

**SMART DCC LIMITED**

- and -

**CAPACITAS LIMITED**

**DCCT0273  
FRAMEWORK AGREEMENT FOR THE PROVISION OF CAPACITY & NETWORK ECONOMICS  
CONSULTANCY SERVICES**

**THIS FRAMEWORK AGREEMENT** is made on the 26th day of February 2021, ("**Effective Date**"), ("**Framework Agreement**");

**BETWEEN:**

- (1) **SMART DCC LIMITED** a company registered in England and Wales under company number 8641769 whose registered office is at 65 Gresham Street, London, EC2V 7NQ ("**DCC**");
- (2) **CAPACITAS LIMITED** a company registered in England and Wales under company number 04363163, whose registered office is 69 Turnmill St, London, EC1M 5RR, ("**Contractor**");

DCC and Contractor shall be referred to individually as a "**Party**" or collectively as the "**Parties**" as the context requires.

**RECITALS:**

- A. DCC requires Capacity & Network Economics Consultancy services from time to time.
- B. DCC conducted a competitive procurement to create a framework arrangement with a number of suppliers to meet the aforementioned service need, as and when such services are needed.
- C. On the basis of the Contractor's proposal to DCC, DCC has selected the Contractor to be one of the Contractors on the framework and the Contractor undertakes to supply services to DCC on the terms set out in this Framework Agreement and any call-off contract that is agreed pursuant to it; and
- D. There is no obligation whatsoever upon DCC to purchase any services from the Contractor under this Framework Agreement.

**PROVISIONS:**

**1. Definitions and Interpretation**

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

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| <b>"Applicable Law"</b>      | 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; |
| <b>"Authorised Activity"</b> | means the activity of providing within the area of Great Britain a Smart Metering Program and associated services, as defined at paragraph 4 of Part 1 of the DCC Licence;   |
| <b>"Authority"</b>           | has the meaning given in the DCC Licence;  |
| <b>"Background IPR"</b>      | means any IPR licensed to or belonging to a Party prior to or during the Term, which is or was created independently of any connection with this Framework Agreement or a Call-Off Contract, including such IPR in software or Materials, but not any Bespoke IPR;   |

**“Basic Information”**

means, in relation to a Data Subject, Personal Data which identifies who they are, where they live or work and how to contact, communicate or otherwise interact with them, including copies and records of such contact, communications and interactions. In a business context, this may include details of their job title, role and responsibilities;

**“Bespoke IPR”**

means all IPR and other rights in DCC Data, Materials and/or software created by or on behalf of the Contractor (at any time before or during the Term) for the purposes of or under this Framework Agreement or a Call-Off Contract, or otherwise to meet the DCC Requirements;

**“Breach of Security”**

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

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

**“Call-Off Contract”**

means a call-off contract entered into pursuant to this Framework Agreement, in the form specified in Schedule 2 (Template Call-off Contract);

**“Call-Off Award Procedure”**

means the procedure set out in clause 4 (Call-Off Award Procedure);

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| <b>“Charges”</b>                            | means those sums payable by the DCC to the Contractor, as stated in clause 11 (Charges) and in Schedule 4 (Charges and Payment);   |
| <b>“Change in Law”</b>                      | means the coming into effect after the Effective Date of any change in Applicable Law or any applicable judgment of a relevant court of law which changes the interpretation of the Applicable Law which affects the Contractor’s performance and/or delivery of the Services under this Framework Agreement or a Call-Off Contract;   |
| <b>“Code Administrator”</b>                 | means the body providing SEC administration services;  |
| <b>“Commercially Sensitive Information”</b> | 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 Contractor Person in relation to the Services (or any proposed Services); (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);  |
| <b>“Competent Authority”</b>                | means the Secretary of State for Business Energy and Industrial Strategy, Ofgem or any local or regional or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of the government of the United Kingdom or of the European Union (but only insofar as each has jurisdiction over the relevant party);   |
| <b>“Confidential Information”</b>           | means any information which is marked as confidential, or is by its nature clearly confidential including, without limitation, any information relating to that Party’s services, operations, plans or intentions, service information, design rights, trade secrets, market opportunities, and business affairs or those of its customers, and any information shared between the parties under any non-disclosure agreement prior to this Framework Agreement, and which is disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) and, in the case of the DCC, the DCC Data; |

**"Contractor Persons"**

means:

- (a) the Contractor;
- (b) each other member of the Contractor's Group;
- (c) its subcontractors; and
- (d) Contractor Personnel;

and Contractor Persons shall be construed accordingly;

**"Contractor Personnel"**

means all natural persons that are employees, staff, workers, agents, consultants, contractors, directors, officers, professional advisors and/or other persons performing services, roles or functions on behalf of the Contractor and/or its subcontractors in connection with this Framework Agreement or a Call-Off Contract;

**"Contractor System"**

means the System(s) used by or on behalf of any Contractor to deliver the Services;

**"Contractor Solution"**

means the solution, including the Services, to be provided by the Contractor as described in Schedule 4.1, which must meet the DCC Requirements in all respects;

**"Data"**

means any information, data, text, drawings, diagrams, photographs, images or sounds (together with any database made up of any of these), formats, know-how or other information embodied in any medium (including whether tangible or electronic);

**"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 Connected Person(s)"** shall be construed accordingly;

**"Data Controller"**

has the meaning given to it in the Data Protection Laws;

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| <b>"Data Protection Laws"</b> | any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body, which relates to the protection of individuals with regard to the processing of Personal Data and to which a Party is subject, including (but not limited to) the GDPR and the Data Protection Act 2018; |
| <b>"Data Processor"</b>       | has the meaning given to it in the Data Protection Laws;  |
| <b>"Data Subject"</b>         | has the meaning given to it in the Data Protection Laws;  |
| <b>"DCC Data"</b>             | means Data:<br><br>(a) supplied to the Contractor by or on behalf of the DCC or any DCC Connected Person;<br><br>(b) received by the Contractor, or which the Contractor is required to create, generate, process, store, transmit or otherwise use under or in connection with this Framework Agreement or a Call-Off Contract; or<br><br>(c) any Personal Data for which the DCC is a Data Controller or a Data Processor.  |
| <b>"DCC Data Subjects"</b>    | means a Data Subject who works for the DCC and/or any of its group companies, affiliates, or sub-contractors, whether by way of employment or otherwise;  |
| <b>"DCC Environment"</b>      | means the Systems used by or on behalf of the DCC, excluding the Contractor Solution;   |
| <b>"DCC Licence"</b>          | means the Licence for the Provision of a Smart Meter Communication Services 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;   |
| <b>"DCC Requirements"</b>     | means the requirements of the DCC which are set out in Schedule 2.1;  |
| <b>"DCC Services"</b>         | means any services to be provided by the DCC to the DCC Service Users;  |

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| <b>"DCC Service Providers"</b>        | any third party with whom the DCC enters into an agreement for the provision of good and/or services (including any replacements for or successors of such persons from time to time);  |
| <b>"DCC Service User"</b>             | means:<br><br>(a) any person who receives or is to receive any services from the DCC (except for natural persons acting in the capacity of a consumer);<br><br>(b) each person who is a SEC Party; and<br><br>(c) where applicable, the DCC;  |
| <b>"DCC Software"</b>                 | means software which is owned or licensed by the DCC;   |
| <b>"Disposal"</b>                     | has the meaning given in licence condition 28.11 of the DCC Licence;  |
| <b>"Energy Consumer Data Subject"</b> | means a Data Subject who is a member of the public, including individuals who are the end-user customer of an energy supplier in England, Scotland or Wales.<br><br>For the avoidance of doubt, an individual who might qualify for another category of Data Subject under this Framework Agreement or a Call-Off Contract, shall qualify for this definition where they are acting as a member of the public or the end-user customer of an energy supplier in England, Scotland or Wales; |
| <b>"Energy Industry Data Subject"</b> | means a Data Subject who works for an energy company licensed under the Electricity Act 1989 and the Gas Act 1986, and/or any of their group companies, affiliates or sub-contractors, whether by way of employment or otherwise;   |

**“Energy Supply Information”**

means, in connection with an Energy Consumer Data Subject, any Personal Data relating to their use of gas, electricity and/or smart meters and communications hubs. This may include (but is not limited to):

- (a) Personal Data relating to energy consumption and supply; and/or
- (b) Personal Data included in, or otherwise Processed as a result of, electronic communications sent and received by the DCC or its service providers via the smart metering network(s) and systems; and/or
- (c) Any Personal Data comprising or derived from energy industry registration databases, any Personal Data comprising or linked to meter point administration number or meter point reference number.

Basic Information relating to an Energy Consumer Data Subject shall be treated as Energy Supply Information;

**“Deliverables”**

means any outputs or deliverables specified in or produced in connection with a Call-Off Contract, including (but not limited to) Data and Materials;

**"Force Majeure"**

means an event which falls within one or more of the following categories:

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



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| <b>“GDPR”</b>                     | means EU Regulation 2016/679 of the European Parliament and of the European Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;  |
| <b>“Good Industry Practice”</b>   | means the degree of skill and care, diligence, professionalism, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in providing goods or services similar to the Services, including any applicable standards, practices, methods and procedures conforming to Applicable Laws and the requirements of any Regulatory Body which is responsible for regulating the Party in question;  |
| <b>“Group”</b>                    | 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);  |
| <b>“Inducement”</b>               | means:<br><br>(a) any advantage, benefit, consideration, gift or payment of any kind, which is (or is agreed to be) accepted, agreed, authorised, given, offered, promised or requested, 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 business, employment, official, public or business role, duties or functions;<br><br>(b) anything that would amount to an offence of bribery or corruption under law; or<br><br>(c) any facilitation payment; |
| <b>“Industry Information”</b>     | means, in relation to a Data Subject (other than an Energy Consumer Data Subject), any Personal Data which DCC is required to Process in order to fulfil its DCC Licence and Smart Energy Code obligations and purposes in connection with smart metering, other than Basic Information;   |
| <b>“Information Commissioner”</b> | Means the UK regulator for the Data Protection Laws;   |

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| <b>"IPR"</b>   | means all intellectual and industrial property rights, including copyright, database rights, registered and unregistered design rights, know-how, models, patents, topography rights, registered and unregistered trademarks, rights in confidential information and any rights in any discovery, invention or process, and applications for and rights to apply for each of these in any country;   |
| <b>"Materials"</b>   | means any document, design, methodology or process, documentation, data or other material in whatever form, including any reports, business rules or requirements, testing documents and records, user manuals, user guides, operations manuals, training materials and instructions;  |
| <b>"Milestone(s)"</b>                                      | means an event or task described in a Call-Off Contract as a milestone and, which, if applicable, must be completed by the relevant date as detailed in a Call-Off Contract;   |
| <b>"Personal Data"</b>                                     | has the meaning given to it in Data Protection Laws;   |
| <b>"Process", "Processes", "Processed" or "Processing"</b> | have the meaning given to them in the Data Protection Laws;  |
| <b>"Relevant Business Asset"</b>                           | means any tangible or intangible asset used by the Contractor in connection with, and which is essential to the delivery of the Contractor Solution, including the Services;   |
| <b>"Regulatory Body"</b>                                   | <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> <ul style="list-style-type: none"><li>a) any matters dealt with in this Framework Agreement or a Call-Off Contract; or</li><li>b) the DCC or any of its business, activities or affairs, including Ofcom and Ofgem,</li></ul> <p>and <b>"Regulatory Bodies"</b> shall be construed accordingly;</p> |
| <b>"Replacement Contractor"</b>                            | means any third party (including any third party appointed by the DCC from time to time) providing or which shall provide replacement services;  |

