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Should you have any queries, please contact Commercial@SmartDCC.co.uk

DATED _____

(1) SMART DCC LIMITED

(2) CAPGEMINI UK plc

**AGREEMENT FOR THE PROVISION OF SOFTWARE
DEVELOPMENT AND RELATED SERVICES IN
RESPECT OF THE SMETS1 SMART METERING
PROGRAMME**



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THIS AGREEMENT is made on [REDACTED]

BETWEEN:

- (1) **Smart DCC Limited** (registered in England and Wales under number 08641679) whose registered office is at 17 Rochester Row, London, SW1P 1QT ("**DCC**"); and
- (2) **Capgemini UK Plc** (registered in England and Wales under number 943935) whose registered office is at 1 Forge End, Woking, Surrey, GU21 6DB (the "**Contractor**").

RECITALS

The following recitals shall not have contractual or legal effect save as an aid to the background and interpretation of the remainder of this Agreement:-

- (A) The UK Government has an objective to maximise the benefit of SMETS1 smart meters. Accordingly, the DCC has set up, in accordance with the DCC Licence and directions from the Secretary of State, an enrolment and adoption programme to deliver interoperable data and communication services for SMETS1 meters (the "**SMETS1 Programme**").
- (B) In order to facilitate the delivery of the SMETS1 Programme, DCC wishes to appoint a contingent supplier to provide software development and related services.
- (C) On 17 May 2017 the DCC published a request for proposal, inviting prospective suppliers to submit proposals for the provision of software development and related services.
- (D) The Contractor is an experienced provider of software development and related services.
- (E) On the basis of the Contractor's response to the request for proposal and a subsequent procurement process, the DCC has selected the Contractor as its contingent supplier.
- (F) Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below in respect of performance of the Services.

IT IS AGREED as follows:

SECTION A: STRUCTURE, EXECUTION AND COMMENCEMENT

1. INTERPRETATION AND DEFINITIONS

- 1.1 In this Agreement, the definitions and rules of interpretation set out in Schedule 1 (*Interpretation and Definitions*) shall apply.

2. COMMENCEMENT AND DURATION

- 2.1 Subject to Clause 47 (*Consequences of Expiry or Termination*), this Agreement will commence on the Commencement Date and, unless terminated at an earlier date by operation of Law or in accordance with this Agreement, shall terminate at:-

- 2.1.1 the end of the Initial Term; or
 - 2.1.2 if the DCC elects to extend the Term in accordance with Clause 2.2, at the end of the Extension Period.
- 2.2 The DCC shall have the option to extend the Term of the Agreement in respect of all or part of the Services (subject to the relevant extension provisions in Schedule 22 (*Charges and Invoicing*) for [REDACTED]
[REDACTED] If the DCC intends to exercise this option, it shall give notice to such effect to the Contractor by no later than three (3) months prior to the expiry of the Initial Term.

3. DUE DILIGENCE

- 3.1 Except as expressly provided in this Agreement, no representations, warranties or conditions, express or implied, statutory or otherwise (including as to condition, quality, satisfactory quality, accuracy, performance or fitness for purpose) are given by the DCC in respect of any of the following:-
 - 3.1.1 the End-to-end Smart Metering System;
 - 3.1.2 the Procurement Information;
 - 3.1.3 the SMETS;
 - 3.1.4 the Standards;
 - 3.1.5 DCC Requirements;
 - 3.1.6 the Smart Metering Programme; or
 - 3.1.7 any other matter,(collectively, the "**Excluded Matters**") and any such representations, warranties or conditions are excluded, except to the extent prohibited by Law.
- 3.2 The Contractor acknowledges and agrees that it:-
 - 3.2.1 has made and shall make its own enquiries, analysis and review to satisfy itself as to the accuracy, completeness, fitness for purpose and adequacy of any information (including relating to the Excluded Matters) supplied to it (or any person acting on its behalf) by or on behalf of the DCC or any person acting on behalf of the DCC;
 - 3.2.2 has raised all relevant due diligence questions with the DCC before the Signature Date; and
 - 3.2.3 has entered into this Agreement in reliance on its own due diligence alone.
- 3.3 The Contractor (without prejudice to any express obligations or warranties of the DCC set out in this Agreement or to the Contractor's express rights and remedies set out in this Agreement):-
 - 3.3.1 agrees that, in entering into this Agreement, it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the DCC at any time in relation to:-
 - (a) the subject-matter of this Agreement; and/or
 - (b) any of the Excluded Matters,(the "**Procurement Information**");
 - 3.3.2 waives all rights and remedies (including for breach of contract, in tort,

in negligence and under any other legal theory) which might otherwise be available to it in relation to any of the Procurement Information; and

3.3.3 shall not make any Claim against the DCC whether in contract, tort, negligence or otherwise, including any Claim in damages, for any Loss, extension of time or for additional payments or pricing adjustments in connection with this Agreement on the grounds:-

- (a) of any misunderstanding or misapprehension in respect of any Procurement Information; and/or
- (b) that any of the Procurement Information is incorrect, incomplete or insufficient.

3.4 Subject to Clause 4.1.2 (*Limitations on Liability*), where the DCC (or anyone acting on its behalf) has provided the Contractor with incorrect or insufficient Procurement Information, the Contractor shall (except as otherwise expressly stated in this Agreement) not be relieved from any obligation under this Agreement and shall not be entitled to Claim any Loss.

4. SCOPE OF AGREEMENT

4.1 This Agreement relates to the provision of Services:-

4.1.1 from the Commencement Date, in connection with:

- (a) the Mobilisation Phase;
- (b) the Development Phase; and
- (c) the Transition to Live Phase;

4.1.2 following the Achievement of Go-Live Release Acceptance, the Early Life Support Phase;

4.1.3 following the Achievement of Final Acceptance:-

- (a) the Operational Phase; and
- (b) the Transition and Exit Phase; and

4.1.4 as otherwise referred to in this Agreement.

4.2 In addition to its other obligations under this Agreement, the Contractor shall provide any ancillary or incidental service, function or responsibility not specified in this Agreement where such service, function or responsibility is necessarily required for the proper performance of the Services and is not expressly identified in this Agreement as the responsibility of the DCC or DCC Service Provider.

4.3 The Contractor agrees that:

4.3.1 it is not the exclusive or sole supplier of the Services; and

4.3.2 DCC may, at any time, obtain from a third party, or perform itself, services of the same or similar nature as the Services.

4.4 The Contractor agrees that it shall not enter into any contract or other arrangement that prevents or restricts competition or prevents or restricts the DCC from procuring services from any third party.

5. OBJECTIVES **

- 5.1 The Contractor acknowledges that, under the DCC Licence, the DCC is required to comply with certain objectives and principles that are described and referred to in Condition 5 of the DCC Licence (together, the "**Objectives**").
- 5.2 The Contractor shall:-
- 5.2.1 in so far as the Agreement leaves any discretion as to how to perform its obligations under this Agreement, perform its obligations under this Agreement in such a manner as to enable the DCC to comply with the Objectives; and
 - 5.2.2 save as expressly required by this Agreement or the DCC, not carry out any activity, or any combination of activities, in a manner which prejudices or impairs, or would be likely to prejudice or impair, the DCC's ability to comply with the Objectives.
- 5.3 To the extent that the terms of this Agreement require the Parties to develop, review and/or agree any plans, procedures or other documents, otherwise discuss, negotiate or agree on a particular matter, the Parties shall, in carrying out such activities, take account of the Objectives and seek to give the fullest possible effect to the Objectives.
- 5.4 To the extent that the terms of this Agreement do not address a particular circumstance or are unclear or ambiguous, such terms shall be construed in a manner which gives the fullest possible effect to the Objectives.

6. SERVICES

- 6.1 The Contractor shall ensure that the Services at all times:
- 6.1.1 comply in all respects with the DCC Requirements and the Contractor Methodology; and
 - 6.1.2 are otherwise supplied in accordance with the terms of this Agreement.
- 6.2 Without prejudice to the DCC's other rights and remedies, the Contractor shall (at the Contractor's cost):
- 6.2.1 promptly remedy any failure to provide the Services or to comply with its obligations in accordance with this Agreement; and
 - 6.2.2 in the event of the Contractor's failure to provide the Services, re-perform the Services as required by the DCC.
- 6.3 The Contractor shall:
- 6.3.1 at all times allocate sufficient resources to provide the Services in accordance with this Agreement;
 - 6.3.2 obtain, and maintain throughout the Term, all Consents it may require and which are necessary to provide the Services (other than those forming part of the DCC Responsibilities, if any); and
 - 6.3.3 provide the DCC with such assistance as the DCC may reasonably require during the Term in respect of the supply of the Services.

7. AGILE DEVELOPMENT METHODOLOGY

- 7.1 Without prejudice to Clause 25 (*Variation*), the Contractor shall provide the Development Services and (where requested by the DCC any other Services) in accordance with (and shall otherwise comply with) the Agile Development Methodology. The Parties shall comply with its respective obligations, and may exercise its respective rights, under Schedule 4 (*Agile Development Methodology*).

8. PROJECT PLAN

- 8.1 The Contractor shall provide the Services in accordance with (and shall otherwise comply with) the Project Plans. The Parties shall comply with their respective obligations, and may exercise their respective rights, under Schedule 15 (*Project Plan*).

- 8.2 The Contractor acknowledges and accepts that the provision of the Services requires the Achievement of a number of Milestones and the successful delivery of certain Deliverables by the Contractor and/or the completion of other obligations by the Contractor.

Delay

- 8.3 If the Contractor becomes aware that there is, or there is reasonably likely to be, a Delay it shall:

- 8.3.1 notify the DCC in accordance with Clause 11.1 (*Rectification Plan*);
- 8.3.2 comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
- 8.3.3 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

9. TESTING AND ACCEPTANCE

Each Party

- 9.1 shall comply with its respective obligations, and may exercise its respective rights, under Schedule 17 (Testing and Acceptance).

10. PERFORMANCE MONITORING

- 10.1 The Contractor shall perform its obligations under this Agreement so as to achieve or exceed the KPIs. The Parties shall comply with its respective obligations, and may exercise its respective rights, under Schedule 5 (*Performance Measures and Monitoring*).

11. RECTIFICATION PLAN

- 11.1 In the event that:-

- 11.1.1 there is, or is reasonably likely to be, a Delay;
- 11.1.2 in any one month there has been a KPI Failure; and/or
- 11.1.3 the Contractor commits a material breach (being a single event or a series of events which are together a material breach) of any of its obligations under this Agreement that is capable of remedy (whether the same or different obligations and regardless of whether the Contractor has remedied those breaches on previous occasions),

(each a “**Notifiable Default**”), the Contractor shall notify the DCC of the Notifiable Default as soon as practicable but in any event within three (3) Business Days of

becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default.

11.2 If:

11.2.1 the Contractor notifies the DCC pursuant to Clause 11.1 that a Notifiable Default has occurred; or

11.2.2 the DCC notifies the Contractor that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Contractor has to rectify),

then, without prejudice to the DCC's other rights and remedies (including the right to terminate), the Contractor shall comply with the Rectification Plan Process.

Submission of the draft Rectification Plan

11.3 The Contractor shall submit a draft Rectification Plan to the DCC for it to review as soon as possible and in any event within five (5) Business Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 11.1. The Contractor shall submit a draft Rectification Plan even if the Contractor disputes that it is responsible for the Notifiable Default.

11.4 The draft Rectification Plan shall set out:

11.4.1 full details of the Notifiable Default that has occurred, including a root cause analysis (where applicable);

11.4.2 the actual or anticipated effect of the Notifiable Default; and

11.4.3 the steps which the Contractor proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

11.5 The Contractor shall promptly provide to the DCC any further documentation that the DCC reasonably requires to assess the Contractor's draft Rectification Plan (including the Contractor's root cause analysis).

Agreement of the Rectification Plan

11.6 The DCC may reject the draft Rectification Plan by notice to the Contractor if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

11.6.1 is insufficiently detailed to be capable of proper evaluation;

11.6.2 will take too long to complete;

11.6.3 will not prevent reoccurrence of the Notifiable Default; and/or

11.6.4 will rectify the Notifiable Default but in a manner which is unacceptable to the DCC.

11.7 The DCC shall notify the Contractor whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the DCC rejects the draft Rectification Plan, the DCC shall give reasons for its decision and the Contractor shall take the reasons into account in the preparation of a revised Rectification Plan. The Contractor shall submit the revised draft of the Rectification Plan to the DCC for review within three (3) Business Days (or such other period as agreed between the Parties) of the DCC's notice rejecting the first draft.

11.8 If the DCC consents to the Rectification Plan the Contractor shall immediately start work on the actions set out in the Rectification Plan.

11.9 Failure by the Contractor to comply with a Rectification Plan shall be deemed a material breach not capable of remedy for the purposes of Clause 46.2.1(a) (*Termination Rights*).

Costs and Expenses

11.10 Without prejudice to Clause 40.19, the Contractor shall bear both Parties' costs and expenses in respect of the agreement and implementation of a Rectification Plan, except to the extent that the Contractor can demonstrate that the Contractor Non-Performance would not have occurred but for a DCC Cause in which case DCC shall be liable for both Parties' costs and expenses in accordance with Schedule 22 of this Agreement.

12. DCC RESPONSIBILITIES

12.1 The DCC's obligations under this Agreement shall be limited to (and the DCC shall comply with) the DCC Responsibilities.

13. RELIEF EVENTS

13.1 Notwithstanding any other provision of this Agreement, if the Contractor has failed to provide the Services and/or comply with its obligations under this Agreement (each a "**Contractor Non-Performance**"), and can demonstrate that a DCC Cause contributed to the Contractor Non-Performance, then (subject to the Contractor fulfilling its obligations in this Clause 13):-

13.1.1 the Contractor shall not be treated as being in breach of this Agreement to the extent the Contractor can demonstrate that the Contractor Non-Performance was caused by the DCC Cause; and

13.1.2 the DCC shall not be entitled to exercise any rights that may arise as a result of that Contractor Non-Performance to terminate this Agreement pursuant to Clause 46.2.1.

13.2 In order to claim any of the relief referred to in Clause 13.1, the Contractor shall as soon as reasonably practicable (and in any event within five (5) Business Days) after becoming aware of the DCC Cause, or that a DCC Cause is reasonably likely to arise which may result in a Contractor Non-Performance, give the DCC notice (a "**Relief Notice**") setting out details of:-

13.2.1 the DCC Cause and its effect, or likely effect, on the Contractor's ability to meet its obligations under this Agreement;

13.2.2 any steps which the DCC can take to eliminate or mitigate the consequences and impact of such DCC Cause; and

13.2.3 the relief claimed by the Contractor.

13.3 Following the receipt of a Relief Notice, the DCC shall as soon as reasonably practicable consider the nature of the Contractor Non-Performance and the alleged DCC Cause and whether it agrees with the Contractor's assessment set out in the Relief Notice as to the effect of the relevant DCC Cause and its entitlement to relief, consulting with the Contractor where necessary.

13.4 The Contractor shall use all reasonable endeavours, at DCC's cost, to eliminate or mitigate the consequences and impact of the DCC Cause.

14. COMPLIANCE WITH MANDATORY REQUIREMENTS **

14.1 General Obligations in relation to the Mandatory Requirements

- 14.1.1 The Contractor shall at all times provide the Services and perform its other obligations under the Agreement:
- (a) in accordance with all Mandatory Requirements and Consents (including the giving of notices and the obtaining of any such Consents) and so as not to prejudice the renewal of any such Consents; and
 - (b) so as not to put the DCC and/or any DCC Eco-system Entity in breach of the Mandatory Requirements.
- 14.1.2 Without prejudice to Clause 14.1.1, the Contractor shall comply with all directions given to it by the DCC with regard to compliance with the Mandatory Requirements. If the Contractor is aware (or reasonably suspects) that any direction given to it may cause the Contractor to be in breach of any Mandatory Requirements or cause the DCC to be in breach of any Mandatory Requirements, it shall immediately notify the DCC; and, subject to any instruction to the contrary from the DCC and only in the latter case (i.e. where the direction may cause the DCC to be in breach of any Mandatory Requirements), the Contractor shall continue to comply with the original direction following any such notification.
- 14.1.3 The Contractor shall promptly notify the DCC of any act or omission of the Contractor or any Contractor Person, or potential issues of which the Contractor is aware, that have or may have an adverse effect on the DCC's ability to comply with the Mandatory Requirements, and it shall cooperate fully with the DCC to resolve any such adverse effects.

14.2 Provision of Co-operation and Assistance

- 14.2.1 Without limiting the Contractor's other obligations under this Agreement, the Contractor shall:-
- (a) promptly provide any co-operation, documentation, data, information, reports or other assistance reasonably requested by the DCC, a Regulatory Body, the Compliance Officer, a Reviewer and/or any Successor Licensee from time to time in relation to the DCC's compliance with its obligations under the Mandatory Requirements (and any associated activities), including in relation to the preparation, review and/or revision of any plan, report (including in relation to the quality and performance of the Services), statement, accounts or other presentation or publication the preparation of which is required by the Mandatory Requirements; and
 - (b) ensure that appropriate representatives of the Contractor, including any representatives specifically identified by the DCC, attend any meetings with the DCC, a Regulatory Body, the Compliance Officer, a Reviewer or any Successor Licensee that are reasonably requested by the DCC from time to time in relation to the DCC's compliance with its obligations under the Mandatory Requirements including in relation to the

preparation, review and/or revision of any plan, report, statement, accounts or other publication which is required to be prepared by the Mandatory Requirements.

14.3 **Provision of Information under the DCC Licence**

14.3.1 Subject to Clause 14.3.3:-

- (a) if the DCC receives a request for Condition 29 Information from a Regulatory Body or the Secretary of State (as applicable) under the DCC Licence (each, an "**Information Request**"); and
- (b) in order to comply with the Information Request, the DCC requires the Contractor to provide any Condition 29 Information,

then the Contractor shall provide the Condition 29 Information requested by the DCC within the time and in the form requested by the DCC.

14.3.2 The Contractor shall provide any other assistance reasonably requested by the DCC to enable it to comply with the relevant Information Request.

14.3.3 The DCC agrees that the Condition 29 Information requested by the DCC under Clause 14.3.1(b) shall not exceed the scope of Condition 29 Information which is required, in turn, from the DCC in order to comply with the relevant Information Request.

14.3.4 The Contractor acknowledges that the DCC may be obliged to disclose Contractor's Confidential Information under the requirements of the relevant Information Request. 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.

14.3.5 The Contractor shall not enter into or be a party to any agreement or arrangement with any person who is materially connected with the carrying on of the Services that does not contain rights enabling the Contractor to procure from that person and to provide to the DCC any Condition 29 Information that is requested under or pursuant to this Clause 14.3.

15. **AVAILABILITY OF RESOURCES****

15.1 Without limiting its other obligations under this Agreement, the Contractor shall at all times ensure that it has available to itself, either directly or under appropriate contractual arrangements, such operational and financial resources (including management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities) on such terms and with all such rights, as will enable it to properly and efficiently perform the Services.

16. **MANAGEMENT ORDERS; REVOCATION OR EXPIRY OF THE DCC LICENCE****

- 16.1 The Contractor acknowledges that in the circumstances specified in Part 2 of the DCC Licence:
- 16.1.1 a Regulatory Body is entitled to revoke the DCC Licence; and
- 16.1.2 a Regulatory Body's powers of revocation under the DCC Licence include a power to direct the DCC to cease carrying on any or all of its activities under the DCC Licence while still remaining the holder of the DCC Licence (including for purposes connected with a handover the DCC's business in accordance with Condition 43 of the DCC Licence or for purposes arising from an occurrence of any Revocation Event however described under the terms of the DCC Licence).
- 16.2 Without limiting the Contractor's other obligations under this Agreement, the Contractor shall:
- 16.2.1 promptly provide any co-operation, documentation, data, information or other assistance reasonably requested by:
- (a) the DCC or any person performing the functions or activities of DCC pursuant to a Management Order from time to time in relation DCC's compliance with a Management Order;
 - (b) the DCC from time to time in relation to the preparation, review and/or modification of the Business Handover Plan; or
 - (c) the DCC, a Regulatory Body and/or the Successor Licensee in relation to the handover of the Authorised Business from the DCC to the Successor Licensee;
- 16.2.2 ensure that appropriate representatives of the Contractor, including any representatives specifically identified by the DCC, a Regulatory Body and/or the Successor Licensee, attend any meetings with any of those persons that are requested from time to time in relation to:
- (a) any person performing the functions or activities of DCC pursuant to a Management Order;
 - (b) the preparation, review and/or modification of the Business Handover Plan; or
 - (c) the handover of the Authorised Business from the DCC to the Successor Licensee, and
- 16.2.3 continue to perform the Services in accordance with this Agreement notwithstanding the handover of the Authorised Business from the DCC to the Successor Licensee.
- 16.3 To the extent that compliance by the Contractor with this Clause 16 requires the Contractor to incur any material additional costs (being costs which it would not have otherwise incurred under this Agreement), then the Contractor may notify the DCC accordingly and the Parties (acting reasonably) shall agree any necessary changes to the Charges.

17. INDEPENDENCE AND NON-DISCRIMINATION OBLIGATIONS **

- 17.1 The Contractor shall at all times manage and perform the Services and its obligations under this Agreement in a way that is calculated to ensure that it does not contrary to the applicable Law restrict, prevent, or distort competition:
- 17.1.1 in any activity (other than the Authorised Activity) that is authorised by an Energy Licence under the Principal Energy Legislation; or
- 17.1.2 in the provision of, or in any of the markets for, Commercial Activities that are connected with the Supply of Energy under the Principal Energy Legislation
- 17.2 The Contractor shall not, and shall procure that any Affiliate or Related Undertaking of the Contractor from time to time shall not, at any time, hold or acquire any investments by way of shares, securities or other financial rights or interests in the DCC (or any subsidiary of the DCC).
- 17.3 The Contractor shall ensure that no director of the Contractor (or any director of any Affiliate or Related Undertaking of the Contractor):-
- 17.3.1 is or at any time becomes a director or an employee of the DCC (or any subsidiary of the DCC); or
- 17.3.2 at any time holds or acquires any investments by way of shares, securities or other financial rights or interests in the DCC (or any subsidiary of the DCC).
- 17.4 The Contractor shall take all appropriate steps within its power (and shall procure that any Affiliate or Related Undertaking of the Contractor from time to time shall take all appropriate steps within its power) to ensure that it and any such entity is not, and does not at any time become, a Related Undertaking of:
- 17.4.1 the DCC (or any subsidiary of the DCC); or
- 17.4.2 any person who, whether by virtue of the investments it holds or otherwise, is able to exert a material influence over the conduct or affairs of the DCC (or any subsidiary of the DCC).
- 17.5 Clauses 17.2 to 17.4 shall not apply to any holdings in shares in any parent Affiliate of the DCC that are generally available to the public on any recognised stock exchange(s). The Contractor shall otherwise immediately notify the DCC if it becomes aware that it has failed to comply in any way with its obligations under any of Clauses 17.1 to 17.4.
- 17.6 In performing any of the Services, the Contractor shall not unduly discriminate between any person or any class or description of persons in connection with the provision of the Services.
- 17.7 The Contractor shall establish and maintain management systems, procedures and arrangements that are designed to secure its compliance with its obligations under Clauses 17.1 to 17.6.
- 18. CO-OPERATION WITH THIRD PARTIES**
- 18.1 The Contractor recognises the importance of it co-operating with the DCC and the Relevant Service Providers in order to ensure that the DCC is able to provide the DCC Services in a successful and timely manner and in accordance with

the Mandatory Requirements.

- 18.2 Each Party shall comply with its respective obligations, and may exercise its respective rights, under Schedule 20 (*Co-operation*).

19. QUALITY ASSURANCE

- 19.1 Each Party shall comply with its respective obligations, and may exercise its rights, under Schedule 8 (*Quality Assurance*).

20. CHARGING AND INVOICING

- 20.1 In consideration of the Contractor carrying out its obligations, including the provision of the Services, under this Agreement, the DCC shall pay the Charges to the Contractor in accordance with Schedule 22 (*Charges and Invoicing*) and each Party shall comply with its respective obligations, and may exercise its respective rights, under Schedule 22 (*Charges and Invoicing*).
- 20.2 Except as expressly stated in this Agreement, the Parties shall each bear its costs and expenses incurred in respect of compliance with its obligations under this Agreement.

21. FINANCIAL DISTRESS **

- 21.1 The Contractor warrants and undertakes that:-
- 21.1.1 it meets or exceeds and shall continue to meet and exceed, the Credit Rating Level.
 - 21.1.2 it has notified and shall promptly notify the DCC in writing of any failure to meet or exceed the Credit Rating Level.
- 21.2 The Contractor shall, on request, provide the DCC with any publically available information required by the DCC to enable it to determine the Contractor's financial viability.
- 21.3 If during the term the Contractor's Dun & Bradstreet score for financial stability falls below the Credit Rating Level, the DCC reserves the right to:-
- 21.3.1 immediately suspend the Contractor's appointment under this Agreement. Such suspension will remain in force until the Contractor's Dun & Bradstreet score for financial stability is restored to or above the Credit Rating Level or the Contractor has provided assurance of its continuing financial stability to the DCC's reasonable satisfaction;
 - 21.3.2 require such further security for the Contractor's performance, and its ability to meet its liabilities to the DCC in full in the event of non-performance, as the DCC may reasonably require; and/or
 - 21.3.3 require copies of the Contractor's published accounts, including a balance sheet, profit and loss statement, cash flow statement and relevant supporting notes, along with its management accounts, on request until such time as the above events are reversed. The Contractor shall be responsible for notifying and satisfying the DCC that the events have been reversed, such satisfaction to be at the sole discretion of the DCC.
- 21.4 Failure to provide the required security under Clause 21.3.2 (*Financial Distress*) within fifteen (15) Business Days of the DCC's request, or to provide copies of

the documents referred to in Clause 21.3.3 (*Financial Distress*) within five (5) Business Days of the DCC's request shall be a material breach capable of remedy.

22. NOT USED

23. RECOVERY OF SUMS DUE

23.1 The DCC may at any time retain or set-off any amount owed to it by the Contractor or any liability (whether liquidated or otherwise) to the Contractor under this Agreement or any other agreement between the Contractor and the DCC.

23.2 The Contractor shall have no right, whether contractual, at common law or otherwise, to deduct or apply to reduce the amount of any sum due to, or becoming due from, the Contractor to the DCC under this Agreement or any other agreement between the Contractor and the DCC or to exercise any right of set-off.

23.3 Any exercise by the DCC of its rights under this Clause 23 shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

24. NOT USED

25. VARIATION

25.1 Any requirement for a Variation shall be subject to the Variation Procedure and each Party shall comply with its respective obligations, and may exercise its respective rights, under Schedule 19 (*Variation Procedure*).

26. DISPUTE RESOLUTION PROCEDURE **

26.1 If a Dispute arises in relation to any aspect of this Agreement, the representatives of the Contractor and DCC responsible for the administration of this Agreement shall first consult and discuss in good faith in an attempt to come to an agreement in relation to the disputed matter.

26.2 If the Parties fail to resolve the Dispute at that level within a reasonable period of time (having due regard for the nature of the dispute and the operational necessity for its resolution), the dispute shall be escalated to the respective responsible company directors within each Party for resolution.

26.3 If the Dispute remains unresolved between the Parties after ten (10) Business Days after it has been referred to the directors of the Parties pursuant to Clause 26.2 above, then:

26.3.1 the Parties may proceed to mediation provided by the Centre for Dispute Resolution (or such other body as the Parties may agree); or

26.3.2 the Parties may employ any other method or procedure for the resolution of disputes as may be agreed between them.

26.4 In respect of any Dispute that has not been resolved in accordance with Clauses 26.1 to 26.3:

26.4.1 the DCC may, at any time before court proceedings are commenced, serve a notice on the Contractor requiring that the Dispute be referred to arbitration in accordance with Clause 26.5, and the Contractor shall comply with such requirement; and

- 26.4.2 if the Contractor intends to commence any court proceedings in relation to the Dispute, it shall first serve written notice on the DCC confirming its intention to do so, and the DCC shall have fifteen (15) Business Days from the date of receipt of the Contractor's notice under this Clause 26.4.2 in which to reply to the Contractor in writing, requiring that the Dispute be referred to arbitration in accordance with Clause 26.4.1, and the Contractor shall comply with such requirement.
- 26.5 The following provisions shall apply to any arbitration proceedings commenced under Clause 26.4:
- 26.5.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- 26.5.2 the London Court of International Arbitration ("**LCIA**") (consisting of a three-member panel) procedural rules shall be applied to the arbitration and are deemed to be incorporated into this Agreement (provided that, in the event of any conflict between those rules and this Agreement, this Agreement shall prevail);
- 26.5.3 the decision of the arbitrators shall be final and binding on the Parties except where:
- (a) there is a material failure by the arbitrators to comply with the LCIA procedural rules;
 - (b) there is a serious irregularity (as defined in section 68(2) of the Arbitration Act 1996) affecting the arbitration; or
 - (c) either Party successfully appeals the arbitral award on a point of law in accordance with section 69 of the Arbitration Act 1996;
- 26.5.4 the seat, or legal place, of the arbitration shall be London, United Kingdom;
- 26.5.5 the language to be used in the arbitral proceedings shall be English;
- 26.5.6 the arbitral proceedings and any award shall be confidential; and
- 26.5.7 the arbitrators shall determine how and by whom the costs of the arbitral proceedings, including their fees and expenses, are to be paid.
- 26.6 If no agreement is reached between the Parties to proceed pursuant to Clause 26.3 and, without prejudice to the DCC's rights under Clause 26.4, both Parties shall be entitled to pursue the matter in law.
- 26.7 The Contractor shall not, under any circumstances, suspend the provision of the Services, other than in accordance with this Agreement.
- 26.8 The DCC (acting reasonably and in good faith) may require the consolidation of any Disputes where such Disputes relate to common questions of law or fact or if it otherwise convenient to do so (unless such consolidation would prejudice the rights of either Party). The Contractor acknowledges and accepts that such consolidation of Disputes may include or otherwise relate to disputes with a Relevant Service Provider and any SEC Party.

Subcontractors

- 26.9 The Contractor shall procure that any Sub-contractor involved in the provision of any Services which are the subject of a Dispute shall provide any information or assistance reasonably required by either Party in order to resolve such Dispute (including the provision of any reasonable information, data or documentation and the reasonable attendance at any meetings or hearings).
- 26.10 Unless otherwise agreed by the Parties in writing, responsibility for any costs incurred by any Sub-contractors participating in the resolution of any Dispute shall be determined by the relevant forum of dispute resolution.
- 26.11 For the avoidance of doubt, a Sub-contractor shall not have the authority to agree the outcome of any resolution of a Dispute or the procedures that shall apply in respect of the resolution of any Dispute.

27. SUPPLY CHAIN RIGHTS **

- 27.1 The Contractor shall (and shall ensure that each Sub-contractor shall):
 - 27.1.1 satisfy itself, before entering into any Sub-contract (including in connection with the replacement of any Sub-contractor) that the proposed Sub-contractor is capable of satisfying the requirements imposed on it and/or the Contractor pursuant to this Agreement (including security and other requirements), including by conducting a security assessment of the proposed Sub-contractor;
 - 27.1.2 not Sub-contract to a person (including in connection with the replacement of any Sub-contractor) without the DCC's prior written consent, which shall not be unreasonably withheld or delayed; and
 - 27.1.3 not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement or any Sub-contract without the prior written consent of the DCC (such consent not to be unreasonably withheld or delayed).
- 27.2 The Contractor shall remain responsible for all acts and omissions of Contractor Persons, and the acts and omissions of those employed or engaged by the Contractor Persons, as if they were its own acts and omissions. Any obligation on the Contractor to do, or to refrain from doing, any act or thing under this Agreement or otherwise shall include an obligation upon the Contractor to procure that all Contractor Persons also do, or refrain from doing, such act or thing.
- 27.3 The DCC may, by written notice, require the Contractor to terminate any Sub-contract and/or remove the relevant Sub-contractor from the performance of the Services within ninety (90) days if:
 - 27.3.1 the acts or omissions of the relevant Sub-contractor have given rise to any right for the DCC to terminate this Agreement; and/or
 - 27.3.2 the Sub-contractor has failed to comply with any requirement or warranty set out in this Agreement and, if remediable, the Sub-contractor has failed to remedy such breach within twenty (20) days of the DCC giving written notice of such failure to the Contractor.

- 27.4 If any Sub-contract shall at any time during the Term expire, terminate or otherwise cease to be in full force and effect, the Contractor shall:
- 27.4.1 immediately itself provide suitable replacement services or appoint a replacement Sub-contractor; and
 - 27.4.2 ensure that the relevant Sub-contractor shall, where relevant, comply with the applicable provisions of this Agreement, including Clause 47.4 (*Consequences of Expiry or Termination*) as if the relevant Sub-contractor were the Contractor at the end of the Term.
- 27.5 If the DCC exercises its rights under Clause 27.3, the Contractor shall:
- 27.5.1 ensure the Services continue to be provided without interruption (including without any degradation in quality or performance against the Performance Measures);
 - 27.5.2 ensure the Services are provided at no additional Charge to the DCC (and any extra costs or expense shall be borne by the Contractor);
 - 27.5.3 immediately put forward proposals for the interim management or provision of the relevant Services until such time as an alternative Sub-contractor can be engaged by the Contractor in accordance with this Agreement. If the Contractor fails to put forward such proposals (or if such proposals, if implemented, are not reasonably likely to ensure provision of the relevant Services in accordance with this Agreement) then, without prejudice to the DCC's other rights or remedies, the DCC may perform, or procure a third party to perform, such Services; and
 - 27.5.4 not be entitled to any relief or forbearance as a result of any delay in the appointment of a replacement Sub-contractor (unless and to the extent that the DCC has withheld or delayed its consent contrary to an express provision of this Agreement).
- 27.6 For the avoidance of doubt, the Contractor shall not be entitled to any reimbursement, costs or expenses (including in connection with termination compensation payments to Sub-contractors) in connection with the performance of any obligation under this Clause 27.
- 27.7 As at the Commencement Date, the DCC will be deemed to have given its consent to the use of the Sub-contractors listed in Schedule 13 (*Sub-contractors*), for the purposes set out therein.
- 27.8 The Contractor shall ensure that a term is included in each Sub-contract permitted under this Agreement which requires the Contractor to pay any undisputed sums due to its Sub-contractors within a specified period that does not exceed thirty (30) days from the date on which the Contractor receives the relevant Sub-contractor's invoice. The Contractor shall ensure that all Sub-contractors are paid promptly and in accordance with each Sub-contract.
- 27.9 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.

27.10 The Contractor agrees that, except where prohibited by Law, in making a request pursuant to Clause 27.1.2 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 reasonably requested by the DCC, and a copy of the proposed or existing Sub-contract which the Contractor may redact (acting reasonably) to preserve the confidentiality of sensitive financial information contained therein.

27.11 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 Sub-contract without the DCC's prior written consent, which shall not be unreasonably withheld or delayed.

28. RECORDS AND AUDITS **

28.1 During the Term and for a period of seven (7) years after the end of the Term (or for such period of time as required by Mandatory Requirements), the Contractor shall maintain accurate and up-to-date records, documentation and other similar materials whether financial or otherwise relating to this Agreement. The Contractor shall also maintain such records as are required to comply with all Mandatory Requirements.

28.2 If the DCC asks it to do so, the Contractor shall immediately make available to the DCC any file, correspondence, document or information (including, where available, audio and video recordings but excluding Commercially Sensitive Information) relating to the performance of the Contractor's obligations under this Agreement which the DCC informs the Contractor is required to enable the DCC (or any Regulatory Bodies) to review the Services or the Contractor's on-going ability to perform its obligations. The Contractor shall make available any other information which is needed to enable the DCC to comply fully and effectively with all Mandatory Requirements and requests from Regulatory Bodies. The Contractor shall comply with each request from the DCC to conduct self-verification exercises in respect of its own compliance with this Agreement and, for example, such verification exercises may include responding to questionnaires issued by the DCC, providing compliance certificates signed by executive directors of the Contractor, and engaging in testing exercises operated by the DCC.

28.3 Upon the DCC's request, the Contractor shall grant the DCC, its auditors (being any internal or external auditors of the DCC or professional services providers, provided such auditors or professional services providers are subject to confidentiality obligations and are not direct competitors of the Contractor in respect of services which are similar to the Services), or representatives of any Regulatory Body the right to enter the Sites, as the case may be, and shall procure such rights to enter those premises of its Contractor Persons, in order to inspect, review, verify, and take copies of all files, correspondence, documents or information (including, where available, audio and video recordings) and other things reasonably requested by the DCC or the Regulatory Body relating to the performance of the Services (but, other than in the case of any representatives of any Regulatory Body or external auditors, excluding access to Commercially Sensitive Information) and to audit and inspect the Contractor's systems, security arrangements (including data security measures as required under Clause 36 (Data Protection)) and its compliance with the terms of this Agreement generally. The DCC shall not have access to Commercially Sensitive Information other than the outcome of the audit. The DCC shall give the Contractor reasonable notice, but, in any event,

such notice period shall not be less than forty eight (48) hours except where the requirements of Mandatory Requirements or a Regulatory Body do not permit it or where the DCC suspects fraud (in which circumstances no advance notice need be given). Additionally, the Contractor shall give the DCC all assistance reasonably requested, including making available documentation and Contractor Personnel for interviews and granting or procuring the granting of access to premises, equipment (including hardware and software) used in the performance of the Services.

- 28.4 The Contractor shall bear the reasonable costs of the DCC for any inspection, review, or verification under this Clause if such an inspection, review, or verification finds irregularities, material errors or non-compliance on the part of the Contractor with this Agreement. Otherwise, the DCC's costs of any inspection, review, or verification under this Clause shall be paid by the DCC. The Contractor shall be responsible for any of its own costs incurred by it in relation to any inspection, review, or verification under this Clause 28.
- 28.5 The DCC agrees that any inspection, review, or verification under this Clause 28 which is undertaken on its instructions shall, as far as reasonably possible, be undertaken so as to minimise disruption to the Contractor's business, both generally and in relation to the provision of the Services.
- 28.6 Without limitation to the rights to audit at any time, if the DCC determines that the circumstances are such as to require a further inspection, review, or verification to demonstrate or provide assurance that any irregularities, errors or non-compliance has been remedied, the DCC shall have the right to undertake such further inspection, review, or verification.
- 28.7 If the DCC determines, having carried out an audit that:
- 28.7.1 the Contractor has failed to comply with the terms of this Agreement, the DCC may (without prejudice to any rights and remedies the DCC may have) require the Contractor to correct such non-compliance as soon as reasonably practicable and, if such non-compliance constitutes a Notifiable Default, to comply with the Rectification Plan Process; or
- 28.7.2 the DCC has overpaid any Charges, the Contractor shall pay to the DCC:-
- (a) the amount overpaid; and
- (b) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the DCC up to the date of repayment by the Contractor.
- 28.8 If the DCC has underpaid any Charges, the Contractor shall not be entitled to increase the Charges paid or payable by the DCC.
- 28.9 In addition to using its own employees, the DCC may exercise its rights under this Clause 28 using external auditors or other agents. The Contractor shall also permit any Regulatory Body and its representatives to exercise the rights of the DCC under this Clause 28.

29. CHANGE IN MANDATORY REQUIREMENTS **

- 29.1 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Agreement nor be entitled to an increase in the Charges as the result of any change in Mandatory Requirements.
- 29.2 Each Party shall monitor and shall keep the other Party informed in writing of any changes in the Mandatory Requirements which may impact the Services and/or the obligation of the Contractor under this Agreement.
- 29.3 The Contractor shall consult with the DCC (and wherever possible agree with the DCC) on the manner, form and timing of changes it proposes to make to meet any changes in Mandatory Requirements where it would impact the Services and/or the obligation of the Contractor under this Agreement.
- 29.4 The Contractor shall not implement any change arising from any change in Mandatory Requirements without the DCC's prior written agreement, and any such change shall be agreed and documented in accordance with the Variation Procedure.
- 29.5 The Contractor shall use all reasonable endeavours to minimise any disruption caused by any change in Mandatory Requirements.

30. CONTRACTOR PERSONNEL **

- 30.1 The Contractor shall ensure that, at all times:
- 30.1.1 each of the Contractor Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - 30.1.2 there is an adequate number of Contractor Personnel to provide the Services in accordance with this Agreement;
 - 30.1.3 only those people who are authorised by the Contractor (and who comply with the obligations on the Contractor and Sub-contractors under this Agreement) are involved in providing the Services; and
 - 30.1.4 all of the Contractor Personnel, where relevant, comply with all of the Mandatory Requirements and the Contractor's other obligations in connection with this Agreement, including those that apply to persons who are allowed access to any of the DCC Premises.
- 30.2 The DCC may:
- 30.2.1 require that any Unsuitable Staff shall not be (or shall cease to be) engaged or employed in the provision of the Services in any capacity; and/or
 - 30.2.2 refuse admission to any of the DCC Premises to any Unsuitable Staff.
- 30.3 The Contractor shall comply (and shall ensure all Contractor Persons comply) with any such decision by the DCC pursuant to clause 30.2 except to the extent that doing so would place any Contractor Person in breach of any Laws. The DCC shall provide the Contractor with the reasons for any decision under this Clause 30.3 within a reasonable time after a written request to do so from the Contractor.

