

These terms and conditions ("**Terms**"), together with the DCC Order Form issued by Smart DCC Limited ("**DCC**") to you (hereafter, "**you**" or the "**Contractor**") comprise the entire agreement entered into between DCC and the Contractor concerning the subject matter of the DCC Order Form, to the exclusion of all other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing (collectively the "**Agreement**"). You acknowledge that you have not relied on any statement, promise, representation, assurance and/or warranty that is not set out in the Agreement. Nothing contained in any Contractor-issued purchase order, purchase order acknowledgement, or purchase order terms and conditions (including any online terms) will modify or add any terms or conditions to this Agreement.

You are deemed to accept and be bound by these Terms and the Agreement upon the execution of the DCC Order Form by DCC ("**Commencement Date**"). You should not commence the provision of Services or work on any Deliverables or supply any Goods until you have received a purchase order from the DCC.

1. Definitions

1.1. The following definitions shall apply in this Agreement:

"Applicable Law"	means any law, statute, bye law, regulation, order, regulatory policy (including any requirement or notice of any Regulatory Body), guidance or industry code of practice, rule of court or directive, delegated or subordinate legislation in force from time to time as applicable to the provision of the Services, Deliverables or Goods.
"Bespoke IPR"	means all IPR and other rights in DCC Data, Materials and/or software created by or on behalf of the Contractor (at any time before or during the Term) including any system, process, network or software design, architecture or configuration and any preparatory, technical or design materials created in connection with the same, for the purposes of or under this Agreement.
"Business Day"	means any day other than a Saturday, Sunday or a bank holiday in England.
"Charges"	means the Charges set out in the DCC Order Form.
"Confidential Information"	means any information which is marked as confidential, or is by its nature clearly confidential including, without limitation, any information relating to that Party's services, operations, plans or intentions, service information, design rights, trade secrets, IPR, DCC Data, market opportunities, and business affairs or those of its customers, and any information shared between the Parties under any non-disclosure agreement prior to this Agreement, and which is disclosed (whether in writing, verbally or by any other means and whether directly or indirectly).
"Contractor Background IPR"	means any IPR licensed to or belonging to the Contractor prior to or during this Agreement, which is or was created independently of any connection with this Agreement, including (but not limited to) such IPR in software or Data.
"Data"	means any information, data, text, drawings, diagrams, photographs, images or sounds (together with any database made up of any of these), formats, know-how or other information embodied in any medium (including whether tangible or electronic).
"Data Protection Legislation"	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body, which relates to the protection of individuals with regard to the processing of Personal Data and to which a Party is subject, including (but not limited to) the EU General Data Protection Regulation 2016/679 and the Data Protection Act 2018.
"DCC Data"	means Data:

- (a) supplied to the Contractor (or persons acting on its behalf) by or on behalf of the DCC;
- (b) received by the Contractor, or which the Contractor is required to create, generate, process, store, transmit or otherwise use under or in connection with this Agreement; or
- (c) any Personal Data for which the DCC is a data controller or a data processor.

“DCC IPR” means any IPR licensed to or belonging to the DCC prior to or during this Agreement, which is or was created independently of any connection with this Agreement, including such IPR in software or Data.

“DCC Licence” means the Licence for the Provision of a Smart Meter Communication Service granted to DCC or any successor pursuant to sections 7AB(1) or 7AB(2) and 7AB(4) of the Gas Act 1986 and sections 6(1)(f) or 6(1A) and 6(1C) of the Electricity Act 1989.

“DCC Order Form” means the order form issued by the DCC to the Contractor for the purchase of Services and/or Goods and which incorporates these Terms.

“DCC Personal Data Addendum” means the document provided by the DCC upon request or as a Schedule to the DCC Order Form, as amended from time to time by the DCC.

“Deliverable” or “Deliverables” means any outputs or other deliverables specified in the DCC Order Form or which are otherwise produced pursuant to this Agreement, including (without limitation) any Bespoke IPR, document, design, methodology or process, documentation, Data or other material in whatever form, including any reports, business rules or requirements, testing documents and records, user manuals, user guides, operations manuals, training materials and instructions.

