

Stage 1 of the Smart Energy Code: Proposed Designation Draft

Dated: _____ **2013**

Smart Energy Code

CONTENTS

SMART ENERGY CODE CONTENTS

	Page No.
Introduction	1
Section A: Definitions and Interpretation	
A1 Definitions	2
A2 Interpretation	31
Section B: Accession	
B1 Accession	33
Section C: Governance	
C1 SEC Objectives	36
C2 Panel	39
C3 Panel Members	43
C4 Elected Members	48
C5 Proceedings of the Panel	53
C6 Sub-Committees	58
C7 Code Administrator, Secretariat and SECCo	61
C8 Panel Costs and Budgets	65
Section D: Modification Process	
D1 Raising Modification Proposals	70
D2 Modification Paths	75
D3 Initial Consideration of Modification Proposals	77
D4 Authority Determinations	81
D5 Withdrawal by Proposer	84
D6 Refinement Process	85
D7 Report Phase	90
D8 Change Board and Change Board Decision	94
D9 Modification Proposal Decision	100
D10 Implementation	103

Section E: Registration Data

E1	Reliance on Registration Data	105
E2	Provision of Registration Data	106

Section F: Smart Metering System Requirements

[Intentionally Blank]

Section G: Security

[Intentionally Blank]

Section H: DCC Services

H1	User Entry Process	109
H2	Supplier Nominated Agents	112
H3	DCC User Gateway	115
H4	Communications Hub Service	117
H5	Enrolment of Smart Metering Systems	118
H6	Core Communication Services	119
H7	Elective Communication Services	121
H8	Withdrawal of Enrolled Metering Systems	126
H9	Replacement of Enrolled Metering Systems	127
H10	Error Reporting/Fault Management	128
H11	Other Services	129
H12	Business Continuity	130
H13	Performance Standards and Reporting	131

Section I: Data Privacy

I1	Data Protection and Access to Data	132
----	------------------------------------	-----

Section J: Charges

J1	Payment of Charges	135
J2	Payment Default and Disputes	138
J3	Credit Cover	141
J4	Review and Forecasting of Charges	148

Section K: Charging Methodology

K1	Introduction	150
K2	Estimated Revenues	151
K3	Matters Relevant to Fixed Charge Calculation	153
K4	Determining Fixed Charges Before the MPMR Period	158
K5	Determining Fixed Charges During the MPMR Period	160
K6	Determining Fixed Charges After the MPMR Period	165
K7	Determining Explicit Charges	169
K8	Determining Elective Charges	172
K9	Within-Year Adjustments	175
K10	Calculating Monthly Payments	179
K11	Definitions	184

Section L: [Intentionally Blank]

[Intentionally Blank]

Section M: General

M1	Commencement and Duration	189
M2	Limitations of Liability	190
M3	Services FM and Force Majeure	195
M4	Confidentiality	199
M5	Intellectual Property Rights	204
M6	Party Details	209
M7	Dispute Resolution	210
M8	Suspension Expulsion and Withdrawal	214
M9	Transfer of DCC Licence	220
M10	Notices	222
M11	Miscellaneous	224

Section X: Transition

X1	General Provisions Regarding Transition	227
X2	Effective Provisions at Designation	231
X3	Provisions to Become Effective Following Designation	236
X4	Governance Set-up Arrangements	237
X5	Incorporation of Certain Documents into this Code	240

X6	Transitional Variations	242
----	-------------------------	-----

Schedules:

Schedule 1:	Framework Agreement	244
Schedule 2:	Specimen Accession Agreement	250
Schedule 3:	Specimen Bilateral Agreements	256
Schedule 4:	SECCo	265
Schedule 5:	Accession Information	290
Schedule 6:	Specimen Form Letter of Credit	291

INTRODUCTION

- A) This Code has been designated by the Secretary of State pursuant to the DCC Licence, and is subject to modification in accordance with the Secretary of State's statutory powers and the DCC Licence.
- B) The Parties comprise the DCC, Users (or prospective Users) of DCC's Services, and persons holding certain Energy Licences that are obliged by those licences to accede to this Code (some of whom are Users of DCC's Services).
- C) The Original Parties have agreed to give effect to, and to be bound by, this Code in accordance with the Framework Agreement.
- D) The other Parties have agreed to give effect to, and to be bound by, this Code in accordance with an Accession Agreement.
- E) SECCo is a company established to facilitate the operation of this Code. SECCo is not a Party (as defined), and only has rights and obligations under this Code where specified.

SECTION A: DEFINITIONS AND INTERPRETATION

A1 DEFINITIONS

A1.1 In this Code, except where the context otherwise requires, the expressions in the left hand column below shall have the meanings given to them in the right hand column below:

Accession Agreement means an accession agreement entered into pursuant to Section B1 (Accession).

Affected Party has the meaning given to that expression in the definition of Force Majeure.

Affiliate means, in relation to any person, any holding company of that person, any subsidiary of that person or any subsidiary of a holding company of that person, in each case within the meaning of section 1159 of the Companies Act 2006.

Agency for the Co-operation of Energy Regulators means the agency of that name established under Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Co-operation of Energy Regulators.

Alternate has the meaning given to that expression in Section C5.19 (Alternates).

Alternative Proposal has the meaning given to that expression in Section D6.15 (Alternative Proposals).

Applicant has the meaning given to that expression in Section B1.1 (Eligibility for Admission).

- Application Fee** has the meaning given to that expression in Section B1.5 (Application Fee).
- Application Form** means a form requesting the information set out in Schedule 5 (and which must not request any further information), in such format as the Code Administrator may determine from time to time.
- Application Guidance** has the meaning given to that expression in Section B1.4 (Application Form and Guidance).
- Appropriate Permission** means, in respect of a Communication Service to be provided to a User in respect of a Smart Metering System at a premises that will result in the User obtaining Consumption Data, either:
- (a) (where that User is the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System) that the User does not need consent to access that Consumption Data in accordance with its Energy Licence, or that the User has consent (whether explicit or implicit) in accordance with the requirements of its Energy Licence; or
 - (b) (where that User is not the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System) that the Energy Consumer has given the User explicit consent to obtain that Consumption Data and such consent has not been withdrawn.

Approved Budget	has the meaning given to that expression in Section C8.13 (Approval of Budgets).
Authority	means the Gas and Electricity Markets Authority as established under section 1 of the Utilities Act 2000.
Bank Guarantee	means an on demand bank guarantee in a form reasonably acceptable to the DCC from a bank with the Required Bank Rating which guarantee has not been breached or disclaimed by the provider and has at least one month left until it expires.
Bilateral Agreement	means an agreement entered into pursuant to Section H7 (Elective Communication Services) between the DCC and a User.
Business Continuity Plan	means the plan developed in accordance with Section H12 (Business Continuity).
Cash Deposit	means a deposit of funds by or on behalf of the User into a bank account in the name of the DCC, such that title in such funds transfers absolutely to the DCC.
Change Board	has the meaning given to that expression in Section D8.1 (Establishment of the Change Board).
Change Board Member	has the meaning given to that expression in Section D8.4 (Membership of the Change Board).
Charges	means the charges payable to the DCC pursuant to this Code (including pursuant to Bilateral Agreements).

Charging Methodology	means the methodology for determining the Charges, as set out in Section K (Charging Methodology).
Charging Objectives	has the meaning given to that expression in Section C1 (SEC Objectives).
Charging Statement	means, from time to time, the statement prepared by DCC pursuant to Condition 19 of the DCC Licence that is in force at that time.
Code	means this Smart Energy Code (including its Schedules and the SEC Subsidiary Documents).
Code Administration Code of Practice	means the document of that name as approved by the Authority from time to time.
Code Administration Code of Practice Principles	means the principles set out as such in the Code Administration Code of Practice.
Code Administrator	has the meaning given to that expression in Section C7.1 (Code Administrator).
Commercial Activities	includes, in particular, Energy Efficiency Services, Energy Management Services, Energy Metering Services, and Energy Price Comparison Services, in each case as defined in the DCC Licence and in relation to the Supply of Energy (or its use) under the Electricity Act and the Gas Act.
Communication Services	means the Core Communication Services or the Elective Communication Services.
Communications Hub	has the meaning given to that expression in the DCC Licence.

Communications Hub Service	means the Service described in Section H4 (Communications Hub Service).
Competent Authority	means the Secretary of State, the Authority, and 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, this Code or its subject matter).
Completion of Implementation	has the meaning given to that expression in Section X1 (General Provisions Regarding Transition).
Confidential Information	means, in respect of a Party other than DCC, the Data belonging or relating to that Party or that otherwise becomes available to the DCC as a result (whether directly or indirectly) of that Party being a party to this Code.
Consultation Summary	has the meaning given to that expression in Section D6.14 (Working Group Consultation).
Consumer Data	has the meaning given to that expression in Section M5.6 (Consumer Data).
Consumer Member	has the meaning given to that expression in Section C3.1 (Panel Composition).
Consumption Data	means, in respect of a premises, the quantity of electricity or gas measured by the Energy Meter as having been supplied to the premises.

Core Communication Services	means Services for the provision of communications to or from a Smart Metering System that relate solely to the Supply of Energy (or its use), as described in the Core Communication Services Schedule.
Core Communication Services Schedule	means the document to be included as a Schedule to this Code pursuant to section 88 of the Energy Act 2008.
Credit Assessment Score	means, in respect of a User, a credit assessment score in respect of that User procured from one of the credit assessment companies named in Section J3.8 (User's Credit Cover Factor). Where more than one credit assessment product is listed in respect of that company, it shall be the score determined in accordance with the listed product that the DCC reasonably considers the most appropriate for the User.
Credit Cover Factor	has the meaning given to that expression in Section J3.4 (User's Credit Cover Factor).
Credit Cover Requirement	has the meaning given to that expression in Section J3.2 (Calculation of Credit Cover Requirement).
Credit Support	means one or more of a Bank Guarantee, Cash Deposit and/or Letter of Credit procured by a User pursuant to Section J3 (Credit Cover).
Data	means any information, data, knowledge, figures, methodologies, minutes, reports, forecasts, images or sounds (together with any database made up of any of these) embodied in any medium (whether tangible or electronic).

Data Protection Act	means the Data Protection Act 1998.
DCC	means, subject to Section M9 (Transfer of DCC Licence), the holder from time to time of the DCC Licence. In accordance with Section A2.1(1), references to the DCC shall (where applicable) include references to the DCC Service Providers with whom the DCC has contracted in order to secure performance of its obligations under this Code.
DCC Licence	means the licences granted under section 6(1A) of the Electricity Act and section 7AB(2) of the Gas Act.
DCC Member	has the meaning given to that expression in Section C3.1 (Panel Composition).
DCC Service Provider	means an External Service Provider, as defined in the DCC Licence (but always excluding the DCC itself).
DCC Service Provider Contract	means, as between the DCC and each DCC Service Provider, any arrangement (however described) pursuant to which the DCC procures services for the purpose of providing the Services.
DCC Systems	means the Systems used by the DCC and/or the DCC Service Providers in relation to the Services and/or this Code.
DCC User Gateway	means the communications interface designed to allow the communications referred to in Section H3 (DCC User Gateway) to be sent between the User and the DCC.

DCC Website	means the DCC's publicly available website (or, where the Panel and the DCC so agree, the Website).
Default Interest Rate	means, for any day, 8% above the base lending rate of the Bank of England at 13.00 hours on that day.
Defaulting Party	has the meaning given to that expression in Section M8.1 (Events of Default).
Designated Premises	means Non-Domestic Premises defined as Designated Premises within the meaning given to that expression in the Electricity Supply Licences or the Gas Supply Licences.
Detailed Evaluation	has the meaning given to that expression in Section H7.7 (Detailed Evaluation of Elective Communication Services).
Device	means each of the devices that together comprise a Smart Metering System, as further described in the SMETS.
Dispute	means any dispute or difference (of whatever nature) arising under, out of or in connection with this Code and/or any Bilateral Agreement.
Domestic Premises	means premises at which a Supply of Energy is or will be taken wholly or mainly for domestic purposes, which is to be interpreted in accordance with Condition 6 of the relevant Energy Supply Licence.
Draft Budget	has the meaning given to that expression in Section C8.11 (Preparation of Draft Budgets).

Due Date	has the meaning given to that expression in Section J1.4 (Payment of Charges).
Elected Members	has the meaning given to that expression in Section C3.1 (Panel Composition).
Elective Communication Services	means Services for the provision of communications to or from a Smart Metering System that relate solely to the Supply of Energy (or its use), and that are provided by the DCC pursuant to Bilateral Agreements (or that a Party may request that the DCC so provides).
Electricity Act	means the Electricity Act 1989.
Electricity Distribution Licence	means a licence granted, or treated as granted, under section 6(1)(c) of the Electricity Act.
Electricity Distributor	means, in respect of a Smart Metering System at a premises, the Electricity Distribution Licence holder for the network to which such premises are connected.
Electricity Distributor Services	means those Core Communication Services identified as such in the Core Communication Services Schedule.
Electricity Meter	means any meter that conforms to the requirements of paragraph 2 of schedule 7 to the Electricity Act and is used for the purpose of measuring the quantity of electricity that is supplied to premises.
Electricity Network Party	means a Party that holds an Electricity Distribution Licence.

Electricity Supplier Party	means a Party that holds an Electricity Supply Licence (regardless of whether that Party also holds a Gas Supply Licence).
Electricity Supply Licence	means a licence granted, or treated as granted, pursuant to section 6(1)(d) of the Electricity Act.
Eligible Supplier Agent	has the meaning given to that expression in Section H2.2 (Eligible Supplier Agents).
Enabling Services	means one or more of the Enrolment Service, the Communications Hub Service, and the Other Enabling Services.
Energy Code	means a multilateral code or agreement maintained pursuant to one or more of the Energy Licences.
Energy Consumer	means a person who receives, or wishes to receive, a Supply of Energy at any premises in Great Britain.
Energy Licence	means a licence that is granted, or treated as granted, under section 6 of the Electricity Act or under section 7, 7A or 7AB of the Gas Act.
Energy Meter	means an Electricity Meter or a Gas Meter.
Energy Supply Licence	means an Electricity Supply Licence or a Gas Supply Licence.
Enrolment	means, in respect of a Smart Metering System, the act of enrolling that Smart Metering System in accordance with the Enrolment Service (and the words “ Enrol ” and “ Enrolled ” will be interpreted accordingly).

Enrolment Service	means the Service described in Section H5 (Enrolment of Smart Metering Systems).
EU Regulations	means: <ul style="list-style-type: none">(a) Regulation 2009/714/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchange in electricity and repealing Regulation 2003/1228/EC; and(b) Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the national gas transmission networks and repealing Regulation 2005/1775/EC, as amended by Commission Decision 2010/685/EU of 10 November 2010 amending Chapter 3 of Annex I to Regulation 2009/715/EC of the European Parliament and of the Council on conditions for access to the natural gas transmission networks.
Event of Default	has the meaning given to that expression in Section M8.1 (Events of Default).
Export MPAN	means an MPAN for a Metering Point relating to the export of electricity from a premises.
Export Supplier	means, for a Smart Metering System and any period of time, the User Registered during that period in respect of the Export MPAN for that Smart Metering System.
Export Supplier Services	means those Core Communication Services identified as such in the Core Communication Services Schedule.