- 30.4 Following the removal of any of the Contractor Personnel under Clause 30.2 or otherwise, the Contractor shall ensure that such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 30.5 For the purposes of Clause 30.2 "**Unsuitable Staff**" means any class of individuals generally or individual Contractor Personnel whom the DCC (acting reasonably) decides:
- 30.5.1 have failed to carry out their duties with reasonable skill and care;
 - 30.5.2 have placed or is reasonably likely to place the Contractor in breach of any obligation under this Agreement or any Co-operation Agreement;
 - 30.5.3 represents a security risk;
 - 30.5.4 does not have the required levels of training and expertise; or
 - 30.5.5 should be removed or denied admission to the DCC Premises for another reasonable reason.
- 30.6 The Contractor shall (and shall ensure all Contractor Persons shall):
- 30.6.1 comply with the Staff Vetting Procedures (as amended from time to time under the Variation Procedure) in respect of all Contractor Personnel employed or engaged in the provision of the Services at any time;
 - 30.6.2 ensure that all Contractor Personnel employed or engaged in the provision of the Services are vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures; and
 - 30.6.3 ensure that all Contractor Personnel employed or engaged in the provision of the Services are re-vetted and/or re-screened at such times as is required for compliance with the requirements of the Staff Vetting Procedures.
- 30.7 The Contractor shall provide training on a continuing basis for all Contractor Personnel (including those of its Sub-contractors) employed or engaged in the provision of the Services in relation to compliance with the Security Policy and the Security Management Plan.

31. HEALTH AND SAFETY **

- 31.1 The Contractor shall comply (and ensure that all Contractor Personnel comply) with:
- 31.1.1 the health and safety policies adopted from time to time by the Contractor or any Contractor Entity; and
 - 31.1.2 the Health and Safety Regime.
- 31.2 To the extent necessary, the DCC will be responsible for procuring that its employees and agents also comply with the Health and Safety Regime.

- 31.3 Either Party shall notify the other as soon as practicable of any health and safety hazards at the DCC Premises or other sites from which it provides the Services of which it becomes aware. The Contractor will draw these hazards to the attention of the Contractor Personnel and will instruct those persons in connection with any necessary associated safety measures.

32. EQUALITY AND DIVERSITY **

- 32.1 The Contractor shall, and shall procure that the Contractor Personnel shall, comply with:

32.1.1 any applicable anti-discrimination Laws (including the Equality Act 2010); and

32.1.2 the equality and diversity policies adopted from time to time by the Contractor of any Contractor Entity.

33. NON-SOLICITATION

- 33.1 No Party will (directly or indirectly, for the benefit of itself or any other person), during the term of this Agreement and for a period of six (6) months after its expiry or termination for any reason, solicit or hire as an employee or consultant any senior employee or senior long-term consultant of any other Party who is involved with the performance of this Agreement. Provided however that this Clause 33 will not prevent any Party from hiring:

33.1.1 any person who has ceased to be an employee or consultant of any other Party at least six (6) months before being employed or engaged by the hiring Party and who was not solicited during that six (6) month period;

33.1.2 any employee or consultant of any other Party who contacts the hiring Party on his own initiative without any direct or indirect solicitation by or encouragement from or on behalf of the hiring Party; or

33.1.3 any employee or consultant of any other Party as a result of placing general advertisements in trade journals, newspapers or similar publications which are not directed at the other Party or its employees or consultants.

34. INTELLECTUAL PROPERTY RIGHTS AND LICENCES GRANTED **

Contractor IPR

- 34.1 The Contractor hereby grants to the DCC a perpetual, royalty-free, irrevocable and non-exclusive licence to Use the Contractor IPR for the Permitted Purpose.

Third Party IPR

- 34.2 Subject to Clause 34.3, the Contractor shall procure that the owners or the authorised licensors of any Third Party IPR grant to the DCC a direct, perpetual, royalty-free, irrevocable and non-exclusive licence to Use the Third Party IPR for the Permitted Purpose.

- 34.3 If the Contractor cannot obtain the necessary licence in accordance with the requirements of Clause 34.2, 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 third party provider. The Contractor shall only be excused from its obligations under Clause 34.2 to

the extent that the DCC accepts (in its sole discretion) any alternative arrangements in accordance with this Clause 34.3.

Project Specific IPR

- 34.4 The Contractor hereby assigns to the DCC title to and all rights and interest in the Project Specific IPR or shall procure that the first owner of the relevant Project Specific IPR assigns them to the DCC on the same basis.
- 34.5 The assignment under Clause 34.4 shall either take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPR.
- 34.6 The assignment under Clause 34.4 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.
- 34.7 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 Clause 34.4 or shall procure that the owner of the relevant Project Specific IPR does so on the same basis.
- 34.8 The Contractor acknowledges and accepts that the DCC may subsequently transfer the title to and all rights and interest in the Project Specific IPR to any third party.

DCC IPR and Relevant Service Provider IPR

- 34.9 The DCC hereby grants (or shall procure the grant) to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Term to use the DCC IPR, Relevant Service Provider IPR and Project Specific IPR solely to the extent necessary for performing the Services in accordance with this Agreement. The Contractor shall not use the DCC IPR, Relevant Service Provider IPR or Project Specific IPR for any other purpose or for the benefit of any person other than the DCC.
- 34.10 In the event of the termination or expiry of this Agreement the licences referred to in Clause 34.9 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 Clause 34.9 in the Contractor's possession or control.

Sub-licensing

- 34.11 The DCC may sub-licence its rights under Clauses 34.1 and 34.2 to:
 - 34.11.1 any DCC Eco-System Entity (including any replacements for such persons from time to time);
 - 34.11.2 any Replacement Contractor;
 - 34.11.3 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:

- (a) 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
- (b) 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

34.11.4 any other third party to the extent necessary for such person to provide any goods or services to the DCC.

Successors

34.12 The Contractor acknowledges and agrees that if this Agreement is novated, assigned or otherwise transferred to any person in accordance with Clause 50 (*Assignment and Novation*) (the “**Transferee**”), then:

34.12.1 the licences granted by the Contractor under Clauses 34.1 and 34.2 and Paragraph 2.2 of Schedule 11 (*Escrow*), and the other rights of the DCC under this Agreement, shall automatically transfer to the Transferee on the same terms as such licences and rights are granted under this agreement; and

34.12.2 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.

34.13 If, for any reason, this Agreement is not novated, assigned or otherwise transferred to any person in accordance with Clause 50.3 (*Assignment and Novation*), the Contractor undertakes to grant equivalent licences and rights to those set out in Clauses 34.1 and 34.2 and Paragraph 2.2 of Schedule 11 (*Escrow*) to:

34.13.1 each Successor Licensee; and

34.13.2 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 Clause 34.13.2) to exercise its functions under or pursuant to its licence to carry on the Authorised Activity.

General

34.14 The Contractor shall waive or procure a waiver of any moral rights in any copyright works assigned to the DCC under this Agreement.

34.15 Where either party acquires, by operation of Law, title to IPR that is inconsistent with the allocation of title set out in this Clause 34, it shall promptly do all acts and things as may be necessary, and execute all necessary documents, to assign such IPR as it has acquired to the other party and, pending such assignment, shall hold all such IPR on trust for the other party.

34.16 Where any of the Contractor Entities acquires, by operation of Law, title to IPR that is inconsistent with the allocation of title set out in this Clause 34, the Contractor shall procure that:

34.16.1 the relevant Contractor Entity shall promptly do all acts and things as may be necessary, and execute all necessary documents, to assign such IPR as it has acquired to the DCC; and

34.16.2 pending such assignment, the relevant Contractor Entity shall hold all such IPR on trust for the DCC.

Registers

34.17 The Contractor shall maintain registers of the Contractor IPR, Third Party IPR, Project Specific IPR, DCC IPR and Relevant Service Provider IPR in accordance with Schedule 21 (*Exit Management*).

Escrow

34.18 Each Party shall comply with its respective obligations, and may exercise its rights, under Schedule 11 (*Escrow*).

35. DCC DATA **

35.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the DCC Data.

35.2 The Contractor shall not store, copy, disclose, or use the DCC Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the DCC.

35.3 To the extent that DCC Data are held and/or processed by the Contractor, the Contractor shall supply that DCC Data to the DCC as requested by the DCC in any format reasonably required by the DCC.

35.4 The Contractor shall preserve the integrity of DCC Data and prevent the corruption or loss of DCC Data at all times that the relevant DCC Data is under its control or the control of any Sub-contractor, in compliance with the Security Policy and the Security Management Plan.

35.5 The Contractor shall ensure that any system on which the Contractor holds any DCC Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan.

35.6 If any of the DCC Data are corrupted, lost or sufficiently degraded as a result of the Contractor's act or omission so as to be unusable, the DCC may:

35.6.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of DCC Data to the last available back-up copy and the Contractor shall do so as soon as practicable but not later than five (5) Business Days from the date of receipt of the DCC's notice; and/or

35.6.2 itself restore or procure the restoration of DCC Data to the last available back-up copy, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

- 35.7 If at any time the Contractor suspects or has reason to believe that DCC Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the DCC immediately and, as soon as reasonably practicable, and in any event within five (5) Business Days, inform the DCC of the remedial action the Contractor proposes to take.

36. PROTECTION OF PERSONAL DATA **

Arrangement between the Parties

- 36.1 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the DCC is a Data Controller and that the Contractor is a Data Processor. In respect of the Contractor's Processing under this Agreement:

- 36.1.1 the subject-matter, nature and purpose of the Processing will be DCC employee and supply chain contact details used for the purposes of liaising with such parties to perform the Services and/or as required to assist in delivering the Objectives;
- 36.1.2 the type of Personal Data being processed will be Personal Data of names, contact addresses, email addresses and telephone numbers;
- 36.1.3 the duration of the Processing shall be the term of this Agreement; and
- 36.1.4 the parties will use the Variation Procedure to agree any changes to this clause for the Transition to Live and Operational Phase.

Processor obligations

- 36.2 The Contractor shall:

- 36.2.1 Process the Personal Data only in accordance with instructions from the DCC to perform its obligations under this Agreement;
- 36.2.2 ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data, including the measures as are set out in Clause 35 (*DCC Data*), Clause 41 (*Security Requirements*) and the Security Management Plan;
- 36.2.3 not disclose or transfer the Personal Data to any third party or Contractor Personnel, or allow a third party or Contractor Personnel access to the Personal Data, unless necessary for the provision of the Services and:
- (a) for any disclosure or transfer of Personal Data to any third party, with the prior written consent of the DCC;
 - (b) where the Contractor wishes to appoint a sub-Processor, in compliance with Clause 27 (*Supply Chain Rights*) and any applicable conditions under such Clause 27 (*Supply Chain Rights*) or Clause 36.3;

36.2.4 take all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that the Contractor Personnel:

- (i) are aware of and comply with the Contractor's duties under this Clause 36.2 and Clauses 37 (*Confidentiality*), 35 (*DCC Data*) and 41 (*Security Requirements*);
- (ii) are subject to appropriate confidentiality undertakings with the Contractor or the relevant Sub-contractor;
- (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the DCC or as otherwise permitted by this Agreement; and
- (iv) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Data Protection Laws);

36.2.5 notify the DCC within 48 hours if it:

- (a) receives from a Data Subject (or third party on their behalf):
 - (i) a Data Subject Access Request (or purported Data Subject Access Request);
 - (ii) a request to rectify, block or erase any Personal Data; or
 - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
- (b) considers that any of the instructions from the DCC infringe the Data Protection Laws;
- (c) receives any Regulator Correspondence or any other any communication from the Information Commissioner or any other Regulatory Body in connection with Personal Data Processed under this Agreement;
- (d) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (e) is required by Law to commit an act or omission that would, but for Clause 36.2, constitute a breach of this Clause 36;

36.2.6 provide the DCC with full co-operation and assistance (within the timescales reasonably required by the DCC) in relation to either Party's obligations under the Data Protection Laws or any complaint,

communication or request made as referred to in Clause 36.2.5, including by promptly providing:

- (a) the DCC with full details and copies of the complaint, communication or request;
- (b) where applicable, such assistance as is reasonably requested by the DCC to enable the DCC to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Laws; and
- (c) the DCC, on request by the DCC, with any Personal Data it holds in relation to a Data Subject; and

36.2.7 assistance following a security breach or incident involving Personal Data as required by the DCC including with respect to the DCC's consultation with the Information Commissioner's Office; and

36.2.8 if requested by the DCC, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 36 and provide to the DCC copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

36.3 The Contractor shall not Process or otherwise transfer any Personal Data in or to any Restricted Country without the DCC's prior written consent. If, after the Commencement Date, the Contractor or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the Contractor shall, in seeking consent, submit such information as the DCC's shall require in order to enable it to consider the request and acknowledges that such consent may be given subject to conditions which will, if appropriate, be incorporated into this Agreement at the Contractor's cost and expense using the Variation Procedure.

36.4 The Contractor shall use its reasonable endeavours to assist the DCC to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause the DCC to breach any of the DCC's obligations under the Data Protection Laws to the extent the Contractor is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

36.5 The Contractor shall indemnify and keep indemnified the DCC at all times against any Losses incurred by the DCC in connection with the Contractor's breach of this Clause 36 and/or any failure by the Contractor or any Sub-contractor to comply with their respective obligations under Data Protection Laws.

36.6 Nothing in this Clause 36 shall be construed as requiring the Contractor or any relevant Sub-contractor to be in breach of any Data Protection Laws.

37. CONFIDENTIALITY **

37.1 For the purposes of this Clause 37, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential

Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.

- 37.2 Except to the extent set out in this Clause 37, or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- 37.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (to a reasonable standard of care and as appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - 37.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
 - 37.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - 37.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 37.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 37.3.1 the Recipient is required to disclose the Confidential Information by the Mandatory Requirements;
 - 37.3.2 the need for such disclosure arises out of or in connection with:
 - (a) any legal challenge or potential legal challenge against the DCC arising out of or in connection with this Agreement;
 - (b) the examination and certification of the DCC's accounts (provided that the disclosure is made on a confidential basis) or for any examination or audit pursuant to the DCC Licence; or
 - (c) the conduct of a Regulatory Body review; or
 - 37.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 37.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or Regulatory Body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 37.5 The Recipient's duties under this Clause 37 include a duty to take all appropriate steps within its power (including where necessary by way of contractual requirement) to ensure that any Affiliate or Related Undertaking of the

Recipient, and any agent, consultant, or contractor of the Recipient, complies with this Clause 37.

37.6 The obligations set out in Clause 37.2 shall not apply to any information of the Disclosing Party which:

37.6.1 was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;

37.6.2 the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;

37.6.3 was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or

37.6.4 was independently developed without access to the Confidential Information.

37.7 The DCC (or any person acting on its behalf) may disclose, or permit the disclosure of, any Contractor's Confidential Information except Commercially Sensitive Information and subject to equivalent obligations of confidentiality to (and permit its use by) any of the following persons:

37.7.1 any DCC Eco-system Entity solely in relation to any DCC Purpose;

37.7.2 any person as reasonably required by the DCC in connection with the transfer of the Licence to a Successor Licensee.

37.8 The DCC may disclose, or permit the disclosure of, any Contractor's Confidential Information (including Commercially Sensitive Information) to (and permit its use by) any of the following persons:

(a) any Regulatory Body;

(b) the Compliance Officer solely in relation to any DCC Purpose;

(c) the Authority, the Compliance Officer, a Reviewer and/or any Replacement Contractor from time to time in relation to the DCC's compliance with its obligations under the Mandatory Requirements; and

(d) any person to whom any rights or obligations of the DCC under this Agreement are or are to be assigned, novated or otherwise transferred in accordance with Clause 50 (*Assignment and Novation*) and/or any proposed or actual Replacement Contractor solely in relation to any DCC Purpose.

38. RIGHT TO PUBLISH**

38.1 The Contractor acknowledges that DCC may be obliged to publish this Agreement in order to comply with the Mandatory Requirements. Both Parties agree to such publication and acknowledge that in this circumstance any

Commercially Sensitive Information would be redacted and the Contractor agrees to promptly agree reasonable redactions with DCC to enable this publication.

39. WARRANTIES

Mutual warranties

- 39.1 Each Party warrants, represents and undertakes as at the Signature Date that:
- 39.1.1 it has full capacity and authority to enter into and to perform this Agreement and it has (and shall have) undertaken all requisite corporate and other action to approve the signature and performance of this Agreement or any Variation to it;
 - 39.1.2 this Agreement is executed by a duly authorised representative of that Party;
 - 39.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party (and, in respect of the Contractor, any of its Sub-contractors) before any court or administrative body or arbitration tribunal that might affect the ability of that Party to meet and carry out its obligations under this Agreement (and the Contractor further warrants, represents and undertakes that the same is true in respect of each Sub-Contractor as at the Signature Date); and
 - 39.1.4 once duly executed, this Agreement will constitute its legal, valid and binding obligations.

Contractor warranties

- 39.2 The Contractor warrants, represents and undertakes that as at the Signature Date, neither it, nor any of its Sub-Contractors, are aware of:
- 39.2.1 any circumstances which will or are reasonably likely to lead to a decrease in the Credit Rating Level in respect of itself (and/or, as applicable, any Sub-Contractor); and/or
 - 39.2.2 any matter that will or is reasonably likely to adversely affect the Contractor's (and/or, as applicable, any Sub-Contractor's) ability to perform any relevant part(s) of the Services in accordance with this Agreement, including any matter that will or is reasonably likely to adversely affect full compliance with the warranties referred to in Clause 39.2.3; and
 - 39.2.3 as at the date upon which they were submitted by the Contractor, all statements and representations set out in:
 - (a) the Contractor's responses to Request for Proposal dated 17 May 2017 (the "**RFP Response**"); and
 - (b) the Contractor's responses to all clarification questions raised by DCC in connection with the RFP Response,were true, complete and accurate in all respects.
- 39.3 The Contractor warrants, represents and undertakes for the duration of the Term that:
- 39.3.1 it has obtained and complied with and will maintain and comply with all applicable Consents;

- 39.3.2 all information communicated by the Contractor to the DCC as part of the Documentation at any time in connection with this Agreement shall be true, complete and accurate in all material respects;
- 39.3.3 it will promptly advise the DCC of any fact, matter or circumstance which would render any statement or representation referred to in Clause 39.2.3 to be false or otherwise misleading if it were repeated at such later time;
- 39.3.4 the Services shall meet the DCC Requirements in all respects and be provided in accordance with Good Industry Practice;
- 39.3.5 it will exercise all reasonable care and skill in performance of the Services in accordance with standards that would be expected of a similar business with similar experienced in providing such services;
- 39.3.6 the Services and all other work performed by the Contractor pursuant to this Agreement will be performed with due care, skill, diligence and speed, using staff of the Contractor who are competent and are skilled and experienced in the subjects, areas and matters which relate to the Services which they are to provide;
- 39.3.7 it will ensure that the DCC (and/or its nominee) or the Replacement Contractor shall acquire title to any assets provided to the DCC (and/or its nominee) or the Replacement Contractor (as applicable):
- (a) in the course of the provision of the Services; or
 - (b) in the event of the exercise of any of the options or offers to obtain all the rights, title and interest of the Contractor or any Contractor Person in and to any asset,
 - (c) obtain all the rights, title and interest of the Contractor or any Contractor Person in and to any asset,
- in each case with full title guarantee and free from all encumbrances and the DCC (and/or its nominee) or the Replacement Contractor (as applicable) shall have the right to quiet possession of such assets and such assets shall at that stage be in a condition consistent with the Contractor having complied with its obligations under this Agreement;
- 39.3.8 it has and will have authority to grant any rights to be granted hereunder and has and will have obtained valid licences to any IPR necessary for the fulfilment of all its obligations under this Agreement, including that it has and will continue to have all necessary rights:
- (a) in accordance with Clause 34 (*Intellectual Property Rights and Licences Granted*) and to comply with its obligations under this Agreement; and
 - (b) in and to any other materials made available by the Contractor to the DCC under this Agreement;
- 39.3.9 the Software and Deliverables will be:
- (a) free of all encumbrances which could affect the performance of the Contractor's obligations under this Agreement; and
 - (b) Date Compliant; and
 - (c) Euro Compliant;

- 39.3.10 save for any Open Source Software disclosed and identified as Open Source Software in Schedule 14 (*Intellectual Property Rights and Software*), the Software will not contain, be derived from, use or incorporate or otherwise include any Open Source Software unless expressly agreed in writing with the DCC;
- 39.3.11 it will ensure that the Services are performed, and the Deliverables are provided, in such a way as not to cause any fault or malfunction in any software or systems of DCC or any interruption to DCC's business processes (other than any interruption which is unavoidable in order to perform the Services, and/or to provide the Deliverables, in a proper and efficient manner and has been approved in advance by the DCC);
- 39.3.12 it will ensure that no computer virus or similar destructive code is introduced into the DCC's computer equipment or systems by any act, omission, or negligence of the Contractor, and will test all Software before delivering to prevent the introduction of any computer virus into the DCC's computer equipment or systems;
- 39.3.13 it will ensure that there is nothing contained in any Software or any medium in which it is delivered which is capable of executing, facilitating or allowing deletion of any of the software or any data, or restricting access to the software or any data, or otherwise rendering any of the software or any of the systems on which it is installed or the data normally accessible by those systems incapable of force and unfettered use; and
- 39.3.14 none of the Sub-contracts includes any terms:
- (a) that conflict with the Contractor's obligations in Clause 27 (*Supply Chain Rights*) (including that such Sub-contracts may be assigned and/or novated);
 - (b) under which the Contractor would be unable to perform any obligations in connection with this Agreement, including under Schedule 21 (*Exit Management*);
 - (c) which cause or allow the terms of supply to alter as a result of, or in connection with, any expiry or termination of this Agreement and/or any assignment or novation of it; or
 - (d) under which the Sub-contractor is prevented or restricted from dealing with the DCC directly.
- 39.4 The Contractor warrants and undertakes to the DCC:
- 39.4.1 for the duration of the Term; and
- 39.4.2 from the date of the Milestone Achievement Certificate for Milestone 5 (Exit from UIT into Live) for the Warranty Period (including where calculated under Clause 39.7),
- that:
- 39.4.3 the Third Party Software shall be fully supported versions of that Third Party Software;
- 39.4.4 all components of the Software will:
- (a) be free from material design and programming errors;

- (b) be free from material defects and be of satisfactory quality; and
 - (c) perform in all material respects with the DCC Requirements (breach of (a), (b) and/or (c) being a "**Software Defect**").
- 39.5 If the DCC gives notice to the Contractor within the Warranty Period of any Software Defect ("**Warranty Claim**"), the Contractor shall (without prejudice to any other rights and remedies of the DCC howsoever arising) promptly remedy such Software Defect.
- 39.6 Without prejudice to Clause 40.19, the Contractor shall bear both Parties' costs and expenses in respect of the remediation of such Software Defect pursuant to Clause 39.5.
- 39.7 Where the Contractor remedies a Software Defect pursuant to Clause 39.5, the Warranty Period in respect of the relevant Software shall recommence on the date that such Software is delivered back to the DCC following successful remediation of the Software Defect.

General

- 39.8 Except as expressly stated in this Agreement, all warranties and conditions (whether express or implied by statute, common law or otherwise) are hereby excluded to the extent permitted by Law.
- 39.9 The fact that any provision in this Agreement is expressed as a warranty shall not preclude any rights of termination the DCC may have in respect of breach of that provision by the Contractor.
- 39.10 If at any time a Party becomes aware that a representation or warranty given by it under this Agreement has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

40. INDEMNITIES

Indemnity from the DCC in respect of DCC IPR

- 40.1 The DCC shall, on demand, indemnify and keep indemnified the Contractor at all times against any Losses incurred by the Contractor in connection with any Claim that the use of any DCC IPR permitted under this Agreement infringes the IPR of a third party ("**DCC IPR Claim**").
- 40.2 The Contractor shall:
 - 40.2.1 promptly notify the DCC in writing of any DCC IPR Claim;
 - 40.2.2 allow the DCC, at its own expense, to conduct all negotiations and proceedings regarding the DCC IPR Claim;
 - 40.2.3 provide the DCC with such assistance (at the DCC's cost) as is reasonably required by the DCC regarding the DCC IPR Claim; and
 - 40.2.4 not, without first consulting with the DCC, make any admission of liability relating to the DCC IPR Claim.
- 40.3 Failure by the Contractor to comply with Clause 40.2 shall not relieve the DCC of any of its obligations under Clause 40.1 in respect of any DCC IPR Claim.
- 40.4 The DCC shall:

- 40.4.1 conduct the DCC IPR Claim with due diligence and propriety and in such a way as not to bring the reputation or good name of the Contractor into disrepute. In this regard it shall take into account and action any reasonable comments made by the Contractor in relation to the conduct and/or settlement of the DCC IPR Claim;
 - 40.4.2 use commercially reasonable efforts to mitigate any DCC IPR Claims;
 - 40.4.3 keep the Contractor informed in writing at all times of developments in the litigation or negotiations and shall comply with the Contractor's reasonable directions, and shall, in particular, allow the Contractor to participate in any litigation or negotiations through counsel of its choosing, if the Contractor wishes to do so; and
 - 40.4.4 not make any admissions or otherwise take or fail to take any action which would be prejudicial to the Contractor.
- 40.5 If a DCC IPR Claim is made, or the DCC anticipates that a DCC IPR Claim might be made, the DCC may, at its option, either:
- 40.5.1 procure for the Contractor the right to continue to use the DCC IPR which is the subject matter of the DCC IPR Claim ("**DCC Infringing Item**"); or
 - 40.5.2 replace or modify the DCC Infringing Item with non-infringing substitutes.
- 40.6 Unless otherwise agreed by the Parties in writing, the terms of the Agreement shall apply equally to the replaced or modified substitute as they did to the original DCC Infringing Item.

Indemnity from the DCC in respect of Relevant Service Provider IPR

- 40.7 Subject to Clause 40.8, the DCC shall, on demand, indemnify and keep indemnified the Contractor at all times against any Losses incurred by the Contractor in connection with any Claim that the use of any Relevant Service Provider IPR permitted under this Agreement infringes the IPR of a third party ("**Relevant Service Provider IPR Claim**").
- 40.8 The DCC's liability under the indemnity in Clause 40.7 shall be limited to those Losses of the Contractor which the DCC is able to recover from the Relevant Service Provider.
- 40.9 The Contractor shall:
- 40.9.1 promptly notify the DCC in writing of any Relevant Service Provider IPR Claim;
 - 40.9.2 allow the DCC (or, at the DCC's discretion, the Relevant Service Provider), at its own expense, to conduct all negotiations and proceedings regarding the Relevant Service Provider IPR Claim;
 - 40.9.3 provide the DCC (and Relevant Service Provider) with such assistance (and the Contractor's costs relating to the provision of such assistance shall be borne by the entity requiring the assistance) as is reasonably required by the DCC (and/or Relevant Service Provider) regarding the Relevant Service Provider IPR Claim; and

- 40.9.4 not, without first consulting with the DCC (and, at the DCC's discretion), make any admission of liability.
- 40.10 Failure by the Contractor to comply with Clause 40.9 shall not relieve the DCC of any of its obligations under Clause 40.7 in respect of any DCC (and Relevant Service Provider).
- Indemnity from the Contractor in respect of Contractor IPR***
- 40.11 The Contractor shall indemnify and keep indemnified the DCC (and each of the DCC Eco-system Entities) at all times against any Losses incurred by the DCC (and all DCC Eco-system Entities) in connection with any Claim that the Project Specific IPR or the use of any Contractor IPR or any Third Party IPR permitted under this Agreement infringes the IPR of a third party ("**Contractor IPR Claim**").
- 40.12 The DCC shall (where the Contractor IPR Claim is made against the DCC (as opposed to any DCC Eco-System Entity)):
- 40.12.1 promptly notify the Contractor in writing of any Contractor IPR Claim;
- 40.12.2 allow the Contractor, at its own expense, to conduct all negotiations and proceedings regarding the Contractor IPR Claim;
- 40.12.3 provide the Contractor with such assistance (at the Contractor's cost) as is reasonably required by the Contractor regarding the Contractor IPR Claim; and
- 40.12.4 not, without first consulting with the Contractor, make any admission of liability relating to the Contractor IPR Claim.
- 40.13 Failure by the DCC to comply with Clause 40.12 shall not relive the Contractor of any of its obligations under Clause 40.11 in respect of any Contractor IPR Claim.
- 40.14 The Contractor shall:
- 40.14.1 conduct such Contractor IPR Claim with due diligence and propriety and in such a way as not to bring the reputation or good name of the DCC (and each of the DCC Eco-System Entities) into disrepute. In this regard it shall take into account and action any reasonable comments made by the DCC and (at the DCC's direction) any other third party in relation to the conduct and/or settlement of the Contractor IPR Claim;
- 40.14.2 use commercially reasonable efforts to mitigate any Contractor IPR Claim;
- 40.14.3 keep the DCC informed in writing at all times of developments in the litigation or negotiations and shall comply with the DCC's reasonable directions, and shall, in particular, allow the DCC (and, at the DCC's discretion, any third party) to participate in any litigation or negotiations through counsel of its choosing, if the DCC wishes to do so; and
- 40.14.4 not make any admissions or otherwise take or fail to take any action which would be prejudicial to the DCC (or any DCC Eco-System Entities).

40.15 If a Contractor IPR Claim is made, or the Contractor anticipates that a Contractor IPR Claim might be made, the Contractor may, at its option and at no additional cost to the DCC, either:

40.15.1 procure for the DCC (and all DCC Eco-System Entities) the right to continue to use (as the case may be) the Project Specific IPR, Contractor IPR and/or Third Party IPR which is the subject matter of the Contractor IPR Claim ("**Contractor Infringing Item**") on terms that are no less beneficial to the DCC (and all DCC Eco-System Entities) than the terms of this Agreement; or

40.15.2 replace or modify the Contractor Infringing Item with non-infringing substitutes provided that:

(a) the performance and functionality of the replaced or modified substitute is at least equivalent to the performance and functionality of the original Contractor Infringing Item; and

(b) the replaced or modified substitute does not have an adverse effect or impact on any of the Services (including the Deliverables), any DCC Eco-System Entity, the DCC Services or the Smart Metering Programme generally.

40.16 Unless otherwise agreed by the Parties in writing, the terms of the Agreement shall apply equally to the replaced or modified substitute as they did to the original Contractor Infringing Item.

40.17 The DCC may terminate this Agreement with immediate effect by written notice to the Contractor if:

40.17.1 the Contractor has failed to take any of the actions referred to in Clauses 40.15.1 or 40.15.2 within 60 days after the date of the DCC's notice under Clause 40.12.1; or

40.17.2 any actions taken by the Contractor under Clauses 40.15.1 or 40.15.2, or otherwise have not avoided or resolved the Contractor IPR Claim within 60 days after the date of the DCC's notice under Clause 40.12.1.

40.18 The remedies stated in Clauses 40.11 to 40.17 (inclusive) are without prejudice to any other remedy DCC may have.

Indemnity from the Contractor for adverse impacts on the Relevant Service Providers

40.19 The Contractor acknowledges that:

40.19.1 (a "**Related Adverse Impact**"); and

40.19.2 under the terms of the Relevant Service Provider Contract, the DCC may be obliged to reimburse the Relevant Service Provider for the following costs (together, the "**Additional Costs**"):

(a) wasted costs, being costs which the Relevant Service Provider would not have incurred but for the occurrence of the Related Adverse Impact; and

(b) additional costs incurred by the Relevant Service Provider in order to avoid, mitigate or overcome .

- 40.20 The Contractor shall, on demand, indemnify and keep indemnified the DCC at all times against all Additional Costs paid by the DCC to a Relevant Service Provider in accordance with Clause 40.19.
- 40.21 The Contractor shall pay any amount demanded by the DCC under Clause 40.20 promptly, and in any event within twenty (20) Business Days, after receipt of a relevant demand from the DCC regardless of any Dispute regarding such demand (and the provisions of Clause 20.2 (Charging and Invoicing) shall not apply to this Clause 40.21)
- 40.22 Any Dispute arising out of or in connection with Clause 40.20 or 40.21 shall be resolved in accordance with the Dispute Resolution Procedure. Following resolution of any such Dispute, any amount agreed or determined to have been incorrectly paid by the Contractor under Clause 40.21 shall be reimbursed by the DCC within twenty (20) Business Days after final resolution of the Dispute.

Other Indemnities from the Contractor

- 40.23 The Contractor shall indemnify and keep indemnified the DCC at all times against any Losses incurred by the DCC in connection with:
- 40.23.1 Clause 14 (*Compliance with Mandatory Requirements*);
- 40.23.2 Clause 17 (*Independence and Non-Discrimination Obligations*);
- 40.23.3 NOT USED;
- 40.23.4 Clause 37 (*Confidentiality*);
- 40.23.5 Clause 41 (*Security Requirements*);
- 40.23.6 Clause 53 (*Prevention of Corruption*);
- 40.23.7 NOT USED;
- 40.23.8 damage to real or personal property including loss or damage to DCC's property;
- 40.23.9 injury to persons, including injury resulting in death; and
- 40.23.10 NOT USED.
- 40.24 For the avoidance of doubt, this Clause 40 is without prejudice to Clause 36.5 (*Data Protection*).

41. SECURITY REQUIREMENTS **

- 41.1 Each Party shall comply with its respective obligations, and may exercise its rights, under Schedule 7 (*Security Requirements*).

42. BUSINESS CONTINUITY AND DISASTER RECOVERY **

- 42.1 Each Party shall comply with its respective obligations, and may exercise its rights, under Schedule 9 (*Business Continuity and Disaster Recovery*).

43. FORCE MAJEURE

- 43.1 Subject to the remaining provisions of this Clause 43, to the extent that either Party is prevented from performing its obligations under this Agreement by an Event of Force Majeure and that such Event of Force Majeure was beyond the Party in question's reasonable power to control then that Party's obligation to perform its obligations under this Agreement will (during the continuation of the Event of Force Majeure) be read and construed as an obligation to perform such obligations to the best level reasonably achievable in the circumstances of the Event of Force Majeure. PROVIDED THAT where the Contractor claims that it

is affected by an Event of Force Majeure, then such claim will only be valid to the extent that a prudent service provider, operating in accordance with Good Industry Practice, could not have foreseen and prevented or avoided the effect of such event or occurrence.

- 43.2 A Party claiming to be affected by an Event of Force Majeure will not be entitled to invoke the provisions of Clause 43.1 unless it fully performs the following obligations, namely:

43.2.1 on becoming aware of any Event of Force Majeure which gives rise, or which is likely to give rise, to any failure or delay in the performance of its obligations under this Agreement, it notifies the other Party by the most expeditious method then available, giving details of the Event of Force Majeure, the obligations on its part which are affected and its reasonable estimate of the period for which such failure or delay will continue;

43.2.2 it provides written confirmation and reasonable evidence of such Event of Force Majeure within five (5) Business Days of notification under sub-Clause 43.2.1; and

43.2.3 it takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such Event of Force Majeure.

- 43.3 If the Contractor is prevented from performing its obligations under this Agreement by an Event of Force Majeure which continues for more than ninety (90) Business Days then the DCC will be entitled to terminate this Agreement without liability to the Contractor forthwith on giving written notice of termination to the Contractor.

- 43.4 The Contractor shall not be entitled to invoke the provisions of Clause 43.1 in respect of any Service unless the Contractor has discharged its obligations under Clause 42 (*Business Continuity and Disaster Recovery*) (both in respect of such Service and all other Services).

44. LIMITATIONS ON LIABILITY

48. EXIT MANAGEMENT

- 48.1 Each Party shall comply with its respective obligations, and may exercise its respective rights, under Schedule 21 (*Exit Management*).

49. TRANSFER OF PERSONNEL

- 49.1 It is the understanding of the Parties that the TUPE Regulations will not apply in respect of the commencement of this Agreement or any of the Services or upon the Contractor ceasing to provide any the Services or following the expiry or termination of the whole or part of this Agreement. Notwithstanding such a belief and on the basis that both Parties have agreed to be responsible for its own employees:

49.1.1 if the TUPE Regulations are found to apply, or a Party reasonably suspects the TUPE Regulations shall apply, in respect of the commencement of this Agreement, any Services or upon the Contractor ceasing to perform any or all of its obligations under this Agreement or following the expiry or termination of the whole or part of this Agreement, the Parties shall meet within a reasonable time of a Party requesting a meeting to negotiate in good faith to find an equitable apportionment of the liability arising as a result of the TUPE Regulations applying; and

49.1.2 either Party may at any time during the Term review the position set out in this Clause 49 and request that amendments are made to this Agreement to cover each Party's potential liability under the TUPE Regulations if that Party considers that the TUPE Regulations may apply on the commencement of this Agreement, the commencement of any Services or expiry or termination of this Agreement or any part of it.

50. ASSIGNMENT AND NOVATION **

- 50.1 Subject to Clause 50.2, the Contractor shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written consent of the DCC.

- 50.2 The Contractor may novate its rights and obligations under this Agreement to another member of the Contractor Entity with the prior written consent of the DCC (such consent not to be unreasonably withheld or delayed).

- 50.3 The Contractor agrees that the DCC may:-

50.3.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement and any associated third party licences to any Successor Licensee; or

50.3.2 in the event that the DCC wishes to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement other than in accordance with Clause 50.3.1, the Contractor shall

promptly enter into good faith negotiations with the DCC and use reasonable endeavours to reach Agreement with the DCC on the terms of a disposal. The Contractor shall not unreasonably withhold or delay its consent to any proposed disposal.

50.4 Any novation to a Successor Licensee shall be on terms that are substantially the same as those set out in Schedule 2 of the DCC Licence (unless the DCC otherwise elects).

50.5 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.

51. WAIVER AND CUMULATIVE REMEDIES

51.1 Any failure to exercise or any delay in exercising a right or remedy provided by this Agreement or at law or in equity (and/or the continued performance of this Agreement) will not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. A waiver of a breach of any of the terms of this Agreement will not constitute a waiver of any other breach and will not affect the other terms of this Agreement.

51.2 The rights and remedies provided by this Agreement are cumulative and (except as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided at law or in equity.

52. RELATIONSHIP OF THE PARTIES

52.1 Nothing in this Agreement is intended to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other. Except where expressly so stated in this Agreement neither Party will have authority to act in the name or on behalf of or otherwise to bind the other.

53. PREVENTION OF CORRUPTION **

53.1 The Contractor represents, warrants and undertakes to the DCC that the Contractor shall:-

53.1.1 comply with all Laws, binding regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");

53.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

53.1.3 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the relevant policies and this Clause 53.1, and will enforce them where appropriate;

53.1.4 immediately notify the DCC if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor (and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement);

- 53.1.5 ensure that all persons associated with the Contractor or other persons who are performing services or providing or leasing goods in connection with this Agreement comply with this Clause 53.1; and
- 53.1.6 procure that its officers, agents and Contractor Persons shall comply with the DCC's policy on bribery and corruption (as amended from time to time) a copy of which shall be provided to the Contractor upon request.
- 53.2 Breach of this Clause 53 shall be deemed a material breach incapable of remedy for the purposes of Clause 46.2.1(a) (*Termination*).
- 53.3 The DCC may terminate this Agreement on written notice with immediate effect if the Contractor (including any of the Contractor Persons) breaches any of the Relevant Requirements in relation to any other contract with the DCC.
- 53.4 If the DCC terminates this Agreement in accordance with Clause 53.2 or Clause 53.3, the Contractor shall not be entitled to claim compensation or any further remuneration from the DCC, regardless of any activities carried out or agreements with third parties entered into before termination of this Agreement.
- 53.5 For the purpose of this Clause 53, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 53 a person associated with the Contractor includes any Contractor Person.

54. PUBLICITY AND BRANDING

- 54.1 The Contractor shall not:
 - 54.1.1 make or permit or procure to be made any public or press announcements (whether for publication in the press, the radio, television, the internet or any other medium) or disclosure or other form of publicity in respect of this Agreement, its contents or any matters relating thereto in any way, including its interest in the Services or any matters relating thereto; or
 - 54.1.2 use the DCC's name or brand in any promotion or marketing or announcements of orders,

without the prior written consent of the DCC, which shall not be unreasonably withheld or delayed.
- 54.2 Nothing in this Agreement (either expressly or by implication) constitutes an endorsement of any products or services of the other Party (including the Services and the DCC Environment) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
- 54.3 The Contractor shall:
 - 54.3.1 not bring the DCC, Smart Metering Programme or any DCC Eco-System Entity into disrepute or damage the public image, reputation or goodwill of the DCC, the Smart Metering Programme or any DCC Eco-System Entity;
 - 54.3.2 notify the DCC promptly (and in any event within two (2) Business Days of becoming aware) of any breach of this Clause 54.3; and

54.3.3 within fifteen (15) Business Days of receiving notice (or, if earlier, becoming aware of) any breach of Clause 54.3.1, procure that procedures are implemented which are likely to the reasonable satisfaction of the DCC to prevent a repetition or the continuance of such breach and which mitigates so far as practicable the damage caused by such breach.

55. SEVERANCE

- 55.1 If any provision of this Agreement will be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this Agreement which will remain in full force and effect.
- 55.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification(s) as may be necessary to make it valid.
- 55.3 The Parties agree, in the circumstances referred to in Clause 55.1 and if Clause 55.2 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision of this Agreement will be suspended while an attempt at such substitution is made.

56. FURTHER ASSURANCE

- 56.1 Each Party will at the request of the other Party at its own costs do (or procure others to do) everything necessary to give the other the full benefit of this Agreement and for vesting in the DCC the full benefit of the assets, rights and benefits to be transferred to it under this Agreement.

57. ENTIRE AGREEMENT

- 57.1 This Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes any previous agreement between the Parties relating to such matters notwithstanding the arrangement expressed to survive termination.
- 57.2 Each of the Parties represents and agrees that in entering this Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The Contractor gives up any rights against the DCC regarding any warranty or representation except in respect of any warranty or representation expressly made in this Agreement.
- 57.3 Except for those expressly set out in this Agreement, all warranties, conditions, representations and undertakings (including without limitation any and all warranties, conditions, representations and undertakings implied by statute, common law or otherwise) are excluded to the fullest extent permitted by law.

58. THIRD PARTY RIGHTS

- 58.1 Save as provided in clause 58.2 below, a person who is not a party to this Agreement will have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its provisions.

