



Smart Meters Programme Schedule 5.1

(Intellectual Property Rights) (CSP South version)

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

SCHEDULE 5.1
INTELLECTUAL PROPERTY RIGHTS

1. IPR OWNERSHIP PRINCIPLES

1.1 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:

- (a) the Contractor Software;
- (b) the Third Party Software;
- (c) the Specially Written Software;
- (d) the Project Specific IPRs; or
- (e) the Contractor's Background IPRs,

(together, the "**Contractor IPR**").

1.2 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:

- (a) the DCC Software;
- (b) the DCC Data; or
- (c) the Documentation.

1.3 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 1.1 or 1.2, 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.

1.4 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 1.2, the Contractor shall procure that:

- (a) 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
- (b) pending such assignment, the relevant Contractor Entity shall hold all such Intellectual Property Rights on trust for the DCC.

2. LICENCES GRANTED BY THE CONTRACTOR

General

2.1 Subject to paragraph 2.2, 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:

- (a) the Contractor Software;
- (b) the Specially Written Software (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 operation of, the Specially Written Software); and
- (c) 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 purposes of:

- (i) receiving the benefit of the Services (or any Replacement Services);
- (ii) (in relation to the DCC only) exercising any of its rights under this Agreement (including under Schedule 6.2 (Testing and Acceptance) or Schedule 8.10 (Enhanced Scrutiny and Step-in));
- (iii) providing any Replacement Services;
- (iv) integrating the Services (or any Replacement 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
- (v) carrying out any of the other activities referred to in paragraph 4 of this Schedule 5.1,

(together, the "**Permitted Purposes**").

2.2 If the DCC wishes to continue to Use the Smart m2m Software following the end of the Service Period, such Use shall be subject to an annual licence fee of ■ per Connected Communications Hub. In this Schedule 5.1, "**Smart m2m Software**" means:

- (a) the Smart m2m – API;
- (b) the Smart m2m – Web Portal; and
- (c) the Smart m2m – core and supervision module,

each as further described in Schedule 5.2 (Software). For the avoidance of doubt, the licence fee referred to in this paragraph 2.2 is payable in addition to any other charges relating to the OTA/subscription management and/or MVNO exit arrangements (as further described in Schedule 8.5 (Exit)).

Support and maintenance arrangements on exit

- 2.3 If requested by the DCC in writing at any time before the end of the Termination Assistance Period, the Contractor shall provide ongoing support and maintenance services in relation to the Smart m2m Software:
- (a) in accordance with the terms of this Agreement (including Schedule 2.1 (DCC Requirements) and Schedule 2.2 (Performance Measures and Monitoring));
 - (b) for a period of at least five (5) years after the end of the Termination Assistance Period; and
 - (c) for a fixed charge of ■■■ per year. Such charges shall be subject to indexation on an annual basis in accordance with paragraph 2 of Part A of Schedule 7.1 (Charges and Payment), with effect from the first anniversary of the end of the Termination Assistance Period.

The Contractor shall, at all times during the period referred to in paragraph 2.3(b), comply with its obligations under Schedule 5.3 (Escrow) in relation to the Smart m2m Software.

For the avoidance of doubt, the support charges referred to in this paragraph 2.3 is payable in addition to any other charges relating to the OTA/subscription management and/or MVNO exit arrangements (as further described in Schedule 8.5 (Exit)).

3. THIRD PARTY SOFTWARE

Use of Commercially Available Software

- 3.1 If the Contractor wishes to use any Third Party Software in relation to the performance of the Services, it shall (wherever reasonably practicable, and except where expressly provided otherwise in Schedule 5.2 (Software)) use Commercially Available Software.

