



Smart Meters Programme Schedule 8.10

(Enhanced Scrutiny and Step-in) (CSP Central version)

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

**SCHEDULE 8.10
ENHANCED SCRUTINY AND STEP-IN**

OVERVIEW

This Schedule 8.10 comprises the following parts:

Part	Scope
Part A	General
Part B	Enhanced Scrutiny, including: <ul style="list-style-type: none"> ○ Enhanced Monitoring; ○ appointment of Observers; ○ Enhanced Scrutiny – costs; and ○ Enhanced Scrutiny – Disputes
Part C	Step-in/Step-out, including: <ul style="list-style-type: none"> ○ general provisions; ○ Directive Action; ○ Management Action; ○ Step-out; ○ Step-in/Step-out – costs; and ○ Step-in/Step-out – Disputes
Appendix 1	Directive Action Restrictions
Appendix 2	Management Action Restrictions

PART A – GENERAL

1. INTRODUCTION

1.1 The Contractor acknowledges that this Agreement and the performance of the Services is of fundamental importance to the provision by the DCC of DCC Services and to the Smart Metering Programme. Consequently the DCC may wish to exercise its rights and/or remedies under this Schedule 8.10 to mitigate, remedy or prevent the reoccurrence of the circumstances giving rise to any Enhanced Scrutiny Trigger or Step-in Trigger (as defined in Part B and C) (a "**Legitimate Objective**"). As such, this Schedule 8.10 provides additional rights and remedies for the DCC that the DCC may (but in no case is obliged to) exercise and which are (in each case) without prejudice to any other rights or remedies of the DCC. In particular these rights and remedies are:

(a) those set out in Part B (collectively, "**Enhanced Scrutiny**"), including:

(i) Enhanced Monitoring; and

(ii) the appointment of Observers by the DCC; and

(b) those set out in Part C (collectively, "**Step-in**"), comprising:

(i) Directive Action; and

(ii) Management Action.

1.2 The DCC's rights and remedies under this Schedule 8.10 are cumulative and may, unless stated otherwise, be exercised successively, in any order or combination in respect of any occurrence of any Enhanced Scrutiny Trigger and/or Step-in Trigger.

1.3 No waiver of any previous circumstance in which the DCC may exercise any such rights or remedies (or waiver of any breach by the Contractor) shall operate as a waiver of any subsequent circumstance in which the DCC may exercise any such rights or remedies (or waiver of any subsequent breach by the Contractor).

2. GENERAL CONTRACTOR OBLIGATIONS

2.1 Without prejudice to any other obligation, for so long as and to the extent that any Enhanced Scrutiny or Step-in action continues in accordance with this Schedule 8.10 the Contractor shall:

(a) take all reasonable steps and co-operate fully and in good faith with the DCC and any third party supplier engaged by the DCC to undertake the Enhanced Scrutiny or Step-in actions; and

(b) promptly procure and provide all information, assistance and necessary documentation, Consents and access to Sites (or any other Contractor Person's premises) as may be necessary in order that the DCC may fully and promptly exercise and carry out its rights and remedies granted under this Schedule 8.10.

- 2.2 The Contractor shall (and shall ensure that all Contractor Persons shall) act reasonably in mitigating the costs that the Contractor will incur as a result of the exercise of the DCC's rights and remedies under this Schedule 8.10.
- 2.3 The DCC's rights and remedies under this Schedule 8.10 shall not require the Contractor to act in any manner that:
- (a) is in breach of Law, or health and safety regulations; or
 - (b) (having used all reasonable endeavours to remove or mitigate any restrictions imposed by such) would: (i) place the Contractor in breach of reasonable confidentiality or security obligations owed to third parties; or (ii) would have a material adverse impact upon the Contractor's core network and mobile services to its customers.