58.2 In respect of all substantive (but not procedural) rights or remedies provided by common law or statute (including in tort or delict, but without prejudice to contractual rights or remedies) in respect of loss of or damage to physical property (including loss of or damage to Systems, and loss or corruption of data) arising in relation to the subject matter of the SEC, the Contractor hereby waives and releases (to the fullest extent possible at law) such rights and remedies in respect of such loss or damage as the Contractor may otherwise have against the SEC Parties other than DCC in their capacity as such (and/or against the contractors, employees and agents of such Parties in their capacity as such). The SEC Parties may enforce the terms of this Clause 58.2 subject to and in accordance with the provisions of this Agreement and the Contracts (Rights of Third Parties) Act 1999.

58.3 Notwithstanding Clause 58.2, it is expressly agreed that the Parties may by agreement rescind or vary this Agreement or any term of this Agreement (including Clause 58.2) without the consent of any third party who has the right to enforce this Agreement or the term in question, notwithstanding that such rescission or variation may extinguish or alter that third party's entitlement under that right.

59. NOTICES

59.1 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 below:-

DCC: SMETS 1 Delivery Lead, Smart DCC, Ibex House, 42-47 Minories, London, EC3N

Contractor: 1 Forge End, Woking, Surrey GU21 6DB

or as otherwise specified by the relevant Party by notice in writing to each other Party.

59.2 Any notice or other communication shall be deemed to have been duly received:-

59.2.1 if delivered personally, when left at the address and for the contact referred to in this clause;

59.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

59.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

59.3 A notice or other communication required to be given under this Agreement shall be validly given if sent by e-mail.

59.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

60. COSTS AND EXPENSES

60.1 Each Party shall bear its own costs and expenses (including legal fees) in relation to the preparation, and execution of this Agreement.

61. COUNTERPARTS

61.1 This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, will be an original, and all the counterparts

together will constitute one and the same instrument.

62. GOVERNING LAW AND JURISDICTION

- 62.1 This Agreement, and the relationship between the parties, shall be governed by the laws of England and each Party agrees that all disputes arising out of or in connection with this Agreement, and/or with its negotiation, validity or enforceability, and/or the relationship between the parties, (in each case whether or not regarded as contractual claims) shall be exclusively governed by and determined in accordance with English law. Each Party expressly submits to the exclusive jurisdiction of the English Courts.

This Agreement has been duly executed by the parties.

Signed by

SCHEDULE 1 INTERPRETATION AND DEFINITIONS

PART A: INTERPRETATION AND DEFINITIONS

1. INTERPRETATION

- 1.1 In this Agreement (except where the context otherwise requires):
 - 1.1.1 capitalised expressions shall have the meanings set out in Schedule 1 (*Interpretation and Definitions*);
 - 1.1.2 use of the singular includes the plural (and *vice versa*) and use of any gender includes the other genders;
 - 1.1.3 a reference to a Party is to a party to this Agreement and shall include that Party's personal representatives, successors or permitted assignees;
 - 1.1.4 a reference to persons includes natural persons, firms, partnerships, bodies corporate and corporations, and associations, organisations, governments, states, foundations, trusts and other unincorporated bodies (in each case whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence); and
 - 1.1.5 a reference to a Clause or Schedule is to the relevant recital or clause of or schedule to this Agreement; a reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the Clause or Schedule in which it appears.
- 1.2 The Schedules form an integral part of this Agreement and have effect as if set out in full in the body of this Agreement. A reference to this Agreement includes the Schedules.
- 1.3 The table of contents and headings are included for convenience only and will not affect the construction or interpretation of this Agreement.
- 1.4 Without limiting the Contractor's obligations pursuant to Clause 14 (*Compliance with Mandatory Requirements*), if there is any conflict between any of the Clauses, the Schedules, any Appendices or Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.4.1 Schedule 23 and Schedule 1 (Interpretation and Definitions);
 - 1.4.2 the Clauses and Schedule 1;
 - 1.4.3 any Schedules (with the exception of Schedule 23) and their Appendices and Annexes.
- 1.5 Except as expressly stated in this Agreement, the Contractor acknowledges and accepts that any consent, approval, agreement or acceptance (including in relation to any document, proposal or other matter) by any DCC Eco-System Entity shall:
 - 1.5.1 not act as an endorsement of any matter;
 - 1.5.2 not relieve the Contractor of its responsibility for ensuring that the Services are provided in accordance with the requirements of this Agreement;
 - 1.5.3 not give rise to any rights of estoppel or waiver; and

- 1.5.4 not relieve the Contractor of any other obligation under this Agreement, except as otherwise expressly stated by the DCC in writing therein with reference to this Paragraph 1.5 of Schedule 1 (*Interpretation and Definitions*) and in compliance with the terms of this Agreement.

PART B: GENERAL DEFINITIONS

In this Agreement (except where the context otherwise requires) the following words and expressions have the following meanings:

"Abandonment"	means a deliberate repudiatory breach by the Contractor whereby the Contractor intends or recklessly abandons the provision of the whole or substantially the whole of the Services and shall not include any lawful cessation of the Services or the proper exercise of the Contractor's termination rights under this Agreement or as permitted by law;
"Acceptance"	means the process to be carried out under this Agreement, as further set out in Part E of Schedule 17 (<i>Testing and Acceptance</i>), in respect of a Report;
"Achieve"	means the achievement of a Milestone evidenced by the issuance by the DCC of a Milestone Achievement Certificate and "Achievement" shall be construed accordingly;
"Additional Costs"	has the meaning given in Clause 40.19.2;
"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Agile Development Methodology"	the agile development methodology as set out in Schedule 4 (<i>Agile Development Methodology</i>);
"Agreement"	means the Clauses of this Agreement together with the Schedules, appendices and annexes to it and any document(s) attached to it;
"Authorised Activity"	means the activity of providing within the area of Great Britain a Smart Meter Communication Service as defined at paragraph 4 of Part 1 (Terms in Respect of Grant) of the DCC Licence;
"Authorised Business"	means the whole of the business carried on by the DCC under the DCC Licence;
"BCDR Plan"	has the meaning given in Schedule 9 (<i>Business Continuity and Disaster Recovery</i>);
"Business Day"	means any day other than a Saturday, Sunday or bank or other public holiday in England;

"Business Handover Plan"	has the meaning given in Condition 43.26 of the DCC Licence;
"Change in Mandatory Requirements"	<p>means any change (including any modification, replacement, extension, consolidation or amendment) in any Mandatory Requirement(s) which comes into effect after the Commencement Date, including:</p> <p>(a) the enactment or commencement of any new Mandatory Requirement other than (i) the designation of the SEC by the Secretary of State and/or (ii) the coming into effect at any time of any provision in the SEC contained in the SEC at the time of its designation;</p> <p>(b) the modification or repeal of any Mandatory Requirement;</p> <p>(c) any applicable judgment of a relevant court of law which changes a binding precedent; or</p> <p>(d) the imposition of a requirement by a Regulatory Body for an additional necessary Consent,</p> <p>which impacts on the performance of the Services or any of the Contractor's other obligations under this Agreement;</p>
"Change of Control"	means a change in Control of the Contractor or Sub-contractor;
"Chargeable Time"	has the meaning given in Paragraph 7.3.2 of Schedule 22 (<i>Charges and Invoicing</i>);
"Charges Deferral Period"	has the meaning given in Paragraph 9.2 of Schedule 22 (<i>Charges and Invoicing</i>);
"Charges"	means the charges payment pursuant to this Agreement calculated in accordance with Schedule 22 (<i>Charges and Invoicing</i>);
"Claim"	means any allegation, claim, proceedings, action or demand made (or litigation, arbitration or mediation or other dispute resolution process commenced);
"CMDB"	has the meaning given in Schedule 21 (<i>Exit Management</i>);
"Code Administrator"	means the body providing SEC administrative services;
"Commencement Date"	means the 21 November 2017;
"Commercial Activities"	has the meaning given in the DCC Licence;
"Commercially Sensitive"	means (i) Confidential Information that is specifically and clearly marked "Commercially Sensitive –

"Information"	Access by other DCC Contractor(s) Generally Prohibited" and which details: the strategic business intentions of the Contractor (that are not obvious and that are likely to materially negatively affect the business of the Contractor if publically available) (ii) the charges, costs, margins and profits of the Contractor or a Contractor Person in relation to the Services (or any proposed Services), (iii) non-public external reports or (iv) internal reports prepared by the Contractor's internal audit function which in all cases, the parties acknowledge will be excluded from any obligation of disclosure;
"Communications Service Provider"	<p>means any person:</p> <ul style="list-style-type: none"> a) contracted to the DCC to provide (on behalf of the DCC) any communication service(s) in connection with the Smart Metering Programme; b) providing communication services to a DCC Service User (other than the DCC) in connection with the Smart Metering Programme; and c) providing services in replacement of such Communications Service Provider at (a) and (b), <p>but excluding any direct or indirect sub-contractor, contractor, agent, representative or service provider providing any goods or services to the person that is contracted directly to the DCC;</p>
"Comparable Supply"	means the supply of services to another customer of the Contractor that are the same or similar to any of the Services;
"Compliance Officer"	means the person appointed for the purposes of monitoring and facilitating the DCC's compliance with the requirements specified in Part F of Chapter 3 of the DCC Licence;
"Condition 29 Information"	means "Information", as such term is defined in the DCC Licence;
"Condition"	means a condition of the DCC Licence, and a reference to a condition includes any Schedules to it;
"Confidential Information"	<p>means (in any medium or format and however conveyed):</p> <ul style="list-style-type: none"> (a) any information of the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be

considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;

- (b) in the case of any information of the DCC:
 - (i) DCC Data and any records and / or documentation and / or similar materials kept and maintained by the Contractor in order to comply with its obligations under this Agreement;
 - (ii) all data and / or information disclosed by any person or received by any Contractor Person in connection with the Services:
 - (x) relating to any business, affairs, developments, finances (including charges, costs or profits), policies, customers, employees, procedures, methodologies, algorithms, trade secrets, know-how, technical information or information technologies systems or process(es) and/or business intention(s); and/or
 - (y) that is not obvious and which is likely to materially negatively affect the business,

of any DCC Eco-System Entity or (in each case whether direct or indirect) any of their customers, sub-contractors, agents, advisors, employees or suppliers;
 - (iii) all data that is "Party Data" as defined in the SEC that is clearly marked (or otherwise stated) to be confidential and/or "Confidential Information" of any SEC Party as defined in the SEC; and
- (c) any other data and / or information clearly designated by the DCC as being confidential (whether or not it is marked "confidential") or which the DCC notifies the Contractor that it or any DCC Eco-System Entity is under any obligation under any applicable Mandatory Requirement or contract to treat as confidential (other than to the Contractor or pursuant to this Agreement) or which ought to reasonably be considered by the Contractor to be confidential to any DCC Eco-System Entity,

together with all reproductions (hard copy or electronic), extracts, summaries or analyses of such Confidential Information in any medium or format whether prepared by the Disclosing Party or not;

"Consents"	means all permissions, way-leaves or access rights, other rights of access, exemptions, consents, approvals, certificates, permits, permissions, waivers, registrations, licences, statutory agreements, agreements and authorisations required by Law or required from any third parties (including Regulatory Bodies), in order to provide the Services in accordance with this Agreement;
"Contract Year"	means a period of three hundred and sixty five (365) days (or three hundred and sixty six (366) days in the case of any leap year) (or shorter period in the case of the final Contract Year) commencing on the Commencement Date or on an anniversary of the Commencement Date;
"Contractor Approach"	means the agile development methodology utilised by the Contractor;
"Contractor Background IPR"	<p>means:</p> <ul style="list-style-type: none"> a) IPR owned by the Contractor (or a Contractor Person or any Affiliate of a Contractor Person) before the Commencement Date; or b) IPR created by the Contractor (or a Contractor Person or any Affiliate of a Contractor Person) independently of this Agreement after the Commencement Date; and <p>in each case,</p> <ul style="list-style-type: none"> i) used by the Contractor (or any third party on behalf of the Contractor) to provide the Services or otherwise perform the Contractor's obligations under this Agreement; and ii) is made available to the DCC in connection with this Agreement; and <p>in each case, including all updates and amendments of these items;</p> <p>but excluding the Project Specific IPR.</p>
"Contractor Entity"	<p>means:</p> <ul style="list-style-type: none"> a) a Contractor Person; and b) any Affiliate of any Contractor Person;
"Contractor Infringing Item"	has the meaning given in Clause 40.15.1;
"Contractor IPR Claim"	has the meaning given in Clause 40.11;

"Contractor IPR"	means: (a) Contractor Background IPR; and (b) Contractor Software;
"Contractor Methodology"	means the Contractor's methodology for the provision of the Services and compliance with its obligations under this Agreement (including all processes, ways of working, equipment and materials) as set out in: a) Annex 1 to Schedule 3 (<i>DCC Requirements</i>); and b) <i>NOT USED</i> .
"Contractor Non-Performance"	has the meaning given in Clause 13.1;
"Contractor Personnel"	means all natural persons that are employees, staff, workers, agents, consultants, contractors, directors, officers, professional advisors and/or other persons performing services, roles or functions on behalf of the Contractor and/or of any Sub-contractor in connection with this Agreement;
"Contractor Persons"	means: (a) the Contractor; (b) each Affiliate of the Contractor; (c) the Sub-contractors; and (d) the Contractor Personnel, and "Contractor Person" shall be construed accordingly;
"Contractor Premises"	means premises owned, controlled or occupied by the Contractor and which are made available for use by the DCC or used by the Contractor for provision of the Services (or any of them);
"Contractor Software"	means any software in which the IPR is owned by the Contractor (or a Contractor Person or any Affiliate of a Contractor Person), and: a) used by the Contractor (or any third party on behalf of the Contractor) to provide the Services or otherwise perform the Contractor's obligations under this Agreement; or b) is made available to the DCC in connection with this Agreement, and, in each case, including all updates and amendments of these items, but excluding the Specially Written Software;
"Control"	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) or is otherwise deemed to have

	control of another person for the purposes of section 1124 of the Corporation Tax Act 2010 and " Controls " and " Controlled " shall be interpreted accordingly;
"Co-Operation Agreement"	has the meaning given in Schedule 20 (<i>Co-operation</i>);
"Co-operation Objectives"	has the meaning given in Schedule 20 (<i>Co-operation</i>);
"Credit Rating Level"	shall be: <div style="background-color: black; width: 100%; height: 100%; min-height: 100px;"></div>
"Data Controller"	has the meaning given in the Data Protection Laws;
"Data Processor"	has the meaning given in the Data Protection Laws;
"Data Protection Laws"	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 to which a Party is subject including the DPA (and including, with effect from 25 May 2018, the GDPR);
"Data Subject Access Request"	a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data;
"Data Subject"	has the meaning given in the Data Protection Laws;
"Date Compliant"	means that no previous or future date change has had or will have any adverse impact on performance or functionality;
"Day Rate"	means the day rate for Contractor Personnel set out in Appendix 1 to Schedule 22 (<i>Charges and Invoicing</i>);
"DCC Cause"	means any breach by the DCC of the DCC Responsibilities except to the extent that it is the result of: <ul style="list-style-type: none"> a) any act or omission of the Contractor

including any breach of this Agreement (or any Co-Operation Agreement) by the Contractor; or

- b) any act or omission by the DCC to which the Contractor has given its prior consent;

"DCC Data"

means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:
 - (i) are supplied to the Contractor by or on behalf of the DCC or any DCC Eco-System Entity; and/or
 - (ii) the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the DCC is the Data Controller;

"DCC Eco-System Entities"

means:

- a) the DCC;
- b) SECCo;
- c) the Code Administrator;
- d) the SEC Secretariat; and
- e) DCC Service Users,

and **"DCC Eco-System Entity"** shall be constricted accordingly;

"DCC Environment"

has the meaning given in Schedule 7 (*Security Requirements*);

"DCC Infringing Item"

has the meaning given in Clause 40.5.1;

"DCC IPR Claim"

has the meaning given in Clause 40.1;

"DCC IPR"

means the IPR which is owned by the DCC or licensed to the DCC under the SEC and which is required to be used by the Contractor for the purposes of providing the Services, but excluding the Relevant Service Provider IPR, Contractor IPR, Third Party IPR and Project Specific IPR;

"DCC Licence"

means the "Licence for the Provision of a Smart Meter Communication Service" granted to DCC or any successor pursuant to section 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, as amended from time to time;

"DCC Premises"

means premises owned, controlled or occupied by the DCC and which are made available for use by the Contractor or any of the Sub-contractors for provision of the Services (or any of them);

"DCC Purpose"

means in connection with:

(a) the performance of any of the DCC's obligations and/or exercise of any its rights and/or remedies in connection with any of this Agreement and/or any Mandatory Requirement; and/or

(b) the receipt and/or use of any of the Services during the Term;

"DCC Requirements"

means the requirements set out in Schedules 2 (*Project Description*); 3 (*DCC Requirements*), 4 (*Agile Development Methodology*); 5 (*Performance Measures and Monitoring*); 6 (*Standards*); 7 (*Security Requirements*); 8 (*Quality Assurance*); 9 (*Business Continuity and Disaster Recover*); 10 (*Insurance*); and 11 (*Escrow*);

"DCC Responsibilities"

means the responsibilities of the DCC as set out in Schedule 12 (*DCC Responsibilities*) or as otherwise agreed in connection with the implementation of the Agile Development Methodology or a Variation;

"DCC Service Provider Contract"

means (excluding any arrangement that is a Subcontract and/or this Agreement) any contract or agreement or proposed contract or agreement between the DCC (or any sub-contractor of the DCC) any third party under which such third party provides facilities, goods, services or other supply to the DCC (or any sub-contractor to the DCC);

"DCC Service Provider"

means:

- a) a person with whom DCC enters into a DCC Service Provider Contract or its servants or agents;
- b) a person with whom the person described in a) above enters into a DCC Service Provider Contract or its servants or agents; and
- c) without prejudice to the generality of the foregoing; any Replacement Contractor, but excluding the Contractor;

"DCC Services"

means any and all services to be provided by the DCC to the DCC Service Users or to any other person in connection with such DCC Services or the DCC Licence;

"DCC Service Users"	<p>means (other than DCC):</p> <ul style="list-style-type: none"> a) each person who receives or is to receive services from DCC (including authorised third parties) (other than any person acting solely as an Energy Consumer); b) each person who is a SEC Party; and <p>each person who is an "Other User" (as defined by the SEC);</p>
"DCC Software"	means software which is owned by or licensed to the DCC, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor Software;
"DCC Sub-contractor"	means a sub-contractor of the DCC;
"Default Interest Rate"	means, for any day, 8% above the base lending rate of the Bank of England at 13:00 hours on that day;
"Deferred Charges"	has the meaning given in Paragraph 9.2 of Schedule 22 (<i>Charges and Invoicing</i>);
"Deferred Milestone Payment"	has the meaning given in Paragraph 9.3 of Schedule 22 (<i>Charges and Invoicing</i>);
"Deferred Payment Instalment"	has the meaning given in Paragraph 9.7 of Schedule 22 (<i>Charges and Invoicing</i>);
"Deferred Payment"	<p>means any of:</p> <ul style="list-style-type: none"> (a) the Deferred Charges; (b) Deferred Milestone Payments; and (c) the Deferred Termination Amounts, <p>and the expression "Deferred Payments" shall be construed accordingly;</p>
"Deferred Termination Amounts"	has the meaning given in Paragraph 9.4 of Schedule 22 (<i>Charges and Invoicing</i>);
"Delay"	<p>means:</p> <ul style="list-style-type: none"> (a) a delay in the Achievement of a Milestone by its Milestone Date; or (b) a delay in the design, development, delivery, testing or implementation of a Deliverable by the relevant date set out in the Project Plan or as otherwise agreed between the Parties;
"Deliverable"	means a deliverable (including an item or feature) delivered or to be delivered by the Contractor during

	the performance of this Agreement;
"Deposited Software"	means any Software which the DCC notifies the Contractor in writing is to be subject to the provisions of Schedule 11 (<i>Escrow</i>) including the deposit requirements set out in Paragraph 2 of that Schedule;
"Development Phase"	has the meaning given in Schedule 15 (<i>Project Plan</i>);
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for period of forty eight (48) hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
"Disclosing Party"	has the meaning given in Clause 37.1;
"Disposal"	in relation to any Relevant Business Asset, means any of the following: <ul style="list-style-type: none"> a) a novation, assignment, transfer, or other passing of that Relevant Business Asset (whether or not for value) to a person other than the Contractor; b) a lease, licence, or loan of (or the grant of any other right of possession in relation to) that Relevant Business Asset; c) the grant of any mortgage, charge, or other form of security over that Relevant Business Asset; or d) where the asset comprises a contractual arrangement of any kind, any variation of its terms that would be likely to reduce or otherwise impair the efficiency and effectiveness of the Contractor's provision of Services under or pursuant to this Agreement;
"Dispute Resolution Procedure"	means the procedure for the resolution of disputes between the parties under this Agreement, as set out in Clause 26;
"Dispute"	means any dispute, difference or questions of interpretation arising out of or in connection with this Agreement including, in relation to the Services, any failure to agree in accordance with the Variation Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Early Life Support Phase"	has the meaning given in Schedule 15 (<i>Project Plan</i>);
"Documentation"	means descriptions of the Services and Performance Measures, technical specifications, user manuals, operating manuals, process definitions and procedures, and all such other documentation as: <ul style="list-style-type: none"> a) referred to in Paragraph 3.1 (Documentation

Management) of Schedule 3 (DCC Requirements);

- b) is required to be supplied by the Contractor to the DCC under this Agreement;
- c) is required by the Contractor in order to provide the Services; and
- d) has been or shall be generated for the purpose of providing the Services;

"Enduring Service"

means any service provided to the DCC by the Contractor pursuant to a separate agreement that utilises software of the Contractor (including any of the Software) and enables, amongst other things, the two-way communication and data transfer between the DCC Environment and SMETS1 smart meters;

"End-to-end Smart Metering System"

means all components and services included in the end-to-end smart metering system;

"Energy Licence"

means any licence (including the DCC Licence) that is granted, or treated as granted, under section 7, 7A, or 7AB of the Gas Act 1986 or under section 6 of the Electricity Act 1989;

"Energy Consumer"

has the meaning given in the DCC Licence;

"Escrow Agent"

has the meaning given in Schedule 11 (*Escrow*);

"Escrow Agreements"

has the meaning given in Schedule 11 (*Escrow*);

"Euro Compliant"

means:

- (a) the introduction of the euro within any part of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the DCC's business;
- (b) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and
- (c) in particular each and every relevant item shall, to the extent it performs or relies upon currency related functions (including all calculations concerning financial data):
 - (i) be able to perform all such functions in any number of currencies and/or in euros;
 - (ii) during any transition phase applicable to the UK, be able to deal with multiple currencies and in relation to the euro and the national currency of UK dual

	denominations;
	(iii) recognise, accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
	(iv) incorporate protocols for dealing with rounding and currency conversion;
	(v) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the UK and/or the euro; and
	(vi) permit the input of data in euro and display an outcome in euro where such data, supporting the DCC's normal business practices, operates in euro and/or the national currency of the UK;
"Event of Force Majeure"	means an event which falls within one or more of the following categories: <ul style="list-style-type: none"> (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);
"Excluded Matters"	has the meaning given in Clause 3.1;
"Exit Information"	has the meaning given in Schedule 21 (<i>Exit Management</i>);
"Exit Manager"	the person appointed by each Party pursuant to Schedule 21 (<i>Exit Management</i>) for managing the Parties' respective obligations under Schedule 21 (<i>Exit Management</i>);
"Exit Plan"	has the meaning given in Schedule 21 (<i>Exit Management</i>);

"Extension Period"	has the meaning given in Clause 2.2;
"Failure Score"	has the meaning given in <i>"A Guide to Dun & Bradstreet's Predictive Indicators 2015"</i> ;
"Financial Strength Indicator"	has the meaning given in <i>"A Guide to Dun & Bradstreet's Predictive Indicators 2015"</i> ;
"Functional Requirements"	means those requirements set out in Schedule 3 (<i>DCC Requirements</i>);
"Good Industry Practice"	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
"Health and Safety Regime"	means: <ul style="list-style-type: none"> (a) any health & safety Laws in force from time to time in relation to prevention of harm to human health, including the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc. Act 1974 (and associated regulations), the Regulatory Reform (Fire Safety) Order 2005, Part 3 of the Fire (Scotland) Act 2005, and the Fire Safety (Scotland) Regulations 2006 and any similar or analogous health & safety Law in force from time to time and as amended; and (b) any non-binding requirement, rule, code, code of practice, circular, policy, order, demand, decision, determination, direction, guidance, consent or notice relating to the prevention of harm to human health issued by any Regulatory Body or other competent authority from time to time with which a contractor operating in the same industry as the Contractor and working in accordance with Good Industry Practice would be expected to comply
"Impact Assessment"	has the meaning given in Schedule 19 (<i>Variation</i>);
"Implementation Service Provider"	means: <ul style="list-style-type: none"> a) any person contracted to the DCC to provide (on behalf of the DCC) any facilities, goods, services or other supply in connection with the Smart Metering Implementation Programme. b) any person providing any facilities, goods, services or other supply to a DCC Service User (other than the DCC) in connection with the Smart Metering Implementation

Programme; and

- c) providing services in replacement of such Implementation Service Provider at (a) and (b),

but excluding any direct or indirect sub-contractor, contractor, agent, representative or service provider providing any goods or services to the person that is contracted directly to the DCC;

"Indexation Amount"

means in respect of (as the case may be) each Deferred Payment and each Deferred Payment Instalment an amount calculated in accordance with Paragraph 9.6 of Schedule 22 (*Charges and Invoicing*) and the expression **"Indexation Amounts"** shall be construed accordingly;

"Indexation Start Date"

means in respect of a Deferred Payment, the date on which, but for the deferral of that Deferred Payment pursuant to Paragraph 9.6 of Schedule 22 (*Charges and Invoicing*), the relevant Deferred Payment due by the DCC to the Contractor under the Agreement would have become overdue;

"Industry Codes and Arrangements"

means any binding code, code of practice, methodology or industry agreements (including contracts) relating to the DCC, the Services, DCC Services or DCC Service Users (including all that any DCC Eco-System Entity is a party to or subject to), including:

(a) in relation to the electricity industry:

- (i) the relevant **"Core Industry Documents"** as defined in Condition 21 of the DCC Licence (together with any replacement, extension, consolidation or amendments to the same (whether or not reflected in the DCC Licence from time to time)); and

- (ii) the SEC; and

(b) in relation to the gas industry:

- (i) the relevant Core Industry Documents; and

- (ii) the SEC;

(c) each Energy Licence;

(d) the DCC Licence; and

(e) any other statement, code, methodology or other document which must be prepared by the DCC and approved by a Regulatory Body in accordance with

Mandatory Requirement;

"Information Request"

has the meaning given to that term in Clause 14.3.1(a);

"Initial Term"

[REDACTED]

"Insolvency Event"

means the occurrence of any of the following events, appointments or circumstances (or the occurrence of any event, appointment or circumstances analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant person:

- (a) the person passing a resolution for its winding up or a court of competent jurisdiction making an order for the person to be wound up or dissolved or a liquidator otherwise being appointed or the person being otherwise dissolved;
- (b) the giving of any notice of intention of appointment or notice of appointment of, or the appointment of, an administrator of, or the making of an administration order in relation to, the person;
- (c) the appointment of a receiver, manager or receiver or administrative receiver of, or an encumbrancer taking possession of, selling or giving any notice in respect of, the whole or any part of the person's undertaking, assets, rights or revenue;
- (d) the person commencing negotiations for or entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or taking steps to obtain a moratorium or making an application to a court of competent jurisdiction for protection from its creditors;
- (e) the person stopping or suspending payment of any of its debts or being unable to pay its debts or being declared unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (f) any circumstance arising which would (or which with the giving of notice, lapse of time, determination of materiality or fulfilment of any other applicable condition or any combination of the foregoing would) entitle any third party to enforce any encumbrance (including any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge,

pledge, lien, assignment, security interest, any other security agreement or arrangement or which otherwise restricts the Contractor's ability to use and deal with the relevant Contractor Equipment) over or in respect of any Contractor Equipment.

However, a resolution by the relevant person or a court order that such person be wound up for the purpose of a bona fide solvent reconstruction or amalgamation shall not amount to an Insolvency Event;

"Insurance"

has the meaning given in Schedule 10 (*Insurance*);

"IPR"

means:

(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;

(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

(c) all other rights having equivalent or similar effect in any country or jurisdiction;

"ITIL"

has the meaning given in Schedule 6 (*Standards*);

"Know-How"

means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services;

"KPI Failure"

means a failure to meet the Target Performance Level in respect of a KPI;

"KPI"

means each key performance indicator identified in Appendix 1 (*Key Performance Indicators*) of Schedule 5 (*Performance Measures and Monitoring*);

"Law"

means any applicable law, statute, bye law, regulation, order, regulatory policy, compulsory guidance, industry code of practice (voluntary or otherwise), rule of court or directives, delegated or subordinate legislation in any applicable jurisdiction, or any applicable requirements or notices of any Regulatory Body relevant to the provision or receipt

	of the Services in connection with this Agreement;
"Loss"	means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, indemnity or otherwise;
"Management Order"	a management order issued by a Regulatory Body pursuant to and in accordance with the terms of the DCC Licence;
"Mandatory Requirements"	means: (a) Laws; (b) Industry Codes and Arrangements; and (c) Standards;
"Material Test Issue"	means a Test Issue described as such in in the Test Approach Document;
"Milestone Achievement Certificate"	means a certificate materially in the form of the document contained in Appendix 4 issued by the DCC pursuant to Paragraph 7 of Schedule 15 (<i>Project Plan</i>);
"Milestone Criteria"	means the criteria applicable in respect of each Milestone as set out in Appendix 1 of Schedule 15 (<i>Project Plan</i>);
"Milestone Date"	means the target date by which a Milestone must be Achieved;
"Milestone"	<p>means an event or task:</p> <ul style="list-style-type: none"> a) described in Appendix 1 (<i>Milestones</i>) of Schedule 15 (<i>Project Plan</i>); and b) otherwise agreed between the Parties to be a Milestone, <p>in each case, which shall be completed by the Millstone Date;</p>
"Milestone Payment"	means the sum of the value of the Retention Account on the date of the Milestone Achievement Certificate multiplied by the relevant Milestone Payment Percentage;
"Milestone Payment Percentage"	has the meaning given in Paragraph 8.5 of Schedule 22 (<i>Charges and Invoicing</i>);
"Mobilisation Phase"	has the meaning given in Schedule 15 (<i>Project Plan</i>);
"month"	a calendar month and "monthly" shall be interpreted accordingly;

"Non Rate Card Costs"	agreed costs from Appendix 2 of Schedule 22;
"Notifiable Default"	has the meaning given in Clause 11.1;
"Objectives"	has the meaning given in Clause 5.1;
"Ongoing Access Asset"	has the meaning given in Paragraph 3.4.1 of Schedule 21 (<i>Exit Management</i>);
"Open Source Software"	means computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
"Original Deposit Date"	has the meaning given in Schedule 11 (<i>Escrow</i>);
"Original Source Code Delivery Date"	has the meaning given in Schedule 11 (<i>Escrow</i>);
"Operational Phase"	has the meaning given in Schedule 15 (<i>Project Plan</i>);
"Other ESP Solution"	has the meaning given in Schedule 7 (<i>Security Requirements</i>);
"Pass-Through Expenses"	means third party charges passed directly through to the DCC by the Contractor without mark up or other charge;
"Performance Monitoring Report"	means the monthly report prepared by the Contractor in accordance with Paragraph 4.2 of Schedule 5 (<i>Performance Measures and Monitoring</i>);
"Performance Review Meeting"	means the regular meeting between the Contractor and the DCC to manage and review the Contractor's performance under this Agreement, as further described in Paragraph 5 of Schedule 5 (<i>Performance Measures and Monitoring</i>);
"Permitted Purpose"	means: <ul style="list-style-type: none"> a) receiving the benefit of the Services (and any Replacement Services); b) exercising any of its rights under this Agreement; c) providing any Replacement Services; d) integrating the Services (and 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; e) carry out any Authorised Activity; and/or

- f) carrying out any of the other activities referred to in Clauses 34.11 (*Sub-licensing*), 34.12 (*Successors*);

"Personal Data"	personal data (as defined in the Data Protection Laws) which is Processed by the Contractor or any Sub-contractor on behalf of the DCC pursuant to or in connection with this Agreement;
"Phase"	has the meaning given in Schedule 15 (<i>Project Plan</i>);
"Physical SIT"	means the physical system integration testing to be completed pursuant to this Agreement;
"Plan"	means the Project Delivery Project Plan and/or Project Plan;
"Principal Energy Legislation"	means the Gas Act 1986 and the Electricity Act 1989 Act, read together so far as they apply for the purposes of the DCC Licence in respect of the Supply of Energy under those Acts;
"Process"	has the meaning given to it under the Data Protection Laws and "Processed" and "Processing" shall be construed accordingly;
"Procurement Information"	has the meaning given in Clause 3.3.1;
"Product Backlog"	means the product backlog to be prepared and maintained in accordance with Paragraph 4 of Schedule 4 (<i>Agile Development Methodology</i>).
"Product Vision"	means the vision based on the high-level functional and non-functional requirements of the DCC;
"Project Participants"	means those individuals who undertake the roles together with the Development Team and any replacement from time to time (agreed in accordance with Schedule 4 (<i>Agile Development Methodology</i>));
"Project Delivery Report"	means the project delivery report prepared by the Contractor in accordance with Paragraph 3.3 of Schedule 5 (<i>Performance Measures and Monitoring</i>);
"Project Plan"	the plan set out at the Signature Date in Appendix 3 of Schedule 15 (<i>Project Plan</i>) as amended pursuant to Schedule 15 (<i>Project Plan</i>);
"Project Specific IPR"	means: (a) Specially Written Software; (b) Documentation; and (c) all other items;

	<p>(i) created by the Contractor (or any third party on behalf of the Contractor) specifically for the purposes of this Agreement; or</p> <p>(ii) arising as a result of the performance of the Contractor's obligations under this Agreement, and</p> <p>in each case, including all updates and amendments of these items;</p>
"Quality Plan Audit"	has the meaning given in Schedule 8 (<i>Quality Assurance</i>);
"Quality Plan"	means the Contractor's quality plan that reflects the quality management systems as further described in Schedule 8 (<i>Quality Assurance</i>);
"Recipient"	has the meaning given in Clause 37.1;
"Rectification Plan Process"	as set out in Clauses 11.3 (<i>Submission of the draft Rectification Plan</i>) to 11.9 (<i>Agreement of the Rectification Plan</i>);
"Rectification Plan"	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
"Register of Business Assets"	means a register that identifies and records particulars of all Relevant Business Assets;
"Registers"	has the meaning given in of Paragraph 3.1 of Schedule 21 (<i>Exit Management</i>);
"Regulator Correspondence"	any correspondence from the Information Commissioner's Office, or any successor body, in relation to the Processing of Personal Data under this Agreement;
"Regulatory Bodies"	<p>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:</p> <p>a) any matters dealt with in this Agreement; or</p> <p>b) the DCC or any of its business, activities or affairs, including Ofcom and Ofgem,</p> <p>and "Regulatory Body" shall be construed accordingly;</p>
"Related Adverse Impact"	has the maning given in Clause 40.19.1;
"Related BCDR Plan"	has the meaning given Schedule 9 (<i>Business Continuity and Disaster Recovery</i>);
"Related Exit Plan"	has the meaning given in Schedule 21 (<i>Exit</i>

	<i>Management</i>);
"Related Project Plan"	has the meaning given in Schedule 15 (<i>Project Plan</i>);
"Related Quality Plan"	has the meaning given in Schedule 8 (<i>Quality Assurance</i>);
"Related Service Failure"	has the meaning given Schedule 20 (<i>Co-Operation</i>);
"Related Test Document"	has the meaning given Paragraph 11 of Schedule 17 (<i>Testing and Acceptance</i>);
"Related Undertaking"	means, in relation to any person, any undertaking in which that person has a participating interest as defined in section 421A of the Financial Services and Markets Act 2000;
"Related Variation Procedure"	has the meaning given in Schedule 19 (<i>Variation</i>);
"Relevant Business Asset"	has the meaning given in Schedule 21 (<i>Exit Management</i>);
"Relevant Requirements"	has the meaning given to that term in Clause 53.1.1;
"Relevant Service Provider"	means a DCC Service Provider which provides facilities, goods, services or other supply to the DCC in connection with the Smart Metering Programme, but excluding the Contractor;
"Relevant Service Provider Contract"	means (any contractor or agreement or proposed contract or agreement between the DCC and a Relevant Service Provider;
"Relevant Service Provider IPR Claim"	has the meaning given in Clause 40.7;
"Relevant Service Provider IPR"	means the IPR which is owned by a Relevant Service provider and which is required to be used by the Contractor for the purposes of providing the Services, but excluding the Contractor IPR, Third Party IPR and Project Specific IPR;
"Relief Notice"	has the meaning given in Clause 13.2;
"Relinquishment of Operational Control"	has the meaning given in Schedule 21 (<i>Exit Management</i>);
"Replacement Contractor"	means any third party (including any third party appointed by the DCC from time to time) providing or which shall provide Replacement Services;
"Replacement Services"	means any services which the DCC obtains or itself provides:

	(a) in substitution for the Services or any part of the Services at any time; and/or
	(b) in substitution for the services of the DCC or any part of the DCC's services to Users at any time;
"Report Delivery Project Plan"	the plan set out at the Signature Date in Appendix 2 of Schedule 15 (<i>Project Plan</i>) as amended pursuant to Schedule 15 (<i>Project Plan</i>);
"Resources"	means the people delivering a Sprint;
"Restricted Countries"	<p>(a) any country outside the European Economic Area; and</p> <p>(b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;</p>
"Retained Amount"	has the meaning given in Paragraph 8.2 of Schedule 22 (<i>Charges and Invoicing</i>);
"Retention Account"	has the meaning given in Paragraph 8.2 of Schedule 22 (<i>Charges and Invoicing</i>);
"Reviewer"	means a person appointed by a Regulatory Body to review any matters reported by the Contractor in respect of which the Regulatory Body and/or the DCC requires clarification;
"RFP Response"	has the meaning given in Clause 39.2.3 (a);
"Risk Indicator"	has the meaning given in " <i>A Guide to Dun & Bradstreet's Predictive Indicators 2015</i> ";
"SECCo"	has the meaning given in the SEC;
"SEC Party"	has the meaning in the DCC Licence and " SEC Parties " shall be construed accordingly;
"SEC Secretariat"	means the body providing SEC secretariat services;
"Security Controls"	has the meaning given in Schedule 7 (<i>Security Requirements</i>);
"Security Management Plan"	has the meaning given in Schedule 7 (<i>Security Requirements</i>);
"Security Policy"	has the meaning given in Schedule 7 (<i>Security Requirements</i>);
"Services"	means any and all of the services (including the provision of Deliverables, performance of any other obligations under this Agreement and delivery of the Contractor Methodology) to be provided by the Contractor under this Agreement;

"Signature Date"	means the date on which this Agreement is signed by both parties;
"Site"	has the meaning given in Schedule 7 (<i>Security Requirements</i>);
"Smart Energy Code or "SEC"	has the meaning given to those expressions in the DCC Licence;
"Smart Metering Implementation Programme" or "SMIP"	has the meaning given in the DCC Licence;
"Smart Metering Programme"	means the SMIP and (following SMIP Completion (as such term is defined in the DCC Licence)) those other government and/or industry programmes and arrangements relating to the continuation, maintenance and/or further enhancement of the End-to-end Smart Metering System and/or roles and responsibilities of the DCC (and any Successor DCC);
"SMETS"	means the document of that name as designated by the Secretary of State for incorporation into the SEC with respect to the technical and functional capabilities of Smart Metering Systems (and all versions thereof). Individual designated versions of SMETS are identified by unique version numbers (for example SMETS1 and SMETS2);
"Software"	means Specially Written Software, Contractor Software and Third Party Software;
"Software Defect"	has the meaning given in Clause 39.4.4 (<i>Warranties</i>);
"Source Code Materials"	means, in relation to each item of Specially Written Software and each item of Deposited Software (the "Relevant Software"): <ul style="list-style-type: none"> (a) the Relevant Software expressed in a source language or form readable by a human (and that can be interpreted or compiled and then executed by a computer as commands); (b) a running object code version of the Relevant Software on media that is acceptable to the DCC (acting reasonably) and which is free from malicious software in a compiled form ready to be executed by a computer; (c) copies of any relevant maintenance tools, compilers and assemblers; (d) details of all hardware (including communications links) required in order to operate the Relevant Software;

- (e) details of relevant hardware, processor and system configurations applicable to the Relevant Software;
- (f) descriptions of any generally-available third party software required for the support or maintenance of the Relevant Software and its availability; and

all documentation and tools (including the Relevant Software expressed in a source language that can be interpreted by a human) reasonably required for a person having commercially available computer programming skills to read, understand and modify the Relevant Software;

"Specially Written Software"

means any software (with the exception of scripts):

- a) which is created by the Contractor (or any third party on behalf of the Contractor) specifically for the purposes of this Agreement; or
- b) arising as a result of the performance of the Contractor's obligations under this Agreement, and

in each case, including all updates and amendments of these items;

"Sprint"

means two-weekly package of work to be approved by the DCC Team Leader;

"Staff Vetting Procedure"

means all:

(a) vetting procedures in: (i) the Security Policy and/or the Security Management Plan; or (ii) otherwise required pursuant to any provision of this Agreement; and

(b) the Contractor's vetting procedures and policies to the extent these require or imply any additional vetting to that otherwise referred to under this definition; and

(c) additional vetting procedures agreed under the Variation Procedure;

"Stage Exit Criteria"

means, in relation to a Test Stage, the test success criteria for that Test Stage as set out in Paragraph 4.4 of Schedule 17 (*Testing and Acceptance*);

"Standards"

means:

(a) the standards set out in this Agreement; and

(b) all other standards, codes of practice, guidance, policies, procedures or specifications with which a contractor operating in the same industry as the Contractor and working in accordance with Good

Industry Practice would be expected to comply;

"Sub-contract"

means any contract or agreement (or proposed contract or agreement) between the Contractor (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Contractor (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof and the expression "Sub-contracting" shall be construed accordingly;

"Sub-contractor"

any third party with whom:

- (a) the Contractor enters into a Sub-contract; or
- (b) a third party under (a) above enters into a Sub-contract,

or the servants or agents of that third party;

"Successor Licensee"

means the person that is to succeed (or has succeeded) the DCC as holder of a licence to carry on the Authorised Activity within Great Britain (and, if the context so permits, may include any person who has applied, or is considering whether to apply, to be that licence holder);

"Supply of Energy"

means either or both of the supply of gas pursuant to the Gas Act 1986 and the supply of electricity pursuant to the Electricity Act 1989, in each case within the meaning that is given to the term "supply" in the respective Act;

"Supporting Documentation"

has the meaning given in Paragraph 4.7 of Schedule 22 (*Charges and Invoicing*);

"System"

has the meaning given in Schedule 7 (*Security Requirements*);

"Target Performance Level"

means the target performance level for each KPI as set out in Appendix 1 (*Key Performance Indicators*) of Schedule 5 (*Performance Measures and Monitoring*);

"Taxes"

means any form of taxation, duty, impost, levy, tariff of any nature whatsoever (including, without limitation, statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction) including:

- a) (whether or not any such taxation, duty, impost, levy or tariff arises) in respect of actual, deemed, gross or net income, profit,

gain, value, receipt, payment, sale, use, occupation, franchise, value added property or right;

- b) national insurance contributions in the UK (and corresponding obligations elsewhere);
- c) any withholding amount subject to PAYE or other amount of or in respect of any of the foregoing payable by virtue of any Tax statute; and
- d) any penalty, charge, surcharge, fine, charges or costs or interest payable in connection with any such taxation, duty, impost, levy or tariff;

and "**Tax**" shall be construed accordingly;

"Team Leader"

means the person appointed by the DCC to manage the delivery of the Services (and any replacement from time to time);

"Term"

the period commencing on the Commencement Date and ending on the expiry of the Initial Term or any Extension Period (or, if later, the expiry of the Termination Assistance Period) or on earlier termination of this Agreement;

"Termination Assistance Notice"

has the meaning given in Schedule 21 (*Exit Management*);

"Termination Assistance Period"

means the period during which the Contractor shall provide the Termination Assistance Services (as specified in the Termination Assistance Notice) and as may be extended pursuant to Paragraph 14.7 of Schedule 21 (*Exit Management*);

"Termination Assistance Services"

means the services and activities to be performed by the Contractor pursuant to the Exit Plan and as specified in the Termination Assistance Notice;

"Test Approach Document"

means the DCC's SMETS1 test approach document (as applicable from time to time);

"Test Stage Completion Certificate"

means a certificate materially in the form of the document contained in Appendix 1 issued by the DCC pursuant to Paragraph 10 of Schedule 17 (*Testing and Acceptance*);

"Test Stage Completion Report"

means a report issued as a result of the successful completion of a Test Stage;

"Test Document"

has the meaning set out in Paragraph 2.1 of Schedule 17 (*Testing and Acceptance*);

"Test Issue Threshold"

means a maximum number of Test Issues as set out in the relevant Test Plan;

"Test Issue"	means any variance or non-conformity of a Deliverable with the Test Success Criteria;
"Test Plan"	means a plan for the Testing of Deliverables, as described further in Paragraph 2.3 to 2.5 (inclusive) of Schedule 17 (<i>Testing and Acceptance</i>);
"Test Report"	has the meaning given in Paragraph 5.4 of Schedule 17 (<i>Testing and Acceptance</i>);
"Test Specification"	means the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraphs 2.6 and 2.7 of Schedule 17 (<i>Testing and Acceptance</i>);
"Test Stage"	has the meaning given in Paragraph 4.1 of Schedule 17 (<i>Testing and Acceptance</i>);
"Test Success Criteria"	means, in relation to a Test, the test success criteria for that Test as set out in the Test Plan;
"Test Witness"	means any person appointed by the DCC pursuant to Paragraph 7.1 of Schedule 17 (<i>Testing and Acceptance</i>);
"Test"	means any tests required to be carried out under this Agreement, as further described in Schedule 17 (<i>Testing and Acceptance</i>) and "Testing" and "Tested" shall be construed accordingly;
"Testing Quality Audit"	has the meaning given in Paragraph 8.1 of Schedule 17 (<i>Testing and Acceptance</i>);
"Third Party IPR"	<p>means:</p> <ul style="list-style-type: none"> (a) Third Party Software; and (b) all other items owned by a third party (other than a Contractor Person or any Affiliate of a Contractor Person): and, <ul style="list-style-type: none"> (i) used by the Contractor (or any third party on behalf of the Contractor) to provide the Services or otherwise perform the Contractor's obligations under this Agreement; or (ii) made available to the DCC in connection with this Agreement; <p>and, in each case, including all updates and amendments of these items,</p> <p>but excluding the Project Specific IPR;</p>

"Third Party Software"	<p>means any software in which the IPR is owned by a third party (other than a Contractor Person or any Affiliate of a Contractor Person):</p> <ul style="list-style-type: none"> c) used by the Contractor (or any third party on behalf of the Contractor) to provide the Services or otherwise perform the Contractor's obligations under this Agreement; or d) is made available to the DCC in connection with this Agreement, and <p>in each case, including all updates and amendments of these items.</p> <p>Excluding the Specially Written Software;</p>
"Third Party Tester"	has the meaning given in Paragraph 3.1 of Schedule 11 (<i>Escrow</i>);
"Transition and Exit Phase"	has the meaning given in Schedule 15 (<i>Project Plan</i>);
"Third Party Tester"	has the meaning given in Schedule 11 (<i>Escrow</i>);
"Transferable Asset"	has the meaning given in Paragraph 3.4.1 of Schedule 21 (<i>Exit Management</i>);
"Transition to Live Phase;	has the meaning given in Schedule 15 (<i>Project Plan</i>);
"TUPE Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (Council Directive 77/187/EEC as amended by Council Directive 98/50 EEC and consolidated in Council Directive 2001/23/EEC) into English law;
"UIT"	means the user integration testing to be completed pursuant to this Agreement;
"Unsuitable Staff"	has the meaning given in Clause 30.5;
"Use"	<p>means:</p> <ul style="list-style-type: none"> a) with respect to Contractor Software, the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate, or otherwise utilise the relevant Contractor Software; b) with respect to any Third Party Software, the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) that Third Party Software; and c) with respect to any Contractor IPR and Third Party IPR (in each case other than software), the

right to copy, adapt, publish, distribute or otherwise use such Contractor Background IPR and Third Party IPR.

"User"	has the meaning given in Schedule 7 (<i>Security Requirements</i>);
"User Systems"	has the meaning given in Schedule 7 (<i>Security Requirements</i>);
"Variation Form"	means the form that will be completed and signed by the Parties to effect a Variation which shall be in the form set out in Appendix 1 to Schedule 19 (<i>Variation Procedure</i>);
"Variation Procedure"	means the procedure for carrying out a Variation as set out in Schedule 19 (<i>Variation Procedure</i>);
"Variation"	has the meaning given in Schedule 19 (<i>Variation Procedure</i>); and
"VAT"	means value added tax and/or any equivalent and/or any sales taxes, duties and/or levies imposed by any authority, government or government agency in any jurisdiction.
"Verification Exercise"	has the meaning given in Schedule 11 (<i>Escrow</i>); and
"Verification Fees"	has the meaning given in Schedule 11 (<i>Escrow</i>).
"Warranty Claim"	has the meaning given in Clause 39.5 (<i>Warranties</i>); and
"Warranty Claim Period"	has the meaning given in Paragraph 8.8 of Schedule 22 (<i>Charges and Invoicing</i>);
"Warranty Period"	the period of twelve (12) months;
"Wilful Default"	means a wrongful act or omission by the Contractor which the Contractor either knows that in so acting it is committing, and intends to commit, a breach of contract, or is reckless or recklessly indifferent as to whether or not it is a breach a contract and in either case, is made without prior consultation with and without the consent of DCC.
"Work Off Plan"	means a plan to resolve any outstanding Test Issues.

SCHEDULE 2

PROJECT DESCRIPTION

The contents of this project description does not create a contractual commitment on the DCC and the Contractor.

The Smart Metering Implementation Programme

The Government developed a Smart Metering Implementation Programme to deliver its vision to ensure that every home and small business in Great Britain has smart electricity and gas meters. The programme aims to replace 53 million meters with smart electricity and gas meters in domestic properties and smart or advanced meters in smaller non-domestic sites, benefitting approximately 30 million premises.

The Department of Business, Energy and Industrial Strategy ("BEIS") formerly known as DECC granted Smart DCC Ltd a licence in September 2013 to establish and manage the data and communications network to connect smart meters to the business systems of energy suppliers, network operators and other authorised service users of the network.

The DCC infrastructure will help deliver the Government's plans to roll out an estimated 53 million smart electricity and gas meters to domestic and non-domestic properties in the UK by 2020.

The data and communications infrastructure will:-

- operate consistently for all consumers regardless of their energy supplier
- provide smart metering data to network operators in support of smart grids
- allow authorised third parties to provide services to consumers who have granted them permission to use their data. Consumers can benefit by receiving energy services and advice on how to reduce their energy usage.

The DCC initiated the SMETS1 Programme to ensure these smart meters can still be utilised in order to ensure the investment to date by the industry is not lost and that households are not encumbered with a further change in meter to upgrade to SMETS2 technology.

The external link for DCC's SMETS1 Programme, including the links to the IEPFR final report and the delivery plan consultation, can be found here:-

<https://www.smartdcc.co.uk/about-dcc/future-service-development/enrolment-and-adoption/>

The SMETS 1 Programme delivery plans are set out in Appendix 1 of this Schedule 2.

The DCC is in the process of assessing options for the initial enrolment of SMETS1 meters into a DCC service. Once these options have been assessed the DCC will be reporting to the UK Government on the feasibility and estimated cost of each option and the manner in which it would be delivered.

SMETS 1 Options Analysis

The infrastructure for existing SMETS1 meters has developed organically without a unified communications standard and often independently, to meet energy suppliers' own requirements, according to their own business needs. As such, meters installed by one

supplier are not always compatible with another suppliers' system and could lose functionality or require replacement when consumers switch supplier.

The Government believes that there are important shared benefits for industry and consumers from the enrolment of SMETS1 meters into the DCC. In particular, the enablement of more efficient and effective switching for customers, as a gaining supplier will be able to access the smart meter functionality should a consumer switch suppliers. Consequently this should reduce the risk of SMETS1 meters being replaced before the end of their operating lives.

In order to achieve the objective of maximising the benefits of smart metering, the Government has requested the DCC to carry out a study of feasible options for the enrolment of SMETS1 meters. Section N of the SEC required the DCC to produce an IEPFR relating to the enrolment of SMETS1 meters and to consult parties on the content of the draft report.

In identifying feasible options for the provision by the DCC of a SMETS1 service, the DCC took as its starting point the existing multiple technical solutions and systems that have developed to support SMETS1 meters, and considered how technical and commercial arrangements could be structured to enable the provision of a DCC SMETS1 service.

The DCC's objective is to identify feasible options that whilst technically effective, commercially efficient and secure, are delivered for a reasonable cost and within reasonable timeframes.

SMETS1 Integration Path

Integration path covers the means by which the DCC can communicate with SMETS1 meters to enable it to first enrol the meters and then send commands to and receive messages from enrolled SMETS1 meters. A range of potential integration path options have been considered as part of consultation with the industry (see Appendix 2 of this Schedule 2).

In order to provide a DCC SMETS1 Service, the DCC needs to establish communication with SMETS1 meters such that (on an on-going basis) the DCC can provide the SMETS1 communication services in respect of the SMETS1 meter. There are a number of options for how the DCC might technically communicate (via integration) with a SMETS1 meter, which are set out and evaluated below. 'Integration path' is the term that is used to describe how such communications might take place.

This initial analysis resulted in five possible integration path options, with a conclusion that two options were feasible. Through the consultation process three options were indeed discounted resulting in two identified options:-

- establish communications between a new SMETS1 service (procured by the DCC) which integrates via existing SMETS1 CSPs to the meter (i.e. 'integrate to meter') – Option 4 ; and
- establish communications with the existing SMETS1 data services capability (known as the Smart Meter Systems Operator ("**SMSO**")), which integrates, via existing SMETS1 CSPs, with the meter (i.e. 'integrate to SMSO') – Option 5.

Option 5 uses existing SMETS1 meters, communications hubs and SMETS1 CSPs but also uses existing SMETS1 SMSOs (together with their existing HESs). This option involves the service request sent to the DCC by a user, 'a user service request', being converted into an 'SMSO service request' (in the format of the current SMSO-user interface/language). As with the current arrangements, the SMSO would then convert the SMSO service request into a command to be sent to the meter.

Option 5 has two related options:-

- non-standardised DCC - SMSO interface: the existing SMSO interfaces are retained and the DCC procures the service that would translate user service requests into SMSO service requests - Option 5a; or
- standardised DCC - SMSO interface: the DCC contracts with SMSOs to modify their interfaces to provide the function to translate the user service requests into the SMSO service requests – Option 5b.

What the DCC requires from the SMSOs

In order to further understand the feasibility of Integration Path Option 5b the DCC wishes to commission the development required by SMSOs to integrate to the Service Request Interface provided by the DCC Data Service Provider, or equivalent. This will allow the DCC to make an informed and costed recommendation to BEIS in quarter four of 2017.

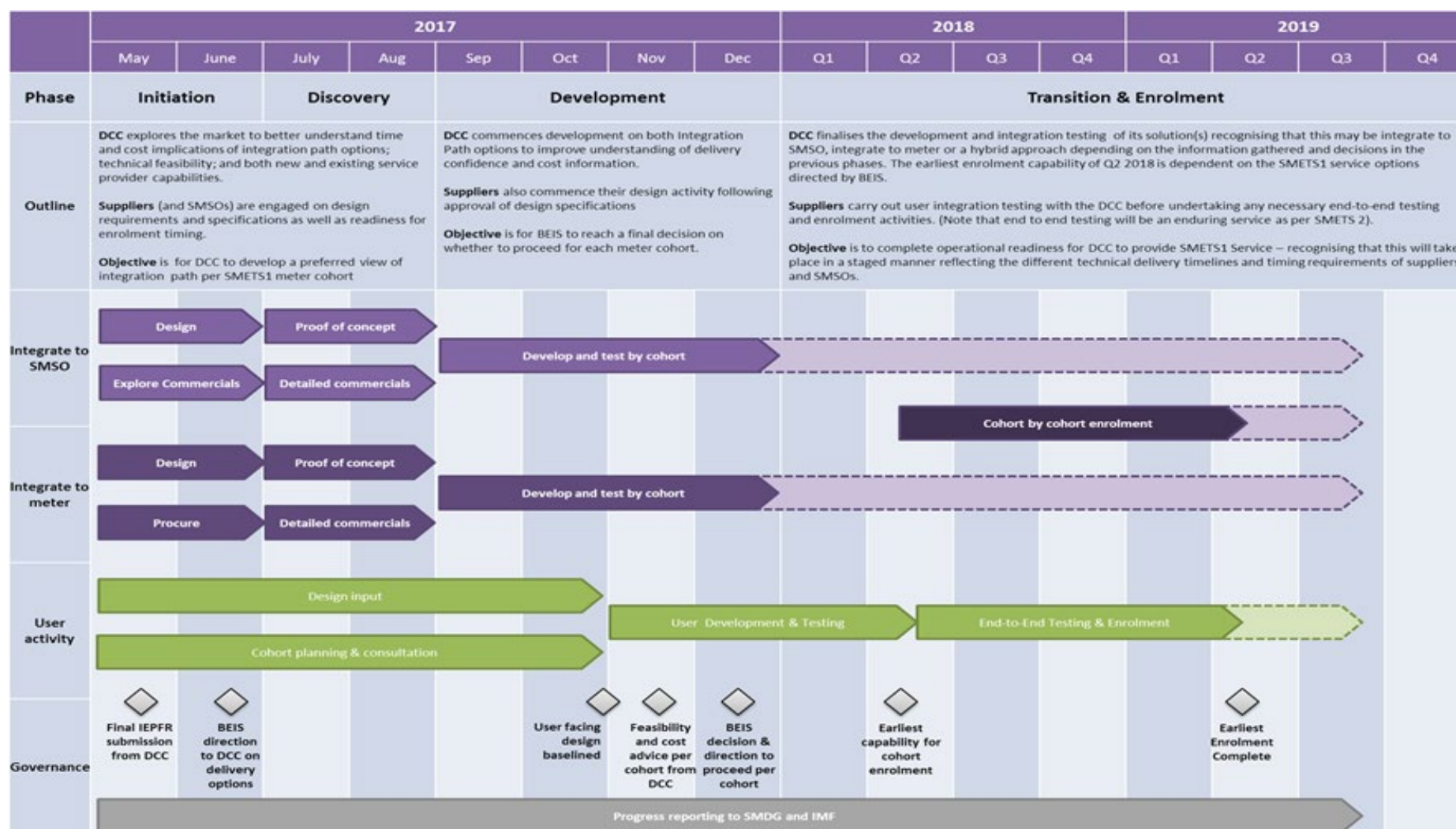
The DCC wishes to pursue an iterative design and development process. Therefore the requirements are likely to change over the initial stages of the software development. The DCC's indicative requirements are detailed in Schedule 3 (*Requirements*) and the methodology that the DCC wishes SMSOs to employ is detailed in Schedule 4 (*Agile Development Methodology*).

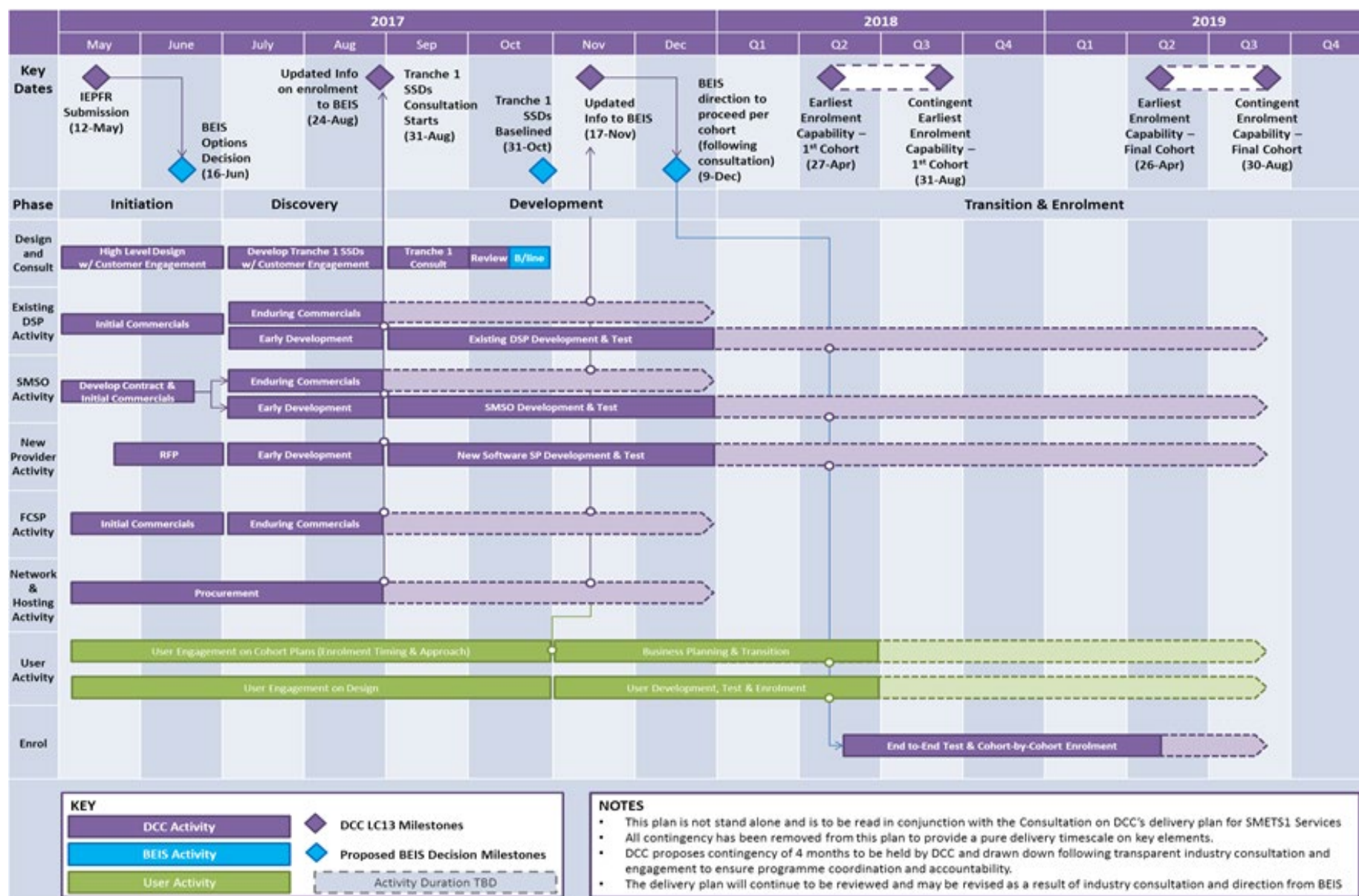
As the methodology is iterative in nature a time and material charging mechanism has been selected. In order to manage the commercial risk of the DCC a cap on effort will be agreed with the DCC for each tranche of work. This cap will not be exceeded without the DCC's authorisation.

SMSO's are asked to recognise that should BEIS decide that Integration Path Option 5b is optimal that the requirements that will be developed as part of this development will likely be used as the basis for an enduring solution.

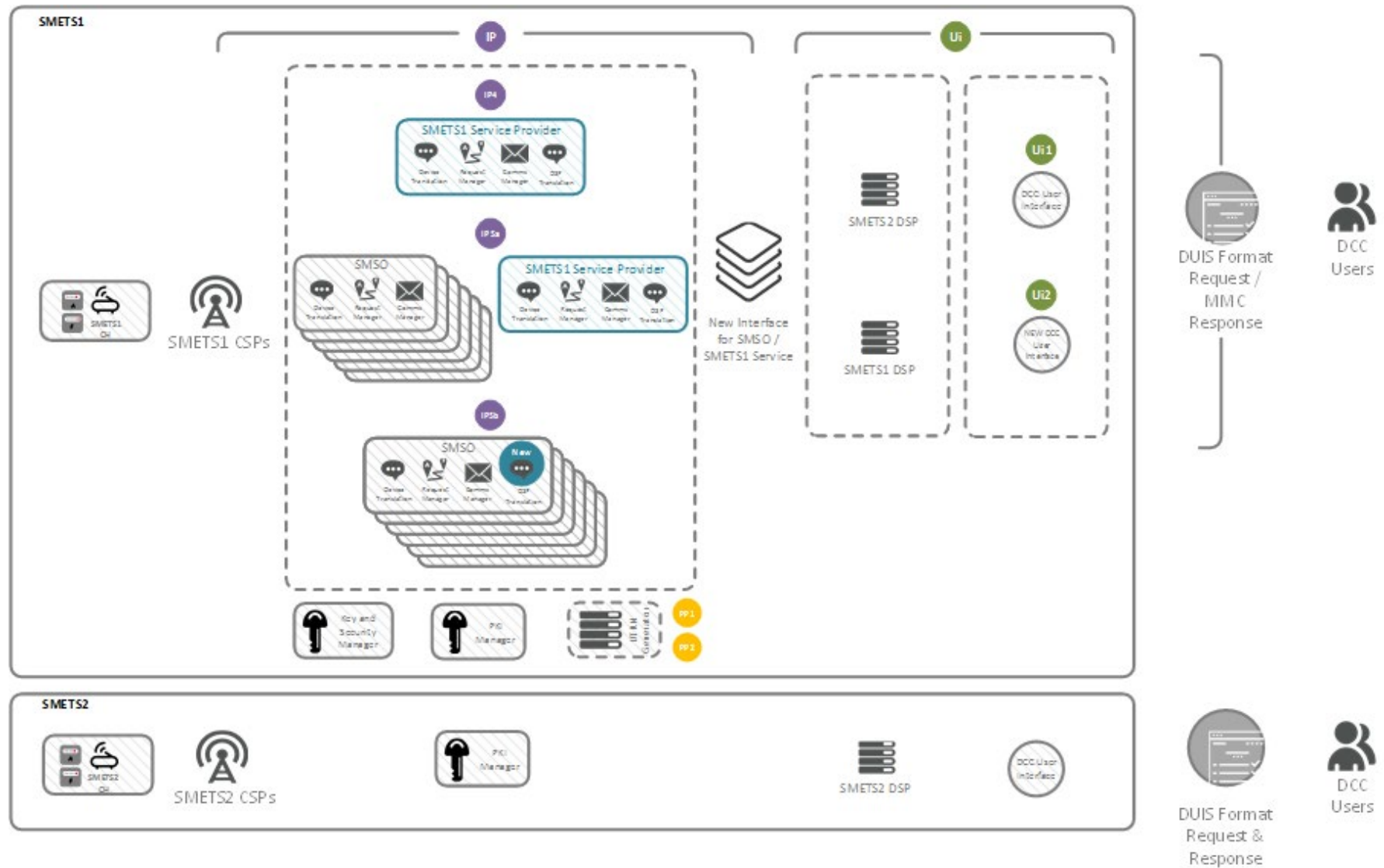
Therefore the DCC would like the SMSOs to develop the software in a way that allows this development to be scaled into an enduring solution (recognising the non-functional requirements in Schedule 4 (*Agile Development Methodology*)) in an efficient manner so as to minimise on-going resource requirements and costs.

Appendix 1 – SMETS 1 Programme Delivery Plans





Appendix 2 – Example Implementation Path Options



SCHEDULE 3

REQUIREMENTS

1. INTRODUCTION

- 1.1 This Schedule 3 sets out DCC's requirements as follows;
- 1.1.1 Functional requirements – those that define the specific behaviour or functions of the service;
- 1.1.2 Non-functional requirements – all other requirements.
- 1.2 The Contractor shall, and shall ensure that the Services and Deliverables shall, deliver and comply with the requirements set out in this Schedule 3.

2. FUNCTIONAL REQUIREMENTS

- 2.1 The Contractor must be capable of delivering the following Functional Requirements:

Requirement	Description
Cloud Development	<ul style="list-style-type: none">Cloud configuration design documentsCloud configuration scriptsCloud Security design documentsAutomated software promotion scriptsSoftware testing scriptsIntegration testing scriptsPerformance testing scripts
User Interface Option	<ul style="list-style-type: none">Scope and delivery requirements documentsCore UI2 interfacesMessage Bus software
Related Services	<ul style="list-style-type: none">Software testing reportsQuality assurance reportsITHC reports.

- 2.2 Requirements will be further refined or identified via:
- 2.2.1 The Agile Development Methodology and/or
- 2.2.2 The Variation Process.

3. NON-FUNCTIONAL REQUIREMENTS – GENERAL

- 3.1 The requirements set out in this paragraph 3 will apply at all times during the Term.

Requirement	Description
Project Management	<ul style="list-style-type: none"> • The Contractor must ensure that all aspects of project management are carried out in accordance with and reflect Good Industry Practice. • As part if the Services, the Contractor must provide project management services in accordance with Good Industry Practice for the following phases; <ul style="list-style-type: none"> ○ Development; • The Contractor must provide such additional project management services as are required to implement each Variation.
Risk Management	<ul style="list-style-type: none"> • The Contractor should monitor and formally report to the DCC on Services risks and issues at regular and agreed intervals, through mechanisms agreed with the DCC, or, in the absence of any such agreement, in accordance with Good Industry Practice • The Contractor shall implement, operate and maintain a joint risk and issue management process, which shall include processes to identify, assess, monitor, mitigate, control risks and issues and to communicate such risks and issues to the DCC in accordance with Good Industry practice.

4. NON-FUNCTIONAL REQUIREMENTS – DEVELOPMENT PHASE

4.1 The requirements set out in this paragraph 5 will apply at all times during the Development Phase:

Requirement	Description
Design, build and test process	<p>The Contractor shall;</p> <ul style="list-style-type: none"> • support DCCs iterative development of the high-level design of the Functional Requirements; • carry out iterative development of the detailed design of the Functional Requirements; • carry out continuous integration; • support the creation of automated testing; •
Service management and performance monitoring	<p>The Contractor shall:</p> <ul style="list-style-type: none"> • support DCC in the selection of third party tools to be used to aid service management, performance monitoring, and incident and problem resolution in connection with the Enduring Service;

Requirement	Description
design	<ul style="list-style-type: none"> • design the Enduring Service so that it incorporates tools for service management, performance monitoring, and incident and problem resolution; • design the Enduring Service so that DCC selected third party tools to be used to aid service management, performance monitoring, and incident and problem resolution are incorporated.

ANNEX 1

Contractor General Solution Method Statement

Not Used

SCHEDULE 4

AGILE DEVELOPMENT METHODOLOGY

1. APPOINTMENT OF TEAM LEADER

- 1.1. Within two (2) Business Days of the Commencement Date the DCC will appoint a Team Leader.

2. PROJECT TOOLS

- 2.1. As a minimum the Project Tools that the DCC will use are:

- 2.1.1. Product Visions;
- 2.1.2. Contractor Approach; and
- 2.1.3. Product Backlog.

3. PREFERRED METHOD OF ENGAGEMENT

- 3.1. Within five (5) Business Days of the Commencement Date the DCC shall meet with the Contractor to agree upon the preferred method of engagement. As a minimum, within a further five (5) Business Days, the parties will have agreed upon:

- 3.1.1. The Product Visions;
- 3.1.2. The Contractor Approach – expected to be based on an industry standard agile development methodology;
- 3.1.3. The approach to resource estimates, allocation and burn rates;
- 3.1.4. The method by which quality is managed;
- 3.1.5. The approach to collaboration and how the Parties communicate on progress and priority, which may be similar to the following:-
 - 3.1.5.1. The Contractor may inform the DCC via daily stand ups, escalations and issues that the DCC needs to facilitate resolutions, provide guidance or be made aware of;
 - 3.1.5.2. The DCC Team Leader responsible for the area of any concern or change may similarly inform the relevant Contractor personnel of any changes to priority or new requirements that are to be added to the product backlog;

4. CHARGES

- 4.1. It is intended that a time and materials charging approach will be used. So as to manage the commercial risk of the DCC an effort cap will be agreed with the Contractor at the start of any tranche of work.

- 4.2. Where the effort cap has been reached no further effort or Charges can be made without the Team Leader authorising any additional effort.
- 4.3. Prior to each tranche of work commencing the Team Leader will agree the scope of work, the associated resource profile and envisaged man days of effort (including the cap that will be applied).
- 4.4. Any changes to the envisaged man days of effort will be highlighted to the Team Leader and it is at the discretion of the Team Leader to agree to proceed with Contractor's suggested resource profile.
- 4.5. At the request of the Team Leader the Contractor will issue a statement that details the resource costs to date detailing as a minimum: the Resources employed; the days of effort expended and the relevant day rate per resource.
- 4.6. When the Contractor presents an invoice it shall be accompanied by a statement that details as a minimum: the Resources employed; the days of effort expended and the relevant day rate per resource.

5. PROJECT CHANGE

- 5.1. The Team Leader may require a project change at any time (which may include reducing or increasing the scope of the Product Vision).
- 5.2. Any change to the Charges shall be calculated in accordance with Schedule 22 (*Charges and Invoicing*).

6. DCC ROLES AND RESPONSIBILITIES

- 6.1. At least once a month a review meeting will be held between the Team Leader and the Contractor's Project Manager.
- 6.2. The Contractor will present Resources and Charges for the Requirements detailed in 2.2 of Schedule 3, or as varied in the Variation Process, that hasn't already been agreed.
- 6.3. The Contractor's forecast Charges will include details of the Provider site and other site breakdown.
- 6.4. The Team Leader will agree or reject the Resources and Charges forecast.
- 6.5. Where the Team Leader disagrees with either or both of the Resources and Charges, the Contractor shall provide a new forecast within five (5) Business Days.
- 6.6. The Contractor will provide Timesheets of the Resource used and Charges to the Team Leader on a two-weekly basis and the Team Leader will review and approve or disapprove the Timesheets. Where the Team Leader does not approve the Timesheets, the DCC may request further information in accordance with clause 4.7 of Schedule 22.

6.7. Any variations to agreed Resources and Charges will be agreed by the Team Leader.

SCHEDULE 5

PERFORMANCE MEASURES AND MONITORING

1. KEY PERFORMANCE INDICATORS

1.1 The Contractor shall:

- 1.1.1 record and report each KPI, in as close to real time as reasonably possible but in any event by five (5) days after the end of the preceding month;
- 1.1.2 provide the Services in such a manner so as to meet or exceed the Target Performance Level for each KPI; and
- 1.1.3 comply with the provisions of this Schedule in relation to the monitoring and reporting on its performance against the KPIs.

2. KPI FAILURE

- 2.1 Pursuant to Clause 10.1 (*Performance Monitoring*), if a KPI Failure occurs, the DCC may exercise its rights to terminate this Agreement Pursuant to Clause 46.2.1 (a) (*Termination Rights*).

3. PROJECT DELIVERY REPORT FOR THE DEVELOPMENT PHASE

- 3.1 This Paragraph 3 shall apply in the Development Phase.
- 3.2 The Contractor shall provide a Project Delivery Report to the DCC in accordance with Schedule 15 (*Project Plan*).
- 3.3 The Project Delivery Report shall be in a format mutually agreed between the Parties and shall contain, as a minimum, the following information in respect of the time period to which the Project Delivery Report relates:-
 - 3.3.1 KPI performance;
 - 3.3.2 a summary of the KPI Failures including the root cause of each failure; and
 - 3.3.3 such other details as the DCC may reasonably require from time to time.
- 3.4 The Project Delivery Report shall be reviewed by the Parties in accordance with Schedule 15 (*Project Plan*).

4. PERFORMANCE MONITORING REPORT FOR THE MOBILISATION PHASE

- 4.1 This Paragraph 4 shall apply in the Mobilisation Phase.
- 4.2 Within ten (10) Business Days after the end of each month (unless otherwise agreed between the Parties), the Contractor shall provide a Performance Monitoring Report to the DCC.

- 4.3 The Performance Monitoring Report shall be in a format mutually agreed between the Parties and shall contain, as a minimum, the following information in respect of the month just ended (or as otherwise agreed between the Parties):-
- 4.3.1 KPI performance;
 - 4.3.2 a summary of the KPI Failures including the root cause of each failure; and
 - 4.3.3 such other details as the DCC may reasonably require from time to time.
- 4.4 The Performance Monitoring Report shall be reviewed by the Parties at the Performance Review Meeting.
- 4.5 The Performance Review Meeting shall be attended by personnel as agreed by the parties.
- 4.6 The DCC may:-
- 4.6.1 invite representatives of any other DCC Service Providers to attend the Performance Review Meeting; and
- raise any additional questions and request any further information regarding any KPI Failure, and the Contractor shall promptly comply with such request.

APPENDIX 1

KEY PERFORMANCE INDICATORS

Mobilisation Phase

Ref.	Key Performance Indicator	Target Performance Level	KPI Failure
1.	To Be Agreed	*	*
2.	To Be Agreed	*	*

Development Phase

Ref.	Key Performance Indicator	Target Performance Level	KPI Failure
1.	To Be Agreed	*	*
2.	To be Agreed	*	*

SCHEDULE 6

STANDARDS

1. PURPOSE

- 1.1 This Schedule 6 details certain Standards with which the Contractor is required to comply to the extent applicable to the Services under this Agreement.
- 1.2 This Schedule 6 is without prejudice to the Contractor's other obligations under this Agreement, including any requirement to comply with other Standards referred to elsewhere in this Agreement.
- 1.3 For the avoidance of doubt, references to Standards in this Agreement refer to the latest version of such Standards, as updated from time to time in accordance with Clause 29 (*Change in Mandatory Requirements*).

2. STANDARDS

- 2.1 Without prejudice to any other provisions of this Agreement, the Contractor (and the Contractor Solution) shall comply with the Standards referred to in this Schedule 6 throughout the Term and for clarity, certification is not required for those specific standards in paragraphs 2.4 and 2.5.

ITIL standards

- 2.2 Standards contained in the Office of Government Commerce's IT Infrastructure Library ("ITIL").

Technical standards

- 2.3 Technical standards, including:

No.	Standard
1.	Open and accessibility standards, wherever possible, following www.w3.org guidelines for web services
2.	Java Coding Standard

2.4 Security standards

Security standards, including:

No.	Standard
ISO/BS Standards	
1.	ISO/IEC 27001:2005 (Information technology — Security techniques — Information security management systems — Requirements)

2.	ISO/IEC 27002:2005 (Security techniques – Code of practice for information security management)
3.	ISO/IEC 27005:2011 (Information technology – Security techniques – Information security risk management)
4.	ISO/IEC 27033 (Information technology – Security techniques – Network security)
5.	the Contractor's internal security incident management process which has and will continue to have similar aims and characteristics to ISO/IEC 27035:2011 (Information technology – Security techniques – Information security incident management)
6.	NOT USED
7.	NOT USED
8.	BSI BS 10008 (Evidential weight and legal admissibility of electronic information)
9.	DISC PD 0008 (Code of practice for legal admissibility and evidential weight of information stored electronically)
10.	BS 7858 – Security Screening
HMG/CESG Standards	
11.	HMG Information Assurance Standard No.4 (Management of Cryptographic Systems)
12.	HMG Information Assurance Standard No. 5 (Secure Sanitisation of Protectively Marked or Sensitive Information)
13.	HMG Information Assurance Standard No. 6 (Protecting Personal Data and Managing Information Risk)
14.	NOT USED
15.	NOT USED
16.	HMG Baseline Personnel Security Standard (BPSS)
17.	Compliance with latest National Cyber Security Centre Guidance.
Other Standards	
18.	RFC 3647 (Internet X.509 Public Key Infrastructure Certificate Policy and Certificate Practices Framework)
19.	Any requirements or advice of the Centre for Protection of National Infrastructure regarding Critical National Infrastructure

	(CNI) category as notified to the Contractor from time to time by the DCC
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2.5 Quality and service management standards

Quality and service management standards, including:

No.	Standard	
1.	the Contractor's internal project/programme management standards (UPM) which is within the Contractor's overall DELIVER methodology which has and continues to have similar aims and characteristics to "Managing Successful Programmes" (the HMG-approved programme management methodology)	
2.	the Contractor's internal quality management standards which has and continue to have similar aims and characterists to ISO 9001:2000 (Quality management systems – Requirements)	
3.	the Contractor's internal standards which has and continues to have similar aims and characterists to TickITplus	
4.	ISO/IEC 20000 (Standard for IT service management)	

2.6 Business continuity standards

Business continuity standards, including:

No.	Standard
1.	ISO/IEC 27031:2011 (Information technology – Security techniques – Guidelines for information and communication technology readiness for business continuity)
2.	ISO/IEC 22301:2012 (Societal security – Business continuity management systems – Requirements)
3.	BS 25999:2006 (Business Continuity Planning Standard)

4.	Business Continuity Institute (BCI) Good Practice Guidelines
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2.7 Environmental standards

Environmental standards, including:

No.	Standard
1.	NOT USED
2.	NOT USED

2.8 Interface standards

Interface standards, including:

No.	Standard
1.	NOT USED

2.9 NOT USED

2.10 Health and safety standards

Health and safety standards, including:

No.	Standard	
1.	NOT USED	
2.	NOT USED	

2.11 Details of technical standards the Contractor cannot comply with:

Clause number in Schedule	Heading	No.	Reason for non-compliance
NOT USED			

2.12 Details of the Contractor's applicable technical standards not listed:

No.	Standard.
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	NOT USED
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SCHEDULE 7

SECURITY REQUIREMENTS

1. DEFINITIONS

1.1 Defined terms in this Schedule 7 will have the meaning given to them in this Paragraph 1.1 and will be interpreted in accordance with the DCC Licence.

"Breach of Security" means the occurrence of any of the following events which affects or otherwise relates to any part of the Services or any of the Contractor Systems or Sites (whether or not such event results from an act or omission of any Contractor Person):

- (a) any loss of the DCC Data;
- (b) any corruption, degradation or other loss of integrity of the DCC Data;
- (c) any loss of confidentiality of the DCC Data;
- (d) any loss of availability of the DCC Data;
- (e) any unauthorised access to, use of, or interference with, the DCC Data and/or the Services;
- (f) any unauthorised access to any of the Contractor Systems or Sites;
- (g) any accidental compromise, access to, use of, or interference with, the DCC Data, the Contractor Systems and/or the Services; and/or
- (h) any use of the Services or the Contractor Systems by any third party in order to gain unauthorised access to, or which results in any accidental compromise of, any computer resource or data of the DCC or any DCC Service User including the DCC Data;

"Contractor Solution"

means all of the following:

- (a) the Services (and any items, features or services associated with the provision of the Services or a change in the provision of the Services);
- (b) the Contractor System; and
- (c) any and all processes, ways of working, equipment or materials used or provided by or

on behalf of the Contractor in connection with any obligations under this Agreement;

"Contractor System"	means the Systems used by or on behalf of any Contractor Person in performing the Services including the Software and any equipment, hardware and related cabling used by a Contractor Person in performing the Services, but excluding all parts of any Other ESP Solution(s);
"DCC Environment"	means the Systems used by or on behalf of the DCC, excluding all parts of any Other ESP Solution and/or the Contractor Systems;
"DCC Live Systems"	has the meaning given in the SEC;
"Other ESP Solution"	<p>means, in relation to any DCC Service Provider, all of the following:</p> <ul style="list-style-type: none">(a) the services provided by that DCC Service Provider to the DCC in accordance with the applicable DCC Service Provider Contract (and any items, features or services associated with the provision of such services);(b) the Systems used by or on behalf of that DCC Service Provider in performing services pursuant to a DCC Service Provider Contract; and(c) any and all processes, ways of working, equipment or materials used or provided by or on behalf of that DCC Service Provider or its Affiliates, sub-contractors or other personnel in connection with any obligations under the applicable DCC Service Provider Contract;
"Security Controls"	means those obligations of the Contractor and Contractor Persons and requirements and controls listed in Paragraph 5 of this Schedule 7;
"Security Management Plan"	means the Contractor's security management plan to be developed and maintained in accordance with this Schedule 7;
"Security Policy"	has the meaning given to the term in Paragraph 2.4 of this Schedule 7;
"Sites"	means any sites or premises:

- (a) from which the Services are provided;
- (b) from which the Contractor manages, organises or otherwise directs the provision or the use of the Services;
- (c) where any part of the Contractor System is situated; or
- (d) where any physical interface between (i) the Contractor Solution; and (ii) the DCC Environment and/or Other ESP Solution(s) takes place;

"System" means computing, information systems and ICT environment(s) (including hardware, assets, software (including firmware), all data, IPRs and/or telecommunications networks or equipment;

"User" has the meaning given in the SEC; and

"User Systems" has the meaning given in the SEC.

2. **GENERAL SECURITY REQUIREMENTS**

2.1 The Contractor shall:

- 2.1.1 take all such steps as are required in accordance with Good Industry Practice, or as are otherwise agreed between the Parties, to ensure the security of the Contractor and the Contractor Systems;
- 2.1.2 ensure the security of Contractor Personnel and the Sites in accordance with Good Industry Practice; and
- 2.1.3 ensure the security of all Contractor Persons (including their Systems, solutions and services) in accordance with Good Industry Practice in connection with the provision of the Services.

2.2 The Contractor shall provide a reasonable level of access to the DCC to any member of the Contractor Personnel for the purpose of designing, implementing and managing security.

2.3 The Contractor shall act in accordance with Good Industry Practice in the day to day operation of any Contractor System holding, transferring or processing DCC Data and any Contractor System that could directly or indirectly have an impact on that DCC Data and shall ensure that any such DCC Data remains under the effective control of the Contractor at all times.

2.4 The Contractor shall ensure the up to date maintenance of a security policy (the "Security Policy") and Security Management Plan relating to the operation of its own organisation and the systems, and on request from the DCC shall supply to DCC the current version of such documents as soon as practicable. The Security Policy shall be a document that establishes the Contractor

expectations of security, the security objectives or a method for setting security objectives, and senior management responsibilities and support of security within the Contractor.

3. **SECURITY MANAGEMENT PLAN**

3.1 Within twenty (20) Business Days of the Commencement Date, the Contractor shall prepare and submit to DCC for approval a fully developed, complete and up-to-date draft Security Management Plan. The Security Management Plan shall be a document, or collection of documents, detailing how security will be assured for the provision of the Services, the Contractor Solution and for the DCC Data. The Security Management Plan can make reference to existing Contractor security policies, practices and an information security management system or new security policies, practices and information security management systems that will be introduced for the Services.

3.2 The Security Management Plan shall:

- 3.2.1 comply with the Security Controls and describe how such compliance will be achieved;
- 3.2.2 take account of and, to the extent applicable to the Contractor Solution and the provision of the Services, be consistent with the security requirements set out in Section G of the SEC,
- 3.2.3 be consistent with, and include all the elements of a plan prepared in accordance with, Good Industry Practice;
- 3.2.4 set out how the Contractor shall ensure that the Services are the subject of robust and appropriate security management systems;
- 3.2.5 be consistent with the quality standards set out in Schedule 6 (*Standards*) including any such standards that relate specifically to security;
- 3.2.6 be otherwise consistent with the requirements of the Agreement.
- 3.2.7 identify a senior manager appointed by the Contractor who is responsible for security and who has formally approved the Security Management Plan;
- 3.2.8 include the relevant contact details of the Contractor and the relevant Contractor Personnel to be used by DCC to coordinate security incident response and other operational security considerations with the Contractor;
- 3.2.9 detail the process for managing any security risks, including those from Contractor Persons (including their respective Systems, solutions and services) in respect of their involvement in the provision of the Services;
- 3.2.10 unless otherwise specified by DCC in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the DCC Premises, Sites, the Contractor System and DCC Data to the extent used by DCC or the Contractor in connection with this Agreement or in connection with any

System that could directly or indirectly have an impact on the DCC Data, the DCC Environment and/or the Services; and

- 3.2.11 set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the provision of the Services and the Contractor Solution comply with the requirements set out in this Schedule 7 (*Security Requirements*).
- 3.3 As soon as reasonably practicable after receipt of the draft Security Management Plan from the Contractor, the DCC shall notify the Contractor if it (acting reasonably) considers that the draft does not comply with any of the requirements set out in this Schedule 7 (each for the purposes of this Schedule, a "**non-conformity**").
- 3.4 By no later than ten (10) Business Days after receipt of a notice from the DCC under Paragraph 3.3, the Contractor shall:
 - 3.4.1 make any amendments to the Security Management Plan that are necessary to address the non-conformities notified by the DCC under Paragraph 3.3; and
 - 3.4.2 re-submit the revised Security Management Plan to the DCC for approval.
- 3.5 As soon as reasonably practicable after receipt of the revised Security Management Plan from the Contractor, the DCC shall notify the Contractor of any new or outstanding non-conformities.
- 3.6 The process in Paragraphs 3.4 and 3.5 will then be repeated until the DCC notifies the Contractor that the Security Management Plan is approved. Any Dispute relating to the existence of non-conformities in the Security Management Plan shall be referred to the Dispute Resolution Procedure. Once approved by the DCC, the Contractor shall ensure that:
 - 3.6.1 it implements the Security Management Plan;
 - 3.6.2 the Services are carried out in compliance with the Security Management Plan;
 - 3.6.3 the Contractor Solution is operated in accordance with the Security Management Plan.
- 3.7 The Contractor acknowledges and accepts that the DCC's approval shall not act as an endorsement of the Security Management Plan and shall not relieve the Contractor of its responsibility for ensuring that the Services are provided, and its obligations performed, in accordance with the requirements of this Agreement.
- 3.8 The Contractor shall, review and update the Security Management Plan so as to ensure that it accurately reflects:

- 3.8.1 the then current Contractor Solution and Services and the manner in which they are provided, and otherwise continues to comply with the requirements of this Schedule 7;
 - 3.8.2 emerging changes in Good Industry Practice;
 - 3.8.3 any change or proposed change to the Services and/or associated processes and the Contractor System;
 - 3.8.4 any new perceived or changed security threats; and
 - 3.8.5 any reasonable change in requirement requested by DCC.
- 3.9 The Contractor shall carry out the review described in Paragraph 3.8:
 - 3.9.1 on an annual basis by no later than each anniversary of the Commencement Date;
 - 3.9.2 when there are any material changes to the security of the Services and/or associated processed and the Contractor System; and
 - 3.9.3 within twenty (20) Business Days after a request from the DCC.
- 3.10 In relation to any updated version of the Security Management Plan under Paragraph 3.8, the Parties shall comply with the procedure set out in Paragraphs 3.3 to 3.7 (inclusive) relating to the approval by the DCC of the updated version of the Security Management Plan.

4. SECURITY COMPLIANCE

- 4.1 DCC shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the Contractor maintains compliance with the Security Policy and the Security Management Plan, the specific security requirements set out in this Agreement and the Security Controls.
- 4.2 If, on the basis of evidence provided by such audits, it is DCC's reasonable opinion that:
 - 4.2.1 the Contractor is not complying with any of the Security Policy, the Security Management Plan or the specific security requirements set out in this Agreement; and/or
 - 4.2.2 the Security Controls are not being applied by the Contractor,

then DCC shall notify the Contractor of the instance of non-compliance and give the Contractor reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement any necessary remedy.

5. SECURITY CONTROLS

- 5.1 Only DCC Data classified by DCC as 'DCC PUBLIC', 'DCC CONTROLLED' and 'DCC CONFIDENTIAL' may be handled by the Contractor. The Contractor shall not handle DCC Data classified as 'DCC CONFIDENTIAL – UK ONLY' except if there is a specific requirement and in this case prior to receipt of such information the Contractor shall seek additional specific guidance from DCC.

- 5.2 Without prejudice to the provisions of Clause 35 (*DCC Data*) the Contractor shall:
- 5.2.1 provide DCC with all DCC Data on demand in an agreed open format;
 - 5.2.2 have documented processes to guarantee availability of DCC Data in the event of the Contractor ceasing to trade;
 - 5.2.3 develop, maintain, and hold all DCC Data in accordance with DCC data retention policies or any other relevant instruction provided by the DCC;
 - 5.2.4 securely destroy all media that has held DCC Data at the end of life of that media in line with Good Industry Practice; and
 - 5.2.5 securely erase any or all DCC Data when requested to do so by DCC.
- 5.3 Without prejudice to the provisions of Clause 30 (*Contractor Personnel*) the Contractor shall ensure that:
- 5.3.1 all Contractor Personnel shall be subject to pre-employment checks that conform to Good Industry Practice and that include, as a minimum:
 - (a) employment history for at least the last three years;
 - (b) proof of identity;
 - (c) checks to identify unspent criminal convictions; and
 - (d) confirmation of right to live and work in the UK (including nationality and immigration status).
 - 5.3.2 all Contractor Personnel that have the ability to access DCC Data or Systems holding such data shall be informed of their responsibilities and undergo regular training on secure information management principles relevant to their role;
 - 5.3.3 the training described in Paragraph 5.3.2 shall include controls relating to home and mobile working outside of Contractor premises, secure information transfer, and the use of removable devices. Unless otherwise agreed with DCC in writing, the Contractor shall ensure that this training is undertaken annually.
- 5.4 The Contractor shall ensure that at all times it is able to confirm to the DCC the physical locations in which DCC Data is or may be stored, processed and managed from, and the applicable legal and regulatory frameworks to which DCC Data is subject.
- 5.5 The Contractor shall not store, process or administer DCC Data outside of the UK without the prior written consent of the DCC.
- 5.6 The Contractor shall ensure that Systems used to access or manage DCC Data shall be under the management authority and control of the Contractor and shall have a minimum set of security policy configuration enforced by the Contractor in accordance with Good Industry Practice. Such configuration shall be

described in the Security Management Plan and shall address amongst other things:

- 5.6.1 firewalls and other perimeter security controls;
 - 5.6.2 malicious software protection such as anti-virus software;
 - 5.6.3 password complexity, lifespan and management;
 - 5.6.4 security dependencies and responsibilities on Contract Persons and any other suppliers for hosted or 'cloud' services and systems.
- 5.7 The Contractor shall ensure that:
- 5.7.1 the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice;
 - 5.7.2 when DCC Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or service that is recognised as providing a standard that is consistent with Good Industry Practice;
 - 5.7.3 the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) shall be applied to the design and configuration of the Contractor Solution.
- 5.8 The Contractor shall operate an access control regime to ensure all users and administrators of the Contractor System are uniquely identified and authenticated when accessing or administering the Contractor System. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the Contractor System they require. The Contractor shall retain an audit record of accesses.
- 5.9 The Contractor shall ensure that any software development undertaken as part of the Services is subject to secure development policies and processes. Where relevant documented DCC policies and processes have been developed, and approved by the Contractor for use in delivering the services, the Contractor shall use such policies and procedures. Where DCC policies and procedures have not been developed, then the Contractor shall use Contractor secure development policies and procedures.
- 5.10 Contractor secure development policies and procedures used in accordance with 5.11 shall be considered to be part of the Security Management Plan, and shall include consideration of:
- 5.10.1 development standards to be used, such as the 'Open Web Application Security Project (OWASP)' principles and 'Center for Internet Security Benchmarks';
 - 5.10.2 the review of software code that has been developed;
 - 5.10.3 the use of automated software code analysis tools; and
 - 5.10.4 security testing of produced software.

- 5.11 The Contractor shall ensure that any Systems hosting internet-facing web services as part of the Services, whether part of the Contractor System or those provided by a Contractor Person, will be designed to ensure that:
- 5.11.1 user connections are appropriately secured and encrypted using transport layer security with an appropriate selection of cipher suites in accordance with Good Industry Practice;
 - 5.11.2 user input is processed in a way to detect and prevent malformed input intended to cause undesired behaviour;
 - 5.11.3 users cannot submit uniform resource locators that enable security controls to be bypassed or that cause undesired behaviour; and
 - 5.11.4 use of the Contractor Solution is subject to security event audit recording and monitoring so that malicious behaviour is detected and responded to in a timely manner.
- 5.12 The Contractor shall ensure that Systems hosting internet-facing web services as part of the Services, whether part of the Contractor System or those provided by a Contractor Person, will be subject to a test to identify security vulnerabilities in such Systems that is consistent with Good Industry Practice and the Contractor shall ensure that such test is carried out in accordance with Good Industry Practice:
- 5.12.1 at least annually;
 - 5.12.2 subsequent to any material change to the Contractor Solution;
 - 5.12.3 on notification from DCC of any new perceived or changed security threats;
 - 5.12.4 on any other reasonable request by DCC.
- 5.13 The Contractor shall remediate issues identified by tests to identify security vulnerabilities in the Contractor Solution within time periods defined in the Security Management Plan and based on Good Industry Practice for categorising and remediating such issues.
- 5.14 The Contractor shall notify the DCC as soon as reasonably practicable upon becoming aware of any security vulnerability in the Contractor Solution and/or any likely cause of any material adverse effect on any aspect of the Contractor Solution.
- 5.15 The Contractor shall procure the application of security patches to vulnerabilities within such time periods as defined in the Security Management Plan based on Good Industry Practice for categorising vulnerabilities, except where:
- 5.15.1 the Contractor can demonstrate that a vulnerability is not exploitable within the context of the Contractor Solution; or
 - 5.15.2 the application of a security patch adversely affects the Contractor's ability to deliver the Services in which case the Contractor shall request an extension from the DCC that includes a security patch test plan.

- 5.16 The Contractor shall ensure that the Contractor System is maintained with the provision for major version upgrades of all commercial off-the-shelf software to be upgraded within six (6) months of the release of the latest version, such that it is no more than one major version level below the latest release throughout the Term unless:
- 5.16.1 where upgrading such commercial off-the-shelf software reduces the level of mitigations to known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within twelve (12) months of release of the latest version; or
 - 5.16.2 agreed otherwise with the DCC in writing.
- 5.17 The Contractor shall collect audit records which relate to security events in the Contractor System or that would support the analysis of potential or actual compromises in or related to the Contractor System. In order to facilitate effective monitoring and forensic readiness the Contractor shall ensure that the audit records should as a minimum include:
- 5.17.1 logs to facilitate the identification of the specific asset which makes every outbound request external to the IT environment (to the extent that the IT environment is within the control of the Contractor). Such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers;
 - 5.17.2 security events generated in the IT environment (to the extent that the IT environment is within the control of the Contractor) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
- 5.18 The Contractor shall retain audit records collected in accordance with Paragraph 5.17 for a period of at least six (6) months.
- 5.19 The Contractor shall notify DCC in accordance with the agreed security incident management process described in the Security Management Plan upon becoming aware of any Breach of Security, suspected Breach of Security or attempted Breach of Security.
- 5.20 Without prejudice to the security incident management process set out in the Security Management Plan, upon becoming aware of any Breach of Security, suspected Breach of Security or attempted Breach of Security the Contractor shall:-
- 5.20.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by DCC) necessary to:
 - (a) minimise the extent of action or potential harm caused by the breach;
 - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Services;

- (c) apply a tested mitigation against any such Breach of Security;
and
- (d) prevent a further Breach of Security in the future exploiting the same root cause.

5.20.2 as soon as reasonably practicable provide to DCC full details of the Breach of Security, suspected Breach of Security or attempted Breach of Security, including a root cause analysis where requested by the DCC.

5.21 In the event that any action is taken in response to a Breach of Security, suspected Breach of Security or attempted Breach of Security that demonstrates non-compliance with the Contractor's Security Policy and Security Management Plan, the specific security requirements set out in this Agreement and/or the Security Controls, then any required changes and/or action shall be implemented at no cost to the DCC.

6. **INDEPENDENCE OF SYSTEMS**

6.1 The Contractor shall ensure that no Contractor Person is engaged in:

6.1.1 the development of bespoke software or firmware, or the customisation of any software or firmware, for the purpose of its installation on any part of the DCC Live Systems; or

6.1.2 the development, design, build, testing, configuration, implementation, operation, maintenance, modification or decommissioning of any part of the DCC Live Systems, unless that individual satisfies the requirements of Clause 6.2.

6.2 A Contractor Person satisfies the requirements of this Clause 6.2 only if, at any time at which that individual is engaged in any activity described in Clause 6.1, he or she:-

6.2.1 is not at the same time also engaged in:-

- (a) the development of bespoke software or firmware, or the customisation of any software or firmware, for the purpose of its installation on any User Systems; or
- (b) the development, design, build, testing, configuration, implementation, operation, maintenance, modification or decommissioning of any User Systems; and

6.2.2 has not been engaged in any activity described in Paragraph 6.2.1 for a period of time which the DCC reasonably considers to be appropriate.

SCHEDULE 8

QUALITY ASSURANCE

1. PREPARATION OF THE QUALITY PLAN

- 1.1 By no later than twenty (20) days after the Commencement Date, the Contractor shall deliver to the DCC a draft Quality Plan which:
- 1.1.1 shall set out how the Contractor shall ensure that the Services are the subject of robust and appropriate quality management systems;
 - 1.1.2 incorporates the quality management systems of each Sub-contractor;
 - 1.1.3 is consistent with ISO 9001:2000 (or any equivalent standard which is generally recognised as having replaced it);
 - 1.1.4 is consistent with any other quality standards set out in Schedule 6 (*Standards*); and
 - 1.1.5 is otherwise consistent with the requirements of the Agreement.
- 1.2 Within ten (10) days after receipt of the draft Quality Plan from the Contractor, the DCC shall notify the Contractor if it (acting reasonably) considers that the draft does not comply with any of the requirements set out in Paragraph 1.1 (each for the purposes of this Schedule, a "**non-conformity**").
- 1.3 By no later than ten (10) days after receipt of a notice from the DCC under Paragraph 1.2 or 1.3, the Contractor shall:
- 1.3.1 make any amendments to the Quality Plan that are necessary to address the non-conformities notified by the DCC under Paragraph 1.2 or 1.3; and
 - 1.3.2 re-submit the revised Quality Plan to the DCC for approval.
- 1.4 Within ten (10) days after receipt of the revised Quality Plan from the Contractor, the DCC shall notify the Contractor of any new or outstanding non-conformities.
- 1.5 The process in Paragraphs 1.3 and 1.4 will then be repeated until the DCC notifies the Contractor that the Quality Plan is approved. Any Dispute relating to the existence of non-conformities in the Quality Plan shall be referred to the Dispute Resolution Procedure. Once approved by the DCC, the Contractor shall ensure that the Services are carried out in compliance with the Quality Plan.
- 1.6 The Contractor acknowledges and accepts that the DCC's approval shall not act as an endorsement of the Quality Plan and shall not relieve the Contractor of its responsibility for ensuring that the Services are provided in accordance with the requirements of this Agreement.

2. UPDATING THE QUALITY PLAN

- 2.1 The Contractor shall review and update the Quality Plan so as to ensure that it accurately reflects then current Services and the manner in which they are provided, and otherwise continues to comply with the requirements of Paragraph 1.1:
- 2.1.1 on an annual basis by no later than each anniversary of the Commencement Date; and
- 2.1.2 within twenty (20) days after a request from the DCC.
- 2.2 In relation to any updated version of the Quality Plan under Paragraph 2.1, the Parties shall comply with the procedure set out in Paragraphs 1.2 to 1.6 (inclusive) relating to the approval by the DCC of the updated version of the Quality Plan.

3. QUALITY MONITORING

- 3.1 Without limiting the DCC's rights under Clause 28 (Records and Audits), the DCC may carry out audits of the Contractor's quality management systems (including the Quality Plan and any related quality manuals and procedures) at regular intervals. The Parties anticipate that these audits will be carried out at intervals of approximately six (6) months, but the DCC may carry out other periodic monitoring or spot checks at any other time. In each case, the Contractor shall co-operate, and shall procure that its Subcontractors co-operate, with the DCC, including by providing the DCC (or its nominated representative) with all information and documentation, and access to any relevant Contractor Personnel and/or to any relevant Contractor Premises, which the DCC reasonably requires in connection with the conduct of audits under this Paragraph 3.1 at no additional charge to the DCC but subject at all times to the general requirements and safeguards of Clause 28 including restricting access to Commercially Sensitive Information..

4. RELATED QUALITY MONITORING

- 4.1 The Contractor acknowledges that the Quality Plan may need to be consistent with, and interoperate with, the disaster recovery and/or business continuity plans of the DCC and other Relevant Service Providers (each a "**Related Quality Plan**").
- 4.2 The Contractor shall promptly provide any co-operation (which may include attendance at workshops with the DCC and the Relevant Service Providers), documentation, data, information or other assistance reasonably requested by the DCC or any Relevant Service Provider in relation to the preparation of the Quality Plan and Related Quality Plans and their alignment but excluding Commercially Sensitive Information.

SCHEDULE 9

BUSINESS CONTINUITY AND DISASTER RECOVERY

1. BCDR PLAN

- 1.1 The Contractor shall prepare, deliver, maintain and update a plan which shall detail the processes and arrangements that the Contractor shall follow to:-
 - 1.1.1 support continuity of the business processes and operations of the Contractor following any failure or disruption of any element of the Services; and
 - 1.1.2 the recovery of the Services in the event of a Disaster,the "**BCDR Plan**".
- 1.2 The BCDR Plan shall, as a minimum, include the information set out in Appendix 1.
- 1.3 Within fifteen (15) Business Days from the Commencement Date the Contractor shall prepare and deliver to the DCC for the DCC's written approval the BCDR Plan for the Development Phase.
- 1.4 Following receipt of the draft BCDR Plan from the Contractor, the DCC shall:-
 - 1.4.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and
 - 1.4.2 notify the Contractor in writing that it approves or rejects the draft BCDR Plan no later than ten (10) Business Days after the date on which the draft BCDR Plan is first delivered to the DCC.
- 1.5 If the DCC rejects the draft BCDR Plan:-
 - 1.5.1 the DCC shall inform the Contractor in writing of its reasons for its rejection; and
 - 1.5.2 the Contractor shall then revise the draft BCDR Plan (taking reasonable account of the DCC's comments) and shall re-submit a revised draft BCDR Plan to the DCC for the DCC's approval within ten (10) Business Days of the date of the DCC's notice of rejection. The provisions of Paragraph 1.3 and this Paragraph 1.5 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

2. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 2.1 The Contractor shall review the BCDR Plan (and the risk analysis on which it is based):-
 - 2.1.1 on a regular basis and as a minimum once every six (6) months;
 - 2.1.2 within two (2) months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 4; and
 - 2.1.3 where the DCC requests any additional reviews (over and above those provided for in Paragraphs 2.1.1 and 2.1.2) by notifying the Contractor to such effect in writing, whereupon the Contractor shall conduct such reviews in accordance with the DCC's written requirements.

3. TESTING OF THE BCDR PLAN

3.1 The Contractor shall test the BCDR Plan on a regular basis and, in any event:-

3.1.1 not less than once in every Contract Year;

3.1.2 in the event of any major reconfiguration of the Services; and

3.1.3 as otherwise reasonably requested by the DCC.

4. INVOCATION OF THE BCDR PLAN

4.1 In the event of a complete loss of service or in the event of a Disaster, the Contractor shall immediately invoke the BCDR Plan (and shall inform the DCC promptly of such invocation). In all other instances the Contractor shall invoke or test the BCDR Plan only with the prior consent of the DCC.

5. RELATED BCDR PLANS

5.1 The Contractor acknowledges that the BCDR Plan may need to be consistent with, and interoperate with, the disaster recovery and/or business continuity plans of the DCC and other Relevant Service Providers (each a "**Related BCDR Plan**").

5.2 The Contractor shall promptly provide at DCC's cost, any co-operation (which may include attendance at workshops with the DCC and Relevant Service Providers), documentation, data, information or other assistance reasonably requested by the DCC or any Relevant Service Provider in relation to the preparation of the BCDR Plan and Related BCDR Plans and their alignment.

APPENDIX 1

BCDR PLAN

1. GENERAL PRINCIPLES AND REQUIREMENTS

1.1 The BCDR Plan shall:-

- 1.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- 1.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the DCC by DCC Service Providers;
- 1.1.3 contain an obligation upon the Contractor to liaise with the DCC and (at the DCC's request) any DCC Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
- 1.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the DCC and any of its other Relevant Service Providers in each case as notified to the Contractor by the DCC from time to time;
- 1.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the DCC;
- 1.1.6 contain a risk analysis, including:-
 - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (b) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the Services with the services provided by a DCC Service Provider; and
 - (d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 1.1.7 provide for documentation of processes, including business processes, and procedures;
- 1.1.8 set out key contact details (including roles and responsibilities) for the Contractor (and any Sub-contractors) and for the DCC;
- 1.1.9 identify the procedures for reverting to "normal service";

- 1.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
 - 1.1.11 identify the responsibilities (if any) that the DCC has agreed it will assume in the event of the invocation of the BCDR Plan; and
 - 1.1.12 provide for the provision of technical advice and assistance to key contacts at the DCC as notified by the DCC from time to time to inform decisions in support of the DCC's business continuity plans.
- 1.2 The BCDR Plan shall be designed so as to ensure that:-
- 1.2.1 the Services are provided in accordance with this Agreement at all times during and after the invocation of the BCDR Plan;
 - 1.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the DCC is minimal as far as reasonably possible;
 - 1.2.3 it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
 - 1.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 1.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

2. BUSINESS CONTINUITY

- 2.1 The BCDR Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the DCC expressly states otherwise in writing:-
- 2.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
 - 2.1.2 the steps to be taken by the Contractor upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 2.2 The BCDR Plan shall:-
- 2.2.1 address the various possible levels of failures of or disruptions to the Services;
 - 2.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services;
 - 2.2.3 clearly set out the conditions and/or circumstances under which the BCDR is invoked.

3. DISASTER RECOVERY

- 3.1 The BCDR Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Contractor ensures continuity of the business operations of the DCC supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 3.2 The BCDR Plan shall include the following:-
- 3.2.1 details of the procedures and processes to be put in place by the Contractor and any testing of the same including but not limited to the following:-
- (a) data centre and disaster recovery site audits;
 - (b) backup methodology and details of the Contractor's approach to data back-up and data verification;
 - (c) identification of all potential disaster scenarios;
 - (d) risk analysis;
 - (e) documentation of processes and procedures;
 - (f) hardware configuration details;
 - (g) network planning including details of all relevant data networks and communication links;
 - (h) invocation rules;
 - (i) service recovery procedures; and
 - (j) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- 3.2.2 details of how the Contractor shall ensure compliance with Clause 41 (*Security Requirements*) ensuring that compliance is maintained for any period during which the BCDR Plan is invoked;
- 3.2.3 access controls to any disaster recovery sites used by the Contractor in relation to its obligations pursuant to this Schedule; and
- 3.2.4 testing and management arrangements.

SCHEDULE 10

INSURANCE

1. OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the DCC under this Agreement, including its indemnity obligations, the Contractor shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Contractor shall ensure that each of the Insurances is effective no later than the Commencement Date.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
 - 1.3.1 of good financial standing;
 - 1.3.2 appropriately regulated; and
 - 1.3.3 except in the case of any Insurances provided by an Affiliate of the Contractor, of good repute in the international insurance market.
- 1.4 Where any Insurances are provided by an Affiliate of the Contractor, the Contractor shall provide to the DCC on the Commencement Date (or inception of the relevant Insurances if later) and thereafter within ten (10) Business Days of written request from the DCC evidence of good financial standing of the relevant Affiliate in a form satisfactory to the DCC.
- 1.5 The Contractor shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the DCC shall be indemnified in respect of Claims made against the DCC in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Contractor is legally liable.

2. GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Agreement, the Contractor shall:
 - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Contractor is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. FAILURE TO INSURE

- 3.1 The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Contractor has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the DCC may elect (but shall not be obliged) following written notice to the Contractor to purchase the relevant Insurances, and the DCC shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.

4. EVIDENCE OF INSURANCES

- 4.1 The Contractor shall upon the Commencement Date and within fifteen (15) Business Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the DCC, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the DCC shall not in itself constitute acceptance by the DCC or relieve the Contractor of any of its liabilities and obligations under this Agreement.

5. AGGREGATE LIMIT OF INDEMNITY

- 5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":
 - 5.1.1 if a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Contractor shall immediately submit to the DCC:
 - (a) details of the policy concerned; and
 - (b) its proposed solution for maintaining the minimum limit of indemnity specified; and
 - 5.1.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Contractor shall:
 - (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement; or
 - (b) if the Contractor is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the DCC full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

6. CANCELLATION

- 6.1 Subject to Paragraph 6.2, the Contractor shall notify the DCC in writing at least fifteen (15) Business Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

- 6.2 Without prejudice to the Contractor's obligations under Paragraph 4, Paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

7. INSURANCE CLAIMS

- 7.1 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the DCC receives a claim relating to or arising out of the Services and/or this Agreement, the Contractor shall co-operate with the DCC and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the DCC is the claimant party, the Contractor shall give the DCC notice within twenty (20) Business Days after any insurance claim in excess of £1 million relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the DCC) full details of the incident giving rise to the claim.
- 7.3 Where any of the Insurances require payment of a premium, the Contractor shall be liable for and shall promptly pay such premium.
- 7.4 Where any of the Insurances are subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible. The Contractor shall not be entitled to recover from the DCC any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

APPENDIX 1

REQUIRED INSURANCES

THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1. Insured

The Contractor.

2. Interest

To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

- a) death or bodily injury to or sickness, illness or disease contracted by any person; and
- b) loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 below) and arising out of or in connection with the provision of the Services and in connection with this Agreement.

3. Limit of indemnity

Not less than [REDACTED] in respect of any one occurrence, the number of occurrences being [REDACTED] in the aggregate per annum in respect of products and pollution liability.

4. Territorial limits

Not applicable.

5. Period of insurance

From the Commencement Date for the Term [and any Termination Assistance Period] and renewable on an annual basis unless agreed otherwise by the DCC in writing.

6. Cover features and extensions

Indemnity to principals clause.

7. Principal exclusions

War and related perils.

Nuclear and radioactive risks.

Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of the Insured's employment.

Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

Liability arising from the ownership, possession or use of any aircraft or marine vessel.

Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8. Maximum deductible threshold



PROFESSIONAL INDEMNITY INSURANCE

1. Insured

The Contractor.

2. Interest

To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the period of insurance (as specified in Paragraph 5 below) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

3. Limit of indemnity

Not less than [REDACTED] in respect of any one claim and in the aggregate per annum, exclusive of defence costs which are payable in addition.

4. Territorial Limits

Not Applicable.

5. Period of insurance

From the Commencement Date and renewable on an annual basis unless agreed otherwise by the DCC in writing (a) throughout the Term [and any Termination Assistance Period] or until earlier termination of this Agreement and (b) for a period of six (6) years thereafter.

6. Cover features and extensions

Retroactive cover to apply to any claims made policy wording in respect of this Agreement or retroactive date to be no later than the Commencement Date.

7. Principal exclusions

War and related perils.

Nuclear and radioactive risks.

8. Maximum deductible threshold

[REDACTED]

UNITED KINGDOM COMPULSORY INSURANCES

The Contractor shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

SCHEDULE 11

ESCROW

1. SOURCE CODE MATERIALS FOR SPECIALLY WRITTEN SOFTWARE

- 1.1 By no later than the relevant date(s) specified in the applicable Project Plan (the "**Original Source Code Delivery Date**"), or at such other times as the DCC may from time to time require, the Contractor shall deliver to the DCC a copy of the Source Code Materials relating to the Specially Written Software.
- 1.2 The Contractor shall deliver to the DCC an up-to-date copy of the Source Code Materials relating to the Specially Written Software:-
 - 1.2.1 within thirty (30) days after the implementation of any material modification relating to any of the Specially Written Software;
 - 1.2.2 within thirty (30) days after the implementation of any material Variation which involves a change to any of the Specially Written Software;
 - 1.2.3 within ten (10) Business Days after the date of any notice of termination given by either Party under this Agreement; and
 - 1.2.4 on the date which is ninety (90) days prior to the expiry of the Term.

2. DEPOSITED SOFTWARE

- 2.1 By no later than the relevant date(s) specified in the Project Plan, or, in the absence of any such date, a date notified by the DCC to Contractor in writing (the "**Original Deposit Date**"), the Contractor shall deposit a copy of the Source Code Materials for the Deposited Software in escrow in the United Kingdom with NCC (or an alternative escrow agent approved by the DCC) (the "**Escrow Agent**") under one or more escrow agreements in a form to be agreed by the Parties within thirty (30) days of the Commencement Date (such agreement not to be unreasonably withheld or delayed) or such other form as may be agreed by the Parties from time to time (the "**Escrow Agreements**"). Each Escrow Agreement shall reflect the principles set out in Appendix 1 of this Schedule 11.
- 2.2 The Contractor hereby grants to the DCC (or, in relation to any Source Code Materials relating to Third Party Software, shall procure that the owners or the authorised licensors of such Third Party Software grant to the DCC) a, royalty-free, irrevocable and non-exclusive licence to exercise all Intellectual Property Rights relating to the Source Code Materials accessed from escrow in accordance with the relevant Escrow Agreement (including the right to modify any source code comprised in the Source Code Materials) which are necessary for the DCC, or any of the entities referred to in Paragraph 2.3, to use the Deposited Software for the purposes of:-
 - 2.2.1 performing or receiving the benefit of the Services (or, if applicable, the Replacement Services);

- 2.2.2 performing or receiving services which are similar or equivalent to the Services;
 - 2.2.3 integrating the Services (or, if applicable, the Replacement Services or any services which are similar or equivalent to the Services) with any other services provided pursuant to (or otherwise related to) the Smart Metering Programme;
 - 2.2.4 correcting defects and faults in the Deposited Software; and
 - 2.2.5 any other purposes envisaged by this Agreement.
- 2.3 The DCC may sub-licence its rights under Paragraph 2.2 to:-
 - 2.3.1 any DCC Service Provider (including any replacements for such persons from time to time);
 - 2.3.2 any Replacement Contractor; and
 - 2.3.3 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 37 (*Confidentiality*).
- 2.4 The Contractor shall ensure that at all times the Source Code Materials placed in escrow under Paragraph 2.1 are kept fully up-to-date and accurately reflect the version of the Deposited Software then in use (including any modifications).
- 2.5 Without limiting the Contractor's obligations under Paragraph 2.4, the Contractor shall update or replace the Source Code Materials placed in escrow under Paragraph 2.1 so that it accurately reflects the version of the Deposited Software then in use (including any modifications):-
 - 2.5.1 by no later than each anniversary of the Original Deposit Date;
 - 2.5.2 within thirty (30) days after the implementation of any material modification relating to any of the Specially Written Software; and
 - 2.5.3 within thirty (30) days after the implementation of any material Change which involves a change to any aspect of the Deposited Software.
- 2.6 If any Escrow Agreement expires or is terminated for any reason, the Contractor shall procure that, within ten (10) Business Days after the date of expiry or termination of the Escrow Agreement, the Source Code Materials referred to in Paragraph 2.1 are placed in escrow under an alternative escrow agreement acceptable to the DCC (acting reasonably) which complies with the requirements of Paragraph 2.1.
- 2.7 The Contractor must pay all amounts payable under or in relation to the Escrow Agreements (or an alternative escrow agreement entered into pursuant to Paragraph 2.6).
- 2.8 Where the Contractor is unable to procure compliance with the provisions of this Paragraph 2 in respect of any Third Party Software, it shall:-

- 2.8.1 provide the DCC with written evidence of its inability to comply with such provisions; and
- 2.8.2 propose a suitable alternative to escrow that affords the DCC the nearest equivalent protection in relation to access to the relevant Source Code Materials.

The Contractor shall only be excused from its obligations under any of Paragraphs 2.1 to 2.7 to the extent that the DCC accepts (in its sole discretion) any alternative proposal in accordance with this Paragraph 2.8.

3. VERIFICATION OF DEPOSITED SOFTWARE

3.1 At any time after the Original Deposit Date, the DCC may engage an appropriately qualified and independent third party (the "**Third Party Tester**"), which may (or may not) be the Escrow Agent to conduct such verification, analysis and testing of the Source Code Materials for the Deposited Software as the DCC requires from time to time, including to verify that:-

- 3.1.1 the Source Code Materials are complete and comply with the requirements of this Agreement regarding the scope and content of such Source Code Materials;
- 3.1.2 the Source Code Materials contain all of the Software and other information and materials that would be necessary for the DCC, or any of the entities referred to in Paragraph 2.3, to use the Deposited Software for the purposes referred to in Paragraph 2.2, including that:-
 - (a) any compressed files included within the Source Code Materials can be decompressed;
 - (b) any encrypted files included within the Source Code Materials can be read; and
 - (c) any password-protected files within the Source Code Materials can be accessed;
- 3.1.3 the Source Code Materials are capable of being used for the purposes referred to in Paragraph 2.2;
- 3.1.4 the Source Code Materials do not contain any malicious software; and
- 3.1.5 the Source Code Materials otherwise comply with the requirements of this Agreement (including this Schedule 11), (the "**Verification Exercise**").

3.2 Except as set out in Paragraph 3.6, the DCC shall give the Contractor at least twenty (20) Business Days' prior written notice of any Verification Exercise under this Paragraph 3.

3.3 The Contractor:-

- 3.3.1 shall, where the Third Party Tester is not the Escrow Agent, provide (or procure that the Escrow Agent provides) the Third Party Tester

with a copy of the then current Source Code Materials for the Deposited Software within five (5) Business Days after receipt of the DCC's notice under Paragraph 3.2;

- 3.3.2 authorises the Third Party Tester to use such Source Code Materials for the purposes of any Verification Exercise (provided that the DCC has complied with its obligations under Clause 37 (*Confidentiality*); and
 - 3.3.3 shall provide all reasonable assistance required by the DCC and/or the Third Party Tester in relation to the conduct of any Verification Exercise.
- 3.4 The DCC shall require the Third Party Tester to provide a written report to the DCC and the Contractor detailing the results of any Verification Exercise within twenty (20) Business Days after the completion of the Verification Exercise.
- 3.5 If any Verification Exercise demonstrates that the Source Code Materials for the Deposited Software do not comply with the requirements of Paragraph 3.1, the Contractor shall immediately:-
- 3.5.1 replace or update such Source Code Materials so that it does comply with the requirements of Paragraph 3.1; and
 - 3.5.2 notify the DCC when such replacement or updated Source Code Materials have been deposited in escrow in accordance with the Escrow Agreement.
- 3.6 Where Paragraph 3.5 applies, the DCC may conduct a repeated Verification Exercise on the replacement or updated Source Code Materials (and each Party shall comply with its respective obligations under this Paragraph 3 in respect of any repeated Verification Exercise). At the election of the DCC, the process in this Paragraph 3 may then be repeated until the results of the Verification Exercise indicate that the Source Code Materials for the Deposited Software comply with the requirements of Paragraph 3.1. For the avoidance of doubt, Paragraph 3.2 shall not apply to any repeated Verification Exercises under this Paragraph 3.6.
- 3.7 The fees payable to the Third Party Tester in relation to the conduct of any Verification Exercise ("**Verification Fees**") shall be paid by the DCC except for:-
- 3.7.1 any Verification Exercise which demonstrates that the Source Code Materials for the Deposited Software do not comply with the requirements of Paragraph 3.1; or
 - 3.7.2 any repeated Verification Exercise under Paragraph 3.6.

The Verification Fees in relation to any Verification Exercise referred to in Paragraph 3.7.1 and/or 3.7.2 shall be paid by the Contractor.

4. 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 11, and otherwise to comply with its obligations under this Schedule 11.

APPENDIX 1

Principles for the form of Escrow Agreement

1. The Escrow Agreements shall be consistent with the provisions of this Schedule 11 including with regards to responsibility for charges, delivery of updates to the Deposited Software and verification by Third Party Testers.
2. The Escrow Agreements shall include trigger events for the release of the Source Code Materials for the relevant Deposited Software to the DCC (or its Transferee or Successor Licensees, as appropriate) upon the occurrence of any of the following events:-
 - a. where the DCC terminates this Agreement (either in whole or in part) in accordance with Clause 46 (*Termination Rights*) provided that, where there is a partial termination, only the Source Code Materials for the Deposited Software relating to the terminated Services shall be released; or
 - b. where the Contractor terminates a Sub-contract and/or removes any Sub-contractor, provided that in these circumstances, only the Source Code Materials for the Deposited Software of the terminated Sub-contractor shall be released.
3. The Escrow Agreements shall not entitle the Contractor to terminate the Escrow Agreement without the DCC's agreement in writing unless it can evidence that this Agreement has been terminated in accordance with Clause 46.6 (*Termination Rights*).
4. The Escrow Agreements shall not entitle the Escrow Agent to terminate the Escrow Agreement other than for non-payment of charges by the Contractor where the Escrow Agent has notified the DCC that such charges are overdue and afforded the DCC a reasonable opportunity to pay the charges on the Contractor's behalf (and recover such sums as damages from the Contractor under this Agreement). Where an Escrow Agreement is terminated by the Escrow Agent the Source Code Materials for the Deposited Software shall be released to the DCC (or its Transferee or Successor Licensees as appropriate).

SCHEDULE 12

DCC RESPONSIBILITIES

1. GENERAL

- 1.1 The responsibilities of the DCC set out in this Schedule shall constitute the DCC Responsibilities under this Agreement.

2. GENERAL DCC RESPONSIBILITIES

General responsibilities

The following obligations will be applicable in respect of all Services:

DCC Responsibility	Description
General	The DCC shall perform those obligations of the DCC which are set out in the Clauses of this Agreement and the Paragraphs of the Schedules.
Access to the DCC Premises	<p>The DCC shall provide the Contractor with agreed access to, and use of, its own premises, systems and equipment to the extent that such access is reasonably necessary for the Contractor to perform its obligations under this Agreement, and provided that:</p> <ul style="list-style-type: none">a) such access shall be provided during the DCC's normal working hours on Business Days unless otherwise agreed by the DCC (such agreements not to be unreasonably withheld or delayed); andb) the Contractor, at all times, complies with all requirements of this Agreement applicable to the access and use of such premises, systems and equipment.
Access to the DCC employees	<p>The DCC shall provide the Contractor with access to appropriate DCC employees to the extent that such access is reasonably necessary for the Contractor to perform its obligations under this Agreement, and provided that:</p> <ul style="list-style-type: none">a) such access shall be provided during the DCC's normal working hours on Business Days unless otherwise agreed by the DCC (such agreements not to be unreasonably withheld or delayed); andb) the Contractor, at all times, complies with all requirements of this Agreement applicable to the access to the DCC's employees.

DCC Responsibility	Description
Access to documentation etc.	<p>The DCC shall provide the Contractor such documentation, data and other information that is in the possession or control of the DCC as reasonably requested by the Contractor, to the extent that such documentation, data and other information is reasonably necessary for the Contractor to perform its obligations under this Agreement, and provided that:</p> <ul style="list-style-type: none"> a) such documentation, data and information is available to the DCC and is authorised for release by the DCC; and b) the Contractor, at all times, complies with all requirements of this Agreement applicable to the access and use of such documentation, data and other information.
Management of Relevant Service Providers	<p>The DCC shall ensure that (in accordance with the Project Plan):</p> <ul style="list-style-type: none"> a) interface specifications, environments and related technical documentation is defined to the agreed level of detail; b) interfaces to third party systems are available for connection; c) Relevant Service Provider personnel are available to support the Contractor; and d) Escalation Management of issues reported by the Contractor to the relevant Service Providers, when required.

3. MOBILISATION SERVICES

The following obligations will be applicable in respect of the mobilisation services to be provided by or on behalf of DCC, including via a Related Service Provider:

DCC Responsibility	Description
Environments	<p>DCC to notify the Contractor of any specific environmental requirements needed to support the Services which may impact the setup and commissioning of the, system test and integration test environments. DCC will make available sufficient detail on the target production infrastructure to allow the Contractor to deploy appropriate test environments including any security or encryption constraints.</p>

Design	<p>DCC will work with the Contractor to support the production, delivery and signoff the following key deliverables, including informing the Contractor of the requirements relating to these deliverables:</p> <p>High level design and solution blueprint (including environment/tooling design & setup (Sprint 0); Define non-functional, sizing, capacity; High level Test strategy; High level Security strategy. DCC will inform the Contractor of its requirements to support the creation of a product backlog.</p> <p>DCC further acknowledges that in providing testing services, the Contractor is not warranting that any tested outputs are fit for operational use and deployment into a live environment or otherwise comply with the Mandatory Requirements (including the Objectives).</p>
Planning	<p>DCC will work with the Contractor to inform and agree with the Contractor the following; Delivery approach & method, Define number of sprints and length, Identify and prioritise high risk areas to mitigate, the project plan</p>
Commercials	<p>DCC to work in good faith with the Contractor to ensure that contract and commercial arrangements are in place to support the Services.</p>
Access to POC results	<p>DCC to provide access to the POC results and data and the team to further explore work completed to date.</p>
Deliverables	<p>DCC to review and signoff in a timely manner (and in any event within 5 Business Days of receipt) any deliverables agreed as part of delivering the Services.</p>
Key documentation to support solution design	<p>DCC will make available high-level architecture/design decisions and any other key material from the Commencement Date .</p>

4. DEVELOPMENT SERVICES

The following obligations will be applicable in respect of the development services to be provided by or on behalf of DCC, including via a Related Service Provider:

DCC Responsibility	Description
To provide Product owners	The Product Owner is accountable for, amongst others, defining the product strategy and vision, collects the business needs of the product from other stakeholders. The product owner should be fully trained and aware of their responsibilities as Product Owners.
Technology services	Where DCC requires the Contractor to use shared technology services (e.g. authentication), appropriate access to and documentation for these will be made available.
Deliverables	DCC to review and signoff in a timely manner (and in any event within 5 Business Days of receipt) of any deliverables agreed as part of delivering the solution

5. SPECIFIC DCC RESPONSIBILITIES

The DCC shall perform the obligations set out below in respect of all Services and shall supplement the general responsibilities set out in paragraph 2 above:

Reference	DCC Responsibility
1	<p>Without limitation, the DCC</p> <ul style="list-style-type: none"> a. shall provide to the Contractor such timely assistance and full and accurate information as the Contractor may reasonably require to enable it to perform the Services and its obligations in accordance with the terms of this Agreement, including access at all reasonable times to essential personnel. Further, the DCC agrees that it shall give prompt attention to any matter raised by the Contractor relating to the obligations of the DCC under this Agreement and shall comply with and not put the Contractor in breach of the Mandatory Requirements; b. shall where it is responsible for providing third party items (including software and hardware), procure all licenses, consents and approvals necessary for the Contractor to perform its obligations under this Agreement and without infringing the Intellectual Property Rights of any third party; and c. where the Contractor is required to work at any premises owned or licensed to the DCC, provide all office facilities, including the supply of work space,

	meeting rooms, printing facilities and high speed broadband access as may be reasonably necessary to support the delivery of the Services, and shall provide safe working conditions in accordance with the Health & Safety Regime.
2	<p>All instructions of the DDC shall comply with the Mandatory Requirements and shall not put the Contractor in breach of such requirements. Further, the DCC shall ensure that such instructions are reasonable at all times and not intrusive, including, affecting the Contractor's internal organisation or relationship with its employees or Sub-contractors.</p> <p>DCC shall notify the Contractor without undue delay, if, at any time, it has reasonable grounds to believe that the Contractor has carried out any activity, or any combination of activities, in a manner which, contrary to Clause 5.2, prejudices or impairs, or would be likely to prejudice or impair, the DCC's ability to comply with the Objectives.</p>
3	The DCC shall at all times comply with (and shall procure that any Related Service Provider shall comply with) the Mandatory Requirements. The DCC is solely responsible for the management of any Related Service Provider and shall ensure that any such party and any other permitted sub-licensees of any Contractor IPR complies with the terms of the applicable licence and shall take all reasonable steps to enforce such licence in the event of a breach.
4	When notifying the Contractor of a breach of warranty, the DCC shall provide the Contractor with such documented information, details and assistance as the Contractor may reasonably request.
5	Where the DCC is assigned tasks as part of any Rectification Plan, it shall immediately start work on the actions set out in the Rectification Plan and shall comply with any timescales specified in the plan.
6	Where any deliverable will integrate with DCC's systems, DCC will have in place security measures necessary to prevent any destructive code or virus from being introduced.
7	Where in this Agreement it specifies that DCC's entitlement to disclose information to a third party is subject to the third party being subject to obligations of confidentiality, DCC shall take all reasonable steps to enforce such obligations in the event of breach by such third party and DCC shall ensure that such obligations are no less onerous than those set out in this Agreement.
8	Where pursuant to this Agreement Confidential Information of the Contractor may be disclosed to a Replacement Provider or

	an assignee, the DCC shall ensure that such third parties are bound by obligations of confidentiality.
9	Further to clause 14.3.4, the DCC shall on becoming aware of the requirement for disclosure of Contractor Confidential Information to the Regulator and/or Secretary of State, immediately notify the Contractor in writing of the full circumstances of the required disclosure and shall have regard to any observations of the Contractor.
10	The DCC shall obtain all consents, licenses and approvals necessary to support the delivery of the Services and which have not been specifically identified as being the responsibility of the Contractor.
11	The DCC is solely responsible for determining whether any export licenses are required and for obtaining any necessary licences for all items the DCC provides.
12	The DCC shall comply with the Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause the Contractor to breach any of the Contractor obligations under the Data Protection Laws to the extent the DCC is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations. Without limitation, the DCC will ensure that (a) its instructions to the Contractor in respect of any Personal Data are lawful and (b) any Data it provides to the Contractor is lawfully provided.
13	The DCC shall satisfy itself that the measures taken by the Contractor pursuant to clause 53.1.3 are adequate, taking into account the nature, scope, context and purpose of the processing. The DCC shall inform the Contractor if it has any specific data security requirements whereupon the parties shall agree to implement additional measures in respect of such specific requirements, subject to agreement of a Variation.
14	The DCC consents to the processing of Personal Data by any Affiliate of the Contractor, for the purposes of providing the Services. The Contractor will ensure that any such party is subject to a written contract imposing at least the same standard of protection for the Personal Data as is imposed on the Contractor under this Agreement.
15	In respect of any Affiliate of the Contractor located outside the European Economic Area and not in a third country which is subject to a European Commission “adequacy” decision, the Contractor agreed that it will ensure that it has in place adequate safeguards to transfer the Personal Data to the Affiliate.
16	The DCC will, at its own expenses, comply with any reasonable requests of the Contractor which are necessary to enable the Contractor’s compliance with the Data Protection Laws.

17	DCC will, and shall also procure that any third party will, comply with our on-site policies including security arrangements and health and safety arrangements, which will be made available by the Contractor upon request.
18	DCC will provide the Contractor with reasonable notice of any change to DCC's policy on bribery and corruption which must be implemented under the Variation Procedure where the Contractor advises that any change will impact its delivery of the Services.
19	Notwithstanding anything else in the Agreement, the DCC agrees and shall permit the Supplier to retain, develop and use for its own purposes all know how, techniques and concepts of general application obtained before or during the performance of the Services.
20	<p>(i) DCC will be responsible for procuring any cloud accounts needed for the project and fund all cloud usage.</p> <p>(ii) DCC to provide all network access to cloud platform and any interconnect between DCC and existing components such as SMETS2 DSP and DCC shared project folders.</p> <p>(iii) DCC to provide access to any existing identity and access management platform for integration with the cloud services.</p>

SCHEDULE 13

SUB-CONTRACTORS

In accordance with Clause 27.7 (*Supply Chain Rights*), the DCC has given its written consent to the use of the Sub-contractors set out in the table below.

The Parties agree that they will update this Schedule periodically to record any Sub-contractors appointed by the Contractor in accordance with Clause 27 (*Supply Chain Rights*) after the Commencement Date.

Name	Registered office and company number	Role in delivery of the services	Phase

SCHEDULE 14

INTELLECTUAL PROPERTY RIGHTS AND SOFTWARE

1. SOFTWARE

- 1.1 The Software set out below is licensed to the DCC in accordance with [Clause 34 (*Intellectual Property Rights and Licences Granted*)].
- 1.2 The Contractor shall ensure that, at all times, this Schedule is kept fully up-to-date and accurately reflects the Software which is being used by any Contractor Person to provide the Services (or is otherwise made available to the DCC in connection with this Agreement), including following a Variation.
- 1.3 The Contract shall ensure that, at all times, the description of the Software set out below:
- 1.3.1 includes a description (in reasonable details) of the purpose of the relevant Software; and
 - 1.3.2 generally obtains sufficient information for the DCC to understand and verify the details of the Software set out in this Schedule.
- 1.4 Where indicated in the tables below, the Software shall be placed into escrow in accordance with Schedule 11 (*Escrow*).

CONTRACTOR SOFTWARE

The Contractor Software comprises the items set out below.

Description	Supplier	Licence details	Licence restrictions

THIRD PARTY SOFTWARE

The Third Party Software comprises the items set out below.

Description	Supplier	Licence details	Licence restrictions

In accordance with [Clause 34.3 (*Intellectual Property Rights and Licenses Granted*)], the DCC has given its written consent to the use of the Third Party Software set out in the table below.

Description	Supplier	Licence details	Licence restrictions
████████	████████	████████	████████

SPECIALLY WRITTEN SOFTWARE

The Specially Written Software comprises the items set out below.

Description	Supplier	Licence details	Licence restrictions	To be deposited in escrow?
████████	████████	████████	████████	████████

2. OPEN SOURCE SOFTWARE

2.1 In accordance with [Clause 39.3.11 (*Warranties*)], the DCC has given its written consent to the use of the Open Source Software set out in the table below.

Description	Supplier	Licence details	Licence restrictions

SCHEDULE 15
PROJECT PLAN

1. PHASES

- 1.1 The Services shall be delivered by the Contractor in accordance with the following phases (each a "**Phase**" and together the "**Phases**"):-

Phase	Scope

2. PLAN

Creation

- 2.1 Within (20) Business Days of the Commencement Date, the Contractor shall work with the DCC to prepare and submit to DCC for approval an up-to-date Project Plan. The Project Plan shall be a document, or collection of documents, detailing the content set out in Paragraph 2.2 below.

Content

- 2.2 The Plan shall:-
- 2.2.1 Pertain to work packages covering tangible deliverables where a delivery schedule is appropriate;
 - 2.2.2 NOT USED;
 - 2.2.3 set out the Contractor's proposed methodology for achieving an orderly, timely and co-ordinated delivery of all the Services pursuant to this Agreement and identify all Milestones;
 - 2.2.4 identify relevant project dates, and any associated Milestones Dates;
 - 2.2.5 clearly outline:-
 - (a) the steps required to complete each Milestone:-
 - (b) the required roles and responsibilities of both Parties; and
 - 2.2.6 be sufficient to ensure that the Contractor will be able to Achieve:-
 - (a) the identified Milestones;by the relevant Milestone Date.

Approval

- 2.3 Within ten (10) Business Days of receipt of the draft Project Plan, the DCC shall review the draft Project Plan.

- 2.4 Where not approved, the DCC may (acting reasonably) reject the Project Plan, in which case:-
- 2.4.1 the DCC shall inform the Contractor in writing of its reasons for its rejection; and
- 2.4.2 the Contractor shall then revise the draft Project Plan, taking reasonable account of the DCC's comments, and shall re-submit a revised draft Project Plan to the DCC for the DCC's approval. The provisions of this Paragraph 3.3 shall apply again to any resubmitted draft Project Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 2.5 If the DCC approves the draft Project Plan pursuant to Paragraph 3.2 or 3.3.2, the draft Project Plan shall supersede and replace the initial draft Project Plan from the date of the DCC's notice of approval.
- 2.6 Once approved, each Party shall comply with its obligations under the Project Plan.

3. UPDATES TO AND MAINTENANCE OF THE PROJECT PLAN

- 3.1 The Contractor shall review and update each Project Plan so as to ensure that it accurately reflects then current Services and the manner in which they are provided, and otherwise continues to comply with the requirements of this Schedule 15:-
- 3.1.1 in respect of the Project Plan, updates on an iterative basis by no later than four (4) Business Days from the end of each iteration; and
- 3.1.2 within five (5) Business Days after a request from the DCC.
- 3.2 In relation to any updated version of a Project Plan under Paragraph 4.1, the Parties shall comply with the procedure set out in:-
- 3.2.1 Paragraph 2.3.2 and 2.4 relating to the approval by the DCC of the updated version of the Report Delivery Plan; and
- 3.2.2 Paragraphs 3.3.2 and 3.4 relating to the approval by the DCC of the updated version of the Project Plan.

4. RELATED PROJECT PLANS

- 4.1 The Contractor acknowledges that the Project Plan may need to be consistent with, and interoperate with, the plans of the DCC and other Relevant Service Providers (each a "**Related Project Plan**") as notified to it by the DCC.
- 4.2 The Contractor shall promptly provide any co-operation (which may include attendance at workshops with the DCC and Relevant Service Providers), documentation, data, information or other assistance reasonably requested by the DCC or any Relevant Service Provider in relation to the preparation of any Related Project Plan and its alignment with the Project Plan.

5. MILESTONES

- 5.1 The Contractor shall perform its obligations under this Agreement generally, so as to ensure that each Milestone is Achieved by the applicable Milestone Date.
- 5.2 All changes to the Milestones shall be subject to either the Variation Procedure of the Agile Development Methodology to be reasonably determined by the Project Manager provided that the DCC may, by giving the Contractor not less than ten (10) Business Days notice, elect to postpone one or more of the Milestones by a period set out in such notice in response to any circumstances outside its reasonable control that impact, or may potentially impact the Smart Metering Programme (including as a result of any direction issued by a Regulatory Body). The Contractor shall, within ten (10) Business Days of the date of such notice, re-issue the then current Project Plans taking into account such revised Milestone Dates for approval by the DCC (not to be unreasonably withheld or delayed) in accordance with the procedure set out in:-
- 5.2.1 Paragraph 2.3.2 and 2.4 relating to the approval by the DCC of the updated version of the Report Delivery Plan; and
- 5.2.2 Paragraphs 3.3.2 and 3.4 relating to the approval by the DCC of the updated version of the Project Plan.

6. MILESTONE ACHIEVEMENT CERTIFICATE

- 6.1 Where, in the Project Plan, the Parties have agreed a Milestone will be subject to a Milestone Payment, the DCC shall issue a Milestone Achievement Certificate as soon as reasonably practicable upon all of the Milestone Criteria for the Milestone having been met, and in any event within 5 Business Days. If the DCC has still not issued a Milestone Achievement Certificate within 10 Business Days upon all of the Milestone Criteria having been met, the Milestone Achievement Certificate shall be deemed to have been issued for the purposes of Paragraph 6.2 below.
- 6.2 The Milestone Achievement Certificate shall, where set out in Schedule 22 (*Charges and Invoicing*), entitle the Contractor to invoice the DCC for the relevant Milestone Payment in accordance with the provisions of Schedule 22 (*Charges and Invoicing*).
- 6.3 If:-
- 6.3.1 the Contractor fails to Achieve a Milestone by the applicable Milestone Date;
- 6.3.2 NOT USED
- then the Parties shall have the rights and remedies, and shall be subject to the obligations, set out in this Agreement, including:-
- 6.3.3 Clause 8.3 (*Delay*); and
- 6.3.4 Clause 11 (*Rectification Plan*).

APPENDIX 1
MILESTONES

NOT USED

1.			
2.			
3.			

APPENDIX 2

NOT USED

APPENDIX 3
PROJECT PLAN

NOT USED

APPENDIX 4

MILESTONE ACHIEVEMENT CERTIFICATE

To:

From: SMART DCC LTD

[date]

Dear Sirs

Milestone Achievement Certificate

Milestone Ref.: [#]

Milestone Name: [insert Milestone name]

Milestone Date: [insert Milestone Date]

We refer to the Agreement (the “**Agreement**”) relating to the provision of software development and related services in respect of the SMETS1 Smart Metering Programme between the DCC and [] (the “**Contractor**”) dated [Signature Date].

The definitions for terms capitalised in this certificate shall have the same meanings given to them in Schedule 1 (*Interpretation and Definitions*) of the Agreement.

This Milestone Achievement Certificate is issued pursuant to Paragraph 7 of Schedule 15 (*Project Plan*).

We confirm that each of the Milestone Criteria for the Milestone (as set out above) has been met.

This Milestone Achievement Certificate shall, where set out in Schedule 22 (*Charges and Invoicing*), entitle the Contractor to invoice the DCC for the relevant Milestone Payment in accordance with the provisions of Schedule 22 (*Charges and Invoicing*).

Yours faithfully

[Name]

[Position]

acting on behalf of the DCC

SCHEDULE 17

TESTING AND ACCEPTANCE

PART A: OVERVIEW

1. OVERVIEW OF TESTING

- 1.1 This Schedule 17 sets out the approach to Testing and Acceptance activities to be undertaken under this Agreement, including the preparation of Test Documents.
- 1.2 This Schedule 17 comprises the following parts:-

Part	Scope
Part A	Overview
Part B	Test Documents
Part C	Testing
Part D	Outcome of Testing
Part E	Acceptance of Reports

PART B: TEST DOCUMENTS

2. TEST DOCUMENTS

2.1 Unless otherwise specified by the DCC, the Contractor shall conduct all Testing under this Agreement in accordance with the following test documents (the "**Test Documents**"):-

- 2.1.1 the Test Approach Document;
- 2.1.2 the applicable Test Plans; and
- 2.1.3 the applicable Test Specifications.

Test Approach Document

2.2 The DCC shall deliver the Test Approach Document to the Contractor.

Test Plan

2.3 The Contractor shall develop Test Plans as required by the Test Approach Document and submit these for the approval of the DCC, as soon as practicable but in any case no later than twenty (20) Business Days (or such other period as stated in the Test Approach Document or otherwise agreed in writing between the Parties) prior to the start date of the relevant Testing (as specified in the Project Plan).

2.4 Each Test Plan shall include as a minimum:-

- 2.4.1 the Test Stage to which the Test Plan relates;
- 2.4.2
- 2.4.3 the Stage Exit Criteria;
- 2.4.4 the Deliverable to which the Test Plan relates;
- 2.4.5 each of the Tests to be carried out pursuant to the Test Plan;
- 2.4.6 the testing mechanism;
- 2.4.7 the test timetable;
- 2.4.8 the process which the DCC will use to review a Test Issue and the Contractor's progress in resolving such in a timely basis;
- 2.4.9 the mechanism for ensuring the quality, completeness and relevance of the Tests;
- 2.4.10 the format and an example of test progress reports and the process with which the DCC accesses daily test schedules;
- 2.4.11 the re-test procedure, the timetable and the resources which would be required for re-testing;
- 2.4.12 the process for escalating a Test Issue from a re-Test situation to the taking of specific remedial action to resolve the Test Issue; and
- 2.4.13 in respect of each Test, the:-

- (a) definition of the Test;
- (b) purpose of the Test;
- (c) the Test Specifications required;
- (d) Test Success Criteria;
- (e) start and end dates for the Test;
- (f) dates and methods by which the DCC can inspect test results or witness the Tests in order to establish that the Test Success Criteria have been met; and
- (g) anything unique to the Test.

2.5 The DCC shall not unreasonably withhold or delay its approval of a Test Plan provided that the Contractor shall incorporate any reasonable requirements of the DCC in the Test Plan.

Test Specification

2.6 Following approval of a Test Plan, the Contractor shall develop the Test Specifications as required by the Test Plan, as soon as reasonably practicable and in any event at least ten (10) Business Days (or such other period as stated in the Test Approach Document or otherwise agreed in writing between the Parties) prior to the start of the relevant Testing (as specified in the Project Plan).

2.7 Each Test Specification shall include:-

- 2.7.1 the specification of the test data, including its source, scope, volume and management, a request (if applicable) for relevant test data to be provided by the DCC and the extent to which it is equivalent to live operational data;
- 2.7.2 a plan to make the resources available for testing;
- 2.7.3 test scripts;
- 2.7.4 test pre-requisites and the mechanism for measuring them; and
- 2.7.5 expected test results, including:-
 - (a) a mechanism to be used to capture and record test results; and
 - (b) a method to process the test results to establish their content.

PART C: TESTING

3. APPROACH

3.1 Testing shall correspond to the Phases as follows:

Phase	Testing
Mobilisation Phase	<ul style="list-style-type: none">Testing pursuant to Schedule 4 (<i>Agile Development Methodology</i>)
Development Phase	<ul style="list-style-type: none">Testing pursuant to Schedule 4 (<i>Agile Development Methodology</i>) or Variation procedure.

4. TEST STAGES

4.1 A "**Test Stage**" shall constitute a collection of Tests (and, accordingly, a collection of Test Plans) as set out in the Test Approach Document (and each applicable Test Plan).

4.2 The Test Stages shall include (as a minimum):

4.2.1 Physical SIT;

4.2.2 UIT; and

4.2.3 any other Test Stages set out in the Test Approach Document or otherwise requested by the DCC.

4.3 The Contractor acknowledges and accepts that one or more Test Plans may be required for each Test Stage (such Test Plans to be delivered and approved pursuant to Paragraphs 2.3 to 2.5 (inclusive)).

4.4 Each Test Stage shall have corresponding "**Stage Exit Criteria**" which shall be as set out in the Test Approach Document and each relevant Test Plan and which shall (as a minimum) include:-

4.4.1 all Tests run, or any exceptions documented by the Contractor and agreed by the DCC;

4.4.2 all Test Success Criteria achieved, or any exceptions documented by the Contractor and agreed by the DCC;

4.4.3 the number and severity of any outstanding Test Issue is at or below the target thresholds, or any exceptions documented by the Contractor and agreed by the DCC;

4.4.4 test results documented by the Contractor and evidence captured by the Contractor;

4.4.5 set of test issue logs have been produced;

4.4.6 regression testing successfully completed by the Contractor and agreed by the DCC;

- 4.4.7 regression test pack has been prepared or updated;
- 4.4.8 agreed Work Off Plans as required by the DCC;
- 4.4.9 preceding Work Off Plans completed by the Contractor as required by the DCC;
- 4.4.10 a Test Stage Completion Report.

5. TEST ACTIVITIES

- 5.1 The provisions of this Paragraph 5 shall apply in respect of all Testing activities (which together may constitute a Test Stage).
- 5.2 The Contractor shall submit each Deliverable for Testing or re-Testing by or before the date set out in the Project Plan for the commencement of testing in respect of the relevant Deliverable.
- 5.3 The Contractor shall not submit any Deliverable for Testing:-
 - 5.3.1 without first subjecting the relevant Deliverable to its own internal quality control measures;
 - 5.3.2 unless the Contractor is reasonably confident that it will satisfy the relevant Test Success Criteria; and
 - 5.3.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable;
 - 5.3.4 unless test labs, devices, tools, stubs, environment, connectivity and data are ready;
 - 5.3.5 unless DCC and all relevant third parties have confirmed they have resources with the requisite skills and access available to complete the Testing; and
 - 5.3.6 unless DCC has provided the Contractor with written approval to proceed.
- 5.4 The Contractor shall provide to the DCC the test reports as set out in the Test Approach Document and each relevant Test Plan and which shall (as a minimum) include:-
 - 5.4.1 daily and weekly test progress and test result reports;
 - 5.4.2 daily and weekly defect reports;
 - 5.4.3 the Test Stage Completion Report as further detailed in Paragraph 5.5,
(each a "**Test Report**").
- 5.5 The Contractor shall provide the Test Stage Completion Report to the DCC within five (5) Business Days of completion of Testing (or such other period as the Parties may agree in writing) and which shall (as a minimum) include:-
 - 5.5.1 a full report on the Testing conducted in respect of the relevant Deliverable;
 - 5.5.2 identification of the relevant Test Success Criteria that have been satisfied;

- 5.5.3 identification of all Test Issues and Test Success Criteria (if any) that have not been satisfied together with the Contractor's explanation of why those criteria have not been met;
- 5.5.4 the Tests that were not completed together with the Contractor's explanation of why those Tests were not completed;
- 5.5.5 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories; and
- 5.5.6 the specification for any hardware and software used throughout testing and any changes that were applied to that hardware and/or software during Testing.

6. TEST ISSUES

- 6.1 Where a Test Issue is identified, the Parties shall agree the classification of the Test Issue using the criteria set out in the Test Plan.
- 6.2 The Test Plan shall set out, in respect of each Test Stage:
 - 6.2.1 the Test Issue Threshold; and
 - 6.2.2 each Material Test Issue.
- 6.3 In respect of each Test Stage, where:
 - 6.3.1 the number of Test Issues meets or exceeds the Test Issue Threshold; or
 - 6.3.2 there is a Material Test Issue,the Stage Exit Criteria will not be satisfied and such will constitute a Notifiable Default for the purposes of Clause 11 (*Rectification Plan*).

PART D: OUTCOME OF TESTING

7. TEST WITNESSING

- 7.1 The DCC may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the DCC, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 7.2 The Contractor shall notify the DCC at least ten (10) Business Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Test and the DCC shall ensure that the Test Witness attends the Test, except where the DCC has specified in writing that such attendance is not necessary.
- 7.3 The Contractor shall give the Test Witness access to all documentation and testing environments reasonably necessary and requested by the Test Witness to perform their role as a Test Witness in respect of the relevant Tests.
- 7.4 The Test Witness may:-
 - 7.4.1 actively review the test documentation;
 - 7.4.2 attend and engage in the performance of the Tests on behalf of the DCC so as to enable the DCC to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested; and
 - 7.4.3 produce and deliver its own, independent report on testing, which may be used by the DCC to assess the outcome and success of the Tests.

8. TESTING QUALITY AUDIT

- 8.1 Without prejudice to its rights pursuant to Clause 28 (*Records and Audit*) and Schedule 8 (*Quality Assurance*), the DCC may perform on-going quality audits in respect of any part of Testing (each a "**Testing Quality Audit**").
- 8.2 The focus of a Testing Quality Audits shall be:-
 - 8.2.1 adherence to an agreed methodology;
 - 8.2.2 adherence to the agreed testing process;
 - 8.2.3 adherence to the Test Plan;
 - 8.2.4 review of status and key development issues; and
 - 8.2.5 identification of key risk areas.
- 8.3 The Contractor shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 8.4 The DCC shall give the Contractor at least five (5) Business Days written notice of the DCC's intention to undertake a Testing Quality Audit and the Contractor may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Contractor's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the DCC will materially and adversely impact the Project Plan.

- 8.5 A Testing Quality Audit may involve document reviews, interviews with the Contractor Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule 17 and/or the DCC witnessing Tests and demonstrations of the Deliverables to the DCC. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Contractor and the DCC on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Contractor shall provide all reasonably necessary assistance and access to all relevant documentation required by the DCC to enable it to carry out the Testing Quality Audit.
- 8.6 If the Testing Quality Audit gives the DCC concern in respect of the applicable testing procedures set out in this Schedule 17, or any Test, the DCC shall:-
- 8.6.1 discuss the outcome of the Testing Quality Audit with the Contractor, giving the Contractor the opportunity to provide feedback in relation to specific activities; and
 - 8.6.2 subsequently prepare a written report for the Contractor detailing its concerns, and the Contractor shall, within a reasonable timeframe, respond in writing to the DCC's report.
- 8.7 In the event of an inadequate response to the DCC's report from the Contractor, the DCC (acting reasonably) may withhold the issuance of a Test Stage Completion Certificate until the issues in the report have been addressed to the reasonable satisfaction of the DCC.

9. FAILURE TO MEET THE STAGE EXIT CRITERIA

- 9.1 If the Contractor does not meet all of the Stage Exit Criteria (for the purposes of this Paragraph 9 each being a "**non-conformity**") then the DCC shall notify the Contractor and the DCC may:-
- 9.1.1 issue a Test Stage Completion Certificate:
 - (a) waiving the non-conformity; or
 - (b) conditional upon the successful completion of a Work Off Plan;
 - 9.1.2 extend the Test Stage (and applicable Test Plans) by such period or periods as the Parties may reasonably agree and require the Contractor to rectify the non-conformity and re-Test as required; or
 - 9.1.3 where the failure to satisfy the Stage Exit Criteria results, or is likely to result, in the failure (in whole or in part) by the Contractor to meet a Milestone, then without prejudice to the DCC's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 11 (*Rectification Plan*).
- 9.2 If the Contractor does not successfully complete a Test Stage, the DCC shall (subject to Clause 13 (*Relief Events*)) and without prejudice to the DCC's other rights and remedies) be entitled to recover from the Contractor any reasonable additional costs (including, for the avoidance of doubt, any additional internal management time) it may incur as a result of any further Testing or Acceptance activities required for the Contractor to successfully complete the Test Stage.

10. TEST STAGE COMPLETION CERTIFICATE

- 10.1 Achievement of each Test Stage will be evidenced by the issuance of a Test Stage Completion Certificate.

- 10.2 The DCC shall issue a Test Stage Completion Certificate as soon as is reasonably practicable.
- 10.3 The issue of a Test Stage Completion Certificate shall not:-
 - 10.3.1 operate to transfer any risk to the DCC such that the relevant Deliverable is complete or is deemed to meet or satisfy the DCC Requirements; or
 - 10.3.2 affect the DCC's right subsequently to reject all or any element of the Deliverable to which a Test Stage Completion Certificate relates.

11. RELATED TEST DOCUMENTS

- 11.1 The Contractor acknowledges that the Test Documents may need to be consistent with, and interoperate with, the test documents and testing and acceptance activities of the DCC and other Relevant Service Providers (each a "**Related Test Documents**").
- 11.2 The Contractor shall promptly provide any co-operation (which may include attendance at workshops with the DCC and the Relevant Service Providers), documentation, data, information or other assistance reasonably requested by the DCC or any Relevant Service Provider in relation to the preparation of any Related Test Documents and its alignment with the Test Documents.

PART E: ACCEPTANCE OF REPORTS

12. ACCEPTANCE OF REPORTS

- 12.1 By no later than 2 Business Days before the relevant Milestone Date, the Contractor shall deliver to the DCC a draft Report which is consistent with the requirements of this Agreement.
- 12.2 As soon as reasonably practicable after receipt of the draft Report from the Contractor, the DCC shall notify the Contractor if it (acting reasonably) considers that the draft does not comply with any of the requirements set out in Schedule 3 (*DCC Requirements*) or otherwise consistent with the requirements of this Agreement (for the purposes of this Part E (*Acceptance of Reports*) each being a "**non-conformity**").
- 12.3 By no later than 4 Business Days after receipt of a notice from the DCC under Paragraphs 12.2 or 12.4, the Contractor shall:-
- 12.3.1 make all amendments to the draft Report that are necessary to address the non-conformities notified by the DCC under Paragraphs 12.2 or 12.4; and
 - 12.3.2 re-submit the revised draft Report to the DCC for review.
- 12.4 As soon as reasonably practicable after receipt of the revised draft Report from the Contractor, the DCC shall notify the Contractor of any new or outstanding non-conformities.
- 12.5 The process in Paragraphs 12.3 and 12.4 will then be repeated until the DCC notifies the Contractor that the Report is approved. Any Dispute relating to the existence of non-conformities in the Report shall be referred to the Dispute Resolution Procedure.
- 12.6 The Contractor acknowledges and accepts that the DCC's acceptance of a Report shall not act as an endorsement of the Report and shall not relieve the Contractor of its responsibility for ensuring that the Report is provided in accordance with the requirements of this Agreement.

APPENDIX 1

TEST STAGE COMPLETION CERTIFICATE

To:

From: SMART DCC LTD

[date]

Dear Sirs

Test Stage Complete Certificate

TEST STAGE: [insert relevant Test Stage]

We refer to the Agreement (the “**Agreement**”) relating to the provision of software development and related services in respect of the SMETS1 Smart Metering Programme between the DCC and [] (the “**Contractor**”) dated [Signature Date].

The definitions for terms capitalised in this certificate shall have the same meanings given to them in Schedule 1 (*Interpretation and Definitions*) of the Agreement.

[This Test Stage Complete Certificate is issued pursuant to Paragraph 10 of Schedule 17 (*Testing and Acceptance*).

We confirm that each of the Stage Exit Criteria for the Stage (as set out above) has been met.]

[OR]

[This Test Stage Complete Certificate is issued pursuant to Paragraph 9.1.1(a) of Schedule 17 (*Testing and Acceptance*).

We confirm that the DCC is waiving the non-conformit[y][ies] set out in Annex 1 of this Test Stage Complete Certificate]

[AND/OR]

[This Test Stage Complete Certificate is issued pursuant to Paragraph 9.1.1(b) of Schedule 17 (*Testing and Acceptance*).

We confirm that each of the Stage Exit Criteria for the Stage as set out above has been met, conditional upon the successful completion of the Work Off Plan(s) as set out in Annex [1][2] of this Test Stage Complete Certificate.]

Pursuant to Paragraph 10.3 of Schedule 17 (*Testing and Acceptance*), the issue of this Test Stage Completion Certificate shall not operate to transfer any risk to the DCC such that the relevant Deliverable is complete or is deemed to meet or satisfy the DCC Requirements or affect the DCC's

right subsequently to reject all or any element of the Deliverable to which a Test Stage Completion Certificate relates.

Yours faithfully,

[Name]

[Position]

acting on behalf of the DCC

Annex 1

Ref.	Non-conformity	Description
1.		
2.		

Annex [1][2]

[Insert Work Off Plan(s)]

SCHEDULE 19

VARIATION PROCEDURE

1. VARIATION PROCEDURE

1.1 Subject to the provisions of this Schedule 19, either Party may request a variation to this Agreement. Such a variation once implemented is hereinafter called a "**Variation**".

1.1.1 If either Party elects to request a Variation, the following procedure shall apply:

(a) the requesting Party shall complete and send the Variation Form to the other Party, giving sufficient information for the other Party to assess the extent of the proposed Variation.

(b) the Contractor shall:

(i) in the case where it receives a Variation Form from the DCC, within ten (10) Business Days of receipt or such other longer period as specified in the DCC's Variation Form; or

(ii) in the case where the Contractor submits a Variation Form to the DCC, at the same time as its submits the Variation Form,

prepare and provide to the DCC an "**Impact Assessment**" and all information required by the DCC to assess the extent of the proposed Variation.

(c) each Impact Assessment shall be completed in good faith and shall include:

(i) details of the proposed Variation including the reason for the Variation;

(ii) details of the impact of the proposed Variation on the Services, and the Contractor's ability to meet its other obligations under this Agreement;

(iii) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:

(1) the Services;

(2) other goods and services provided by other DCC Service Providers where reasonably known by the Contractor;

(iv) details of the on-going costs required by the proposed Variation when implemented, including any

increase or decrease in any Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

- (v) a timetable for the implementation, together with any proposals for the testing of the proposed Variation (if applicable);
- (vi) details of how the proposed Variation will support compliance with any applicable Specific Change in Mandatory Requirements notified to the Contractor in writing as part of the Variation request; and
- (vii) such other information as the DCC may reasonably request in (or in response to) the proposed Variation.

1.1.2 If the DCC is the receiving Party and the DCC reasonably considers that it requires further information regarding the proposed Variation so that it may properly evaluate the proposed Variation and the Impact Assessment, then it shall notify the Contractor of this fact and detail the further information that it requires. The Contractor shall then re-issue the relevant Impact Assessment to the DCC within ten (10) Business Days of receiving such notification or such longer timescale as the Parties may agree (acting reasonably). At the DCC's discretion, the Parties may repeat the process described in this paragraph 1.1.2 until the DCC is satisfied that it has sufficient information to properly evaluate the proposed Variation and Impact Assessment.

1.1.3 The DCC shall have the sole and absolute right to approve or reject the Contractor's proposed Variation.

1.1.4 The Contractor shall attend any meetings reasonably requested by the DCC to discuss any proposed Variation.

1.1.5 Where a proposed Variation is approved by the DCC, the DCC shall notify the Contractor of its approval of the Variation by signing and returning the Variation Form to the Contractor. A proposed Variation shall not be implemented by the Contractor until such time as the DCC has notified the Contractor of such approval in accordance with this Paragraph.

1.1.6 In the event that the DCC does not approve the proposed Variation, the DCC will notify the Contractor in writing. The DCC will make its decision under this Paragraph or the preceding as soon as reasonably practicable, having due regard for any Contractor resourcing implications stated in the Variation Form.

1.1.7 In the event that:

- (a) the DCC requests a Variation and the Contractor rejects the Variation in accordance with the circumstances specified in Paragraph 1.2:

and/or

- (b) either Party requests a Variation, the Parties are unable to agree a change to the Charges that may be included in a request for a Variation or response to it as a consequence thereof,

the DCC may (in its absolute discretion):

- (c) choose to have the Contractor continue to perform its obligations under this Agreement without the Variation; or
- (d) in respect of any Variation, other than a Variation rejected by the Contractor under Paragraph 1.2, choose to have the Contractor continue to perform its obligations under this Agreement with the Variation, with any Dispute as to the Charges, costs and impacts of the Variation to be settled in accordance with Clause 26 (*Dispute Resolution Procedure*); or
- (e) on 20 Business Days prior written notice, terminate this Agreement with immediate effect on a no fault basis.

1.1.8 Any Charges Adjustment shall be subject to the Contractor:

- (a) taking reasonable steps to minimise any increase in its costs (and, where applicable, maximise any reduction in its costs) arising from the Change, including by ensuring that, where possible:
 - (i) existing resources are used in relation to the implementation and/or ongoing operation of the Change; and
 - (ii) any existing or new resources used in relation to the Change are used in a reasonably efficient manner and in accordance with Good Industry Practice;
- (b) taking reasonable steps to mitigate any risks or other adverse effects of the Change (and, where applicable, to take advantage of any positive or beneficial effects of the Change); and
- (c) providing reasonable evidence to the DCC (as part of the relevant Impact Assessment) in relation to:
 - (i) where applicable, how the Change has affected the costs of providing any Services affected by the Change;
 - (ii) any alteration in the resources used to provide the Services (including any new resources to be used in relation to the Change);
 - (iii) how the Contractor has minimised any increase in its costs (and, where applicable, maximised any reduction in its costs) arising from the Change in accordance with paragraph 1.1.8 (a) above;

- (iv) how the Contractor has mitigated any risks or other adverse effects of the Change (and, where applicable, taken advantage of any positive or beneficial effects of the Change) in accordance with paragraph 1.1.8 (b) above; and
- (v) how any expenditure that has been avoided as a result of the Change has been taken into account in adjusting the Charges.

Contractor's right of rejection

1.2 Following an Impact Assessment, if

1.2.1 the Contractor reasonably believes that any proposed Variation which is requested by DCC would:

- (a) adversely affect the risks to the health and safety of any person; or
- (b) require the Services to be performed in a way that infringes any Law; or

1.2.2 the Contractor reasonably demonstrates that the proposed Variation is technically impossible to implement or the Contractor does not have the technical capacity or flexibility required to implement the proposed Variation.

then the Contractor shall be entitled to reject the proposed Variation and shall notify the DCC of its reasons for doing so within five (5) Business Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 1.1.1(b).

2. COSTS

2.1 Each Party shall bear its own costs in relation to the preparation and agreement of each Variation (including the preparation of the Variation Form and Impact Assessment).

2.2 All Variations shall be calculated and charged in accordance with the principles and rates set out in Schedule 22 (*Charges and Invoicing*).

2.3 In all cases and at all times the Contractor shall ensure resources are used (working in accordance with Good Industry Practice) in an efficient manner.

2.4 The DCC shall be entitled to a reduction in the Charges in respect of any Variation to the extent that resources used by the Contractor to provide the Services after the Variation are (or would reasonably be, if the Services were being provided with efficiency and in accordance with Good Industry Practice) less than those used by the Contractor on an equivalent basis prior to the Variation.

2.5 It is agreed that both Parties' costs incurred in respect of any use of this Variation Procedure as a direct result of any breach by the Contractor of this Agreement (subject to any relief available) shall be paid for by the Contractor

provided such costs are reasonable and the Contractor shall not be entitled to increase any Charges (or any other sum) in connection with such Variation.

3. RELATED VARIATION PROCEDURES

- 3.1 The Contractor acknowledges that the Variation Procedure may need to be consistent with, and interoperate with, the variation and change control procedures of the DCC and other Relevant Service Providers (each a "**Related Variation Procedure**").
- 3.2 The Contractor shall, at DCC's cost, promptly provide any co-operation (which may include attendance at workshops with the DCC and the Relevant Service Providers), documentation, data, information or other assistance reasonably requested by the DCC or any Relevant Service Provider in relation to the Variation Procedures and Related Variation Procedures and their alignment.

APPENDIX 1
VARIATION FORM

Variation Request

Title:			
Variation Request No:		Date raised:	
Raised by:		Contact Email address:	
Organisation:		Contact Telephone number:	
Does this Variation contain any commercially sensitive information?			

Supporting Information

Background	
Reason(s) for the Variation:	
Consequences of not progressing the Variation	

Variation Definition (DCC Requirements)

Overview

Variation Definition and Business Objectives	
--	--

Solution Requirements

Functional Requirements	
Non-Functional Requirements	
Service Provider Co-operation	
Management and Reporting Requirements	

Commercial Requirements

Constraints	
Delivery Milestones	
Charging mechanism	
Terms and Conditions changes	
Schedule changes	

Variation Approval

Charges (if any):
Changes to the Contract (if any):
Other Relevant Information (if any):

For SMART DCC Limited	For Contractor
Signature	Signature
Name	Name
Title	Title
Date	Date

Title:			
Date raised:		Unique Identifier:	

Raising Party:		Contact address:	Email	
Raised by:		Contact number:	Telephone	

The proposed change request:
Brief description of the change required:
Deliverables requested (if any):

Target dates (if any):
Other (if any):

SCHEDULE 20

CO-OPERATION

1. GENERAL

- 1.1 This Schedule 20 sets out certain obligations on the Contractor to co-operate with the DCC and Relevant Service Providers in order to support the DCC's provision of the DCC Services in a successful and timely manner and in accordance with the DCC Obligations.
- 1.2 The Contractor's obligations and the DCC's rights and remedies under this Schedule 20 are in addition to any co-operation or other obligations of the Contractor (or rights or remedies of the DCC) under any other provision of this Agreement or any Co-operation Agreement.
- 1.3 The Contractor shall perform its obligations under this Schedule 20 at the cost and expense of the DCC.

2. CO-OPERATION OBJECTIVES

- 2.1 The Contractor shall perform its obligations under this Schedule 20 and proactively manage the coordination of its obligations under this Schedule 20 with the Relevant Service Providers in order to facilitate as far as reasonably practicable to the extent under the Contractor's control, the following:
 - 2.1.1 the DCC is able to provide the DCC Services in a successful and timely manner and in accordance with the DCC Obligations;
 - 2.1.2 the DCC and each Relevant Service Provider is able to develop and maintain any necessary technical, operational and/or organisational interfaces for the SMIP Environment;
 - 2.1.3 any changes by the Contractor which may have an impact on any services provided to the DCC by the Relevant Service Providers are planned, managed and delivered in an efficient and co-ordinated manner;
 - 2.1.4 any maintenance activities under this Agreement are planned, managed and implemented in an efficient and co-ordinated manner with any relevant maintenance activities of the Relevant Service Providers;
 - 2.1.5 the BCDR Plan and Related BCDR are developed, implemented and invoked in a consistent manner which is intended to facilitate a co-ordinated response to service interruptions and disasters;
 - 2.1.6 co-operative behaviour and overall cost efficiency are promoted, which shall include that when the Contractor exercises its discretion it shall in good faith: (i) consider the cost impact of its choice on relevant DCC Eco-system Entities; and (ii) refrain from knowingly choosing an option which would significantly and without justification increase the costs of any DCC Eco-system Entity;

2.1.7 on the expiry or termination of this Agreement and/or any Relevant Service Provider Contract, there is an orderly transfer of the services being terminated to a replacement service provider in a manner which is co-ordinated with the ongoing provision of any continuing services (whether under this Agreement or any Relevant Service Provider Contract); and

2.1.8 it performs service management obligations (including the identification and resolution of incidents and problems) in an efficient and co-ordinated manner with the Relevant Service Providers,

(together, the "**Co-operation Objectives**"),

3. **GENERAL OBLIGATIONS**

3.1 The Contractor shall perform the obligations set out in the table below:

Contractor Obligation	Description
General	The Contractor shall provide such co-operation and assistance as may be reasonably required from time to time by the DCC or any Relevant Service Provider in relation to any of the Co-operation Objectives.
Notification of Contractor service failures	<p>The Contractor shall promptly notify the DCC and any Relevant Service Providers if:</p> <p>(a) the Contractor fails to perform any of the Services in accordance with the requirements of this Agreement; and</p> <p>(b) such failure may have an adverse impact on the performance of any services provided to the DCC by such Relevant Service Providers.</p>
Notification of Related Service Failures	<p>The Contractor shall promptly notify the DCC and the Relevant Service Providers if:</p> <p>(a) the Contractor becomes aware of any failure by any Relevant Service Provider to perform any element of the services under the Relevant Service Provider Contract; and</p> <p>(b) such failure has had, or may have, an adverse impact on the performance of any of the Services under this Agreement,</p> <p>(a "Related Service Failure").</p>
Mitigation of Related Service Failures	Wherever possible, the Contractor shall use all reasonable endeavours to mitigate the consequences of any Related Service Failure on the performance of the Services under this Agreement. For the avoidance of doubt, this obligation does not require the Contractor to perform any of the services under the

Contractor Obligation	Description
	Relevant Service Provider Contracts on behalf of the Relevant Service Providers.
Meetings	The Contractor shall attend any meetings during normal working hours as reasonably requested by the DCC or any Relevant Service Providers (on more than two (2) Business Days notice or any shorter period if reasonable) from time to time in relation to the Co-operation Objectives, including to attempt in good faith to resolve any actual, threatened or potential issues that may arise from time to time in relation to the Services, the DCC Services and/or any services provided to the DCC by such Relevant Service Providers.
Disruption	The Contractor shall use all reasonable endeavours to ensure that the performance of the Services (and any other obligations of the Contractor under this Agreement) do not disrupt the operations of any Relevant Service Providers (including the provision of services to the DCC), or, where disruption is unavoidable, that such disruption is minimised to the greatest extent reasonably practicable.
Access to premises etc.	The Contractor shall provide the DCC and any of the Relevant Service Providers with reasonable access to, and use of, the premises, systems and equipment used in connection with the Services to the extent such access is reasonably necessary in relation to the Co-operation Objectives.
Access to Contractor Personnel	The Contractor shall provide the DCC and any of the Relevant Service Providers with access to appropriate members of the Contractor Personnel to the extent such access is reasonably necessary in relation to the Co-operation Objectives.
Access to documentation etc.	<p>The Contractor shall provide such documentation, data and/or other information requested by the DCC or any of the Relevant Service Providers, to the extent:</p> <ul style="list-style-type: none"> (a) such documentation, data and/or other information is reasonably necessary in relation to the Co-operation Objectives; and (b) such is either: <ul style="list-style-type: none"> (ii) documentation, data and/or other information that the DCC would have a right (whether or not by notice) to access and/or receive under any other provision of this Agreement; or

Contractor Obligation	Description
	(ii) DCC Data.
"Fix first, discuss later"	The Contractor shall comply with the principle of "fix first, discuss later", requiring that the Contractor shall concentrate on solving a problem as expeditiously as possible and leave any Disputes with the DCC or any disputes with Relevant Service Providers as to who is responsible and who should bear the cost of fixing the problem and any associated legal issues until after resolution of the relevant problem.

- 3.2 The Parties shall comply with its respective obligations under Clause 37 (*Confidentiality*) in respect of any of the DCC's Confidential Information and/or the Contractor's Confidential Information disclosed pursuant to this Schedule 20.

4. **CO-OPERATION AGREEMENT**

- 4.1 The DCC may, from time to time, request that the Contractor agree and enter into co-operation agreements with one or more Relevant Service Providers in order to better achieve the Co-operation Objectives ("**Co-operation Agreement**"). Without limiting the generality of any other obligation, the Contractor shall use reasonable endeavours to agree (as soon as reasonably practicable) appropriate terms for any proposed Co-operation Agreement that are consistent with the Co-operation Objectives and its obligations pursuant to this Agreement (including paragraph 3), provided always that the Co-operation Agreement:

- 4.1.1 does not require the Contractor and any proposed Relevant Service Provider counterparty to have any direct liability to one another; and
- 4.1.2 is agreed by the DCC and the Contractor in accordance with the Variation Procedure.

- 4.2 The Parties acknowledge and accept that this Agreement may be varied (in accordance with the Variation Procedure) to give full effect to any Co-operation Agreement or align the Co-operation Agreement and this Agreement (as required).

SCHEDULE 21

EXIT MANAGEMENT

"Relevant Business Asset"

means all assets and rights used by the Contractor or any Contractor Person dedicated exclusively to provide the Services in accordance with this Agreement (including rights under any Sub-contract) and that are required by the DCC and/or a Replacement Contractor in connection with the DCC carrying on of the Authorised Business, but excluding those assets and rights owned by the DCC;

"Relinquishment of Operational Control"

in relation to any Relevant Business Asset, means entering into any agreement or arrangement under which operational control of that Relevant Business Asset is not or will cease to be under the sole management of the Contractor;

1. GENERAL OBLIGATIONS

1.1 Subject to Paragraph 1.2, the Contractor, at DCC's cost:

- 1.1.1 is required to support the orderly transition of the Services from the Contractor to the DCC (or Replacement Contractor) in the event of the expiry or termination of this Agreement; and
- 1.1.2 shall support, the overall management of the exit arrangements in this Schedule 21.

1.2 The DCC shall (and shall procure that any Replacement Contractor shall) co-operate with the Contractor to such extent as is reasonably necessary to enable the Contractor to perform its obligations under this Schedule 21.

1.3 Without limiting the Contractor's obligations under Paragraph 1.1, the Contractor shall co-operate with the DCC (and Replacement Contractor) to support the orderly transition of the Services from the Contractor to the DCC (or Replacement Contractor), including maintaining service continuity.

2. OBLIGATION TO CONTINUE TO PROVIDE THE SERVICES

2.1 Unless otherwise agreed by the Parties, the Contractor shall continue to provide the Services in accordance with this Agreement at all times during the Termination Assistance Period.

2.2 The Charges payable in relation to the provision of the Services during the Termination Assistance Period shall be determined in accordance with Schedule 22 (*Charging and Invoicing*).

3. MAINTENANCE OF REGISTERS AND RELEVANT BUSINESS ASSETS

3.1 During the Term, the Contractor shall maintain and provide to the DCC:

- 3.1.1 where agreed, a knowledge management database;

- 3.1.2 the Register of Business Assets; and
- 3.1.3 where agreed, a configuration management database ("**CMDB**") which is of sufficient detail to permit the DCC (and any Replacement Contractor) to acquire sufficient technical understanding of how the Contractor provides the Services to enable the smooth transition of the Services with the minimum disruption,

(together, the "**Registers**").

- 3.2 The Contractor shall maintain the Registers in the format specified in the Exit Plan (or such other format as is agreed between the Parties from time to time).
- 3.3 The Contractor shall ensure that, at all times, the Registers are kept fully up-to-date and accurate.
- 3.4 In the case of the Register of Business Assets, the Contractor shall ensure that the Register of Relevant Business Assets contains the following information:

- 3.4.1 a register of all of the Relevant Business Assets, detailing:

- (a) whether each Relevant Business Asset is capable of being transferred to the DCC and/or any Replacement Contractor following the expiry or termination of this Agreement (each, a "**Transferable Asset**").
- (b) if not, whether each Relevant Business Asset is otherwise capable of being made available by the Contractor for use by the DCC and/or any Replacement Contractor following the expiry or termination of this Agreement (each, an "**Ongoing Access Asset**");
- (c) the ownership status of each Transferable Asset and each Ongoing Access Asset;
- (d) the value of each Transferable Asset, calculated using the net book value of the Transferable Asset, remaining lease payments or such other valuation method as approved by the DCC in respect of specific Relevant Assets and, in any event, in compliance with the applicable accounting standards of the Contractor;

- 3.4.2 a register of all of the Software (in the format specified in Schedule 14 (*Intellectual Property Rights and Software*));

- 3.4.3 a register of all other Intellectual Property Rights relevant to the performance of the Services;

- 3.4.4 a register of all Sub-contracts and other agreements (including maintenance and support agreements and equipment, rental and lease agreements) required for the performance of the Services.

- 3.5 The Contractor shall not, without the DCC's prior written consent, encumber any Relevant Business Assets in any way which would:

- 3.5.1 require the consent of a third party to the exercise by the DCC of any of its rights under this Agreement; or
- 3.5.2 otherwise restrict the exercise by the DCC of any of its rights under this Agreement.

For the purposes of this Paragraph 3.5 "**encumber**" shall include any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, security interest, any other security agreement or arrangement or which otherwise restricts the Contractor's ability to use and deal with the Relevant Business Asset.

- 3.6 Without limiting its other obligations under this Agreement, the Contractor may not carry out any Disposal of, or any Relinquishment of Operational Control over, any Relevant Business Asset without the prior written consent of the DCC. The Contractor acknowledges that:

- 3.6.1 the granting of consent by the DCC under this Paragraph 3.6 may be subject to the Authority also granting its consent to the relevant Disposal or Relinquishment of Operational Control; and
- 3.6.2 the consent of the DCC under this Paragraph 3.6 may be given subject to acceptance by the Contractor, or by any third party in favour of whom the relevant Disposal or Relinquishment of Operational Control is to be made, of such conditions as may be specified in the DCC's consent.

4. APPOINTMENT OF EXIT MANAGERS

- 4.1 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule 21 and provide written notification of such appointment to the other Party within one (1) month of the Commencement Date.
- 4.2 The Contractor's Exit Manager shall be responsible for ensuring that the Contractor and its employees, agents and Subcontractors comply with this Schedule 21. The Contractor shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Contractor as are reasonably necessary to enable the Contractor to comply with the requirements set out in this Schedule 21.
- 4.3 The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule 21 and each Party's compliance with it.
- 4.4 Either Party may request a meeting of the Exit Managers by giving the other written notice. Such meeting shall take place within five (5) Business Days of the date of such notice at a mutually convenient time and venue.

5. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 5.1 The Contractor shall provide to the DCC such information relating to the Services as is reasonably requested by the DCC from time to time in order to facilitate the preparation of by the DCC of any invitation to tender for the provision of some or all of the Services or to facilitate any potential Replacement

Contractor undertaking due diligence in relation to some or all of the Services. Such information may include:

- 5.1.1 details of the Service (including the manner in which the Services are provided);
- 5.1.2 a copy of the Registers, updated by the Contractor up to the date of delivery of such Registers;
- 5.1.3 an inventory of DCC Data in the Contractor's possession or control;
- 5.1.4 such other material and information as the DCC shall reasonably require,

but excluding Commercially Sensitive Information

(together, the "**Exit Information**").

5.2 The Contractor shall comply with any request from the DCC under Paragraph 5.1 within a reasonable time (but, in any event, within ten (10) Business Days after the date of the request).

5.3 The Contractor acknowledges and agrees that:

- 5.3.1 that the DCC may provide any information under Paragraph 5.1 (including the Contractor's Confidential Information) but excluding Commercially Sensitive Information to any actual or prospective Replacement Contractor subject to the Replacement Contractor being subject to obligations of confidentiality which the DCC shall enforce ; and
- 5.3.2 if requested by the DCC at any time, the Contractor shall provide any information under Paragraph 5.1 (including the Contractor's Confidential Information) directly to any actual or prospective Replacement Contractor identified by the DCC from time to time.

5.4 The Contractor recognises that any re tendering exercise commenced by the DCC in respect of all or part of the Services must be fair and open; and in order to facilitate a smooth, timely and orderly re-tendering the Contractor shall (promptly and inreasonable timescale set out by the DCC):

- 5.4.1 provide all reasonable assistance that the DCC may require in connection with any re-tendering process;
- 5.4.2 comply with the DCC's reasonable requests in connection with any re-tendering process, which may include requests for such assistance and information as specified in Paragraph 5.1;
- 5.4.3 at the DCC's request, review and comment upon any draft transition plans proposed by bidders during any re tendering process;
- 5.4.4 do or perform such other acts as may be reasonably required in order to assist the DCC with any re-tendering process, including, but not limited to, attending meetings with bidders; and

- 5.4.5 not knowingly do or omit to do anything which may adversely affect the ability of the DCC to ensure an orderly re-tendering process.

6. EXIT PLAN

- 6.1 The Contractor shall prepare, deliver and maintain a plan, which shall detail the processes and arrangements that the Contractor shall follow to support an orderly transition of the Services from the Contractor to the DCC and/or its Replacement Contractor on the expiry or termination of this Agreement ("**Exit Plan**").
- 6.2 The Exit Plan shall, as a minimum, include the information set out in Appendix 2 of this Schedule 21.
- 6.3 Within twenty (20) Business Days from the Commencement Date the Contractor shall deliver to the DCC for the DCC's written approval an Exit Plan for the Development Phase.
- 6.4 Following receipt of the draft Exit Plan from the Contractor, the DCC shall:-
 - 6.4.1 review and comment on the draft Exit Plan as soon as reasonably practicable; and
 - 6.4.2 notify the Contractor in writing that it approves or rejects the draft Exit Plan no later than ten (10) Business Days after the date on which the draft Exit Plan is first delivered to the DCC.
- 6.5 If the DCC rejects the draft Exit Plan:-
 - 6.5.1 the DCC shall inform the Contractor in writing of its reasons for its rejection; and
 - 6.5.2 the Contractor shall then revise the draft Exit Plan (taking reasonable account of the DCC's comments) and shall re-submit a revised draft Exit Plan to the DCC for the DCC's approval within ten (10) Business Days of the date of the DCC's notice of rejection. The provisions of Paragraph 6.4 and this Paragraph 6.5 shall apply again to any resubmitted draft Exit Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

7. REVIEW AND AMENDMENT OF THE EXIT PLAN

- 7.1 Not used.
- 7.2 The Contractor shall review the Exit Plan:
 - 7.2.1 on a regular basis and as a minimum once every six (6) months; and
 - 7.2.2 where the DCC requests any additional reviews (over and above those provided for in Paragraph 7.2.1) by notifying the Contractor to such effect in writing, whereupon the Contractor shall conduct such reviews in accordance with the DCC's written requirements.

8. FINALISATION OF THE EXIT PLAN

- 8.1 Within ten (10) Business Days after service of a notice of termination by either Party or three (3) months prior to the expiry of this Agreement, the Contractor will submit for the DCC's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule 21 and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 8.2 The Parties will meet and use its respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within ten (10) Business Days following its delivery to the DCC then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Contractor shall provide the Termination Assistance Services in accordance with the principles set out in this Schedule 21 and the last approved version of the Exit Plan (insofar as relevant).

9. RELATED EXIT PLANS

- 9.1 The Contractor acknowledges that the Exit Plan may need to be consistent with, and interoperate with, the exit plans of the DCC and other DCC Sub-contractors (each a "**Related Exit Plan**").
- 9.2 The Contractor shall promptly provide any co-operation at the cost of the DCC (which may include attendance at workshops with DCC and DCC Sub-contractors), documentation, data, information or other assistance reasonably requested by the DCC or any DCC Sub-contractor in relation to the preparation of the Exit Plan and Related Exit Plans and their alignment.

10. TERMINATION ASSISTANCE SERVICES

General

- 10.1 During the Termination Assistance Period, the Contractor shall provide the Termination Assistance Services.
- 10.2 The charges payable for the provision of the Termination Assistance Services shall be calculated in accordance with the charging methodology set out in Schedule 22 (*Charges and Invoicing*) and shall be specified in the Exit Plan.
- 10.3 In addition to the Termination Assistance Services, the Contractor shall provide any assistance during the Termination Assistance Period that is reasonably requested by the DCC to assist DCC to:
- 10.3.1 ensure that there is no disruption in the supply of the Services during the Termination Assistance Period;
 - 10.3.2 ensure that there is no degradation in the quality of delivery of the Services during the Termination Assistance Period; and
 - 10.3.3 achieve an orderly transition of the Services from the Contractor to the DCC (or any Replacement Contractor).

- 10.4 The Contractor shall use all reasonable endeavours to provide the assistance referred to in Paragraph 10.3 without additional cost to the DCC. However, if this is not possible, any additional costs incurred by the Contractor in providing such assistance (which are not already in the scope of the Termination Assistance Services or the Exit Plan) will be subject to agreement in accordance with the Variation Procedure (such agreement not to be unreasonably withheld or delayed by either Party).

Notification of Requirements

- 10.5 The DCC shall be entitled to require the provision of Termination Assistance Services at any time during the Term by giving written notice to the Contractor (a "**Termination Assistance Notice**")

10.5.1 during the Development Phase, as soon as reasonably practicable but at least two (2) weeks prior to the date of termination or expiry of this Agreement;

10.5.2 at any other time other than during the Development Phase, as soon as reasonably practicable, but at least one (1) month prior to the date of termination or expiry of this Agreement.

- 10.6 The Termination Assistance Notice shall specify:

10.6.1 the scope of the Termination Assistance Services required;

10.6.2 the date from which Termination Assistance Services are required; and

10.6.3 if served during the Development Phase, the period during which it is anticipated that Termination Assistance Services will be required, which shall continue no longer than two (2) months after the date that the Contractor ceases to provide the Services.

10.6.4 if served at any time other than during the Development Phase, the period during which it is anticipated that Termination Assistance Services will be required, which shall continue no longer than six (6) months after the date that the Contractor ceases to provide the Services.

- 10.7 The DCC may, from time to time, extend the Termination Assistance Period beyond the period originally specified in the Termination Assistance Notice, provided that:

10.7.1 the overall Termination Assistance Period does not extend beyond the periods specified in Paragraph 10.6.3 or 10.6.4; and

10.7.2 the DCC notifies the Contractor of such requirement no later than ten (10) Business Days before the date on which the Termination Assistance Period is otherwise due to expire.

11. CHARGES

- 11.1 During the Termination Assistance Period (or for such shorter period as the DCC may require the Contractor to provide the Termination Assistance Services), the DCC shall pay the Charges to the Contractor in respect of the

Termination Assistance Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Assistance Services is changed and this results in a change to the costs of such Termination Assistance Services, the estimate may be varied in accordance with the Variation Procedure.

- 11.2 For the purpose of calculating the costs of providing the Termination Assistance Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Assistance Services shall be determined in accordance with the Change Control Procedure.
- 11.3 The Parties acknowledge that the Contractor shall be entitled to charge for the services provided by the Contractor pursuant to, and the DCC shall be obliged to pay for costs incurred by the Contractor in relation to its compliance with, this Schedule 21 including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

12. OBLIGATIONS AFTER THE TERMINATION ASSISTANCE PERIOD

Provision of DCC Data

- 12.1 At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Contractor's performance of the Services and the Termination Assistance Services and its compliance with the other provisions of this Schedule 21), the Contractor shall provide the DCC (or Replacement Contractor) with a complete and uncorrupted version of the DCC Data (in the possession of the Contractor) in accordance with Clause 35 (*DCC Data*), together with all relevant data schema and data definitions.

General

- 12.2 If directed to do so by the DCC at any time in writing and promptly following the date of expiry or termination of this Agreement (and in any event within six (6) months of such date), the Contractor shall:
 - 12.2.1 to the extent reasonably practicable, securely, confidentially and permanently destroy, delete and erase (in accordance with HMG Information Assurance Standard No. 5 or such equivalent standard as the DCC may notify from time to time) all DCC Data (or procure such destruction, deletion and erasure) from any computers, storage devices and storage media that have been used, at any time, by any Contractor Person in relation to the Services and which are not being transferred to the DCC;
 - 12.2.2 where reasonably practicable, securely and confidentially return to the DCC such of the following as is in the Contractor's possession or control:
 - (a) all copies of the DCC Software and any other software licensed by the DCC to the Contractor under this Agreement;
 - (b) all materials created by the Contractor under this Agreement, the IPRs in which are owned by the DCC;

- (c) all Confidential Information of the DCC;
- (d) dedicated licences or equivalent for all Third Party Software used in performing the Services and / or any Systems on which the Software is operating and in both cases, have been on-charged to the DCC or is otherwise necessary for DCC to maintain continuity of the Services, and which the Contractor has the legal right to transfer to the DCC;
- (e) any dedicated items that have been on-charged to the DCC, such as consumables; and
- (f) all security credentials which are necessary for DCC to maintain continuity of the Services ; and

12.2.3 vacate any DCC Premises.

12.3 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the DCC to the Contractor in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

Delivery of documents

12.4 At the end of the Termination Assistance Period, the Contractor shall deliver up-to-date copies of the following documents:

12.4.1 the Registers; and

12.4.2 any other documents identified in the Exit Plan as being delivered at the end of the Termination Assistance Period.

APPENDIX 1

SCOPE OF THE TERMINATION ASSISTANCE SERVICES

1. TERMINATION ASSISTANCE SERVICES

1.1 The Termination Assistance Services to be provided by the Contractor shall include such of the following services (insofar as they relate to the Services) as the DCC may specify in the Termination Assistance Notice:

- 1.1.1 ceasing all non-critical Software changes (by agreement with the DCC);
- 1.1.2 notifying the Contractor Persons of the procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
- 1.1.3 providing an adequate explanation of the procedures, standards and operations used to provide the services to the extent reasonably necessary to enable a competent services provider to provide the Services following the expiry or termination of this Agreement;
- 1.1.4 providing reasonable support and assistance to enable the DCC (or Replacement Contractor) to:
 - (a) understand any operational and/or business processes and procedures used by the Contractor or any other Contractor Person in the provision of the Services and which will need to be replicated by the DCC (or Replacement Contractor);
 - (b) re-write and implement such processes and procedures so that they are appropriate for use by the DCC (or Replacement Contractor) in providing the Services after the end of the Termination Assistance Period;
 - (c) delivering to the DCC the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports relating to the twelve (12) month period immediately before the start of the Termination Assistance Period;
 - (d) providing details of work volumes and staffing requirements over the twelve (12) month period immediately before the start of the Termination Assistance Period;
 - (e) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition to the DCC (or Replacement Contractor);
 - (f) providing assistance and expertise as necessary to examine all external governance and reporting procedures in place for the provision of the Services and providing reasonable support and assistance to the DCC (or Replacement Contractor) in re-writing and implementing such procedures

so that they are appropriate for use by the DCC (or Replacement Contractor) in providing the Services after the end of the Termination Assistance Period;

- (g) providing assistance and expertise as necessary to examine all relevant personnel roles and responsibilities in place for the provision of the Services;
- (h) reviewing all software libraries used in delivering the Services and providing details of these to the DCC (or Replacement Contractor);
- (i) analysing and providing information regarding:
 - (i) historical performance data in relation to the Services in relation to the twelve (12) month period immediately before the start of the Termination Assistance Period;
 - (ii) capacity and performance requirements;
 - (iii) processor requirements and bandwidth requirements; and
 - (iv) known planned requirements for capacity growth in relation to the Services;
- (j) agreeing with the DCC a handover plan for all of the Contractor's responsibilities as set out in the Security Management Plan to be implemented under Schedule 7 (*Security Requirements*). The Contractor will co-operate fully in the execution of the agreed plan, providing skills and expertise of a suitable standard;
- (k) assisting in the execution of a parallel operation of the Services at the same time as any Replacement Services;
- (l) providing existing training materials directly relating to the Services to the DCC (or Replacement Contractor);
- (m) providing reasonable support and assistance to the DCC (or Replacement Contractor) regarding the DCC's analysis of the training requirements of the DCC (or Replacement Contractor) in relation to the provision of the Services following the end of the Termination Assistance Period;
- (n) providing up to two (2) handover events for those personnel of the DCC (or Replacement Contractor) responsible for internal training in connection with the provision of the Services following the end of the Termination Assistance Period;
- (o) providing for transfer to the DCC (or Replacement Contractor) of such knowledge as reasonably required by the DCC and/or the Replacement Contractor to support the provision of the

Services following the end of the Termination Assistance Period;

- (p) answering all reasonable questions from the DCC (or Replacement Contractor) regarding the Services; and
- (q) agreeing with the DCC (or Replacement Contractor) a plan for the migration of the DCC Data and the Services and/or Software to the DCC (or Replacement Contractor). The Contractor will fully co-operate in the execution of the agreed plan by the DCC (or Replacement Contractor), providing skills and expertise of a reasonably acceptable standard, and will maintain service continuity up to the point that DCC (acting reasonably) agrees that the Services and/or Software and all live Systems on which the Software is operating have been successfully handed over to the DCC or the Replacement Contractor.

APPENDIX 2

EXIT PLAN

1. GENERAL REQUIREMENTS

1.1 The Exit Plan shall:

1.1.1 address each of the issues set out in this Schedule 21 to facilitate an orderly transition of the Services from the Contractor or the DCC (or any Replacement Contractor) with the aim of ensuring that there is no:

- (a) disruption in the supply of the Services; and
- (b) degradation in the quality of deliver of the Services.

2. TRANSFER OF SERVICES

2.1 The Exit Plan shall document how the Services will transfer to the DCC (or any Replacement Contractor), including:

2.1.1 details of the activities to be undertaken by the Contractor, the DCC (or any Replacement Contractor) in relation to the transfer of Services;

2.1.2 a timetable for the transfer of the Services from the Contractor to the DCC (or any Replacement Contractor); and

2.1.3 details of how service continuity will be ensured up to and at the point of transition of all live Systems on which the Software is operating to the DCC (or any Replacement Contractor);

2.1.4 a handover plan for all of the Contractor's responsibilities as set out in the Security Management Plan to be implemented under Schedule 7 (*Security Requirements*).

3. CONTINUATION OF THE SERVICES DURING THE TERMINATION ASSISTANCE PERIOD

3.1 The Exit Plan shall:

3.1.1 set out a detailed description of the continuing provision of the Services during the Termination Assistance Period (which complies with Paragraph 2); and

3.1.2 detail appropriate measures to minimise any disruption in the supply of the Services.

4. TERMINATION ASSISTANCE SERVICES

4.1 The Exit Plan shall:

4.1.1 set out the scope of the Termination Assistance Services to be provided by the Contractor;

- 4.1.2 specify the charges that would be payable for the provision of the Termination Assistance Services (calculated in accordance with Schedule 22 (*Charging and Invoicing*)); and
- 4.1.3 describe how the Termination Assistance Services will be provided during the Termination Assistance Period.

5. HANDOVER OF DATA

- 5.1 The Exit Plan shall contain a detailed description of the process and timetable for the transfer to the DCC (or any Replacement Contractor) of the DCC Data.
- 5.2 For operational Services, DCC Data is to be transferred as an integral part of the transfer of the live Systems on which the Software is operating.

SCHEDULE 22

CHARGES AND INVOICING

1. GENERAL

1.1 this Schedule 22 describes how the Charges payable by the DCC to the Contractor pursuant to this Agreement will be calculated and invoiced.

1.2 The following provisions of this Agreement set out the charges and other amounts payable by the DCC to the Contractor in relation to this Agreement:

1.2.1 this Schedule 22 (and the Appendix to this Schedule 22);

1.2.2 express references in this Agreement to repaying particular costs incurred by the Contractor; and

1.2.3 Paragraph 11 of Schedule 21 (*Exit Management*),
(the “**Charges**”).

1.3 The amounts due under this Agreement, as further described in this Schedule 22 are as follows:

1.3.1 the time and material Charges calculated in accordance with Paragraphs 7.2, 7.3, 7.4 and 7.5;

1.3.2 any fixed price Charges agreed in accordance with Paragraph 7.11;

1.3.3 any agreed Pass-Through Expenses;

1.3.4 any Milestone Payments due;

1.3.5 any Indexation Amounts;

1.3.6 any Non-Rate Card Related Costs;

1.3.7 any Charges for Termination Assistance Services;

as such Charges may be adjusted in accordance with Paragraph 7.2.1 and together with any applicable taxes on the foregoing, as set out in Paragraph 3.

1.4 The Parties agree that the Charges calculated in accordance with the provisions of this Schedule 22 are the only amounts payable by the DCC to the Contractor in relation to this Agreement and that no other charges, or expenses, costs or other amounts incurred by the Contractor in performing the Services (or any services incidental or ancillary to the Services) and its (or their) other obligations pursuant to this Agreement will be additionally chargeable to the DCC.

2. PRICING PRINCIPLES

2.1 The Parties agree that the pricing mechanisms set out in this Schedule 22 are intended to:

- 2.1.1 be straightforward and auditable;
 - 2.1.2 provide predictable pricing with no unanticipated or hidden charges;
 - 2.1.3 remain market competitive throughout the Term; and
 - 2.1.4 be capable of accommodating changes in the DCC's business and property policies and requirements during the Term (including where required as a result of the divestiture or acquisition of businesses).
- 2.2 The Contractor will apply its pricing methodology fairly throughout the Term so as not to recover the Contractor's fixed costs and overheads more than once from the DCC. Without limiting the generality of the foregoing:
 - 2.2.1 to the extent that the Contractor provides Contractor Personnel or other resources for the Services on a dedicated basis which are charged through the pricing mechanisms described in this Schedule 22, the Contractor shall not be entitled to charge the DCC using the same Contractor Personnel or resources for separately charged Services; and
 - 2.2.2 if a reduction in the DCC's requirements in one element of the Services can be offset against an increase in the DCC's requirements in another element of the Services, but the pricing methodology would have the effect of allowing the Contractor to recover associated overhead items twice, the Contractor will adjust the Charges accordingly to ensure that such double recovery is not made.
- 2.3 Save to the extent that expenses are recoverable by the Contractor pursuant to Paragraph 7.13, no other expenses incurred by the Contractor in providing the Services will be reimbursable by the DCC.

3. TAXES

- 3.1 All Charges and rates set out in this Schedule 22 are exclusive of all applicable taxes payable in respect of the provision of the Services such as VAT or sales taxes. Where such taxes are properly chargeable on the supply of Services made pursuant to this Agreement, the DCC will be responsible for paying such taxes on production of valid tax invoices by the Contractor.
- 3.2 Each Party will each be responsible for any their own applicable taxes as follows:
 - 3.2.1 each Party will be responsible for any personal property taxes on property, equipment or Software for which it has financial responsibility;
 - 3.2.2 each Party will be responsible for any taxes arising in relation to its employees or contractors;
 - 3.2.3 each Party will be responsible for taxes based upon its net income or gross receipts; and
 - 3.2.4 the Contractor will be responsible for all sales, use, excise, value added, services, consumption and other taxes when due to be payable on any goods or services used or consumed in providing the Services

where the taxes are imposed on its acquisition or use of such goods or its provision of such Services.

- 3.3 All Charges will be inclusive of any import or export duties and charges levied by relevant taxation authorities on goods delivered to the DCC.
- 3.4 The Contractor will cooperate reasonably with the DCC in relation to invoices rendered in accordance with this Agreement to:
 - 3.4.1 enable the DCC to more accurately determine its tax liability and minimise any tax liability to the greatest extent possible in accordance with Law; and
 - 3.4.2 address any claims asserted by the taxation authority, including assisting the DCC in the challenge of any imposition of taxes.
- 3.5 The following provisions will apply should any payment in respect of any invoice for the provision of Services be subject by Law to any withholding tax:
 - 3.5.1 the DCC will make payment to the Contractor of the amount owing less a deduction for such withholding tax and will account to the relevant taxation authority for the appropriate withholding tax;
 - 3.5.2 payment of such net sum to the Contractor and of the withholding tax to the relevant taxation authority will constitute full settlement of the sums owing pursuant to the relevant invoice;
 - 3.5.3 on written request from the Contractor to the DCC, and at the Contractor's expense, the DCC will provide any necessary evidence that may be reasonably required of the payment of the relevant withholding tax.
 - 3.5.4 The Contractor will, on written request from the DCC, provide a declaration of tax residence on the prescribed forms and obtain certification by the relevant taxation authority in order to confirm the applicability and availability of any reduced rate of withholding tax pursuant to the provisions of any relevant double taxation treaties.
- 3.6 If a payment due from an indemnifying Party pursuant to an indemnity given by a Party in this Agreement is subject to tax (whether by way of direct assessment or withholding at its source) the indemnitee will be entitled to receive from the indemnitor such amounts as will ensure that the net receipt, after tax, in respect of the payment is the same as it would have been were the payment not subject to tax.
- 3.7 The Contractor shall indemnify the DCC on a continuing basis against any liability, including any interest, penalties or costs incurred, which are levied, demanded or assessed on the DCC at any time in respect of the Contractor's failure to account for, or to pay any, VAT relating to payments made to the Contractor under this Agreement. Any amounts due under this Paragraph 3.7 shall be paid in cleared funds by the Contractor to the DCC not less than five (5) Business Days before the date upon which the tax or other liability is payable by the DCC.

4. INVOICING

- 4.1 Subject to the provisions of Paragraphs 8 and 9, which, in the event of any conflict with this Paragraph 4, shall take precedence over this Paragraph 4, the Contractor will invoice the DCC for the Charges in accordance with this Paragraph 4.
- 4.2 The Contractor shall prepare and provide to the DCC for approval a draft pro forma invoice within twenty (20) Business Days of the Commencement Date which shall include, as a minimum, the details set out in Paragraph 4.4 together with such other information as the DCC may reasonably require. If the draft pro forma invoice is not approved by the DCC then the Contractor shall make such amendments as may be reasonably required by the DCC.
- 4.3 Invoices will be raised on a monthly basis to the DCC. Each invoice will be sent by the Contractor so that it is received by the DCC on or before the 15th of the month immediately following the month in respect of which the Charges were incurred. Each invoice will consist of:
- 4.3.1 if requested by DCC, a written paper version;
 - 4.3.2 an electronic version in PDF format, or such other version which is compatible with the DCC's billing system, as specified by the DCC and agreed by the Contractor (as the same may change over the Term);
 - 4.3.3 tax invoices (if required by a tax authority) in the format required by the tax authority and agreed by the Contractor.
- 4.4 The Contractor shall ensure that each invoice shall include the following details:
- 4.4.1 the date of the invoice;
 - 4.4.2 a unique invoice number;
 - 4.4.3 the month or other period(s) to which the relevant Charge(s) relate;
 - 4.4.4 details of the correct Agreement reference;
 - 4.4.5 the reference number of the purchase order issued by the DCC to which it relates;
 - 4.4.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - 4.4.7 such management information as is reasonably required and is agreed by the Contractor to enable the DCC (where relevant) to re-charge the Charges to individual operating divisions of the DCC or its business groups;
 - 4.4.8 the methodology applied to calculate the Charges;
 - 4.4.9 the total Charges gross and net of any applicable deductions and, separately, the amount of any disbursements properly chargeable to the DCC under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of the same;

- 4.4.10 details of any deductions that shall apply to the Charges detailed on the invoice;
 - 4.4.11 details of any Pass-Through Expenses;
 - 4.4.12 reference to any reports required by the DCC in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Contractor for validation by the DCC, then to any such reports as are validated by the DCC in respect of the Services);
 - 4.4.13 a contact name and telephone number of a responsible person in the Contractor's finance department in the event of administrative queries; and
 - 4.4.14 the banking details for payment to the Contractor via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
 - 4.4.15 any other information as reasonably required by the DCC from time to time, as notified at least ten (10) Business Days in advance to the Contractor.
- 4.5 The Contractor shall ensure that an electronic version in PDF format of each invoice shall be sent to the individual and department (and copied to other relevant individuals and departments) as notified by the DCC to the Contractor, from time to time, by giving not less than thirty (30) days' notice to the Contractor.
- 4.6 The Contractor will ensure that each invoice is complete, accurate and conforms to the requirements of the Agreement (including by carrying out detailed checks of each invoice before sending the invoice to the DCC).
- 4.7 Each invoice shall at all times be accompanied by sufficient information to enable the DCC to reasonably assess whether the Charges detailed thereon are properly payable, such information to include, but not limited to, timesheets, Pass-Through Expenses, third party costs and other such items as may be agreed between the Parties from time to time ("**Supporting Documentation**"). Any such assessment by the DCC shall not be conclusive. The Contractor undertakes to provide to the DCC any other documentation reasonably required by the DCC from time to time to substantiate an invoice.
- 4.8 Invoices, Supporting Documentation and Administrative Queries shall be submitted to:-

(a) Invoices to be sent to : -

Accounts Payable
Smart DCC Limited
PO Box 22
Darlington
DL1 9HB.