Fast-Track Modifications	has the meaning given to that expression in Section D2.8 (Fast-Track Modifications).
Fixed Charges	has the meaning given to that expression in the Charging Methodology.
Force Majeure	means, in respect of any Party (the Affected Party), any event or circumstance which is beyond the reasonable control of the Affected Party, but only to the extent such event or circumstance (or its consequences) could not have been prevented or avoided had the Affected Party acted in accordance with Good Industry Practice. Neither lack of funds nor strikes or other industrial disturbances affecting only the employees of the Affected Party and/or its contractors shall be interpreted as an event or circumstance beyond the Affected Party's control.
Framework Agreement	means an agreement in the form set out in Schedule 1.
Gas Act	means the Gas Act 1986.
Gas Meter	means a meter that conforms to the requirements of section 17(1) of the Gas Act for the purpose of registering the quantity of gas supplied through pipes to premises.
Gas Network Party	means a Party that holds a Gas Transporter Licence.
Gas Supplier	means, for a Smart Metering System and any period of time, the User Registered during that period in respect of the MPRN for that Smart Metering System.

Gas Supplier Party	means a Party that holds a Gas Supply Licence (regardless of whether that Party also holds an Electricity Supply Licence).
Gas Supplier Services	means those Core Communication Services identified as such in the Core Communication Services Schedule.
Gas Supply Licence	means a licence granted, or treated as granted, pursuant to section 7A(1) of the Gas Act.
Gas Transporter	means, in respect of a Smart Metering System at a premises, the person who holds the Gas Transporter Licence for the network to which such premises are connected.
Gas Transporter Licence	means a licence granted, or treated as granted, under section 7 of the Gas Act (but not the licence in respect of the National Transmission System, as defined in the UNC).
Gas Transporter Services	means those Core Communication Services identified as such in the Core Communication Services Schedule.
General SEC Objectives	has the meaning given to that expression in Section C1 (SEC Objectives).
Good Industry Practice	means, in respect of a Party, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking as that Party under the same or similar circumstances.

- Greenhouse Gas Emissions** means emissions of Greenhouse Gases, as defined in section 92 of the Climate Change Act 2008.
- Import MPAN** means an MPAN for a Metering Point relating to the import of electricity to a premises.
- Import Supplier** means, for a Smart Metering System and any period of time, the User Registered during that period in respect of the Import MPAN for that Smart Metering System.
- Import Supplier Services** means those Core Communication Services identified as such in the Core Communication Services Schedule.
- Information Commissioner** means the Commissioner, as defined in the Data Protection Act.
- Insolvency Type Event** means, in respect of a Party, that that Party:
- (a) is unable to pay its debts as they fall due, or is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (but as if the reference in such section to “£750” was replaced with “£10,000”);
 - (b) calls a meeting for the purpose of passing a resolution for its winding-up, or such a resolution is passed;
 - (c) presents, or has presented in respect of it, a petition for a winding-up order;
 - (d) has an application to appoint an administrator made in respect of it, or a notice of intention to appoint an administrator is filed in respect of it;
 - (e) has an administrator, administrative receiver, or

receiver appointed over all or a substantial part of its business, undertaking, property or assets;

- (f) takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it; or
- (g) suffers or undergoes any procedure analogous to any of those specified above, including in respect of a Party who is a natural person or in any jurisdiction outside the UK in which a Party is incorporated.

Intellectual Property Rights

means patents, trade marks, trade names, service marks, rights in designs, copyright (including rights in computer software), logos, rights in internet domain names, and moral rights, database rights, rights in know-how, and other intellectual property rights (in each case, whether registered or unregistered or subject to an application for registration), and includes any and all rights or forms of protection having equivalent or similar effect anywhere in the world.

Interim Election

has the meaning given to that expression in Section C4.2 (Election of Elected Members).

Invoice

has the meaning given to that expression in Section J1.2 (Invoicing of Charges).

Large Supplier Party

means a Supplier Party that is not a Small Supplier Party.

Laws and Directives	means any law (including the common law), statute, statutory instrument, regulation, instruction, direction, rule, condition or requirement (in each case) of any Competent Authority (or of any authorisation, licence, consent, permit or approval of any Competent Authority).
Letter of Credit	means an unconditional irrevocable standby letter of credit in substantially the form set out in Schedule 6 from a bank with the Required Bank Rating which letter of credit has not been breached or disclaimed by the provider.
Liability	includes any loss, liability, damages, costs (including legal costs), expenses and claims.
Malicious Software	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on Data, software, files, programs or codes (whether or not its operation is immediate or delayed, and whether it is introduced wilfully, negligently or without knowledge of its existence).
Meter Asset Manager	has the meaning given to that expression in the SPAA.
Meter Operator	has the meaning given to that expression in the MRA.
Metering Point	has the meaning given to that expression in the MRA.
Modification Proposal	has the meaning given to that expression in Section D1.2 (Modifications).

Modification Register	has the meaning given to that expression in Section D1.8 (Modification Register).
Modification Report	has the meaning given to that expression in Section D7.1 (Modification Report).
Modification Report Consultation	has the meaning given to that expression in Section D7.8 (Modification Report Consultation).
MPAN	means, in respect of a Smart Metering System, the Supply Number (or each of the Supply Numbers) allocated under the MRA to the Metering Point(s) at which the import or export of electricity is recorded by that Smart Metering System.
MPRN	means, in respect of a Smart Metering System, the Supply Meter Point Reference Number allocated by the relevant Gas Transporter to the Supply Point at which the supply of gas is recorded by that Smart Metering System.
MRA	means the Master Registration Agreement established pursuant to the Electricity Distribution Licences.
National Consumer Council	means the body of that name established by section 1 of the Consumers, Estate Agents and Redress Act 2007.
Network Party	means a Party that is either an Electricity Network Party or a Gas Network Party.
New Party	means a Party that is a Party pursuant to an Accession Agreement.

Non-Default Interest Rate	means, for any day, the base lending rate of the Bank of England at 13.00 hours on that day.
Non-Domestic Premises	means premises other than Domestic Premises.
Original Party	means a Party that is a Party pursuant to the Framework Agreement.
Other Enabling Services	means the Services described in Section H11 (Other Services), and all other Services other than the Enrolment Service, the Communications Hub Service, and the Communication Services.
Other SEC Party	means a Party that is not the DCC, is not a Network Party, and is not a Supplier Party.
Other User Core Services	means those Core Communication Services identified as such in the Core Communication Services Schedule.
Panel	means the body established as such in accordance with Section C2.1 (Establishment of the Panel).
Panel Chair	has the meaning given to that expression in Section C3.1 (Composition of the Panel).
Panel Member	has the meaning given to that expression in Section C3.1 (Composition of the Panel).
Panel Objectives	has the meaning given to that expression in Section C2.2 (Panel Objectives).

Parent Company Guarantee	means a guarantee in such form as the DCC may reasonably approve from an Affiliate of the User in question which guarantee has not been breached or disclaimed by the guarantor and has at least one month left until it expires. Where the guarantor is incorporated outside of the United Kingdom, the guarantee will only be validly given where supported by a legal opinion regarding capacity and enforceability in a form reasonably satisfactory to the DCC.
Party	means, from time to time, a person that has agreed to be bound by this Code (either pursuant to the Framework Agreement or an Accession Agreement), and (without prejudice to Section M8.14 (Consequences of Ceasing to be a Party)) that has not at that time ceased to be so bound in accordance with Section M8 (but excluding SECCo).
Party Data	has the meaning given to that expression in Section M5.10 (Party Data).
Party Category	means, as the context requires, one of the following categories: <ul style="list-style-type: none">(a) the Large Supplier Parties collectively;(b) the Small Supplier Parties collectively;(c) the Electricity Network Parties collectively;(d) the Gas Network Parties collectively; and(e) the Other SEC Parties collectively.

Party Details	means, in respect of each Party, the information relating to that Party and corresponding to the heads of information set out in the Application Form from time to time.
Path 1 Modification	has the meaning given to that expression in Section D2.4 (Path 1 Modification: Authority-led).
Path 2 Modification	has the meaning given to that expression in Section D2.6 (Path 2 Modification: Authority Determination).
Path 3 Modification	has the meaning given to that expression in Section D2.7 (Path 3 Modification: Self-Governance).
Personal Data	means personal data, as defined in the Data Protection Act.
Preliminary Assessment	has the meaning given to that expression in Section H7.4 (Preliminary Assessment of Elective Communication Services).
Process	means, in respect of any Personal Data, to ‘process’ that Personal Data, as defined in the Data Protection Act (and “ Processing ” shall be interpreted accordingly).
Proposer	has the meaning given to that expression in Section D1.3 (Persons Entitled to Propose Modification Proposals).
Recoverable Costs	has the meaning given to that expression in Section C8.2 (SEC Costs and Expenses).
Refinement Process	has the meaning given to that expression in Section D6 (Refinement Process).

Region	means each of the geographical regions of Great Britain that are subject to different DCC Service Provider Contracts, the exact boundaries of which will be as published by the DCC (or the Panel on behalf of the DCC) from time to time.
Registered	means Registered, as defined in the MRA or the SPAA, as applicable (and “ Registration ” shall be interpreted accordingly).
Registration Data	has the meaning given to that expression in Section E1 (Reliance on Registration Data).
Regulatory Year	means a period of twelve months beginning at the start of 1 April in any calendar year and ending at the end of 31 March in the next following calendar year.
Related Person	means, in relation to an individual, that individual’s spouse, civil partner, parent, grandparent, sibling, child, grandchild or other immediate family member; any partner with whom that individual is in partnership; that individual’s employer; any Affiliate of such employer; any person by whom that individual was employed in the previous 12 months; and any company (or Affiliate of a company) in respect of which that individual (individually or collectively with any member of his immediate family) controls more than 20% of the voting rights.

- Relevant Instruments** means:
- (a) the Electricity Act and the Gas Act;
 - (b) the Data Protection Act;
 - (c) the Energy Licences; and
 - (d) the Energy Codes.
- Report Phase** has the meaning given to that expression in Section D7.1 (Modification Report).
- Required Bank Rating** means that a person has one or more long-term Recognised Credit Ratings of at least (based, where the person has more than one such rating, on the lower of the ratings):
- (a) “A-” by Standard & Poor’s Financial Services LLC;
 - (b) “A3” by Moody’s Investors Services Inc; and/or
 - (c) “A-” by Fitch Ratings Limited; and/or
 - (d) “A(low)” by DBRS Ratings Limited.
- Restricted Communication Service** means, in respect of any User requesting an Elective Communication Service in respect of a Smart Metering System, an Elective Communication Service that would be equivalent to a Core Communication Service that is identified in the Core Communication Services Schedule as being restricted to a class of Users of which the requesting User is not one for the purposes of that Smart Metering System.

Scheduled Election	has the meaning given to that expression in Section C4.2 (Election of the Elected Members).
SEC Arrangements	has the meaning given to that expression in the DCC Licence.
SEC Materials	has the meaning given to that expression in Section M5.1 (SEC Materials).
SEC Objectives	means, in respect of the Charging Methodology only, the Charging Objectives and, in all other cases, the General SEC Objectives.
SEC Subsidiary Documents	means each of the documents set out as such in the appendices to this Code. Each SEC Subsidiary Document will identify the Section(s) of this Code to which the SEC Subsidiary Document relates, and references to the “applicable SEC Subsidiary Document” shall be construed accordingly.
SECCo	has the meaning given to that expression in Schedule 4.
Secretariat	has the meaning given to that expression in Section C7.6 (Secretariat).
Secretary of State	has the meaning given to that expression in the Interpretation Act 1978.
Services	means the services provided, or to be provided, by the DCC pursuant to Section H (DCC Services), including pursuant to Bilateral Agreements.

Services FM

means, in respect of any Services, the occurrence of any of the following:

- (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 against a person or serious damage to property, 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).

Services IPR

has the meaning given to that expression in Section M5.14 (Services IPR).

Significant Code Review means a review of one or more matters by the Authority which the Authority considers is:

- (a) related to this Code (whether on its own or together with other Energy Codes); and
- (b) likely to be of significance in relation to the Authority's principal objective and/or general duties (as set out in section 3A of the Electricity Act and section 4AA of the Gas Act), statutory functions and/or relevant obligations arising under EU law,

and concerning which the Authority has issued a notice that the review will constitute a significant code review.

Significant Code Review Phase means, in respect of each Significant Code Review, the period from the date on which the Authority issues the notice stating that the matter is to constitute a Significant Code Review, and ending on the earlier of:

- (a) the date on which the DCC submits a Modification Proposal in respect of any variations arising out of a Significant Code Review that the DCC is directed to submit by the Authority;
- (b) the date on which the Authority issues a conclusion that no modification is required to this Code as a result of the Significant Code Review; or
- (c) the date 28 days after the date on which the Authority issues its conclusion document in respect of the Significant Code Review.

Small Supplier Party	means a Supplier Party which, at the time at which it is necessary to assess the status of the Party, supplies electricity and/or gas to fewer than 250,000 (two hundred and fifty thousand) Domestic Premises.
Smart Metering Equipment Technical Specification	means the document of that name designated for the purposes of the Energy Supply Licences, which it is intended will be incorporated into this Code pursuant to Section X5 (Incorporation of Certain Documents into this Code).
Smart Metering System	<p>means a system installed at premises for the purposes of the Supply of Energy to the premises that, on the date on which it is installed, as a minimum:</p> <ul style="list-style-type: none">(a) consists of the apparatus identified in;(b) has the functional capability specified by; and(c) complies with the other requirements of, <p>the Smart Metering Equipment Technical Specification that is applicable at that date.</p>
SMETS	means the Smart Metering Equipment Technical Specification.
SPAA	means the Supply Point Administration Agreement established pursuant to the Gas Supply Licences.
Specimen Accession Agreement	means the specimen form of agreement set out in Schedule 2.
Specimen Bilateral Agreement	means the specimen form of agreement set out in Schedule 3.

Statement of Service Exemptions	means a statement of that name developed by the DCC in accordance with Condition 17 of the DCC Licence.
Sub-Committee	has the meaning given to that expression in Section C6 (Sub-Committees).
Successor Licensee	has the meaning given to that expression in Section M9.2 (Application and Interpretation of Section M9).
Supplier Nominated Agent	has the meaning given to that expression in Section H2.7 (Appointment of Supplier Nominated Agent).
Supplier Party	means a Party that is an Electricity Supplier Party and/or a Gas Supplier Party.
Supply Meter Point Reference Number	has the meaning given to that expression in the UNC.
Supply Number	has the meaning given to that expression in the MRA.
Supply of Energy	means either or both of the supply of gas pursuant to the Gas Act and the supply of electricity pursuant to the Electricity Act (in each case within the meaning that is given to the expression “supply” in the respective Act).
Supply Point	has the meaning given to that expression in the UNC.
System	means a system for generating, sending, receiving, storing, manipulating or otherwise processing electronic communications, including all hardware, software and Data associated therewith.
Transition Objective	has the meaning given to that expression in Section X1 (General Provisions Regarding Transition).