Licence of Third Party Software

- 3.2 Subject to paragraphs 3.4 and 3.5, the Contractor shall procure that the owners or the authorised licensors of any Third Party Software grant to the DCC, the DCC Service Users and the SEC Parties a direct, perpetual, royalty-free, irrevocable and non-exclusive licence to Use the Third Party Software for the Permitted Purposes.
- 3.3 If the Contractor cannot obtain the necessary licence in accordance with the requirements of paragraph 3.2, the Contractor shall consult with the DCC on whether the rights that can be obtained are nevertheless acceptable to the DCC or whether the Contractor should seek to use an alternative provider of software. The Contractor shall only be excused from its obligations under paragraph 3.2 to the extent that the DCC accepts (in its sole discretion) any alternative arrangements in accordance with this paragraph 3.3.
- 3.4 As set out in Appendix 2 of Schedule 5.2 (Software), the Contractor confirms that none of the DCC, the DCC Service Users, the SEC Parties, the DCC Service Providers (or the other entities referred to in paragraph 4 of this

Schedule 5.1) will need to Use any of the Third Party Software (as specified in Appendix 2 of Schedule 5.2) during the Service Period in relation to the Permitted Purposes.

- 3.5 Accordingly, paragraph 3.2 shall only apply to the extent that, at any time during the Service Period, any of the entities referred to in paragraph 3.4 do, for any reason, need to Use any of the Third Party Software in relation to any of the Permitted Purposes.

4. **SUB-LICENSING**

- 4.1 Subject to any limitations or exclusions specifically identified in the relevant Appendix of Schedule 5.2 (Software), the DCC may sub-licence its rights under paragraphs 2, 3 and 6 to:

- (a) any DCC Service Provider (including any replacements for such persons from time to time);
- (b) any Replacement Contractor;
- (c) 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:
 - (i) 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
 - (ii) 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
- (d) 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 50 (Confidentiality).

- 4.2 Subject to any limitations or exclusions specifically identified in the relevant Appendix of Schedule 5.2 (Software), each DCC Service User and SEC Party may sub-licence its rights under paragraphs 2, 3 and 6 to any of its Providers.

5. **LICENCES GRANTED BY THE DCC**

- 5.1 Subject to paragraph 5.2, and (where applicable) with effect from the date that the relevant rights are transferred to the DCC in accordance with paragraph 6, the DCC hereby grants (or shall procure the grant) to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Service Period to use:

- (a) the DCC Software;
- (b) the DCC Data; and
- (c) the Documentation.

- 5.2 The licence granted in paragraph 5.1:

- (a) includes the right to grant sub-licences to the Contractor Persons provided that any relevant Contractor Person has entered into a confidentiality undertaking with the Contractor on terms equivalent to, and which provide equivalent levels of protection as, Clause 50 (Confidentiality); and
 - (b) is granted solely to the extent necessary for performing the Services in accordance with this Agreement. The Contractor shall not, and shall procure that the Contractor Persons do not, use the licensed materials for any other purpose or for the benefit of any person other than the DCC.
- 5.3 The Contractor shall not have any right to use any of the DCC's names, logos or trade marks on any of its products or services without the prior written consent of the DCC.
- 5.4 In the event of the termination or expiry of this Agreement:
- (a) the licences referred to in paragraph 5.1;
 - (b) any sub-licence granted in accordance with paragraph 5.2(a); and
 - (c) any licence granted in accordance with paragraph 5.3,

shall terminate automatically with effect from the end of the Termination Assistance Period and the Contractor shall deliver to the DCC all material licensed to the Contractor pursuant to this paragraph 5 in the Contractor's possession or control (and shall procure that each Contractor Person shall deliver to the DCC all material sub-licensed to that Contractor Person pursuant to paragraph 5.2(a) in the possession or control of that Contractor Person).

6. **ASSIGNMENT OF IPR TO THE DCC**

Assignment to the DCC

- 6.1 The Contractor hereby assigns to the DCC title to and all rights and interest in:
- (a) the DCC Data; and
 - (b) the Documentation,
- (the "**Transferred Materials**") or shall procure that the first owner of the relevant Transferred Materials assigns them to the DCC on the same basis.
- 6.2 The assignment under paragraph 6.1 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Transferred Materials, as appropriate.
- 6.3 The assignment under paragraph 6.1 shall be with full title guarantee, free from encumbrances and shall include the right to take action for any past, present or future damages and other remedies in respect of any infringement.

