withheld or refused) within twenty (20) Working Days of any Dispute Notice relating to the development or approval of the same; or

40.2.2.2 following approval by the DCC of the Correction Plan in respect of the relevant Milestone, the Contractor fails to implement such Correction Plan in accordance with its terms (including as to timescales); or

40.2.2.3 notwithstanding the implementation of the Correction Plan in respect of the relevant Milestone by the Contractor, the Contractor fails to Achieve the relevant Milestone within a period not exceeding sixty (60) days from the original Milestone Date or such other date as the parties may have agreed in the Correction Plan,

provided that the DCC shall not be obliged to repeat any Correction Plan process (and shall be entitled to terminate under Clause 40.1) where the reasons for the failure to Achieve the Milestone were already the subject of a prior Correction Plan;

40.2.3 in accordance with:

40.2.3.1 Clause 37.8 (IPR Indemnity);

40.2.3.2 any express termination right set out in Clause 41 (Remedial Plan Process); or

40.2.3.3 Clause 48 (Prevention of Corruption);

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40.2.4 the Contractor commits a material breach (other than due to an Unavoidable Breach or Unavoidable Delay) of:

40.2.4.1 this Agreement; or

40.2.4.2 any of the provisions of this Agreement referred to in Clause 40.2.1,

40.2.4.3 which results in (i) any formal investigation or proceedings, (ii) any prosecution and/or (iii) the conviction of any Contractor Person or any DCC Eco-System Entity by the Authority and/or Ofcom;

40.2.5 a Critical Service Failure occurs;

40.2.6 an Insolvency Event occurs in relation to the Contractor;

40.2.7 the Contractor commits a breach of this Agreement which results in the conviction of the Contractor or any Sub-contractor under the Health and Safety Regime. In determining whether to exercise any right of termination pursuant to this Clause 40.2.7, the DCC shall:

40.2.7.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of any person committing it; and

40.2.7.2 give all due consideration, where appropriate, to action other than termination of this Agreement;

40.2.8 there has been a Disaster or other Service Disruption in response to which the Contractor should have implemented pursuant to an obligation under this Agreement, and acted in accordance with, the BCDR Plan and:

40.2.8.1 the Contractor has failed to do so; and

40.2.8.2 such failure is in itself a material breach of this Agreement or the result of such failure has a material adverse impact on the DCC (including its ability to provide the DCC Services); and/or

40.2.9 the Contractor has failed to comply with its applicable obligations under Clause 17.3 (Supply Chain Rights) within ninety (90) days of the DCC requiring termination of such Sub-contractor in accordance with Clause 17.3.

Termination for convenience by the DCC

40.3 The DCC may terminate this Agreement for convenience at any time on giving written notice to the Contractor (a "**Termination for Convenience Notice**"). The amount of notice given by the DCC shall affect the payments that the DCC is obliged to make in accordance with Clause 43 (Payments made on Termination) and Schedule 7.2 (Payments on Termination) but shall otherwise be without liability to the Contractor.

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- 40.4 Subject to any obligation to provide the Services in accordance with the Exit Plan, the Contractor's obligation to provide the Services shall end on the date set out in the Termination for Convenience Notice.
- 40.5 If the DCC exercises its right to serve a Termination for Convenience Notice then, without prejudice to Clause 40.4 and unless otherwise stipulated by the DCC in the Termination for Convenience Notice, any Services that have not commenced at the date of receipt of the Termination for Convenience Notice by the Contractor shall be cancelled automatically and irrevocably.
- 40.6 The right of termination set out in Clause 40.3 is in addition to any other rights of the DCC under this Agreement and its exercise shall be without prejudice to any Claim, remedy or right of action that either party may have in relation to this Agreement.

Termination for Change of Control

- 40.7 The Contractor shall:
- 40.7.1 notify the DCC of any actual or potential Change of Control of the Contractor (or any entity which Controls the Contractor). Such notice shall be provided by the Contractor as soon as practicable, and in any event, within five (5) Working Days after the completion of the relevant Change of Control; and
- 40.7.2 promptly provide to the DCC such information regarding a Change of Control under Clause 40.7.1 as is reasonably requested by the DCC.
- 40.8 Without prejudice to any other right or remedy (including Clause 40.2.9), the DCC may (unless it has previously provided its express written consent to such Change of Control or a period of ninety (90) days has elapsed after receipt by the DCC of a notice from the Contractor under Clause 40.7.1 in relation to the relevant Change of Control of the Contractor and all information reasonably requested under Clause 40.7.2):
- 40.8.1 in the event of a Prohibited Change of Control of the Contractor, immediately terminate this Agreement without liability to the Contractor;
- 40.8.2 in the event of a Change of Control of the Contractor which does not constitute a Prohibited Change of Control, issue a Notice of Termination for Convenience, in which case, Clauses 40.3 to 40.6 shall apply (subject to paragraph 3.2 of Schedule 7.2 (Payments on Termination)).

Where the DCC terminates this Agreement (in whole or in part) in accordance with Clause 40.8.1 the circumstances giving rise to such termination shall be deemed to constitute a breach of this Agreement by the Contractor. The DCC shall be entitled to Claim damages for such breach.

Termination or suspension by the Contractor

40.9 For the purposes of this Agreement:

40.9.1 "**Allowable Action**" means the SEC Panel having agreed to take such action as should reasonably result in the rectification of the DCC Event of Default;

40.9.2 "**Allowable Action Period**" means ten (10) Working Days starting from the date on which the notice of suspension or termination (as appropriate) by the Contractor under Clause 40.10 would otherwise have taken effect;

40.9.3 "**DCC Event of Default**" means (subject to Clause 40.11) any failure by the DCC to pay undisputed Charges due to the Contractor under this Agreement which (either singly or in aggregate) exceeds one hundred thousand pounds sterling (£100,000):

40.10 Following the occurrence of a DCC Event of Default, the Contractor may serve written notice on the DCC requesting that the DCC rectifies the DCC Event of Default (and such notice must provide full details of the DCC Event of Default).

40.10.1 **Suspension:** if the DCC Event of Default has not been rectified by the DCC within thirty (30) days after receipt by the DCC of such notice the Contractor may suspend the Unpaid Services (unless the DCC has informed the Contractor prior to expiry of such further notice period of any Allowable Action, in which case the suspension of the Unpaid Services shall only take effect at the end of the Allowable Action Period if the DCC Event of Default remains unrectified), and provided always that any suspension by the Contractor of any Unpaid Services pursuant to this Clause 40.10.1 shall end once the DCC has resolved the DCC Event of Default in respect of such Unpaid Services; and

40.10.2 **Termination:** if the DCC Event of Default has not been rectified by the DCC within thirty (30) days after receipt by the DCC of such notice, the Contractor may serve a further written notice on the DCC terminating the Unpaid Services on thirty (30) days' notice if the DCC Event of Default remains unrectified at the end of such period (unless the DCC has informed the Contractor prior to expiry of such further notice period of any Allowable Action, in which case the termination of the Unpaid Services shall only take effect at the end of the Allowable Action Period if the DCC Event of Default remains unrectified).