UNC	means the Uniform Network Code established pursuant to the Gas Transporter Licences.
Urgent Proposal	has the meaning given to that expression in Section D4.6 (Urgent Proposals).
User	means a Party that has completed the User Entry Process.
User Entry Process	means the process described in Section H1 (User Entry Process).
User System	means, in respect of each User, the Systems of that User (including, where relevant, those of its Supplier Nominated Agent) used in relation to the Services and/or Smart Metering Systems.
Value at Risk	has the meaning given to that expression in Section J3.3 (User's Value at Risk).
VAT	means VAT, as defined in the Value Added Tax Act 1994, and any tax of a similar nature which may be substituted for or levied in addition to it.
Voting Group	means, in respect of each Party Category, each Party that falls into that Party Category collectively with that Party's Affiliates (if any) who also fall into that Party Category.
Website	means a dedicated website established at the direction of the Panel for the purposes of this Code.

- Withdrawal** means, in respect of a Smart Metering System, the act of ending that Smart Metering System’s Enrolment in accordance with Section H8 (Withdrawal of Smart Metering Systems), and the words “**Withdraw**” and “**Withdrawn**” shall be interpreted accordingly.
- Working Day** means any day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day that is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.
- Working Group** has the meaning given to that expression in Section D6.2 (Establishment of a Working Group).

A2 INTERPRETATION

A2.1 In this Code, unless the context otherwise requires, any reference to:

- (a) a “person” includes a reference to an individual, a body corporate, an association, a partnership or a Competent Authority;
- (b) the singular includes the plural, and vice versa;
- (c) a gender includes every gender;
- (d) a Section or Schedule is a reference (respectively) to the section of, or schedule to, this Code which bears the relevant letter, number or letter and number;
- (e) a numbered Paragraph is a reference to the paragraph of the Schedule in which such reference occurs;
- (f) a numbered Condition (with or without a letter) is a reference to the licence condition bearing that number (and, where relevant, letter) in the Energy Licence indicated (and, save in the case of the DCC Licence, is a reference to the standard licence conditions of that Energy Licence);
- (g) writing (or similar) includes all methods of reproducing words in a legible and non-transitory form (including email);
- (h) a day, week or month is a reference (respectively) to a calendar day, a week starting on a Monday, or a calendar month;
- (i) a time is a reference to that time in the UK;
- (j) any statute or statutory provision includes any subordinate legislation made under it, any provision which it has modified or re-enacted, and any provision which subsequently supersedes or re-enacts it (with or without modification);
- (k) an agreement, code, licence or other document is to such agreement, code, licence or other document as amended, supplemented, novated or replaced from time to time;
- (l) a Party shall include reference to that Party’s respective successors, (in the

case of the DCC) to the person to whom the DCC may novate its rights and obligations pursuant to Section M9 (Transfer of DCC Licence), and (as the context permits) reference to the respective persons to whom that Party may sub-contract or otherwise delegate its rights and/or obligations under this Code in accordance with Section M11.8 and M11.9 (which shall include, in the case of the DCC, reference to the DCC Service Providers);

- (m) a Competent Authority or other public organisation includes a reference to its successors, or to any organisation to which some or all of its functions and responsibilities have been transferred; and
- (n) an expression that is stated to have the meaning given to it in an Energy Licence (other than the DCC Licence) is a reference to that expression as defined in the standard licence conditions for the Energy Licence indicated.

A2.2 The headings in this Code are for ease of reference only and shall not affect its interpretation.

A2.3 In this Code, the words preceding “include”, “including” or “in particular” are to be construed without limitation to the generality of the words following those expressions.

A2.4 The language of this Code is English. All notices and other communications sent between any of the Parties, the Panel, SECCo, the Code Administrator and the Secretariat shall be in English.

A2.5 In the event of any conflict between the provisions of this Code, the following order of precedence shall apply:

- (a) the Sections, as among which Section X (Transition) shall take precedence; then
- (b) the Schedules; then
- (c) the SEC Subsidiary Documents.

SECTION B: ACCESSION

B1 ACCESSION

Eligibility for Admission

B1.1 Any person who applies to be admitted as a Party (an **Applicant**) shall be entitled to be admitted as a Party, subject to and in accordance with the provisions of this Section B1.

B1.2 An Applicant may not be admitted as a Party if:

- (a) it is already a Party; or
- (b) it was expelled from this Code in accordance with Section M8 (Suspension, Expulsion and Withdrawal) within the 12 months preceding the date of its application (or such shorter period as the Panel may determine from time to time).

Application Form and Guidance

B1.3 The Code Administrator shall create an Application Form, and publish such form on the Website.

B1.4 The Code Administrator shall establish and publish on the Website a guide for Applicants describing, and providing guidance in respect of, the process set out in this Section B1 (the **Application Guidance**).

Application Fee

B1.5 The Panel shall determine (and publish on the Website) a fee from time to time (the **Application Fee**) to be payable by Applicants to SECCo. The Panel shall set the Application Fee at a level intended to recover the reasonable costs incurred by or on behalf of the Panel (including amounts payable to the Code Administrator) in administering the process set out in this Section B1.

B1.6 The Code Administrator shall include within the Application Guidance details of the

methods by which the Application Fee may be paid.

Accession Process

- B1.7 An Applicant shall submit to the Code Administrator a duly completed Application Form (together with any supporting documents required by that form), and the Application Fee (by a method of payment provided for in the Application Guidance).
- B1.8 As soon as reasonably practicable following receipt of an Application Form and the Application Fee from an Applicant, the Code Administrator shall:
- (a) notify the Applicant if it is ineligible to be admitted as a Party in accordance with Section B1.2;
 - (b) where the Applicant is not ineligible, check that the Application Form has been duly completed and that any supporting documentation requested has been provided, and notify the Applicant of any omissions; and
 - (c) where there are no such omissions, notify the Applicant and the Panel that the Applicant is to be admitted as a Party subject to execution of an Accession Agreement.

Accession Agreement

- B1.9 Where an Applicant is to be admitted as a Party in accordance with Section B1.8(c), the Code Administrator shall prepare two counterparts of the Accession Agreement for the Applicant (in substantially the form of the Specimen Accession Agreement), and send them to the Applicant.
- B1.10 An Applicant that wishes to proceed with its accession to this Code should sign (but not date) both counterparts of the Accession Agreement, and return them to the Code Administrator.
- B1.11 Upon return to the Code Administrator of the two counterparts of the Accession Agreement as envisaged by Section B1.10, the Panel shall procure that (as soon as reasonably practicable thereafter) SECCo:
- (a) signs each counterpart on behalf of itself and all the Parties (as it is authorised to do under Section B1.14); and

(b) dates each counterpart with the date of such execution.

B1.12 The Code Administrator shall return one signed and dated counterpart of the Accession Agreement to the Applicant, and retain the other counterpart for the Panel's records.

Accession

B1.13 An Applicant will accede to this Code and become a Party with effect from the date of its executed Accession Agreement. The Code Administrator shall give notice of each Applicant's accession to the Applicant, to each other Party and to the Authority. Such notice will confirm the Applicant's Party Details.

SECCo Authority to enter into Accession Agreements

B1.14 Subject to and in accordance with this Section B1, each Party hereby irrevocably and unconditionally authorises SECCo to execute and deliver, on behalf of such Party, any and all Accession Agreements that are substantially in the form of the Specimen Accession Agreement and that have been signed by an Applicant.

Disputes Regarding Admission

B1.15 Where an Applicant disagrees with any decision of the Code Administrator pursuant to Section B1.8, the Applicant may refer the matter to the Panel for determination.

B1.16 Where an Applicant disagrees with any decision of the Panel made pursuant to Section B1.15, the Applicant may refer the matter to the Authority for its determination, which shall be final and binding for the purposes of this Code.

SECTION C – GOVERNANCE

C1 SEC OBJECTIVES

General SEC Objectives

C1.1 The objectives of this Code otherwise than in respect of the Charging Methodology are set out in Condition 22 of the DCC Licence (such objectives being the **General SEC Objectives**). For ease of reference, the General SEC Objectives are set out below using the terminology of this Code (but in the case of any inconsistency with the DCC Licence, the DCC Licence shall prevail):

- (a) the first General SEC Objective is to facilitate the efficient provision, installation, and operation, as well as interoperability, of Smart Metering Systems at Energy Consumers' premises within Great Britain;
- (b) the second General SEC Objective is to enable the DCC to comply at all times with the General Objectives of the DCC (as defined in the DCC Licence), and to efficiently discharge the other obligations imposed upon it by the DCC Licence;
- (c) the third General SEC Objective is to facilitate Energy Consumers' management of their use of electricity and gas through the provision to them of appropriate information by means of Smart Metering Systems;
- (d) the fourth General SEC Objective is to facilitate effective competition between persons engaged in, or in Commercial Activities connected with, the Supply of Energy;
- (e) the fifth General SEC Objective is to facilitate such innovation in the design and operation of Energy Networks (as defined in the DCC Licence) as will best contribute to the delivery of a secure and sustainable Supply of Energy;
- (f) the sixth General SEC Objective is to ensure the protection of Data and the security of Data and Systems in the operation of this Code;
- (g) the seventh General SEC Objective is to facilitate the efficient and transparent

administration and implementation of this Code.

Transition Objective

C1.2 As provided for in Condition 22 of the DCC Licence, during the period prior to the Completion of Implementation, the General SEC Objectives must be read and given effect (so far as it is possible to do so) in a way that is compatible with achieving the Transition Objective.

Charging Objectives

C1.3 The objectives of this Code in respect of the Charging Methodology only (such objectives being the **Charging Objectives**) comprise the “**First Relevant Policy Objective**” and the “**Second Relevant Policy Objective**” as set out in Condition 18 of the DCC Licence. For ease of reference, the First Relevant Policy Objective and the Second Relevant Policy Objective are set out in Sections C1.4 and C1.5 using the terminology of this Code (but in the case of any inconsistency with the DCC Licence, the DCC Licence shall prevail).

C1.4 The First Relevant Policy Objective:

- (a) applies in relation to Smart Metering Systems installed (or to be installed) at Domestic Premises; and
- (b) requires the Charging Methodology to ensure that Charges (other than Charges for Elective Communication Services) in respect of such Smart Metering Systems do not distinguish (whether directly or indirectly) between Energy Consumers at Domestic Premises in different parts of Great Britain.

C1.5 The Second Relevant Policy Objective is that, subject to compliance with the First Relevant Policy Objective, the Charging Methodology must result in Charges that:

- (a) facilitate effective competition in the Supply of Energy (or its use) under the Electricity Act and the Gas Act;
- (b) do not restrict, distort, or prevent competition in Commercial Activities that are connected with the Supply of Energy under the Electricity Act and the Gas Act;

- (c) do not deter the full and timely installation by Energy Suppliers of Smart Metering Systems at Energy Consumers' premises in accordance with their obligations under the Energy Supply Licence; and
- (d) do not unduly discriminate in their application and are reflective of the costs incurred by the DCC, as far as is reasonably practicable in all of the circumstances of the case, having regard to the costs of implementing the Charging Methodology.

C1.6 The Charging Methodology will achieve the Second Relevant Policy Objective if it is compliant with the provisions of Section C1.5 in the round, weighing them as appropriate in each particular case.

C2 PANEL

Establishment of the Panel

C2.1 The Panel is hereby established. The Panel shall:

- (a) pursue the objectives, undertake the duties, and have the powers, set out in Sections C2.2 to C2.4;
- (b) be composed of the Panel Members described in Section C3 (Panel Members), some of whom will be elected in accordance with Section C4 (Elected Members); and
- (c) conduct its activities in accordance with the procedures set out in Section C5 (Proceedings of the Panel).

Panel Objectives

C2.2 The Panel shall, in all its activities, always act in a manner designed to achieve the following objectives (the **Panel Objectives**):

- (a) that this Code is given full and prompt effect in accordance with its terms and conditions;
- (b) that this Code is given effect in such a manner as will facilitate achievement of the SEC Objectives;
- (c) that this Code is given effect in a fair manner without undue discrimination between the Parties or any classes of Party; and
- (d) that the Panel conducts its affairs in an open and transparent manner.

Panel Duties

C2.3 Without prejudice to any other tasks, duties or obligations imposed on the Panel in this Code, the Panel shall, subject to and in accordance with the other provisions of this Code:

- (a) oversee the process by which Applicants apply to become a Party, as set out in Section B (Accession);

- (b) manage the Code Administrator and Secretariat, and oversee their performance;
- (c) develop, consult upon, and report upon its performance against three-year budgets and work plans in accordance with Section C8 (Panel Costs and Budgets);
- (d) oversee and co-ordinate the process for assessing Modification Proposals, and implement successful Modification Proposals, each as set out in Section D (Modification Process);
- (e) manage and co-ordinate arrangements for the resolution of certain Disputes under or in relation to this Code, as set out in Section M7.3 (Reference to the Panel or its Sub-Committees);
- (f) manage and co-ordinate the suspension of Parties' rights under this Code, as set out in Section M8 (Suspension, Expulsion and Withdrawal);
- (g) manage and co-ordinate the withdrawal or expulsion of Parties from this Code, as set out in Section M8 (Suspension, Expulsion and Withdrawal);
- (h) by no later than 30 Working Days following the end of each Regulatory Year prepare and publish a report on the implementation of this Code and the activities of the Panel during that Regulatory Year, including so as to evaluate whether this Code continues to meet the SEC Objectives;
- (i) at the written request of the Authority at any time, undertake a review of such parts of this Code as the Authority may specify to evaluate whether this Code continues to meet the SEC Objectives;
- (j) at the written request of the Authority, collect and provide to the Authority (or publish in such manner as the Authority may direct) such information regarding the SEC Arrangements as the Authority may reasonably request (and each Party shall provide to the Panel such information as the Panel reasonably requires in order to enable the Panel to comply with any such request of the Authority);
- (k) hold a general meeting during the month of July each year, which each Panel

Member will (subject to unforeseen circumstances) attend, at which a representative of each Party shall be entitled to attend and speak, and at which the Panel will endeavour to answer any reasonable questions submitted to the Secretariat in advance of the meeting;

- (l) establish (and, where appropriate, revise from time to time) joint working arrangements with the panels, committees and administrators responsible for the governance and operation of other Energy Codes, in order to facilitate the timely identification, co-ordination, making and implementation of changes to other Energy Codes consequent on a Modification Proposal (and vice versa); and
- (m) establish joint working arrangements with the Information Commissioner pursuant to which the Panel shall notify the Information Commissioner of matters in which the Panel believes the Information Commissioner may have an interest.

Panel Powers

C2.4 Without prejudice to any other rights or powers granted to the Panel in this Code, the Panel shall, subject to and in accordance with the other provisions of this Code, have the power to:

- (a) appoint and remove the Code Administrator and the Secretariat in accordance with Section C7 (Code Administrator, Secretariat and SECCo);
- (b) appoint and remove professional advisers;
- (c) consider, approve and authorise the entering into by SECCo of contracts in accordance with Section C7 (Code Administrator, Secretariat and SECCo);
- (d) constitute Sub-Committees in accordance with Section C6 (Sub-Committees);
- (e) consider, approve and authorise the licensing, sub-licensing, or any other manner of dealing with the Intellectual Property Rights in the SEC Materials, for any use which does not hinder, delay or frustrate, in any way whatsoever, the SEC Objectives; and

- (f) do anything necessary for, or reasonably incidental to, the discharge of its duties under this Code.