3. GENERAL DCC OBLIGATIONS

- 3.1 The DCC shall ensure that it complies with its obligations in Clause 50 (Confidentiality) in respect of any Contractor's Confidential Information made available to any Observer, DCC Appointed Manager or third party in connection with the DCC's exercise of its rights and remedies under this Schedule 8.10, in particular the DCC will ensure that any such person shall be subject to and will comply with equivalent confidentiality obligations to those set out in Clause 50 in respect of any Contractor's Confidential Information.
- 3.2 Following service of an Enhanced Scrutiny or Step-in Notice, as the case may be, the DCC shall:
- (a) take the action set out in the Notice and any consequential additional action as it reasonably believes is necessary to achieve (together, the "**Required Action**");
 - (b) keep records of the Required Action taken and provide information about the Required Action to the Contractor;
 - (c) co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide and/or mitigate the impact on any Services not the subject of an Enhanced Monitoring or Step-in Notice;
 - (d) act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the DCC's rights under this Schedule 8.10;
 - (e) act with reasonable care and skill;
 - (f) procure that any third party appointed by it abides by such security and health and safety requirements applicable to the Sites and/or the Contractor System as the Contractor may reasonably require; and
 - (g) subject to paragraph 4 of Part B and paragraph 5 of Part C (as the case may be), pay to the Contractor the Charges applicable to the Services.

PART B – ENHANCED SCRUTINY

1. ENHANCED SCRUTINY TRIGGERS

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2. ENHANCED MONITORING

2.1 On the occurrence of any Enhanced Scrutiny Trigger the DCC may by written notice to the Contractor increase the level of its monitoring of the Contractor or require the Contractor to increase the level of its monitoring and reporting of its own performance of its obligations under this Agreement ("**Enhanced Monitoring**") in respect of the Services (or relevant part thereof) to which the Enhanced Scrutiny Trigger relates until such time as the circumstances giving rise to the Enhanced Scrutiny Trigger no longer apply but in any event for not more than a period of six (6) months after the giving of such notice, unless the Contractor has failed to satisfy the requirements of this paragraph during that six month period, in which case the DCC may, at its sole discretion and without prejudice to its other rights, elect to extend the period of Enhanced Monitoring by, at most, a further six (6) months.

2.2 Enhanced Monitoring that the DCC may require under paragraph 2.1 may include:

- (a) increasing the frequency, depth or type(s) of any existing monitoring or reporting;
- (b) adding new reporting and/or monitoring requirements; and/or
- (c) requiring the Contractor to provide a reasonable number of appropriately qualified and senior staff to participate in a dedicated governance board or other focus group established by the DCC,

in relation to the obligations which gave rise to the Enhanced Monitoring.

- 2.3 Any such notice to the Contractor (as referred to in paragraph 2.1) shall specify in reasonable detail the additional measures to be taken by the DCC or by the Contractor (as the case may be) in monitoring or reporting on the performance of the Contractor.
- 2.4 The Contractor shall notify the DCC within five (5) Working Days of receipt of the notice referred to in paragraph 2.1 of any measures specified in such notice that the Contractor (acting reasonably) believes are excessive or may prejudice the Contractor's performance of its obligations under this Agreement, together with such alternative measures that the Contractor may propose.
- 2.5 Any Dispute arising out of or in connection with a notice referred to in paragraph 2.1 shall be resolved in accordance with paragraph 5 below.

3. **DCC OBSERVERS**

- 3.1 Before the DCC exercises its rights to appoint any Observers under this Part B of Schedule 8.10, the DCC shall permit the Contractor the opportunity to demonstrate to the DCC's reasonable satisfaction within five (5) Working Days of written notice to do so, that the Contractor is able to remedy the circumstances giving rise to the right to Enhanced Scrutiny without the requirement for the DCC to take action, unless in the DCC's reasonable but sole opinion it believes the circumstances are such that to afford the Contractor such opportunity would create an undue risk to the DCC, DCC Service Users, Consumers or DCC Eco-System Entity, including that it considers there is insufficient time.
- 3.2 If the DCC is not satisfied with the Contractor's demonstration pursuant to paragraph 3.1 immediately above or if such demonstration is not required pursuant to that paragraph 3.1, the DCC may, on the occurrence of an Enhanced Scrutiny Trigger during the Service Period, by written notice to the Contractor appoint such reasonable number of people (each an "**Observer**") as may reasonably be required to observe, monitor, and/or review any matter related to:
- (a) any circumstances that have given rise to an Enhanced Scrutiny Trigger; and/or
 - (b) the performance (or non-performance) by or on behalf of the Contractor of any obligations under this Agreement:
 - (i) in respect of the Services (or relevant part thereof) to which the Enhanced Scrutiny Trigger relates; and/or
 - (ii) to mitigate, remedy or prevent the reoccurrence of the circumstances that have given rise to an Enhanced Scrutiny Trigger,

until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the DCC that the circumstances giving rise to the Enhanced Scrutiny Trigger no longer apply.