Termination by the Contractor under Clause 40.10.2 shall be deemed to be a Termination and the parties shall comply with the applicable provisions of Clauses 40.8 in relation to (i) a reduction of the Charges to reflect the termination of the Unpaid Services and (ii) agreeing any Changes necessary to the Agreement as a result of the termination of the Unpaid Services.

40.11 A DCC Event of Default:

40.11.1 shall be considered rectified / resolved if the DCC ensures it does not owe undisputed Charges in excess of the sum indicated in Clause

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40.9.3 (and rectification/resolution does not require the DCC to have paid all undisputed Charges in full); and

40.11.2 a DCC Event of Default shall not include any non-payment of any Charges by the DCC where such non-payment is due to the DCC exercising its rights arising under or in connection with this Agreement.

40.12 The Contractor shall not exercise, or purport to exercise, and hereby expressly waives, any and all rights or causes of action howsoever arising (whether under the terms of this Agreement or otherwise) to terminate this Agreement or suspend any Services or the performance of any obligations (or accept any repudiation of this Agreement) except as expressly set out in Clause 40.10. Any exercise of such rights or causes or action shall not affect the Contractor's continuing obligations under Clause 42 (Consequences of Expiry or Termination), the provision of any Termination Assistance Services and fulfilment of all other obligations of the Contractor expressed as surviving any termination of this Agreement.

Termination for continuing Force Majeure

40.13 The DCC may, by written notice to the Contractor, immediately terminate without liability to the Contractor:

40.13.1 this Agreement, if a Force Majeure Event continues for a continuous period of more than one hundred and eighty (180) days;

40.13.2 any Project in relation to which a Force Majeure Event has occurred, if that Force Majeure Event continues for a continuous period of more than thirty (30) days. **General**

40.14 The DCC's rights to terminate this Agreement (in whole or in part):

40.14.1 shall be without liability to the Contractor (except as expressly stated otherwise); and

40.14.2 are without prejudice to Clause 42.2 and any other right or remedy which the DCC or any Successor Licensee may have in relation to the Contractor (including the right to Claim damages).

41. **REMEDIAL PLAN PROCESS**

41.1 If:

41.1.1 the Contractor has committed a breach to which Clause 40.2.1 relates and that is capable of remedy; or

41.1.2 a Persistent Service Failure has occurred,

(in each case, a "**Remediable Event**") then the Contractor shall provide the DCC with a draft Remedial Plan within ten (10) Working Days (or any other period agreed by the parties in writing) the Remediable Event.

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41.2 In respect of each Remediable Event, the Contractor shall appoint a named individual and during such person's absence for holiday, parental leave or illness or any other reason, a suitable interim replacement (the "**Remedial Plan Sponsor**") and who shall:

41.2.1 lead the effective and timely delivery by the Contractor of its obligations under this Clause 41 in respect of such Remediable Event;

41.2.2 appropriately supervise the day-to-day implementation of the Contractor of its obligations under this Clause 41 in respect of such Remediable Event;

41.2.3 provide the DCC with a detailed update in respect of (i) all relevant matters relating to the performance by the Contractor of its obligations under this Clause 41 and (ii) the progress made by the Contractor in remedying the circumstances that gave rise to the Remediable Event (including answering any reasonable questions raised by the DCC or those acting on its behalf):

41.2.3.1 in writing every five (5) Working Days; and

41.2.3.2 by way of face-to-face meetings with such representatives of the DCC as the DCC may reasonably elect (and at least every ten (10) Working Days).

41.3 In respect of each Remediable Event, the Contractor shall comply with any written notice by the DCC specifying any specific additional monitoring by the DCC and/or the Contractor of:

41.3.1 the Contractor's compliance with its obligations under this Clause 41; and/or

41.3.2 the implementation of any associated Remedial Plan,

that the DCC may require, provided that such additional monitoring is reasonably proportionate to the circumstances giving rise to the Remediable Event and would not jeopardise the performance by the Contractor of its obligations under this Agreement. The Contractor shall reimburse the DCC in respect of any reasonable additional costs that are directly incurred by the DCC in respect of any such additional monitoring measures.

41.4 Each draft Remedial Plan issued by the Contractor pursuant to this Clause 41 shall identify:

41.4.1 the cause of the Remediable Event or otherwise giving rise to the DCC's right to require a Remedial Plan;

41.4.2 the steps that the Contractor proposes to take in order to rectify such issues (and to prevent their reoccurrence);

41.4.3 the Contractor's proposed timescales for the implementation of such steps;

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- 41.4.4 the resources which the Contractor proposes to allocate to the rectification of the issues to which the Remedial Plan ought to relate;
 - 41.4.5 any activities to be conducted by the Contractor in order to mitigate any consequences of the Remediable Event or otherwise notified by the DCC; and
 - 41.4.6 the process for establishing that the issues giving rise to the Remedial Plan have been resolved by the Contractor and the deadline by which such issues must have been resolved.
- 41.5 If the DCC considers that the draft Remedial Plan:
- 41.5.1 is insufficiently detailed to be properly evaluated;
 - 41.5.2 does not comply with any of the requirements set out in Clause 41.4;
 - 41.5.3 will take too long to complete;
 - 41.5.4 has not been submitted (or re-submitted) when due in accordance with Clause 41.1 or as otherwise agreed; or
 - 41.5.5 will not remedy the Remediable Event or otherwise giving rise to the DCC's right to require a Remedial Plan,
- then it may either agree a further time period for the development and agreement of the Remedial Plan or by a Dispute Notice to the Contractor escalate any issues directly via the Dispute Resolution Procedure.
- 41.6 If, despite the measures taken under Clause 41.5, the Remedial Plan has not been agreed by the parties within ten (10) Working Days of any Dispute Notice pursuant to Clause 41.5 then the DCC may elect to end the Remedial Plan Process and serve a Termination Notice which will take effect on the date specified in the Termination Notice, unless the Contractor remedies the relevant material breach (or breaches) or Persistent Service Failure referred to in the Termination Notice within the period specified in the Termination Notice (which shall not be less than thirty (30) days after the date of receipt of the Termination Notice by the Contractor).
- 41.7 If the DCC notifies the Contractor that the Remedial Plan is approved by the DCC, the Contractor shall implement the Remedial Plan in accordance with its terms (including as to timescales). The Contractor acknowledges and accepts that the DCC's approval shall not act as an endorsement of the Remedial Plan by the DCC and shall not relieve the Contractor of its responsibility for ensuring that the Services are provided in accordance with the requirements of this Agreement.
- 41.8 If a Remedial Plan is agreed between the parties but the Contractor fails to implement the Remedial Plan in accordance with its terms (including as to timescales), the DCC may either:
- 41.8.1 give the Contractor a further opportunity to resume full implementation of the Remedial Plan (without the need to repeat the Remedial Plan Process); or

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41.8.2 by a Dispute Notice to the Contractor, escalate the Contractor's failure to implement the Remedial Plan in accordance with the Dispute Resolution Procedure.