“Energy Consumer Data Subject” means a data subject who is a member of the public, including an individual who is the end-user customer of an energy supplier in England, Scotland or Wales.

For the avoidance of doubt, an individual who might qualify for another category of data subject under this Agreement, shall qualify for this definition where they are acting as a member of the public or the end-user customer of an energy supplier in England, Scotland or Wales.

“Energy Industry Data Subject” means a data subject who works for an energy company licensed under the Electricity Act 1989 or the Gas Act 1986, and/or any of their group companies, affiliates or sub-contractors, whether by way of employment or otherwise.

“Force Majeure” means an event which falls within one or more of the following categories:

- (a) war, civil war, riot, civil commotion or armed conflict;
- (b) terrorism (being the use or threat of action designed to influence the government or intimidate the public or for the purpose of advancing a political, religious or ideological cause and which involves serious violence, endangers a person’s life, creates a serious risk to the public or is designed to seriously interfere with or disrupt an electronic system);
- (c) nuclear, chemical or biological contamination;
- (d) earthquakes, fire, storm damage or severe flooding (if in each case it affects a significant geographical area); and/or
- (e) any blockade or embargo (if in each case it affects a significant geographical area).

“Good Industry Practice” means the degree of skill and care, diligence, professionalism, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in providing goods or services similar to

the Goods and/ or Services, including any applicable standards, practices, methods and procedures conforming to Applicable Laws and the requirements of any Regulatory Body which is responsible for regulating the Party in question.

- “Goods”** means the goods to be supplied by the Contractor (or on its behalf) under this Agreement as identified in the DCC Order Form.
- “Intellectual Property Rights” or “IPR”** means all rights in patents, trademarks, service marks, design rights (whether registered or unregistered and including semi-conductor topographies), copyright (including rights in computer software), database rights, sui generis rights, confidential information, trade secrets, trade or business names, domain names and other similar rights or obligations whether registerable or not in any country and applications for any of the foregoing.
- “Materials”** means any document, design, methodology or process, documentation, data, system architecture, process, configuration materials or other material in whatever form, including any reports, business rules or requirements, testing documents and records, user manuals, user guides, operations manuals, training materials and instructions and any preparatory works relating to the same.
- “Personal Data”** has the meaning given to it in the Data Protection Legislation.
- “REC”** means the Retail Energy Code as defined in the DCC Licence.
- “Regulatory Body”** means those government departments, regulators, regulatory bodies, and other entities, committees and bodies (including the SEC Panel) which, whether under law, industry codes or otherwise, are entitled to regulate, supervise, investigate, or influence:
- (a) any matters dealt with in this Agreement; or
 - (b) the DCC or any of its business, activities or affairs, including Ofcom and Ofgem,
 - (c) and **“Regulatory Bodies”** shall be construed accordingly.
- “Services”** means the services to be supplied by the Contractor (or on its behalf) under this Agreement as identified in the DCC Order Form.
- “SEC”** means the Smart Energy Code, as defined in the DCC Licence.
- “Specification”** means the specification set out in the DCC Order Form.
- “Successor Licensee”** means the person that is to succeed (or has succeeded) the DCC as holder of the DCC Licence (and, if the context so permits, may include any person who has applied, or is considering whether to apply, to be that licence holder).
- “Volume DCC Personal Data”** means the processing of a significant volume of Personal Data of individuals who work for the DCC and/or any of its group companies, affiliates, or sub-contractors, whether by way of employment or otherwise, but not the exchange of business contact information in connection with the receipt of Services and/or Goods under, or the administration of, this Agreement.

