

DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in
relation to the Smart Metering Programme

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 Security 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;

DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in relation to the Smart Metering Programme

- 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 Sub-contractor will be or is employed, including the scope of any services provided or to be provided by the proposed or existing Sub-contractor;
 - 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 Sub-contract 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

this Clause 17

17.3.2.1 or

DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in relation to the Smart Metering Programme

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);

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

DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in
relation to the Smart Metering Programme

- 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, 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 32.2.1 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;

DCC Public

Agreement for the provision of Smart Meter Key Infrastructure Services in relation to the Smart Metering Programme

- 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 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

**DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in
relation to the Smart Metering Programme**

- 32.2 The Contractor shall, on demand, indemnify and keep the DCC indemnified at all times against any Losses incurred by the DCC in connection with:
- 32.2.1 any breach by the Contractor of its obligations under Clause 29 (Protection of Personal Data);
 - 32.2.2 any breach by the Contractor of its obligations under Clause 30 (Confidentiality).
- 32.3 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.
- 32.4 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 Requirements, including any obligation to Achieve a Milestone and/or to achieve any of the Performance Measures.

**DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in
relation to the Smart Metering Programme**

- 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 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 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

DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in
relation to the Smart Metering Programme

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.
- 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

DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in relation to the Smart Metering Programme

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 re-loading 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

**DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in
relation to the Smart Metering Programme**

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, re-assign 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.

**DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in
relation to the Smart Metering Programme**

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 40.14 (Termination for continuing Force Majeure), Clause 63 (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.

DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in
relation to the Smart Metering Programme

representations, act in the name of, or on behalf of, or to otherwise bind the other party.

48. PREVENTION OF CORRUPTION

48.1 The Contractor undertakes that in connection with the Services all Contractor Persons working for or on behalf of the Contractor shall:

48.1.1 comply with any applicable laws in force from time to time regarding bribery, fraudulent acts and/or any other corrupt practice ("**Anti-Bribery Law**") including:

48.1.1.1 the Bribery Act 2010;

48.1.1.2 the US Foreign Corrupt Practices Act of 1977; and

48.1.1.3 any equivalent laws in any territory in which that Contractor Person performs any of the Services; and

48.1.2 not do, or omit to do, any act that will cause or lead any DCC Eco-System Entity to be in breach of any Anti-Bribery Law or Anti-Bribery Policy.

48.2 The Contractor shall ensure that:

48.2.1 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:

48.2.1.1 recommended by prevailing UK government issued guidance from time to time; and

48.2.1.2 Good Industry Practice; and

48.2.2 such procedures, methodologies and structures meet or exceed the standards that are:

48.2.2.1 recommended by applicable Guidance; and

48.2.2.2 required by Good Industry Practice.

48.3 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:

48.3.1 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

**DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in
relation to the Smart Metering Programme**

relevant jurisdiction for the purposes of compliance with any of the Anti-Bribery Law and/or Anti-Bribery Policies; and/or

48.4.3.2 in relation to ensuring compliance by the DCC with any Anti-Bribery Law and/or Anti-Bribery Policy;

48.5 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:

48.5.1 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

48.5.2 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.

48.6 Subject to Clause 48.8, if any Contractor Person:

48.6.1 breaches any Anti-Bribery Law;

48.6.2 materially breaches any of the obligations under Clauses 48.1 to 48.5 (inclusive); or

48.6.3 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.

48.7 the DCC may not terminate this Agreement under Clause 48.6 if the following are all fulfilled:

48.7.1 the Contractor has itself complied with all of its obligations under 48.1 to 48.5 (inclusive);

48.7.2 the relevant breach under Clause 48.6 was caused by a Sub-contractor 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;

DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in relation to the Smart Metering Programme

- 48.7.3 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
- 48.7.4 the Contractor has taken all reasonable steps in order to prevent the re-occurrence of the relevant breach.
- 48.8 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.
- 48.9 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).

49. PUBLICITY AND BRANDING

49.1 The Contractor shall not:

- 49.1.1 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
- 49.1.2 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.

49.2 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.

49.3 The Contractor shall:

- 49.3.1 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;
- 49.3.2 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
- 49.3.3 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

DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in
relation to the Smart Metering Programme

which mitigates so far as practicable the damage caused by such breach.

50. SEVERANCE

- 50.1 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.
- 50.2 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.
- 50.3 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.

51. 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.

52. ENTIRE AGREEMENT

- 52.1 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.
- 52.2 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.
- 52.3 Each party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.

DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in relation to the Smart Metering Programme

52.4 Nothing in this Agreement shall exclude or restrict the liability of either party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

53. THIRD PARTY RIGHTS

53.1 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.

53.2 Those persons granted third party rights pursuant to:

53.2.1 Clause 12 (Equipment);

53.2.2 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.

53.3 Any rights created under this Clause 53 may be altered or extinguished by the parties without the consent of the third party beneficiaries.

54. NOTICES

54.1 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).

**DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in
relation to the Smart Metering Programme**

54.1.1

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:	David Eveleigh - President and General Counsel
Address:	81 Newgate Street London EC1A 7AJ
Email Address:	david.2.eveleigh@bt.com

54.2 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.

54.3 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).

54.4 The Sender shall:

54.4.1 where the Notice is delivered by hand, keep a delivery receipt;

54.4.2 where the Notice is delivered by fax, keep a successful fax transmission report recording the correct number of pages; or

54.4.3 where the Notice is delivered by recorded delivery or any equivalent postal service, keep a postal receipt issued by the relevant postal service.

54.5 This Clause 54.5 shall apply in the absence of proof of earlier receipt. Any Notice shall be deemed to have been duly given:

54.5.1 if delivered by hand, at the time and date of delivery shown on the delivery receipt kept by the Sender;

54.5.2 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

DCC Public

Agreement for the provision of Smart Meter Key Infrastructure Services in relation to the Smart Metering Programme

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);

54.5.3 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

54.5.4 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.

54.6 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.

55. 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.

56. 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.

57. GOVERNING LAW AND JURISDICTION

57.1 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.

57.2 Subject to the provisions of the Dispute Resolution Procedure, the parties to this Agreement irrevocably agree for the sole benefit of the DCC that, subject as provided below, 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). Nothing in this Clause 57 shall limit the right of:

57.2.1 the DCC; or

DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in relation to the Smart Metering Programme

57.2.2 any third party granted rights pursuant to Clause 53 (Third Party Rights) of this Agreement,

to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**DCC Public
Agreement for the provision of Smart Meter Key Infrastructure Services in
relation to the Smart 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, director, for and on
behalf of **xxxxxxx** (Signature)