41.9 If the reasons for the Contractor's failure to implement the Remedial Plan have not been resolved within ten (10) Working Days of the DCC invoking the Dispute Resolution Procedure in accordance with Clause 41.8 then the DCC may serve a Termination Notice which will take effect on the date specified in the Termination Notice, unless the Contractor remedies the relevant material breach (or breaches) or Persistent Service Failure referred to in the Termination Notice within the period specified in the Termination Notice (which shall not be less than thirty (30) days after the date of receipt of the Termination Notice by the Contractor).

41.10 the DCC shall not be obliged to repeat the Remedial Plan Process and may terminate this Agreement in accordance with this Clause 41.10 if:

41.10.1 the Remedial Plan has been implemented but has failed to remedy the relevant Remediable Event in accordance with the timescales specified in the Remedial Plan; or

41.10.2 there is a repetition of substantially the same Remediable Event within a period of three (3) months after the agreement of the Remedial Plan.

In such circumstances, the DCC may serve a Termination Notice which will take effect on the date specified in the Termination Notice (which shall not be less than thirty (30) days after the date of receipt of the Termination Notice by the Contractor).

41.11 If the DCC has the right to terminate this Agreement in accordance with any provision of this Clause 41, the Contractor shall be deemed to have failed to remedy the material breach for the purposes of Clause 40.2.1.

42. CONSEQUENCES OF EXPIRY OR TERMINATION

General

42.1 The expiry or termination (however arising) of this Agreement shall be without prejudice to any accrued rights and obligations of the parties under this Agreement as at the date of expiry or termination.

Agreement continues throughout Service Period

42.2 Following the service of a Termination Notice for any reason or on the expiry of this Agreement:

42.2.1 the Contractor shall continue to be under an obligation to provide the Services so as to achieve or exceed the applicable Performance Measures and to ensure that there is no degradation in the standards of the Services, and

42.2.2 subject to Schedule 8.5 (Exit) , this Agreement shall continue, until the end of the relevant Service Period.

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42.3 On the Termination Date and except as provided in Clauses 42.2, 42.5 and 42.6, all rights and obligations of the DCC and the Contractor under this Agreement shall cease and be of no further force and effect.

Responsibility of Contractor at the end of Service Period

42.4 In the event of the Termination Date occurring, the Contractor shall:

42.4.1 promptly (and, in any event, within thirty (30) days after the Termination Date) reimburse the DCC for all Charges paid by the DCC in advance in respect of any Services not provided by the Contractor as at the Termination Date; and

42.4.2 comply with its applicable obligations contained in the Exit Plan, Clause 43 (Payments made on Termination), Clause 44 (Exit Management), Schedule 8.5 (Exit,); and

42.4.3 subject to the content of the Exit Plan, cease to use the DCC Data and, at the direction of the DCC, provide the DCC and/or the Replacement Contractor with a complete and uncorrupted version of

the DCC Data and in electronic form in the formats and on media agreed with the DCC and/or the Replacement Contractor or as specified in the Information Assets Register; and

42.4.4 comply with its obligations in Clause 30.14; and

42.4.5 provide access during normal working hours to the DCC and/or the Replacement Contractor for up to twelve (12) months after the Termination Date to:

42.4.5.1 such information relating to the Services as remains in the possession or control of the Contractor; and

42.4.5.2 such members of the Contractor Personnel as have been involved in the design, development and provision of the Services in the previous 18 months prior to the Termination Date (or at any time thereafter) and who are still employed by the Contractor,

provided that the DCC and/or the Replacement Contractor shall pay the reasonable costs of the Contractor actually incurred in responding to requests for access under this Clause 42.5.5. **Provisions surviving after**

Service Period

42.5 The following provisions:

Provision/Schedule	Scope
Clause 2	Interpretation and Definitions
Clause 5	Objectives
Clause 10	Compliance with Mandatory Requirements
Clause 12	Equipment
Clauses 13.1 and 13.2	Environment

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Clause 14	Charging and Invoices
Clause 17	Supply Chain Rights
Clause 18	Audits
Clause 19	Records
Clause 21	Dispute Resolution Procedure
Clause 23	Staff Transfer
Clause 26	Non-Solicitation
Clause 27	Intellectual Property Rights and Licences Granted
Clause 28	DCC Data
Clause 29	Protection of Personal Data
Clause 30	Confidentiality
Clause 32	Indemnities – General
Clause 34	Security Requirements
Clause 37	IPR Indemnity
Clause 38	Limitations on Liability
Clause 39	Insurance
Clause 42	Consequences of Expiry or Termination
Clause 43	Payments made on Termination
Provision/Schedule	Scope
Clause 44	Exit Management
Clause 45	Assignment and Novation
Clause 46	Waiver, Variations and Cumulative Remedies
Clause 47	Relationship of the Parties
Clause 49	Publicity and Branding
Clause 50	Severance
Clause 52	Entire Agreement
Clause 53	Third Party Rights
Clause 54	Notices
Clause 55	Costs and Expenses
Clause 56	Counterparts
Clause 57	Governing Law and Jurisdiction
Schedule 1	Interpretation and Definitions
Schedule 7.1	Charges and Payment
Schedule 7.2	Payments made on Termination
Schedule 8.5	Exit

shall (along with any other provision expressed or implied to survive or otherwise required to give effect to such termination or expiry or the consequences of such termination or expiry) survive the end of the Service Period and continue thereafter.

43. PAYMENTS MADE ON TERMINATION

43.1 Subject to Clause 42.2 and except for any payments due in accordance with Schedule 8.5 (Exit) and amounts properly due up to the Termination Date, the DCC shall not make any payment to the Contractor other than as strictly required by provisions of Schedule 7.2 (Payments on Termination).

43.2 The provisions of Schedule 7.2 (Payments on Termination) shall constitute the Contractor's sole remedy for the DCC's termination of this Agreement (in whole

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or in part) or the Contractor's termination of this Agreement in accordance with Clause 40.10.2 (Termination by the Contractor).

44. EXIT MANAGEMENT

44.1 The parties shall comply with their respective obligations, and may exercise their respective rights, under Schedule 8.5 (Exit).

44.2 The Contractor acknowledges that ensuring an orderly transition of the Services from the Contractor to the DCC and/or any Replacement Contractor in the event of the expiry or termination (including Partial Termination) of this Agreement for any reason is of critical importance to the DCC, the DCC Service Users and Consumers, and that, accordingly, the DCC relies significantly on the Contractor fulfilling its obligations under Schedule 8.5 (Exit).

SECTION O: MISCELLANEOUS AND GOVERNING LAW

45. IMPLEMENTATION DELAYS

General Provisions

45.1 If, at any time, the Contractor becomes aware that:

45.1.1 it has failed, or is unlikely, to Achieve a Milestone by its Milestone Date, whether that failure arises because of:

45.1.1.1 a failure to submit any or all Deliverables in respect of that Milestone;

45.1.1.2 the failure of the Contractor to successfully Achieve any Test;
or

45.1.1.3 where there are no Tests in respect of the relevant Milestone, any non-conformance in respect of that Milestone,

it shall promptly, and in any event within three (3) days, notify the DCC of such circumstance and summarise in such notification the reasons for it, including whether it believes such circumstance may result from a DCC Cause.