2. Services and Deliverables

- 2.1. You will perform the Services and provide the Deliverables in accordance with the requirements and timelines specified in the DCC Order Form and any reasonable instructions which the DCC may provide in connection with the agreed scope in the DCC Order Form.
- 2.2. In performing the Services and providing the Deliverables, you will exercise Good Industry Practice, in accordance with the Specification and the terms of this Agreement, in a timely manner, and ensure

compliance with Applicable Law. The DCC, acting reasonably, shall be entitled to reject any Services and/or Deliverables which do not meet the requirements or timetable set out in the DCC Order Form or which do not meet Good Industry Practice or comply with Applicable Law ("**Failure(s)**"). In the event of Failure(s), the DCC may choose to: (i) accept the Services and/or Deliverables without correction of Failure(s), whereupon the DCC shall be entitled to apply a reasonable pro-rata deduction to payment of any Charges that would otherwise have become payable but for the Failure(s); (ii) alternatively, require you to re-perform the Services and/or Deliverables to correct any Failure(s) to the DCC's reasonable satisfaction, at no further cost to the DCC; or (iii) for Failure(s) incapable of remedy (or, where the DCC elects to permit a remedy pursuant to Clause 2.2(ii) and such Failures are not remedied within a reasonable time stipulated by the DCC) bring the Agreement to an end in accordance with Clause 16.3.

- 2.3. No extension or alteration to the Services and/or scope of Deliverables shall be valid unless agreed by the DCC in writing.

Service Levels

- 2.4. You shall perform the Services so as to meet or exceed the Service Levels (if any are specified).
- 2.5. You shall provide the DCC with any information that the DCC reasonably requires to validate your performance against the Service Levels (the **Validation Information**). The DCC shall give you not less than two (2) calendar months' notice of the information it requires to perform its validation and thereafter such information shall form part of the Validation Information.
- 2.6. You shall provide the Validation Information to the DCC within five (5) Business Days of the end of the calendar month in which the relevant Services are performed.

Service Failure

- 2.7. If you fail to provide any of the Services in accordance with the Service Levels (**Service Level Failure**), you must promptly notify the DCC in writing.
- 2.8. As soon as practicable after notification under Clause 2.7, you must (at your own cost):
- 2.8.1 perform a root-cause analysis to identify the cause of the Service Level Failure;
 - 2.8.2 allocate such resources as may be necessary to remedy the Service Level Failure and any consequences;
 - 2.8.3 promptly correct the Service Level Failure and resume the Services; and
 - 2.8.4 provide the DCC with a written report detailing the cause of, and procedure for correcting, the Service Level Failure and any consequences.
- 2.9. If, in any month, a Service Level Failure occurs and the DCC Order Form states that service credits shall accrue in respect of such failure, you must deduct those service credits from your next invoice (or, where no further invoices are due, you must pay an amount equal to such service credits within 30 days after a written demand for payment from the DCC). The Parties agree that the payment of service credits is without prejudice to any other remedy available to the DCC whether under this Agreement or in law.

3. Goods (if applicable)

- 3.1. Any Goods delivered by you (or on your behalf) under this Agreement shall (i) be fit for purpose and of satisfactory quality; (ii) meet the requirements and specification set out in the DCC Order Form; (iii) comply with Applicable Laws and be accompanied by any certifications (if any) necessary for the use specified in the DCC Order Form; (iv) be free from any third-party rights or interests (including liens, charges and options); (v) be free from defects in design, material and workmanship and remain so for twelve (12) months after delivery; and (vi) meet the manufacturer's specifications and documents (you will procure and provide those documents prior to despatch and whenever requested by the DCC).