C3 PANEL MEMBERS

Panel Composition

C3.1 The Panel shall be composed of the following categories of persons (each a **Panel Member**, and the Panel Members referred to in Sections C3.1(a) to (e) being the **Elected Members**):

- (a) two persons elected by the Large Supplier Parties;
- (b) two persons elected by the Small Supplier Parties;
- (c) one person elected by the Electricity Network Parties;
- (d) one person elected by the Gas Network Parties;
- (e) two persons elected by the Other SEC Parties;
- (f) one person nominated by the DCC in accordance with Section C3.3 (the **DCC Member**);
- (g) two persons nominated in accordance with Section C3.4 (the **Consumer Members**);
- (h) one person appointed in accordance with Section C3.5 (the **Panel Chair**); and
- (i) any additional person appointed by the Panel Chair in accordance with Section C3.6.

C3.2 Each Panel Member must be an individual (and cannot be a body corporate, association or partnership). No one person can hold more than one office as a Panel Member.

DCC Member

C3.3 The DCC Member shall be one person nominated by the DCC by notice to the Secretariat. The DCC may replace such person from time to time by prior notice to the Secretariat.

Consumer Members

C3.4 The Consumer Members shall be two persons nominated by the National Consumer Council by notice to the Secretariat from time to time. The National Consumer Council may replace each such person from time to time by prior notice to the Secretariat.

Appointment of the Panel Chair

C3.5 The first Panel Chair to be appointed following the designation of this Code shall be appointed in accordance with the appointment process developed in accordance with Section X (Transition). Thereafter, each Panel Chair shall be appointed in accordance with the same process, as modified from time to time by the Panel; provided that such process as modified must be designed to ensure that:

- (a) the candidate selected is sufficiently independent of any particular Party or class of Parties;
- (b) the appointment is conditional on the Authority approving the candidate;
- (c) the Panel Chair is appointed for a three-year term (following which he or she can apply to be re-appointed);
- (d) the Panel Chair is remunerated at a reasonable rate;
- (e) the Panel Chair's appointment is subject to Section C3.8 and terms equivalent to those set out in Section C4.6 (Removal of Elected Members); and
- (f) provision is made for the Panel Chair to continue in office for a reasonable period following the end of his or her term of office in the event of any delay in appointing his or her successor.

Panel Chair Appointee

C3.6 Where at any time:

- (a) no person is currently appointed as a Panel Member pursuant to this Section C3.6; and
- (b) the Panel Chair (having consulted with the other Panel Members) considers that there is a class or category of person having an interest in the SEC

Arrangements whose interests are not adequately represented in the composition of the Panel at that time, and whose interests would be better represented if a particular person were appointed as an additional Panel Member,

the Panel Chair may (having consulted with the other Panel Members) appoint that particular person as a Panel Member by notice to the Secretariat. The Panel Chair may (having consulted with the other Panel Members), at any time thereafter by notice to the Secretariat, remove that person from the office of Panel Member.

Duties of Panel Members

- C3.7 A person appointed as Panel Member, when acting in that capacity, shall:
- (a) act independently, not as a delegate, and without undue regard to the interests, of any Related Person;
 - (b) exercise reasonable skill and care to the standard reasonably expected of a director of a company under the Companies Act 2006; and
 - (c) act in a manner designed to facilitate the performance by the Panel of its duties under this Code.

Panel Member Confirmation

- C3.8 Each Panel Member must confirm in writing to SECCo (for the benefit of SECCo and each Party) that that person:
- (a) agrees to act as a Panel Member in accordance with this Code, including the requirements of Section C3.7; and
 - (b) agrees to accept appointment as a director of SECCo, and to act in such capacity in accordance with this Code; and
 - (c) will be available as reasonably required throughout his or her term of office, both to attend Panel meetings and to undertake work outside those meetings as may reasonably be required.

- C3.9 The appointment of a person who would otherwise be a Panel Member shall lapse

(and the relevant office shall become vacant) if that person does not comply with the requirements of Section C3.8 within 20 Working Days after a request from the Secretariat to do so.

Notification of Related Persons

C3.10 Each Panel Member shall, at the time of his appointment and upon any relevant change in circumstance, disclose, in writing to the Panel, the name of each Related Person who is a Party, a DCC Service Provider or is otherwise likely to be materially affected by the SEC Arrangements (other than in the capacity of Energy Consumer).

C3.11 Without prejudice to the generality of Section C3.10, where a Panel Member changes employer, the Panel Member shall (as soon as reasonably practicable after such change) notify the Secretariat of such change in writing. The Secretariat shall then notify the Parties of such change in employer.

Protections for Panel Members and Others

C3.12 SECCo shall indemnify, and keep indemnified:

- (a) each Panel Member (whether as a Panel Member or as a director of SECCo);
- (b) each Reserve (whether acting as an Alternate or otherwise);
- (c) each person who serves on a Sub-Committee or Working Group; and
- (d) each Party, or an Affiliate of a Party, as employer of any person referred to in Sections C3.12(a) to (c),

from and against any and all costs (including legal costs), charges, expenses, damages or other liabilities properly incurred or suffered by that person or employer in relation to the exercise of the person's powers duties or responsibilities under this Code, including where such powers duties or responsibilities are exercised negligently. The persons and employers shall be entitled to enforce their rights under this Section C3.12 pursuant to Section M11.5 (Third Party Rights).

C3.13 The indemnity set out in Section C3.12 shall not apply to any costs, charges, expenses, damages or other liabilities that are:

Stage 1 of the Smart Energy Code: Proposed Designation Draft

- (a) costs and expenses expressly stated to be incapable of recovery by the Panel under Section C8 (Panel Costs and Budgets); or
- (b) suffered or incurred or occasioned by the wilful default, fraud or bad faith of, or breach of contract by, the relevant person.

C4 ELECTED MEMBERS

Elected Members

C4.1 The first Elected Members to be appointed on the designation of this Code shall be appointed in accordance with Section X (Transition). All other Elected Members shall be elected in accordance with the process set out in Section C4.2. Each Elected Member shall serve as a Panel Member until his or her retirement in accordance with Section C4.4, or until he or she is removed from office in accordance with Section C3.9, C4.5 or C4.6.

Election of Elected Members

C4.2 The process set out in this Section C4.2 shall apply in respect of the election of each Elected Member. This process shall apply in respect of Elected Member vacancies arising by virtue of a Panel Member's retirement in accordance with Section C4.4 (a **Scheduled Election**), or a Panel Member being removed from office in accordance with Section C3.9, C4.5 or C4.6 (an **Interim Election**). In each case, the following process shall apply:

- (a) each Elected Member is to be elected by a Party Category as described in Section C3.1;
- (b) each Voting Group within a Party Category is entitled to cast one vote in the election of the Panel Member(s) to be elected by that Party Category;
- (c) the Secretariat shall publish on the Website and send to each Party within the relevant Party Category an invitation for nominations for candidates for the role of Elected Member for that Party Category;
- (d) in the case of Scheduled Elections, the invitation for nomination of candidates shall be published and sent by the Secretariat at least 35 Working Days ahead of the date on which the relevant Panel Member's term of office expires;
- (e) in the case of Interim Elections, the invitation for nomination of candidates shall be published and sent by the Secretariat by no later than 5 Working Days after the date on which the relevant Panel Member was removed from office;

- (f) the invitation for nomination of candidates shall request nominations within 15 Working Days after the date of the invitation;
- (g) the eligible candidates for election shall be those persons who are (at the time of their nomination) capable of becoming and remaining Panel Members in accordance with Sections C3.2 and C4.6, and whose nominations (whether nominated by themselves or a third party) are received by the Secretariat within the period of time set out in the request for nominations;
- (h) where the Secretariat receives a nomination for a candidate that the Secretariat does not consider to be an eligible candidate in accordance with Section C4.2(g), the Secretariat shall notify that person that this is the case as soon as reasonably practicable after receipt of the nomination (and, in any event, by no later than 2 Working Days following the expiry of the period of time set out in the request for nominations);
- (i) where a candidate disputes the Secretariat's notification under Section C4.2(h), the candidate shall have 2 Working Days following receipt of such notification to refer the matter to the Panel Chair for final determination (which determination shall be made by the Panel Chair by no later than 5 Working Days following the expiry of the period of time set out in the request for nominations);
- (j) 6 Working Days following the expiry of the period of time set out in the request for nominations, the Secretariat shall give notice to each Party within the relevant Party Category of the names of each eligible candidate (together with any supporting information provided to the Secretariat with his or her nomination);
- (k) at the same time as the Secretariat issues such notice, where there are more eligible candidates for a Party Category than there are positions to be filled as Elected Members for that Party Category, the Secretariat shall invite the Voting Groups comprising that Party Category to vote for their preferred eligible candidate;
- (l) each such Voting Group shall be entitled to cast one vote, and shall cast such

vote by means of a system established by the Panel which ensures that each Voting Group casts only one vote, and which allows 10 Working Days following the invitation pursuant to Section C4.2(k) for such vote to be cast;

- (m) the successful candidate or candidates elected as a result of the votes cast in accordance with this Section C4.2 shall be determined in accordance with Section C4.3;
- (n) the Secretariat shall not publish details of the votes cast by each Voting Group, but shall disclose such details to the Panel Chair for scrutiny;
- (o) as soon as reasonably practicable following the election of an Elected Member in accordance with this Section C4.2, the Secretariat shall publish on the Website and notify each Party of the identity of the person who has been so elected; and
- (p) each person elected as a Panel Member in accordance with this Section C4.2 shall commence his or her office as a Panel Member: (i) in the case of Scheduled Elections, simultaneously with the retirement of the relevant Panel Member; or (ii) in the case of Interim Elections, simultaneously with the notification by the Secretariat pursuant to Section C4.2(o).

C4.3 As a result of the process set out in Section C4.2:

- (a) where there are the same number of eligible candidates for a Party Category as there are positions to be filled as Elected Members for that Party Category, all of the eligible candidates shall be elected as Elected Members;
- (b) where there are more eligible candidates for a Party Category than there are positions to be filled as Elected Members for that Party Category, the eligible candidate(s) that received the most votes in accordance with Section C4.2(l) shall be elected as Elected Members (and, in the case of a tie, the Secretariat shall determine the Elected Member by drawing lots, to be witnessed by the Panel Chair); or
- (c) where there are fewer eligible candidates for a Party Category than there are positions to be filled as Elected Members for that Party Category (including

where there are no eligible candidates), the Authority will (at its discretion) be entitled to nominate an Elected Member for that Party Category. Where this Section C4.3(c) applies, the Panel shall be entitled (at any time thereafter) to determine that a further Interim Election should be held in accordance with Section C4.2 in respect of that Party Category.

Retirement of Elected Members

C4.4 Subject to earlier removal from office of an Elected Member in accordance with Section C3.9, C4.5 or C4.6 and without prejudice to his or her ability to stand for re-election, each Elected Member shall retire (at which point his or her office shall become vacant) as follows:

- (a) the Elected Members elected in accordance with Section X (Transition) shall retire in accordance with that Section;
- (b) the Elected Members elected in accordance with this Section C4.2, shall retire two years after the date on which they first took office; and
- (c) any Elected Member nominated by the Authority pursuant to Section C4.3(c), shall retire on the Authority determining (at its discretion) that such person should be removed from office, or on the successful election of a replacement Elected Member in an election pursuant to Section C4.3(c).

Removal of Elected Members

C4.5 An Elected Member may:

- (a) resign his or her office by 10 Working Days' notice in writing to the Panel Chair;
- (b) be removed from office by the Panel Chair on notice to the Panel if the Elected Member fails to attend (either in person or via his or her Alternate) at least 50% of the Panel meetings held in any period of 12 months; or
- (c) be removed from office by the other Panel Members (acting unanimously) if such other Panel Members consider that the Elected Member is in breach of the confirmation given by that Elected Member pursuant to Section C3.8

(Panel Member Confirmation).

C4.6 An Elected Member shall automatically be removed from office if he or she:

- (a) dies;
- (b) is admitted to hospital in pursuance of an application under the Mental Health Act 1983 or the Mental Health (Care and Treatment) (Scotland) Act 2003, or an order is made by a court with competent jurisdiction in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person with respect to his property or affairs;
- (c) becomes bankrupt or makes any arrangement or composition with his creditors;
- (d) becomes prohibited by law from being a director of a company under the Companies Act 2006; and/or
- (e) is convicted of an indictable criminal offence.

C5 PROCEEDINGS OF THE PANEL

Meetings of the Panel

- C5.1 The Panel shall hold meetings with such frequency as it may determine or the Panel Chair may direct, but in any event shall meet when necessary to meet its responsibilities under Section D (Modification Process) and at least once every two months.
- C5.2 The location and timing of each meeting shall be determined by the Panel. Panel Members shall endeavour to attend each meeting in person, but attendance by telephone conference or other technological means shall be permitted (provided that each of the Panel Members attending the meeting acknowledges that he or she can communicate with each other).
- C5.3 Subject to the other provisions of this Code, the Panel may regulate the conduct of its meetings as it sees fit.

Quorum

- C5.4 No business shall be transacted at any meeting of the Panel unless a quorum is present at that meeting. The quorum for each Panel meeting shall be one half of all Panel Members appointed at the relevant time, at least one of whom must be the Panel Chair.

Meeting Notice and Papers

- C5.5 Each meeting that the Panel determines, or the Panel Chair directs, is to be held shall be convened by the Secretariat. Such meeting shall be convened on at least 5 Working Days' advance notice (or such shorter period as the Panel may approve). Such notice must be given to:
- (a) the Panel Members (and any appointed Alternates);
 - (b) each of the persons referred to in Section C5.13;
 - (c) the Parties; and
 - (d) any other person that the Panel determines, or the Panel Chair directs, should

be invited to the meeting.

- C5.6 The notice of each Panel meeting shall contain or be accompanied by the following:
- (a) the time, date and location of the meeting;
 - (b) the arrangements for those wishing to attend the meeting by telephone conference or other technological means; and
 - (c) an agenda and supporting papers.
- C5.7 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a Panel meeting by, a person entitled to receive notice shall not invalidate the proceedings of that meeting.

Panel Chair

- C5.8 The Panel Chair shall preside at every meeting of the Panel. If the Panel Chair is unable to attend a Panel meeting, the Panel Chair shall ensure that his or her Alternate attends the meeting as Panel Chair.
- C5.9 The Panel Chair shall not be entitled to vote unless there is a deadlock, in which case the Panel Chair shall have the casting vote.

Voting

- C5.10 Subject to Section C5.9, each Panel Member shall be entitled to attend, and to speak and vote at, every meeting of the Panel.
- C5.11 All decisions of the Panel shall be by resolution. In order for a resolution of the Panel to be passed at a meeting, a simple majority of those Panel Members attending that meeting must vote in favour of that resolution.
- C5.12 A resolution in writing signed by or on behalf of all the Panel Members shall be as valid and effective as if it had been passed at a meeting of the Panel duly convened and held. Such a resolution may be signed in any number of counterparts.

Attendance by other persons

- C5.13 One representative from each of the following persons shall be entitled to attend and

speak (but not vote) at any meeting of the Panel:

- (a) the Secretary of State;
- (b) the Authority; and
- (c) any other person that the Panel determines, or the Panel Chair directs, should be invited to attend.

C5.14 Any Party shall be entitled to send a representative to attend a Panel meeting provided that Party gives the Secretariat at least 3 Working Days' notice in advance of such meeting (or such shorter period of notice as the Panel Chair may approve). Such a representative shall be entitled to attend and (at the Panel Chair's invitation) speak at (but in no circumstances vote at) the meeting.