45.2 If the Contractor claims to be affected by a Delay or potential Delay it shall, save where and to the extent that the circumstances giving rise to the Delay constitute an Unavoidable Delay (in which case the provisions of Clauses 47 shall apply), take and continue to take all necessary steps to:

45.2.1 overcome and mitigate the cause of any Delay or potential Delay;

45.2.2 overcome and mitigate the consequences of such Delay upon the performance of its obligations under this Agreement; and

45.2.3 resume the performance of its obligations in full at the earliest opportunity. **Correction Plan**

45.3 The parties have agreed that:

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45.3.1 where a Delay occurs and the Contractor's implementation of any Correction Plan would necessarily depend to a material extent on a DCC Eco-System Entity, the Contractor shall as soon as reasonably practicable, and in any event not later than ten (10) Working Days after the initial notification under Clause 45.1, deliver in good faith a summary of the proposals the Contractor expects to develop in a draft Correction Plan; and

45.3.2 the Contractor shall as soon as reasonably practicable and within ten (10) Working Days after the initial notification under Clause 45.1 (which shall be increased to twenty (20) Working Days if Clause 45.3.1 applies):

- (a) submit a draft Correction Plan for approval by the DCC; and
- (b) provide sufficient details for the purpose of any relief and/or compensation Claimed pursuant to Clause 47.

In respect of any time period referred to in this Clause 45.3, the DCC may notify the Contractor in writing that a longer period will apply.

45.4 The draft Correction Plan shall identify:

45.4.1 the cause of the Delay (including the root cause of the Delay);

45.4.2 the consequences of the Delay;

45.4.3 the steps that the Contractor proposes to take in order to Achieve the Milestone or Test, as the case may be, in accordance with this Agreement,;

45.4.4 the Contractor's proposed timescales for the implementation of those steps referred to in any of Clauses 45.4.3, 45.4.6 and 45.4.7;

45.4.5 any activities to be conducted by the Contractor in order to mitigate any consequences of the Delay;

45.4.6 such steps as the Contractor proposes to take to prevent the reoccurrence of the failure to Achieve the relevant Test or Milestone (including such steps as necessary to address the root cause);

45.4.7 in respect of any Unavoidable Delay, to the extent reasonably practicable:

45.4.7.1 the Contractor's proposals as to: (a) the steps the DCC and/or other third parties should take (together with the Contractor's proposed timescales for the implementation of such steps and any activities to be conducted by the DCC or such third parties) in order to mitigate any consequences of the Delay; and (b) the steps the Contractor proposes the DCC or such other third parties should take to prevent the reoccurrence of the circumstances giving rise to the Unavoidable Delay; and

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- 45.4.7.2 the resources the Contractor proposes the DCC or such other third parties allocate to support those steps referred to in Clause 45.4.7.1; and
- 45.4.8 the resources which the Contractor proposes to allocate to support those steps referred to in Clauses 45.4.3, 45.4.6 and 45.4.7.
- 45.5 Within ten (10) days after receipt of the draft Correction Plan from the Contractor (or where the Correction Plan is one to which Clause 1.4.7 relates, within a reasonable time), the DCC shall notify the Contractor whether it approves or rejects the draft Correction Plan and, if the latter, what changes it requires to be made to the draft Correction Plan. The DCC shall not withhold its approval of a draft Correction Plan unreasonably.
- 45.6 If the DCC rejects the draft Correction Plan then, by no later than ten (10) days after receipt of a notice from the DCC under Clause 45.5 or 45.7 (as applicable), the Contractor shall:
- 45.6.1 make any amendments to the Correction Plan that are necessary to address the comments notified by the DCC under Clause 45.5 or 45.7; and
- 45.6.2 re-submit the revised Correction Plan to the DCC for approval.
- 45.7 The process in Clauses 45.5 and 45.6 shall (without limiting any other right or remedy of the DCC) then be repeated until the DCC notifies the Contractor that the Correction Plan is approved.
- 45.8 Any Dispute relating to development or approval of the Correction Plan (including whether a Correction Plan or its further development is required) shall be handled in accordance with Clause 21 (Dispute Resolution Procedure).
- 45.9 Once approved by the DCC, the Contractor shall implement the Correction Plan in accordance with its terms (including as to timescales).
- 45.10 The Contractor acknowledges and accepts that the DCC's approval of any Correction Plan under Clause 45.5 or 45.7 shall not (subject to Clause 13):
- 45.10.1 act as an endorsement of the Correction Plan by the DCC;
- 45.10.2 be deemed to be a variation or waiver of any Milestone Date (unless otherwise agreed by the DCC under the Change Control Procedure or pursuant to Clause 47.6); and/or
- 45.10.3 relieve the Contractor of its responsibility for ensuring that the Services are provided in accordance with the requirements of this Agreement.
- 45.11 The Contractor shall have no obligation under Clauses 45 to 47 (inclusive) to submit, prepare, propose, implement or comply with any Correction Plan otherwise required by this Agreement to the extent the DCC has elected by notice (including pursuant to Clause 46.2.1) (or specifically agreed in writing

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with the Contractor) that it will not require the same. **Meaning of "Delay" in this Agreement**

45.12 The parties agree that references in this Agreement to a "Delay" shall be construed as follows:

45.12.1 to the period of time by which the implementation of any Services by reference to the Project Plan is delayed arising from a failure to successfully complete or Achieve a Test or Milestone; provided that

45.12.2 whether a particular set of circumstances Delayed Achievement of a scheduled Test or Contractor Milestone or delayed the performance of any other obligation under or in connection with this Agreement shall be a factual question,

and the obligations, rights and remedies of the parties in Clauses 45 to 47 (inclusive) and the indemnity in Clause . may be enforced by the parties accordingly.

46. DELAYS DUE TO CONTRACTOR DEFAULT

46.1 This Clause 46 shall apply to the extent that the Contractor does not successfully Achieve a Test by the agreed date and/or Milestone by the relevant Milestone Date and such failure is not:

46.1.1 the result of an Unavoidable Delay; and/or

46.1.2 the result of a Force Majeure Event.