- 3.2. Title and risk in the Goods shall pass to the DCC on delivery except where such Goods have already been paid in full in which event title shall pass to the DCC upon payment and risk shall pass to the DCC upon delivery. You shall ensure that Goods are fully insured at all times during transit.
- 3.3. Goods shall be “Delivered Duty Paid” (Incoterms 2010) at the site(s) and during the time period instructed by the DCC in writing, whether in the DCC Order Form or otherwise. Time shall be of the essence of this Agreement. Your personnel shall comply with the reasonable policies and procedures at any delivery location. The Charges shall be deemed inclusive of all delivery costs, transit, insurance, packaging and other charges.
- 3.4. You shall not deliver the Goods in instalments without the DCC’s prior written consent unless specified in the DCC Order Form. Where it is agreed that Goods may be delivered by instalments, such instalments shall be invoiced separately. If you fail to deliver any instalment then the DCC may, at its sole discretion, treat the Agreement (in its entirety) as repudiated.
- 3.5. You will procure that the DCC obtains the benefit of any warranty from a manufacturer or third party associated with the Goods. You bear all product liability risk associated with the Goods.
- 3.6. Delivery of the Goods shall not be deemed acceptance by the DCC. After Delivery of the Goods, the DCC shall have a reasonable time (given the nature of the Goods and the DCC’s programme of works) to inspect and test the Goods.
- 3.7. If following inspection or testing of the Goods, the DCC considers that the Goods (in whole or in part) do not comply fully with the Agreement then DCC shall notify you and at the DCC’s option, you shall: (i) repair the Goods, (ii) replace such Goods, or (iii) if DCC rejects the Goods, refund to the DCC the value of such Goods.
- 3.8. You shall make arrangements to promptly collect any Goods rejected by the DCC at your cost. If you fail to collect any rejected Goods then the DCC shall be entitled to claim the cost of storage and disposal of such Goods from you by right of set-off or otherwise.

4. Supply Chain and Ethics

- 4.1. You warrant that you and your supply chain comply with all Applicable Laws and operate your businesses with due regard for ethical considerations (including without limitation relating to human trafficking, modern day slavery, child labour, corruption, bribery, equality, diversity and environmental protection).
- 4.2. You will put in place appropriate measures in accordance with Good Industry Practice to verify that your supply chain operates its business in accordance with all Applicable Laws and the above ethical considerations.
- 4.3. You will notify the DCC if you discover any breach or potential breach of this Clause 4 by you or your supply chain. You will procure that all of your supply chain contracts have duties that are substantially similar to this Clause 4 including obligations to notify.

5. Charges & Payments

- 5.1. All Charges for the Services, Deliverables and/or any Goods shall be as set out in the DCC Order Form and shall comprise the full and exclusive remuneration of the Contractor in relation to the performance of the Agreement.
- 5.2. The Charges are exclusive of VAT. Any other charges, costs, duties, expenses or taxes applicable directly or indirectly to the Services, Deliverables and/or Goods shall be for the Contractor’s account unless otherwise specified in the DCC Order Form.
- 5.3. The Contractor may invoice the DCC for the Services, Deliverables and/or Goods, plus any applicable VAT, on or after delivery of the relevant Services, Deliverables and/or any Goods or such other date as

may be specified in the DCC Order Form. All Contractor invoices shall be expressed in pounds sterling (£) or such other currency as specified in writing by the DCC.

- 5.4. The DCC shall pay within thirty (30) days of receipt of invoice provided that the invoice is undisputed or the invoice does not relate to any delivery of Services, Deliverables and/or Goods that is in dispute between the Parties.
- 5.5. Where an amount remains unpaid after sixty (60) days have elapsed since the receipt of invoice by the DCC and is undisputed then the Contractor may charge the DCC interest on the amount due from the due date until payment is made in full, at two percent (2%) per annum over the HSBC base rate from time to time in effect and in any event, at two percent (2%) per annum for any period that base rate falls below zero percent (0%).

6. Representations and Warranties

- 6.1. The Contractor warrants, represents and undertakes to the DCC that as at the Commencement Date and for the duration of the Term of this Agreement:
 - 6.1.1. it has all the licences, permissions, authorisations, consents and permits necessary to carry out its obligations under this Agreement;
 - 6.1.2. it has all necessary Intellectual Property Rights in order to perform this Agreement and provide the Services, Deliverables and any Goods to the DCC for the DCC's use for the purpose (and in accordance with the terms) of this Agreement;
 - 6.1.3. it will comply with all the DCC policies and procedures as well as any the DCC and health and safety requirements at Site notified to it; and
 - 6.1.4. it shall not (nor attempt to) damage the goodwill, name or reputation of the DCC or any member of its group.