- 3.3 The DCC may require that such Observers are granted the rights referred to in paragraph 3.1 either through such remote means as the DCC may request

(provided such request is reasonably practicable) or at any Site or other relevant premise(s).

3.4 The Contractor shall notify the DCC within five (5) Working Days of having been informed of the actions the DCC proposes to take or require under this paragraph 3 if it believes the DCC's action or proposed actions are excessive or may prejudice the Contractor's performance of its obligations under this Agreement, together with such alternative measures that the Contractor may propose.

3.5 Any Dispute arising out of or in connection with a notice referred to in paragraph 3.1 shall be resolved in accordance with paragraph 5 below.

4. **ENHANCED SCRUTINY – COSTS**

4.1 Subject to paragraph 4.2 and 4.3, the Contractor shall bear its own costs and shall reimburse the DCC in respect of any additional costs that are directly incurred by the DCC in respect of any measures and/or the appointment of any Observers or the taking of any other action under paragraph 0 or 3 (including Observers' reasonable incurred expenses, including travel and accommodation).

4.2 Each party shall bear its own costs incurred in accordance with this Agreement in respect of any action taken under paragraph 0 or 3 to the extent arising solely as a result of the circumstances set out in paragraph Error! Reference source not found..

4.3 The DCC shall bear its own costs and shall reimburse the Contractor in respect of any reasonable additional costs that are directly incurred by the Contractor in accordance with this Agreement in respect of any action taken under paragraph 0 or 3 to the extent arising solely as a result of the circumstances identified in paragraph 1.1(e) insofar as these were caused by a DCC Cause or Other Service Provider Cause or paragraph Error! Reference source not found., provided such circumstances did not arise as a result of any breach (or likely future breach) of this Agreement by the Contractor.

5. **ENHANCED SCRUTINY – DISPUTES**

5.1 In the event of any Dispute relating to:

- (a) any Enhanced Monitoring;
- (b) the appointment of any Observers; or
- (c) otherwise in relation to any action taken by the DCC under this Part B of Schedule 8.10,

the Contractor shall comply with any measures specified by the DCC and/or appointment of Observers (and related obligations in connection with such paragraphs) at all times until such Dispute has been resolved in accordance with the Fast Track Dispute Resolution Procedure.

PART C – STEP-IN (AND STEP-OUT)

1. STEP-IN

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2. DIRECTIVE ACTION

2.1 For the purposes of this Agreement "**Directive Action**" means the DCC taking over direction of the Services to the extent that the DCC considers necessary or expedient to mitigate, remedy or prevent the reoccurrence of the circumstances giving rise to the DCC's right to Step-in and/or to ensure the performance of all or part of the Services (including those provided by any Sub-contractor), the DCC may:

- (a) appoint such reasonably qualified (in the DCC's sole but reasonable judgment) person(s) as it may elect to:
 - (i) manage the prioritisation or allocation of resources used by or on behalf of the Contractor to perform any part(s) of the Services as set out in the Step-in Notice (including those resources provided by any Sub-contractor); and/or
 - (ii) manage any Contractor Personnel in performing all or any part(s) of the Services as set out in the Step-in Notice (including those provided by any Sub-contractor),

(each such person appointed by the DCC being a "**DCC Appointed Manager**");

- (b) require the Contractor to deploy such additional resources or assets (including staff) as the DCC may reasonably require (including those provided by any Sub-contractor); and/or
- (c) vary methodologies, processes or procedures applicable to Contractor Person(s) or their performance of any part(s) of the Services (to the extent such changes do not conflict with Law or the rights of staff enforceable at Law),

provided that Directive Action does not extend to the DCC exercising the Management Action rights referred to in paragraphs 3.2(a) to 3.2(c).

