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

Change Management System

DCCT0047

Terms and Conditions

V1.0

Last Update: 13/02/2018

THIS AGREEMENT is made on the 14th of February 2018.

BETWEEN:

- (1) **SMART DCC LIMITED** a company registered in England and Wales under company number 8641769 whose registered office is at 17 Rochester Row, London, SW1P 1QT (“**DCC**” or “**Smart DCC**”).
- (2) **I-Associates (UK) Limited**, a company registered in England and Wales under company number 06048430, whose registered office is 1b The Svt Building, Holloway Road, Heybridge, Maldon, Essex, CM9 4ER (“**Contractor**”).

RECITALS:

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

PROVISIONS:

1. Definitions and Interpretation

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

Agreement	means this agreement comprising the clauses and schedules hereto.
BEIS	Department for Business, Energy and Industrial Strategy.
Charges	means the charges specified in Schedule 7.1 (Charges and Payment).
Code Administrator	means the body providing SEC administration services.
Contractor CMDB Data	means all Data forming a part of the Contractor CMDB.
Contractor CMDB	means the configuration management database (CMDB), which is the repository of all configuration item information related to all the components within the Contractor Solution, but excluding the DCC CMDB.

Contractor Persons	<p>means:</p> <p>(a) the Contractor;</p> <p>(b) each other member of the Contractor's group;</p> <p>(c) the Sub-contractors; and</p> <p>(d) the Contractor personnel,</p> <p>and "Contractor Person" shall be construed accordingly.</p>
Contractor System	<p>means the System(s) used by or on behalf of any Contractor to deliver the Services.</p>
Contractor Solution	<p>means the Contractors Solution to meet the DCC Requirements as set out in schedule 4.1.</p>
CSP	<p>Communications Service Provider</p> <p>The service provider of Communications Service – the Smart Metering Wide Area Network – under contract to the DCC. The CSP is a DCC Service Provider.</p>
Data	<p>means any information, data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) embodied in any medium (including whether tangible or electronic).</p>
DCC	<p>Data Communications Company.</p> <p>The entity licensed to provide smart meter communication and data services, i.e. the central infrastructure to roll-out and operate Smart Metering. The DCC is responsible for the procurement and contract management of data and communications services, providing remote access to Smart Metering Equipment.</p> <p>The company name Smart DCC Ltd. (which is a wholly owned subsidiary of Capita).</p>
DCC CMDB	<p>means the configuration management database (CMDB), which is the repository of all configuration item information related to all the components of those Systems provided by the DCC.</p>
DCC CMDB Data	<p>means all Data forming a part of the DCC CMDB.</p>

<p>DCC Connected Person</p>	<p>means:</p> <ul style="list-style-type: none"> (a) the DCC; (b) DCC Service Providers; (c) SECCo; (d) the Code Administrator; (e) the SEC Secretariat; and (f) DCC Service Users, <p>and "DCC Eco-System Entity" shall be construed accordingly; means key industry partners involved in the Smart Metering Implementation Programme.</p>
<p>Data Controller</p>	<p>shall have the same meaning as set out in the Data Protection Legislation.</p>
<p>Data Processor</p>	<p>shall have the same meaning as set out in the Data Protection Legislation.</p>
<p>Data Protection Legislation</p>	<p>Means:</p> <ul style="list-style-type: none"> (a) prior to 25 May 2018, the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC together with any transposition of that Directive into European Union Member State law; (b) from and including 25 May 2018, the GDPR together with any transposition of that Regulation into European Member State, English and/or Scottish law; (c) the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (d) all applicable laws relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, the European Commission's Article 29 Working Party and the European Data Protection Board.
<p>Data Subject</p>	<p>shall have the same meaning as set out in the Data Protection Legislation.</p>

<p>DCC Data</p>	<p>means all of the following (and also all Data derived from such Data (including any modification or enhancement) and all Databases to the extent composed of any DCC Data):</p> <ul style="list-style-type: none"> (a) Transactional Data; (b) System Audit Data; (c) cryptographic keys; (d) DCC CMDB Data; and (e) any Data: <ul style="list-style-type: none"> (i) owned or originated by or on behalf of the DCC or any DCC Eco-System Entity that either is or may be used in connection with provision or receipt of Services; (ii) generated specifically and solely for the Services that relates to any DCC Eco-System Entity or the DCC Services (excluding ad hoc Service related e-mails and internal communications between Contractor Persons) unless otherwise explicitly agreed in a particular Change or Project); and/or (iii) to which the Contractor would not have had access other than in connection with the performance of Services under this Agreement, including: <ul style="list-style-type: none"> A. any Data supplied to the Contractor by or on behalf of the DCC (excluding any Data owned in accordance with this Agreement or originally possessed by any Contractor Person); and B. all Industry Registration Data, <p><u>but excluding:</u></p> <ul style="list-style-type: none"> (a) Data that forms part of the Contractor CMDB; and (b) Data that forms part of the Existing Contractor IPRs.
<p>DCC Ecosystem</p>	<p>Refers to DCC’s activities taking place in an environment which includes other suppliers, systems, integrations and interfaces and which also requires DCC to provide services to and/or otherwise interact with the DCC Connected Person(s).</p>
<p>DCC Environment</p>	<p>means the Systems used by or on behalf of the DCC, excluding the Contractor Solution.</p>
<p>DCC Licence</p>	<p>means the "Licence for the Provision of a Smart Meter Communication Service" granted to the DCC or any successor pursuant to sections 7AB(1) or 7AB(2) and 7AB(4) of the Gas Act 1986 and sections 6(1)(f) or 6(1A) and 6(1C) of the Electricity Act 1989.</p>

DCC Requirements	means requirements set out in Schedule 2.1 (DCC Requirements).
DCC Services	means any and all services to be provided by the DCC to the DCC Service Users or to any other person (including the provision of information relating to Smart Meters) in connection with such DCC Services or the DCC Licence.
DCC Service Providers	Organisations that provide smart metering communications (CSP) and data services (DSP) on behalf of and under contract to the DCC and any third party with whom the DCC enters into a Contract.
DCC Service User	means (other than the DCC): (a) each person who receives or is to receive any services from the DCC (including any Other SEC Party) (other than any person acting solely as an Energy Consumer); and (b) each person who is a SEC Party.
DCC Software	Means software which is owned by or licensed to the DCC.
DSP	Data Services Provider The Provider of Data processing Services to the DCC in support of Smart Metering in Great Britain. The DSP is a DCC Service Provider.
Effective Date	means the effective date of this Agreement being the date at the top of this Agreement.
Existing Contractor IPR	means IPR vesting with the Contractor that exists prior to the Effective Date that are used to provide the Services.
Force Majeure	means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof), fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Force Majeure does not include: (a) any act, event or, omission which is attributable to the wilful act, neglect or a failure to take reasonable precautions by the affected party; (b) a failure by the Contractor to adequately test any equipment or computer software supplied by it or a third party or other service component before installation, or any consequence of such failure; or (c) strikes or other industrial action by employees of, or other non-availability of labour to, the Contractor, its sub-contractors or suppliers.