- 6.4 The Contractor shall waive or procure a waiver of any moral rights in any copyright works assigned to the DCC under this Agreement.
- 6.5 If requested to do so by the DCC, the Contractor shall without charge to the DCC execute all documents and do all such further acts as the DCC may require to perfect the assignment under paragraph 6.1 or shall procure that the owner of the relevant Transferred Materials does so on the same basis.
- 6.6 The Contractor acknowledges that the DCC may subsequently transfer the title to and all rights and interest in:
- (a) the ICHIS;
 - (b) the CHHSM;
 - (c) the CHIPSM;
 - (d) the CHMSM; and/or
 - (e) the Installer Training Plan,
- (each as further described in Schedule 6.3 (Development Process)) to SECCo (as further described in the SEC), or any other person nominated by the DCC from time to time.

Grant of licences by the Contractor

- 6.7 Subject to any limitations or exclusions specifically identified in the relevant Appendix of Schedule 5.1 or Schedule 5.2 (as applicable), 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:
- (a) any Contractor's Background IPRs; and/or
 - (b) any IPRs owned by a third party,

that are embedded in, form an integral part of, or are otherwise necessary for the operation of, the Transferred Materials to the extent that is necessary to enable the DCC to obtain the full benefit of ownership of the Transferred Materials.

7. CONTRACTOR WARRANTIES

The Contractor represents and warrants that it has, and will continue to have, all rights that are necessary to grant the licences set out in this Schedule 5.1, and otherwise to comply with its obligations under this Schedule 5.1.

8. SUCCESSORS

- 8.1 The Contractor acknowledges and agrees that if this Agreement is novated, assigned or otherwise transferred to any person in accordance with Clause 66.3 (the “**Transferee**”), then:

- (a) the licences granted by the Contractor under this Schedule 5.1, and the other rights of the DCC under this Schedule 5.1, shall automatically

transfer to the Transferee on a royalty-free, payment-free and non-exclusive basis; and

- (b) 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.

8.2 If, for any reason, this Agreement is not novated, assigned or otherwise transferred to any person in accordance with Clause 66.3, the Contractor undertakes to grant equivalent licences and rights to those set out in this Schedule 5.1 to:

- (a) each Successor Licensee; and
- (b) any other person who is subsequently licensed to carry on the Authorised Activity,

to the extent necessary for each Successor Licensee (or any other person referred to in paragraph 8.2(b)) to exercise its functions under or pursuant to its licence to carry on the Authorised Activity.

9. **REGISTERS**

The Contractor shall maintain registers of all IPRs referred to in this Schedule 5.1 in accordance with Part B of Schedule 8.5 (Exit).

Appendix 1 – Project Specific IPRs



Appendix 2 – Contractor's Background IPRs



Appendix 3 – DCC Software

Name	Description
Test Management Tool	As further described in Schedule 6.2 (Testing and Acceptance).

Appendix 4 – Documentation

Name	Description
Operations Manual	<p>As further described in Schedule 8.9 (Operations Manual), but excluding any parts of the Operations Manual which are expressly identified in this Schedule 5.1 as being:</p> <p>(a) Project Specific IPRs (as further described in Appendix 1); or</p> <p>(b) Contractor's Background IPRs (as further described in Appendix 2).</p>
Intimate Communications Hub Interface Specification (ICHIS)	As further described in Appendix 4 of Schedule 6.3 (Development Process).
Communications Hub Handover Support Materials (CHHSM)	As further described in Appendix 4 of Schedule 6.3 (Development Process).
Communications Hub Installation Process Support Materials (CHIPSM)	As further described in Appendix 4 of Schedule 6.3 (Development Process).
Communications Hub Maintenance Support Materials (CHMSM)	As further described in Appendix 4 of Schedule 6.3 (Development Process).
Installer Training Plan	As further described in Appendix 4 of Schedule 6.3 (Development Process).