2.2 Subject to paragraphs 2 and 3 (inclusive) of Part A, at any time that the DCC has the right to Step-in in accordance with this Schedule 8.10 it may serve a notice requiring that the Contractor comply with the specified Directive Action.

- 2.3 The Contractor shall comply (and ensure that all Contractor Persons comply) with any direction given by the DCC pursuant to its Directive Action rights (including any direction or decision given by any DCC Appointed Manager) and shall ensure that all Contractor Persons co-operate fully and in good faith with the DCC and all DCC Appointed Managers in relation to the provision of the Services subject to the Directive Action.
- 2.4 The Contractor shall continue to provide the Services in accordance with the provisions of this Agreement other than to the extent of the Directive Action.
- 2.5 The DCC shall comply with the Directive Action Restrictions set out in Appendix 1 in taking any Directive Action.

3. **MANAGEMENT ACTION**

- 3.1 Before the DCC exercises its right to require Management Action, the DCC shall permit the Contractor the opportunity to demonstrate to the DCC's reasonable satisfaction within five (5) Working Days of written notice to do so, that the Contractor is able to remedy the circumstances giving rise to the DCC's right to Management Action without the requirement for the DCC to take action, unless:
- (a) in the DCC's reasonable but sole opinion it believes the circumstances are such that to afford the Contractor such opportunity would create an undue risk to the DCC, DCC Service Users, Consumers or DCC Eco-System Entity, including that it considers there is insufficient time; or
 - (b) the DCC is, at that time, already exercising its Directive Action rights under Part C of this Schedule 8.10 for or in connection with the same circumstances.
- 3.2 If the DCC is not satisfied with the Contractor's demonstration pursuant to paragraph 3.1 immediately above or if such demonstration is not required pursuant to that paragraph 3.1, the DCC may, on the occurrence of a Step-in Trigger during the Service Period, serve notice on the Contractor requiring the Contractor to take (or procure the taking) of those steps that the DCC considers necessary or expedient to achieve any Legitimate Objective ("**Management Action**"), encompassing:
- (a) appointing any person to work with the Contractor in performing all or any part(s) of the Services (including those provided by any Sub-contractor);
 - (b) the DCC engaging a third party or its own staff to perform all or any part(s) of the Services (including those provided by any Sub-contractor); and
 - (c) the Contractor suspending its provision of any Services or part thereof.
- 3.3 The Contractor shall continue to provide the Services in accordance with the provisions of this Agreement other than to the extent of the Management Action.
- 3.4 The DCC shall comply with the Management Action Restrictions set out in Appendix 2 in taking any Management Action.

4. **STEP-OUT**

- 4.1 At any time whilst any Step-in action is occurring the Contractor may request the DCC to exercise its rights under paragraphs 4.2 to 4.5 (inclusive) ("**Step-out**") with effect from a date which is not less than twenty (20) Working Days after the request provided the request is accompanied by a draft plan relating to the resumption by the Contractor of the Services (including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Agreement) for the DCC's approval. The DCC shall not, however, be obliged to Step-out in any case unless:
- (a) it is satisfied, in its absolute discretion, that the issue or reason in relation to which it decided to Step-in has been resolved and that there are no other grounds on which it would be entitled to Step-in under this Schedule 8.10; or
 - (b) a period of six months has elapsed since issuing the Step-in Notice provided that, if the Contractor has not remedied the cause of the event giving rise to the Step-in Notice, the DCC may, without prejudice to its other rights, including the DCC's right to termination under Clause 60, at its sole discretion, issue a further Step-in Notice to extend the Step-in period for a further period of up to six (6) months.
- 4.2 If the DCC approves such request and resumption plan referred to in paragraph 4.1 and serves a Step-out Notice specifying that it wishes the parties to use such plan then that plan shall be deemed the Step-out Plan for the purposes of paragraph 4.4.
- 4.3 Before ceasing to exercise its Step-in rights, the DCC shall deliver a written notice to the Contractor ("**Step-out Notice**"), specifying:
- (a) the Step-in action it has actually taken; and
 - (b) the date on which the DCC plans to end the Step-in action ("**Step-out Date**") subject to the DCC being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with paragraph 4.4.
- 4.4 The Contractor shall, following receipt of a Step-out Notice (unless the circumstances in paragraph 4.2 apply) and not less than twenty (20) Working Days prior to the Step-out Date, develop for the DCC's approval a draft plan ("**Step-out Plan**") relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Agreement and removal of any circumstances giving rise to the relevant Step-in Trigger(s).
- 4.5 If the DCC does not approve the draft Step-out Plan, the DCC shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-out Plan taking those reasons into account and shall re-submit the revised plan to the DCC for the DCC's approval. The DCC shall not withhold or delay its approval of the draft Step-out Plan unnecessarily.