7. Intellectual Property

- 7.1. Save as provided in clause 7.2, the DCC shall not acquire any rights in the Contractor Background IPR.
- 7.2. The Contractor hereby grants the DCC an irrevocable, non-exclusive, transferable, sub-licensable, perpetual, fully-paid (save for the applicable Charges) worldwide licence to access, copy, load, execute, store, transmit, adapt, publish, distribute or otherwise use Contractor Background IPR for any purpose on or in connection with the delivery of Services and/or Goods under this Agreement, including any Contractor Background IPR incorporated in or which forms part of the Services, Deliverables and/or any Goods supplied under this Agreement.
- 7.3. The DCC shall own all Bespoke IPR contained in the Deliverables or which are created or result from the Services and/or Deliverables. You hereby assign to the DCC all current and future title to and interest in all Bespoke IPR in respect of which ownership has not automatically vested or already transferred to the DCC. Where you or any person acting on your behalf acquires, by operation of law, any Bespoke IPR that does not automatically transfer pursuant to this Clause you shall do all acts and things as may be necessary, and execute all necessary documents, to assign such Bespoke IPR as you have acquired to the DCC and you shall procure that any person acting on your behalf does the same (at no additional cost to the DCC).
- 7.4. Where necessary, the DCC shall grant the Contractor a non-exclusive, royalty free, non-transferable licence for the Term to use DCC IPR and DCC Data solely to the extent necessary for the provision of the Services and/or Deliverables under this Agreement.
- 7.5. If the Services and/or Deliverables (or any part of them), are held to constitute an infringement of the IPR of any third party, the Contractor shall at its own expense and discretion (i) procure for the DCC, with the DCC's agreement, the right to continue using the Services and/or Deliverables; or (ii) modify the Services and/or Deliverables so that they are non-infringing without materially detracting from their

overall performance; or (iii) replace the infringing Services and/or Deliverables with other non-infringing items or services having a capability materially equivalent to the infringing Services and/or Deliverables.

8. DCC Data

- 8.1. You shall not at any time be entitled (i) to copy, disclose or use any DCC Data except in compliance with all of your obligations under this Agreement and to the extent strictly required to comply with your obligations under this Agreement; and (ii) to store (or retain) any DCC Data except in compliance with your obligations under this Agreement and to the extent strictly required to comply with any applicable law of Scotland or England and Wales; or any express provisions of this Agreement that require you to retain such DCC Data.
- 8.2. You shall not (unless expressly agreed by the DCC in writing) delete or remove any proprietary notices contained within or relating to DCC Confidential Information, DCC Data, Deliverables or DCC IPR.
- 8.3. You shall, at all times when in your possession, preserve the integrity of all DCC Data (including preventing the loss, corruption, degradation or unauthorised access of such DCC Data) in accordance with any requirements set out in this Agreement or, if none, in accordance with Good Industry Practice.
- 8.4. You undertake to provide to the DCC copies of all DCC Data in your possession, custody or control on demand and, in any event, upon termination or expiry of this Agreement. You hereby agree to irrevocably delete DCC Data in your possession, custody or control on demand.

9. Security Requirements

- 9.1. If applicable, you will comply with any additional security requirements set out in the DCC Order Form (including any appendices thereto).

10. Personal Data

- 10.1. In the event that the Contractor is to process personal data of Energy Industry Data Subjects or Energy Consumer Data Subjects, or Volume DCC Personal Data then the Contractor shall process such personal data in accordance with the DCC Personal Data Addendum and shall be liable to the DCC in accordance with the terms of this Agreement.
- 10.2. Save as set out in Clause 10.1, each party shall be responsible for its own compliance and shall bear its own risk for compliance with Data Protection Legislation and neither shall have liability to the other in connection with any fines, penalties or claims made by data subjects in respect of the same.