Good Industry Practice	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
Great Britain Companion Specification (GBCS)	The Technical specification for interfacing to and from Smart Meters to ensure interoperability. The specification utilises the ZigBee and DLMS protocols to communicate with Smart Metering Devices.
Inducement	means (i) any payment, gift, consideration, benefit or advantage of any kind, which is (or is agreed to be) offered, promised, given, authorised, requested, accepted or agreed, whether directly or indirectly (through one or more intermediaries) which could act as an inducement or reward, for any form of improper conduct by any person in connection with their official, public, fiduciary, employment or business role, duties or functions; and/or (ii) anything that would amount to an offence of bribery or corruption under applicable law; and/or (iii) any Facilitation Payment and “Induce”, “Induced”, “Inducing” and other variants of “Inducement” shall be construed accordingly.
Industry Registration Data	means the collective term for all electricity and gas data contained within the Industry Registration Systems.
Intellectual Property Rights or IPR	means all rights in patents, trademarks, service marks, design rights (whether registered or unregistered and including semi-conductor topographies), copyright (including rights in computer software), database rights, sui generis rights, confidential information, trade secrets, trade or business names, domain names and other similar rights or obligations whether registerable or not in any country and applications for any of the foregoing.
Milestone	means an event or task described in a Schedule to this Agreement, which, if applicable, must be completed by the relevant Milestone Date.
Milestone Date	Means the date by which a Milestone must be completed as set out in this Agreement.
PDF	Planning and Delivery Forum Formed of project managers from the various parties, meets weekly.
Personnel	means any person employed or self-employed working for the Contractor and/or its sub-contractor.
Personal Data	shall have the same meaning as set out in Data Protection Legislation.
Process	has the meaning given to it under the GDPR but, for the purposes of this Agreement, it shall include both manual and automatic processing.

<p>Prohibited Act</p>	<p>means any of the following acts:</p> <p>(a) offering giving or agreeing to give to any servant of Smart DCC, any gift or consideration of any kind as an inducement or reward:</p> <p>(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any contract with Smart DCC or</p> <p>(ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any contract with Smart DCC</p> <p>(b) entering into this Agreement or any other contract with Smart DCC in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to Smart DCC.</p>
<p>Project-Generated Works</p>	<p>means any works which are generated by the Contractor, or by any of its sub-contractors or agents, in the design and development and the delivery of the Contractor Solution including but not limited to any:</p> <p>(a) computer software, including well annotated source code;</p> <p>(b) text, designs, documentation, architectures or technical configurations, logos, trademarks, domain names, Web addresses (URLs) and/or other names, addresses or brands; and/or</p> <p>records, specifications, reports, guides, manuals and/or any other documentation (whether in hard copy or electronic format), including any preparatory versions of the same, which relate in any way to a) to b) above or otherwise to the design, development or operation of the delivery of the Services.</p>
<p>Public Official</p>	<p>means any person holding a legislative, administrative or judicial position of any kind, whether appointed or elected, including any person employed by or acting on behalf of a public agency, body or state-owned enterprise, a public international organisation (as defined in the UK Bribery Act 2010 and/or any other applicable law) or a political party or organisation, or a candidate for any such office.</p>
<p>SEC or Smart Energy Code</p>	<p>has the meaning given in the DCC Licence.</p>
<p>SECCo</p>	<p>has the meaning given in the SEC.</p>
<p>Secretariat or SEC Secretariat</p>	<p>means the organisation providing SEC secretariat services.</p>

Services	means the provision of the services as specified in Schedule 4.1.
Sites	means any premises: <ul style="list-style-type: none"> (a) from which the Services are provided; (b) from which the Contractor manages, organises or otherwise directs the provision or the use of the Services; (c) where any part of the Contractor System is situated.
SLA or Service Level Agreement	means the service level agreement set out in Schedule 7.2 (Service Level Agreement).
Smart DCC	See DCC above.
Smart DCC Data	means all data, information, addresses, telephone numbers, texts, drawings, diagrams, images or sound embodied in any electronic or tangible medium (excluding any computer software) owned by Smart DCC which is provided by Smart DCC to the Contractor for the purposes of this Agreement.
Smart DCC IPR	means any Smart DCC owned or licensed software, code or materials identified in this Agreement supplied by Smart DCC to the Contractor.
Smart Meter	Equipment that meets either the SMETS1, the SMETS2 or later published versions specifications and interoperates using the Standards and definitions detailed in the GBCS. Specifically In the context of this paper this covers Electricity Smart Metering Equipment and Gas Smart Metering Equipment.
Smart Meter Response/Alert	The GBCS formatted responses and alerts generated as output by Smart Meters. These form the input to the 'Parse' function.
SMETS1	Smart metering equipment technical specifications: first version.
SMETS2	Smart metering equipment technical specifications: second version.
Successor Licensee	has the meaning given in the DCC Licence (being the "Licence for the Provision of a Smart Meter Communication Service" granted to the DCC or any successor pursuant to sections 7AB(1) or 7AB(2) and 7AB(4) of the Gas Act 1986 and sections 6(1)(f) or 6(1A) and 6(1C) of the Electricity Act 1989).
System	means computing, information systems and ICT environment(s) (including hardware, assets, software (including firmware), and/or telecommunications networks or equipment).

System Audit Data	means Data contained in or produced for the purposes of any audit carried out by DCC into the Contractor's System, the Contractor Solution or any part of it (including but not limited to security aspects).
Term	means the term of this Agreement as defined in clause 4.
Transactional Data	Refers to Smart Meter Data produced or exchanged within the DCC Ecosystem.
Wave 1 and 2 Completion	Shall have the meaning set out in Schedule 7.1 (Charges and Payment), Appendix B, paragraph 2.