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| <b>“Relevant Contractor Data”</b> | means Data in the possession, custody or control of a Contractor Person which is materially relevant to the Services or the contents of this Framework Agreement or a Call-Off Contract and which is not DCC Data;                |
| <b>“RFP”</b>                      | means a request for proposal issued pursuant to the Call-Off Award Procedure, in the format specified by DCC from time-to-time;   |
| <b>“RFP Response”</b>             | means the Contractor’s response to an RFP, to be provided in accordance with the Call-Off Award Procedure and the requirements of an RFP;   |
| <b>“RFQ”</b>                      | means a request for quotation issued pursuant to the Call-Off Award Procedure, in the format specified by DCC from time-to-time;  |
| <b>“RFQ Response”</b>             | means the Contractor’s response to an RFQ, to be provided in accordance with the Call-Off Award Procedure and the requirements of an RFQ;   |
| <b>“Special Term”</b>             | means a term in a Call-Off Contract which is stated to be a special term;   |
| <b>"SEC"</b>                      | means the Smart Energy Code;  |
| <b>"SECCo"</b>                    | has the meaning given in the SEC;   |
| <b>"SEC Panel"</b>                | has the meaning given in the DCC Licence;   |
| <b>"SEC Party"</b>                | has the meaning given in the DCC Licence and <b>"SEC Parties"</b> shall be construed accordingly;   |
| <b>"SEC Secretariat"</b>          | has the meaning given in the SEC;   |
| <b>"Security Controls"</b>        | means those obligations of the Contractor set out in clause 17 (Security);  |
| <b>"Security Management Plan"</b> | means any security management plan which the Contractor must develop and maintain pursuant to Schedule 3 (Security Management Plan);  |
| <b>"Site(s)"</b>                  | means <ul style="list-style-type: none"> <li>(a) any place or location at which the Services are being managed, organised and/or performed; and/or</li> <li>(b) at which any part of the Contractor System is located;</li> </ul> |

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| <b>"Services"</b>                          | means any and all of the services to be provided by the Contractor under or in connection with this Framework Agreement and/or a Call-Off Contract., which may be one or more of the services listed in Schedule 1 (Service Descriptions) and any ancillary services thereto;           |
| <b>"Service Levels"</b>                    | means a service level specified in a Call-Off Contract;   |
| <b>"Smart Metering Program"</b>            | means the end to end smart metering system and all components and services included in the end-to-end smart metering system;  |
| <b>"System"</b>                            | means computing, information systems and information and communications technology environments (including hardware, assets, software (including firmware) and/or telecommunications network or equipment). <b>'Systems'</b> shall be construed accordingly;                            |
| <b>"Sub-Processor" or "Sub-Processors"</b> | Means any person who Processes Personal Data on behalf of a Data Processor;   |
| <b>"Successor Licensee"</b>                | means the person that is to succeed (or has succeeded) the DCC as holder of a licence to carry on the Authorised Activity within Great Britain (and, if the context so permits, may include any person who has applied, or is considering whether to apply, to be that licence holder); |
| <b>"Term"</b>                              | means the duration of the Framework Agreement as set out in clause 2 (Duration);  |
| <b>"Working Day"</b>                       | means any day other than Saturday, Sunday and bank holidays in England.   |

1.2 In this Framework Agreement and in each Call-Off Contract:

- 1.2.1 Clauses marked '\*\*\*' are mandatory requirements flowed-down from the DCC Licence.
- 1.2.2 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;
- 1.2.3 any reference to a day (including within the phrase Working Day) shall mean a period of 24 hours running from midnight to midnight;
- 1.2.4 references to times are to GMT;
- 1.2.5 a reference to any other document referred to in this Framework Agreement or a Call-Off Contract is a reference to that other document as amended, varied, novated or supplemented;
- 1.2.6 headings and titles are for convenience only and do not affect the interpretation of this Framework Agreement or a Call-Off Contract;

- 1.2.7 references to amounts of money are to Great British Pounds sterling unless expressly stated otherwise; and
- 1.2.8 the schedules form part of this Framework Agreement and/or any Call-Off Contract and shall have the same force and effect as if expressly set out in the body of this Framework Agreement or a Call-Off Contract and any reference to this agreement shall include the schedules. Schedule numbers may not run sequentially as they follow an internal DCC numbering system.

## **2. Duration**

- 2.1 This Framework Agreement shall commence on the Effective Date and shall continue for a period of four (4) years unless extended by the provisions of clause 2.2 below, or terminated earlier in accordance with the provisions of this Framework Agreement or at law.
- 2.2 DCC may extend the Term of this Framework Agreement for a further period of twelve (12) months 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 three (3) months before the expiry of the Term.

## **3. Structure**

- 3.1 DCC appoints the Contractor as a potential provider of the Services and the Contractor shall be eligible to be considered by DCC for the award of a Call-Off Contract for the provision of Services, in accordance with the Call-Off Award Procedure.
- 3.2 Each Call-Off Contract constitutes a separate contract between the Parties thereto and shall be deemed to incorporate the terms and conditions of this Framework Agreement. Any reference in this Framework Agreement to a Call-Off Contract shall be deemed to include a reference to the terms of this Framework Agreement.
- 3.3 Unless otherwise agreed, a Call-Off Contract shall commence upon the date that it is fully executed and shall expire either on a specified date or on the occurrence of a specified event, as set out in the Call-Off Contract.
- 3.4 A Call-Off Contract may survive the termination of the Framework Agreement in which case the terms of the Framework Agreement shall continue to apply to that Call-Off Contract for the balance of its term.
- 3.5 If there is any conflict between (i) any of the terms of this Framework Agreement; and (ii) any additional terms set out in a Call-Off Contract, the terms of this Framework Agreement will prevail unless the parties have expressly agreed in the relevant Call-Off Contract that the relevant terms of this Agreement will not apply. Without prejudice to the foregoing, where a Special Term conflicts with a term in this Framework Agreement, that Special Term shall be deemed to prevail.

## **4. Call-Off Award Procedure**

- 4.1 DCC may, from time to time and in its absolute discretion invite the Contractor to participate in the procedure set out in this clause 4 (Call-Off Award Procedure).
- 4.2 DCC may invite the Contractor via:
  - 4.2.1 An RFP, which will typically be a competitive procurement process with other bidders, for procurements which are either complex or above £100,000 (one hundred thousand pounds) in value;
  - 4.2.2 An RFQ, which will typically be a competitive procurement process with other bidders, for procurements which are simple or less than £100,000 (one hundred thousand pounds) in value; or

- 4.2.3 A “**direct award procedure**”, which will typically involve DCC (in its discretion) undertaking a single-source procurement.
- 4.3 Where so invited pursuant to clause 4.1, the Contractor shall provide an RFP Response, RFQ Response or a quotation in response to a direct award within the times and containing the information specified by DCC via the relevant process.
- 4.4 All prices quoted by the Contractor pursuant to this Call-Off Award Procedure shall be in accordance with the terms of this Framework Agreement.
- 4.5 DCC may request further information or particulars from the Contractor at any time during the Call-Off Award Procedure and the Contractor shall respond within such time as is stipulated by DCC in the request.
- 4.6 The Contractor acknowledges and agrees that:
- 4.6.1 Participation in the Call-Off Award Procedure, including a direct award procedure, does not guarantee the Contractor will be awarded a Call-Off Contract;
- 4.6.2 The description of the nature of each procedure in clause 4.2 are indicative only and DCC may, in its discretion, alter the requirements for each procedure;
- 4.6.3 DCC reserves the right to cancel a Call-Off Award Procedure and/or replace one Call-Off Award Procedure with another procedure at any time and without any guarantee of further participation by the Contractor;
- 4.6.4 The Contractor shall bear its own cost and risk regarding participation in the Call-Off Procedure and the Contractor waives any claim to compensation from DCC in respect of such participation, except where DCC conducts a Call-Off Procedure in a dishonest, fraudulent or capricious manner;
- 4.6.5 DCC is under no obligation whatsoever to purchase any Services from the Contractor during the Term;
- 4.6.6 No form of exclusivity or volume guarantee has been offered or granted by DCC, under (or prior to) this Framework Agreement; and
- 4.6.7 DCC is at all times entitled to enter into other contracts and agreements with other suppliers for the provision of services that are the same or similar to the Services which may be provided pursuant to this Framework Agreement or a Call-Off Contract, pursuant to the Call-Off Award Procedure or otherwise.
- 4.7 The Contractor shall not accept instructions from DCC, commence Services for, or supply goods to DCC without a fully executed Call-Off Contract and DCC purchase order having been issued.
- 4.8 Where the Contractor breaches clause 4.7:
- 4.8.1 it shall not be entitled to payment for any Services performed or goods delivered prior to the steps set out in clause 4.7 having been completed;
- 4.8.2 notwithstanding any other provision of this Agreement, DCC shall have no liability in respect of the Contractor’s purported performance of Services (or otherwise) in breach of clause 4.7; and
- 4.8.3 DCC may decide to cancel the award of a Call-Off Contract upon a breach of clause 4.7.

4.9 The Contractor hereby waives any and all claims in respect of the matters set out in clauses 4.7 and 4.8. No waiver of this clause, or clauses 4.7 and 4.8, by DCC shall be valid unless provided in writing by DCC's Finance Director (from time to time).

## 5. Services

5.1 The Contractor represents, warrants and undertakes to DCC that under a Call-Off Contract (and for the duration of that Call-Off Contract):

5.1.1 \*\*the Services shall in all respects and at all times comply and be performed in accordance with the terms of a Call-Off Contract;

5.1.2 \*\*the Services and any Deliverables will be delivered by the Contractor in a timely, diligent and professional way, in accordance with Good Industry Practice and any applicable Service Levels;

5.1.3 \*\*the Services shall be performed by the Contractor 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;

5.1.4 the Services shall comply with any necessary standards and regulations applicable in connection the terms of a Call-Off Contract;

5.1.5 the Contractor will perform the Services in accordance with the reasonable instructions of the DCC;

5.1.6 \*\*the Contractor shall co-operate with the DCC and, where specifically instructed by the DCC or referred to in a Call-Off Contract, any applicable DCC Connected Person(s);

5.1.7 \*\*where necessary or desirable in order for the DCC to receive the benefit of the Services, provide necessary co-operation with relevant DCC Service Providers; and

5.1.8 \*\*The Contractor shall comply with the business continuity and disaster recovery measures set out by the DCC from time to time.

5.2 \*\*Without limiting its other obligations under this Framework Agreement and a Call-Off Contract, 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.

5.3 \*\*The Contractor shall at all times manage and perform the Services in a way that ensures that:

5.3.1 it does not restrict, prevent, or distort competition nor prejudice the DCC's special position under the DCC Licence or the SEC;

5.3.2 unduly discriminate between any persons or any class or description of persons in connection with the provision of the Services; and

5.3.3 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 clause.

