



Smart Meters Programme Schedule 4.3

(Sub-contractors) (DSP version)

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Amendment History		
Version	Date	Status
v.1	Signature Date	Execution copy

SCHEDULE 4.3 SUB-CONTRACTORS

1. INTRODUCTION

This Schedule 4.3 sets out the processes around and terms governing:

- (a) the provision of information by the Contractor in respect of each Sub-contractor;
- (b) the requirements and obligations with which a Sub-contractor and a Key Sub-contractor must comply;
- (c) the amendment of Sub-contracts; and
- (d) a change in a Sub-contractor's status.

2. SUB-CONTRACTING

2.1 The Contractor shall comply with the provisions of Clause 36 (Supply Chain Rights) in respect of all those existing or future suppliers who the Contractor wishes to engage to provide part of the Services.

2.2 The DCC will be deemed to have given its consent to the use of the Key Sub-contractors listed at the Signature Date in Appendix 1 to this Schedule 4.3, for the purposes set out therein. As at the Signature Date, the Contractor has ensured Appendix 1 lists all Key Sub-contractors and Appendix 2 lists all Sub-contractors (other than Key Sub-contractors and Commodity Suppliers). The Contractor shall ensure at all times that Appendix 1 and Appendix 2 are updated in accordance with the terms of this Agreement and remain accurate and complete throughout the Service Period.

2.3 Where the proposed or existing Sub-contractor is also an Affiliate of the Contractor, the Contractor shall ensure the proposed or existing Sub-contract has been agreed on "arms-length" terms.

3. SUB-CONTRACTOR INFORMATION

The Contractor agrees that, subject to paragraph 8, in making a request pursuant to Clause 36.1 or at any time subsequently requested by the DCC, the Contractor shall provide the DCC with all of the information about any proposed or existing Sub-contractor (other than any Commodity Supplier) as set out in Appendix 3, any further information reasonably requested by the DCC, and, for each Key Sub-contractor, a copy of the proposed or existing Sub-contract which the Contractor may, without prejudice to its obligations under Clause 19 and Schedule 8.4, redact (acting reasonably) to preserve the confidentiality of sensitive financial information contained therein.

4. SUB-CONTRACTOR REQUIREMENTS

4.1 Without prejudice to the Contractor's other obligations under this Schedule 4.3 or this Agreement generally, the Contractor shall, unless the DCC has agreed otherwise in writing and the same having been recorded in accordance with paragraph 2.2 above:

- (a) 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;
- (b) prior to entering into any Sub-contract, determine (acting reasonably) which of the:
 - (i) Security Standards;
 - (ii) the Security Requirements;
 - (iii) the provisions of Clauses 41 (Contractor Personnel), 48 (DCC Data), 49 (Protection of Personal Data) and 50 (Confidentiality) and Schedule 9.2 (Personnel and Key Personnel); and/ or
 - (iv) any other obligations of the Contractor relating to security and integrity of systems and information under this Agreement (including the Contractor's obligations under Schedule 2.5 (Security Management Plan)),

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;

- (c) 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);
- (d) in relation to any Key Sub-contractor, ensure that, subject to paragraph 3 above, a copy of the relevant Sub-contract containing the Sub-contractor Security Obligations is provided to the DCC prior to the execution of the relevant Sub-contract in order to enable the DCC to assess the adequacy and appropriateness of the Sub-contractor Security Obligations (as part of determining whether to consent to the proposed Sub-contracting arrangement under Clause 36 (Supply Chain Rights));
- (e) 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 (including the Contractor's obligations under Schedule 2.5 (Security Management Plan)), 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
- (f) 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,

including for the DCC to exercise its rights pursuant to Schedule 8.4 (Records and Audit Provisions).

- 4.2 The Contractor shall not make use of a pre-existing contract with:
- (a) any Key Sub-contractor, including those listed as such in Appendix 1 of this Schedule 4.3, without the prior written consent of the DCC, which shall not be unreasonably withheld or delayed; and/or
 - (b) any Sub-contractor (other than a Key Sub-contractor or a Commodity Supplier), including those listed as such in Appendix 2 to this Schedule 4.3, unless it has first put in place arrangements and notified the DCC of its compliance with paragraph 4.1 above.

5. KEY SUB-CONTRACTORS: ADDITIONAL REQUIREMENTS

5.1 Unless the DCC has agreed otherwise in writing, the Contractor shall ensure that each Key Sub-contract shall, in addition to the obligations set out in paragraph 4 above, include (and the relevant Key Sub-contractor shall comply at all times with) the provisions set out in Appendix 4 to this Schedule 4.3 in a manner that is substantially similar to the equivalent provisions set out in the Agreement.