11. Confidentiality

- 11.1. This Clause 11 applies to Confidential Information disclosed by one Party (“the Disclosing Party”) to the other (“the Receiving Party”) under or in connection with this Agreement. For the avoidance of doubt, this Clause 11 shall apply to any Confidential Information disclosed by either Party to the other Party prior to the Commencement Date. The terms of this Clause 11 shall supersede and replace any non-disclosure Agreement entered into between the Parties prior to the date of this Agreement.
- 11.2. The Receiving Party shall use the Confidential Information solely for the purposes of performing its obligations in accordance with the terms of this Agreement. The Receiving Party will exercise in relation to the Disclosing Party’s Confidential Information a reasonable and appropriate degree of care and protection.
- 11.3. The Receiving Party undertakes not to disclose any of the Disclosing Party’s Confidential Information to any third party except that it may disclose such Confidential Information to (i) its employees, professional advisors, agents or sub-contractors but only to the extent necessary for the performance of its obligations under this Agreement; and (ii) in the case of the DCC, those persons to whom it is necessary and permitted to disclose Confidential Information pursuant to the DCC Licence, the SEC and the REC. The Receiving Party shall ensure that any third party to whom it discloses the Confidential

Information shall be informed of the confidential nature of the information and be bound by obligations of confidentiality on terms no less onerous than those set out in this Agreement.

- 11.4. The Receiving Party undertakes to destroy or return to the Disclosing Party (at the Disclosing Party's discretion) all Confidential Information in its possession, custody or control on receipt of a request to that effect and, in any event, upon termination or expiry of this Agreement save in respect of any Confidential Information that the Receiving Party is required to retain under Applicable Law or retained for archival purposes only in an auto-backup computer system (that the Receiving Party shall ensure is continuously maintained and secured against unauthorised access), which shall be destroyed in accordance with the Receiving Party's' document retention policy.
- 11.5. Without prejudice to any other rights or remedies that either Party may be entitled to, the Parties acknowledge that damages may not be an adequate remedy for breach of these confidentiality obligations and agree that both Parties will be entitled to seek the remedies of injunction, specific performance and any other available equitable relief for any threatened or actual breach.
- 11.6. The provisions of this Clause 11 are of indefinite duration but shall not apply to any Confidential Information: (i) to the extent that it is or comes into the public domain otherwise than as a result of a breach of this Agreement by the Receiving Party; (ii) which the Receiving Party can show by its written records was in its possession prior to receiving it from the Disclosing Party and which it had not previously obtained from the Disclosing Party or a third party on its behalf under an obligation of confidence; (iii) has been independently developed by the Receiving Party without use of the Confidential Information; or (iv) which is required to be disclosed by Applicable Law.
- 11.7. Notwithstanding anything else to the contrary in the Agreement, if DCC receives a request for information from a Regulatory Body or the Secretary of State (as applicable) under condition 29 of the DCC Licence (each, an "**Information Request**"), the Contractor acknowledges that the DCC may be obliged to disclose the Contractor's Confidential Information under the requirements of the relevant Information Request provided that, if and to the extent that it is practicable and lawful for it to do so, the DCC shall give prompt notice to the Contractor prior to the required disclosure and shall cooperate with the Contractor regarding the form, nature, content and purpose of such disclosure or any action which the Contractor may reasonably take to challenge the validity or extent of such disclosure obligation. The DCC shall be responsible for determining in its absolute discretion whether any Contractor's Confidential Information is required to be disclosed to a Regulatory Body and/or the Secretary of State in accordance with the relevant Information Request. The Contractor shall cooperate with each and every Information Request.
- 11.8. Notwithstanding anything else to the contrary in this Agreement, in the event the DCC is requested to disclose any information as requested by Ofgem or the Secretary of State for the Department for Business, Energy and Industrial Strategy (BEIS) (or their successors) in relation to the DCC Licence, the SEC or the REC, the Contractor acknowledges that this may include the Contractor's Confidential Information.

12. Publication

- 12.1. Subject to Clause 12.2, no publicity or advertising shall be released by either Party in connection with the subject matter of this Agreement without the prior written approval of the other Party, which shall not unreasonably be withheld or delayed.
- 12.2. The Contractor acknowledges that the DCC may be obliged to publish this Agreement under the DCC Licence obligations. Both Parties agree to such publication and acknowledge that in this circumstance any Confidential Information would be redacted and the Contractor agrees to promptly agree reasonable redactions with the DCC to enable this publication.