C5.15 The Panel Chair may (at his or her discretion on grounds of confidentiality) exclude from any part of a Panel meeting persons admitted pursuant to Section C5.13(c) or C5.14.

Minutes of Panel Meetings

C5.16 The Secretariat shall, following each Panel meeting (and in any event at or before the next Panel meeting), circulate copies of the minutes of that meeting to each person who was entitled to receive a notice of that meeting. The Panel may determine that certain parts of a meeting are confidential, in which case those matters will not be included in the minutes circulated to persons other than the Panel, the Secretary of State and the Authority.

C5.17 If any Panel Member disagrees with any item of the minutes, he shall notify the Secretariat of those items with which he or she disagrees, and the Secretariat shall incorporate those items upon which there is disagreement into the agenda for the next following meeting of the Panel.

C5.18 The Secretariat shall maintain a record of all resolutions voted on by the Panel, indicating how each Panel Member voted on each resolution, and shall make such record available on request to any Party.

Alternates

- C5.19 Each Panel Member may, from time to time by notice in writing to the Secretariat, appoint another natural person to act as his or her alternate (an **Alternate**). The Panel Chair must appoint a person to act as his or her Alternate.
- C5.20 Each such Alternate must, before his or her appointment as such can become valid, have provided the confirmation referred to in Section C3.8 (Panel Member Confirmation).
- C5.21 Where a Panel Member does not attend at a Panel meeting, the Panel Member's Alternate shall be entitled to attend (and count, in his capacity as Alternate, towards the quorum at) that meeting, and to exercise and discharge all the functions, powers and duties of the Panel Member at that meeting.
- C5.22 Each Panel Member may, by notice in writing to the Secretariat, remove or replace the person appointed from time to time by that Panel Member as his or her Alternate. An Alternate shall immediately cease to be an Alternate on the occurrence of any of the events set out in Section C4.5 (Removal of Elected Members) in respect of the Alternate. Where an Alternate's appointor ceases to be a Panel Member for any reason, the Alternate's role as such shall also cease.
- C5.23 Unless the context otherwise requires, any reference in this Code to a Panel Member shall be construed as including a reference to that Panel Member's Alternate.

Conflicts of interest

- C5.24 Given the duty of each Panel Member to act independently, as set out in C3.7 (Duties of the Panel), conflicts of interest should not regularly arise.
- C5.25 Notwithstanding Section C5.24, where a decision of the Panel will have particular consequences for a particular Party or class of Parties, each Panel Member shall consider whether that decision presents a conflict of interest (whether because such Party or Parties comprise Related Persons of the Panel Member or otherwise).
- C5.26 Where a Panel Member considers that a decision does present a conflict of interest, the Panel Member shall absent him or herself from the Panel meeting for that decision and abstain from the vote regarding that decision. Furthermore, where the Panel Chair

considers that a decision does present a conflict of interest for a Panel Member, the Panel Chair may require the Panel Member to absent him or herself from the Panel meeting for that decision and to abstain from the vote regarding that decision.

C6 SUB-COMMITTEES

Sub-Committees

- C6.1 The Panel may establish committees (**Sub-Committees**) for the purposes of doing or assisting the Panel in doing anything to be done by the Panel pursuant to this Code. The Panel shall establish those Sub-Committees expressly provided for in this Code.
- C6.2 The Panel may establish a Sub-Committee on a standing basis or for a fixed period or a finite purpose.
- C6.3 The Panel may decide that any Sub-Committee (other than one whose establishment is expressly provided for in this Code) is to be dissolved. Those Sub-Committees expressly provided for in this Code are to remain established for so long as they are provided for in this Code.
- C6.4 Subject to Section C6.5, the Panel may delegate to any Sub-Committee such of the duties, powers and functions of the Panel as the Panel may specify. The Panel shall delegate to any Sub-Committee expressly provided for in this Code all of the duties, powers, and functions of the Panel relating to the functions of that Sub-Committee described in this Code.

Working Groups

- C6.5 The Panel may not establish Sub-Committees to undertake the functions expressly reserved to Working Groups under Section D (Modification Process). Working Groups are to be subject to the requirements of Section D6 (Refinement Process), which may impose requirements by reference to this Section C6.

Membership

- C6.6 Each Sub-Committee expressly provided for in this Code shall be composed of such persons as are determined in accordance with the provisions of this Code (if any) that prescribe such membership (and otherwise in accordance with Section C6.7).
- C6.7 Subject to Section C6.6:
- (a) each Sub-Committee shall be composed of such persons of suitable experience and qualifications as the Panel shall decide and as are willing to serve thereon,

and which may include any Panel Member;

- (b) before establishing each Sub-Committee, the Panel shall invite (by such means as it considers appropriate) applications from individuals who wish to serve on that Sub-Committee;
- (c) once a Sub-Committee has been established, the Panel may admit such additional persons to, or remove any person from, that Sub-Committee as the Panel considers appropriate (including on the application of any Party or any member of the Sub-Committee).

C6.8 Each person serving on a Sub-Committee shall, when acting in that capacity:

- (a) act independently, not as a delegate, and without undue regard to the interests, of any Related Person; and
- (b) act in a manner designed to facilitate the performance by the Panel of its duties under this Code.

Member Confirmation

C6.9 Unless the Panel otherwise directs, a person who is to serve on a Sub-Committee shall not do so unless he or she has first provided a written confirmation to SECCo (for the benefit of SECCo and each Party) that that person:

- (a) agrees to serve on the Sub-Committee in accordance with this Code, including the requirements of Section C6.8; and
- (b) will be available as reasonably required throughout his or her term of office, both to attend Sub-Committee meetings and to undertake work outside those meetings as may reasonably be required.

Terms of Reference and Procedural Requirements

C6.10 The Panel shall set out in writing the duties, powers, and functions of the Panel that it has delegated to each Sub-Committee. The Panel shall also specify in the same document the terms of reference and procedural rules that are to be followed by the Sub-Committee (which may be revised from time to time by the Panel); provided that, in the case of Sub-Committees expressly provided for in this Code, the Panel must

specify terms of reference and procedural rules consistent with the requirements (if any) expressly set out in this Code.

C6.11 Save to the extent otherwise specified by the Panel in accordance with Section C6.10, each Sub-Committee shall conduct its business in accordance with the requirements applying to the Panel in accordance with Section C5 (Proceedings of the Panel).

C6.12 No Sub-Committee may further delegate any of its duties, powers and functions unless expressly authorised to do so by the terms of reference and procedural rules specified in accordance with Section C6.10.

Decisions of Sub-Committees

C6.13 Resolutions of Sub-Committees shall only have binding effect as decisions of the Panel if the Panel has formally delegated the decision-making powers to the Sub-Committee.

C6.14 The Panel shall be deemed to have delegated its decision-making powers to each Sub-Committee expressly provided for in this Code, insofar as such decision-making powers relate to the functions of the Sub-Committee. The delegation of decision-making powers to any other Sub-Committee shall require the unanimous agreement of all Panel Members at the meeting at which the decision to delegate such powers is agreed.

C6.15 For the avoidance of doubt, the delegation to a Sub-Committee of any duties, powers and functions of the Panel shall not relieve the Panel of its general responsibility to ensure that such duties, powers and functions are exercised in accordance with this Code.

C7 CODE ADMINISTRATOR, SECRETARIAT AND SECCO

Code Administrator

C7.1 The Panel may, from time to time, appoint and remove, or make arrangements for the appointment and removal of, one or more persons to be known as the **Code Administrator**.

C7.2 The Code Administrator shall perform those tasks and functions expressly ascribed to it under this Code, and any other tasks and functions as the Panel may assign to the Code Administrator from time to time. In particular, the Code Administrator shall:

- (a) comply with the Code Administration Code of Practice and perform its tasks and functions in a manner consistent with the Code Administration Code of Practice Principles (provided that the requirements of this Code shall apply in the event of any inconsistencies between this Code and the requirements of the Code Administration Code of Practice);
- (b) in conjunction with the other persons named as code administrators in the Code Administration Code of Practice, review and where appropriate propose to the Authority that amendments be made to the Code Administration Code of Practice (subject always to the Authority's approval of those amendments);
- (c) report to the Panel on any inconsistencies between this Code and the requirements of the Code Administration Code of Practice;
- (d) support the process by which Applicants apply to become a Party, as set out in Section B (Accession);
- (e) support the process for Modifications, as set out in Section D (Modification Process);
- (f) facilitate a process whereby Parties can submit a potential Modification Proposal to the Code Administrator to have that potential variation developed, refined and discussed prior to the Party deciding whether to formally submit a Modification Proposal (whether through the Change Board or another forum);
- (g) support the process by which Parties become Users, as set out in Section H1

(User Entry Process);

- (h) support the process by which persons become Eligible Supplier Agents, as set out in Section H2 (Supplier Nominated Agents);
- (i) act as a critical friend in providing assistance and support to Parties (and prospective Parties) in relation to the other tasks and functions to be performed by the Code Administrator, with a view to providing particular assistance and support to small Parties and the Consumer Members;
- (j) without prejudice to the generality of Section C7.2(i), provide support and assistance to the Proposer of a Modification Proposal, including assistance in understanding this Code so as to properly frame the Modification Proposal;
- (k) advise the Panel (and Sub-Committees and Working Groups) as to, and in respect of, the matters of which it is necessary or appropriate that the Panel (or the Sub-Committee or Working Group) should be aware in order to discharge their functions in accordance with this Code; and
- (l) provide or procure such information in connection with the implementation of this Code as the Panel may require.

C7.3 The Panel shall be responsible for ensuring that the Code Administrator undertakes its tasks and functions in respect of this Code. In particular, the Panel shall ensure that the arrangements under which the Code Administrator is appointed oblige the Code Administrator to undertake such tasks and functions on terms no less onerous than those provided for by this Code.

C7.4 Subject to the other requirements of this Section C7, the Code Administrator shall be appointed by the Panel on such terms and conditions and in return for such remuneration as the Panel sees fit.

C7.5 In no event shall the Code Administrator be a Party, an Affiliate of a Party, an employee of a Party, an employee of an Affiliate of a Party, a DCC Service Provider, an Affiliate of a DCC Service Provider, an employee of a DCC Service Provider, or an employee of an Affiliate of a DCC Service Provider.

Secretariat

- C7.6 The Panel may, from time to time, appoint and remove, or make arrangements for the appointment and removal of, one or more persons to be known as the **Secretariat**.
- C7.7 The Secretariat shall perform those tasks and functions expressly ascribed to it under this Code, and any other tasks and functions as the Panel may assign to the Secretariat from time to time. In particular, the Secretariat shall:
- (a) support the election of Elected Members, as set out in Section C4 (Elected Members);
 - (b) support the proceedings of the Panel (and Sub-Committees and Working Groups), as set out in Section C5 (Proceedings of the Panel);
 - (c) provide or procure such facilities and services in connection with the operation of the Panel (and Sub-Committees and Working Groups) as the Panel may require;
 - (d) maintain each Party's Party Details, as set out in Section M6 (Party Details);
 - (e) procure the creation, hosting and maintenance of the Website; and
 - (f) make an accurate and up-to-date copy of this Code available on the Website.
- C7.8 The Panel shall be responsible for ensuring that the Secretariat undertakes its tasks and functions in respect of this Code. In particular, the Panel shall ensure that the arrangements under which the Secretariat is appointed oblige the Secretariat to undertake such tasks and functions on terms no less onerous than those provided for by this Code.
- C7.9 Subject to the other requirements of this Section C7, the Secretariat shall be appointed by the Panel on such terms and conditions and in return for such remuneration as the Panel sees fit.
- C7.10 In no event shall the Secretariat be a Party, an Affiliate of a Party, an employee of a Party, an employee of an Affiliate of a Party, a DCC Service Provider, and Affiliate of a DCC Service Provider, an employee of a DCC Service Provider, or an employee of an Affiliate of a DCC Service Provider.

SECCo

C7.11 SECCo shall be established in accordance with Schedule 4.

C7.12 SECCo shall act as a corporate vehicle in relation to the business of the Panel, including entering into any contractual arrangements in order to give effect to any resolution of the Panel which it is necessary or desirable to implement by means of a binding contract.

C8 PANEL COSTS AND BUDGETS

General

C8.1 The costs and expenses incurred by (or on behalf of) the Panel in exercising its powers and performing its duties in respect of this Code shall be incurred by SECCo, and the DCC shall provide SECCo with the funds necessary to meet such costs and expenses.

SEC Costs and Expenses

C8.2 The costs and expenses capable of recovery under this Section C8 (the **Recoverable Costs**) shall be all the reasonable costs and expenses incurred:

- (a) subject to Section C8.3, by the Panel Members in their capacity as such (including in their capacity as directors of SECCo);
- (b) subject to Section C8.3, by those serving on Sub-Committees (but not, for the avoidance of doubt, Working Groups) in their capacity as such;
- (c) by SECCo under or in connection with this Code; or
- (d) by SECCo under or in connection with contracts that SECCo has entered into in accordance with this Code, including the contracts for:
 - (i) the appointment of the Code Administrator and the Secretariat;
 - (ii) the appointment of the Panel Chair;
 - (iii) the appointment of any person serving on a Sub-Committee expressly provided for in this Code where that person is expressly stated to be remunerated; and
 - (iv) the appointment of advisers,

(in each case) provided that such costs or expenses are provided for in, or otherwise consistent with, an Approved Budget.

C8.3 Subject to the terms of those contracts referred to in Sections C8.2(c):

- (a) each Panel Member and each person serving on a Sub-Committee or Working Group shall be entitled to recover all reasonable travel expenses properly incurred by them in their roles as such (and the Panel shall establish a policy that sets out guidelines regarding what constitutes reasonable travel expenses); and
- (b) no Panel Member or person serving on a Sub-Committee or Working Group shall be entitled to a salary in respect of their role as such, or to any payment in respect of time they incur in their role as such.

Reimbursing Panel Members

- C8.4 Where a Panel Member or person serving on a Sub-Committee or Working Group wishes to recover any Recoverable Costs, he or she shall submit evidence of the Recoverable Costs in question to the Panel (or a named person approved by the Panel) for approval. The cost or expense in question shall only be approved to the extent that it is a Recoverable Cost, and only if the evidence is submitted in a timely manner (and in any event on or before the 20th Working Day following the end of the relevant Regulatory Year). Once approved, the evidence of the Recoverable Cost shall be submitted to SECCo for payment.
- C8.5 Within 20 Working Days following receipt of evidence of a Recoverable Cost that has been approved in accordance with Section C8.4, SECCo shall pay the relevant amount to the relevant person.

SEC Costs to be Reimbursed by DCC

- C8.6 The Recoverable Costs incurred by SECCo shall be reimbursed to SECCo by the DCC.
- C8.7 SECCo may periodically invoice the DCC for the Recoverable Costs incurred, or reasonably expected to be incurred, by SECCo; provided that SECCo shall deduct from such Recoverable Costs amounts that SECCo has received by way of Application Fee payments and any amounts that represent previous overpayments by the DCC (due to the inaccuracy of SECCo estimates, or otherwise).
- C8.8 The DCC shall pay each invoice submitted by SECCo in accordance with Section

C8.7 within 10 Working Days of receipt of such invoice by the DCC.