1.2 In this Agreement:

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

2. Order of Precedence

2.1 If there is any conflict between any of the clauses, the Schedules, any Appendices or Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

2.1.2 Schedule 1 (Minimum Licence Requirements);

2.1.3 the clauses;

2.1.4 any Schedules and their Appendices and Annexes in ascending order (except for Schedules 1 (Minimum Licence Requirements) and 4.1 (Contractor Solution));

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

3. Appointment

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

4. Term

4.1 This Agreement starts on the Effective Date and continues until the period of three (3) calendar years has elapsed from the date of Wave 1 and 2 Completion, unless it is terminated early in accordance with the terms of this Agreement.

4.2 DCC may extend the Term of this Agreement for a further period of 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.

5. Provision of Service

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

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

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

5.2 In providing the Services the Contractor shall:

5.2.1 comply at all times with Good Industry Practice;

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

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

5.2.4 specifically engage in performing the Services to the Milestone or the Milestone Date, agreed within this Agreement; and

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

6. Warranties

- 6.1. The Contractor warrants to Smart DCC that:
 - 6.1.1. it will perform its obligations under this Agreement in accordance with Good Industry Practice and all other provisions of this Agreement;
 - 6.1.2. it has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Agreement;
 - 6.1.3. the Services shall be performed in compliance with all applicable laws, enactments, orders, regulations, and other similar instruments;
 - 6.1.4. the Services shall comply with any necessary standards and regulations applicable under this Agreement;
 - 6.1.5. all information given by the Contractor to Smart DCC in connection with this Agreement shall be accurate and comprehensive.
- 6.2. Smart DCC warrants to the Contractor that it has full capacity and authority and all necessary licences, permits and consents to enter into and perform this Agreement.

7. Sub-Contractors

- 7.1. The Contractor shall not engage any agents or sub-contractors to provide the Services or any part of the Services without Smart DCC's prior written consent (such consent not to be unreasonably withheld or delayed).
- 7.2. The Contractor shall remain responsible for obligations which are performed by its permitted agents or sub-contractors and for the acts or omissions of those agents and sub-contractors as if they were acts or omissions of the Contractor.

8. Service Performance

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

9. Charges

- 9.1. The Charges are specified in Schedule 7.1 (Charges and Payment).
- 9.2. The Charges do not include value added tax which shall be payable by Smart DCC to the Contractor at the then prevailing rate and in the manner prescribed by law.

- 9.3. The Charges are fixed and are not subject to any increase during the Term of the Agreement unless specified in Schedule 7.1 (Charges and Payment) or agreed by the parties in accordance with clause 11 (Change Control).
- 9.4. Except in the case of a reasonable dispute Smart DCC will pay the invoiced amount within a maximum time period of [REDACTED] days of receipt of an invoice by the Contractor. Where any amount remains unpaid after the period of [REDACTED] 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 [REDACTED] per annum over HSBC bank plc base rate from time to time.

10. Personnel

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

11. Change Control

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

12. Force Majeure

- 12.1. Neither party shall be responsible for a failure to carry out any of its duties under this Agreement to the extent to which this is caused by an event of Force Majeure provided that it shall take all reasonable steps to overcome and mitigate the effects of the Force Majeure.
- 12.2. The Charges for the Services affected by a Force Majeure shall be reduced or waived by a reasonable amount to be agreed between the parties to reflect the extent and standard to which the affected Services are being provided.
- 12.3. If a Force Majeure which results in the non-delivery of the Services (or a substantial part thereof) continues for more than thirty (30) calendar days, the unaffected party may terminate this Agreement by giving a termination notice specifying a termination date at least thirty (30) calendar days after receipt of the termination notice by the other party.

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

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

14. Fraud

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

15. Data

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

16. IPR indemnity

- 16.1. The Contractor shall indemnify Smart DCC against all claims, demands, actions, costs and expenses (including legal costs and disbursements on a solicitor and client basis) which Smart DCC incurs as a

result of any infringement or alleged infringement of any third party Intellectual Property Rights arising directly from the delivery by the Contractor of the Services to Smart DCC.

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

17. Ownership Rights and Licensing of Intellectual Property Rights

- 17.1. The Contractor shall assign all software rights and any other IPR as applicable generated pursuant to the Services to Smart DCC. This is to include (but is not limited to) sole ownership of well-documented source code, Project-Generated Works and any DCC Data in respect of which ownership has not automatically vested or already transferred to Smart DCC.
- 17.2. The Contractor will supply all documentation created during the provision of the Services to Smart DCC. The documents will be supplied as they are completed and will include, for example test cases, data dictionaries and other project artefacts as applicable.
- 17.3. The Contractor shall retain ownership of any Existing Contractor IPR used to provide the Services.

- 17.4. In consideration for the payment of the Charges, and without prejudice to clause 17.3 of this Agreement or the Contractor's ownership of Existing Contractor IPR the Contractor will grant Smart DCC a non-exclusive, transferable, perpetual licence to use the Existing Contractor IPR.
- 17.5. The Contractor recognises that the Services may be used by Smart DCC, DCC Service Providers and DCC Connected Person(s) and the licence set out at clause 17.4 provides the necessary rights for such parties to use the software and Existing Contractor IPR provided by or on behalf of the Contractor under this Agreement.
- 18. DCC Data**
- 18.1. The Contractor shall not at any time be entitled:
- 18.1.2 to copy, disclose or use any DCC Data except in compliance with all the Contractor's obligations under this Agreement and to the extent strictly required to comply with its obligations under this Agreement; and
- 18.1.3 to store (or retain) any DCC Data except in compliance with all the Contractor's obligations under this Agreement and to the extent strictly required to comply with any:
- (a) applicable law of Scotland or England and Wales; or
- (b) express provisions of this Agreement that require the Contractor to retain such data on a non-persistent basis.
- 18.2 The Contractor shall (and shall ensure all Contractor Persons shall) not (unless expressly agreed by the DCC in writing) delete or remove any proprietary notices contained within or relating to the DCC Data, documentation or DCC Software.
- 18.3 The Contractor shall comply with clause 18.1 in all circumstances and in addition shall (and shall ensure all Contractor Persons shall) not store, copy, disclose, or use any DCC Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the DCC.
- 18.4 To the extent that any DCC Data is held and/or processed by or on behalf of the Contractor, the Contractor shall supply that DCC Data to the DCC as requested by the DCC from time to time.
- 18.5 The Contractor shall, at all times during the Term, preserve the integrity of all DCC Data, Contractor Systems Data and Contractor CMDB Data (including preventing the loss, corruption or degradation of such Data) in the possession or control of any Contractor Person.
- 18.6 The Contractor shall:
- 18.6.2 perform (or procure) secure back-ups of:
- (a) all DCC Data and Contractor CMDB Data as required pursuant to its obligations under this Agreement; and
- (b) any other Data as required pursuant to its obligations under this Agreement; and
- 18.6.3 ensure that up-to-date back-ups of all Data backed up pursuant to clause 18.6.2 are:
- (a) taken daily and encrypted in accordance with Good Industry Practice;
- (b) tested not less than quarterly;
- (c) stored securely at a Site;