13. Insurance

- 13.1. During the term of the Agreement, you shall maintain in force, with a reputable insurance company, professional indemnity insurance, public liability insurance and, if supplying Goods under this Agreement, product liability insurance, to cover the liabilities that may arise under or in connection with

the Agreement and shall, at the DCC's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

14. Liability

- 14.1. Nothing in this Agreement shall limit or exclude either Party's liability arising from death, injury to persons, fraud, fraudulent misrepresentation or breach of Clause 8 (DCC Data), Clause 10 (Personal Data) or Clause 11 (Confidentiality).
- 14.2. Nothing in this Agreement shall limit the Contractor's liability arising from repudiation, wilful abandonment of this Agreement or any of the liabilities which the Contractor indemnifies the DCC in Clause 15.
- 14.3. Subject to Clauses 14.1 and 14.2, the Contractor's liability to the DCC under this Agreement shall be limited to:
- 14.3.1. Where Services, Deliverables or Goods are being delivered for a fixed fee then 150% of the Charges; or
- 14.3.2. Where Services are being delivered on a time and materials basis then 150% of the estimated Charges for the Term calculated using the following methodology:
- Maximum Liability = 150% ((TC ÷ EM) × TM)**
- TC = The total Charges paid or payable since the Commencement Date.*
- EM = Number of months elapsed since the Commencement Date.*
- TM = The number of months in the Term (as adjusted for any agreed extension periods) or 12 whichever is the lesser.*
- 14.4. Subject to Clause 14.1, the DCC's liability to the Contractor under this Agreement shall be limited to the Charges.
- 14.5. Subject to the express provisions of this Agreement and except in the case of any indemnity provided to the DCC from the Contractor under Clause 15 neither Party shall be liable to the other nor any member of its group for any indirect or consequential loss; and/or, loss of profit, business or anticipated business, revenue, contract, goodwill or anticipated savings (regardless of whether any of these types of loss or damage are direct or indirect or consequential); in each case arising out of, or in connection with this Agreement (whether the claim is brought for breach of contract, in negligence (of any degree or character) or any other tort, under statute or otherwise).

15. Indemnities

- 15.1. Subject to Clause 15.2, the Contractor shall indemnify and keep the DCC indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the DCC as a result of or in connection with:
- 15.1.1. any claim made against the DCC for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Services, Deliverables and/or Goods, to the extent that the claim is attributable to the acts or omissions of the Contractor, its employees, agents or subcontractors;
- 15.1.2. any claim made against the DCC by a third party for death, personal injury or damage to property arising out of or in connection with defects in Services and/or Goods, to the extent that such defects are attributable to the acts or omissions of the Contractor, its employees, agents or subcontractors; and
- 15.1.3. any claim made against the DCC by a third party arising out of or in connection with the supply of the Services, Deliverables and/or Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Contractor, its employees, agents or subcontractors.
- 15.2. In respect of the indemnity under Clause 15.1, the DCC shall: (i) promptly notify the Contractor of the relevant claim; (ii) allow the Contractor at its own expense, to conduct all negotiations and proceedings regarding such claim; (iii) not make any admission of liability without first consulting the Contractor; and (iv) not settle any claim without the prior written approval of the Contractor (such approval not to be unreasonably withheld or delayed).