5.2 In addition to those Key Sub-contractors listed at the Signature Date in Appendix 1 as having already agreed appropriate provisions enabling the Contractor to assign, sublicense, transfer or otherwise dispose of any of its rights, or subcontract, transfer or otherwise dispose of any of its obligations under the Key Sub-contract to the DCC when requested by the DCC in the circumstances listed for each relevant Key Sub-contract in Appendix 1, the DCC may, as a condition of its consent under Clause 36.1.5 after the Signature Date, require that:

- (a) the relevant Key Sub-contractor enters into similar arrangements to the ones described above or a direct agreement with the DCC, in which case the Contractor shall procure that the relevant Key Sub-contractor irrevocably consents to and/or enters into a direct agreement with the DCC (including on terms at least as favourable to the DCC (and as onerous on the Key Sub-contractor as the Contractor) as this Agreement and without the requirement for any costs or charges (or additional Charges)) as soon as reasonably possible and on such terms as may be reasonably requested by the DCC; and/or
- (b) the Key Sub-contractor immediately enters into a Direct Step-In Option Agreement with the DCC.

6. AMENDMENT OF SUB-CONTRACTS

Without prejudice to Clause 36 (Supply Chain Rights) and paragraph 7 below, the Contractor shall not (and shall ensure it and all other Contractor Persons do not and shall not take steps to) terminate or materially amend the terms of any Key Sub-contract without the DCC's prior written consent, which shall not be unreasonably withheld or delayed.

7. CHANGE IN SUB-CONTRACTOR STATUS

- 7.1 The Contractor agrees that should there be a change in status such that:
- (a) a Sub-contractor at any time meets the definition of a Key Sub-contractor; or
 - (b) a Key Sub-contractor ceases to meet the definition of a Key Sub-contractor for a period of one (1) month; or
 - (c) a Contractor Person contemplates any change in any arrangements that may have any such effects as set out in paragraphs (a) or (b),

but in each case remains a Sub-contractor, then the Contractor shall notify the DCC at once (and, in any event, within two (2) Working Days of such change in status occurring).

- 7.2 The Contractor agrees that the following changes in status shall be subject to the prior written consent of the DCC, which shall not be unreasonably withheld or delayed:
- (a) a change in status of a Sub-contractor (that did not meet the definition of a Key Sub-contractor) to a Key Sub-contractor; and
 - (b) a Key Sub-contractor losing its status of Key Sub-contractor.

- 7.3 The Contractor agrees that where an existing Sub-contractor becomes a Key Sub-contractor, other than as a result of its contract value exceeding the defined threshold, the provisions and requirements of this Agreement (including Clause 36 (Supply Chain Rights) and this Schedule 4.3) shall apply to such Sub-contract as if it was a Key Sub-contract from the outset or, as applicable, sixty (60) days after exceeding the defined contract value threshold, including that the Contractor shall be in material breach of Clause 36 (Supply Chain Rights) of this Agreement unless the DCC has granted all prior consents in accordance with Clause 36.1 and paragraph 4.2(a).

8. **PROVISION OF INFORMATION RESTRICTED BY LAW**

If the supply of information required pursuant to paragraphs 3 (Sub-contractor Information), 4 (Sub-contractor Requirements) or 5 (Key Sub-contractors: Additional Requirements) would amount to a breach of any rules and/or regulations of any exchange on which the shares of the Contractor or a Sub-contractor are admitted for listing and/or trading, or any other rules and/or regulations with which the Contractor or Sub-contractor is obliged to comply as a result of that listing, the Contractor shall provide the DCC with the relevant information to the fullest extent permitted by those rules and/or regulations.

9. **DISPUTE RESOLUTION**

Any Dispute under Clause 36 (Supply Chain Rights) or this Schedule 4.3 should be dealt with through the Dispute Resolution Procedure except that, in the event of any Dispute as to whether a Sub-contractor is a Key Sub-contractor, the reasonable decision of the DCC shall be final.

Appendix 1 – Key Sub-contractors

Sub-contractor Name	Registered Address and Company Number	Product/Service Description	Pre-existing contract (see paragraph 5.2) (Yes/ No)	Agreed exceptions to obligations in this Agreement (if any)
■	■	■	■	■

Appendix 2 – Sub-contractors (excluding Key Sub-contractors and Commodity Suppliers)

Sub-contractor Name	Registered Address and Company Number	Product/Service Description	Agreed exceptions to obligations in this Agreement (if any)
N/A	-	-	-

Appendix 3 – Sub-contractor Information

1. Sub-contractor name, registered office and company registration number;
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;
3. confirmation that each existing or proposed Sub-contract requires the proposed or existing Sub-contractor to comply with:
 - (a) any relevant Performance Measures;
 - (b) the terms of paragraphs 4 (Sub-contractor Requirements) and 5 (Key Sub-contractors: Additional Requirements) of this Schedule 4.3 (as the case may be); and
 - (c) any other terms of this Agreement which are expressly stated to apply to Sub-contractors;
4. 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
5. all information required by the DCC to determine whether the Sub-contractor may be an Unsuitable Sub-contractor.

Appendix 4 – Key Sub-contractor Obligations

Key Sub-contract Provision	Corresponding Clause of Agreement (where relevant)
Provisions enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract (without cost, charge or expense to the Contractor, DCC or Replacement Contractors) to the DCC or a Replacement Contractor on termination or expiry of this Agreement in whole or in part.	N/A
A right under the Contracts (Rights of Third Parties) Act 1999 for the DCC to enforce the terms of that Key Sub-contract as if it were the Contractor.	N/A
Provisions restricting the ability of the Key Sub-contractor to further subcontract, assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under its Sub-contract or any elements of the services provided to the Contractor unless it and the Contractor are at all times compliant with the requirements of Clause 36.1.	N/A
Provisions requiring the Key Sub-contractor to comply with the terms of and provide such information as to enable the Contractor to comply with Clauses 37 and 38 in respect of the services provided by the relevant Key Sub-contractor only.	Clause 37 (Audits) Clause 38 (Records)
Provisions requiring the Key Sub-contractor to comply with Clauses 41 and 46.	Clause 41 (Contractor Personnel) Clause 46 (Non-Solicitation)
Provision requiring the Sub-contractor to comply with the provisions of Clauses 48 (DCC Data) and 49 (Protection of Personal Data).	Clauses 48 (DCC Data) Clause 49 (Protection of Personal Data)
Provisions requiring the Sub-contractor to comply with the obligations as to confidentiality set out in Clause 50 (Confidentiality) and requiring the Key Sub-contractor, at the DCC's request, to enter into a direct confidentiality agreement with the DCC on the same terms as set out in Clause 50.	Clause 50 (Confidentiality)
Provisions enabling the DCC or any person on behalf of the DCC, to exercise rights of step-in and enhanced scrutiny on substantially the same terms as set out in Schedule 8.10 (Enhanced Scrutiny and Step-in) and for the Sub-contractor to accept and undertake such actions and/or management directions as may be required by the DCC and/or the Contractor to mitigate or rectify the state of affairs which entitle the DCC to exercise its such rights and, if the DCC requires the Key Sub-contractor to enter into a Direct Step-In Option Agreement, provisions requiring the Key Sub-contractor to immediately effect and at all times comply with	Schedule 8.10 (Enhanced Scrutiny and Step-in)

such Direct Step-In Option Agreement.	
A provision requiring the Key Sub-contractor to comply with the restrictions on corrupt gifts and payments pursuant to Clause 69 (Prevention of Corruption).	Clause 69 (Prevention of Corruption)
Provisions requiring the Sub-contractor to comply with Clauses 18 (Non-Discrimination and Independence Obligations), 19 (Transparency), 44 (Health and Safety) and 45 (Equality and Diversity).	
Provisions requiring the Key Sub-contractor to notify the DCC promptly in writing of any material non-payment or late payment of any sums properly due under the Sub-contract to the Key Sub-contractor from the Contractor (or any other Contractor Person) under a specified valid invoice and not subject to a genuine dispute.	N/A
Provisions requiring the Key Sub-contractor to promptly notify the Contractor and the DCC in writing of a Financial Distress Event affecting such Key Sub-contractor or any fact, circumstance or matter which could cause such a Financial Distress Event (and, in any event, provide such notification within five (5) Working Days of the date on which the Key Sub-contractor first becomes aware of such a Financial Distress Event or any fact, circumstance or matter which could cause such a Financial Distress Event).	Schedule 7.4 (Financial Distress)
Provisions requiring the Key Sub-contractor to co-operate with the Contractor and the DCC in order to give full effect to the provisions of Part H of Schedule 7.4 (Financial Distress), including meeting with the Contractor and the DCC to discuss and review the effect of any Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.	Schedule 7.4 (Financial Distress)
Provisions requiring the Sub-contractor to grant the DCC the right to enter any of its premises used for the manufacture, assembly, delivery and/or disposal of the Communications Hubs.	Schedule 11 (Communications Hub)