- (d) also stored securely in a separate geographical location in the United Kingdom at least one (1) kilometre from the relevant first Site referred to in clause (c);
- (e) in all cases stored at all times in accordance with the requirements of this Agreement; and
- (f) promptly available to the DCC at all times upon request and in accordance with any express obligation under this Agreement.

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

18.7.2 require the Contractor (at the Contractor's expense) to restore, or procure the restoration of the Data listed in Clause 18.7 as soon as practicable (and in any event within the timescales required by any part of this Agreement); or

18.7.3 itself restore or procure the restoration of the Data listed in Clause 18.7 and recover the reasonable costs of doing so from the Contractor.

18.8 The Contractor shall ensure that any DCC Data in the possession or under the control of any Contractor Entity is not processed, exported or transferred to any place outside the European Economic Area at any time.

19 Security Requirements

19.1 The Contractor acknowledges that the DCC places great emphasis on the confidentiality, integrity and availability of the DCC Data, and consequently on the security of:

19.1.2 the Contractor Solution;

19.1.3 the DCC Environment; and

19.1.4 the DCC Services.

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

19.2 The Contractor shall be responsible for:

19.2.2 the security of the Contractor Solution;

19.2.3 the security of the Sites;

19.2.4 the compliance of all Contractor Personnel with all security requirements in this Agreement;

19.2.5 the compliance of all Sub-contractors (including their systems, solutions and services) in respect of their involvement in the provision of the Services; and

19.2.6 the implementation and on-going management of, and compliance with, the Security Management Plan.

19.2.7 Meeting the security requirements set out in Schedule 2.1 and Schedule 4.1 of this Agreement

19.3 The Contractor shall be responsible for:

19.3.2 Taking such steps as are agreed between the parties in writing for the purpose of ensuring the security of the Contractor Solution;

- 19.3.3 The security of Contractor Personnel and Sites; and
- 19.3.4 The security of all Sub-contractors (including their systems, solutions and services) in respect of their involvement in the provision of the Services.
- 19.4 The Contractor shall provide a reasonable level of access to any member of their Personnel for the purpose of designing, implementing, managing and maintaining security.
- 19.5 The Contractor shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing DCC Data and any system that could directly or indirectly have an impact on that information, and shall ensure that DCC Data remains under the effective control of the Contractor at all times.
- 19.6 The Contractor shall ensure the up to date maintenance of a security policy and Security Management Plan relating to the operation of its own organisation and the systems, and on request shall supply these documents as soon as practicable to DCC.

Security Management Plan

- 19.7 Within 20 working days after the Effective Date, the Contractor shall prepare and submit to DCC for approval a fully developed, complete and up-to-date Security Management Plan.
- 19.8 The Security Management Plan shall:
 - 19.8.2 at a minimum, comply with the Security Controls described at the end of this section and describe how compliance will be achieved;
 - 19.8.3 identify a senior manager appointed by the Contractor who is responsible for security and who has formally approved the Security Management Plan;
 - 19.8.4 the contact details to be used by DCC to coordinate security incident response and other operational security considerations with the Contractor;
 - 19.8.5 detail the process for managing any security risks, including those from Sub-contractors (including their systems, solutions and services) in respect of their involvement in the provision of the Services;
 - 19.8.6 unless otherwise specified by DCC in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the DCC Premises, Sites, the Contractor System and DCC Data to the extent used by DCC or the Contractor in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that data and/or the Services; and
 - 19.8.7 set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this section;
- 19.9 If the Security Management Plan submitted to DCC is approved by DCC, it shall be adopted by the Contractor immediately and thereafter operated and maintained in accordance with this section. If the Security Management Plan is not approved by DCC, the Contractor shall amend it within 10 Working Days of a notice of non-approval from DCC and re-submit it for approval.
- 19.10 Approval by DCC of the Security Management Plan or of any change or amendment to the Security Management Plan shall not relieve the Contractor of its obligations under this section.

19.11 The Security Management Plan shall be fully reviewed and updated by the Contractor prior to any Service 'go live' and at least annually thereafter to reflect:

19.11.1 emerging changes in Good Industry Practice;

19.11.2 any change or proposed change to the Services and/or associated processes and the Contractor System;

19.11.3 any new perceived or changed security threats; and

19.11.4 any reasonable change in requirement requested by DCC.

19.12 The Contractor shall provide DCC with the results of such reviews and updates as soon as practicable after their completion and amend the Security Management Plan at no additional cost to DCC.

Security Compliance

19.13 DCC shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the Contractor maintains compliance with the Contractor security policy and the Security Management Plan, the specific security requirements set out in this contract and the Security Controls within this section.

19.14 If, on the basis of evidence provided by such audits, it is DCC's reasonable opinion that compliance with the Contractor security policy and Security Management Plan, the specific security requirements set out in this contract and/or the Security Controls is not being achieved by the Contractor, then DCC shall notify the Contractor of the same and give the Contractor reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement any necessary remedy. DCC may re-audit to verify that adequate remedial action has been taken.

Security Controls

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

19.16 The Contractor shall:

19.16.1 provide DCC with all DCC Data on demand in an agreed open format;

19.16.2 have documented processes to guarantee availability of DCC Data in the event of the Contractor ceasing to trade;

19.16.3 The DCC shall develop and maintain, and hold all DCC Data in accordance with DCC data retention policies or any other relevant instruction provided by DCC;

19.16.4 securely destroy all media that has held DCC Data at the end of life of that media in line with Good Industry Practice; and

19.16.5 securely erase any or all DCC Data when requested to do so by DCC.

19.17 Contractor Personnel shall be subject to pre-employment checks that include, as a minimum: employment history for at least the last three years, identity, unspent criminal convictions and right to work (including nationality and immigration status).

- 19.18 All Contractor Personnel that have the ability to access DCC Data or systems holding such data shall be informed of their responsibilities and undergo regular training on secure information management principles relevant to their role. This shall include, but not be limited to, controls relating to home and mobile working outside of Contractor premises, secure information transfer, and the use of removable devices. Unless otherwise agreed with DCC in writing, this training must be undertaken annually.
- 19.19 The Contractor must be able to state to DCC the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks DCC Data will be subject to.
- 19.20 The Contractor shall agree any proposed change in location of data storage, processing and administration with DCC in advance where the proposed location is outside the UK.
- 19.21 The systems used to access or manage DCC Data must be under the management authority of the Contractor and have a minimum set of security policy configuration enforced. Such configuration shall be described in the Security Management Plan, and include consideration of:
- 19.21.1 firewalls and other perimeter security controls;
 - 19.21.2 malicious software protection such as anti-virus software;
 - 19.21.3 password complexity, lifespan and management;
 - 19.21.4 security dependencies and responsibilities on suppliers for hosted or 'cloud' services and systems.
- 19.22 The configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.
- 19.23 When DCC Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or service that is recognised as providing a standard to Good Industry Practice.
- 19.24 The 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) shall be applied to the design and configuration of IT equipment used to provide the Services.
- 19.25 The Contractor shall operate an access control regime to ensure all users and administrators of the Contractor System are uniquely identified and authenticated when accessing or administering the Contractor System. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the Contractor System they require. The Contractor shall retain an audit record of accesses.
- 19.26 The Contractor shall ensure that any systems hosting internet-facing web services as part of the Services, whether part of the Contractor System or those provided by a Sub-contractor, will be designed to ensure that:
- 19.26.1 User connections are appropriately secured and encrypted using transport layer security with an appropriate selection of cipher suites in accordance with Good Industry Practice;
 - 19.26.2 user input is processed in a way to detect and prevent malformed input intended to cause undesired behaviour;
 - 19.26.3 users cannot submit uniform resource locators that enable security controls to be bypassed or that cause undesired behaviour; and

- 19.26.4 use of the Services is subject to security event audit recording and monitoring so that malicious behaviour is detected and responded to in a timely manner.
- 19.27 The Contractor shall ensure that systems hosting internet-facing web services as part of the Services, whether part of the Contractor System or those provided by a Sub-contractor, will be subject to a test to identify security vulnerabilities in the systems to a Good Industry Practice standard:
- 19.27.1 at least annually;
 - 19.27.2 subsequent to any material change to the Services and/or associated processes and systems;
 - 19.27.3 on notification from DCC of any new perceived or changed security threats;
 - 19.27.4 on any other reasonable request by DCC.
- 19.28 The Contractor shall seek to remediate issues identified by tests to identify security vulnerabilities in the systems within time periods defined in the Security Management Plan, based on Good Industry Practice for categorising such issues.
- 19.29 The Contractor shall procure the application of security patches to vulnerabilities within time periods defined in the Security Management Plan, based on Good Industry Practice for categorising vulnerabilities, except where:
- 19.29.1 the Contractor can demonstrate that a vulnerability is not exploitable within the context of any Service; or
 - 19.29.2 the application of a security patch adversely affects the Contractor's ability to deliver the Services in which case the Contractor shall request an extension from the DCC that includes a security patch test plan.
- 19.30 The Contractor System shall be maintained with the provision for major version upgrades of all commercial off-the-shelf software to be upgraded within 6 months of the release of the latest version, such that it is no more than one major version level below the latest release throughout the Term unless:
- 19.30.1 where upgrading such commercial off-the-shelf software reduces the level of mitigations to known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 months of release of the latest version; or
 - 19.30.2 is agreed with DCC in writing.
- 19.31 The Contractor shall collect audit records which relate to security events in the systems or that would support the analysis of potential or actual compromises. In order to facilitate effective monitoring and forensic readiness such Contractor audit records should as a minimum include:
- 19.31.1 Logs to facilitate the identification of the specific asset which makes every outbound request external to the IT environment (to the extent that the IT environment is within the control of the Contractor). Such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
 - 19.31.2 Security events generated in the IT environment (to the extent that the IT environment is within the control of the Contractor) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
- 19.32 The Contractor shall retain audit records collected in compliance with this section for a period of at least 6 months.

- 19.33 The Contractor shall notify DCC in accordance with the agreed security incident management process as defined in the Security Management Plan upon becoming aware of any Breach of Security, suspected Breach of Security or attempted Breach of Security.
- 19.34 Without prejudice to the security incident management process, upon becoming aware of any Breach of Security, suspected Breach of Security or attempted Breach of Security the Contractor shall:
- 19.34.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by DCC necessary to) minimise the extent of action or potential harm caused by the breach; remedy such Breach of Security to the extent possible and protect the integrity of the Services; apply a tested mitigation against any such Breach of Security; and prevent a further Breach of Security in the future exploiting the same root cause.
- 19.34.2 as soon as reasonably practicable provide to DCC full details of the Breach of Security, suspected Breach of Security or attempted Breach of Security, including a root cause analysis where requested by DCC.
- 19.35 In the event that any action is taken in response to a breach of security, suspected breach of security or attempted breach of security that demonstrates non-compliance of the Contractor security policy and Security Management Plan, the specific security requirements set out in this contract and the Security Controls then any required change shall be at no cost to the authority

20 Confidentiality and Publicity

- 20.1 In this Agreement “Confidential Information” shall mean any information which is marked as confidential, or is by its nature clearly confidential including, without limitation, any information relating to that party's services, operations, plans or intentions, service information, design rights, trade secrets, market opportunities and business affairs or those of its customers and is disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by either party (“the Disclosing Party”) to the other (“the Receiving Party”).
- 20.2 The Receiving Party shall only use the Confidential Information solely for the purposes of performing its obligations in accordance with the terms of this Agreement.
- 20.3 The Receiving Party will exercise in relation to the Disclosing Party’s Confidential Information a reasonable and appropriate degree of care and protection.
- 20.4 The Receiving Party undertakes not to disclose any of the Disclosing Party’s Confidential Information to any third party except that it may disclose such Confidential Information to its employees, professional advisors, agents or sub-contractors but only to the extent necessary for the performance of its obligations under this Agreement. The Receiving Party shall ensure that any third party to whom it discloses the Confidential Information shall be informed of the confidential nature of the information and be bound by obligations of confidentiality on terms no less onerous than those set out in this Agreement.
- 20.5 The Receiving Party undertakes to destroy or return (at the Disclosing Party’s discretion) to the Disclosing Party all Confidential Information in its possession, custody or control on receipt of a request to that effect and, in any event, upon termination or expiry of this Agreement.
- 20.6 Without prejudice to any other rights or remedies that either party may be entitled to, the parties acknowledge that damages may not be an adequate remedy for breach of these confidentiality obligations and agree that both parties will be entitled to seek the remedies of injunction, specific performance and any other available equitable relief for any threatened or actual breach.
- 20.7 The provisions of this clause 20 are of indefinite duration and shall not apply to any Confidential Information:

20.7.2 to the extent that it is or comes into the public domain otherwise than as a result of a breach of this Agreement by the Receiving Party;

20.7.3 which the Receiving Party can show by its written records was in its possession prior to receiving it from the Disclosing Party and which it had not previously obtained from the Disclosing Party or a third party on its behalf under an obligation of confidence; or

20.7.4 has been independently developed by the Receiving Party without use of the Confidential Information; or

20.7.5 which is required to be disclosed by law.

20.8 No publicity or advertising shall be released by the Contractor in connection with the subject matter of this Agreement without the prior written approval of Smart DCC, which shall not unreasonably be withheld or delayed.

21 Indemnities

21.1 Smart DCC may recover from the Contractor on an indemnity basis any losses, costs or expenses incurred by Smart DCC to the extent that such losses, costs or expenses arise from:

21.1.2 any negligent or wilful act or omission of the Contractor; or

21.1.3 any breach of the Data Protection Legislation by the Contractor;

only in so far as, and to the extent that, any of the events referred to are caused by the Contractor.

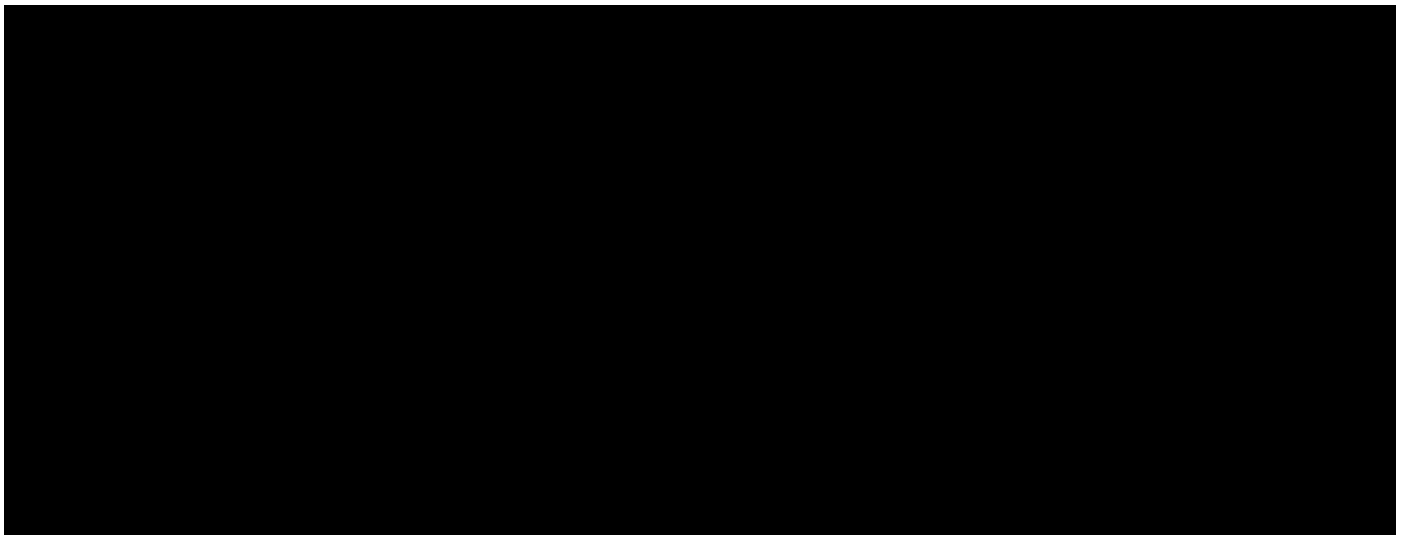
21.2 Each party shall indemnify the other, its officers, and agents against all claims, demands, actions, costs and expenses (including legal costs and disbursements) together with all costs, charges and expenses arising as a result thereof which such party incurs directly as a result of any act, omission or default of the other party, its employees, officers, agents or sub-contractors in respect of:

21.2.2 damage to real or personal property including loss or damage to Smart DCC's property;

21.2.3 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.

22 Limitations of Liability





23 Insurance



24 Dispute Resolution

- 24.1 If a dispute arises in relation to any aspect of this Agreement, the representatives of the Contractor and Smart DCC responsible for the administration of this Agreement shall first consult and discuss in good faith in an attempt to come to an agreement in relation to the disputed matter. If the parties fail to resolve the dispute at that level within a reasonable period of time (having due regard for the nature of the dispute and the operational necessity for its resolution), the dispute shall be escalated to the respective responsible company directors within each party for resolution.
- 24.2 If the dispute remains unresolved between the parties after fourteen (14) days after it has been referred to the directors of the parties pursuant to clause 24.1 above, then:
- 24.2.2 if the parties so agree, the parties may proceed to mediation provided by the Centre for Dispute Resolution (or such other body as the parties may agree); or
 - 24.2.3 if the parties so agree, the parties may proceed to arbitration by an arbitrator recognised by the Chartered Institute of Arbitrators; or
 - 24.2.4 the parties may employ any other method or procedure for the resolution of disputes as may be agreed between them; and

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

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

25 Termination

25.1 [REDACTED]

25.2 [REDACTED]

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

25.4 Smart DCC may terminate this Agreement if there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, of the Contractor.

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

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

25.6.1 the other stops or threatens to stop trading;

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

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

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

25.7 Smart DCC may terminate this Agreement for any reason of convenience by giving the Contractor [REDACTED]

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

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

25.10 The Contractor may terminate this Agreement only if:

25.10.1 [REDACTED]

25.10.2 [REDACTED]



26 Assistance on Termination or Expiry

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

27 Post-termination & survival of clauses

- 27.1 On any termination of this Contract and upon the Contractor receiving payment of the Charges that are due to it, the Contractor shall deliver up to Smart DCC the product of all Services not already delivered to Smart DCC, together with all unfinished works in progress relating to the Services (including, but not limited to, all DCC Data, Project Generated-Works and IPRs to which DCC is entitled under this Agreement). For the avoidance of doubt, save as otherwise provided in this clause 27, the cost of complying with this clause shall be borne by the Contractor.
- 27.2 Termination or expiry of this Agreement shall not affect either party's accrued rights or liabilities or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.

28 Obligations regarding sub-contracts etc.

- 28.1 In regard to all Sub-contracts and other agreements with third parties (including software licences, maintenance and support agreements, the Contractor shall (unless otherwise agreed by the DCC in writing) procure that all such "**Relevant Agreements**" shall be capable of either (at the discretion of the DCC):
 - 28.1.1 novation to the DCC (and/or its nominee) and/or any Replacement Contractor in accordance with a novation agreement in the form reasonably requested by the DCC; or
 - 28.1.2 assignment to the DCC (and/or its nominee) and/or any Replacement Contractor in accordance with an assignment agreement in the form reasonably requested by the DCC.

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

29 Assignment and novation

- 29.1 Subject to clause 29.2, the Contractor shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written consent of the DCC.
- 29.2 The Contractor may novate its rights and obligations under this Agreement to another member of the Contractor's group with the prior written consent of the DCC (such consent not to be unreasonably withheld or delayed).
- 29.3 The Contractor agrees that the DCC may:
- 29.3.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement and any associated third party licences to any Successor Licensee; or
- 29.3.2 in the event that the DCC wishes to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement other than in accordance with clause 29.3.1 the Contractor shall promptly enter into good faith negotiations with the DCC and use reasonable endeavours to reach Agreement with the DCC on the terms of a disposal. The Contractor shall not unreasonably withhold or delay its consent to any proposed disposal.
- 29.4 Any novation to a Successor Licensee shall be on terms that are substantially the same as those set out in Schedule 2 of the DCC Licence (unless the DCC otherwise elects).
- 29.5 A change in the legal status of the DCC shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the DCC.

30 Health and safety

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

31 Data protection

- 31.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that the DCC is either the Data Controller or the Data Processor and that the Contractor is the Data Processor. For the avoidance of doubt, the parties agree that the Contractor is a sub-Data Processor where the DCC acts as a Data Processor. The DCC Service Users will be the Data Controller in relation to the Personal Data Processed in accordance with this Agreement.
- 31.2 The Contractor shall:
- 31.2.1 and shall procure that all Contractor Personnel shall, Process the Personal Data only in accordance with instructions from the DCC including those instructions that are provided on behalf of the DCC Service Users (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the DCC to the Contractor in writing, during the Term) and
- (a) the Contractor shall immediately notify DCC if in its opinion an instruction infringes the GDPR or any other European Union of Member State law;
- (b) any such instructions which are inconsistent with the parties' rights and obligations under this Agreement shall be dealt with in accordance with clause 11,(Change Control);

- (c) in no event shall the Contractor Process the Personal Data for its own purposes or those of any third party;
- 31.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law;
- 31.2.3 implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration, access or disclosure (together, a "Security Incident"). Such measures shall have regard to the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects. Such measures shall include, as appropriate:
 - (a) the pseudonymisation and encryption of Personal Data;
 - (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and Services;
 - (c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
 - (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.
- 31.2.4 upon becoming aware of a Security Incident, the Contractor shall inform the DCC immediately and shall provide all such timely information and cooperation as the DCC (and/or the DCC Service Users) may require including in order for the DCC to fulfil its data breach reporting obligations under (and in accordance with the timescales required by) the Data Protection Legislation. The Contractor shall further take all such measures and actions as are necessary to remedy or mitigate the effects of the Security Incident and shall keep the DCC (and/or the DCC Service Users) up-to-date about all developments in connection with the Security Incident.
- 31.2.5 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- 31.2.6 shall not subcontract any Processing of the Personal Data to a third party subcontractor without the prior written consent from the DCC, such consent not to be unreasonably withheld or delayed and
 - (a) if the DCC refuses to consent to the Contractor's appointment of a third party subcontractor on grounds relating to the protection of the Personal Data, then either the Contractor will not appoint the subcontractor or the DCC may elect to suspend or terminate this Agreement without penalty;
 - (b) if the DCC gives consent to the Contractor's appointment of a third party subcontractor, the Contractor shall ensure that the same data protection and security obligations in this Agreement imposed on the Contractor are imposed on the third party subcontractor and the Contractor shall remain fully liable for any failure by such subcontractor to comply with any such obligations.
- 31.2.7 ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 31;
- 31.2.8 ensure that none of the Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the DCC;

- 31.2.9 notify the DCC (within three (3) Working Days) if it receives:
- (a) a request from a Data Subject to exercise their rights under the Data Protection Legislation (including its rights of access, correction, objection, erasure and data portability, as applicable); or
 - (b) a complaint or request relating to the DCC's obligations under the Data Protection Legislation;
- 31.2.10 provide the DCC (and/or the DCC Service Users) with full co-operation and timely assistance in relation to any complaint or request made, including by:
- (a) providing the DCC (and/or the DCC Service Users) with full details of the complaint or request;
 - (b) enabling the DCC (and/or the DCC Service Users) to comply with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the DCC's instructions;
 - (c) providing the DCC (and/or the DCC Service Users) with any Personal Data it holds in relation to a Data Subject as a result of this Agreement (within the timescales required by the DCC); and
 - (d) providing the DCC (and/or the DCC Service Users) with any information requested by the DCC;
- 31.2.11 provide a written description of the technical and organisational methods employed by the Contractor for Processing Personal Data (within the timescales reasonably required by the DCC);
- 31.2.12 implement technical and organisational measures to assist with fulfilment of requests from Data Subjects to exercise their rights under the Data Protection Legislation; and
- 31.2.13 not Process or otherwise transfer any Personal Data to an international organisation (as defined in the GDPR) or outside the European Economic Area. If, after the Effective Date, the Contractor (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:
- (a) the Contractor shall submit a request to the DCC which shall be dealt with in accordance with the clause 11 (Change Control) and this clause 31.2.12;
 - (b) the Contractor shall set out in its change request and/or impact assessment appropriate details of the following:
 - (i) the Personal Data which will be Processed and/or transferred outside the European Economic Area;
 - (ii) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
 - (iii) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
 - (iv) how the Contractor will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection

Legislation and in particular so as to ensure the DCC's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area. Such measures may include (without limitation) transferring the Personal Data to a recipient in a country that the European Commission has decided provides adequate protection for Personal Data, to a recipient that has achieved binding corporate rules authorisation in accordance with Data Protection Legislation, or to a recipient that has executed standard contractual clauses adopted or approved by the European Commission;

- (c) in providing and evaluating the change request and impact assessment, the parties shall ensure that they have regard to and comply with then current Guidance on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally; and
- (d) the Contractor shall comply with such other instructions and shall carry out such other actions as the DCC may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Agreement or a separate data processing agreement between the parties; and
 - (ii) procuring that any Sub-contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the DCC on such terms as may be required by the DCC, which the Contractor acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).
- (e) DCC shall not be obliged to agree to any change proposed by the Contractor under this clause.

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

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

31.5 Notwithstanding any audit provisions in this Agreement, the Contractor shall permit the DCC (and/or the DCC Service User) (or its appointed third party auditors) to audit the Contractor's compliance with this clause 31, and shall make available to the DCC (and/or the DCC Service User) all information, systems and staff necessary for the DCC (and/or the DCC Service User) (or its third party auditors) to conduct such audit. The Contractor acknowledges that the DCC (and/or the DCC Service User) (or its third party auditors) may enter its premises for the purposes of conducting this audit, provided that the DCC (and/or the DCC Service User) gives it reasonable prior notice of its intention to audit, conducts its audit during normal business hours, and takes all reasonable measures to prevent unnecessary disruption to the Contractor's operations. The DCC (and/or the DCC Service User) will not exercise its audit rights more than once in any twelve (12) calendar month period, except (i) if and when required by instruction of a competent data protection authority; or (ii) the DCC (and/or the DCC Service User) believes a further audit is necessary due to a Security Incident suffered by the Contractor.

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

32 Ethical behaviour

- 32.1 The Parties shall not, and each Party shall ensure that its respective affiliates and personnel shall not, Induce or do or agree to do any other act, failure to act or thing in connection with the provision of the Services or any other agreement between any Contractor affiliate or its subcontractor (to the extent engaged by the Contractor in providing the Services to Smart DCC), including the performance or award of any such agreement, that contravenes any applicable law or requirement of a regulatory authority relating to anti-bribery and corruption or anti-money laundering, including:

32.1.1 the UK Bribery Act 2010 (and/or the laws and legislation it repeals), the Proceeds of Crime Act 2002, the Theft Act 1968, the Fraud Act 2006 and the Companies Act 2006;

- 32.2 The Contractor undertakes, warrants and represents that it shall maintain policies, procedures and guidelines that are applicable to all Contractor affiliates and Contractor personnel (including subcontractors to the extent engaged by the Contractor in providing the Services to Smart DCC) and are intended and designed to prevent them doing or failing to do any act or thing that contravenes any applicable law or requirement of a regulatory authority relating to anti-bribery and corruption or anti-money laundering, including a gifts and entertainment policy requiring such persons not to undertake, offer, promise, give, authorise, request, accept or agree any Inducement (or to agree to do any of the foregoing).
- 32.3 The Contractor agrees to notify Smart DCC and confirm the same promptly in writing immediately upon discovering any instance where it has, or any of its Affiliates or Contractor Personnel have, failed to comply with any provisions of this clause 32.
- 32.4 Each Party agrees to notify the other as soon as reasonably practicable upon becoming aware of any extortive solicitation, demand or other request for anything of value, by or on behalf of any person (including any Public Official) relating to this Agreement or its subject matter.
- 32.5 Each Party shall hold harmless, indemnify and keep indemnified the other Party and its successor's assigns, officers, employees and representatives against losses which it suffers or incurs in connection with a breach of clause 32 and/or, in the case of the Contractor, a breach of clause 32.2. This clause 32.5 shall not require a Party to indemnify the Party for the amount of any fine constituting a criminal penalty, to the extent that such indemnity would not be permitted by applicable law.

33 Contract management

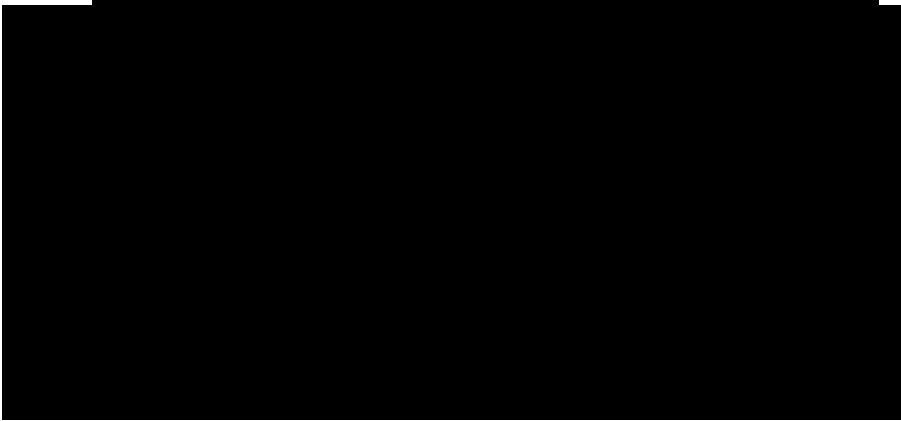
- 33.1 The Contractor shall appoint a service delivery or project manager who shall be responsible for the day-to-day management and administration of this Agreement and of the coordination and delivery of the Services.
- 33.2 The Contractor shall submit a completed highlight report on a weekly basis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

34 General

- 34.1 This Agreement and the Schedules shall together represent the entire understanding and constitute the whole agreement between the parties in relation to its subject matter and supersede any previous discussions, correspondence, representations or agreement between the parties with respect thereto notwithstanding the existence of any provision of any such prior agreement that any rights or provisions of such prior agreement shall survive its termination. The term “this Agreement” shall be construed accordingly. This clause does not exclude liability of either party for fraudulent misrepresentation.
- 34.2 No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy. No waiver by either party of any breach of this Agreement shall be considered as a waiver of a preceding or subsequent breach.
- 34.3 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

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

Signed for and on behalf of **Smart DCC Limited**



Signed for and on behalf of **THE CONTRACTOR**