16. Duration & Termination

- 16.1. This Agreement shall commence on the Commencement Date and shall expire either when specified in the DCC Order Form or when terminated by either Party under this Clause 16 (the “Term”).
- 16.2. In relation to any order by the DCC for Services, the DCC may terminate this Agreement for convenience on giving not less than seven (7) days’ prior written notice. The Contractor’s obligations to provide the Services shall end on the date set out in such notice and the DCC shall pay the applicable Charges up to the date specified in the notice.
- 16.3. The DCC may terminate this Agreement (or any part thereof) immediately by written notice if the Contractor is in material breach of this Agreement that cannot be remedied or has not been remedied to the satisfaction of the DCC within seven (7) days of being given written notice by the DCC requesting the same (or such longer remedy period as the DCC may, in its discretion, define).
- 16.4. The Contractor may suspend performance of its obligations under this Agreement if the DCC has not paid an invoice within sixty (60) days of receipt of the same and may terminate this Agreement on not less than thirty (30) Business Days’ prior written notice if the DCC has not paid an invoice within ninety (90) days of receipt of the same provided that such invoice is undisputed or the invoice does not relate to any delivery of Services, Deliverables or Goods that is in dispute between the Parties. This Clause and Clause 16.5 comprise the Contractor’s only rights of termination at contract or in law.
- 16.5. Either Party may terminate this Agreement immediately by written notice if the other Party: (i) enters into liquidation or receivership; (ii) suffers the appointment of an administrator, administrative receiver, manager or provisional liquidator (or similar officer to any of the foregoing in the relevant jurisdiction) over the whole of or a substantial part of the relevant Party’s assets or undertakings; or (iii) is deemed unable to pay its debts (within the meaning given by Section 123 of the Insolvency Act 1986).
- 16.6. The rights of termination set out in this Clause 16 are in addition to any other rights of the DCC under this Agreement and the exercise of such right shall be without prejudice to any claim, remedy or right of action that either Party may have in relation to this Agreement.

17. Accrued Rights

- 17.1. Termination or expiry of this Agreement shall not affect either Party’s accrued rights or liabilities or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.
- 17.2. The provisions of Clauses 1 (Services and Deliverables), 6 (Intellectual Property), 8 (DCC Data), 10 (Personal Data), 11 (Confidentiality), 12 (Publication), 14 (Liability), 15 (Indemnities), 17 (Accrued Rights), 18 (Assignment and Novation) and 19 (General) shall survive the termination or expiry of this Agreement (under its terms or at law), together with any other provisions expressed or implied to survive such termination or expiry.

18. Assignment and Novation

- 18.1. The Contractor shall not assign, novate, sub-contract 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.
- 18.2. The Contractor agrees that the DCC may assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement and any associated licences to any Successor Licensee.
- 18.3. A change in the legal status of the DCC shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the DCC.

19. General

- 19.1. **Force Majeure:** Neither Party shall be responsible for a failure to carry out any of its duties under this Agreement to the extent to which this is caused by an event of Force Majeure provided that it shall take reasonable steps to overcome and mitigate the effects of the Force Majeure. If a Force Majeure event which results in the non-delivery of the Services, Deliverables or Goods (or a substantial part thereof) continues for more than thirty (30) consecutive days, the unaffected Party may terminate this Agreement by giving a termination notice specifying a termination date at least thirty (30) days after receipt of the termination notice by the other Party.
- 19.2. **Implied Terms:** The DCC’s rights and remedies under this Agreement are in addition to any rights and remedies implied by statute and common law.

- 19.3. **Third Party Rights:** No one other than a Party to this Agreement shall have any right to enforce any of its terms.
- 19.4. **Notices:** Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each Party required to receive the notice or communication as set out on the DCC Order Form or as otherwise specified by the relevant Party by notice in writing to each other Party. Any notice or other communication shall be deemed to have been duly received: (i) if delivered personally, when left at the specified address and marked for the attention of the Party required to receive the notice or communication; (ii) if sent by pre-paid first-class post or recorded delivery, at 09:00 on the second Business Day after posting; and (iii) if sent by commercial courier, on the date and at the time that the courier's delivery receipt is signed. The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.
- 19.5. **Waiver:** No failure or delay by either Party to exercise any right or remedy under this Agreement shall be construed as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy. No waiver by either Party of any breach of this Agreement shall be considered as a waiver of a preceding or subsequent breach.
- 19.6. **Severance:** Each provision of this Agreement is severable from every other term. The invalidity or unenforceability of any term (in whole or in part) of this Agreement will not affect the validity or enforceability of the remaining terms.
- 19.7. **Variations:** This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the DCC and by a duly authorised representative of the Contractor.
- 19.8. **Law and Jurisdiction:** This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts.