

Provision of a Study to Demonstrate the Technology and Security Landscape for the Next 10 – 15 Years

DCT0254

Terms and Conditions

V1.0

Last Update: 30/09/2020

THIS AGREEMENT is made on the 8th day of October 2020 ("**Effective Date**").

BETWEEN:

- (1) **SMART DCC LIMITED** a company registered in England and Wales under company number 8641769 whose registered office is at 17 Rochester Row, London, SW1P 1QT ("**DCC**" or "**Smart DCC**").
- (2) **WIPRO LIMITED**, a company incorporated under CIN L32102KA1945PLC020800 pursuant to the laws of India with principal place of business at Doddakannelli, Sarjapur Road, Bangalore - 560035, Karnataka, India ("**Contractor**").

RECITALS:

- A. Smart DCC sought a supplier to provide the DCC Requirements in respect of the Smart Metering project.
- B. On the basis of the Contractor's proposal to Smart DCC, Smart DCC has selected the Contractor to deliver the DCC Requirements and the Contractor undertakes to do so on the terms set out below.

PROVISIONS:

1. Definitions and Interpretation

- 1.1 As used in this Agreement the following terms and expressions have the meanings set out below:

Agreement	means this agreement comprising the clauses and schedules hereto.
Applicable Law	means any law, statute, bye law, regulation, order, regulatory policy (including any requirement or notice of any Regulatory Body), guidance or industry code of practice, rule of court or directive, delegated or subordinate legislation in force from time to time as applicable to the provision of the Services.
BEIS	Department for Business, Energy and Industrial Strategy.
Charges	means the charges specified in Schedule 7.1 (Charges and Payment).
Code Administrator	means the body providing SEC administration services.
Contractor Data	means all Data forming a part of the Contractor Solution.
Contractor Persons	means: (a) the Contractor; (b) each other member of the Contractor's group; (c) the Sub-contractors; and

	(d) the Contractor personnel, and "Contractor Person" shall be construed accordingly.
Contractor System	means the System(s) used by or on behalf of any Contractor to deliver the Services.
Contractor Solution	means the Contractors Solution to meet the DCC Requirements as set out in schedule 4.1.
CSP	Communications Service Provider The service provider of Communications Service – the Smart Metering Wide Area Network – under contract to the DCC. The CSP is a DCC Service Provider.
Data	means any information, data, text, drawings, diagrams, images or sounds (together with any database made up of any of these), formats, know-how or other information embodied in any medium (including whether tangible or electronic).
DCC	Data Communications Company. The entity licensed to provide smart meter communication and data services, i.e. the central infrastructure to roll-out and operate Smart Metering. The DCC is responsible for the procurement and contract management of data and communications services, providing remote access to Smart Metering Equipment. The company name Smart DCC Ltd. (which is a wholly owned subsidiary of Capita).
DCC Connected Person	means: (a) the DCC; (b) DCC Service Providers; (c) SECCo; (d) the Code Administrator; (e) the SEC Secretariat; and (f) DCC Service Users, and "DCC Eco-System Entity" shall be construed accordingly; means key industry partners involved in the Smart Metering Implementation Programme.

Data Controller	shall have the same meaning as set out in the Data Protection Legislation.
Data Processor	shall have the same meaning as set out in the Data Protection Legislation.
Data Protection Legislation	<p>Means:</p> <p>(a) prior to 25 May 2018, the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC together with any transposition of that Directive into European Union Member State law;</p> <p>(b) from and including 25 May 2018, the GDPR together with any transposition of that Regulation into European Member State, English and/or Scottish law;</p> <p>(c) the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003; and</p> <p>(d) all applicable laws relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, the European Commission's Article 29 Working Party and the European Data Protection Board.</p>
Data Subject	shall have the same meaning as set out in the Data Protection Legislation.
DCC Data	<p>means all of the following (and also all Data derived from such Data (including any modification or enhancement) and all Databases to the extent composed of any DCC Data):</p> <p>(a) Smart DCC Data;</p> <p>(b) Transactional Data;</p> <p>(c) System Audit Data;</p> <p>(d) cryptographic keys;</p> <p>and</p> <p>(e) any Data:</p> <p>(i) owned or originated by or on behalf of the DCC, DCC Connected Person or any DCC Ecosystem Entity that either is or may be used in connection with provision or receipt of Services;</p> <p>(ii) generated specifically and solely for the Services that relates to any DCC Ecosystem Entity, DCC Connected Person or the DCC Services (excluding ad hoc Service related e-mails and internal communications between</p>

	<p>Contractor Persons) unless otherwise explicitly agreed in a particular Change or Project); and/or</p> <p>(iii) to which the Contractor would not have had access other than in connection with the performance of Services under this Agreement, including:</p> <p>A. any Data supplied to the Contractor by or on behalf of the DCC (excluding any Data owned in accordance with this Agreement or originally possessed by any Contractor Person); and</p> <p>B. all Industry Registration Data,</p> <p>(iv) any Personal Data for which the DCC is a Data Controller or a Data Processor.</p> <p><u>but excluding:</u></p> <p>(a) Data that forms part of the Contractor CMDDB; and</p> <p>(b) Data that forms part of the Existing Contractor IPRs.</p>
DCC Ecosystem	Refers to DCC's activities taking place in an environment which includes other suppliers, systems, integrations and interfaces and which also requires DCC to provide services to and/or otherwise interact with the DCC Connected Person(s).
DCC Environment	means the Systems used by or on behalf of the DCC, excluding the Contractor Solution.
DCC Licence	means the "Licence for the Provision of a Smart Meter Communication Service" granted to the DCC or any successor pursuant to sections 7AB(1) or 7AB(2) and 7AB(4) of the Gas Act 1986 and sections 6(1)(f) or 6(1A) and 6(1C) of the Electricity Act 1989.
DCC Requirements	means requirements set out in Schedule 2.1 (DCC Requirements).
DCC Services	means any and all services to be provided by the DCC to the DCC Service Users or to any other person (including the provision of information relating to Smart Meters) in connection with such DCC Services or the DCC Licence.
DCC Service Providers	Organisations that provide smart metering communications (CSP) and data services (DSP) on behalf of and under contract to the DCC and any third party with whom the DCC enters into a Contract.

DCC Service User	<p>means (other than the DCC):</p> <p>(a) each person who receives or is to receive any services from the DCC (including any Other SEC Party) (other than any person acting solely as an Energy Consumer); and</p> <p>(b) each person who is a SEC Party.</p>
DCC Software	Means software which is owned by or licensed to the DCC.
DSP	<p>Data Services Provider</p> <p>The Provider of Data processing Services to the DCC in support of Smart Metering in Great Britain. The DSP is a DCC Service Provider.</p>
Effective Date	means the effective date of this Agreement being the date at the top of this Agreement.
Existing Contractor IPR	means IPR vesting with the Contractor that exists prior to the Effective Date that are used to provide the Services.
Force Majeure	<p>means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof), fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Force Majeure does not include: (a) any act, event or, omission which is attributable to the wilful act, neglect or a failure to take reasonable precautions by the affected party; (b) a failure by the Contractor to adequately test any equipment or computer software supplied by it or a third party or other service component before installation, or any consequence of such failure; or (c) strikes or other industrial action by employees of, or other non-availability of labour to, the Contractor, its sub-contractors or suppliers.</p>
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.
Great Britain Companion Specification (GBCS)	The Technical specification for interfacing to and from Smart Meters to ensure interoperability. The specification utilises the ZigBee and DLMS protocols to communicate with Smart Metering Devices.
Group	means in relation to a company, that company, any holding company or subsidiary from time to time of that company and any subsidiary from time to time of a holding company of that company (where “holding company” and “subsidiary” have the meanings given to them by section 1159 of the Companies Act 2006);

Inducement	means (i) any payment, gift, consideration, benefit or advantage of any kind, which is (or is agreed to be) offered, promised, given, authorised, requested, accepted or agreed, whether directly or indirectly (through one or more intermediaries) which could act as an inducement or reward, for any form of improper conduct by any person in connection with their official, public, fiduciary, employment or business role, duties or functions; and/or (ii) anything that would amount to an offence of bribery or corruption under applicable law; and/or (iii) any Facilitation Payment and “Induce”, “Induced”, “Inducing” and other variants of “Inducement” shall be construed accordingly.
Industry Registration Data	means the collective term for all electricity and gas data contained within the Industry Registration Systems.
Intellectual Property Rights or IPR	means all rights in patents, trademarks, service marks, design rights (whether registered or unregistered and including semi-conductor topographies), copyright (including rights in computer software), database rights, sui generis rights, confidential information, trade secrets, trade or business names, domain names and other similar rights or obligations whether registerable or not in any country and applications for any of the foregoing.
Milestone	means an event or task described in a Schedule to this Agreement, which, if applicable, must be completed by the relevant Milestone Date.
Milestone Date	Means the date by which a Milestone must be completed as set out in this Agreement.
PDF	Planning and Delivery Forum Formed of project managers from the various parties, meets weekly.
Personnel	means any person employed or self-employed working for the Contractor and/or its sub-contractor.
Personal Data	shall have the same meaning as set out in Data Protection Legislation.
Process	has the meaning given to it under the GDPR but, for the purposes of this Agreement, it shall include both manual and automatic processing.
Prohibited Act	means any of the following acts: (a) offering giving or agreeing to give to any servant of Smart DCC, any gift or consideration of any kind as an inducement or reward: (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any contract with Smart DCC or

	<p>(ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any contract with Smart DCC;</p> <p>(b) entering into this Agreement or any other contract with Smart DCC in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to Smart DCC.</p>
Project-Generated Works	<p>means any works which are generated by the Contractor, or by any of its sub-contractors or agents, in the design and development and the delivery of the Contractor Solution including but not limited to any:</p> <p>(a) computer software, including well annotated source code;</p> <p>(b) text, designs, documentation, architectures or technical configurations, logos, trademarks, domain names, Web addresses (URLs) and/or other names, addresses or brands; and/or</p> <p>records, specifications, reports, guides, manuals and/or any other documentation (whether in hard copy or electronic format), including any preparatory versions of the same, which relate in any way to a) to b) above or otherwise to the design, development or operation of the delivery of the Services.</p>
Public Official	<p>means any person holding a legislative, administrative or judicial position of any kind, whether appointed or elected, including any person employed by or acting on behalf of a public agency, body or state-owned enterprise, a public international organisation (as defined in the UK Bribery Act 2010 and/or any other applicable law) or a political party or organisation, or a candidate for any such office.</p>
Regulatory Body	<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 Bodies” shall be construed accordingly;</p>
Relevant Contractor Data	<p>means Data in the possession, custody or control of a Contractor Person which is materially relevant to the Services or the contents of this Agreement and which is not DCC Data;</p>
SEC or Smart Energy Code	<p>has the meaning given in the DCC Licence.</p>

SECCo	has the meaning given in the SEC.
SEC Panel	has the meaning given in the DCC Licence;
Secretariat or SEC Secretariat	means the organisation providing SEC secretariat services.
Security Management Plan	means the security management plan which the Contractor must develop and maintain pursuant to Clause 19 (Security).
Services	means the provision of the services as specified in Schedule 4.1.
Sites	means any premises: <ul style="list-style-type: none"> (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.
SLA or Service Level Agreement	means the service level agreement set out in Schedule 7.2 (Service Level Agreement).
Smart DCC	See DCC above.
Smart DCC Data	means all data, information, addresses, telephone numbers, texts, drawings, diagrams, images or sound embodied in any electronic or tangible medium (excluding any computer software) owned by Smart DCC which is provided by Smart DCC to the Contractor for the purposes of this Agreement.
Smart DCC IPR	means any Smart DCC owned or licensed software, code or materials identified in this Agreement supplied by Smart DCC to the Contractor.
Smart Meter	Equipment that meets either the SMETS1, the SMETS2 or later published versions specifications and interoperates using the Standards and definitions detailed in the GBCS. Specifically, in the context of this paper this covers Electricity Smart Metering Equipment and Gas Smart Metering Equipment.
Smart Meter Response/Alert	The GBCS formatted responses and alerts generated as output by Smart Meters. These form the input to the 'Parse' function.
SMETS1	Smart metering equipment technical specifications: first version.

SMETS2	Smart metering equipment technical specifications: second version.
Successor Licensee	has the meaning given in the DCC Licence (being the "Licence for the Provision of a Smart Meter Communication Service" granted to the DCC or any successor pursuant to sections 7AB(1) or 7AB(2) and 7AB(4) of the Gas Act 1986 and sections 6(1)(f) or 6(1A) and 6(1C) of the Electricity Act 1989).
System	means computing, information systems and ICT environment(s) (including hardware, assets, software (including firmware), and/or telecommunications networks or equipment).
System Audit Data	means Data contained in or produced for the purposes of any audit carried out by DCC into the Contractor's System, the Contractor Solution or any part of it (including but not limited to security aspects).
Term	means the term of this Agreement as defined in Clause 4.
Transactional Data	Refers to Smart Meter Data produced or exchanged within the DCC Ecosystem.

1.2 In this Agreement:

- 1.2.1 a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- 1.2.2 any reference to a "day" (including within the phrase "Business Day") shall mean a period of 24 hours running from midnight to midnight; references to times are to GMT;
- 1.2.3 a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented;
- 1.2.4 headings and titles are for convenience only and do not affect the interpretation of this Agreement;
- 1.2.5 references to "£" are to pounds sterling and reference to any amount in such currency shall be deemed to include reference to any equivalent amount in any other currency;
- 1.2.6 the schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to this agreement shall include the schedules.

2. Order of Precedence

- 2.1 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:
 - 2.1.2 Schedule 1 (Conditions that Flow from the DCC License);
 - 2.1.3 the clauses set out in this Agreement;

2.1.4 Schedule 2.1 (DCC Requirements) and Schedule 7.1 (Charges & Payments) (and its Appendices and Annexes);

2.1.5 Schedule 4.1 (Contractor Solution) (and its Appendices and Annexes).

3. Appointment

3.1 Smart DCC appoints the Contractor to provide the Services for and on behalf of Smart DCC in accordance with the terms of this Agreement and the Contractor accepts the appointment.

4. Term

4.1 This Agreement starts on the Effective Date and continues until the period of three (3) calendar months from the Effective Date, unless it is terminated early in accordance with the terms of this Agreement.

4.2 DCC may extend the Term of this Agreement for a further period of one (1) month on the same terms and conditions applicable at the end of the Term by serving notice on the Contractor of such extension not less than thirty (30) days before the expiry of the Term.

5. Provision of Service

5.1 The Contractor shall ensure that the Contractor Solution at all times:

5.1.1 complies in all respects with Schedule 2.1 (DCC Requirements), Schedule 4.1 (Contractor Solution) and Schedule 7.2 (Service Level Agreement);

5.1.2 the Services shall comply with any necessary standards and regulations applicable under or in connection with this Agreement;

5.1.3 in accordance with the reasonable instructions of the DCC; and

5.1.4 is otherwise supplied in accordance with the terms of this Agreement.

5.2 In providing the Services the Contractor shall:

5.2.1 comply at all times with Good Industry Practice;

5.2.2 pay for and supply everything it needs to provide the Services;

5.2.3 in compliance with all Applicable Laws and, as such, will be performed so as not to place DCC nor any member of its Group in breach of any Applicable Laws;

5.2.4 do nothing that damages, or might reasonably be expected to damage, Smart DCC's business interests or reputation;

5.2.5 liaise with the Smart DCC technical lead and/or project manager as and when required in order to ensure the performance of its obligations under this agreement.

5.2.6 where necessary in order for the DCC to receive the benefit of the Services and/or this Agreement, provide necessary co-operation with relevant DCC Service Providers.

5.3 The Contractor shall at all times manage and perform the Services in a way that ensures that (i) it does not restrict, prevent, or distort competition nor prejudice the DCC's special position under the DCC Licence or the SEC; (ii) unduly discriminate between any persons or any class or description of persons in connection with the provision of the Services; and (iii) in relation to this Clause 5.3,

Contractor shall establish and maintain management systems, procedures and arrangements that are designed to secure its compliance with its obligations under this Agreement.

6. Warranties

6.1. The Contractor warrants to Smart DCC that:

- 6.1.1. it will perform its obligations under this Agreement in accordance with Good Industry Practice and all other provisions of this Agreement;
- 6.1.2. it has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Agreement;
- 6.1.3. the Services shall be performed in compliance with all Applicable Laws, enactments, orders, regulations, and other similar instruments;
- 6.1.4. the Services shall comply with any necessary standards and regulations applicable under this Agreement;
- 6.1.5. it will not do anything to cause the DCC to be in breach of any provision of the DCC Licence, the SEC nor any part of them;
- 6.1.6. all information given by the Contractor to Smart DCC in connection with this Agreement shall be accurate and comprehensive.

6.2. Smart DCC warrants to the Contractor that it has full capacity and authority and all necessary licences, permits and consents to enter into and perform this Agreement.

7. Sub-Contractors

- 7.1. The Contractor shall not engage any agents or sub-contractors to provide the Services or any part of the Services without Smart DCC's prior written consent (such consent not to be unreasonably withheld or delayed). Without prejudice to the above, DCC acknowledges and agrees that the Contractor shall be engaging PwC UK as a sub-contractor to support the security, threat intelligence and industry research portion of the Services to be provided under this Agreement.
- 7.2. The Contractor shall remain responsible for obligations which are performed by its permitted agents or sub-contractors and for the acts or omissions of those agents and sub-contractors as if they were acts or omissions of the Contractor.

8. Service Performance

- 8.1. If the Services or any portion thereof are not delivered within the time or times specified in Schedule 2.1 or agreed between the parties or any other applicable Schedule to this Contract or any extension that is agreed by the parties in writing, Smart DCC shall be entitled, without prejudice to Smart DCC's other rights and remedies, to terminate the Contract in respect of the Services undelivered as aforesaid.
- 8.2. On such termination Smart DCC shall be entitled at its option to recover from the Contractor any monies already paid for Services not fully delivered and accepted at the point of termination.
- 8.3. If at any time the Contractor becomes aware of a delay in providing the Services for whatever reason or cause, the Contractor has to immediately inform Smart DCC summarising the reasons for the delay. In addition, the Contractor shall use its most reasonable endeavours to eliminate or mitigate the consequences of delay and the losses or expenses that may be incurred to the extent attributable to the Contractor.

9. Charges

- 9.1. The Charges are specified in Schedule 7.1 (Charges and Payment).
- 9.2. The Charges do not include value added tax which shall be payable by Smart DCC to the Contractor at the then prevailing rate and in the manner prescribed by law.
- 9.3. The Charges are fixed and are not subject to any increase during the Term of the Agreement unless specified in Schedule 7.1 (Charges and Payment) or agreed by the parties in accordance with Clause 11 (Change Control).
- 9.4. Except in the case of a reasonable dispute, Smart DCC will pay the invoiced amount within a maximum time period of thirty (30) days of receipt of an invoice by the Contractor. Where any amount remains unpaid after the period of sixty (60) days of receipt of an invoice and is undisputed the Contractor may be entitled to charge interest on the amount due from the due date until payment is made in full, at two (2)% per annum over HSBC bank plc base rate from time to time.

10. Personnel

- 10.1. The Contractor shall be responsible for providing at its own cost and expense all the personnel necessary to perform the Services in accordance with this Agreement (as per Schedule 4.1 Contractor Solution).
- 10.2. The Contractor accepts that Smart DCC may refuse to admit to any premises occupied by or on behalf of Smart DCC any person employed or engaged by the Contractor, or by any other person whose admission would be, in the reasonable opinion of Smart DCC, undesirable. The Contractor will not be responsible for any delays in scheduling or performance of the Services caused by such refusal.
- 10.3. If requested by Smart DCC, the Contractor shall within seven (7) days provide a list of the names of all persons who it expects may require admission in connection with the performance of this Agreement to any premises occupied by or on behalf of Smart DCC specifying the capacities in which they are concerned with this Agreement and giving such other particulars as Smart DCC may reasonably require, subject to the Contractor's confidentiality and privacy provisions.
- 10.4. The Contractor shall comply with Smart DCC's rules in respect of the access by its representatives to any premises occupied by or on behalf of Smart DCC. Such rules will be shared with the Contractor in advance.

11. Change Control

- 11.1. This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of Smart DCC and by a duly authorised representative of the Contractor.
- 11.2. If a change pursuant to Clause 11.1 may result in a change to the Charges, then any relevant quotation and/or agreed revision to the Charges pursuant to Clause 11.1 shall be calculated in accordance with Schedule 7.1 (Charges & Payment).

12. Force Majeure

- 12.1. Neither party shall be responsible for a failure to carry out any of its duties under this Agreement to the extent to which this is caused by an event of Force Majeure provided that it shall take all reasonable steps to overcome and mitigate the effects of the Force Majeure.
- 12.2. The Charges for the Services affected by a Force Majeure shall be reduced or waived by a reasonable amount to be agreed between the parties to reflect the extent and standard to which the affected Services are being provided.

- 12.3. If a Force Majeure which results in the non-delivery of the Services (or a substantial part thereof) continues for more than thirty (30) calendar days, the unaffected party may terminate this Agreement by giving a termination notice specifying a termination date at least thirty (30) calendar days after receipt of the termination notice by the other party.

13. Co-operation with Smart DCC and the DCC Ecosystem and other suppliers

- 13.1. Smart DCC may contract with other suppliers of products and services in connection with this project that may need to interface or be used in conjunction with the Services. As part of the Services, the Contractor shall co-operate to a reasonable extent including where requested by Smart DCC.
- 13.2. The Contractor may during the Term identify new or potential improvements to the Services and in doing so will suggest such improvements to Smart DCC without delay.
- 13.3. The Contractor will be required to work with Smart DCC in a cooperative manner.

14. Fraud

- 14.1. Smart DCC may terminate or suspend all or part of the Services if it has reasonable grounds to believe that the Contractor, its employees, permitted agents or permitted sub-contractors has committed an act of fraud or malpractice.
- 14.2. Smart DCC shall permit the Contractor to resume delivery of the Services once it is established that the Contractor, its employees, permitted agents or permitted sub-contractors were not responsible for any fraud or malpractice, or if any malpractice has been eradicated.

15. Data

- 15.1. The provisions of this Clause 15 shall apply to all Data which relates to or is used for the purposes of this Agreement and/or the Services but which does not comprise DCC Data ("**Relevant Data**").
- 15.2. Smart DCC and the Contractor shall each use reasonable endeavours (having regard to the nature of their respective obligations under this Agreement) to preserve the integrity of the Relevant Data.
- 15.3. If the Relevant Data is corrupted or lost as a result of any default, act or omission of the Contractor, Smart DCC shall have the option to:
- 15.3.1. require the Contractor at its own expense to restore or procure the restoration of Relevant Data, or
- 15.3.2. itself restore or procure the restoration of the Relevant Data and recover the reasonable costs of doing so from the Contractor.
- 15.4. The following apply to the extent that Relevant Data is supplied to the Contractor by Smart DCC or a DCC Connected Person:
- 15.4.1. the Contractor may use that Relevant Data solely for the purposes of and to the extent necessary, for the provision of the Services; and
- 15.4.2. the Contractor shall not acquire any Intellectual Property Rights in that Relevant Data other than the limited licence set out in Clause 15.4.1.
- 15.5. If this Agreement is terminated or expires, any licence granted to the Contractor in relation to the Relevant Data shall terminate automatically and the Contractor shall deliver to Smart DCC (or, at Smart DCC's option, a DCC Connected Person) all Data then in the Contractor's possession or control in its then current format and ensure that it destroys any copies of the Data.

16. IPR indemnity

- 16.1. The Contractor shall indemnify Smart DCC and its Group against all claims, demands, actions, costs and expenses (including legal costs and disbursements on a solicitor and client basis) which Smart DCC or its Group incurs as a result of any infringement or alleged infringement of any third party Intellectual Property Rights arising directly from the delivery by the Contractor of the Services to Smart DCC.
- 16.2. Smart DCC shall notify the Contractor promptly in writing of any claim under Clause 16.1 of which it is aware.
- 16.3. The Contractor shall have the exclusive right, at the Contractor's expense, to conduct any litigation and negotiations for a settlement of the claim and Smart DCC will give the Contractor reasonable assistance at the Contractor's expense.
- 16.4. Smart DCC shall not make any admission or take any other action which might be prejudicial to any proceedings conducted by the Contractor under Clause 16.3 without the express consent of the Contractor.
- 16.5. The Contractor shall not use Smart DCC's name in any action or claim without Smart DCC's prior written consent.
- 16.6. If the Services (or any part of them), are held to constitute an infringement under Clause 16.1, the Contractor shall at its own expense and discretion:
 - 16.6.1. procure for Smart DCC, with Smart DCC's agreement, the right to continue using the Services; or
 - 16.6.2. modify the Services so that the Services are non-infringing without materially detracting from their overall performance; or
 - 16.6.3. replace the infringing Services with other non-infringing items or services having a capability materially equivalent to the infringing Services.
- 16.7. The Contractor has no obligation to indemnify, defend or hold Smart DCC harmless:
 - 16.7.1. if the Services or any deliverables there under are altered or modified by anyone other than the Contractor, or used outside the scope of use identified in this Agreement;
 - 16.7.2. to the extent that an infringement claim is based upon any software, design, specification, instruction, data or other material not furnished by the Contractor; or
 - 16.7.3. to the extent an infringement claim is based upon the combination of the Services or any deliverable there under with any products or services not provided to Smart DCC by the Contractor.
- 16.8. This Clause 16 provides the parties' exclusive remedies and liabilities for any claim or damages involving infringement.

17. Ownership Rights and Licensing of Intellectual Property Rights

- 17.1. The Contractor will supply all documentation created during the provision of the Services to Smart DCC. The documents will be supplied as they are completed and will include, for example test cases, data dictionaries and other project artefacts as applicable.
- 17.2. The Contractor shall retain ownership of any Existing Contractor IPR used to provide the Services.

- 17.3. In consideration for the payment of the Charges, and without prejudice to Clause 17.2 of this Agreement or the Contractor's ownership of Existing Contractor IPR the Contractor will grant Smart DCC a non-exclusive, transferable, perpetual, sub-licensable, royalty-free, worldwide licence to use the Existing Contractor IPR to the extent the same are embedded or are incorporated into the Services/Deliverables, and not on a stand-alone basis.
- 17.4. The Contractor recognises that the Services may be used by Smart DCC, DCC Service Providers and DCC Connected Person(s) and the licence set out at Clause 17.3 provides the necessary rights for such parties to use the software and Existing Contractor IPR provided by or on behalf of the Contractor under this Agreement.
- 17.5. The DCC may sub-license all or any of its rights under Clause 17.5 to:
- 17.5.1. a DCC Service Provider;
 - 17.5.2. 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:
 - 17.5.3. exercise any of the rights of such Regulatory Body under the terms of the DCC Licence, the SEC or any Applicable Law; and
 - 17.5.4. otherwise fulfil any of the statutory duties of such Regulatory Body under the terms of the DCC Licence or the SEC or any Applicable Law; and
 - 17.5.5. any other third party to the extent necessary for such person to provide any goods or services to the DCC.
- 17.6. In consideration for the payment of the Charges, the DCC shall own all Bespoke IPR contained in the Services or Deliverables or which are created or result from the Services and/or Deliverables. The Contractor hereby assigns to the DCC all current and future title to and interest in all Bespoke IPR in respect of which ownership has not automatically vested or already transferred to the DCC. Where the Contractor or any Contractor Person acquires, by operation of law, any Bespoke IPR that does not automatically transfer pursuant to this Clause, the Contractor or relevant Contractor Person shall do all acts and things as may be necessary, and execute all necessary documents, to assign such Bespoke IPR as it has acquired to the DCC (at no additional cost to the DCC).
- 17.7. The Contractor will supply all Bespoke IPR to the DCC. The Bespoke IPR will be supplied upon payment of Charges.
- 17.8. If the Services and/or Deliverables (or any part of them), are held to constitute an infringement of a third party's IPR, the Contractor shall at its own expense and discretion:
- 17.8.1. procure for the DCC, with DCC's agreement, the right to continue using the Services and/or Deliverables in accordance with the terms of this Agreement, which shall include the right to sub-licence; or
 - 17.8.2. modify the Services and/or Deliverables so that the Services and/or Deliverables are non-infringing without materially detracting from their overall performance; or
 - 17.8.3. replace the infringing Services and/or Deliverables with other non-infringing items or services having a capability materially equivalent to the infringing Services and/or Deliverables.

18. DCC Data

- 18.1. The Contractor shall not at any time be entitled:
- 18.1.2 to copy, disclose or use any DCC Data except in compliance with all the Contractor's

obligations under this Agreement and to the extent strictly required to comply with its obligations under this Agreement; and

18.1.3 to store (or retain) any DCC Data except in compliance with all the Contractor's obligations under this Agreement and to the extent strictly required to comply with any:

- (a) applicable law of Scotland or England and Wales; or
- (b) express provisions of this Agreement that require the Contractor to retain such data on a non-persistent basis.

18.2 The Contractor shall (and shall ensure all Contractor Persons shall) not (unless expressly agreed by the DCC in writing) delete or remove any proprietary notices contained within or relating to the DCC Data, documentation or DCC Software.

18.3 The Contractor shall comply with Clause 18.1 in all circumstances and in addition shall (and shall ensure all Contractor Persons shall) not store, copy, disclose, or use any 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.

18.4 To the extent that any DCC Data is held and/or processed by or on behalf of the Contractor, the Contractor shall supply that DCC Data to the DCC as requested by the DCC from time to time.

18.5 The Contractor shall, at all times during the Term, preserve the integrity of all DCC Data, Contractor Systems Data and Relevant Contractor Data (including preventing the loss, corruption or degradation of such Data) in the possession or control of any Contractor Person.

18.6 The Contractor shall:

18.6.2 perform (or procure) secure back-ups of:

- (a) all DCC Data and Relevant Contractor Data as required pursuant to its obligations under this Agreement; and
- (b) any other Data as required pursuant to its obligations under this Agreement; and

18.6.3 ensure that up-to-date back-ups of all Data backed up pursuant to Clause 18.6.2 are:

- (a) taken daily and encrypted in accordance with Good Industry Practice;
- (b) tested not less than quarterly;
- (c) stored securely at a Site;
- (d) (also) stored securely in a separate geographical location in the United Kingdom at least ten (10) miles from the relevant first Site referred to in Clause (c);
- (e) in all cases stored at all times in accordance with the requirements of this Agreement; and
- (f) promptly available to the DCC at all times upon request and in accordance with any express obligation under this Agreement.

18.7 If any DCC Data or Relevant Contractor Data or Data relating to the Contractor System is corrupted, lost or degraded in breach of (or as a result of any breach of) the Contractor's obligations in connection with this Agreement, the DCC may (without prejudice to any other right or remedy):-

- 18.7.2 require the Contractor (at the Contractor's expense) to restore, or procure the restoration of the Data listed in Clause 18.7 as soon as practicable (and in any event within the timescales required by any part of this Agreement); or
- 18.7.3 itself restore or procure the restoration of the Data listed in Clause 18.7 and recover the reasonable costs of doing so from the Contractor.
- 18.8 The Contractor shall ensure that any DCC Data in the possession or under the control of any Contractor Entity is not processed, exported or transferred to any place outside the European Economic Area at any time.
- 18.9 The Contractor shall:
 - 18.9.2 have documented processes to guarantee availability of DCC Data in the event of the Contractor ceasing to trade;
 - 18.9.3 the DCC shall develop and maintain, and hold all DCC Data in accordance with DCC data retention policies or any other relevant instruction provided by DCC;
 - 18.9.4 securely destroy all media that has held DCC Data at the end of life of that media in line with Good Industry Practice; and
 - 18.9.5 securely erase any or all DCC Data when requested to do so by DCC.
- 18.10 The Contractor undertakes to provide to DCC copies of all DCC Data in its possession, custody or control on demand and, in any event, upon termination or expiry of this Agreement (whereupon such DCC Data shall be irrevocably deleted by the Contractor).

19 Security Requirements

- 19.1 The Contractor acknowledges that the DCC places great emphasis on the confidentiality, integrity and availability of the DCC Data and DCC Personal Data, and consequently on the security of:
 - 19.1.2 the Contractor Solution;
 - 19.1.3 the DCC Environment; and
 - 19.1.4 the DCC Services.

The Contractor also acknowledges the critical and confidential nature of the DCC Data and DCC Personal Data.

- 19.2 The Contractor shall be responsible for:
 - 19.2.2 the security of the Contractor Solution;
 - 19.2.3 the security of the Sites;
 - 19.2.4 the compliance of all Contractor Personnel with all security requirements in this Agreement;
 - 19.2.5 the compliance of all Sub-contractors (including their systems, solutions and services) in respect of their involvement in the provision of the Services; and

- 19.2.6 the implementation and on-going management of, and compliance with, the Security Management Plan.
- 19.2.7 Meeting the security requirements set out in Schedule 2.1 and Schedule 4.1 of this Agreement.
- 19.3 The Contractor shall be responsible for:
 - 19.3.2 Taking such steps as are agreed between the parties in writing for the purpose of ensuring the security of the Contractor Solution;
 - 19.3.3 The security of Contractor Personnel and Sites; and
 - 19.3.4 The security of all Sub-contractors (including their systems, solutions and services) in respect of their involvement in the provision of the Services.
- 19.4 The Contractor shall provide a reasonable level of access to any member of their Personnel for the purpose of designing, implementing, managing and maintaining security.
- 19.5 The Contractor shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing DCC Data and any system that could directly or indirectly have an impact on that information, and shall ensure that DCC Data remains under the effective control of the Contractor at all times.
- 19.6 The Contractor shall ensure the up to date maintenance of a security policy and Security Management Plan relating to the operation of its own organisation and the systems, and on request shall supply these documents as soon as practicable to DCC.
- 19.7 The Contractor further agrees that access to any DCC Confidential Information and DCC Data (collectively "DCC Materials") required for the purposes of providing the Services, is granted to the Contractor by the DCC on the following basis:
 - 19.7.2 Access shall be granted solely to the Contractor Personnel authorised by the DCC. DCC may suspend or withdraw authorisation at any time;
 - 19.7.3 The Contractor and the Contractor Personnel shall only access and/or view the DCC Materials on a DCC controlled SharePoint site;
 - 19.7.4 Unless otherwise specified in writing by the DCC, the Contractor and Contractor Personnel shall only access and/or view the DCC controlled SharePoint site via DCC issued laptops and all communication containing the DCC Materials is to be made via DCC issued email addresses;
 - 19.7.5 The Contractor and the Contractor Personnel shall not download or otherwise distribute the DCC Materials (nor shall they attempt to do so);
 - 19.7.6 The Contractor shall authorised Contractor Personnel sign a non-disclosure agreement before being granted access to the DCC controlled SharePoint site;
 - 19.7.7 The Contractor and the Contractor Personnel shall ensure that no documents or files, including working papers, whether electronic or hard copies, are to be stored in any computer or data storage device or retained by Contractor Personnel. All documents or files are to be stored on the DCC controlled SharePoint site;
 - 19.7.8 The Contractor and the Contractor Personnel shall comply with the DCC SharePoint Conditions of Use Policy and any reasonable instructions provided by the DCC; and
 - 19.7.9 The Contractor and any authorised Contractor Personnel shall immediately bring to DCC's attention any circumstances which comprise, or could potentially comprise, a breach of these provisions and immediately provide all reasonable co-operation, information, support and access to DCC in order to resolve such breach or potential breach.

Security Management Plan

- 19.8 Within 20 working days after the Effective Date, the Contractor shall prepare and submit to DCC for approval a fully developed, complete and up-to-date Security Management Plan.

19.9 The Security Management Plan shall:

- 19.9.2 at a minimum, comply with the Security Controls described at the end of this section and describe how compliance will be achieved;
 - 19.9.3 identify a senior manager appointed by the Contractor who is responsible for security and who has formally approved the Security Management Plan;
 - 19.9.4 the contact details to be used by DCC to coordinate security incident response and other operational security considerations with the Contractor;
 - 19.9.5 detail the process for managing any security risks, including those from Sub-contractors (including their systems, solutions and services) in respect of their involvement in the provision of the Services;
 - 19.9.6 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 that data and/or the Services; and
 - 19.9.7 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 Services comply with the provisions of this section;
- 19.10 If the Security Management Plan submitted to DCC is approved by DCC, it shall be adopted by the Contractor immediately and thereafter operated and maintained in accordance with this section. If the Security Management Plan is not approved by DCC, the Contractor shall amend it within 10 Working Days of a notice of non-approval from DCC and re-submit it for approval.
- 19.11 Approval by DCC of the Security Management Plan or of any change or amendment to the Security Management Plan shall not relieve the Contractor of its obligations under this section.
- 19.12 The Security Management Plan shall be fully reviewed and updated by the Contractor prior to the commencement of the Services and at least annually thereafter to reflect:
- 19.11.1 emerging changes in Good Industry Practice;
 - 19.11.2 any change or proposed change to the Services and/or associated processes and the Contractor System;
 - 19.11.3 any new perceived or changed security threats; and
 - 19.11.4 any reasonable change in requirement requested by DCC.
- 19.12 The Contractor shall provide DCC with the results of such reviews and updates as soon as practicable after their completion and amend the Security Management Plan at no additional cost to DCC.

Security Compliance

- 19.13 DCC shall be entitled to carry out such security audits at no additional cost to the DCC as it may reasonably deem necessary in order to ensure that the Contractor maintains compliance with the Contractor security policy and the Security Management Plan, the specific security requirements set out in this contract and the Security Controls within this section.

- 19.14 If, on the basis of evidence provided by such audits, it is DCC's reasonable opinion that compliance with the Contractor security policy and Security Management Plan, the specific security requirements set out in this contract and/or the Security Controls is not being achieved by the Contractor, then DCC shall notify the Contractor of the same 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. DCC may re-audit to verify that adequate remedial action has been taken.

Security Controls

- 19.15 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.
- 19.16 The Contractor shall:
- 19.16.1 provide DCC with all DCC Data on demand in an agreed open format;
 - 19.16.2 have documented processes to guarantee availability of DCC Data in the event of the Contractor ceasing to trade;
 - 19.16.3 The DCC shall develop and maintain, and hold all DCC Data in accordance with DCC data retention policies or any other relevant instruction provided by DCC;
 - 19.16.4 securely destroy all media that has held DCC Data at the end of life of that media in line with Good Industry Practice; and
 - 19.16.5 securely erase any or all DCC Data when requested to do so by DCC.
- 19.17 Contractor Personnel shall be subject to pre-employment checks that include, as a minimum: employment history for at least the last three years, identity, unspent criminal convictions and right to work (including nationality and immigration status).
- 19.18 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. This shall include, but not be limited to, 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, this training must be undertaken annually.
- 19.19 The Contractor must be able to state to DCC the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks DCC Data will be subject to.
- 19.20 The Contractor shall agree any proposed change in location of data storage, processing and administration with DCC in advance where the proposed location is outside the UK.
- 19.21 The systems used to access or manage DCC Data must be under the management authority of the Contractor and have a minimum set of security policy configuration enforced. Such configuration shall be described in the Security Management Plan, and include consideration of:
- 19.21.1 firewalls and other perimeter security controls;
 - 19.21.2 malicious software protection such as anti-virus software;
 - 19.21.3 password complexity, lifespan and management;

- 19.21.4 security dependencies and responsibilities on suppliers for hosted or 'cloud' services and systems.
- 19.22 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.
- 19.23 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 to Good Industry Practice.
- 19.24 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 IT equipment used to provide the Services.
- 19.25 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.
- 19.26 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 Sub-contractor, will be designed to ensure that:
- 19.26.1 User connections are appropriately secured and encrypted using transport layer security with an appropriate selection of cipher suites in accordance with Good Industry Practice;
 - 19.26.2 user input is processed in a way to detect and prevent malformed input intended to cause undesired behaviour;
 - 19.26.3 users cannot submit uniform resource locators that enable security controls to be bypassed or that cause undesired behaviour; and
 - 19.26.4 use of the Services is subject to security event audit recording and monitoring so that malicious behaviour is detected and responded to in a timely manner.
- 19.27 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 Sub-contractor, will be subject to a test to identify security vulnerabilities in the systems to a Good Industry Practice standard:
- 19.27.1 at least annually;
 - 19.27.2 subsequent to any material change to the Services and/or associated processes and systems;
 - 19.27.3 on notification from DCC of any new perceived or changed security threats;
 - 19.27.4 on any other reasonable request by DCC.
- 19.28 The Contractor shall seek to remediate issues identified by tests to identify security vulnerabilities in the systems within time periods defined in the Security Management Plan, based on Good Industry Practice for categorising such issues.
- 19.29 The Contractor shall procure the application of security patches to vulnerabilities within time periods defined in the Security Management Plan, based on Good Industry Practice for categorising vulnerabilities, except where:

- 19.29.1 the Contractor can demonstrate that a vulnerability is not exploitable within the context of any Service; or
- 19.29.2 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.
- 19.30 The Contractor System shall be maintained with the provision for major version upgrades of all commercial off-the-shelf software to be upgraded within 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:
- 19.30.1 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 12 months of release of the latest version; or
- 19.30.2 is agreed with DCC in writing.
- 19.31 The Contractor shall collect audit records which relate to security events in the systems or that would support the analysis of potential or actual compromises. In order to facilitate effective monitoring and forensic readiness such Contractor audit records should as a minimum include:
- 19.31.1 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.
- 19.31.2 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.
- 19.32 The Contractor shall retain audit records collected in compliance with this section for a period of at least 6 months.
- 19.33 The Contractor shall notify DCC in accordance with the agreed security incident management process as defined in the Security Management Plan upon becoming aware of any Breach of Security, suspected Breach of Security or attempted Breach of Security within 72 hours.
- 19.34 Without prejudice to the security incident management process, upon becoming aware of any Breach of Security, suspected Breach of Security or attempted Breach of Security the Contractor shall:
- 19.34.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by DCC necessary to) minimise the extent of action or potential harm caused by the breach; remedy such Breach of Security to the extent possible and protect the integrity of the Services; apply a tested mitigation against any such Breach of Security; and prevent a further Breach of Security in the future exploiting the same root cause.
- 19.34.2 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 DCC.
- 19.35 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 of the Contractor security policy and Security Management Plan, the specific security requirements set out in this contract and the Security Controls then any required change shall be at no cost to the authority.

20 Confidentiality and Publicity

- 20.1 In this Agreement “Confidential Information” shall mean any information which is marked as confidential, or is by its nature clearly confidential including, without limitation, any information relating to that party's services, operations, plans or intentions, service information, design rights, trade secrets, market opportunities and business affairs or those of its customers and is disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by either party (“the Disclosing Party”) to the other (“the Receiving Party”).
- 20.2 The Receiving Party shall only use the Confidential Information solely for the purposes of performing its obligations in accordance with the terms of this Agreement.
- 20.3 The Receiving Party will exercise in relation to the Disclosing Party's Confidential Information a reasonable and appropriate degree of care and protection.
- 20.4 The Receiving Party undertakes not to disclose any of the Disclosing Party's Confidential Information to any third party except that it may disclose such Confidential Information to its employees, professional advisors, agents or sub-contractors but only to the extent necessary for the performance of its obligations under this Agreement. The Receiving Party shall ensure that any third party to whom it discloses the Confidential Information shall be informed of the confidential nature of the information and be bound by obligations of confidentiality on terms no less onerous than those set out in this Agreement.
- 20.5 The Receiving Party undertakes to destroy or return (at the Disclosing Party's discretion) to the Disclosing Party all Confidential Information in its possession, custody or control on receipt of a request to that effect and, in any event, upon termination or expiry of this Agreement.
- 20.6 Without prejudice to any other rights or remedies that either party may be entitled to, the parties acknowledge that damages may not be an adequate remedy for breach of these confidentiality obligations and agree that both parties will be entitled to seek the remedies of injunction, specific performance and any other available equitable relief for any threatened or actual breach.
- 20.7 The provisions of this Clause 20 shall apply during the term and for a period of 6 years from the termination or expiry of the Agreement; and shall not apply to any Confidential Information:
- 20.7.2 to the extent that it is or comes into the public domain otherwise than as a result of a breach of this Agreement by the Receiving Party;
- 20.7.3 which the Receiving Party can show by its written records was in its possession prior to receiving it from the Disclosing Party and which it had not previously obtained from the Disclosing Party or a third party on its behalf under an obligation of confidence; or
- 20.7.4 has been independently developed by the Receiving Party without use of the Confidential Information; or
- 20.7.5 which is required to be disclosed by law.
- 20.8 No publicity or advertising shall be released by the Contractor in connection with the subject matter of this Agreement without the prior written approval of Smart DCC, which shall not unreasonably be withheld or delayed.
- 20.9 Notwithstanding anything else to the contrary in this Agreement, in the event DCC is requested to disclose any information as requested by Ofgem or the Secretary of State for Department for Business, Energy and Industrial Strategy (BEIS) (or their successors) in relation to the DCC Licence or the SEC, the Contractor acknowledges that this may include the Contractor's Confidential Information.

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24 Dispute Resolution

- 24.1 If a dispute arises in relation to any aspect of this Agreement, the representatives of the Contractor and Smart 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. 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.
- 24.2 If the dispute remains unresolved between the parties after fourteen (14) days after it has been referred to the directors of the parties pursuant to Clause 24.1 above, then:
- 24.2.2 if the parties so agree, the parties may proceed to mediation provided by the Centre for Dispute Resolution (or such other body as the parties may agree); or

24.2.3 the parties may employ any other method or procedure for the resolution of disputes as may be agreed between them; and

24.2.4 if no such agreement is reached between the parties pursuant to clauses 24.2.2 to 24.2.3 above within a period of seven (7) days, both parties shall be entitled to pursue the matter in law.

24.3 During any dispute, the Contractor will ensure the Services are performed in accordance with this Agreement until the dispute is resolved.

25 Termination

25.1 Smart DCC may terminate this Agreement with immediate effect if the Contractor breaches this Agreement and in the sole opinion of Smart DCC the breach cannot be remedied.

25.2 Smart DCC may terminate this Agreement with immediate effect if the Contractor breaches this Agreement, the breach can be remedied and the Contractor does not remedy the breach within ten (10) calendar days of receipt of written notice from Smart DCC requesting the same.

25.3 Smart DCC may terminate this Agreement with immediate effect if the Contractor commits any act or omission which significantly damages, or might reasonably be expected to significantly damage, the business interests, reputation or goodwill of Smart DCC or the DCC Ecosystem.

25.4 Smart DCC may terminate this Agreement if there is a change of control, as defined by section 1124 of the Corporation Tax Act 2010, of the Contractor.

25.5 Instead of terminating the entire agreement under clauses 25.1 or 25.2 or 25.3, Smart DCC may terminate the part of the Services affected by the breach, provided that the part is severable.

25.6 Either party may terminate this Agreement immediately by writing to the other if:

25.6.1 the other stops or threatens to stop trading;

25.6.2 a receiver, administrator or similar officer is appointed over any of the assets or business of the other;

25.6.3 the other makes an arrangement for the benefit of its creditors; or

25.6.4 the other goes into liquidation except for the purposes of a genuine amalgamation or reconstruction;

25.7 Smart DCC may terminate this Agreement for any reason of convenience by giving the Contractor one (1) month's written notice.

25.8 Upon termination of this Agreement pursuant to Clause 25, and subject to Clause 25.9, Smart DCC shall pay the Contractor the relevant Charges due and payable to the Contractor under this Agreement up to the date of termination of this Agreement.

25.9 The termination or expiry of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

25.10 The Contractor may terminate this Agreement only if:

25.10.1 Smart DCC is in material breach of its obligation to pay undisputed Charges and such breach is not remedied within sixty (60) days of a written notice from the Contractor to remedy that breach;

25.10.2 Smart DCC breaches its confidentiality obligations under this Agreement;

25.10.3 Smart DCC or Smart DCC Personnel through action or inaction prevents the Contractor or Contractor's Personnel from performing the Services without undue stress or interference, by giving Smart DCC thirty (30) days written notice specifying the breach and requiring its remedy within such thirty (30) day period.

25.10.4 The Contractor's right of termination under this Clause 25.10 shall not apply to non-payment of the Charges by Smart DCC where such non-payment is due to Smart DCC exercising its rights under Clause 8.1.

26 Assistance on Termination or Expiry

26.1 On the expiry or termination of this Agreement for any reason, the Contractor shall, if required by Smart DCC, take reasonable steps and co-operate fully with Smart DCC and, if appropriate any replacement service provider so that the transfer of responsibility for the provision of the Services previously performed by the Contractor under this Agreement is achieved with the minimum of disruption and so as to prevent or mitigate any inconvenience to Smart DCC.

26.2 The Contractor will take reasonable steps to mitigate any losses, costs, liabilities and expenses which the Contractor may incur as a result of termination.

27 Post-termination & survival of clauses

27.1 On any termination of this Contract and upon the Contractor receiving payment of the Charges that are due to it, the Contractor shall deliver up to Smart DCC the product of all Services not already delivered to Smart DCC, together with all unfinished works in progress relating to the Services (including, but not limited to, all DCC Data, Project Generated-Works and IPRs to which DCC is entitled under this Agreement). For the avoidance of doubt, save as otherwise provided in this Clause 27, the cost of complying with this Clause shall be borne by the Contractor.

27.2 Termination or expiry of this Agreement shall not affect either party's accrued rights or liabilities or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.

27.3 The provisions of clauses 5 (Provision of Service), 16 & 17 (IPR), 15 (Data), (DCC Data), 20 (Confidentiality & Publicity), 21 (Indemnities), 22 (Limitations of Liability), 23 (Insurance), 24 (Dispute Resolution), 26 (Assistance on Termination or Expiry), 31 (Data Protection), and 34 (General) shall survive the termination or expiry of this Agreement (under its terms or at law), together with any other provisions expressed or implied to survive such termination or expiry.

28 Obligations regarding sub-contracts etc.

28.1 In regard to all Sub-contracts and other agreements with third parties (including software licences, maintenance and support agreements, the Contractor shall (unless otherwise agreed by the DCC in writing) procure that all such "**Relevant Agreements**" shall be capable of either (at the discretion of the DCC):

28.1.1 novation to the DCC (and/or its nominee) and/or any Replacement Contractor in accordance with a novation agreement in the form reasonably requested by the DCC; or

28.1.2 assignment to the DCC (and/or its nominee) and/or any Replacement Contractor in accordance with an assignment agreement in the form reasonably requested by the DCC.

and without (i) any restriction (including any need to obtain the consent or approval of the relevant contract counterparty or any third party) or (ii) the payment of any amount by the DCC and/or any Replacement Contractor.

29 Assignment and novation

- 29.1 Subject to Clause 29.2, 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.
- 29.2 The Contractor may novate its rights and obligations under this Agreement to another member of the Contractor's group with the prior written consent of the DCC (such consent not to be unreasonably withheld or delayed).
- 29.3 The Contractor agrees that the DCC may:
- 29.3.1 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
 - 29.3.2 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 29.3.1 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.
- 29.4 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).
- 29.5 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.

30 Health and safety

- 30.1 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974, the Electricity at Work Act 1989 and other relevant health and safety legislation, regulations, codes of practice and guidance notes at its premises or when visiting Smart DCC's premises.

31 Data protection

- 31.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that the DCC is either the Data Controller or the Data Processor and that the Contractor is the Data Processor. For the avoidance of doubt, the parties agree that the Contractor is a sub-Data Processor where the DCC acts as a Data Processor. The DCC Service Users will be the Data Controller in relation to the Personal Data Processed in accordance with this Agreement.
- 31.2 The Contractor shall:
- 31.2.1 and shall procure that all Contractor Personnel shall, Process the Personal Data only in accordance with instructions from the DCC including those instructions that are provided on behalf of the DCC Service Users (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the DCC to the Contractor in writing, during the Term) and
 - (a) the Contractor shall notify DCC within 2 hours, if in its opinion an instruction infringes the GDPR or any other European Union of Member State law;

- (b) any such instructions which are inconsistent with the parties' rights and obligations under this Agreement shall be dealt with in accordance with Clause 11 (Change Control);
 - (c) in no event shall the Contractor Process the Personal Data for its own purposes or those of any third party;
- 31.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law;
- 31.2.3 implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration, access or disclosure (together, a "Security Incident"). Such measures shall have regard to the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects. Such measures shall include, as appropriate:
 - (a) the pseudonymisation and encryption of Personal Data;
 - (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and Services;
 - (c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
 - (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.
- 31.2.4 upon becoming aware of a Security Incident, the Contractor shall inform the DCC within 24 hours and shall provide all such timely information and cooperation as the DCC (and/or the DCC Service Users) may require including in order for the DCC to fulfil its data breach reporting obligations under (and in accordance with the timescales required by) the Data Protection Legislation. The Contractor shall further take all such measures and actions as are necessary to remedy or mitigate the effects of the Security Incident and shall keep the DCC (and/or the DCC Service Users) up-to-date about all developments in connection with the Security Incident.
- 31.2.5 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- 31.2.6 shall not subcontract any Processing of the Personal Data to a third party subcontractor without the prior written consent from the DCC, such consent not to be unreasonably withheld or delayed, and
 - (a) if the DCC refuses to consent to the Contractor's appointment of a third party subcontractor on grounds relating to the protection of the Personal Data, then either the Contractor will not appoint the subcontractor or the DCC may elect to suspend or terminate this Agreement without penalty;
 - (b) if the DCC gives consent to the Contractor's appointment of a third party subcontractor, the Contractor shall ensure that the same data protection and security obligations in this Agreement imposed on the Contractor are imposed on the third party subcontractor and the Contractor shall remain fully liable for any failure by such subcontractor to comply with any such obligations.

- 31.2.7 ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 31;
- 31.2.8 ensure that none of the Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the DCC;
- 31.2.9 notify the DCC (within three (3) Working Days) if it receives:
- (a) a request from a Data Subject to exercise their rights under the Data Protection Legislation (including its rights of access, correction, objection, erasure and data portability, as applicable); or
 - (b) a complaint or request relating to the DCC's obligations under the Data Protection Legislation;
- 31.2.10 provide the DCC (and/or the DCC Service Users) with full co-operation and timely assistance in relation to any complaint or request made, including by:
- (a) providing the DCC (and/or the DCC Service Users) with full details of the complaint or request;
 - (b) enabling the DCC (and/or the DCC Service Users) to comply with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the DCC's instructions;
 - (c) providing the DCC (and/or the DCC Service Users) with any Personal Data it holds in relation to a Data Subject as a result of this Agreement (within the timescales required by the DCC); and
 - (d) providing the DCC (and/or the DCC Service Users) with any information requested by the DCC;
- 31.2.11 provide a written description of the technical and organisational methods employed by the Contractor for Processing Personal Data (within the timescales reasonably required by the DCC);
- 31.2.12 implement technical and organisational measures to assist with fulfilment of requests from Data Subjects to exercise their rights under the Data Protection Legislation; and
- 31.2.13 not Process or otherwise transfer any Personal Data to an international organisation (as defined in the GDPR) or outside the European Economic Area. If, after the Effective Date, the Contractor (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:
- (a) the Contractor shall submit a request to the DCC which shall be dealt with in accordance with the Clause 11 (Change Control) and this Clause 31.2.12;
 - (b) the Contractor shall set out in its change request and/or impact assessment appropriate details of the following:
 - (i) the Personal Data which will be Processed and/or transferred outside the European Economic Area;
 - (ii) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;

- (iii) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
 - (iv) how the Contractor will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the DCC's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area. Such measures may include (without limitation) transferring the Personal Data to a recipient in a country that the European Commission has decided provides adequate protection for Personal Data, to a recipient that has achieved binding corporate rules authorisation in accordance with Data Protection Legislation, or to a recipient that has executed standard contractual clauses adopted or approved by the European Commission;
- (c) in providing and evaluating the change request and impact assessment, the parties shall ensure that they have regard to and comply with then current Guidance on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally; and
- (d) the Contractor shall comply with such other instructions and shall carry out such other actions as the DCC may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Agreement or a separate data processing agreement between the parties; and
 - (ii) procuring that any Sub-contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the DCC on such terms as may be required by the DCC, which the Contractor acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).
- (e) DCC shall not be obliged to agree to any change proposed by the Contractor under this Clause.

31.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the DCC to breach any of its applicable obligations under the Data Protection Legislation.

31.4 If the Contractor believes or becomes aware that its Processing of the Personal Data is likely to result in a high risk to the data protection rights and freedoms of Data Subjects, it shall promptly inform the DCC and provide the DCC (and/or the DCC Service User) with all such reasonable and timely assistance as the DCC (and/or the DCC Service User) may require in order to conduct a data protection impact assessment and, if necessary, consult with its relevant data protection authority.

31.5 Notwithstanding any audit provisions in this Agreement, the Contractor shall permit the DCC (and/or the DCC Service User) (or its appointed third party auditors) to audit the Contractor's compliance with this Clause 31, and shall make available to the DCC (and/or the DCC Service User) all information, systems and staff necessary for the DCC (and/or the DCC Service User) (or its third party auditors) to conduct such audit. The Contractor acknowledges that the DCC (and/or the DCC Service User) (or its

third party auditors) may enter its premises for the purposes of conducting this audit, provided that the DCC (and/or the DCC Service User) gives it reasonable prior notice of its intention to audit, conducts its audit during normal business hours, and takes all reasonable measures to prevent unnecessary disruption to the Contractor's operations. The DCC (and/or the DCC Service User) will not exercise its audit rights more than once in any twelve (12) calendar month period, except (i) if and when required by instruction of a competent data protection authority; or (ii) the DCC (and/or the DCC Service User) believes a further audit is necessary due to a Security Incident suffered by the Contractor.

- 31.6 Notwithstanding any termination provisions in this Agreement, upon termination or expiry of this Agreement, the Contractor shall (at the DCC's (and/or the DCC Service User) election) destroy or return to the DCC all Personal Data (including all copies of the Personal Data) in its possession or control (including any Personal Data subcontracted to a third party for Processing). This requirement shall not apply to the extent that the Contractor is required by any EU (or any EU Member State) law to retain some or all of the Personal Data, in which event the Contractor shall isolate and protect the Personal Data from any further Processing except to the extent required by such law.

32 Ethical behaviour

- 32.1 The Parties shall not, and each Party shall ensure that its respective affiliates and personnel shall not, Induce or do or agree to do any other act, failure to act or thing in connection with the provision of the Services or any other agreement between any Contractor affiliate or its subcontractor (to the extent engaged by the Contractor in providing the Services to Smart DCC), including the performance or award of any such agreement, that contravenes any applicable law or requirement of a regulatory authority relating to anti-bribery and corruption or anti-money laundering, including:
- 32.1.1 the UK Bribery Act 2010 (and/or the laws and legislation it repeals), the Proceeds of Crime Act 2002, the Theft Act 1968, the Fraud Act 2006 and the Companies Act 2006;
- 32.2 The Contractor undertakes, warrants and represents that it shall maintain policies, procedures and guidelines that are applicable to all Contractor affiliates and Contractor personnel (including subcontractors to the extent engaged by the Contractor in providing the Services to Smart DCC) and are intended and designed to prevent them doing or failing to do any act or thing that contravenes any applicable law or requirement of a regulatory authority relating to anti-bribery and corruption or anti-money laundering, including a gifts and entertainment policy requiring such persons not to undertake, offer, promise, give, authorise, request, accept or agree any Inducement (or to agree to do any of the foregoing).
- 32.3 The Contractor agrees to notify Smart DCC and confirm the same promptly in writing immediately upon discovering any instance where it has, or any of its Affiliates or Contractor Personnel have, failed to comply with any provisions of this Clause 32.
- 32.4 Each Party agrees to notify the other as soon as reasonably practicable upon becoming aware of any extortive solicitation, demand or other request for anything of value, by or on behalf of any person (including any Public Official) relating to this Agreement or its subject matter.
- 32.5 Each Party shall hold harmless, indemnify and keep indemnified the other Party and its successor's assigns, officers, employees and representatives against losses which it suffers or incurs in connection with a breach of Clause 32 and/or, in the case of the Contractor, a breach of Clause 32.2. This Clause 32.5 shall not require a Party to indemnify the Party for the amount of any fine constituting a criminal penalty, to the extent that such indemnity would not be permitted by applicable law.
- 32.6 The Contractor undertakes warrants and represents that it shall implement appropriate due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chains to ensure that there is no slavery or human trafficking in its supply chains. The Contractor agrees to notify DCC and confirm the same promptly in writing immediately upon discovering any breach or potential breach of this Clause or any actual or suspected slavery or human trafficking in its supply chains.

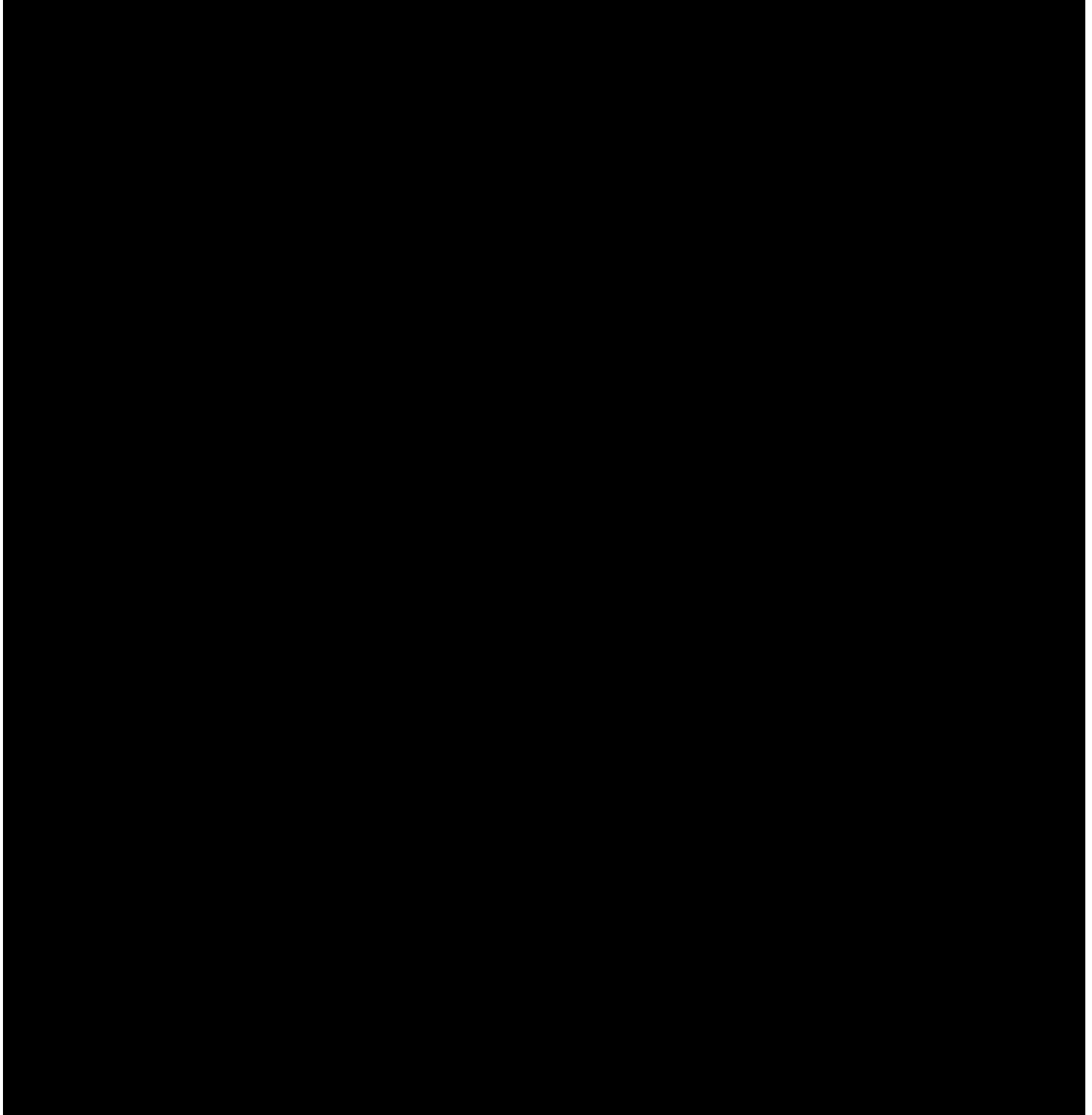
33 Contract management

- 33.1 The Contractor shall appoint a service delivery or project manager who shall be responsible for the day-to-day management and administration of this Agreement and of the coordination and delivery of the Services.
- 33.2 The Contractor shall submit a completed highlight report on a weekly basis to Smart DCC. The highlight report shall contain; at a minimum, a summary of activity including which the use cases and aspects of GBCS have been tested, any current issues or identified risks and the planned activity for the following week.

34 General

- 34.1 This Agreement and the Schedules shall together represent the entire understanding and constitute the whole agreement between the parties in relation to its subject matter and supersede any previous discussions, correspondence, representations or agreement between the parties with respect thereto notwithstanding the existence of any provision of any such prior agreement that any rights or provisions of such prior agreement shall survive its termination. The term “this Agreement” shall be construed accordingly. This Clause does not exclude liability of either party for fraudulent misrepresentation.

- 34.3 No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy. No waiver by either party of any breach of this Agreement shall be considered as a waiver of a preceding or subsequent breach.
- 34.4 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.



SCHEDULE 1

DCC - CONDITIONS THAT FLOW FROM THE DCC LICENCE

1. INTRODUCTION

- 1.1. This Schedule sets out certain contract provisions which derive from the DCC Licence.
- 1.2. This Schedule is without prejudice to the Contractor's other obligations under this Agreement.
- 1.3. In the event of any inconsistency or discrepancy between this Schedule and the main body of the Agreement, this Schedule shall prevail.
- 1.4. Defined terms in this Schedule will, unless otherwise defined below, have the same meaning as in the DCC Licence or the Smart Energy Code ("SEC") and will be interpreted in accordance with the DCC Licence.

Commercially Sensitive Information	means Confidential Information that is specifically and clearly marked "Commercially Sensitive –Access by other DCC Contractor(s) Generally Prohibited" and which details: (a) the charges, cost or profits of the Contractor or a sub-contractor in relation to the Services (or any proposed Services); and/or(b)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 publicly available).
Consents	means all permissions, way-leaves, spectrum licences 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.
Regulatory Body	means those government departments, regulators, regulatory bodies, and other entities, committees and bodies (including the SEC Panel) which, whether under law, industry codes or otherwise, are entitled to regulate, supervise, investigate, or influence:(a) any matters dealt with in this Agreement; or (b)the DCC or any of their business, activities or affairs, including the Authority, Ofcom and Ofgem, and "Regulatory Body" shall be construed accordingly.
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.
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2. DCC'S GENERAL OBJECTIVES

- 2.1. The Contractor acknowledges that, under the SEC and DCC Licence, the DCC is required to comply with the General Objectives set out in Licence Condition 5 "General Objectives of the Licensee".
- 2.2. The Contractor shall, in so far as the Agreement leaves any discretion as to how to perform its obligations under this Agreement:
 - 2.2.1. perform its obligations under this Agreement in such a manner as to enable the DCC to comply with the General Objectives; and
 - 2.2.2. 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 General Objectives.
- 2.3. Subject to paragraph 2.2, 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 General Objectives.

3. COMPLIANCE WITH MANDATORY REQUIREMENTS

General

- 3.1. The Contractor shall at all times provide the Services and perform its other obligations under the Agreement:
 - 3.1.1. in accordance with all applicable laws 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
 - 3.1.2. so as not to put the DCC in breach of the SEC or the DCC Licence.

4. DUTIES ARISING FROM LICENSEE'S SPECIAL POSITION

Obligations regarding no abuse of the DCC's special position

- 4.1. The Contractor shall at all times manage and perform the Services in a way that is calculated to ensure that it does not restrict, prevent, or distort competition:
 - 4.1.1. in any activity (other than the Authorised Activity) that is authorised by an Energy Licence under the Principal Energy Legislation; or
 - 4.1.2. 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.
- 4.2. 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.
- 4.3. The Contractor shall establish and maintain management systems, procedures and arrangements that are designed to secure its compliance with its obligations under Clauses 4.1 to 4.3.

5. AVAILABILITY OF RESOURCES

Availability of resources - general

- 5.1. 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.

6. CONTRACTORS OBLIGATIONS IN RELATION TO THE DCC LICENCE

General obligation to assist

- 6.1. Without limiting the Contractor's other obligations under this Agreement, the Contractor shall, :
- 6.2. promptly provide any co-operation, documentation, data, information or other assistance reasonably requested by the DCC, the Authority, 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 DCC Licence and/or the SEC (and any associated activities), including in relation to the preparation, review and/or revision of any plan, report, statement, accounts or other presentation or publication which is required to be prepared by the DCC Licence and/or SEC;
- 6.3. ensure that appropriate representatives of the Contractor, including any representatives specifically identified by the DCC, attend any meetings with the DCC, the Authority, 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 DCC Licence and/or SEC 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 DCC Licence and/or the SEC.

7. MANAGEMENT ORDERS; REVOCATION OR EXPIRY OF THE DCC LICENCE

- 7.1. Without limiting the Contractor's other obligations under this Agreement, the Contractor shall:
- 7.1.1. 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; and
 - (c) the DCC, the Authority and/or the Successor Licensee in relation to the handover of the Authorised Business from the DCC to the Successor Licensee;
- 7.1.2. ensure that appropriate representatives of the Contractor, including any representatives specifically identified by the DCC, the Authority 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.

7.1.3. continue to perform the Services in accordance with this Agreement notwithstanding the handover of the Authorised Business from the DCC to the Successor Licensee.

7.2. To the extent that compliance by the Contractor with this paragraph 7 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 Contractor's charges.

8. PROVISION OF INFORMATION UNDER THE DCC LICENCE

8.1. Subject to paragraph 8.3:

8.1.1. if the DCC receives a request for Condition 29 Information from the Authority or the Secretary of State (as applicable) under the DCC Licence (each, an "Information Request"); and

8.1.2. in order to comply with the Information Request, the DCC requires the Contractor to provide any Condition 29 Information, the Contractor shall provide the Condition 29 Information requested by the DCC within the time and in the form requested by the DCC.

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

8.3. The DCC agrees that the Condition 29 Information requested by the DCC under paragraph 8.1.2 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.

8.4. 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 the Authority and/or the Secretary of State in accordance with the relevant Information Request.

8.5. 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 paragraph 8.

9. CONFIDENTIAL INFORMATION

Additional Provisions with regard to Confidential Information

9.1. The following provisions shall supplement and qualify the confidentiality provisions of the Agreement.

Disclosure to DCC Service Providers etc

9.2. The DCC (or any person acting on its behalf) may:

9.2.1. disclose, or permit the disclosure of, any Contractor's Confidential Information except Commercially Sensitive Information to (and permit its use by) any of the following persons:

(a) 9.2.1.1 any External Service Provider solely in relation to any DCC Purpose;

(b) 9.2.1.2 any person as reasonably required by the DCC in connection with the transfer of the Licence to a Successor Licensee; and

9.2.2. 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) the Compliance Officer solely in relation to any DCC Purpose;
- (b) the Authority, 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 DCC Licence and/or the SEC;
- (c) 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 paragraph 11 of this Schedule (Assignment and Novation) and/or any proposed or actual Successor Licensee solely in relation to any DCC Purpose.

10. LICENCES OF IPR

Grant of licence

- 10.1. The Contractor hereby grants to the DCC, a perpetual, royalty-free, irrevocable and non-exclusive licence to Use:

10.1.1. the Contractor Intellectual Property Rights or Intellectual Property Rights owned by a third party that are embedded in, form an integral part of, or are otherwise necessary for the operation of, the Services/Deliverables provided by the Contractor for the purposes of:

- (a) the provision of the Replacement Services;
- (b) (in relation to the DCC only) exercising any of its rights under this Agreement;
- (c) the DCC, receiving the benefit of the Replacement Services;
- (d) integrating the Replacement Services with any other services provided pursuant to (or otherwise related to) the Smart Metering Programme or otherwise as envisaged by this Agreement.

Sub-licensing

- 10.2. The DCC may sub-licence its rights under paragraph 10.1 to:

10.2.1. any Replacement Contractor;

10.2.2. 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 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 legal requirements regarding the Smart Metering Programme.

- 10.3. The right under paragraph 10.2 above shall only apply on the expiry, revocation or termination of the DCC Licence and only to the extent Use of these rights will be required in connection with the functions to be exercised by any Successor Licensee under or pursuant to its licence to carry on the Authorised Activity.

11. RIGHT TO PUBLISH

The Contractor acknowledges that DCC may be obliged to publish this Agreement under the DCC Licence obligations. Both Parties agree to such publication and acknowledge that in this circumstance any Commercially Sensitive Information would be redacted and the Contractor agrees to promptly agree reasonable redactions with DCC to enable this publication

12. ASSIGNMENT AND NOVATION

12.1. Subject to paragraph 12.2, 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.

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

12.3. The Contractor agrees that the DCC may:

12.3.1. 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

12.3.2. 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 paragraph 12.3.3 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.

12.4. 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.

13. DISPOSAL OF RELEVANT BUSINESS ASSETS

13.1. The provisions of paragraph 13.1 to 13.3 shall only apply if the Contractor produces or generates Relevant Business Assets in connection with the provision of the Services.

13.2. Asset Register

13.2.1. The Contractor shall maintain and provide to the DCC a Register of Relevant Business Assets.

13.2.2. The Contractor shall ensure that the Register of Relevant Business Assets contains the following information:

(a) a register of all of the Relevant Business Assets, detailing:

(i) 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").

(ii) 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");

(iii) the ownership status of each Transferable Asset and each Ongoing Access Asset;

(iv) the value of each Transferable Asset, calculated using the Net Book Value, 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 (the "Transferable Asset Value");

(b) a register of all of the software provided in connection with the Services;

(c) a register of all other Intellectual Property Rights relevant to the performance of the Services; and

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

13.2.3. The Contractor shall maintain the Register of Relevant Business Assets in the format specified in such format as is agreed by the parties from time to time.

13.2.4. The Contractor shall review and update the Register of Relevant Business Assets periodically.

13.3. **Obligations regarding the Relevant Business Assets**

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

(a) require the consent of a third party to the exercise by the DCC of any of its rights under this Schedule; or

(b) otherwise restrict the exercise by the DCC of any of its rights under this Schedule.

For the purposes of this paragraph 13.3.1, "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 Asset.

13.4. **Disposal of Relevant Business Assets**

13.4.1. 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:

(a) the granting of consent by the DCC under this paragraph 13.4 may be subject to the Authority also granting its consent to the relevant Disposal or Relinquishment of Operational Control; and

(b) the consent of the DCC under this paragraph 13.4 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.

Schedule 2.1 (DCC Requirements)

1. Introduction

The Services will comprise of a study undertaken by the Contractor that will incorporate a previous DCC Future Roadmap Study dated 1st July 2020 (the “**DCC Future Roadmap Study**”) and will focus on the architecture of the DSP (the “**Study**”), resulting in a set of high-level functional and non-functional (technical and business) requirements and architecture options, considerations and recommendations that will form the Deliverables.

The following documents, as a minimum, will be provided by Smart DCC to the Contractor to support the development of this Study:

Problem Statement

Problems with the current DSP solution.

DCC Network Evolution Design Update

DCC architecture documents including the Design Principles, Approach and Options for consideration as part of the Network Evolution portfolio.

As-Is DSP Contract Schedules

Redacted copies of contract schedules to give an understanding of the DSP's existing responsibilities

Current Operating Issues

A shortlist of some of the existing operational issues within the DSP.

Standard SEC Requirements

The latest Smart Energy Code requirements are readily available from the SEC website (<https://smartenergycodecompany.co.uk>)

Service Metrics

Appropriate service metrics relating to the DSP.

DCC Future Roadmap High Level Requirements

High level requirement statements as summarised from the DCC Future Roadmap Study

Solution Design Documents

High level overview of the current DSP solution

2. The Requirements

- 2.1. **Executive Summary:** The Contractor shall provide an executive summary document (in PDF and MS Word format) with the Final Report that can be provided to DCC Executive Committee and senior stakeholders, which summarises the key points and findings of the Study, once the Study has been finalised..

The Contractor shall include, but is not limited to, all requirement areas listed below within the contents of the Executive Summary.

- **Design Requirements:** The Contractor shall provide a high level, functional, non-functional and security requirements (technical and business) and architecture principles to help guide Smart DCC how to design for a future DSP.
- **Security Landscape:** Set out a view of the future security landscape of the DSP. This will address potential improvements to the current security model, risks relating to innovation and operational standards.
- **Architecture Options:** The Contractor shall provide high level architecture options, consuming various inputs provided by Smart DCC for example; Study 1 'As Is' and 'To Be' requirements, Network Evolution principles. The Architecture Options will address DCC requirements, technologies, scalability and future proofing.

The following points must be addressed, as a minimum:

IPR (Intellectual Property Rights)

1. Provide high level designs, assuming the IPRs are obsolete and there is a greenfield architecture landscape;
2. Provide high level designs assuming the existing IPR can be re-used and how to integrate with the new DSP (demonstrate within requirements capture also)

Disaggregated Model

Provide a high-level design of what a disaggregated model looks like taking into account architecture, vendor collaboration, procurement / supply chain, implementation, system integration and management. Specifically demonstrating the principles that are required to be carried out for designing the DSP (E2E) End to End (including how components interface with each other, how we obtain operational transparency and how it all interlinks E2E (deliver, deploy, supply)).

Modelling / Validation

The traceability between DCC requirements and architecture designs must be validated. Demonstrate how the architecture is fit for purpose if/when taken into DCC's internal design build stage (E2E).

- **Recommendations:** The Contractor shall set out the recommendations from the options with a rationale of why the options should be considered or excluded (including ROM costs (assumptions)).
- **Appendices:** The Contractor shall provide supporting documentation that underpins the above deliverables.

3. Design Requirements Details

- 3.1. The Contractor shall provide the following design requirements in an agreed document format (e.g. MS Word and/or MS Excel) in the Final Report that allows for easy interrogation, review and

maintenance (“**Design Requirements**”) by the DCC. The Design Requirements shall meet the following specifications:

- The Contractor shall provide high level technical and business (functional and non-functional and security) Design Requirements.
- The Contractor shall provide the architecture principles that were used when producing the Design Requirements.
- The Contractor shall ensure the Design Requirements, at a minimum, cover security, applications and technology.
- The Contractor shall detail in the Design Requirements how the Architecture Options will meet each requirement with a clear traceability.
- The Contractor shall align the Design Requirements to the DCC Architecture Principles, which will be provided by Smart DCC on commencement of the Study.
- The Contractor shall, as a minimum, align to the requirements as identified from the DCC Future Roadmap Study

3.2. The Contractor shall ensure minimum standards are met for the Design Requirement statements and structures to ensure clarity and to aid subsequent reviews. This will also allow for easier transposing onto a service register and business requirements document:

- Unique Reference IDs
- Grouped logically
- Categorised/labelled in line with DCC architecture terminology
- Captures the SEC reference where applicable
- Captures the source (e.g. DCC SME / DCC Roadmap Study; etc)
- MoSCow rated
- Definition of Terms
- Measurable
- Unambiguous
- Mutually exclusive
- Collectively Exhaustive

3.9 The Contractor shall provide supporting information (e.g. Use Cases, Process Maps, Design Diagrams) that help to corroborate the Design Requirements and demonstrate the thought process.

3.10 The Contractor shall provide Risks, Assumptions, Issues and Dependencies (RAID) that were identified during the requirement analysis. Such inputs will be categorised to ensure DCC can subsequently utilise in an ordered and efficient manner.

4. **Security Landscape Details**

4.1 The Contractor shall set out a view of the future security landscape in an agreed document format (e.g. MS Word and PDF) relating to the DSP and will address the following points, as a minimum:

- **Current Security Model:** How would the current security model be improved upon to add better understanding with the increase in traffic and device types?
The current security model used is dependent on the type of message transmitted. At the application layer, GBCS mandates the following measures for critical E2E Message:
 - **Integrity and Authenticity protection:** the SMIP uses a PKI infrastructure, digital signature and DCC MAC verification. Depending on the end Device, it necessitates the presence of certain certificates (as defined in the GBCS) – the Remote Party(s) and the DCC – in the Device’s Trust Anchor cells.
 - **Non-Repudiation:** ensured through Digital Signatures; the Message Originator signs every Critical Message with its SMIP – specific Private Key.
 - **Confidentiality:** certain data is encrypted within Messages that contain sensitive data, as defined in the specifications.

- **Anti-Replay:** realised through an incremental replay counter check for each Message.
- **Innovation Risk:** How does innovation, disruption and change with the technology / security / energy space potentially contribute to additional risk factors in a security design and what innovation would help mitigate them?
- **Operational Standards:** There are several standards the DCC adheres to (e.g. ISO27001), how would the Contractor go beyond or improve upon them?
- **Regulatory Changes:** The DCC total system is regulated by the SEC. Are there any changes to the SEC that the Contractor would like to introduce that would help improve the security stance?

5. Architecture Options Details

- 5.1 DCC's aim is to determine how to design a DSP for the future; a design that is adaptable and where the cost of change is efficient.

To support this, the Contractor shall provide at least four (4) high level architecture options, in both MS Word and PDF format, in the Final Report.

All options provided must, as a minimum, address the following points:

- a) Alignment with the requirements set out in DCC Future Roadmap;
- b) Alignment with SEC and License requirements;
- c) Alignment with design requirements deliverables
- d) Network Evolution architecture principles and design approach
- e) Identification of future 'To Be' Requirements
- f) Security requirements
- g) Scalability / future proofing Technical debt
- h) Proven technologies that can be leveraged;
- i) Delivery constraints; and
- j) Support continuous improvement

- 5.2 The Contractor shall ensure that:

- For each design option, it shall be supported by at least two (2) use cases; one covering an existing scenario and the second one related to future service
- Each proposed design shall be supported with a Roadmap demonstrating the capability of future services adaptability
- Each design artefact shall conform with ArchiMate (<https://www.opengroup.org/archimate-forum/archimate-overview>)
- Indicative implementation timelines and ROM costs for each design proposed
- Each design option should be described and provide 'pros and cons'
- The Contractor will provide an Architectural Design Document (ADD) for each design option

6. IPR (Intellectual Property Rights) Details

The Contractor shall provide the DCC with at least two options relating to the use of the existing DSP IPR.

- 6.1 The Contractor shall include at least one option where it is assumed existing IPR can be re-used and how to integrate with the new DSP design.
- 6.2 The Contractor shall include at least one option where it is assumed existing IPRs are obsolete and therefore a greenfield architecture landscape.

7. Disaggregated Model Details

- 7.1 The Contractor shall provide a view of what a disaggregated supplier model looks like, in both MS Word and PDF format specifically demonstrating the principles that are required to be carried out for designing the DSP E2E (including how components interface with each other, how we obtain operational transparency and how it all interlinks E2E covering delivery, deployment and supply). The Model must address the following points, as a minimum:
- i. Service architecture
 - ii. Vendor collaboration
 - iii. Procurement process and supplier chain
 - iv. Transition / implementation approach
 - v. Service model, including support and maintenance;
 - vi. System integration
 - vii. Supplier management; and
 - viii. Requirements management.

8. Modelling / Validation Details

- 8.1 The Contractor shall ensure that the requirements and architecture views provided are validated. This will be provided in both MS Word and PDF format, with the Final Study Report.
- 8.2 For each option, the Contractor shall demonstrate how it is fit for purpose if taken into DCC's internal design build stage (E2E).

9. Recommendation Details

- 9.1 The Contractor shall set out their recommendations, in both MS Word and PDF format, from the options set out in Section 5 Architecture Options with a rationale of why each option should be considered or excluded (including implementation timelines and ROM costs (assumptions)).
- 9.2 The Contractor shall take into consideration but not limit their recommendation to the following:
- i. The sequencing of procurements; e.g. bundles or procured separately
 - ii. Supplier collaboration and managing of boundaries
 - iii. Risk allocation
 - iv. Transparency of component costs
 - v. Add-on costs to be aware of such as software licenses.

10. General

- 10.1 The Contractor shall ensure the outputs of the Study comprise of all composite areas set out in in this Schedule 2.1 (DCC Requirements).
- 10.2 The Contractor shall include a list of sources for information, collated for the Study; these must be accessible by DCC or made available to the DCC.
- 10.3 The Contractor shall provide a stakeholder list of job titles for who they will need to engage with to capture requirements (e.g. Service Managers, Architects, Operational or Technical teams), with details of when and how much time is needed from the resource, within the first week of the Study, or where applicable after this point, by providing at least 5 days' notice.
- 10.4 The Contractor shall provide Risks, Assumptions, Issues and Dependencies (RAID) that were identified during the requirement analysis. Such inputs will be categorised to ensure these can be subsequently used and treated efficiently by DCC.



Schedule 7.1 (Charges and Payment)

This Schedule 7.1 (Charges and Payment) sets out:

- the Charges to be invoiced by the Contractor to the DCC in consideration of the deployment and provision of the Services;
- the charging methodology in relation to any Changes;
- the process for invoicing.

PART A – GENERAL PRINCIPLES

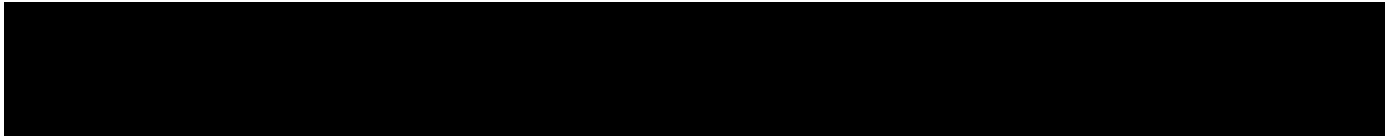
- **PRINCIPLES**

1. The principles which underpin the calculation of Charges are that Charges should, as far as practicable:
 - i. take account of the DCC Objectives and seek to give the fullest possible effect to the DCC Objectives;
 - ii. be clear, well-defined, unambiguous and straight-forward to administer;
 - iii. represent the most appropriate and cost-effective option for the work in question;
 - iv. be based on incurred costs of delivering individual services and support a sustainable funding model over the life of the contract; and
 - v. be flexible to adapt to future changes in service levels and capability.
2. Any future changes to the Charges as well as the pricing of any future services, through the mechanisms detailed below, shall be tested by the DCC against the principles set out in paragraph 1.
3. All Charges shown in this Schedule are exclusive of VAT. Unless and to the extent expressly set out in this Schedule 7.1, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take into account inflation, change in exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Contractor of the performance of their obligations.
4. Where any Charge or limit which is expressed in this Schedule in monthly terms (“monthly” and “month” both referring to calendar months) applies for any reason for part of a month, rather than a whole month, the Charge or limit for such part of a month shall be pro-rated in proportion to the ratio of the days of the month during which the Charges or limit applies to the overall number of days in the month and any remaining days of the month may either have no or different Charges applied to them on a similar pro-rated basis, as the case may be.

PART B – FINANCIAL BREAKDOWN

• CHARGES

1. The Services (including the Software Development Service and the Hosting & Support Service) are to be provided on a fixed price basis.



- 2.1 The breakdown of this amount is set out Appendix B to this Schedule 7.1.
- 2.2 The value may be increased only by written agreement by DCC.
3. For the purposes of paragraph 2.2, any additional Charges payable for the Services (e.g. change control or additional services) shall be calculated in accordance with Contractor's rates set out in Appendix A to this Schedule 7.1. Such Charges will be quoted and applied on the basis that the Contractor should charge rates that are appropriate and commensurate to the task in question, and the Contractor will not seek to charge rates for persons that have a greater level of experience or qualifications than the task requires.
4. Contractor's standard daily fee rates are calculated on the basis of a seven and a half hour day worked on weekdays during normal office hours in the UK (excluding weekends and public holidays).
5. The Contractor's Charges and rates include all costs and expenses incurred by the Contractor, including but not limited to accommodation, subsistence, travelling and any other ancillary expenses incurred in travelling to an individual's designated Contractor base office or DCC base office (currently Ibex House 42-47 Minories, London EC3N 1DY) unless otherwise agreed.
6. Contractor shall ensure that all members of the project team complete time sheets recording time and Contractor shall use such time sheets to calculate the charges covered by invoices to which they relate.

PART C - INVOICING

1. INTRODUCTION

This Part C of Schedule 7.1 sets out the method by which the Contractor shall raise invoices to the DCC for payment, together with the requirements which apply to such invoices, and the payment terms thereof.

2. INVOICES

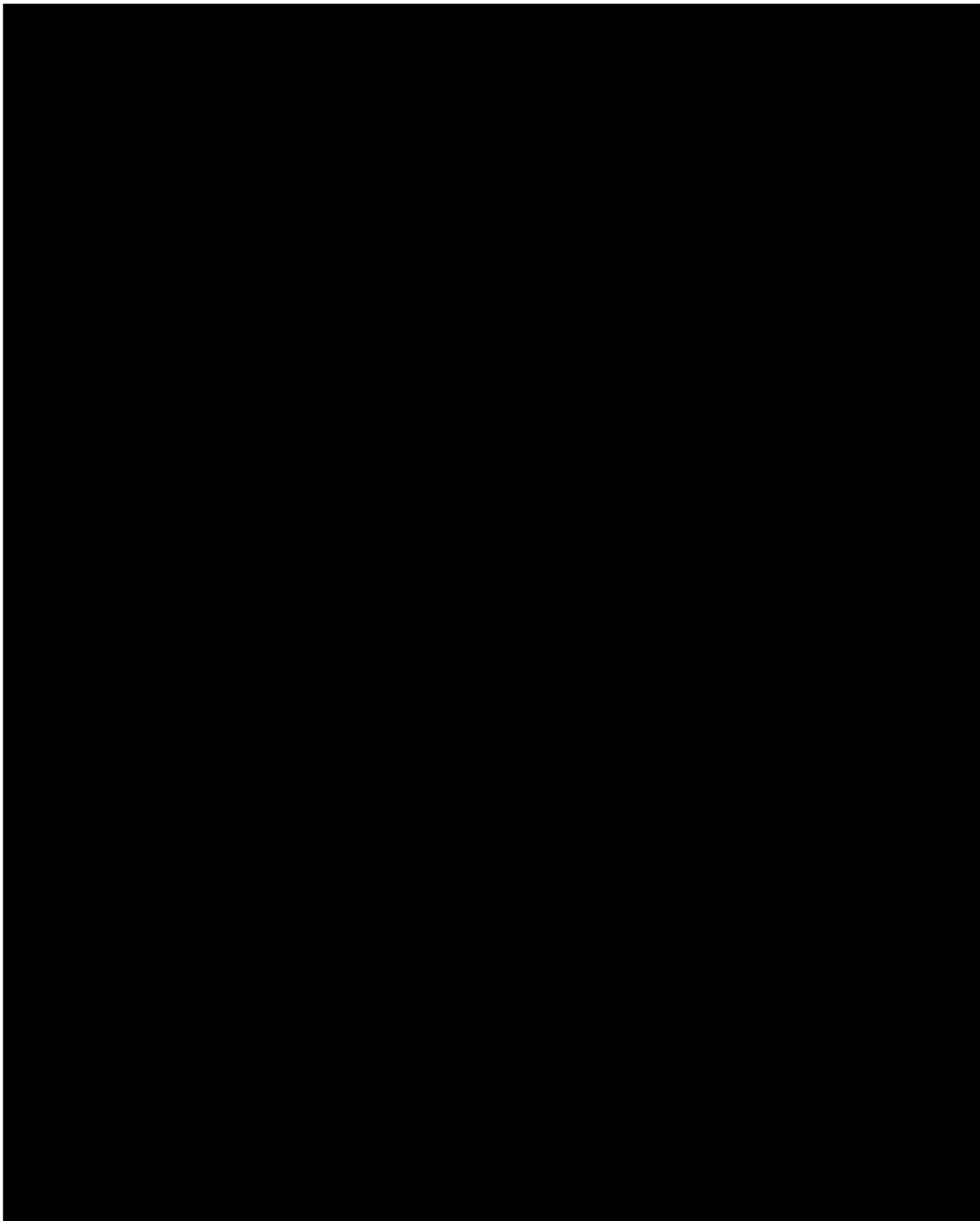
The Contractor shall prepare and provide to the DCC for approval a draft pro forma invoice within ten (10) business dates of the Effective Date which shall include, as a minimum, the details set out in paragraph 2.3 of this Schedule 7.1 together with such other information as the DCC may reasonably require. If the Contractor comments upon the draft pro forma invoice and it is not approved by the DCC then the Contractor shall make such amendments as may be reasonably required by the DCC.

- 2.1 The Contractor shall be entitled to raise an invoice in respect of any payment which falls payable to the Contractor pursuant to the Agreement.
- 2.2 The Contractor shall invoice the DCC in respect of Services in accordance with the timescales specified for issue of invoices for the Charges as detailed in Part A of this Schedule 7.1.
- 2.3 The Contractor shall ensure that each invoice contains the following information:
 - 2.3.1 the date of the invoice;

- 2.3.2 a unique invoice number;
 - 2.3.3 the Payment Month or other period(s) to which the relevant Charge(s) relate;
 - 2.3.4 details of the correct Agreement reference;
 - 2.3.5 the Purchase Order (PO) number, receipt number and release number to which it relates (if any);
 - 2.3.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - 2.3.7 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 the Agreement, and, separately, any VAT or other sales tax payable in respect of the same;
 - 2.3.8 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);
 - 2.3.9 a contact name and telephone number of a responsible person in the Contractor's finance department in the event of administrative queries; and
 - 2.3.10 the Project bank account details for payments to the Contractor via electronic transfer of funds (i.e. name and address of Project bank, sort code, account name and number).
- 2.4 Each invoice shall at all times be accompanied by sufficient information ("**Supporting Documentation**") to enable the DCC to reasonably assess whether the Charges detailed thereon are properly payable. 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.
- 2.5 The Contractor shall submit all invoices and Supporting Documentation in such format as the DCC may specify from time to time to:
- Smart DCC Ltd
- C/o Capita Business Services
- FAO: Accounts Payable
- PO BOX 202
- Darlington
- DL1 9HB
- 2.6 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the DCC in writing.
- 2.7 The DCC shall only regard an invoice as valid if it complies with the provisions of this part C of this Schedule 7.1. Where any invoice does not conform to the DCC's requirements set out in paragraph 2 of this Schedule 7.1, the DCC will promptly return the disputed invoice to the Contractor. The Contractor shall promptly issue a replacement invoice which shall comply with the same.

3. PAYMENT TERMS

- 3.1 The Contractor shall invoice monthly in arrears.
- 3.2 The DCC shall make payment to the Service Provider within thirty (30) days of receipt of a valid invoice by the DCC at its nominated address for invoices.



Schedule 7.2 (Service Level Agreement)