(b) Supporting Documentation to be sent to :-

Team Leader or as directed by Team Leader.

Email Address: [REDACTED]

(c) Administrative Queries to be sent to : -

[REDACTED]

Smart DCC Limited
2nd Floor
Ibex House
42- 47 Minories
London
EC3N 1DY.

Telephone: [REDACTED]

with a copy (again including any Supporting Documentation) to such other person and at such place as the DCC may notify to the Contractor from time to time.

- 4.9 All Contractor invoices shall be expressed in sterling.
- 4.10 The DCC shall only regard an invoice as valid if it complies with the provisions of this Schedule 22. Where any invoice does not conform to the DCC's requirements set out in this Schedule, the DCC will return the disputed invoice to the Contractor within 10 business days of the invoice date. The Contractor shall promptly issue a replacement invoice which shall comply with the same.
- 4.11 All invoices must be submitted to the DCC within six (6) months of completion of delivery of the relevant Services to which the invoice relates. Invoices delivered after expiry of this period shall be invalid and the DCC shall have no liability in respect of such invoices or the payment of Charges specified in any such invoice.
- 4.12 Without prejudice to the generality of Clause 28, the Contractor will maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by the DCC hereunder in accordance with generally accepted accounting principles applied on a consistent basis.

5. PAYMENT

- 5.1 Subject to the provisions of Paragraphs 8 and 9, which, in the event of any conflict with this Paragraph 5 shall take precedence over this Paragraph 5 the DCC shall pay the Charges in accordance with this Paragraph 5.
- 5.2 The DCC will pay undisputed Charges to the Contractor within thirty (30) days of receipt of a relevant valid invoice.
- 5.3 If any submitted invoice does not comply with the requirements pursuant to the Agreement (including any Supporting Documentation not being provided) then the invoice will not be payable by the date specified in Paragraph 5.2 and the invoice will not become payable until thirty (30) days after the invoice and all

Supporting Documentation is received by the DCC in the agreed format pursuant to Paragraph 4.10.

- 5.4 If a Party fails to pay any undisputed sum by the due date for payment, the other Party may charge that Party interest on the sum calculated at the Default Interest Rate in respect of the period from the due date until the date the outstanding sum is paid (whether before or after judgement). Any interest payable pursuant to the Agreement will be calculated on the basis of the actual number of days elapsed, over a 365 day year.

6. DISPUTED CHARGING AND INVOICE ERRORS

- 6.1 Subject to Paragraph 6.2, the DCC may withhold payment of Charges that the DCC disputes in good faith (or, if the disputed Charges have already been paid, then the DCC may withhold an equal amount from a later payment), including disputes in respect of an error in an invoice or an amount paid. If the DCC withholds any such amount:

6.1.1 the DCC will within ten (10) Business Days of receipt of an invoice notify the Contractor, in writing, that it is disputing such Charges (and in the case of withheld payments, prior to the due date of payment); and

6.1.2 the Parties will promptly address such dispute in accordance with the Dispute Resolution Procedure.

- 6.2 Where the dispute relates to only part of the Charges on an invoice, then the DCC will within ten (10) Business Days of receipt of the relevant invoice notify the Contractor of the disputed amount and provided that the Contractor reissues the invoice with the disputed amount removed within ten (10) Business Days of DCC's notice for payment of the relevant invoice, the DCC will pay the undisputed amount in accordance with Paragraph 5.2.

- 6.3 Where an incorrect amount has been paid by the DCC (including incorrect amounts identified through the Dispute Resolution Procedure):

6.3.1 if the DCC has overpaid any amounts, then the Contractor will make a correcting payment to the DCC within thirty (30) days of the date the Contractor becomes aware of the error, together with: (a) interest on the overpaid amount calculated at the Default Interest Rate in respect of the period from the date of the DCC's payment of such amount to the Contractor until the Contractor pays such amounts back to the DCC (calculated on the basis of the actual number of days elapsed, over a 365 day year); and (b) where the error was identified by an audit or reconciliation by, or on behalf of, the DCC, and such error resulted in an overpayment of greater than 5%, reimbursement of direct and reasonable internal and external costs incurred by the DCC in performing such audit or reconciliation; provided that: (i) the Contractor will not be obliged to repay any amounts which were overpaid more than six (6) months prior to the date that the amount was notified to the Contractor; and (ii) the Contractor will not be obliged to repay any amounts overpaid in the Contractor's previous financial year.

6.3.2 if the DCC has been undercharged for any Charges (including where the Contractor has not submitted an invoice in the timescales required

in accordance with section 4.3), the DCC will make an appropriate correcting payment to the Contractor within thirty (30) days of receipt of a valid invoice, together with interest on the underpaid amount calculated at the Default Interest Rate in respect of the period from the date of the DCC's payment of such amount to the Contractor until the DCC pays such amounts to the Contractor (calculated on the basis of the actual number of days elapsed, over a 365 day year); provided that: (a) the DCC will not be obliged to pay any amounts which were incurred more than six (6) months prior to the date that the amount was notified to the DCC; and (b) the DCC will not be obliged to pay any amounts incurred in the previous DCC financial year.

- 6.4 If an invoice is identified as incorrect, then the Contractor will, at the option and direction of the DCC, either issue a correct invoice if the amount has not yet been paid, or make a correction on the next invoice if the amount has been paid.
- 6.5 The Contractor will refund to the DCC, by crediting the same against the next invoice or at the DCC's option, paying the same within ten (10) Business Days of the relevant Party receiving an invoice from the DCC, any of the following amounts:
 - 6.5.1 any Charges paid in advance by the DCC that relate to a period after the date of termination of this Agreement; or
 - 6.5.2 any refund, credit or other rebate received by the Contractor from a third party for goods or services previously paid for by the DCC (including as a Pass-Through Expense).

7. CHARGES

- 7.1 The Charges for the Services shall be calculated either on a:
 - 7.1.1 **time and materials basis**, in which case the provisions of Paragraphs 7.2 to 7.5 shall apply for the purposes of calculating the Charges; or
 - 7.1.2 **fixed price basis**, in which case the provisions of Paragraph 7.11 shall apply for the purposes of calculating the Charges; or
 - 7.1.3 as **non rate card related costs**, in accordance with Appendix 2 of this Schedule 22.

Unless the Parties agree that any part of the Services shall be provided on a fixed price or other basis, it is agreed that the Services shall be provided on a time and materials basis.

Time and Materials

- 7.2 Unless otherwise agreed by the Parties in writing, the following will apply to Services charged on a time and materials basis:
 - 7.2.1 The Day Rates that apply to Services provided on a time and materials basis are specified in Appendix 1 and Appendix 2 to this Schedule 22

for the skill classifications of the Contractor Personnel performing the Services, or such other Day Rates as may be agreed in accordance with the Variation Procedure. The Day Rates shall be fixed for the Initial Term of 2 years (24 months) from the Commencement Date.

- 7.3 Upon the commencement of any extension of this Agreement beyond the Initial Term, the Contractor shall apply indexation (positively or negatively) to the Day Rates only in accordance with the following formula:

$$\text{Increased Day Rate} = \text{Day Rate} \times \left(\frac{\text{Index}_o}{\text{Index}_d} \right)$$

Where:

- "Index" means RPIx;
- "Index d" is the value of the index published or determined with respect to the period immediately preceding the Commencement Date; and
- "Index o" is the value of the index published or determined with respect to the period immediately preceding the expiry date of the Initial Term in respect of which the amount or sum falls to be adjusted.
- The RPI used will be in line with the UK RPI unless otherwise agreed between DCC and the Contractor.

- 7.3.1 For time charged on a time and materials basis the Contractor Personnel will work 7.5 working hours of Chargeable Time per day.

- 7.3.2 **"Chargeable Time"** will be actual time spent by the Contractor Personnel in performing the Services and will not include:

- (i) lunch breaks, vacation, appraisals, sickness or training;
- (ii) time spent performing any services (other than the Services); or
- (iii) time spent performing services for the Contractor or other Contractor customers.

- 7.3.3 The Contractor will perform the Services in an efficient manner (including using Contractor Personnel charged at a lower rate where appropriate and where such Contractor Personnel have sufficient capacity to perform the relevant Services).

- 7.3.4 The DCC will not be charged for time spent by the Contractor in remedying the Contractor errors in performing the Services.

- 7.3.5 Overtime will only be considered in exceptional circumstances and where approved in advance by the DCC.

- 7.4 Subject to Paragraph 7.4, all time and materials work will be charged on the following basis:

- 7.4.1 the Contractor Personnel will work a professional day consisting of a seven and a half (7.5) working hours per day (excluding lunch time);
 - 7.4.2 the Contractor Personnel will work for additional hours as required by the DCC, provided that if the average time worked by the individual during a week is greater than eight (8) working hours per business day, then the Parties will meet to agree how to address the situation (including whether overtime should be paid);
 - 7.4.3 where the Parties agree that overtime is payable then periods worked outside the standard Business Day will not be charged at overtime rates unless overtime has been agreed by the relevant DCC project manager. The process for authorising and signing off overtime will be defined and operated jointly by the relevant DCC project manager and the Contractor's project manager, or the project office (where one exists for projects or assignments).
- 7.5 The Day Rate for any Contractor Personnel will be pro-rated based upon hours actually worked for any days worked where the minimum hours specified in Paragraph 7.4.1 have not been achieved and 1/7.5th of the applicable standard Day Rate shall be paid for each whole hour that is worked (rounded down).
 - 7.6 The amount that is forecast to be consumed in each Phase will be estimated as part of the Project Plan or Agile Delivery Methodology (Schedule 4)..
 - 7.7 For the Development Phase, if the amount that is forecast to be consumed in the relevant Phase will exceed the estimate agreed in the Project Plan, or the amount agreed in the Project Plan is reached before the relevant Phase has been completed, then the Contractor is not to exceed the agreed amount without the prior written agreement of the DCC (which may take the form of an updated Project Plan).
 - 7.8 For all Phases other than the Development Phase, if the amount that is forecast to be consumed in the relevant Phase will exceed the estimate agreed in the Project Plan, or the amount agreed in the Project Plan is reached before a Phase has been completed, then unless service continuity will be affected, the Contractor is not to exceed the agreed estimate without the written agreement of the DCC (which may take the form of an updated Project Plan). If the Contractor acting reasonably considers that service continuity is at risk of being affected, then the Contractor can continue to incur cost, provided that the Contractor makes reasonable endeavours to minimise those costs, gives the DCC prior notification of those costs and seeks the DCC's approval as soon as reasonably practical thereafter (which will not be unreasonably withheld).
 - 7.9 In no circumstances shall the Contractor be permitted to charge in excess of the relevant Day Rate for the time spent during a day by the relevant Contractor Personnel (including to reflect risk, contingency or otherwise).
 - 7.10 Save as provided in Paragraph 7.8 above, the DCC shall not be liable for any amount in excess of the authorised amount for the relevant Phase. The DCC also reserves the right to reject any invoice issued in excess of the agreed estimate for the relevant Phase.
 - 7.11 The Day Rate is for weekday working during normal business hours and in any case no later than 20:00 on any Day. Any out of hours work on a Business Day

after 20:00 and or a Saturday may be chargeable at 1.5 times the agreed Day Rate and any work on Sundays may be chargeable at 2 times the agreed Day Rate based on the Rate Cards in Appendix 1 or Appendix 2 as is relevant to the Requirement.

- 7.12 Any work carried out outside of the normal working hours must be approved by the DCC Team Leader prior to the work being carried out.

Fixed Price

- 7.13 The DCC may request at any time that the Contractor provide an estimate for providing any part of the Services on a fixed price basis. In such an event the following provisions shall apply:

7.13.1 the Contractor shall provide an initial estimate for the Services to be provided for the fixed price Charges within fifteen (15) Business Days or an agreed number of days of the DCC's request for an estimate and such estimate shall contain details of the Services to be provided and an explanation of the basis on which the fixed price Charges included within the estimate have been calculated; and

7.13.2 the DCC shall respond to the Contractor's initial estimate with a request to proceed with the relevant Services on the basis of the fixed price Charges quoted or declining the initial estimate, within ten (10) Business Days of the DCC's receipt of the initial estimate; and

(i) if the DCC has approved the Contractor's initial estimate, the Contractor shall proceed to commence performance of the relevant Services within an agreed timeframe;

(ii) if the DCC has declined the initial estimate, the DCC may either: (a) request that the Contractor proceed to carry out the Services on a time and materials basis in accordance with Paragraphs 7.2 to 7.5; (b) require the Contractor not to perform the relevant Services; or (c) request that the Contractor resubmit the estimate within five (5) Business Days and the DCC shall within five (5) Business days of receipt of the Contractor's estimate or resubmitted revised estimate accept or reject the revised estimate and sub-paragraphs (a) or (b) of 7.11.2 shall apply.

- 7.14 The Contractor shall maintain full and accurate records of the time spent by each of the Contractor Personnel, in providing the Services or complying with its obligations in accordance with this Agreement, on a day-by-day basis and the relevant Day Rate or proportion of the Day Rate and shall provide such records to the DCC with each relevant invoice in accordance with this Schedule 22.

Expenses

- 7.15 The DCC is entering into this Agreement on the basis that the Contractor will pay for all travel, accommodation and subsistence expenses incurred by the Contractor in performing the Services. The Contractor will only be entitled to

claim expenses in exceptional circumstances and, in any case, only those expenses not detailed in Appendix 1; and:

- 7.15.1 that are actually incurred by the Contractor Personnel in performing the Services;
 - 7.15.2 that are expressly agreed to in advance in writing by an authorised representative of the DCC, whether by way of specific approval or, in certain limited cases, general prior approval (e.g., late night taxis); and
 - 7.15.3 that are included on an invoice to the DCC within four (4) months of being incurred.
- 7.16 All expenses will be chargeable by the Contractor on a Pass-Through Expense basis.
- 7.17 The Contractor will provide the DCC with receipts as evidence of expenses.

Pass-Through Expenses and Costs

- 7.18 Only expenses and costs (including any costs of third party materials and / or services and any Third Party Software licensing costs) incurred by the Contractor that are approved in advance and in writing by the DCC shall be separately chargeable as Pass-Through Expenses to the DCC.
- 7.19 With respect to Pass-Through Expenses, the Contractor will review the invoice charges to determine the validity and accuracy of the Pass-Through Expense before submitting the same to the DCC.
- 7.20 With respect to services or materials paid for on a Pass-Through Expenses basis, the DCC reserves the right to:
- 7.20.1 obtain such services or materials directly from a third party;
 - 7.20.2 designate the third party who will provide such services or materials subject to the parties agreeing to appropriate commercial terms;
 - 7.20.3 designate the particular services or materials (e.g., equipment make and model) that the Contractor will obtain;
 - 7.20.4 designate the terms for obtaining such services or materials (e.g., purchase or lease and one-off payment or payment over time);
 - 7.20.5 reasonably require the Contractor to identify and consider multiple sources for such services or materials, or to conduct a competitive procurement; and
 - 7.20.6 review and approve the Pass-Through Expense for such services or materials before entering into a contract for such services or materials.
- 7.21 The Contractor will use its reasonable endeavours to reduce the Pass-Through Expenses so that they are lower than (and in any event no more than) the then current market prices for equivalent goods or services.
- 7.22 Where the Contractor pays any incorrect amounts to a third party and claims such amount from the DCC as a Pass-Through Expense, the Contractor shall,

as soon as becoming aware of such overpayment, reimburse the Pass-Through Expense with interest to the DCC. Interest shall be charged at the Default Interest Rate from the date of payment of the Pass-Through Expense by the DCC until the date of reimbursement of same (calculated on the basis of the actual number of days elapsed, over a 365 day year).

Testing Charges

Mobilisation Phase and Development Phase

7.23 The DCC shall pay the Chargeable Time incurred by the Contractor in respect of all Testing activities undertaken as part of the Mobilisation Phase and Development Phase on a time and materials basis in accordance with Paragraphs 7.2 to 7.5.

7.24 Not used

Testing Expenses

7.25 The Contractor shall be entitled to be reimbursed by the DCC for Pass-Through Expenses incurred in connection with Testing pursuant to Paragraphs 17.17, 17.18 and 17.19 provided that the relevant Test Completion Certificate has been issued.

8. The Contractor shall, within forty (40) Business Days of the date of the applicable Test Completion Certificate, provide to the DCC an invoice in respect of all Pass-Through Expenses in connection with Testing together with all Supporting Documentation in accordance with the provisions of Paragraph 4 and the DCC shall pay such invoice in accordance with the provisions of Paragraph 5. **INCENTIVE PAYMENTS**

8.1 The process set out in this Paragraph 8 is supplementary to the provisions of this Schedule 22 that deal with the invoicing and payment of Charges. In the event of any conflict between the terms of this Paragraph 8 and the remaining provisions of this Schedule 22, the terms of this Paragraph 8 shall take precedence, save in respect of the timing of payments to be made by the DCC, in which case the terms of Paragraph 9 shall take precedence.

Retention Account

8.2 The DCC shall be entitled to retain an amount of the monthly Charges, other than the Non Rate Card Related costs, against the timely delivery by the Contractor of Milestones detailed in the DCC Requirements, Project Plan or Variation. Prior to submitting a monthly invoice in accordance with Paragraph 4.3, the Contractor will submit a statement of the proposed Charges for that month to the DCC (with all other supporting information requested by the DCC). The statement shall set out the amount of the Charges to be retained by the DCC in that month, which in each month shall be [REDACTED] of the Charges payable for Chargeable Time incurred for the relevant Requirements in the relevant month ("**Retained Amount**") and such sum shall be added to a retention account operated by the DCC (the "**Retention Account**").

8.3 On approval of such statement by the DCC, the Contractor shall submit an

invoice to the DCC in accordance with Paragraph 4.3 representing the approved statement (being the relevant monthly Charges LESS the Retained Amount).

Milestone Payments

- 8.4 For each Requirement detailed in Schedule 3, Project Plan or Variation, DCC and the Contractor will determine during the Project Plan creation whether Milestone payments are relevant.
- 8.5 If Milestone Payments are not relevant for any particular Requirement, the provisions of paragraph 8.1 and 8.2 (Retention Amount) shall not apply. The Contractor will submit invoice for the applicable Charges based on Appendix 1 - Rate Card 1.
- 8.6 If Milestone Payments are relevant for any particular Requirement, DCC shall withhold the relevant Retained Amount. For Requirements that are subject to retention, the Charges will be based on Appendix 2 – Rate Card 2.
- 8.7 If the Contractor Achieves one of the Milestones set out in Paragraph 8.7, or as agreed in the Project Plan and/ or Variation, by the relevant Milestone Date, the Contractor shall be entitled to invoice the DCC for the relevant Milestone Payment in accordance with the provisions of Paragraph 4.3 and the DCC shall, subject always to the provisions and operation of Paragraph 9 as regards the deferral of payment, pay such invoice from the Retention Account in accordance with the provisions of Paragraph 5. If the Contractor does not issue an invoice for a Milestone Payment within sixty (60) days of the date on which the DCC issues the relevant Milestone Achievement Certificate, then the right for the Contractor to receive the relevant Milestone Payment shall be lost and the Contractor shall no longer be entitled to receive the relevant Milestone Payment. The Milestones for which a Milestone Payment is payable and the relevant "**Milestone Payment Percentage**" will be as agreed in the Project Plan and/ or Variation.
- 8.8 If a Milestone is not Achieved by the relevant Milestone Date, other than where excused under Clause 13 (Relief Events), the Contractor, shall not be entitled to the Milestone Payment and subject to Paragraph 8.9 a sum equal to the relevant Milestone Payment shall be deducted from the Retention Account and shall be retained by the DCC.
- 8.9 Where indicated in the Project Plan or Variation, the Contractor may be entitled to 'claw back' [REDACTED] of the Milestone Payment by successfully complying with the Rectification Plan Process (as set out in Clause 11 (*Rectification Plan*)) and Achieving the Milestone accordingly.
- 8.10 The operation of the provisions of this Paragraph 8 shall not operate:
- 8.10.1 as the DCC's sole remedy and shall be without prejudice to the other rights and remedies that the DCC may have under the Agreement or otherwise at law;

8.10.2 to reduce the Contractor's financial limit of liability pursuant to Clause 44.4.

8.11 If the Agreement is terminated in the circumstances described in the table set out in this Paragraph 8.11, then the DCC shall dispose of the sums contained in the Retention Account as at the date of termination in the manner set out in the right hand column of such table as follows:

Termination event	Clause	Treatment of Retention Account
Termination by the DCC for convenience	46.1	The Contractor shall be entitled to [REDACTED]
Termination by the DCC for cause and/or Change of Control	46.2	The Contractor shall be entitled to [REDACTED]
Termination for Force Majeure	64.3.2	The Contractor shall be entitled to [REDACTED]

9. DEFERRED PAYMENTS AND FINANCING

9.1 The provisions set out in this Paragraph 9 that deal with the deferral of payment of Charges are supplementary to the other provisions of this Schedule 22 that deal with the invoicing and payment of Charges. In the event of any conflict between the terms of this Paragraph 9 and the remaining provisions of this Schedule 22, the terms of this Paragraph 9 shall take precedence.

9.2 Each invoice submitted by the Contractor for the Charges and any Pass-Through Expenses pursuant to Paragraph 4 LESS the relevant Retained Amount in terms of Paragraph 8 ("**Deferred Charges**") in the period commencing on the Commencement Date and ending on 31 March 2018 (the "**Charges Deferral Period**") shall not, notwithstanding the provisions of Paragraphs 4 and 5 become payable by the DCC until the end of the Charges Deferral Period and then only in instalments in accordance with the provisions of Paragraph 9.7.

9.3 If during the Charges Deferral Period the DCC is due under the Agreement to pay the Contractor a Milestone Payment pursuant to Paragraph 8.4 (a "**Deferred Milestone Payment**"), then that Deferred Milestone Payment shall not, notwithstanding the provisions of Paragraph 8, become payable by the

DCC until the end of the Charges Deferral Period and then only in instalments in accordance with the provisions of Paragraph 9.6.

- 9.4 In the event that the Agreement is terminated during the Charges Deferral Period in circumstances in which the DCC is due, in terms of the Agreement, to pay the Contractor accrued Charges, Milestone Payments, any Retained Amount and / or any other sums properly due to the Contractor in the Charges Deferral Period ("**Deferred Termination Amounts**"), then the Deferred Termination Amounts shall become payable on contract termination.
- 9.5 Following the end of the Charges Deferral Period, the aggregate amount of the Deferred Charges, Deferred Milestone Payments and Deferred Termination Amounts that have accrued in the Charges Deferral Period plus the relevant Indexation Amounts (defined below) calculated in accordance with the provisions of Paragraph 9.6 shall either:
- become payable in full in April 2018 if the Contractor's invoice amount is less than [REDACTED] or
 - if the Contractor's invoice amount is [REDACTED] or more, be divided by [REDACTED] and shall become payable in [REDACTED] monthly instalments, the first such instalment becoming payable in April 2018 and the last such instalment becoming payable in [REDACTED]

Indexation and Calculation of Deferred Payments

- 9.6 Subject to the provisions set out in Paragraphs 9.10 and 9.11 below, the amount of the Deferred Payments payable by the DCC to the Contractor following the end of the Charges Deferral Period (or, in the case of payment by or on behalf of the DCC of a Deferred Payment prior the end of the Charges Deferral Period, on the date of such payment) shall be subject to indexation to reflect the detrimental working capital and cash-flow impact on the Contractor of deferring the payment of sums that would otherwise have been payable by the DCC.
- 9.7 The aggregate sum of the Deferred Payment shall be subject to a one-off uplift [REDACTED]
- 9.8 Following the end of the Charges Deferral Period, the Contractor shall submit to the DCC the following statements:
- 9.8.1 in April 2018 a statement specifying: (i) the aggregate amount of all Deferred Payments outstanding as at the end of the Charges Deferral Period.; and (ii) the amount of the first Deferred Payment Instalment due by the DCC to the Contractor, if relevant;
- 9.8.2 if relevant, in each subsequent month until all Deferred Payment Instalments have been paid, a statement specifying: (i) the amount of the Deferred Payment Instalment payable in that month;

- 9.9 On approval of each such statement by the DCC, such approval not to be unreasonably withheld, the Contractor shall submit an invoice to the DCC for the relevant Deferred Payment Instalment (and the relevant Indexation Amount) in accordance with Paragraph 4 and the relevant sum shall be paid by the DCC within thirty (30) days in accordance with the provisions of Paragraph 5.

Third Party Re-financing

- 9.10 Subject to the Parties agreeing, it is the intention of the DCC and the Contractor, if practicable and economically advantageous to the DCC (whether in terms of the amount of interest payable and / or in respect of the length of the finance term), to enter into arrangements with a third party funder to provide financing that will enable the Contractor to be paid some or all of the Deferred Payments and / or Deferred Payment Instalments prior to the date on which they might otherwise be due. Each of the DCC and the Contractor shall, acting in good faith and in co-operation with the other, use its reasonable endeavours to:
- 9.10.1 where economically advantageous to the DCC, identify and secure funding from a third party funder that will enable Deferred Payments and / or Deferred Payment Instalments to be paid to the Contractor prior to the date on which they would otherwise be due;
 - 9.10.2 agree commercial and contract terms with any such third party funder (which are economically advantageous to the DCC) as soon as reasonably practicable; and
 - 9.10.3 execute any contractual documentation required to implement such commercial and contract terms as soon as reasonably practicable, subject to such contractual documentation being acceptable to it.
- 9.11 Any changes required to the Agreement to reflect any arrangements put in place with a third party funder that affect the provisions that apply to Deferred Payments shall be implemented in accordance with the Variation Procedure.
- 9.12 The operation of the provisions of this Paragraph 9 shall not operate to reduce the Contractor's financial limit of liability pursuant to Clause 44.4 (*Limitations on Liability*) of the Agreement.
- 9.13 Other than as expressly provided in this Paragraph 9 the DCC shall not have any liability to pay the Contractor any default interest or owe any other liability to the Contractor in respect of the deferral of payments that, but for the operation of this Paragraph 9 would have been payable to the Contractor under the Agreement.
- 9.14 It is possible that the DCC may enter into a long-term agreement with the Contractor to, amongst other things, use the Software developed by the Contractor under the Agreement. In such an event, the DCC may require that, as a condition of the long-term agreement, outstanding Deferred Payments and / or Deferred Payment Instalments be included within the charges payable under such agreement in accordance with an agreed payment schedule, which

may include provision for the repayment by the DCC of such sums over a longer period of time than is envisaged by this Paragraph 9 In that event the DCC and the Contractor shall implement the necessary changes to this Agreement in accordance with the Variation Procedure.

SCHEDULE 23

SPECIAL TERMS

Notwithstanding any provision to the contrary in this Agreement, the Parties agree that the following special terms shall apply to the Services set out in Schedule 3 but shall not apply to any change to the scope of the DCC Requirements.

Part A

The following Clauses and Schedules (whether stated in whole or in part) shall not apply and accordingly, have no force or effect:

- Clauses 4.1.1 (with the exception of Clause 4.1.1(b)) – 4.1.3 (Scope of Agreement)
- Clause 10 (Performance Monitoring)
- Clause 34.18 (Escrow)
- Clauses 39.3.3, 39.3.10, 39.4 – 39.7 (Contractor Warranty)
- Clauses 44.7.5 - 44.7.7 (Consequential Losses)
- Clause 56 (Assurance)
- Schedule 5 (Performance Measures and Monitoring)
- Schedule 11 (Escrow)
- Schedule 13 (Subcontractors)
- Schedule 14 (IPR Rights and Software)
- Schedule 16 (NOT USED)
- Schedule 17 (Testing and Assurance), Parts A – D
- Schedule 18 (NOT USED)
- Schedule 19 (Variation) - Paragraph 2.4
- Schedule 21 (Exit Management) – Paragraphs 3.4.3 and 3.4.4
- Schedule 22 (Charges) – Paragraph 7.20.4 and 7.20.5

Part B

The following Clauses shall be amended as stated:

- **Clause 3 Due Diligence** – shall be varied to read as follows:
 - 3.1 Except as expressly provided in this Agreement, no representations, warranties or conditions, express or implied, statutory or otherwise (including as to condition, quality, satisfactory quality, accuracy, performance or fitness for purpose) are given by the DCC in respect of any of the following:-
 - 3.1.1 the End-to-end Smart Metering System;
 - 3.1.2 the Procurement Information;
 - 3.1.3 the SMETS;
 - 3.1.4 the Standards;
 - 3.1.5 DCC Requirements;
 - 3.1.6 the Smart Metering Programme;

(collectively, the "Excluded Matters") and any such representations, warranties or conditions are excluded, except to the extent prohibited by Law.

- 3.2 The Contractor acknowledges and agrees that it:-
- 3.2.1 has made and shall make its own enquiries, analysis and review to satisfy itself as to the accuracy, completeness, fitness for purpose and adequacy of any information (including relating to the Excluded Matters) supplied to it (or any person acting on its behalf) by or on behalf of the DCC or any person acting on behalf of the DCC before the Signature Date.
- 3.3 The Contractor (without prejudice to any express obligations or warranties of the DCC set out in this Agreement or to the Contractor's express rights and remedies set out in this Agreement):-
- 3.3.1 agrees that, in entering into this Agreement, it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the DCC at any time prior to the Signature Date in relation to:-
- (a) the subject-matter of this Agreement; and/or
- (b) any of the Excluded Matters,
- (the "Procurement Information");
- 3.3.2 waives all rights and remedies (including for breach of contract, in tort, in negligence and under any other legal theory) which might otherwise be available to it in relation to any of the Procurement Information; and
- 3.3.3 shall not make any Claim against the DCC whether in contract, tort, negligence or otherwise, including any Claim in damages, for any Loss, extension of time or for additional payments or pricing adjustments in connection with this Agreement on the grounds:-
- (a) of any misunderstanding or misapprehension in respect of any Procurement Information; and/or
- (b) that any of the Procurement Information is incorrect, incomplete or insufficient.
- 3.4 Subject to Clause 44.1.2 (Limitations on Liability), where the DCC (or anyone acting on its behalf) has provided the Contractor with incorrect or insufficient Procurement Information, the Contractor shall (except as otherwise expressly stated in this Agreement) not be relieved from any obligation under this Agreement and shall not be entitled to Claim any Loss.

- **Clause 6.1 (Services)** – line 1, remove the words 'at all times'.
- **Clause 14.1.1 (General Obligations in relation to the Mandatory Requirements)** – add the following words:

The Contractor shall only be obliged to comply with Industry Codes and Arrangements that have been expressly notified to it by DCC in writing by reference to this Clause 14, as at the Signature Date and Clause 14.1 shall be construed accordingly.

- **Clause 14.1.2 (General Obligations in relation to the Mandatory Requirements)** – line 1, add the words “and subject to Clause 29”.
- **Clause 28.1 (Records and Audits)** – last line shall be varied to read as follows:

The Contractor shall also maintain such records as are required to comply with all Mandatory Requirements but only Industry Codes and Arrangements that have been expressly notified to it by DCC in writing by reference to Clause 14 as at the Signature Date and Clause 28.1 shall be construed accordingly.

- **Clause 29 (Change in Mandatory Requirements)** shall be varied to read as follows:

29.1 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:-

29.1.1 a General Change in Mandatory Requirements; or

29.1.2 a Specific Change in Mandatory Requirements where the effect of that Specific Change in Mandatory Requirements on the Services is reasonably foreseeable at the Commencement Date.

For the avoidance of doubt, changes to the Industry Codes and Arrangements which come into effect after the Signature Date are excluded from Clause 29.1.2 (notwithstanding that some or all of such changes were foreseeable).

29.2 The Contractor shall monitor and shall keep the other Party informed in writing of any General Changes in Mandatory Requirements which may impact the Services and/or the obligations of the Contractor under this Agreement.

29.3 The Contractor shall consult with the DCC (and wherever possible agree with the DCC) on the manner, form and timing of changes it proposes to make to meet any changes in Mandatory Requirements pursuant to Clause 29.1, where it would impact the Services and/or the obligation of the Contractor under this Agreement.

29.4 The Contractor shall not implement any change without the DCC's prior written agreement (not to be unreasonably withheld or delayed), and any such change shall be agreed and documented in accordance with the Variation Procedure.

29.5 The Contractor shall use all reasonable endeavours to minimise any disruption caused to the provision of the Services by any General Change in Mandatory Requirements.

Specific Change in Mandatory Requirements

29.6 If a Specific Change in Mandatory Requirements comes into effect or will come into effect during the Term (other than as referred to in Clause 29.1.2):-

29.6.1 the DCC shall notify the Contractor accordingly, providing reasonable details of:-

(a) the scope of the Specific Change in Mandatory Requirements; and

(b) to the extent that such information is known by the DCC, the likely impact of the Specific Change in Mandatory Requirements on the Contractor's obligations under this Agreement (including the provision of the Services);

29.6.2 as soon as reasonably practicable after receipt of a notice from the Contractor under Clause 29.6.1, the Contractor shall:-

- (a) notify the DCC of the reasonable practicable likely effects of that change, including:-
 - (i) whether any Variation is required to the Services, the Charges or the rest of this Agreement; and
 - (ii) whether any relief from compliance with the Contractor's obligations is required, including any obligation to Achieve a Milestone and/or to achieve any of the KPIs; and
- (b) provide the DCC with reasonable evidence:-
 - (i) that the Contractor has minimised any increase in costs or maximised any reduction in costs (including those costs relating to Sub-contractors);
 - (ii) as to how the Specific Change in Mandatory Requirements has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided has been taken into account.

29.7 Nothing in this Clause 29 shall require the Contractor to monitor and keep DCC informed of any Specific Change in Mandatory Requirements or to implement any change which is not agreed and implemented in accordance with the Variation Procedure. Subject to the foregoing, any relief from the Contractor's obligations as a result of a Specific Change in Mandatory Requirements shall be agreed by the Parties (acting reasonably). Any Dispute relating to such matters shall be referred to the Dispute Resolution Procedure.

29.8 In relation to a Specific Change in Mandatory Requirements any adjustment to the Charges pursuant to this Clause 29 shall be calculated on the basis that the Contractor shall be placed in no better or worse position than it would have been in had the Specific Change in Mandatory Requirements not occurred. Any assessment of whether the Contractor is in a better or worse position shall include consideration of the matters referred to in Clause 29.6.2(b).

29.9 The Contractor shall not be entitled to any other adjustment to the Charges in respect of such Specific Change in Mandatory Requirements or associated Variation (or the consequences of either).

29.10 Any adjustment to the Charges shall not take into account any amounts incurred or to be incurred by the Contractor as a direct result of the Contractor's failure to comply with this Clause 29.

Definitions

"Comparable Supply" means the supply of services to another customer of the Contractor that are the same or similar to any of the Services;

"General Change in Mandatory Requirements"

means the coming into effect of any Change in Mandatory Requirements which is not a Specific Change in Mandatory Requirements (including any change to the Data Protection Laws);

"Specific Change in Mandatory Requirements"

means a Change in Mandatory Requirements that relate specifically to the Smart Metering Programme and which would not affect a Comparable Supply;

- **Clause 39.3.4 (Contractor Warranty)** – shall be varied to read as follows::

39.3.4 the Services (with the exception of Software) shall meet the DCC Requirements in all respects and be provided in accordance with Good Industry Practice;

- **Title to Clauses 40.19 – 40.22 (Indemnities)** – the title shall be varied to read as follows:

‘Adverse Impact on Relevant Service Providers’.

The words ‘Indemnity from the Contractor for’ shall be deleted.

- **Clauses 40.19 – 40.22 (Indemnities)** – shall be varied to read as follows:

40.19 The Contractor acknowledges that:-

40.19.1 any breach of this Agreement by the Contractor may have an adverse impact on the ability of a Relevant Service Provider to perform its obligations under the Relevant Service Provider Contract (a "Related Adverse Impact"); and

40.19.2 under the terms of the Relevant Service Provider Contract, the DCC may be obliged to reimburse the Relevant Service Provider for the following costs (together, the "Additional Costs"):-

- (a) wasted costs, being costs which the Relevant Service Provider would not have incurred but for the occurrence of the Related Adverse Impact; and
- (b) additional costs reasonably incurred by the Relevant Service Provider in order to avoid, mitigate or overcome the Related Adverse Impact

but nothing in this Clause 40.19 shall be deemed to put the Contractor on notice that such Related Adverse Impact may arise or of such Additional Costs.

40.20 The DCC may recover from the Contractor all Additional Costs that:-

40.20.1 are actually paid by the DCC to a Relevant Service Provider in accordance with Clause 40.19; and

40.20.2 DCC (i) would not have had to pay but for the relevant breach of this Agreement by the Contractor and (ii) such Additional Costs were fairly and reasonably foreseeable as likely to occur in the ordinary course of events as at the Signature Date,

PROVIDED the DCC shall take reasonable steps to mitigate the amount of any such Additional Costs.

Further, the requirements of Clause 40.12 shall equally apply to DCC and the reference to Contractor IPR Claim shall be construed as a reference to a claim for Additional Costs by a Related Service Provider.

40.21 The Contractor shall pay any amount demanded by the DCC under Clause 40.20 promptly, and in any event within twenty (20) Business Days, after receipt of an undisputed relevant demand from the DCC.

40.22 Any Dispute arising out of or in connection with Clause 40.20 or 40.21 shall be resolved in accordance with the Dispute Resolution Procedure. Following resolution of any such Dispute, any amount agreed or determined to have been incorrectly paid by the Contractor under Clause 40.21 shall be reimbursed by the DCC within twenty (20) Business Days after final resolution of the Dispute.

- **Clause 40.23.8 (Indemnities)** – shall be varied to read as follows:

40.23.8 damage to real or personal property (including such property of DCC) caused by the Contractor's breach of contract or negligence;

- **Clause 40.23.9 (Indemnities)** – shall be varied to read as follows:

40.23.8 injury to persons (including injury resulting in death) caused by the Contractor's breach of contract or negligence;

- **Clause 47.4.8 (Responsibilities of the Contractor)** – shall be varied to read as follows:

47.4.8 provide reasonable access during normal working hours to the DCC and the Replacement Contractor for up to one month after the date of termination:

(a) to such information reasonably requested by DCC relating to the Services as remains in the possession or control of the Contractor; and

(b) to such members of the Contractor Personnel as have been involved in the design, development and provision of the Services in the previous eighteen (18) months prior to the date of termination (or at any time thereafter) and who are still employed by the Contractor.

- **Schedule 1 (Part B: General Definitions)** –

Add the following words to the definition of Laws:

'For the avoidance of doubt, Laws does not mean any legislation, binding code, code of practice, methodology or industry agreements (including contracts) relating to the DCC, the Services, DCC Services or DCC Service Users (including all that any DCC Eco-System Entity is a party to or subject to).'

Vary the definition of Industry Codes and Arrangements to include the word 'legislation,' in line 1 between the words 'any' and 'binding code' so as to read:

'means any legislation, binding code

- **Schedule 12 (DCC Responsibilities)** –the following Client Responsibility shall not apply: Part 5, line 20 (i).

Further, DCC recognises that performance of the Services is dependent on the provision of a cloud platform which is out of scope and as at the Signature Date, the Contractor is not responsible for procuring or funding. This service shall only be provided by the Contractor (on a short term interim basis only) subject to the agreement of the Parties and strictly on a pass through basis so as to ensure that the Contractor is placed in no worse position than if DCC had contracted directly with the cloud service provider and is not liable to DCC for the acts and/or omissions of the cloud service provider unless and to the extent the Contractor is able to recover amounts in respect of such loss or damage from the cloud service provider itself. For clarity, paragraph 1.1.7(d) of Schedule 19 shall not apply.

- **Schedule 12 (DCC Responsibilities)** – the following Client Responsibility shall be added to this Schedule:

‘The DCC shall not provide the Contractor with access to any Personal Data other than the limited data specifically identified in this Agreement.’

- **Schedule 17 (Testing and Acceptance)** – Part E shall be varied to read as follows:

- 12.1 By no later than 2 Business Days before the relevant Milestone Date, the Contractor shall deliver to the DCC any Deliverable with is a draft report which is consistent with the requirements of this Agreement. Any reference to ‘Report’ in this part E shall be construed accordingly.
- 12.2 As soon as reasonably practicable after receipt of the draft Report from the Contractor (and in any event within 5 Business Days from receipt), the DCC shall notify the Contractor if it (acting reasonably) considers that the draft does not comply with any of the requirements set out in Schedule 3 (DCC Requirements) or otherwise consistent with the requirements of this Agreement (for the purposes of this Part E (Acceptance of Reports) each being a "non-conformity").
- 12.3 By no later than 4 Business Days after receipt of a notice from the DCC under Paragraphs 12.2 or 12.4, the Contractor shall:-
 - 12.3.1 make all amendments to the draft Report that are necessary to address the non-conformities notified by the DCC under Paragraphs 12.2 or 12.4; and
 - 12.3.2 re-submit the revised draft Report to the DCC for review.
- 12.4 As soon as reasonably practicable after receipt of the revised draft Report from the Contractor (and in any event within 2 Business Days from receipt), the DCC shall notify the Contractor of any new or outstanding non-conformities.
- 12.5 The process in Paragraphs 12.3 and 12.4 will then be repeated until the DCC notifies the Contractor that the Report is approved. Any Dispute relating to the existence of non-conformities in the Report shall be referred to the Dispute Resolution Procedure.
- 12.6 Approval of a Report by DCC shall not affect the DCC's right subsequently (if any) to reject all or any element of the Report.

- **Schedule 20 (Co-Operation Agreement)** – Nothing in this Agreement shall be construed as fettering the discretion of the Contractor to enter into a Co-operation Agreement.

- **Schedule 21 (Exit)** – This schedule shall only apply to the Services to the extent reasonably applicable.