46.2 Where this Clause 46 applies, the DCC may at its discretion (and without prejudice to its other rights and remedies):

46.2.1 waive its requirement in respect of the specific Test Success Criteria or other non-conformities that caused the Contractor not to Achieve the relevant Test(s) and/or Milestone (together with a waiver of the Contractor's obligation to prepare a Correction Plan in connection with the same);

46.2.2 choose to issue a Milestone Achievement Certificate conditional on the Achievement of the relevant Test(s) and/or Milestone in accordance with an agreed Correction Plan (including as to timescales);

46.2.3 require the Contractor to Achieve the relevant Test(s) and/or Milestone (as the case may be) in accordance with an agreed Correction Plan (including as to timescales);

46.2.4 where the DCC has elected to proceed under Clause 46.2.2 or 46.2.3 and the Contractor has failed to comply with the relevant Correction Plan or the Correction Plan has failed to resolve the breach, require the Contractor (acting reasonably) to provide the DCC with a suitable alternative to the specific Deliverables or relevant part of the Contractor Solution (as opposed to requiring the Contractor to fundamentally alter the nature of the Contractor Solution) that did not

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Achieve the relevant Test(s) and/or Milestone within such additional period as the DCC may determine, in which case the following shall apply:

46.2.4.1 to the extent such alternative amounts to a Change, it shall be dealt with as a Change under Schedule 8.2 (Change Control); and

46.2.4.2 the Contractor shall not be entitled to an increase in the Charges in relation to the Change and shall bear its own costs associated with the preparation, negotiation and finalisation of any Impact Assessment; or

46.2.5 exercise any applicable rights it may have under Clause (Termination Rights).

46.3 Where this Agreement does not expressly provide for the payment of liquidated damages in respect of a Delay to a Milestone, the DCC reserves its rights to other financial compensation in respect of direct costs incurred, including under Clause 52 (Indemnities - General).

46.4 Where the DCC issues a conditional Milestone Achievement Certificate in accordance with Clause 46.2.2, it may (but is not obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

46.5 Any Correction Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the DCC, in its discretion, agrees otherwise in writing.

47. DELAYS DUE TO DCC CAUSE

47.1 This Clause 47 shall apply only to the extent a Delay has occurred that:

47.1.1 the Contractor is able to demonstrate to the DCC's reasonable satisfaction (or, in the event of any Dispute, it is determined in accordance with the Dispute Resolution Procedure) was caused by a DCC Cause; and

47.1.2 could not have been avoided, overcome or mitigated by compliance with the Contractor's obligations under Clauses 45 and 47, (an "**Unavoidable Delay**").

47.2 To the extent that Clause 47.1 applies to a Delay, the DCC, acting reasonably, shall:

47.2.1 consider: (i) the duration of the Unavoidable Delay, (ii) the nature of the Unavoidable Delay, (iii) the content of any (draft) Correction Plan and (iv) the effect of the Unavoidable Delay on the Contractor's ability to comply with the Project Plan;

47.2.2 consult with the Contractor in determining the effect of the Unavoidable Delay;

47.2.3 fix a revised Milestone Date; and

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47.2.4 if appropriate, make any consequential revision to subsequent Milestones in the Project Plan, in accordance with this Clause 47.

47.3 The Contractor shall:

47.3.1 be allowed an extension of time equal to the period of Delay caused by the Unavoidable Delay;

47.3.2 not be in breach of this Agreement as a result of the failure to Achieve the relevant Milestone by its Milestone Date to the extent the same constitutes an Unavoidable Delay;

47.3.3 have no liability for payments or costs that would have been payable by the Contractor to the DCC in respect of any Unavoidable Delay; and

47.3.4 where applicable, be entitled to payment of certain additional costs and elements of the Charges in accordance with Clause 47.4.

47.4 Subject to Clause 47.5, to the extent that the Contractor is unable to Achieve a Milestone under the Project Plan as a result of any Unavoidable Delay, then, where the Contractor is entitled to an extension of time in respect of its obligation to Achieve the Milestone of more than twenty (20) days under Clause 47.3.1, from the moment such period of twenty (20) days has actually elapsed only:

47.4.1 the Contractor shall be entitled to the reimbursement of its:

(a) wasted costs thereafter incurred, being costs which the Contractor would not have incurred but for the occurrence of such Unavoidable Delay; and/or

(b) additional costs thereafter incurred in order to avoid, mitigate or overcome such Unavoidable Delay, which shall in each case be payable by DCC as Charges.

47.5 The Contractor's right to recover any costs and/or Charges under Clauses 47.3 and 47.4 is subject to the following limitations:

47.5.1 such payments shall only apply to the extent they were reasonably and necessarily incurred and could not have been avoided or mitigated by the Contractor's compliance with its obligations under Clauses 45 and 47 ;

47.5.2 such payments shall not place the Contractor in a better position than it would have been in had the DCC Cause not occurred;

47.5.3 the Contractor shall promptly provide the DCC with any additional information the DCC may reasonably require to support any

Claim, and in order to determine the amount due, under Clause 47.3 and/or 47.4.

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47.6 Neither party shall unreasonably delay or withhold its agreement when considering and determining the effect of a Delay under this Clause 47 or in agreeing any:

47.6.1 costs and/or Charges payable to the Contractor under Clause 47.4; and/or

47.6.2 Change to the Project Plan under Clause 47.2,

and such agreement shall (without the need to invoke the usual Change Control Procedure) be deemed a Change duly authorised by both parties and shall constitute a binding variation to this Agreement with effect from the date of the DCC's written confirmation of the same. If any Dispute arises in connection with this Clause 47.6 then either party may refer the matter to the Dispute Resolution Procedure.

48. BENCHMARKING

48.1. PURPOSE OF BENCHMARK REVIEWS

48.1.1. The purpose of a Benchmark Review under this Clause 48 will be to establish whether:

48.1.2. the Charges relating to the relevant Benchmarked Services, and/or all of the Benchmarked Services as a whole, represent Good Value (a "Charges Benchmark Review"); and/or

48.1.3. the Performance Measures relating to the relevant Benchmarked Services, and/or all of the Benchmarked Services as a whole, represent Good Value (a "Performance Measures Benchmark Review").

48.2. FREQUENCY OF BENCHMARK REVIEW

48.2.1. Subject to paragraph 48.2.2, the DCC may instigate a Benchmark Review at any time by notifying the Contractor in writing of the scope of the Benchmarked Services.

48.2.2. The DCC shall not be entitled to carry out a Benchmark Review:

48.2.2.1. during the twelve (12) month period after the Signature Date; or

48.2.2.2. at intervals of less than twelve (12) months after any previous Benchmark Review.

48.3. APPOINTMENT OF BENCHMARKER

48.3.1. The DCC shall appoint the Benchmarking to carry out the Benchmark Review from the following list of organisations:

48.3.1.1. Gartner

48.3.1.2. Forrester Research, and

48.3.1.3. Information Services Group (ISG),

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48.3.2. The DCC shall, at the written request of the Contractor, require the Benchmarker to enter into an appropriate confidentiality undertaking with the Contractor (provided that any such undertaking shall not restrict the disclosure of information by the Benchmarker to the DCC in relation to the conduct of the Benchmark Review).

48.3.3. The costs and expenses of the Benchmarker in relation to the Benchmark Review shall be borne by the DCC.

48.3.4. Each party shall bear its own internal costs relating to the Benchmark Review.

48.4. BENCHMARKING PROCESS

48.4.1. The DCC shall require the Benchmarker to produce, and to send to each party for approval, a draft plan for the Benchmark Review within ten (10) Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:

48.4.1.1. a proposed timetable for the Benchmark Review;

48.4.1.2. a description of the information that the Benchmarker requires each party to provide;

48.4.1.3. a description of the benchmarking methodology to be used;

48.4.1.4. a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives of assessing whether the relevant Benchmarked Services, and/or the Benchmarked Services as a whole, represent Good Value;

48.4.1.5. an estimate of the resources required from each party to underpin the delivery of the plan;

48.4.1.6. a description of how the Benchmarker will scope and identify the Comparison Group; and

48.4.1.7. details of any entities which the Benchmarker proposes to include within the Comparison Group (taking reasonable account of any entities suggested by the DCC and/or the Contractor).

48.4.2. Each party must give notice in writing to the Benchmarker and to the other party within ten (10) Working Days after receiving the draft plan from the Benchmarker, advising whether it approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan.

Neither party may unreasonably withhold or delay its approval of the draft plan, and any suggested amendments must be reasonable.

48.4.3. Where a party suggests amendments to the draft plan under paragraph 48.4.2, the Benchmarker must, if it believes the amendments are reasonable, produce an updated and final version of the plan and issue it

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to the parties as soon as reasonably practicable (but, in any event, within ten (10) Working Days after receipt of the parties' comments under paragraph 48.4.2, such period starting from receipt of the last set of comments from the parties).

48.4.4. Failure by a party to give notice under paragraph 48.4.2 will be treated as approval of the draft plan by that party.

48.4.5. Once the plan has been finalised in accordance with paragraphs 48.4.2 and 48.4.3, the Benchmarker will carry out the Benchmark Review in accordance with the plan. Each party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker, is provided to the Benchmarker without undue delay.

48.4.6. Each party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.

48.4.7. Either party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.

48.4.8. Once it has received the information it requires, the Benchmarker shall:

48.4.8.1. finalise a sample of entities constituting the Comparison Group and collect data relating to the Comparable Services. The selection of the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.;

48.4.8.2. derive the Equivalent Services Data by analysing the Comparable Services and applying the adjustment factors listed in paragraph 48.4.9;

48.4.8.3. using the Equivalent Services Data, calculate:

48.4.8.3.1. the Average Price; and/or

48.4.8.3.2. the median performance measures,

48.4.8.4. as applicable given the scope of the Benchmark Review;

48.4.8.5. compare (using the Equivalent Services Data):

48.4.8.5.1. the Charges attributable to the Benchmarked Services (having regard in particular to the Performance Measures) with the Average Price; and/or

48.4.8.5.2. the Performance Measures attributable to the Benchmarked Services (having regard to the Charges) with the median performance measures,

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48.4.8.6. as applicable given the scope of the Benchmark Review; and

48.4.8.7. determine whether or not the relevant Benchmarked Services, and/or the Benchmarked Services as a whole, represent Good Value.

48.4.9. In carrying out the Benchmark Review, the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services and the Comparable Services in order to derive the Equivalent Services Data:

48.4.9.1. the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);

48.4.9.2. any front-end investment and development costs of the Contractor;

48.4.9.3. the Contractor's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;

48.4.9.4. the extent of the Contractor's management and contract governance responsibilities;

48.4.9.5. any aspects of the Contractor's obligations under this Agreement which are bespoke to the Services, and

48.4.9.6. any other factors reasonably identified by the Contractor, which, if not taken into consideration, could unfairly cause the Contractor's pricing to appear non-competitive (such as erroneous costing or over-aggressive pricing).

48.4.10. Where the Benchmarked Services comprise a number of individual service categories, the Benchmarker shall be entitled to (where, acting reasonably, the Benchmarker considers that it is appropriate to do so):

48.4.10.1. select Comparable Services which are materially similar to the individual service categories of the Benchmarked Services (including in terms of scope, specification, volume and quality of performance); and/or

48.4.10.2. derive the Equivalent Services Data by reference to a combination of the Comparable Services referred to in paragraph 48.4.10.1.

48.5. BENCHMARK REPORT

48.5.1. The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both parties, at the time specified in the plan approved under paragraph 48.4, setting out its findings. Those findings shall be required to:

- 48.5.1.1. include a finding as to whether or not the relevant Benchmarked Services, and/or the Benchmarked Services as a whole, represent Good Value;
 - 48.5.1.2. include other findings (if any) regarding the quality and competitiveness or otherwise of the Benchmarked Services; and
 - 48.5.1.3. if any Benchmarked Services do not represent Good Value, or the Benchmarked Services as a whole do not represent Good Value, specify the changes that would be required to the Charges and/or Service Levels (as applicable), that would be required to make the relevant Benchmarked Services, or the Benchmarked Service as a whole, represent Good Value.
- 48.5.2. The Benchmarker shall act as an expert and not as an arbitrator.
- 48.5.3. Benchmark Reviews shall not result in any increase to the Charges or any decrease in the performance of any Services or Performance Measures.
- 48.5.4. If the Benchmark Report states that the relevant Benchmarked Services do not represent Good Value, or that the Benchmarked Services as a whole do not represent Good Value, then the Contractor shall (subject to paragraphs 48.5.6 and 48.5.7) implement the changes set out in the Benchmark Report within a timescale agreed with the DCC but in any event within no more than three (3) months.
- 48.5.5. Subject to the Contractor's right to dispute or reject the Benchmarking Report under paragraph 48.5.6 or 48.5.7, if the Benchmark Report determines that any or all of the Benchmarked Services do not represent Good Value, any failure by the Contractor to implement the changes set out in the Benchmark Report in accordance with the timescales referred to in paragraph 48.5.4 shall (without prejudice to any other rights or remedies of the DCC) constitute an irremediable material breach for the purposes of Clause 40 of this Agreement.
- 48.5.6. The Contractor shall be entitled to reject the Benchmark Report if:
- 48.5.6.1. the Contractor (acting reasonably and in good faith) considers that the Benchmarker has not followed the procedure for the Benchmark Review as set out in this Clause 48 in any material respect; and/or
 - 48.5.6.2. there is a manifest error in the Benchmark Report.
- 48.5.7. The Contractor shall not be obliged to implement any Benchmark Report to the extent that:
- 48.5.7.1. this would require the Contractor to provide the Services at a loss (as determined) by reference to the Financial Model; or
 - 48.5.7.2. the implementation of the recommended changes is not technically feasible.

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48.5.8. In the event of a Dispute or rejection of the Benchmark Report under paragraphs 48.5.6 or 48.5.7, the matter shall be referred to the Dispute Resolution Procedure.

49. ASSIGNMENT AND NOVATION

49.1 Subject to Clause 45.2, the Contractor shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written consent of the DCC, (such consent not to be unreasonably withheld or delayed).

49.2 The Contractor may novate its rights and obligations under this Agreement to another member of the Contractor Group with the prior written consent of the DCC (such consent not to be unreasonably withheld or delayed).

49.3 The Contractor agrees that the DCC may:

49.3.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement and any associated third party licences to any Successor Licensee; or

49.3.2 in the event that the DCC wishes to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement other than in accordance with Clause 45.3.1 the Contractor shall promptly enter into good faith negotiations with the DCC and use reasonable endeavours to reach Agreement with the DCC on the terms of a disposal. The Contractor shall not unreasonably withhold or delay its consent to any proposed disposal.

49.4 Any novation to a Successor Licensee shall be on terms that are substantially the same as those set out in Schedule 2 of the DCC Licence (unless the DCC otherwise elects).

49.5 A change in the legal status of the DCC shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the DCC.

50. WAIVER, VARIATIONS AND CUMULATIVE REMEDIES

50.1 This Agreement may not be varied except by an agreement in writing expressed to vary this Agreement signed by duly authorised representatives of the parties.

50.2 Any relaxation, forbearance, indulgence or delay (together indulgence) of any party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that party or any other person).

50.3 The rights of each party under this Agreement:

50.3.1 may be exercised as often as necessary;

50.3.2 are cumulative and are without prejudice to and not exclusive of rights or remedies provided by law or in equity or otherwise under this Agreement; and

50.3.3 may be waived only by a duly authorised representative in writing and in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

51. RELATIONSHIP OF THE PARTIES

51.1 Nothing in this Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

52. PREVENTION OF CORRUPTION

52.1 The Contractor undertakes that in connection with the Services all Contractor Persons working for or on behalf of the Contractor shall:

52.1.1 comply with any applicable laws in force from time to time regarding bribery, fraudulent acts and/or any other corrupt practice ("**AntiBribery Law**") including:

52.1.1.1 the Bribery Act 2010; and

52.1.1.2 any equivalent laws in any territory in which that Contractor Person performs any of the Services; and

52.1.2 not do, or omit to do, any act that will cause or lead any DCC EcoSystem Entity to be in breach of any Anti-Bribery Law or AntiBribery Policy.

52.2 The Contractor shall ensure that:

52.2.1 all Contractor Persons have in place (and shall at all times maintain and enforce) appropriate procedures (including adequate procedures under the Bribery Act 2010), methodologies and structures designed to prevent persons associated with it from undertaking conduct that might amount to a breach of any Anti-Bribery Law, any Anti-Bribery Policy and/or any part of Clause 48.1 that at least meet or exceed the procedures, methodologies and structures:

52.2.1.1 recommended by prevailing UK government issued guidance from time to time; and

52.2.1.2 Good Industry Practice; and

52.2.2 such procedures, methodologies and structures meet or exceed the standards that are:

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52.2.2.1 recommended by applicable Guidance; and 52.2.2.2

required by Good Industry Practice.

52.3 The Contractor undertakes, represents and warrants on its own behalf and on behalf of all Contractor Persons that at all times during the Service Period:

52.3.1 it has not and shall not promise, offer or give or agree to give any director, officer, employee or agent of the DCC any gift, financial or other advantage or consideration of any kind as an inducement or reward for doing, forbearing to do, or for having done or forborne to do any act in relation to the obtaining or execution of this Agreement or any other contract with the DCC or for showing favour or disfavour to any person in relation to this Agreement or any other contract with the DCC or as any form of reward for any previous such doing or forbearance;

52.3.2 neither the Contractor nor any Contractor Person, prior to the Signature Date (except as disclosed to the DCC before the Signature Date):

52.3.2.1 has been or is listed by any government agency (or other Regulatory Body) as being debarred, suspended, or otherwise ineligible for participation in government procurement programmes or other government contracts by reason of the Contractor or any Contractor Person committing any offence under Anti-Bribery Law; or

52.3.2.2 has been convicted of any offence involving bribery, corruption, fraud or to the best of its belief, dishonesty; and

52.3.3 it has not entered into this Agreement or any other contract with the DCC in connection with which a financial or other advantage has been paid, agreed to be paid or given by it, on its behalf or to its knowledge.

52.4 The Contractor shall ensure that each Contractor Person shall at all times during the Service Period:

52.4.1 comply (at the sole cost of the Contractor) with the anti-bribery, antifraud and anti-corruption policies adopted from time to time by the Contractor's Group and approved by the DCC (each an "**AntiBribery Policy**"); and

52.4.2 subject to any restrictions on disclosure imposed by Law, the Contractor shall report to the DCC as soon as it becomes aware:

52.4.2.1 if at any time during the Service Period its circumstances, knowledge or awareness changes such that it would not be able to repeat any warranty or undertaking in (or would otherwise be in breach of) this Clause 48 at the relevant time; and

52.4.2.2 of any request or demand for any undue financial or other advantage of any kind received by any Contractor Person in connection with the performance of this Agreement; and

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52.4.3 provide any information and reasonable assistance (at the Contractor's own cost) reasonably requested by the DCC from time to time:

52.4.3.1 to enable the DCC to perform any activity required by any relevant government agency or Regulatory Body in any relevant jurisdiction for the purposes of compliance with any of the Anti-Bribery Law and/or Anti-Bribery Policies; and/or

52.4.3.2 in relation to ensuring compliance by the DCC with any Anti-Bribery Law and/or Anti-Bribery Policy;

52.5 The Contractor represents, warrants and undertakes that each Contractor Person will not (at any time during the Service Period) offer, promise or agree to give any financial or other advantage (including, but not limited to, any money or gift of any value), to:

52.5.1 any official or employee of any government, governmental or regulatory agency or other public body or Regulatory Body (or any person acting in an official capacity for or on behalf of any government, governmental or regulatory agency or other public body or Regulatory Body) in return for such person assisting (by acting or refraining from acting in their official capacity), either directly or indirectly, in obtaining or retaining business for the DCC; or

52.5.2 any other person as an inducement or reward for the improper performance of any function or activity in relation to obtaining or retaining business for the DCC. In this context "improper performance" means performance which does not comply with any reasonable expectations of impartiality or good faith or otherwise (including Good Industry Practice), that are expected of the Contractor or anyone employed by the Contractor and all persons performing services on its behalf.

52.6 Subject to Clause 48.8, if any Contractor Person:

52.6.1 breaches any Anti-Bribery Law;

52.6.2 materially breaches any of the obligations under Clauses 48.1 to 48.5 (inclusive); or

52.6.3 breaches any of the obligations under Clauses 48.1 to 48.6 (inclusive) leading to an investigation by any Regulatory Body,

then the DCC may terminate this Agreement with immediate effect by written notice to the Contractor.

52.7 the DCC may not terminate this Agreement under Clause 48.6 if the following are all fulfilled:

52.7.1 the Contractor has itself complied with all of its obligations under 48.1 to 48.5 (inclusive);

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52.7.2 the relevant breach under Clause 48.6 was caused by a Subcontractor without the knowledge or approval of the Contractor (or any of its employees or representatives) and could not have been prevented by any steps the Contractor might have been expected to take in accordance with the Core Standards;

52.7.3 the Contractor terminates the relevant Sub-contract if requested by the DCC in accordance with Clause 17.3.4 and has complied with its other obligations under Clause 17 (Supply Chain Rights); and

52.7.4 the Contractor has taken all reasonable steps in order to prevent the re-occurrence of the relevant breach.