4.6 The DCC shall notify the Contractor of its decision to approve or not to approve a draft Step-out Plan pursuant to paragraph 4.5 above within thirty (30) days of its receipt of such draft Step-out Plan.

5. COSTS OF STEP-IN/STEP-OUT

5.1 Subject to paragraphs 5.2 and 5.3:

- (a) the Contractor shall bear its own costs in connection with any exercise by the DCC of any Directive Action or Management Action right (or otherwise in connection with paragraphs 1 to 5 (inclusive)) and the Contractor's obligations in connection with the same;
- (b) the Contractor shall reimburse the DCC on demand for all Losses incurred by the DCC (including Losses incurred to third parties) in relation to taking any Step-in action(s) and the DCC shall be entitled to deduct all such amounts from any amount payable to the Contractor under this Agreement (provided that if the DCC does not pay Charges in respect of suspended elements of the Services pursuant to paragraph 5.1(c) the Losses incurred by the DCC for the purposes of this paragraph 5.1(b) shall be deemed reduced by an amount equal to such Charges in respect of suspended elements of the Services); and
- (c) while the Contractor's rights and obligations to provide any or all elements of the Services are suspended as a result of any Management Action, the DCC will not be obliged to pay the Charges that would otherwise have been payable in respect of the suspended elements of the Services.

5.2 In respect of any Step-in action taken solely under the Step-in Trigger based on paragraph **Error! Reference source not found.** of Part B and without prejudice to Clause 56 (Force Majeure):

- (a) the provisions of paragraph 5.1 shall not apply; and
- (b) each party shall bear its own costs in respect of any such action to the extent arising solely as a result of the circumstances set out in paragraph **Error! Reference source not found.** of Part B.

5.3 If the DCC elects to exercise its rights to take Step-in action under the Step-in Trigger based on paragraph 1.1(e) insofar as this was caused by a DCC Cause or Other Service Provider Cause or paragraph **Error! Reference source not found.** of Part B and such circumstances did not arise as a result of any breach of this Agreement by the Contractor then:

- (a) the provisions of paragraph 5.1 shall not apply;
- (b) the DCC shall bear its own costs in respect of the Step-in action (and the costs of any party it engages to take those actions); and
- (c) the DCC shall (subject to the Contractor's compliance with its obligations in connection with this Agreement (including paragraph 2 of Part A and any other rights or remedies available to the DCC under this Agreement)) pay the Contractor:

- (i) in respect of the Services provided by or on behalf of the DCC as part of any Management Action, the sums which the Contractor would be entitled to under this Agreement during such period if it were providing those Services in full over that period; and
- (ii) in respect of all other Services, the amount which the Contractor is actually entitled to pursuant to the provisions of this Agreement after the application of any Service Credits and other adjustments (including Delay Payments) applicable to the provision of those Services.

6. **DISPUTES**

6.1 In the event of any Dispute relating to:

- (a) any Directive Action;
- (b) any Management Action; or
- (c) otherwise in relation to any action taken by the DCC under this Part C of Schedule 8.10,

the Contractor shall comply with any measures specified by the DCC and/or any persons on its behalf (including the DCC Appointed Manager) at all times until such Dispute has been resolved in accordance with the Fast Track Dispute Resolution Procedure.