C8.9 It is acknowledged that the DCC is entitled to recover amounts paid by it to SECCo in accordance with this Section C8 through the Charges (subject to the requirements of the DCC Licence).

C8.10 In the event that the DCC does not pay SECCo in accordance with Section C8.8, and subject to prior approval from the Authority, SECCo may invoice the Parties who hold Energy Licences for the unpaid amount (and those Parties shall pay the invoiced amounts to SECCo as if they were Charges). Where this Section C8.10 applies, the amount to be paid by each Party shall be determined in accordance with a methodology approved by the Authority, and all amounts paid shall be reimbursed by SECCo to the relevant Party (plus interest at the Non-Default Interest Rate) at such time as the Authority may determine.

Draft Budgets and Work Plans

C8.11 The Panel shall, during January of each year, prepare and circulate to all the Parties a draft budget for the next three Regulatory Years commencing thereafter (a **Draft Budget**).

C8.12 Each Draft Budget shall set out the Panel's good-faith estimate of the Recoverable Costs that it anticipates will be incurred (or committed to) during the relevant Regulatory Years, and shall be accompanied by a detailed work plan showing the activities and projects to which the relevant costs and expenses relate. Each Draft Budget must provide for limits (both individually and in the aggregate) on costs and expenses not expressly provided for in the budget which can be incurred without having to amend the budget.

Approval of Budgets

C8.13 In respect of the Draft Budget circulated in January for the next Regulatory Year commencing thereafter, the Panel shall:

- (a) arrange for the circulation to all the Parties of the comments received from the Parties regarding the Draft Budget in the 20 Working Days following its circulation;

- (b) consider and respond to those comments, and circulate its responses to all the Parties;
- (c) to the extent that it considers it appropriate to do so, amend the Draft Budget and/or the accompanying work plan in the light of those comments;
- (d) approve the Draft Budget (subject to any such amendments) and publish that budget and the accompanying work plan on the Website; and
- (e) specify a date in such publication (being not less than 15 Working Days following the date of publication) from which such budget will (subject to Section C8.14) become the **Approved Budget** for the relevant Regulatory Year.

Appeal of Budget

C8.14 Each of the Parties or the National Consumer Council may appeal to the Authority the Panel's approval of a budget as the Approved Budget for a Regulatory Year. Any such appeal will only be validly made if notified to the Authority within 10 Working Days following the publication of such Draft Budget pursuant to Section C8.13(e), and if copied to the Panel. In the event an appeal is validly made, the Panel shall arrange for a copy of the appeal to be circulated to all the Parties, and:

- (a) the Authority may give notice that it dismisses the appeal where it considers that the appeal is trivial or vexatious or has no reasonable prospect of success, in which case the budget approved by the Panel shall remain the Approved Budget; or
- (b) the Authority may give notice that it will further consider the appeal, in which case the budget approved by the Panel shall remain the Approved Budget pending and subject to any interim directions issued by the Authority, and:
 - (i) where the Authority determines that the budget approved by the Panel is consistent with the General SEC Objectives, then such budget shall remain the Approved Budget; or
 - (ii) where the Authority determines that the budget approved by the Panel is not consistent with the General SEC Objectives, then either (as

directed by the Authority):

- (A) such budget shall be amended in such manner as the Authority may direct, and such budget as so amended will be Approved Budget; or
- (B) the Panel shall produce a further Draft Budget and recommence the process set out in Section C8.13.

Amendments to Budgets

C8.15 The Approved Budget relating to each Regulatory Year may be amended by the Panel from time to time (whether before during or after that Regulatory Year, and including in respect of Recoverable Costs already incurred), provided that the Panel has first:

- (a) circulated and invited comments on the proposed amendments in accordance with Section C8.13 as if it were a Draft Budget; and
- (b) circulated and considered any comments received on the proposed amendments within 20 Working Days of such circulation on the same basis as is referred to in Section C8.13.

Reports

C8.16 The Panel shall, as soon as is reasonably practicable following the end of each Regulatory Year, produce and circulate to Parties a report on the costs and expenses incurred (or committed to) during that Regulatory Year and the activities and projects to which those costs and expenses relate.

Audit

C8.17 The Panel shall arrange for the monies paid by and to SECCo pursuant to this Section C8 during each Regulatory Year to be audited by a firm of chartered accountants on an annual basis in order to verify whether the requirements of this Section C8 have been met.

C8.18 The Panel shall send a copy of such auditor's report to all the Parties within 10 Working Days of its receipt by the Panel.

SECTION D – MODIFICATION PROCESS

D1 RAISING MODIFICATION PROPOSALS

Modifications

D1.1 This Code may only be varied in accordance with the provisions of this Section D.

D1.2 Each variation of this Code must commence with a proposal made in accordance with the provisions of this Section D1 (a **Modification Proposal**).

Persons Entitled to Submit Modification Proposals

D1.3 A Modification Proposal may be submitted by any of the following persons (the **Proposer**):

- (a) a Party;
- (b) the National Consumer Council;
- (c) any person or body that may from time to time be designated in writing by the Authority for the purpose of this Section D1.3;
- (d) the Authority or the DCC acting at the direction of the Authority, but in each case only in respect of variations to this Code which the Authority reasonably considers are necessary to comply with or implement:
 - (i) the EU Regulations; and/or
 - (ii) any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators; and
- (e) the Panel (where all Panel Members at the relevant meeting vote unanimously in favour of doing so), but only in respect of variations to this Code which are intended to give effect to:
 - (i) recommendations contained in a report published by the Panel pursuant to Section C2.3(i) (Panel Duties);
 - (ii) recommendations contained in a report published by the Code

Administrator pursuant to Section C7.2(c) (Code Administrator);

- (iii) Fast-Track Modifications (as described in Section D2 (Modification Paths)); and/or
- (iv) consequential changes to this Code required as a result of changes proposed or already made to one or more other Energy Codes.

Form of the Proposal

- D1.4 The Proposer must submit a Modification Proposal to the Code Administrator.
- D1.5 The Code Administrator shall from time to time publish a prescribed form of Modification Proposal on the Website. The prescribed form must require the provision by the Proposer of all of the information set out in Section D1.7, and any other information that the Panel may reasonably approve.
- D1.6 Each Proposer must use the prescribed form when submitting a Modification Proposal.

Content of the Proposal

- D1.7 A Modification Proposal must contain the following information:
 - (a) the name of the Proposer;
 - (b) the name and contact details of an employee or representative of the Proposer who will act as a principal point of contact in relation to the proposal;
 - (c) the date on which the proposal is submitted;
 - (d) a description in sufficient detail of the nature of the proposed variation to this Code and of its intended purpose and effect;
 - (e) a statement of whether, in the opinion of the Proposer, the Modification Proposal should be a Path 1 Modification, a Path 2 Modification or a Path 3 Modification;
 - (f) a statement of whether the Proposer considers, in the light of any guidance on the topic issued by the Authority from time to time, that the Modification

Proposal should be treated as an Urgent Proposal (and, if so, its reasons for so considering);

- (g) a statement of whether or not the Modification Proposal is intended to be a Fast-Track Modification (bearing in mind that only the Panel may raise Fast-Track Modifications);
- (h) a statement of the reasons why the Proposer believes that this Code would, if the proposed variation were made, better facilitate the achievement of the SEC Objectives than if that variation were not made;
- (i) a statement of whether the Proposer believes that there would be a material impact on Greenhouse Gas Emissions as a result of the proposed variation being made;
- (j) a statement as to which parts of this Code the Proposer considers would require to be amended in order to give effect to the proposed variation or as a consequence of that variation (including legal drafting if the Proposer so wishes);
- (k) a statement as to which Party Categories, in the opinion of the Proposer, are likely to be affected by the proposed variation;
- (l) a statement of whether changes are likely to be required to other Energy Codes as a result of the proposed variation being made;
- (m) a statement of whether, in the opinion of the Proposer, the Modification Proposal will require changes to DCC Systems, User Systems and/or Smart Metering Systems; and
- (n) the timetable in accordance with which the Proposer recommends that the proposed variation should be implemented (including the proposed implementation date).

Modification Register

- D1.8 The Secretariat shall establish and maintain a register (the **Modification Register**) of all current and past Modification Proposals from time to time.

D1.9 The Modification Register shall contain, in respect of each Modification Proposal submitted pursuant to this Section D1:

- (a) a unique reference number by which the Modification Proposal can be identified;
- (b) a brief summary of the Modification Proposal and its purpose and effect;
- (c) a copy of (or internet link to) the Modification Proposal;
- (d) the stage of the process set out in this Section D that the Modification Proposal has reached;
- (e) following the Modification Proposal's initial consideration by the Panel pursuant to Section D3:
 - (i) whether it is a Path 1 Modification, a Path 2 Modification or a Path 3 Modification;
 - (ii) whether the proposal is a Fast-Track Proposal; and
 - (iii) the timetable applying in respect of the Modification Proposal;
- (f) whether the Authority has determined the Modification Proposal to be an Urgent Proposal;
- (g) where the Modification Proposal has been submitted to the Refinement Process, the agendas and minutes for Working Group meetings;
- (h) once it has been produced, the Modification Report for the Modification Proposal;
- (i) once it has been made, the decision of the Panel (in the case of Fast-Track Modifications) or of the Change Board (in the case of all other Modification Proposals); and
- (j) such other matters relating to the Modification Proposal as the Panel may reasonably determine from time to time.

D1.10 The Secretariat shall ensure that the Modification Register is updated at regular

intervals so that the information it contains in relation to each Modification Proposal is, so far as is reasonably practicable, accurate and up-to-date.

D1.11 The Secretariat shall ensure that the Modification Register is published on the Website, and that a copy of the Modification Register is sent to each Party at least once every month.

Representations from Parties

D1.12 Each Party shall be free to make written representations from time to time regarding each Modification Proposal. Such representations should be made to the Code Administrator in the first instance. The Code Administrator shall:

- (a) in the case of Fast-Track Modifications, bring such representations to the attention of the Panel;
- (b) in the case of Modifications Proposals (other than Fast-Track Modifications) which are not following the Refinement Process, consider such representations when producing the Modification Report; and
- (c) in the case of Modifications Proposals (other than Fast-Track Modifications) which are following the Refinement Process, bring such representations to the attention of the relevant Working Group.

D2 MODIFICATION PATHS

General

- D2.1 Each Modification Proposal will follow one of four modification paths (as described in this Section D2). The modification path to be followed in respect of a Modification Proposal will depend upon the nature of the variation proposed in the Modification Proposal.
- D2.2 The Panel's determination (whether under Section D3.6 or subsequently) of whether a Modification Proposal is a Path 1 Modification, a Path 2 Modification or a Path 3 Modification shall be conclusive unless and until any contrary determination is made by the Authority in accordance with Section D4 (Authority Determinations).
- D2.3 Where the Panel raises a Fast-Track Modification, such Modification Proposal shall be treated as a Fast-Track Modification unless and until any contrary determination is made by the Authority in accordance with Section D4 (Authority Determinations).

Path 1 Modifications: Authority-led

- D2.4 A Modification Proposal that proposes variations to this Code that satisfy one or more of the following criteria shall have the status of a **Path 1 Modification**:
- (a) the variations arise out of a Significant Code Review and the Authority directs the DCC to submit the Modification Proposal; and/or
 - (b) the Modification Proposal is submitted by the Authority or the DCC at the direction of the Authority pursuant to Section D1.3(d).
- D2.5 The DCC shall submit a Modification Proposal in respect of any variations arising out of a Significant Code Review that the DCC is directed to submit by the Authority.

Path 2 Modifications: Authority Determination

- D2.6 Unless it is a Path 1 Modification, a Modification Proposal that proposes variations to this Code that satisfy one or more of the following criteria shall have the status of a **Path 2 Modification**:
- (a) the variations are likely to have a material effect on existing or future Energy

Consumers;

- (b) the variations are likely to have a material effect on competition in the Supply of Energy or Commercial Activities connected with the Supply of Energy;
- (c) the variations are likely to have a material effect on the environment, on access to or privacy of Data, on security of the Supply of Energy, and/or on the security of Systems and/or Smart Metering Systems;
- (d) the variations are likely to have a material effect on the arrangements set out in Section C (Governance) or this Section D; and/or
- (e) the variations are likely to unduly discriminate in their effects between one Party (or class of Parties) and another Party (or class of Parties).

Path 3 Modification: Self-Governance

D2.7 A Modification Proposal that is not a Path 1 Modification, a Path 2 Modification or a Fast Track Modification shall have the status of a **Path 3 Modification**.

Fast-Track Modifications

D2.8 The Panel may itself raise Modification Proposals where it considers it necessary to do so to correct typographical or other minor errors or inconsistencies in this Code (**Fast-Track Modifications**).

D3 INITIAL CONSIDERATION OF MODIFICATION PROPOSALS

Invalid Modification Proposals

- D3.1 The Code Administrator shall refuse (and may only refuse) to accept the submission of a Modification Proposal that is not submitted:
- (a) by a person entitled to submit Modification Proposals in accordance with Section D1.3 (Persons Entitled to Submit Modification Proposals); and/or
 - (b) in the form, and containing the content, required by Sections D1.6 (Form of the Proposal) and D1.7 (Content of the Proposal).
- D3.2 Where the Code Administrator refuses to accept the submission of a Modification Proposal, it shall notify the Panel and the Proposer of that refusal as soon as is reasonably practicable, setting out the grounds for such refusal.
- D3.3 Where the Panel is notified that the Code Administrator has refused to accept the submission of a Modification Proposal, the Panel may instruct the Code Administrator to accept the submission of that proposal (and Section D3.4 shall apply as if the Code Administrator had not refused to accept the Modification Proposal).

Initial Comment by the Code Administrator

- D3.4 Unless the Code Administrator has refused to accept the submission of the Modification Proposal, the Code Administrator shall, within the time period reasonably necessary to allow the Panel to comply with the time periods set out in Section D3.5, submit to the Panel:
- (a) each Modification Proposal; and
 - (b) without altering the Modification Proposal in any way and without undertaking any detailed evaluation of the Modification Proposal, the Code Administrator's written views on the matters that the Panel is to consider under Section D3.6.

Initial Consideration by the Panel

- D3.5 The Panel shall consider each Modification Proposal and the accompanying

documents referred to in section D3.4:

- (a) in the case of Modification Proposals expressed by the Proposer to be urgent, within 5 Working Days after the proposal's submission; and
- (b) in respect of all other Modification Proposals, at the next Panel meeting occurring more than 6 Working Days after the Modification Proposal's submission (provided that, in the case of Fast-Track Modifications, the Panel shall not consider the Modification Proposal earlier than 15 Working Days after it was raised).

D3.6 In considering each Modification Proposal pursuant to Section D3.6, the Panel shall determine:

- (a) whether to refuse the Modification Proposal in accordance with Section D3.8;
- (b) whether the Modification Proposal is a Path 1 Modification, a Path 2 Modification or a Path 3 Modification (taking into account the view expressed by the Proposer in the Modification Proposal and as described in Section D2);
- (c) whether the Authority should be asked to consider whether the Modification Proposal should be treated as an Urgent Proposal (and, where the Proposer has expressed the Modification Proposal to be urgent, the Panel shall so ask the Authority);
- (d) in the case of Fast-Track Modifications, whether the Modification Proposal should be approved or withdrawn (and such approval shall require the unanimous approval of all the Panel Members present at the relevant meeting);
- (e) whether, in accordance with Section D3.9, it is necessary for the Modification Proposal to go through the Refinement Process, or whether it can progress straight to the Report Process;
- (f) the timetable to apply in respect of the Modification Proposal, in accordance with the criteria set out in Section D3.10; and
- (g) whether the Modification Proposal should be considered together with any other current Modification Proposal(s) (whether because they complement or

contradict one another or for any other reason), in which case the Modification Proposals in question shall be considered by the same Working Group.

D3.7 The Secretariat shall, as soon as reasonably practicable following the Panel's determination under Section D3.6 in respect of each Modification Proposal, confirm that determination to the Proposer and update the Modification Register.

Refusal by the Panel

D3.8 The Panel may not refuse a Path 1 Modification. Save in the case of Path 1 Modifications, the Panel may choose to refuse a Modification Proposal if that Modification Proposal has substantively the same effect as another Modification Proposal which was submitted by a Proposer on an earlier date and which:

- (a) has not been refused, approved, rejected or withdrawn pursuant to this Section D at the time of the Panel's decision under this Section D3.8; or
- (b) was refused or rejected pursuant to this Section D on a date falling within the period of two months immediately preceding the time of the Panel's decision under this Section D3.8.

Determining whether the Refinement Process should be followed

D3.9 The Panel shall determine whether each Modification Proposal must go through the Refinement Process, or whether it can progress straight to the Report Process. The Panel shall ensure that the following Modification Proposals are subject to the Refinement Process:

- (a) those submitted by the Panel itself (other than Fast-Track Modifications);
- (b) those that the Panel considers are likely to have an impact on the ability of the DCC to discharge its duties and comply with its obligations under the Relevant Instruments;
- (c) those that the Panel considers are likely to require changes to DCC Systems, User Systems and/or Smart Metering Systems; or
- (d) any other Modification Proposals, unless the Panel considers them to be clearly expressed and concerned solely with:

- (i) insubstantial or trivial changes that are unlikely to be controversial (including typographical errors and incorrect cross-references); and/or
- (ii) giving effect to variations that are mandated by the Relevant Instruments in circumstances where there is little or no discretion as to how they are to be given effect.

Timetable

D3.10 The Panel shall determine the timetable to be followed in respect of each Modification Proposal. In particular, the Panel shall:

- (a) in the case of Path 1 Modifications, determine a timetable consistent with any relevant timetable issued by the Authority;
- (b) in the case of Urgent Proposals, determine a timetable that is (or amend the existing timetable so that it becomes) consistent with any relevant timetable issued by the Authority; and
- (c) (subject to Sections D3.10(a) and (b)) specify the date by which the Modification Report is to be finalised; being as soon as reasonably practicable after the Panel's decision in respect of such timetable (having regard to the complexity, importance and urgency of the Modification Proposal).

D3.11 The Panel may, whether at its own initiation or on the application of another person, determine amendments to the timetable applying from time to time to each Modification Proposal; provided that any such amendment is consistent with Section D3.10. The Secretariat shall, as soon as reasonably practicable following any Panel determination under this Section D3.11, confirm that determination to the Proposer and the Change Board and update the Modification Register.

D3.12 The Panel, the Code Administrator, the Secretariat, any relevant Working Group, the Change Board and the Parties shall each (insofar as within its reasonable control) complete any and all of the respective tasks assigned to them in respect of a Modification Proposal in accordance with the timetable applying to that Modification Proposal from time to time (including as provided for in Section D4.9).

D4 AUTHORITY DETERMINATIONS

Authority Determination of Modification Path

D4.1 This Section D4.1 applies in respect of each Modification Proposal that the Panel has determined to be a Path 2 Modification or a Path 3 Modification. The Authority may:

- (a) at its own initiation, or on the application of a Party or the National Consumer Council; and
- (b) having consulted with the Panel,

determine that the Modification Proposal should properly (in accordance with Section D2) be considered (in the case of a Path 2 Modification) to be a Path 3 Modification or be considered (in the case of a Path 3 Modification) to be a Path 2 Modification. Any such determination shall be final and binding for the purposes of this Code.

Referral of Disputes to the Authority

D4.2 Where the Panel:

- (a) refuses a Modification Proposal pursuant to Section D3 (Initial Consideration of Modification Proposals);
- (b) determines that the Modification Proposal is a Path 1 Modification, a Path 2 Modification or a Path 3 Modification where such determination differs from the view of the Proposer expressed in the Modification Proposal; and/or
- (c) determines a timetable (or an amendment to the timetable) in respect of the Modification Proposal which the Proposer considers inconsistent with the requirements of Section D3 (Initial Consideration of Modification Proposals),

then the Proposer may refer the matter to the Authority for determination in accordance with Section D4.3.

D4.3 The Proposer may only refer a matter to the Authority pursuant to Section D4.2 where such referral is made within 10 Working Days of the Proposer being notified by the Secretariat of the relevant matter. The Proposer shall send to the Panel a copy of any referral made pursuant to this Section D4.3.

D4.4 Where the Authority, after having consulted with the Panel, considers that the Panel's decision that is the subject of a matter referred to the Authority by a Proposer in accordance with Section D4.3 was made otherwise than in accordance with Section D3, then the Authority may determine the matter. Any such determination shall be final and binding for the purposes of this Code.

Authority Determination in respect of Urgent Proposals

D4.5 Where a Proposer has expressed a Modification Proposal to be urgent and/or where the Panel considers a Modification Proposal to be urgent, the Panel shall ask the Authority whether the Modification Proposal should be treated as an Urgent Proposal.

D4.6 A Modification Proposal shall only be an **Urgent Proposal** where the Authority directs the Panel to treat the Modification Proposal as an Urgent Proposal (whether following a referral by the Panel pursuant to Section D4.5, or at the Authority's own initiation).

D4.7 An Urgent Proposal shall be progressed:

- (a) in accordance with any timetable specified by the Authority from time to time, and the Panel shall not be entitled to vary such timetable without the Authority's approval; and
- (b) subject to any deviations from the procedure set out in this Section D as the Authority may direct (having consulted with the Panel).

Authority Determination in respect of Significant Code Reviews

D4.8 During a Significant Code Review Phase:

- (a) the Panel shall report to the Authority on whether or not the Panel considers that any Modification Proposal on which the Change Board had not voted prior to the commencement of the Significant Code Review (whether submitted before or after the commencement of the Significant Code Review) falls within the scope of the Significant Code Review;
- (b) the Panel may (subject to Section D4.8(d)) suspend the progress of any Modification Proposal that the Panel considers to fall within the scope of that

Significant Code Review;

- (c) the Authority may (subject to Section D4.8(d)) direct the Panel to suspend the progress of any Modification Proposal that the Authority considers to fall within the scope of that Significant Code Review (and the Panel shall comply with such directions); and
- (d) the Authority may direct the Panel to cease the suspension of any Modification Proposal that has been suspended pursuant to this Section D4.8 (and the Panel shall comply with such directions). Any and all suspensions pursuant to this Section D4.8 shall automatically cease at the end of the Significant Code Review Phase.

D4.9 The commencement and cessation of suspensions in respect of a Modification proposal pursuant to Section D4.8 shall have the effect of modifying the timetable applying to that Modification Proposal.

D5 WITHDRAWAL BY PROPOSER

Right to Withdraw

- D5.1 Subject to Section D5.2, the Proposer for a Modification Proposal may withdraw the Modification Proposal on notice to the Secretariat at any time prior to the decision of the Change Board in respect of that Modification Proposal.
- D5.2 In the case of Path 1 Modifications, the Proposer may only withdraw the Modification Proposal where the Proposer provides evidence that the Authority has given its consent to such withdrawal. The Proposer may not withdraw a Modification Proposal following any direction by the Authority to the Panel pursuant to Section D9.3 (Send-Back Process).
- D5.3 As soon as is reasonably practicable after receiving any notice in accordance with Section D5.1, the Secretariat shall notify the Parties that the Proposer has withdrawn its support and shall update the Modification Register accordingly.

Adoption of Withdrawn Proposals

- D5.4 Where, within 10 Working Days of the Secretariat sending notice under Section D5.3, the Secretariat receives notice from a Party that it is prepared to adopt the Modification Proposal, such Party shall (for all purposes in respect of this Code) be deemed thereafter to be the Proposer for the Modification Proposal (and, where the Secretariat receives more than one such notice, the first such notice shall have priority over the others).
- D5.5 Where Section D5.4 applies, the Modification Proposal shall not be withdrawn, and the Secretariat shall notify the Parties and update the Modification Register.

Withdrawn Proposals

- D5.6 Subject to Section D5.5, a Modification Proposal that has been withdrawn in accordance with Section D5.1 shall cease to be subject to the process set out in this Section D.

D6 REFINEMENT PROCESS

Application of this Section

D6.1 This Section D6 sets out the **Refinement Process**. This Section D6 only applies in respect of a Modification Proposal where it is determined that the Modification Proposal is to be subject to the Refinement Process in accordance with Section D3 (Initial Consideration of Modification Proposals). The Refinement Process never applies to Fast-Track Modifications.

Establishment of a Working Group

D6.2 Where this Section D6 applies, the Panel shall establish a group of persons (a **Working Group**) for the purposes set out in Section D6.8.

D6.3 Each Working Group so established must comprise:

- (a) at least five individuals who each have relevant experience and expertise in relation to the subject matter of the Modification Proposal and whose backgrounds are broadly representative of the persons likely to be affected by the Modification Proposal if it is approved (and the Panel, with the cooperation of the Parties, shall seek to establish a standing list of persons with potentially relevant experience who may be willing to serve on Working Groups);
- (b) where the Proposer nominates such a person, one person nominated by the Proposer; and
- (c) a Working Group chair to be (subject to Section D6.4) selected from among the members of the Working Group by such members.

D6.4 The Code Administrator shall attend meetings of the Working Groups established pursuant to this Section D6, and support the activities of such Working Groups. The Code Administrator shall provide feedback to any Party that requests it regarding the progress of the Refinement Process and the outcome of Working Group meetings. Where the Panel or the relevant Working Group so determines, the Code Administrator shall act as chair of a Working Group.

D6.5 A person appointed to serve on a Working Group, when acting in that capacity, shall

act in a manner designed to facilitate the performance by the Panel of its duties under this Code.

- D6.6 Each person appointed to serve on a Working Group must, before that appointment takes effect, confirm in writing to SECCo (for the benefit of itself and each Party) that that person:
- (a) agrees to serve on that Working Group and to do so in accordance with this Code, including the requirements of Section D6.5; and
 - (b) will be available as reasonably required throughout the Refinement Process for the Modification Proposal, both to attend Working Group meetings and to undertake work outside those meetings as may reasonably be required.
- D6.7 Except to the extent inconsistent with this Section D6, the provisions of Section C6 (Sub-Committees) shall apply in respect of each Working Group as if that Working Group was a Sub-Committee.

Purpose of Refinement Process

- D6.8 The purpose of the Refinement Process is to:
- (a) consider and (to the extent necessary) clarify the likely effects of the Modification Proposal, including to identify the Parties, Party Categories, Energy Consumers and other persons likely to be affected by the Modification Proposal;
 - (b) evaluate and (to the extent necessary) develop and refine the content of the Modification Proposal;
 - (c) evaluate and (to the extent necessary) amend the proposed implementation timetable of the Modification Proposal (provided that the proposed implementation timetable of a Path 1 Modification cannot be so amended);
 - (d) consider (to the extent the Working Group considers necessary) the impact which the Modification Proposal would have, if approved, on the matters referred to in Section D6.9;
 - (e) consider whether, if the Modification Proposal is approved, this Code would

better facilitate the achievement of the SEC Objectives than if the Modification Proposal was rejected;

- (f) consider whether it is likely that there would be a material impact on Greenhouse Gas Emissions as a result of the Modification Proposal being approved, and (if so) assessing such impact (which assessment shall be conducted in accordance with any guidance on the evaluation of Greenhouse Gas Emissions issued by the Authority from time to time); and
- (g) consider whether, if the Modification Proposal is approved, changes are likely to be required to other Energy Codes as a result.

Analysis by the DCC

D6.9 At the request of a Working Group established pursuant to this Section D6 in respect of a Modification Proposal, the DCC shall prepare an analysis of how the following matters would be affected if that Modification Proposal were to be approved:

- (a) the ability of the DCC to discharge its duties and comply with its obligations under the Relevant Instruments; and/or
- (b) the extent to which changes would be required to DCC Systems, User Systems, and/or Smart metering Systems; and (if so) the likely development, capital and operating costs associated with such changes and any consequential impact on the Charges.

D6.10 The DCC shall provide such further explanation of any analysis prepared pursuant to Section D6.9 as the Working Group may reasonably require.

D6.11 In considering whether the approval of a Modification Proposal would better facilitate the achievement of the SEC Objectives than the rejection of the Modification Proposal, the Working Group shall have regard to any analysis provided by the DCC pursuant to Section D6.9.

Working Group Consultation

D6.12 Each Working Group established pursuant to this Section D6 in respect of a Modification Proposal shall consider any representations made to it by Parties from

time to time regarding the subject-matter of the Modification Proposal.

D6.13 Each Working Group established pursuant to this Section D6 in respect of a Modification Proposal shall undertake at least one formal consultation in respect of the Modification Proposal seeking views on the matters set out in Section D6.8. The Working Group shall consult with the Parties, the National Consumer Council and (where appropriate) any interested third parties (including, where relevant, Energy Consumers and/or those who represent or advise Energy Consumers).

D6.14 Each Working Group established pursuant to this Section D6 in respect of a Modification Proposal shall publish on the Website, and bring to the Parties' attention, a document (the **Consultation Summary**) containing the following:

- (a) the final consultation draft of the Modification Proposal, including in particular the legal text of the proposed variation and the proposed implementation timetable;
- (b) all consultation responses received and not marked as confidential; and
- (c) a statement of whether the Working Group considers that the approval of the Modification Proposal would better facilitate the achievement of the SEC Objectives than the rejection of the Modification Proposal (and if so why).

Alternative Proposals

D6.15 Alternative Proposals may arise in one of two ways:

- (a) where the majority of the Working Group considers that there is more than one variation to this Code that could achieve the purpose of the Modification Proposal (and that each such variation would, if made, better facilitate the achievement of the SEC Objectives than if that variation were not made), then the Working Group may decide to submit more than one proposed variation to this Code (identifying one proposal as its preferred variation, and the others as **Alternative Proposals**); and/or
- (b) where the Proposer, or the person appointed to the Working Group pursuant to Section D6.3(b), objects to the proposed variation(s) to this Code preferred by the majority of the Working Group, such person may insist that the variation to

this Code that it prefers is included in addition (an **Alternative Proposal**).

D6.16 References in this Section D to a Modification Proposal shall (except where the context otherwise requires) be deemed to include reference to any Alternative Proposal included in accordance with Section D6.15.

D7 REPORT PHASE

Modification Report

D7.1 The Code Administrator shall, in respect of each Modification Proposal, prepare a written report on the proposal (the **Modification Report**); provided that no Modification Report shall be required for Fast-Track Modifications. This stage of the process is referred to as the **Report Phase**.