5.4 \*\*The Contractor acknowledges that the DCC has certain obligations under the DCC Licence and the SEC, as such and without limiting the Contractor's other obligations under this Framework Agreement or a Call-Off Contract, the Contractor shall:

- 5.4.1 promptly provide any co-operation, Data, Materials, information or other assistance reasonably requested by the DCC, or any other person or entity (including any DCC Licence successor), 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 as a mandatory provisions of the DCC's compliance with the DCC Licence and/or the SEC; and
- 5.4.2 ensure that appropriate representatives of the Contractor, including any representatives specifically identified by the DCC, attend any meetings as requested by the DCC and always with the DCC 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.

## 6. **Goods**

- 6.1 Any goods delivered by the Contractor under a Call-Off Contract shall:
  - 6.1.1 be fit for purpose and of satisfactory quality;
  - 6.1.2 meet the requirements and specifications set out in the Call-Off Contract;
  - 6.1.3 be delivered to the relevant Site(s) in accordance with delivery procedures applicable at such Site(s) and at the times specified in the Call-Off Contract (or as otherwise approved by DCC in advance);
  - 6.1.4 be inspected and tested by the Contractor to ensure that they are capable of complying with the provisions of the Services once properly installed (including, where relevant, any inspection or testing requirements set out in a Call-Off Contract and/or this Framework Agreement);
  - 6.1.5 be provided with any legal or regulatory certification required to use the goods for the purposes made known by DCC;
  - 6.1.6 be free from any third-party rights or interests (including liens, charges and options);
  - 6.1.7 be free from defects in design, material and workmanship and remain so for 12 (twelve) months after delivery; and
  - 6.1.8 meet the manufacturer's specifications and documentation.
- 6.2 The Contractor shall deliver any goods in accordance with the timescales and delivery instructions of the DCC always at the sole cost of the Contractor, unless otherwise advised by the DCC.
- 6.3 Title and risk in any goods shall pass to DCC on delivery, except where such goods have already been paid in full in which event title shall pass to DCC upon payment and risk shall pass to DCC upon delivery.
- 6.4 The Contractor shall procure that DCC obtains the benefit of any manufacturer's or third-party warranty associated with the goods. The Contractor shall bear all product liability risk associated with any goods.

## 7. **Service Performance and Delivery Failure**

- 7.1 Where the Contractor fails:



- 7.1.1 to perform the Services in accordance with the timescales of a Call-Off Contract then, without prejudice to any other rights or remedies available to the DCC, the Contractor shall (at its cost) notify DCC and promptly perform the Services fully and so as to minimise the impact of such failure on DCC, any relevant DCC Service Providers and/or DCC Service Users; and/or
- 7.1.2 to perform the Services in accordance with the terms of a Call-Off Contract the Contractor shall (at its cost) notify DCC and correct or re-perform the Services to the satisfaction of, and in accordance with the instruction of the DCC, and use all reasonable endeavours to minimise the impact of such failure on DCC, any relevant DCC Service Providers and/or DCC Service Users.
- 7.2 In complying with its obligations under clause 7.1 the Contractor shall investigate the causes of such service failures, take actions that are reasonably necessary to minimise the impact of that failure and prevent it from re-occurring and report to DCC upon request in respect of its compliance with and findings under this clause.
- 7.3 Until such time as a failure in the performance of the Services is remedied to DCC's reasonable satisfaction, DCC may suspend payment of any Charges due relating to the affected Services.
- 7.4 Where the Contractor cannot remedy a failure in the performance of the Services, or fails to so remedy within such time as DCC may stipulate in writing (acting reasonably), DCC may elect (in its absolute discretion) to:
- 7.4.1 Continue to receive the Services but with the Charges reduced by reference to the value of that portion of the Services (including Deliverables) which the Contractor has failed to deliver; or
- 7.4.2 permanently reject the Services (or relevant parts thereof).
- 7.5 Where Services (or relevant parts thereof) are permanently rejected in accordance with this clause 7:
- 7.5.1 DCC shall not be liable to pay any part of the Charges in respect of those rejected Services (or relevant parts thereof) and the Contractor shall promptly reimburse DCC if any part of the Charges in respect of those rejected Services (or relevant parts thereof) have already been paid; and
- 7.5.2 In respect of any goods, the Contractor shall promptly (at its own cost and at a time agreed with DCC) remove it and make good any damage.

The remedies referred to in this Clause 7 are without prejudice to any other remedy which DCC may have in a Call-Off Contract, this Framework Agreement or in law.

## 8. Testing & Acceptance

- 8.1 Where testing is required under a Call-Off Contract, the provisions of this clause 8 shall apply to such testing unless otherwise specified.
- 8.2 The Contractor shall perform inspections, acceptance and quality tests before the delivery of any relevant parts of the Services under a Call-Off Contract, before delivery of the same to DCC (the "**Acceptance Tests**"). DCC shall be entitled to nominate DCC personnel to attend such testing. The Contractor shall provide its testing results to DCC, in the form requested by DCC at such time.
- 8.3 The Contractor shall provide all such assistance, cooperation and support to DCC as requested to facilitate the Acceptance Tests and in doing so shall comply with DCC's project management, quality and testing methodologies to the extent reasonably required.

- 8.4 DCC shall give written notice to the Contractor once the Services pass their Acceptance Tests to the DCC's reasonable satisfaction. Regardless of any other communication from the DCC, acceptance may only be given by written notice to the Contractor.
- 8.5 If the Services (or any part thereof) fail their Acceptance Tests then at the DCC's option:
- 8.5.1 The Contractor shall promptly analyse and report to DCC on the root cause of such failure and then modify the Services (or relevant parts thereof) to the extent the DCC reasonably determines is necessary for it to pass repeated Acceptance Tests;
- 8.5.2 DCC may provide acceptance of the Services (or relevant parts thereof) subject to conditions, which may include the condition that the Contractor remedies certain defects by a certain date; or
- 8.5.3 DCC may provide acceptance of the Services (or relevant parts thereof) subject to a reduction in the Charges (as determined by DCC acting reasonably) to reflect the reduced value of those Services (or relevant parts thereof) or the estimated cost of DCC remedying those Services (or relevant parts thereof) itself or using a third party to do so.
- 8.6 Where repeated Acceptance Tests are performed in accordance with clause 8.5.1:
- 8.6.1 The Contractor shall bear its own costs and reimburse (upon request) DCC for its reasonable costs incurred in performing such repeated Acceptance Tests;
- 8.6.2 Where DCC has still not provided acceptance within 10 (ten) Working Days of those Services (or relevant parts thereof) initially failing their Acceptance Tests, DCC may exercise its other options in accordance with this clause 8.5; and
- 8.6.3 Where DCC has still not provided acceptance within 20 (twenty) Working Days of those Services (or relevant parts thereof) initially failing their Acceptance Tests, DCC may permanently reject the Services (or relevant parts thereof).
- 8.7 Where Services (or relevant parts thereof) are permanently rejected in accordance with this clause 8:
- 8.7.1 DCC shall not be liable to pay any part of the Charges in respect of those rejected Services (or relevant parts thereof) and the Contractor shall promptly reimburse DCC if any part of the Charges in respect of those rejected Services (or relevant parts thereof) have already been paid; and
- 8.7.2 In respect of any goods, the Contractor shall promptly (at its own cost and at a time agreed with DCC) remove it and make good any damage.
- 8.8 Acceptance shall be without prejudice to the DCC's remedies and rights in connection with this Framework Agreement or a Call-off Contract, or the Contractor's obligation to remedy defects. DCC may subsequently reject Services (or relevant parts thereof) which have been provided with acceptance where it is a component part of a wider solution provided by the Contractor or is related to other Services (or relevant parts thereof) and that wider solution or those related Services (or relevant parts thereof) do not pass their Acceptance Tests.

## **9. Service Levels**

- 9.1 Where a Call-Off Contract includes Service Levels the provisions of this clause 9 shall apply to those Service Levels.
- 9.2 The Contractor must perform the Services and deliver the Deliverables so as to meet or exceed the Service Levels.

- 9.3 The Contractor will provide DCC with sufficient information in order that DCC may validate Contractor's performance against the Service Levels. Unless otherwise stated in a Call-Off Contract, such information will be provided within five (5) Working Days of the end of the calendar month in which the relevant Services took place.
- 9.4 If the Contractor fails to provide any of the Services or deliver the Deliverables in accordance with the Service Levels ("**Service Level Failure**"), it must promptly notify DCC in writing.
- 9.5 As soon as practicable after notification under clause 9.4, Contractor must (at its own cost):
- 9.5.1 perform a root-cause analysis to identify the cause of the Service Level Failure;
  - 9.5.2 allocate such resources as may be necessary to remedy the Service Level Failure and any consequences;
  - 9.5.3 promptly correct the Service Level Failure and resume the Services and deliver the Deliverables; and
  - 9.5.4 provide DCC with a written report detailing the cause of, and procedure for correcting, the Service Level Failure and any consequences.
- 9.6 If, in any month, a Service Level Failure occurs and the relevant Call-Off Contract provides for Service Credits to accrue in respect of such failure, the Contractor must deduct those Service Credits from its next invoice (or, where no further invoices are due, Contractor must pay an amount equal to such Service Credits within 30 days after a written demand for payment from DCC). The Parties agree that the payment of Service Credits is without prejudice to any other remedy available to DCC whether under this Framework Agreement, a Call-Off Contract, or otherwise.

## 10. Warranties and Representations

- 10.1 The Contractor warrants, represents and undertakes to DCC that as at the Effective Date and for the duration of the Term of this Framework Agreement (and each Call-Off Agreement):
- 10.1.1. it has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Framework Agreement;
  - 10.1.2. all information given by the Contractor to DCC in connection with this Framework Agreement shall be accurate and comprehensive;
  - 10.1.3. \*\*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;
  - 10.1.4. \*\*it will comply with all DCC policies and procedures as well as any DCC and health and safety requirements at Site; and
  - 10.1.5. \*\*the Contractor shall not (nor attempt to) damage the goodwill, name or reputation of the DCC or any member of its Group.

## 11. Charges

- 11.1 The Charges are specified in Schedule 4 (Charges & Payment).
- 11.2 The Charges:
- 11.2.1. Are exclusive of VAT unless otherwise stated;
  - 11.2.2. represent the maximum rates which the Contractor is permitted to quote in an RFP Response and charge in any Call-Off Contract that may be awarded;

11.2.3. shall not be amended during the Term except as provided for in clause 11.3.

- 11.3 The Charges shall be fixed for a period of two (2) years commencing on the Effective Date, and reviewable annually thereafter in the Contractor's discretion, up to the lower of the percentage increase or decrease in the Consumer Prices Index (CPI) or Retail Prices Index (RPI) during the previous six months. The Contractor shall provide not less than two months' written notice of such increase. DCC shall be entitled to object to any such increase where the Contractor fails to apply the increase in accordance with this clause, whereupon the matter shall be dealt with via the dispute resolution procedure.
- 11.4 Except in the case of a reasonable dispute 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.
- 11.5 The Contractor shall neither be relieved of its obligations under this Framework Agreement or a Call-Off Contract, nor be entitled to an increase in Charges as a result of a Change in Law. If a Change in Law occurs, the Contractor is obliged to take all reasonable steps to mitigate the adverse impact of such Change in Law upon the performance of its obligations under this Framework Agreement and any relevant Call-Off Contract. If the Contractor is prevented from performing its obligations under this Framework Agreement for any reason other than cost, the Parties shall mutually agree a change in accordance with clause 13 of this Framework Agreement.

## **12. Personnel and Subcontractors**

- 12.1 The Contractor shall be responsible for providing at its own cost and expense all personnel necessary to perform the Services.
- 12.2 The Contractor accepts that DCC may refuse to admit to any premises occupied by or on behalf of DCC any person employed or engaged by the Contractor, or by any other person whose admission would be, in the reasonable opinion of DCC, undesirable. The Contractor will not be responsible for any delays in scheduling or performance of the Services caused by such refusal.
- 12.3 If requested by 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 a Call-Off Contract to any premises occupied by or on behalf of DCC specifying the capacities in which they are concerned with a Call-Off Contract and giving such other particulars as DCC may reasonably require, subject to the Contractor's confidentiality and privacy provisions.
- 12.4 The Contractor shall not engage any agents or sub-contractors to provide the Services or any part of the Services without DCC's prior written consent (such consent not to be unreasonably withheld or delayed). 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.

## **13. Change Control**

- 13.1 This Framework Agreement and any Call-Off Contract agreed under it shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of DCC and by a duly authorised representative of the Contractor.
- 13.2 If a change pursuant to clause 13.1 may result in a change to the Charges under a Call-Off Contract, then any relevant quotation and/or agreed revision to the Charges pursuant to clause 13.1 shall be calculated on a consistent basis with that Call-Off Contract.

## **14. Force Majeure**

- 14.1 Neither Party shall be responsible for a failure to carry out any of its duties under this Framework Agreement or a Call-Off Contract 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.
- 14.2 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.
- 14.3 If a Force Majeure which results in the non-delivery of the Services (or a substantial part thereof) continues for more than thirty (30) consecutive calendar days, the unaffected Party may terminate an affected Call-Off Contract 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.
- 15. \*\*IPR**
- 15.1 Save as set out in this clause 15, the DCC, a DCC Service Provider or a DCC Connected Person shall not acquire any right, title or interest in or to the Contractor's Background IPR.
- 15.2 In consideration for the payment of the Charges the Contractor will grant DCC a non-exclusive, transferable, perpetual licence to use the Contractor's Background IPR Where necessary, in connection with the delivery of Services under a Call-Off Contract.
- 15.3 \*\*The DCC may sub-license all or any of its rights under clause 15.2 to:
- 15.3.1. 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 the DCC Licence, the SEC or any Applicable Law; and
  - (b) 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
- 15.3.2. any other third party to the extent necessary for such person to provide any goods or services to the DCC.
- 15.4 The Contractor hereby assigns to DCC all current and future title to and interest in all Bespoke IPR developed under or pursuant to a Call-Off Contract or this Framework Agreement and in respect of which ownership has not automatically vested or already transferred to 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 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 DCC.
- 15.5 The Contractor will supply all Deliverables created during the provision of the Services to DCC. Such delivery shall be in accordance with the terms of a Call-Off Contract or as otherwise directed by DCC in writing from time to time.
- 15.6 The Contractor shall keep DCC and each member of its Group indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by DCC and/or any member of its Group company as a result of or in connection with any claim brought against DCC, any member of its Group company for actual or alleged infringement of a third party's IPR arising out of, or in connection with, the receipt, use or onward supply of the Services by DCC and its licensees and sub-licensees.
- 15.7 If the Services (or any part of them), are held to constitute an infringement under clause 15.6, the Contractor shall at its own expense and discretion:

- 15.7.1. procure for DCC, with DCC's agreement, the right to continue using the Services; or
  - 15.7.2. modify the Services so that the Services are non-infringing without materially detracting from their overall performance; or
  - 15.7.3. replace the infringing Services with other non-infringing items or services having a capability materially equivalent to the infringing Services.
- 15.8 Where necessary, DCC shall grant the Contractor a non-exclusive, non-transferable licence for the Term to use DCC's Background IPR and DCC Data solely to the extent necessary (i) for the provision of the Services under a Call-Off Contract; or (ii) to enable the Contractor to participate in a Call-Off Award Procedure.
- 16. \*\*Data**
- 16.1 The Contractor shall not at any time be entitled:
- 16.1.1. to copy, disclose or use any DCC Data except in compliance with all the Contractor's obligations under a Call-Off Contract or this Framework Agreement and to the extent strictly required to comply with its obligations under a Call-Off Contract or this Framework Agreement; and
  - 16.1.2. to store (or retain) any DCC Data except in compliance with the Contractor's obligations under a Call-Off Contract or 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 a Call-Off Contract or this Agreement that require the Contractor to retain such data.
- 16.2 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.
- 16.3 The Contractor shall comply with clause 16.1 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 a Call-Off Contract or this Agreement or as otherwise expressly authorised in writing by the DCC.
- 16.4 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.
- 16.5 The Contractor shall, at all times during the Term, preserve the integrity of all DCC Data and Relevant Contractor Data in the possession or control of any Contractor Person (including preventing the loss, corruption or degradation of such DCC Data and Relevant Contractor Data).
- 16.6 Where a Call-Off Contract requires the Contractor or a Contractor Person to hold Data for any material period of time, the Contractor shall perform (or procure) secure back-ups of all DCC Data and Relevant Contractor Data in accordance with Good Industry Practice and any additional requirements of any Call-Off Contract. In performing its obligations under this clause, the Contractor shall address the need for encryption and testing of back-up, and resilience in the event of back-up failure.
- 16.7 If any DCC Data or Relevant Contractor Data is corrupted, lost or degraded in breach of (or as a result of any breach of) the Contractor's obligations in connection with a Call-Off Contract or this Framework Agreement, the DCC may (without prejudice to any other right or remedy):
- 16.7.1. require the Contractor (at the Contractor's expense) to restore, or procure the restoration of the Data listed in clause 16.6 as soon as practicable; or

- 16.7.2. itself restore or procure the restoration of the Data listed in clause 16.6 and recover the reasonable costs of doing so from the Contractor.
- 16.8 The Contractor shall ensure that any DCC Data in the possession or under the control of any Contractor Person is not processed, exported or transferred to any place outside the European Economic Area at any time.
- 16.9 The Contractor shall:
- 16.9.1. have documented processes to guarantee availability of DCC Data in the event of the Contractor ceasing to trade;
  - 16.9.2. shall develop and maintain, and hold all DCC Data in accordance with DCC data retention policies or any other relevant instruction provided by DCC;
  - 16.9.3. securely destroy all media that has held DCC Data at the end of life of that media in line with Good Industry Practice; and
  - 16.9.4. securely erase any or all DCC Data when requested to do so by DCC.
- 16.10 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 a Call-Off Contract or this Agreement (whereupon such DCC Data shall be irrevocably deleted by the Contractor).

## **17. Security Requirements**

- 17.1 The Contractor shall be responsible for ensuring that the Services, Deliverables and Data are managed, processed and delivered by the Contractor in a secure and confidential manner in accordance with Good Industry Practice.
- 17.2 Without prejudice to paragraph 17.1, the Contractor shall be responsible for the security of:
- 17.2.1. the Contractor Personnel and Sites;
  - 17.2.2. the Contractor System; and
  - 17.2.3. all Sub-contractors (including their systems, solutions and services) in respect of their involvement in the provision of the Services.
- 17.3 The Contractor shall provide a reasonable level of access to any member of their Personnel for the purpose of designing, implementing and managing security in connection with a Call-Off Contract.
- 17.4 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 or Relevant Contractor Data and any system that could directly or indirectly have an impact on that information, and shall ensure that DCC Data and Relevant Contractor Data remains under the effective control of the Contractor at all times.
- 17.5 Where specified in a Call-Off Contract, the Contractor shall prepare a Security Management Plan in accordance with Schedule 3 (Security Management Plan).

### **Security Compliance**

- 17.6 DCC shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the Contractor maintains compliance with its security obligations under a Call-Off Contract or this Framework Agreement.
- 17.7 If, on the basis of evidence provided by such audits, it is DCC's reasonable opinion that compliance with the Contractor's obligations 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.

### **Security Controls**

- 17.8 The Contractor shall:
- 17.8.1. provide DCC with all DCC Data on demand in an agreed open format;
  - 17.8.2. have documented processes to guarantee availability of DCC Data in the event of the Contractor ceasing to trade;
  - 17.8.3. 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.
  - 17.8.4. securely destroy all media that has held DCC Data at the end of life of that media in line with Good Industry Practice; and
  - 17.8.5. securely erase any or all DCC Data when requested to do so by DCC.
- 17.9 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).
- 17.10 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.
- 17.11 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.
- 17.12 The Contractor shall agree any change in location of data storage, processing and administration with DCC in advance where the proposed location is outside the UK.
- 17.13 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.
- 17.14 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.
- 17.15 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.
- 17.16 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.
- 17.17 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.



- 17.18 The Contractor shall notify DCC in accordance with the agreed security incident management process as defined or referenced in the Security Management Plan upon becoming aware of any, suspected Breach of Security or attempted Breach of Security.
- 17.19 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:
- 17.19.1. 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; and
- 17.19.2. 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.
- 17.20 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 (if applicable) the 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
- 18. Confidentiality and Publicity**
- 18.1 This clause 18 applies to Confidential Information disclosed by one Party (“**the Disclosing Party**”) to the other (“**the Receiving Party**”) under or in connection with this Framework Agreement and each Call-Off Contract.
- 18.2 The Receiving Party shall only use the Confidential Information solely for the purposes of performing its obligations in accordance with the terms of this Framework Agreement and the relevant Call-off Contract.
- 18.3 The Receiving Party will exercise in relation to the Disclosing Party’s Confidential Information a reasonable and appropriate degree of care and protection.
- 18.4 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 Framework Agreement and the relevant Call-Off Contract. 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 Framework Agreement and the relevant Call-Off Contract.
- 18.5 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 Framework Agreement and the relevant Call-Off Contract, save that the Receiving Party may retain a copy for legal, regulatory or compliance purposes. Any Confidential Information retained by a Receiving Party must be held in accordance with the confidentiality obligations in this Agreement
- 18.6 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.
- 18.7 The provisions of this clause 18 are of indefinite duration but shall not apply to any Confidential Information:

- 18.7.1. to the extent that it is or comes into the public domain otherwise than as a result of a breach of this Framework Agreement or the relevant Call-Off Contract by the Receiving Party;
  - 18.7.2. 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
  - 18.7.3. has been independently developed by the Receiving Party without use of the Confidential Information; or
  - 18.7.4. which is required to be disclosed by law.
- 18.8 No publicity or advertising shall be released by the Contractor in connection with the subject matter of this Framework Agreement or the relevant Call-Off Contract without the prior written approval of DCC, which shall not unreasonably be withheld or delayed.
- 18.9 **\*\*Notwithstanding anything else to the contrary in this Framework Agreement or a Call-Off Contract, if the DCC receives a request for information from a Regulatory Body or the Secretary of State (as applicable) under condition 29 of the DCC Licence (each, an "Information Request"), the Contractor acknowledges that the DCC may be obliged to disclose Contractor's Confidential Information under the requirements of the relevant Information Request provided that if and to the extent that it is practicable and lawful for it to do so, DCC shall give prompt notice to the Contractor prior to the required disclosure and shall cooperate with the Contractor regarding the form, nature, content and purpose of such disclosure or any action which Contractor may reasonably take to challenge the validity or extent of such disclosure obligation. The DCC shall be responsible for determining in its absolute discretion whether any Contractor's Confidential Information is required to be disclosed to a Regulatory Body and/or the Secretary of State in accordance with the relevant Information Request. The Contractor shall cooperate with each and every Information Request.**
- 18.10 The terms of this clause 18 shall supersede and replace any non-disclosure agreement entered into between the parties prior to the date of this Framework Agreement.

## 19. Indemnities

- 19.1 DCC may recover from the Contractor on an indemnity basis any losses, costs or expenses incurred by DCC to the extent that such losses, costs or expenses are arising from, relating to or in connection with;
- 19.1.1. any act of gross misconduct, wilful act and/or any omission of the Contractor; or
  - 19.1.2. any breach of the Data Protection Laws by the Contractor,
- only in so far as, and to the extent that, any of the events referred to are caused by the Contractor.
- 19.2 Each Party shall indemnify the other against all claims, demands, actions, costs and expenses (including legal costs and disbursements) together with all costs, charges and expenses arising as a result thereof which such Party incurs directly as a result of any act, omission or default of the other Party, its employees, officers, agents or sub-contractors in respect of:
- 19.2.1. damage to real or personal property including loss or damage to DCC's property;
  - 19.2.2. injury to persons, including injury resulting in death,
- except in so far as, and to the extent that, the damage or injury is caused by any act, omission or default by such Party.

## 20. Limitations of Liability

- 20.1 Subject to clause 20.2 below, the aggregate liability of each Party to the other under or in connection with this Framework Agreement and all Call-Off Contracts, whether arising under contract or by way of indemnity, negligence or otherwise, in any 12-month period during the Term, shall be limited to the greater of (i) the total maximum Charges payable under all Call-Off Contracts and this Framework Agreement in that 12-month period; and (ii) £1,000,000 (one million pounds).
- 20.2 The limitation of liability set out in clause 20.1 above does not apply to:
- 20.2.1. either Party's liability arising from death or injury to persons; or
- 20.2.2. either Party's liability arising as a result of fraud; or
- 20.2.3. the Contractor's liability arising as a result of gross negligence, wilful acts and/or omissions; or
- 20.2.4. liability arising from breach of clauses 15 (IPR), 16 (Data), 18 (Confidentiality and Publicity), 28 (Data Protection) or 29 (Ethical Behaviour and Modern Slavery); and
- 20.2.5. liability arising from breach of Schedule 3 (Security Management Plan),
- to which no limit applies.
- 20.3 Except in the case of any indemnity provided to the DCC from the Contractor under clause 19, neither Party shall be liable to the other nor its Group for any indirect or consequential loss; and/or, loss of profit, business or anticipated business, revenue, use, contract, goodwill, or anticipated savings (regardless of whether any of these types of loss or damage are direct or indirect or consequential); in each case arising out of, or in connection with this Framework Agreement and each Call-Off Contract (whether the claim is brought for breach of contract, in negligence (of any degree or character) or any other tort, under statute or otherwise).
- 20.4 The Parties expressly agree that should any limitation or provision contained in this clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.
- 20.5 **\*\*In respect of all substantive (but not procedural) rights or remedies provided by common law or statute (including in tort or delict, but without prejudice to contractual rights or remedies) in respect of loss of or damage to physical property (including loss of or damage to Systems, and loss or corruption of Data) arising in relation to the subject matter of the SEC, the Contractor hereby waives and releases (to the fullest extent possible at law) such rights and remedies in respect of such loss or damage as the Contractor may otherwise have against the SEC Parties other than DCC in their capacity as such (and/or against the contractors, employees and agents of such Parties in their capacity as such). The SEC Parties may enforce the terms of this clause 20.5 subject to and in accordance with the provisions of this Framework Agreement and the Contracts (Rights of Third Parties) Act 1999.**

## **21. Insurance**

- 21.1 For the Term and seven (7) years thereafter, the Contractor shall maintain insurance against any liability arising or likely to arise in connection with this Framework Agreement and provide copies of these insurance policies promptly to DCC on request. Such insurance cover shall be provided by an insurer(s) of good reputation and financial standing and shall not include unreasonable excess. Such insurance shall include no less than:
- 21.1.1. Employer's liability insurance, of £10,000,000 (ten million pounds) per claim;
- 21.1.2. Product liability insurance of £10,000,000 (ten million pounds) per claim;
- 21.1.3. Professional indemnity insurance of £5,000,000 (five million pounds) per claim; and

21.1.4. Public liability insurance of £10,000,000 (ten million pounds) per claim.

21.2 Within fourteen (14) calendar days of a request by DCC, the Contractor shall provide evidence of the insurances which it is obliged to maintain under clause 21.1 (Insurance).

## **22. \*\*Dispute Resolution**

22.1 If a dispute arises in relation to any aspect of this Framework Agreement or a Call-Off Contract, the representatives of the Contractor and DCC responsible for the administration of this Framework 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, upon written notice by either Party, be escalated to the respective responsible company directors within each Party for resolution.

22.2 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 22.1 above, then:

22.2.1. 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

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

22.2.3. if no such agreement is reached between the Parties pursuant to clauses 22.2.1 to 22.2.2 above within a period of seven (7) days, both Parties shall be entitled to pursue the matter before the English courts.

22.3 During any dispute, the Contractor will ensure the Services are performed in accordance with this Framework Agreement and each Call-Off Contract until the dispute is resolved.

22.4 Nothing in this clause 22 prevents either party from issuing proceedings at any time when the only relief sought is injunctive or declaratory relief.

## **23. Suspension and Termination**

### **Contractor Suspension and Termination**

23.1 The Contractor may:

23.1.1. upon thirty (30) days' written notice suspend performance of an individual Call-Off Contract in the event that more than 30% of the aggregate Charges due and payable under that Call-Off Contract remain unpaid (after falling due) for more than 60 (sixty) days, provided that such Charges are not disputed by DCC. In the event of such suspension the Contractor shall resume performance immediately upon receipt of payment of all outstanding sums due.

23.1.2. upon thirty (30) days' written notice terminate a Call-Off Contract and/or this Framework Agreement (at Contractor's option) in the event that more than 30% of the aggregate Charges due and payable under that Call-Off Contract remain unpaid (after falling due) for more than 120 (one-hundred-and-twenty) days, provided that such Charges are not disputed by DCC. This sub-clause comprises the Contractor's only rights of termination at contract or in law.

23.2 In the event that the Framework Agreement is terminated pursuant to clause 23.1.2 (and without prejudice to any other breach of the Framework Agreement or a Call-Off Contract by either party), the Contractor's sole remedy in relation to such termination shall be the recovery (as a debt) of all sums due and payable by DCC. Any dispute as to the amount(s) owed to the Contractor pursuant to this clause shall be dealt with under clause 22 (Dispute Resolution).

### **Call-Off Contracts**

- 23.3 DCC may, in its absolute discretion, suspend or terminate a Call-Off Contract for convenience upon ten (10) Working Days notice.
- 23.4 DCC may, in its absolute discretion terminate a Call-Off Contract immediately upon written notice in the event that:
- 23.4.1. the DCC is entitled to permanently reject the Services in accordance with clauses 7 (Service Performance & Failure) and 8 (Testing & Acceptance); or
- 23.4.2. the Contractor is, in the reasonable opinion of DCC, in material breach of its obligations under this Framework Agreement and/or a Call-Off Contract and either (i) the Contractor has failed to remedy such breach within five (5) Working Days of a written notice from DCC (or such longer period as that notice may specify); or (ii) the breach is, in DCC's reasonably opinion, incapable of remedy.
- 23.5 In the event of the termination of a Call-Off Contract pursuant to clause 23.3, the Contractor shall be entitled to be paid all Charges due and payable up to the point of termination, subject to the Contractor taking reasonable steps to mitigate such Charges following receipt of the termination notice.
- 23.6 In the event of the termination of a Call-Off Contract pursuant to clause 23.4, DCC shall be entitled to recover from the Contractor (as a debt) all of its costs wasted in reliance upon the full-performance by the Contractor of the obligations set out in the Call-Off Contract, including (but not limited to), sums paid to the Contractor, third parties and DCC's internal expenditure. Any dispute as to the amount(s) owed to DCC pursuant to this clause shall be dealt with under clause 22 (Dispute Resolution).

#### **Framework Agreement**

- 23.7 DCC may terminate this Framework for convenience on giving not less than thirty (30) days' written notice to the Contractor at any time subsequent to the first anniversary of the Effective Date.
- 23.8 DCC may terminate this Framework Agreement immediately by written notice if the Contractor:
- 23.8.1. enters into liquidation or receivership;
- 23.8.2. suffers the appointment of an administrator, administrative receiver, manager or provisional liquidator (or similar officer to any of the foregoing in the relevant jurisdiction) over the whole of or a substantial part of the relevant Party's assets or undertakings.; or
- 23.8.3. is deemed unable to pay its debts (within the meaning given by section 123 of the Insolvency Act 1986).
- 23.9 DCC may, at its option, suspend all Services and Call-Off Contracts and/or terminate this Framework Agreement immediately upon written notice if:
- 23.9.1. if DCC has reasonable grounds to believe that the Contractor, its employees, permitted agents or permitted sub-contractors has committed an act of fraud or malpractice or that such suspension is otherwise necessary to prevent significant harm to DCC or any DCC Connected Person;
- 23.9.2. the Contractor or its personnel made any actual or attempted fraudulent act or omission or any false or incorrect pre-contract representation, including in its written responses to questions during the procurement and tendering processes;
- 23.9.3. the Contractor is in material breach of this Framework Agreement that cannot be remedied or has not been remedied to the satisfaction of the DCC within 10 (ten) Working Days of being given written notice by DCC requesting the same (or such longer remedy period as DCC may, in its discretion, define);

- 23.9.4. the Contractor undergoes a change of control (where “**control**” has the meaning given to it by section 1124 of the Corporation Tax Act 2010);
  - 23.9.5. breaches any provision of clause 29 (Ethical Behaviour and Modern Slavery);
  - 23.9.6. engages in any dealings which would or might result in the creation of a conflict of interest between the obligations of the Contractor and the business affairs of DCC;
  - 23.9.7. in accordance with clause 14.3 (Force Majeure); and/or
  - 23.9.8. fails to implement the business continuity and disaster recovery measures when required.
- 23.10 In the event of the termination of the Framework Agreement pursuant to clause 23.7 the Contractor shall be entitled to be paid all Charges due and payable up to the point of termination, subject to the Contractor taking reasonable steps to mitigate such Charges following receipt of the termination notice.
- 23.11 In the event of the termination of the Framework Agreement and/or each Call-Off Contract pursuant to clause 23.8, DCC shall be entitled to recover from the Contractor (as a debt) all of its costs wasted in reliance upon the full-performance by the Contractor of the obligations set out under the Framework Agreement and each terminated Call-Off Contract, including (but not limited to), sums paid to the Contractor, third parties and DCC’s internal expenditure. Any dispute as to the amount(s) owed to DCC pursuant to this clause shall be dealt with under clause 22 (Dispute Resolution).
- 24. \*\*Assistance on Termination or Expiry**
- 24.1 On the expiry or termination of this Framework Agreement and/or any Call-Off Contract for any reason, under their express terms or at law, the Contractor shall:
- 24.1.1. Return to DCC all IPR (including Bespoke IPR), Data (including DCC Data), Deliverables and other property belonging to DCC pursuant to this Framework Agreement or otherwise, whether completed or unfinished;
  - 24.1.2. deliver up to DCC the product of all Services not already delivered to DCC; and
  - 24.1.3. if required by DCC, take reasonable steps and co-operate fully with DCC and, if necessary, any replacement service provider so that the transfer of responsibility for the provision of the Services previously performed by the Contractor under this Framework Agreement is achieved with the minimum of disruption and so as to prevent or mitigate any inconvenience to DCC.
- 24.2 The Contractor will take reasonable steps to mitigate any losses, costs, liabilities and expenses which the Contractor may incur as a result of termination and shall be responsible for the cost of its own compliance with this clause 24.
- 25. Accrued rights & survival of clauses**
- 25.1 Termination or expiry of this Framework 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.
- 25.2 The provisions of clauses 15 (IPR), 16.10 (Data), 18 (Confidentiality & Publicity), 19 (Indemnities), 20 (Limitations of Liability), 21 (Insurance), 22 (Dispute Resolution), 23 (Suspension and Termination) 24 (Assistance on Termination or Expiry), 28 (Data Protection), 30 (Disposal of Relevant Business Assets) and 31 (General) shall survive the termination or expiry of this Framework Agreement (under its terms or at law), together with any other provisions expressed or implied to survive such termination or expiry.

**26. \*\*Assignment and novation**

- 26.1 Subject to clause 26.2, 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 Framework Agreement or any Call-Off Contract without the prior written consent of the DCC.
- 26.2 The Contractor may novate its rights and obligations under this Framework Agreement or any Call-Off Contract 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).
- 26.3 The Contractor agrees that the DCC may:
- 26.3.1. assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement and/or a Call-Off Contract and any associated licences to any Successor Licensee; or
- 26.3.2. in the event that the DCC wishes to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement and/or a Call-Off Contract other than in accordance with clause 26.3.1 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.
- 26.4 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).
- 26.5 A change in the legal status of the DCC shall not affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the DCC.

**27. \*\*Revocation or change in the DCC Licence**

- 27.1 Without limiting the Contractor's other obligations, in the event of a revocation or expiry of the DCC Licence, the Contractor shall promptly provide any and all co-operation, documentation, date, information or other assistance as reasonably requested and shall ensure that appropriate representatives of the Contractor, attend any and all meetings as and when requested.
- 27.2 Notwithstanding anything to the contrary, the Contractor shall continue to provide the Services in accordance with any applicable Call-Off Contracts notwithstanding any handover of business from the DCC to any Successor Licensee.
- 27.3 To the extent that compliance by the Contractor with this clause 27 requires the Contractor to incur any material additional costs (being costs which it would not have otherwise incurred under this Framework Agreement), then the Contractor may notify the DCC accordingly and the Parties (acting reasonably) shall agree any necessary changes to the Contractor's Charges.

**28. \*\*Data protection**

- 28.1 Without prejudice to the obligations contained in this clause 28, each Party undertakes to the other to comply with Data Protection Laws in respect of all Personal Data Processed in connection with this Framework Agreement or a Call-Off Contract.

**Roles****Contractor, DCC and Energy Industry Data Subjects**

- 28.2 To the extent that the Contractor Processes any Personal Data pursuant to this Framework Agreement or a Call-Off Contract which relates to DCC Data Subjects and/or Energy Industry Data Subjects, then

the Contractor shall be a Data Processor and DCC shall be a Data Controller in relation to that Personal Data.

- 28.3 The types of Personal Data that may be Processed in relation to DCC Data Subjects and/or Energy Industry Data Subjects may include Basic Information and/or Industry Information.

Energy Consumer Data Subjects

- 28.4 To the extent that the Contractor Processes any Personal Data pursuant to this Framework Agreement or a Call-Off Contract relating to Energy Consumer Data Subjects, it shall Process that Personal Data in the capacity of Sub-Processor, DCC shall be the Data Processor and the relevant DCC Service User shall be the Data Controller.

- 28.5 The types of Personal Data that may be Processed in relation to Energy Consumer Data Subjects may include Energy Supply Information.

**Processing obligations**

- 28.6 The Contractor shall:

- 28.6.1. only Process the Personal Data on the documented instructions of DCC, for the purposes of and in the manner permitted by this Framework Agreement or a Call-Off Contract. A documented instruction includes an express obligation in a Call-Off Contract;
- 28.6.2. only Process for as long as is necessary for a party to deliver the Services or otherwise comply with its obligations under the Framework Agreement or a Call-Off Contract or DCC's instructions.
- 28.6.3. not process Personal Data in a manner which it knows, or ought reasonably to know, is likely to cause an infringement of the Data Protection Laws or a breach of this Framework Agreement, a Call-Off Contract, the Smart Energy Code or the DCC Licence;
- 28.6.4. notify DCC if the Contractor believes that an instruction will, or may, result in a breach of clause 28.5.3;
- 28.6.5. ensure that its personnel who are authorised to Process Personal Data are under enforceable obligations of confidentiality and are required to Process that Personal Data only in accordance with this Framework Agreement or a Call-Off Contract. Personnel shall only be granted access to Personal Data to the extent necessary to assist the Contractor to comply with its obligations under this Framework Agreement or a Call-Off Contract;
- 28.6.6. having 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 relevant Data Subjects, implement and maintain appropriate technical and organisational measures to protect Personal Data and in particular, protect it from accidental or unlawful loss, destruction, alteration or unauthorised disclosure of, or access to Personal Data that is transmitted, stored or otherwise Processed. Such measures to at least be in accordance with Good Industry Practice and any applicable security requirements set out in this Framework Agreement and a Call-Off Contract;
- 28.6.7. not transfer or Process Personal Data outside of the European Economic Area (or in the event that the United Kingdom leaves the European Economic Area, not to transfer out of the European Economic Area or the United Kingdom);



- 28.6.8. not transmit any Personal Data to a third party, nor appoint a Sub-Processor, without the written consent of the DCC. Such consent shall be at the sole discretion of DCC, who may make its consent conditional upon any third-party or Sub-Processor being made subject to contractual terms which are identical to those set out in this clause 28;
- 28.6.9. taking into account the nature of the Processing, provide reasonable assistance to DCC in its obligations to comply with Data Subjects' requests and Data Subjects' rights under the Data Protection Laws through, insofar as is possible, the use of appropriate technical and organisational measures;
- 28.6.10. taking into account the nature of the Processing and the information available it, assist DCC in ensuring compliance with that party's obligations in Articles 32 to 36 of the GDPR (or its national equivalent), including:
- (a) notifying DCC if it becomes aware of an infringement of the Data Protection Laws in relation to the Personal Data (including in the event of unauthorised access to such Personal Data);
  - (b) providing full details of the relevant infringement where caused by it or its Sub-Processor without undue delay or, where necessary, in phases but always without further undue delay; and
  - (c) in the event of an infringement, promptly review all technical and organisational measures, policies and procedures and implement appropriate changes in order to prevent any further breaches.
- 28.6.11. provide reasonable assistance to DCC with any enquiry made, or investigation or assessment initiated, by the Information Commissioner and/or other Competent Authority in respect of the Processing of that Personal Data pursuant to this Framework Agreement or a Call-Off Contract.
- 28.6.12. immediately notify DCC in the event that it Processes Personal Data otherwise than in accordance with this Framework Agreement, a Call-Off Contract or the Data Protection Laws (including in the event of unauthorised access to such Personal Data).
- 28.6.13. notify DCC of any complaint made (by any person or body) relating to Processing under this Framework Agreement or a Call-Off Contract.
- 28.6.14. within two (2) months of a written instruction from DCC, or within three (3) months of the termination of this Framework Agreement or a Call-Off Contract (unless a contrary written instruction is received from DCC), return copies of all Personal Data in its possession and which relates to this Framework Agreement or a relevant Call-Off Contract to DCC and then securely and irrevocably delete such Personal Data.
- 28.6.15. insofar as relates to its Processing under this Framework Agreement or a Call-Off Contract, maintain accurate records and any other information or documentation necessary to demonstrate that it has complied and is complying with its obligations under this clause 28 and the Data Protection Laws. The Contractor shall make such records, information and documentation available to DCC promptly upon request.
- 28.6.16. without prejudice to any other obligation contained in this clause 28, the Contractor shall:
- (a) Inform DCC in writing, no less than bi-annually, of any categories of Personal Data which in its opinion are could be amended, minimised or deleted pursuant to the Data Protection Laws without impacting upon any services

delivered under this Framework Agreement or a Call-Off Contract or placing either party at risk of non-compliance with this Framework Agreement, a Call-Off Contract or Data Protection Laws. No such amendment, minimisation or deletion shall take place without DCC's express written authorisation.

- (b) promptly notify DCC if there is a material change in the manner in which the Contractor Processes Personal Data pursuant to this Framework Agreement or a Call-Off Contract, or risks associated with Processing under this Framework Agreement or a Call-Off Contract, providing full details.
- (c) promptly notify DCC if there is any change in the categories of Data Subjects or Personal Data that it Processes pursuant to this Framework Agreement or a Call-Off Contract, providing full details.
- (d) upon request by DCC, promptly provide:
  - (i) copies of any Personal Data in its possession which may relate to this Framework Agreement or a Call-Off Contract;
  - (ii) a list of the categories of Personal Data which the Contractor is Processing (or otherwise retaining) in relation to this Framework Agreement or a Call-Off Contract; and/or
  - (iii) a list of all Sub-Processors appointed by the Contractor in connection with this Framework Agreement or a Call-Off Contract plus, if requested by DCC, copies of the relevant agreement(s) under which such Sub-Processor is appointed and any information relating to that Sub-Processor and the Processing it carries out which DCC may reasonably request.

28.6.17. subject to reasonable prior notice, permit DCC or any relevant Data Controller under this Framework Agreement or a Call-Off Contract to audit its compliance with its obligations under this clause 28 during normal business hours, and make available to the auditor all information, systems and staff reasonably necessary for the audit to be conducted. The number of audits shall be limited to no more than once in every twelve (12) calendar month period unless more frequent audits are required under the Data Protection Laws or the Data Controller or the Data Processor (as the case may be) has grounds to suspect there has or is likely to be a breach of the Data Protection Laws. Where practicable, it shall be provided with an opportunity to comment upon the scope of an audit in advance and any audit shall be carried out in such a way that interruption to its operations is minimised as far as is reasonably possible. This paragraph is without prejudice to any other right of audit contained in this Framework Agreement or a Call-Off Contract.

28.6.18. support DCC in connection with DCC's certification and compliance with applicable standards relating to information and organisational security and/or the protection of Personal Data, including providing any information requested by DCC and any letters of representation that may be required in connection with support or information provided under this sub-paragraph.

28.7 The Contractor represents, warrants and undertakes that in the design and performance of any services under this Framework Agreement or a Call-Off Contract and/or the design or provision of any software, systems or networks, that the Contractor has and will give due regard to Data Protection Laws and the need to protect Personal Data, in accordance with Good Industry Practice.

28.8 The Contractor warrants that it has never been the subject of an investigation or action by the Information Commissioner or other Competent Authority in relation to its activities in the United

Kingdom or European Economic Area. The Contractor undertakes that it will immediately inform DCC of any such investigation or action against it, including details of the nature and subject matter of the investigation, unless prohibited from doing so by Data Protection Laws, the Information Commissioner or other Competent Authority. The Contractor shall be entitled to limit details of the nature and subject matter of the investigation to the extent that to do otherwise would breach a duty of confidence owed to a third party.

- 28.9 Any provision of this clause 28 which relates to security shall be treated as separate to any other security obligations contained in this Framework Agreement or a Call-Off Contract and shall not limit those other security obligations in any way.
- 28.10 A breach of any of the provisions of this clause 28 shall entitle DCC to terminate this Framework Agreement or a Call-Off Contract immediately (irrespective of whether the breach may be remediable and irrespective of any other right of termination contained in this Framework Agreement or a Call-Off Contract or at law). In the event of a termination pursuant to this clause 28.9, any other provisions of this Framework Agreement and any relevant Call-Off Contract which are expressed to survive terminations shall so apply.
- 28.11 The provisions of this clause 28 shall survive any termination of this Framework Agreement (including termination at law), until such time as the Contractor has handed over and/or deleted all Personal Data relating to this Framework Agreement or a Call-Off Contract on the written instructions of DCC.
- 28.12 The Contractor shall not be entitled to any additional payment in respect of its compliance with this clause 28.

**29. \*\*Ethical behaviour and Modern Slavery**

- 29.1 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 DCC), including the performance or award of any such agreement, that contravenes any applicable law or requirement of a Regulatory Body relating to anti-bribery and corruption or anti-money laundering, including 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.
- 29.2 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 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 Body 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).
- 29.3 The Contractor agrees to notify 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 27.
- 29.4 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 Framework Agreement or a Call-Off Contract or its subject matter.
- 29.5 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 29 and/or, in the case of the Contractor, a breach of this clause 29 This clause 29.5 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.

- 29.6 The Contractor shall perform its obligations under this Framework Agreement and each Call-Off Contract in compliance with (and shall ensure that its sub-contractors comply with):
- 29.6.1. the Modern Slavery Act 2015; and
  - 29.6.2. the DCC Prevention of Modern Slavery Policy (as amended from time to time) and available upon request.
- 29.7 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.
- 29.8 The Contractor agrees to notify DCC and confirm the same promptly in writing immediately upon discovering any breach or potential breach of clause 29.6 or 29.7 or any actual or suspected slavery or human trafficking in its supply chains.
- 30. \*\*Disposal of Relevant Business Assets**
- 30.1 In the event that the Contractor generates Relevant Business Assets, the Contractor shall maintain and provide to the DCC a register of such Relevant Business Assets, which shall contain the following information:
- 30.1.1. a register of all of the Relevant Business Assets, detailing:
    - (a) whether each Relevant Business Asset is capable of being transferred to the DCC and/or any Replacement Contractor following the expiry or termination of this Framework Agreement or a Call-Off Contract (each, a "**Transferable Asset**").
    - (b) if not, whether each Relevant Business Asset is otherwise capable of being made available by the Contractor for use by the DCC and/or any Replacement Contractor following the expiry or termination of this Framework Agreement or a Call-Off Contract (each, an "**Ongoing Access Asset**");
    - (c) the ownership status of each Transferable Asset and each Ongoing Access Asset;
    - (d) the value of each Transferable Asset, calculated using the net book value, remaining lease payments or such other valuation method as approved by the DCC in respect of specific Relevant Business Assets and, in any event, in compliance with the applicable accounting standards of the Contractor;
  - (a) a register of all of the software provided in connection with the Services;
  - (b) a register of all other IPR relevant to the performance of the Services; and
  - (c) 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.
- 30.2 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 and the Contractor shall review and update such register of Relevant Business Assets periodically.
- 30.3 The Contractor shall not, without the DCC's prior written consent, encumber any Relevant Business Assets in any way which would:
- 30.3.1. require the consent of a third party to the exercise by the DCC of any of its rights under this Schedule; or

30.3.2. otherwise restrict the exercise by the DCC of any of its rights under this Schedule.

For the purposes of this clause 30.3, "**encumber**" shall include any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, security interest, any other security agreement or arrangement or which otherwise restricts the Contractor's ability to use and deal with the Relevant Business Asset.

30.4 Without limiting its other obligations under this Framework Agreement or a Call-Off Contract, the Contractor may not carry out any Disposal of, or any relinquishment of any control over, any Relevant Business Asset without the prior written consent of the DCC. The Contractor acknowledges that:

30.4.1. the granting of consent by the DCC under this clause 30.4 may be subject to the relevant authority also granting its consent to the relevant disposal or relinquishment of operational control; and

30.4.2. the consent of the DCC under this clause 30.4 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.

## 31. General

31.1 This Framework Agreement, its Schedules and each Call-Off Contract 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. This clause does not exclude liability of either Party for fraudulent misrepresentation.

31.2 No failure or delay by either Party to exercise any right or remedy under this Framework Agreement or a Call-Off Contract 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 Framework Agreement or a Call-Off Contract shall be considered as a waiver of a preceding or subsequent breach.

31.3 The Services, this Framework Agreement, each Call-Off Contract and any non-contractual obligations arising out of or in connection with them shall be governed by and construed in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts.

31.4 \*\*The Contractor acknowledges that DCC may be obliged to publish this Framework Agreement and each Call-Off Contract 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

31.5 \*\*Notwithstanding anything else to the contrary in this Framework Agreement or a Call-Off Contract, in the event the DCC is requested to disclose any information as requested by the Authority in relation to the DCC Licence or the SEC. The Contractor acknowledges that this may include the Contractor's Confidential Information.

**Schedule 1**

**Service Descriptions**

**1. Overview**

- 1.1. This Framework Agreement is for the provision of Capacity & Network Economics Consultancy Services. Services will be called-off against this Framework Agreement as requirements arise and a Call-Off Contract put in place for that specific requirement.
- 1.2. The scope and indicative service lines that Suppliers will be required to supply is set out Table 2.
- 1.3. A detailed description of requirements will be provided in each Request for Proposal (RFP), Request for Quote (RFQ) or Direct Award that is issued against this Framework Agreement. The Call-Off Contract can be found in Schedule 2 of the Framework Agreement.
- 1.4. This Framework Agreement is for consultancy Services only. It is not for the provision of resources to fill temporary or permanent roles (staff augmentation).
- 1.5. The requirements called-off against this Framework Agreement will vary in nature and scale. DCC will use either the RFP, RFQ or Direct Award to ensure the level of detail required in the response is proportionate to the scale of requirements.

**2. Principles**

**Table 1 - Core Principles**

| ID         | Description  | Essential / Information |
|------------|--|-------------------------|
| <b>4.1</b> | <b>Core Principles</b>   |                         |
| i.         | The Contractor Persons put forward by the Contractor to carry out the Services must be appropriately qualified and possess the knowledge and skills essential to perform the Services. | Essential               |
| ii.        | The Contractor must demonstrate adherence to the appropriate industry standards for the Services being undertaken.   | Essential               |
| iii.       | The Contractor Persons carrying out the Consultancy Services must be skilled in dealing with various levels of stakeholders and be proficient at communicating effectively.            | Essential               |
| iv.        | The Contractor must be able to demonstrate suitable experience in performing and delivering the specific Services tendered for against this Framework Agreement.                       | Essential               |
| v.         | The Contractor must be flexible in its approach to delivering Services for DCC.  | Essential               |
| vi.        | The Contractor must be extremely competent at time management and meeting deadlines.   | Essential               |
| vii.       | The Contractor must have demonstrable experience of appropriate and effective knowledge transfer to DCC.   | Essential               |

**3. Scope**

- 3.1. The table below describes the core requirements of this Consultancy Framework Agreement, these requirements provide a high-level view of the type of advice required in each Sub-lot.

**Table 2 - Scope**

| Headline Lot                                | Sub-Lot                          | Scope  |
|---|----------------------------------|--|
| Lot 1 – Business and Management Consultancy | 1.8 Capacity & Network Economics | <p>Provide advice (technical, procedural and organisational), statistical, econometric, quantitative expertise, analytical thinking &amp; parameterised models to:</p> <ul style="list-style-type: none"> <li>• Predict &amp; model capacity trends, breakpoints &amp; alternative technologies in the supplier ecosystem of DCC</li> <li>• Predict &amp; model trends in the smart energy industry</li> <li>• Establishing &amp; modelling the economic feasibility of a new opportunity or approach to all or part of the ecosystem via sophisticated, flexible economic models</li> <li>• Providing input to business cases for these new approaches, including commercial aspects, affordability and achievability.</li> </ul> |

**Schedule 2**

**Template Call-Off Contract**

**DCC Framework Call-Off Contract**

**Call-Off Contract Ref: DCCTXXXX**

This Call-Off Contract is entered into between the following parties, pursuant to the Framework Agreement entered into between them upon 26<sup>th</sup> February 2021:

- (1) **SMART DCC LIMITED** a company registered in England and Wales under company number 8641769 whose registered office is at 65 Gresham Street, London, EC2V 7NQ ("**DCC**");
- (2) **CAPACITAS LIMITED** a company registered in England and Wales under company number 04363163, whose registered office is 69 Turnmill St, London, EC1M 5RR, ("**Contractor**");

Capitalised terms mean the same as set out in the Framework Agreement or this Call-Off Contract.

**1. Call-off Contract Terms and Conditions**

The terms of the Call-Off Contract shall be as set out in the table below.

| Category  | Agreed Term  |
|---|--|
| Start Date  | [to be inserted]   |
| End Date  | [to be inserted]   |
| Total Duration  | [to be inserted]   |
| Extension   | DCC may extent the duration of this Call-Off Contract upon not less than [X] [weeks/months] written notice, for a maximum period of [Y] [weeks/months/years] |
| Services  | The Contractor shall provide the Services specified in Section 2 of this Call-Off Contract   |
| Charges   | The Charges for the Services set out in this Call-Off Agreement shall be as set out in Section 3 of this Call-Off Contract                                   |
| Will the Services be tested in accordance with Clause [7] of the Framework Agreement? | [yes / no / specify otherwise]   |
| Will Service Levels and/or Service Credits apply to the Services?                     | [Yes – please see Section 4] [or] [no Service Levels or Service Credits are applicable]  |



|  |                                 |
|--|---------------------------------|
| Is a Security Management Plan required pursuant to Schedule 3 of the Framework Agreement?                          | [yes / no]                      |
| List out the categories of Data which either party may receive from the other.                                     | [to be completed]               |
| List out the categories of Personal Data which may be processed by either party                                    | [to be completed]               |
| Contractor to specify the geographical locations with the Contractor host Data pursuant to this Call-Off Contract. | [to be completed by Contractor] |
| List Contractor Background IPR to be used as part of the Services and the party so using.                          | [to be completed]               |
| List Bespoke IPR to be developed as part of the Services.  | [to be completed]               |
| List any DCC Background IPR to be used as part of the Services.  | [to be completed]               |

**2. Description of Services**

[To be inserted – to include details of any Milestones or Deliverables]

**3. Details of Charges**

[To be inserted]

**4. Service Levels/Service Credits**

[To be inserted]

**5. Special Terms**

To be added as required

### Schedule 3

#### Security Management Plan

1. Within five (5) Working Days of the signature of a Call-Off Contract (or such other period as DCC may approve in writing), the Contractor shall prepare and submit to DCC for approval a complete and up-to-date Security Management Plan in connection with the Services to be delivered under a Call-Off Contract.
2. The Security Management Plan shall:
  - 2.1. at a minimum, comply with the Security Controls described in clause 17 and describe how compliance will be achieved;
  - 2.2. identify a senior manager appointed by the Contractor who is responsible for security and who has formally approved the Security Management Plan;
  - 2.3. the contact details to be used by DCC to coordinate security incident response and other operational security considerations with the Contractor;
  - 2.4. describe how good industry security practice is achieved by the Contractor, including a description of the structure and names of security policies and procedures, and a description of security risk management and its governance; and
  - 2.5. detail security standards that the Contractor has been accredited to or aligns to.
3. 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 five (5) Working Days of a notice of non-approval from DCC and re-submit it for approval.
4. 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.
5. Where a Call-Off Contract is of a duration longer than 12-months, the Security Management Plan shall be fully reviewed and updated by the Contractor at least annually to reflect:
  - 5.1. emerging changes in Good Industry Practice;
  - 5.2. any change or proposed change to the Services and/or associated processes and the Contractor System;
  - 5.3. any new perceived or changed security threats; and
  - 5.4. any reasonable change in requirement requested by DCC.
6. 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.

## Schedule 4

### Charges and Payment

#### 1. The Charges

- 1.1. The Charges to be paid in connection with this Framework Agreement and each Call-Off Contract are to be based on the rates set out in Appendix 1 Contractor Rate Card to this Schedule 4 (Charges and Payment). In addition, the Parties have agreed to a volume rebate mechanism in accordance with Appendix 2 to this Schedule 4 (Charges and Payment).
- 1.2. The Charges shall comply with the provisions of paragraph 2 (Charging Principles) and shall be invoiced in accordance with paragraph 3 (Invoicing).

#### 2. Charging Principles

- 2.1. The Charges shall take account of and comply with this Framework Agreement and the requirements of the DCC Licence.
- 2.2. The Charges shall be clear, transparent, unambiguous and straight-forward to administer, represent the most appropriate and cost-effective option for the Services and be based on incurred costs of delivering individual Services.
- 2.3. Where the Charges are based upon time spent by individuals:
  - 2.3.1. The 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).
  - 2.3.2. The Contractor shall only be entitled to payment at rates which are 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.
- 2.4. 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, that Charge 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.

#### 3. Invoicing

- 3.1. 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 Ibx House 42-47 Minories London EC3N 1DY), unless otherwise directed by the DCC.
- 3.2. 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 this Schedule 4. All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the DCC in writing.
- 3.3. The DCC shall make payment to the Contractor within thirty (30) days of receipt of a properly prepared and valid invoice by the DCC at its nominated address for invoices.
- 3.4. The Contractor shall ensure that each invoice contains the following information:
  - 3.4.1. the date of the invoice;

- 3.4.2. a unique invoice number;
  - 3.4.3. the payment month or other period(s) to which the relevant Charge(s) relate;
  - 3.4.4. details of the correct Call-Off Contract reference;
  - 3.4.5. the purchase order (“PO”) number, receipt number and release number to which it relates (if any);
  - 3.4.6. the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
  - 3.4.7. 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 Framework Agreement, and, separately, any VAT or other sales tax payable in respect of the same;
  - 3.4.8. 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);
  - 3.4.9. a contact name and telephone number of a responsible person in the Contractor's finance department in the event of administrative queries; and
  - 3.4.10. the bank account details for payments to the Contractor via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 3.5. Each invoice shall at all times be accompanied by sufficient information to enable the DCC to reasonably assess whether the Charges detailed thereon are properly payable. 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.
- 3.6. The Contractor shall submit all invoices and supporting documentation in such format as the DCC may specify from time to time to:

**DCC Ltd**

**C/o DCC Business Services  
FAO: Accounts Payable  
PO BOX 202  
Darlington  
DL1 9HB**

**Appendix 1  
Contractor Rate Card**

| Level Ref | Level of Consultant                  | General Description  | Day Rate (£) |
|-----------|--------------------------------------|--|--------------|
| 1         | Junior                               | Able to demonstrate experience in a range of projects in their field/ consultancy role and provide evidence of client facing experience. May have supported larger projects.   | ■            |
| 2         | Consultant                           | Able to demonstrate good experience and knowledge of their specialist field/ consultancy role. Provide evidence of a wide range of consultancy projects and client facing experience.  | ■            |
| 3         | Senior                               | Demonstrate considerable experience in their specialist field/ consultancy role and with work in a wide range of high quality and relevant projects. Experience of leading some activity and controlling projects.   | ■            |
| 4         | Managing Consultant/Project Director | Able to show substantial experience in their field/ consultancy role. Sound knowledge of the relevant industries. Experience of managing assignments and key point of contact with senior stakeholders.  | ■            |
| 5         | Partner/Delivery Partner             | Significant experience in their specialist field/ consultancy role. Able to demonstrate in depth knowledge of the role and general wider understanding of environment the client is operating and any political considerations. Must have managed several significantly-sized projects and complex stakeholder groups. Typically, should have significant, proven, industry recognised experience. | ■            |
| 6         | Senior Partner/VP                    | Extensive experience in their specialist field/ consultancy role. Nationally or internationally renowned as an expert. Extensive experience of leading or directing major, complex and business-critical projects, bringing genuine strategic insight. Typically have significant, proven industry recognised experience.  | ■            |

**Appendix 2  
Volume Rebate**

**1. Overview**

1.1. This Framework Agreement includes a volume rebate mechanism to be applied for the duration of the Term. On the first one-year anniversary of the Framework Agreement, and each anniversary thereafter, (each a “Rebate Year”), the Contractor will within thirty (30) days provide: (a) a written statement to the DCC for the volume rebate to be provided for the Rebate Year calculated in accordance with Table 3 (“Volume Rebate Statement”), and (b) full payment to the DCC for the volume rebate for the Rebate Year.

1.2. Any dispute shall be resolved in accordance with Clause 22 of the Framework Agreement.

**Table 3 - Rebate**

| Item           | Band 1     | Band 2     | Band 3     | Band 4     | Band 5     |
|----------------|------------|------------|------------|------------|------------|
| Annual Charges | [Redacted] | [Redacted] | [Redacted] | [Redacted] | [Redacted] |
| Rebate (%)     | [Redacted] | [Redacted] | [Redacted] | [Redacted] | [Redacted] |

1.3. The rebate specified in Band 1 will apply to Charges up to and including [Redacted] in the Rebate Year.

1.4. The rebate specified in Band 2 will apply to Charges in excess of [Redacted] up to [Redacted] in the Rebate Year.

1.5. The rebate specified in Band 3 will apply to Charges in excess of [Redacted] up to [Redacted] in the Rebate Year.

1.6. The rebate specified in Band 4 will apply to Charges in excess of [Redacted] up to [Redacted] in the Rebate Year.

1.7. The rebate specified in Band 5 will apply to Charges in excess of [Redacted] in the Rebate Year.

**2. Example**

2.1. If annual expenditure was [Redacted] in Rebate Year 1, then the rebate due to the DCC would be [Redacted] calculated as follows:

[Redacted]

2.2. If annual expenditure was [Redacted] in Rebate Year 2, then the rebate due to the DCC would be [Redacted] calculated as follows:

[Redacted]

2.3. If annual expenditure was [Redacted] in Rebate Year 3, then the rebate due to the DCC would be [Redacted] calculated as follows:

[Redacted]

2.4. If annual expenditure was [Redacted] in Rebate Year 4, then the rebate due to the DCC would be [Redacted] calculated as follows:

[Redacted]





**Appendix 3**  
**Travel Policy**

1. The Contractor shall comply with DCC's travel policy.
2. The final version of the travel policy is incorporated into this Agreement and appended separately, with filename "20201015 - DCCT0273 - Schedule 4 - Appendix 3 – Travel Policy v1.0.docx"

## Schedule 5

### Award and Call-off Procedure

#### 1. Overview

- 1.8. This Schedule outlines the process of the two call-off procedures (how the framework will be used). The DCC reserves the right to alter this process at any time.
- 1.9. A contract for Services may be awarded in one of the two following ways:
  - 1.9.1. Direct Award against the Framework Agreement or;
  - 1.9.2. following a mini-competition conducted in accordance with Section 2 below:

#### 2. Direct Award

- 2.1. DCC, when ordering Services under this Framework Agreement without re-opening competition shall:
  - 2.1.1. complete and submit a Non-Competitive Procurement form (“**NCP Form**”) identifying the chosen supplier and sufficient justification for bypassing the standard procurement process.
  - 2.1.2. once approval to proceed has been granted, a mini-competition document must be drafted and issued to the relevant supplier. The supplier submission must be assessed against evaluation criteria set in advance.
  - 2.1.3. if the submission from the single supplier is deemed satisfactory then the services may be awarded to the chosen supplier;
  - 2.1.4. place a Call-Off Contract with the chosen contractor which:
    - (a) states the Service Requirements;
    - (b) states the price payable for the Service requirements in accordance with the relevant price matrix and
    - (c) incorporates the Framework Agreement Terms and Conditions.
- 2.2. This process may only be used in exceptional circumstances as outlined in the Non-Competitive Procurement Policy.

#### 3. Mini-Competition

- 3.1. DCC, when ordering competed services under the Framework Agreement shall:
  - 3.1.1. identify the relevant Services Framework Lot which its requirements fall into and identify the eligible Framework Suppliers within that Lot;
  - 3.1.2. complete and issue the mini-competition document to all eligible Framework Suppliers;
  - 3.1.3. request that the eligible Framework Suppliers must complete an Expression of Interest (EOI) within 2 working days to clearly state whether they will be bidding or not. If the response is negative then bidders shall also issue a brief statement explaining why they do not wish to participate.

- 3.1.4. set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders and
  - 3.1.5. apply the specific competition Award Criteria to the compliant tenders submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its requirements and
  - 3.1.6. issue the Call-Off Contract with the successful Framework Supplier which:
    - (a) clearly states the requirements, including deliverables;
    - (b) identifies the Service Framework Lot or Lots for which the award is made;
    - (c) states the price payable in accordance with the tender submitted by the successful Contractor; and
    - (d) incorporates the Framework terms and conditions.
- 3.2. There are two ways to run a mini competition under this agreement. Which option is best will depend on the project timescales and the complexity or scale of the project leads needs.
- 3.2.1. A Request for Quotation (“**RFQ**”) will typically be used for procurements which are either simple or less than £100,000 (one hundred thousand pounds) in value.
  - 3.2.2. A Request for Proposal (“**RFP**”) will typically be used for procurements which are either complex or above £100,000 (one hundred thousand pounds) in value.

---

**Schedule 6****Contact Details**

1. The primary contact for matters related to this Framework Agreement is shown in Table 4 and Table 5.

**Table 4 – Contractor’s Primary Contact**

|               |                             |
|---------------|-----------------------------|
| Name          | Danny Quilton               |
| Role          | CTO                         |
| Email         | danny.quilton@capacitas.com |
| Telephone No. | +44 (0) 7968 562449         |

**Table 5 - DCC Primary Contact**

|       |                            |
|-------|----------------------------|
| Name  | Procurement Mailbox        |
| Email | procurement@smartdcc.co.uk |

**EXECUTION PAGE**

**IN WITNESS WHEREOF** the Parties hereto have signed by their duly authorised representatives on the date first above written:

Signed by

.....

Director, for and on behalf of **SMART DCC LIMITED**

.....

Signature of Director

in the presence of:

.....  
Full Name (Witness)

.....

.....

.....

Address

.....

Signature of Witness

Signed by

.....

Authorised Signatory, for and on behalf of **CAPACITAS LIMITED**

.....

Signature of Authorised Signatory

in the presence of:

.....  
Full Name (Witness)

.....

.....

.....

Address

.....

Signature of Witness