52.8 Any termination under Clause 48.6 shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the DCC.

52.9 For the purposes of this Clause 48 (Prevention of Corruption), the phrase "**Contractor Person**" shall also include any person associated with any Contractor Person (and whether any other person is so associated shall be construed in accordance with the Bribery Act 2010).

53. PUBLICITY AND BRANDING

53.1 The Contractor shall not:

53.1.1 make or permit or procure to be made any public or press announcements (whether for publication in the press, the radio, television, the internet or any other medium) or disclosure or other form of publicity in respect of this Agreement, its contents or any matters relating thereto in any way, including its (or any Contractor Person's) interest in the Services or any matters relating thereto; or

53.1.2 use the DCC's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the DCC, which shall not be unreasonably withheld or delayed.

53.2 Nothing in this Agreement (either expressly or by implication) constitutes an endorsement of any products or services of the other party (including the Services, the Contractor Solution and the DCC Environment) and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

53.3 The Contractor shall:

53.3.1 not (and shall ensure that the Contractor Persons shall not) bring the DCC, Smart Metering Programme or any DCC Eco-System Entity into disrepute or damage the public image, reputation or goodwill of the DCC, the Smart Metering Programme or any DCC Eco-System Entity;

53.3.2 notify the DCC promptly (and in any event within two (2) Working Days) of becoming aware of any breach of this Clause 49.3; and

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53.3.3 within twenty (20) days of receiving notice (or, if earlier, becoming aware) of any breach of Clause 49.3.1, procure that procedures are implemented which are likely to the reasonable satisfaction of the DCC to prevent a repetition or the continuance of such breach and which mitigates so far as practicable the damage caused by such breach.

54. SEVERANCE

54.1 If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.

54.2 The parties expressly agree that should any limitation or provision contained in this Agreement be held to be invalid under any applicable law it shall to that extent be deemed to be omitted but, if any party thereby becomes liable for Loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out in this Agreement.

54.3 If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, unenforceable or illegal the Contractor and the DCC shall immediately commence good faith negotiations using all reasonable endeavours to remedy that invalidity, unenforceability or illegality.

55. FURTHER ASSURANCE

Each party undertakes at the request of the other, and at the cost of the requesting party, to do all acts and execute all documents which may be necessary to give effect to the meaning of this Agreement.

56. ENTIRE AGREEMENT

56.1 This Agreement (together with the documents referred to in it and attached to it) constitutes the entire agreement between the parties in relation to its subject matter. It replaces and extinguishes all prior agreements, draft agreements, arrangements, collateral warranties, collateral contracts, statements, assurances, representations and undertakings of any nature made by or on behalf of the parties, whether oral or written, in relation to that subject matter.

56.2 Each party acknowledges that in entering into this Agreement (together with the documents referred to in it and attached to it) it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other party in relation to the subject-matter of this Agreement at any time before its signature (together "**Pre-Contractual Statements**"), other than those which are set out in this Agreement.

56.3 Each party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.

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56.4 Nothing in this Agreement shall exclude or restrict the liability of either party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

57. THIRD PARTY RIGHTS

57.1 Subject to Clause 53.2, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

57.2 Those persons granted third party rights pursuant to:

57.2.1 not used;

57.2.2 any person to whom the benefit of this Agreement is assigned or transferred in accordance with this Agreement,

may enforce the benefits conferred on it under such provisions of this Agreement in accordance with the terms of the Contracts (Rights of Third Parties) Act 1999.

57.3 Any rights created under this Clause 53 may be altered or extinguished by the parties without the consent of the third party beneficiaries.

58. NOTICES

58.1 Except as otherwise expressly provided, any notice, consent, permission, document, approval, information or other communication from any party ("**Sender**") to any other party ("**Recipient**") that is required to be given under or in connection with this Agreement ("**Notice**") must be: (i) in writing in English; and (ii) sent to the officer of the Recipient whose details are set out in below (as may be amended from time to time in accordance with Clause 54.2).

58.1.1

DCC	
For the attention of:	The Managing Director
Address:	2 nd Floor, Ludgate House 245 Blackfriars Road London SE19UF
Email Address:	contact@smartdcc.co.uk
Contractor	
For the attention of:	CIO Group Systems

DCC Public
Agreement for the provision of Billing System Services in relation to the Smart Metering Programme

Address:	Rochester Row, London
Email Address:	

58.2 Each party may alter the above details that relate to itself and shall promptly notify the other of any such alteration by a Notice in accordance with this Clause 54. The alteration will take effect seven (7) days after the day on which the Notice of the alteration is deemed to be delivered in accordance with Clause 54.4.

58.3 Each Notice must be delivered by one of the following delivery methods: hand, fax or recorded delivery post (or any equivalent postal service, but the term "recorded delivery post" is used as opposed to first or second class postage).

58.4 The Sender shall:

58.4.1 where the Notice is delivered by hand, keep a delivery receipt;

58.4.2 where the Notice is delivered by fax, keep a successful fax transmission report recording the correct number of pages; or

58.4.3 where the Notice is delivered by recorded delivery or any equivalent postal service, keep a postal receipt issued by the relevant postal service.

58.5 This Clause 54.5 shall apply in the absence of proof of earlier receipt. Any Notice shall be deemed to have been duly given:

58.5.1 if delivered by hand, at the time and date of delivery shown on the delivery receipt kept by the Sender;

58.5.2 if sent by fax, at the time and date shown on the successful (and error-free) fax transmission report kept by the Sender (except that if the transmission occurs after 5.00pm (UK time) on a Working Day or on a day other than a Working Day the Notice shall be deemed to have been served at 9.00am (UK time) on the next Working Day following transmission);

58.5.3 if sent by recorded delivery or any equivalent postal service to a Recipient in the same country as the Sender, two (2) Working Days from the date of posting as shown on proof of postage kept by the Sender; or

58.5.4 if sent by recorded delivery or any equivalent postal service to a Recipient in a different country to the Sender, five (5) Working Days from the date of posting as shown on proof of postage kept by the Sender.

58.6 This Clause 54 (Notices) does not apply to the service of any proceedings or other documents in any litigation or arbitration commenced in accordance with the Dispute Resolution Procedure. The service of documents in any such litigation or arbitration shall be governed by the rules of the relevant court or arbitration institution.

59. COSTS AND EXPENSES

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

60. COUNTERPARTS

This Agreement may be executed in one (1) or more counterparts and any party may enter into this Agreement by executing a counterpart. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute one and the same agreement and a full original of this Agreement for all purposes.

61. GOVERNING LAW AND JURISDICTION

61.1 This Agreement and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or Claims) shall be governed by and construed in accordance with the laws of England and Wales.

61.2 Subject to the provisions of the Dispute Resolution Procedure, the parties to this Agreement irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction over any dispute or Claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual Claims).

**DCC Public
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Metering Programme**

IN WITNESS of which this Agreement has been duly executed by the parties.

SIGNED by, for and on behalf of
SMART DCC LIMITED (Signature)

SIGNED by, for and on behalf of
CAPITA BUSINESS SERVICES LIMITED (Signature)