D7.2 The Code Administrator shall prepare the Modification Report for each Modification Proposal:

- (a) where the Refinement Process has been followed, in accordance with the instructions of the relevant Working Group; or
- (b) where the Refinement Process has not been followed, on the basis of the Modification Proposal and in consultation with the Proposer.

Content of the Modification Report

D7.3 The Modification Report for each Modification Proposal shall:

- (a) be addressed and delivered to the Panel;
- (b) set out the legal text of the proposed variation to this Code (and, where applicable, set out the alternative legal text of the Alternative Proposal);
- (c) specify the proposed implementation timetable (including the proposed implementation date);
- (d) specify the likely effects of the proposed variation if it is implemented;
- (e) specify, in the opinion of the Working Group (or, where the Refinement Process was not followed, the Code Administrator), which Party Categories are likely to be affected by the Modification Proposal;
- (f) specify whether the implementation of the Modification Proposal will require changes to DCC Systems, User Systems and/or Smart Metering Systems; and (if so) the likely development, capital and operating costs associated with such changes and any consequential impact on the Charges;

- (g) specify whether, if the Modification Proposal is approved, this Code would better facilitate the achievement of the SEC Objectives than if the Modification Proposal was rejected;
- (h) specify whether it is likely that there would be a material impact on Greenhouse Gas Emissions as a result of the Modification Proposal being approved, and (if so) assessing such impact (which assessment shall be conducted in accordance with any guidance on the evaluation of Greenhouse Gas Emissions issued by the Authority from time to time);
- (i) specify whether, if the Modification Proposal is approved, changes are likely to be necessary to other Energy Codes, and whether changes have been proposed in respect of the affected Energy Codes; and
- (j) where the Modification Proposal was subject to the Refinement Process prior to the Report Phase, include the Consultation Summary produced by the Working Group in respect of the Modification Proposal.

Consideration of the Modification Report

D7.4 Upon completion of the Modification Report, the Code Administrator will place such report on the agenda for the next meeting of the Panel. Where the Refinement Process was followed, a member of the relevant Working Group shall attend that Panel meeting, and may be invited to present the findings of the Working Group to the Panel and/or answer the questions of Panel Members in respect of the Modification Report.

D7.5 The Panel shall consider each Modification Report and shall determine whether to:

- (a) return the Modification Report back to the Working Group (or, where there was no Refinement Process, the Code Administrator) for further clarification or analysis (in which case, the Panel shall determine the timetable and terms of reference of such further analysis); or
- (b) allow the Modification Report to proceed to the Modification Report Consultation.

D7.6 The Panel shall not make any statement regarding whether it believes the

Modification Proposal should be successful.

D7.7 Where the Panel determines that a Modification Report is to proceed to the Modification Report Consultation, the Panel shall determine:

- (a) the timetable for such Modification Report Consultation, including the period for which the consultation is to remain open (which cannot be more than 15 Working Days); and
- (b) the Party Categories that the Panel considers are likely to be affected by the Modification Proposal.

Modification Report Consultation

D7.8 Where the Panel determines that a Modification Report is to proceed to the Modification Report Consultation, the Code Administrator shall arrange for a consultation seeking the views of Parties (other than the DCC) on the Modification Report (the **Modification Report Consultation**). The Code Administrator shall:

- (a) invite consultation responses in accordance with the timetable determined by the Panel and in the form referred to in Section D7.9;
- (b) collate the responses received during the consultation, and add those responses to the Modification Register; and
- (c) place the Modification Report on the agenda for the next meeting of the Change Board following the collation of such consultation responses.

D7.9 Each Modification Report Consultation shall allow for each Party (other than the DCC) that wishes to respond to the consultation to respond by way of a form that provides for a response in one of the following manners (where applicable, in respect of the Modification Proposal and the Alternative Proposal separately):

- (a) 'no interest' where the Party considers that it and its Party Category are unlikely to be affected by the Modification Proposal;
- (b) 'abstain' where the Party wishes to abstain for reasons other than as described in Section D7.9(a);

- (c) 'approve' where the Party considers that making the variation would better facilitate the achievement of the SEC Objectives than if the variation was rejected; or
- (d) 'reject' where the Party considers that not making the variation would better facilitate the achievement of the SEC Objectives than if the variation was approved,

and which prompts the Party to give a reason for its response by reference to the SEC Objectives.

D7.10 Each Party's response to a Modification Report Consultation will only be validly given if made on the forms provided and received on or before the deadline for responses.

D8 CHANGE BOARD AND CHANGE BOARD DECISION

Establishment of the Change Board

D8.1 The Panel shall establish a Sub-Committee for the purposes of this Section D8, to be known as the **Change Board**. Save as expressly set out in this Section D8, the Change Board shall be subject to the provisions concerning Sub-Committees set out in Section C6 (Sub-Committees).

Function of the Change Board

D8.2 The function of the Change Board shall be to:

- (a) facilitate the development, refinement and discussion of potential variations to this Code prior to their formal submission as Modification Proposals;
- (b) consider each Modification Report and the responses received in response to the Modification Report Consultation; and
- (c) decide whether to approve or reject the Modification Proposal in the form set out in the Modification Report (and, where applicable, whether to approve or reject each Alternative Proposal).

Effect of the Change Board Decision

D8.3 The effect of the Change Board decision shall:

- (a) in the case of Path 1 Modifications and Path 2 Modifications, be to recommend to the Authority that the variation be approved or rejected; or
- (b) in the case of Path 3 Modifications, be to approve or reject the variation.

Membership of the Change Board

D8.4 The following persons shall serve on the Change Board (each being a **Change Board Member**):

- (a) one of the Consumer Members (or one of their Alternates);
- (b) one person appointed by each of the Voting Groups within the Party Category

representing the Large Supplier Parties;

- (c) three persons appointed by the Party Category representing the Small Supplier Parties;
- (d) three persons appointed by the Party Categories representing Electricity Network Parties and the Gas Network Parties collectively; and
- (e) three persons appointed by the Party Category representing the Other SEC Parties.

D8.5 Each Voting Group, Party Category or Party Categories (as applicable) referred to in each sub-section of Section D8.4 shall nominate its appointee(s) to serve as Change Board Member(s) to the Secretariat. Each Change Board Member shall serve for a term of one year, and shall be capable of being reappointed at the end of that term. The relevant Voting Group, Party Category or Party Categories may (on notice to the Secretariat) establish a rota whereby more than one person shares the office of Change Board Member.

D8.6 It shall be for the Parties within the relevant Party Category or Party Categories (as applicable) referred to in each sub-section of Section D8.4 to determine how they agree between themselves on the identity of each person to be appointed as a Change Board Member on their behalf. In the event that the Parties within such Party Category or Party Categories cannot so agree, the Secretariat shall seek the preference of the Parties within the relevant Party Category or Party Categories (as applicable) and the person preferred by the majority of those Parties that express a preference (on a one-vote-per-Party basis) shall be appointed as a Change Board Member. In the absence of a majority preference the relevant Change Board Member position shall remain unfilled.

D8.7 The Panel shall only be entitled to remove a Change Board Member from office where such Change Board Member is repeatedly absent from meetings to an extent that frustrates the proceedings of the Change Board. The Voting Group by which a Change Board Member was appointed pursuant to Section D8.4(b) shall be entitled to remove that Change Board Member by notice in writing to the Secretariat. The Party Category or Party Categories (as applicable) referred to in each other sub-section of

Section D8.4 shall be entitled to remove the Change Board Member appointed by them from office by notice in writing to the Secretariat; provided that the majority of the Parties within the relevant Party Category or Party Categories (as applicable) must approve such removal.

Duties of Change Board Members

D8.8 The Consumer Member serving on the Change Board will, when acting as a Change Board Member, act in a manner consistent with the statutory functions of the National Consumer Council. Each other Change Board Member will act in the interests of the Voting Group, Party Category or Party Categories (as applicable) by which the Change Board Member was appointed.

D8.9 In giving effect to his or her duties under Section D8.8, each Change Board Member (other than the Consumer Member) shall:

- (a) be guided (but not bound) by the responses to the Modification Report Consultation given by Parties within the Voting Group, Party Category, or Party Categories (as applicable) by which such Change Board Member was appointed;
- (b) seek to clarify with the relevant Party any responses to the Modification Report Consultation that are not clear to the Change Board Member, or which the Change Board Member considers to be based on a misunderstanding of the facts;
- (c) seek to act in the best interests of the majority, whilst representing the minority view (and, where a majority is not significant, the Change Board Member should consider whether abstention from the vote best represents the interests of the Change Board Member's constituents); and
- (d) be entitled to vote or abstain without regard to the Panel's indication of which Party Categories the Panel considered to be affected by the Modification Proposal.

D8.10 The confirmation to be given by each Change Board Member to SECCo in accordance with Section C6.9 (Member Confirmation) shall refer to Section D8.8 in

place of Section C6.8.

Proceedings of the Change Board

D8.11 The Code Administrator shall chair the Change Board meetings. The chair shall have no vote (casting or otherwise).

D8.12 The quorum for Change Board meetings shall be:

- (a) at least three persons appointed by the Large Supplier Parties;
- (b) at least one person appointed by the Small Supplier Parties;
- (c) at least two persons appointed by the Electricity Network Parties and Gas Network Parties collectively; and
- (d) at least one person appointed by the Other SEC Parties,

provided that fewer (or no) appointees from a Party Category shall be required where that Party Category has not appointed that many (or any) Change Board Members; and further provided that no appointees from a Party Category shall be required where the Panel indicated pursuant to Section D7.7(b) that that Party Category was not likely to be affected by the Modification Proposal in question.

D8.13 In addition to those persons referred to in Section C5.13, representatives of the DCC shall be entitled to attend and speak (but not vote) at each meeting of the Change Board.

The Change Board Vote

D8.14 In respect of each Modification Report referred to the Change Board, the Change Board shall vote:

- (a) whether to recommend to the Panel that the Panel consider returning the Modification Report to the Working Group (or, where there was no Refinement Process, the Code Administrator) for further clarification or analysis; and if not
- (b) whether to approve the variation set out in the Modification Report or any Alternative Modification (on the basis that the Change Board may only

approve one of them).

D8.15 A vote referred to in Section D8.14 shall take the form of a vote by:

- (a) the Consumer Member serving on the Change Board;
- (b) the Change Board Members appointed by the Voting Groups within the Party Category representing the Large Supplier Parties (whose collective vote shall be determined in accordance Section D8.16);
- (c) the Change Board Members appointed by the Party Category representing the Small Supplier Parties (whose collective vote shall be determined in accordance with Section D8.16);
- (d) the Change Board Members appointed by the Party Categories representing Electricity Network Parties and the Gas Network Parties (collectively) (whose collective vote shall be determined in accordance with Section D8.16); and
- (e) the Change Board Members appointed by the Party Category representing the Other SEC Parties (whose collective vote shall be determined in accordance with Section D8.16),

and a vote pursuant to Section D8.14 shall only be successfully passed if the majority of the votes cast in accordance with this Section D8.15 are cast in favour. For the avoidance of doubt: an abstention shall be treated as if no vote was cast; where there are no Change Board Members present from within the categories referred to in each of Sections D8.15(a) to (e) they shall be deemed to have abstained; and a tie amongst the votes cast shall not be a vote in favour.

D8.16 Each of the collective votes by Change Board Members referred to in Section D8.15(b) to (e) shall be determined by a vote among the relevant Change Board Members, such vote to be undertaken on the basis:

- (a) of one vote per Change Board Member; and
- (b) that the majority of those Change Board Members that are present must vote in favour in order for the collective vote to be considered a vote in favour (and, for the avoidance of doubt, a tie amongst the votes cast shall not be a vote in

favour).

D8.17 In casting his or her vote, each Change Board Member must record the reason for his or her vote, and where voting on whether or not to approve a variation must explain whether the making of the variation would better facilitate the achievement of the SEC Objectives than if the variation was rejected.

Communicating the Change Board Vote

D8.18 Following the vote of the Change Board in respect of each Modification Report, the Code Administrator shall update the Modification Register to include the outcome of the vote and the reasons given by the Change Board Members pursuant to Section D8.17.

D8.19 Where the outcome of the Change Board vote is to recommend to the Panel that the Panel consider returning the Modification Report for further clarification or analysis (as referred to in Section D8.14(a)), the Panel may either follow such recommendation or return the Modification Report to the Change Board without any further clarification or analysis. Where the Panel returns the Modification Report to the Change Board without any further clarification or analysis, the Change Board shall not vote again on the matters referred to in Section D8.14(a) and must vote on whether to approve the variation (as referred to in Section D8.14(b)).

D8.20 Where the Change Board votes on whether to approve a variation set out in a Modification Report (as referred to in Section D8.14(b)), the Code Administrator shall communicate the outcome of that vote to the Authority and the Panel, and shall send copies of the following to the Authority:

- (a) the Modification Report;
- (b) the Modification Report Consultation and the responses received in respect of the same; and
- (c) the outcome of the Change Board vote, including the reasons given by the Change Board Members pursuant to Section D8.17.

D9 MODIFICATION PROPOSAL DECISION

General

D9.1 The final decision as to whether or not to approve a Modification Proposal shall depend upon whether the Modification Proposal is:

- (a) a Path 1 Modification or a Path 2 Modification;
- (b) a Path 3 Modification; or
- (c) a Fast-Track Modification.

Path 1 Modifications and Path 2 Modifications

D9.2 A Path 1 Modification or a Path 2 Modification shall only be approved where the Authority determines that the Modification Proposal shall be approved (which determination shall, without prejudice to section 173 of the Energy Act 2004, be final and binding for the purposes of this Code). In making such determination, the Authority will have regard to:

- (a) its objectives and statutory duties under the Electricity Act and the Gas Act;
- (b) whether or not the approval of the variation would better facilitate the achievement of the SEC Objectives than if the variation was rejected;
- (c) the decision of the Change Board in respect of the Modification Proposal, which shall be considered to constitute a recommendation by the Parties as to whether or not to approve the Modification Proposal; and
- (d) such other matters as the Authority considers appropriate.

Send-Back Process

D9.3 Where the Authority considers that it is unable to form an opinion in relation to a Modification Proposal submitted to it, then it may issue a direction to the Panel specifying any additional steps that the Authority requires in order to form such an opinion (including drafting or amending the proposed legal text, revising the proposed implementation timetable, and/or revising or providing additional analysis and/or

information). Where the Authority issues a direction to the Panel pursuant to this Section D9.3:

- (a) the decision of the Change Board in respect of the Modification Proposal shall be null and void;
- (b) the Panel shall send the Modification Proposal back to the relevant Working Group (or shall establish a Working Group) to consider the matters raised by the Authority, and to prepare a revised Modification Report;
- (c) the Panel shall revise the timetable applying to the Modification Proposal; and
- (d) the Secretariat shall update the Modification Register to record the status of the Modification Proposal.

Path 3 Modifications

D9.4 Save where it is a Fast-Track Modification (to which Section D9.5 shall apply), a Path 3 Modification shall only be approved where the Change Board votes to approve the Modification Proposal, subject to the following:

- (a) any Party that disagrees with the decision of the Change Board, may (within 10 Working Days following the publication of that decision) refer the matter to the Panel, and the Panel shall determine whether it wishes to reverse the decision of the Change Board;
- (b) any Party that disagrees with the decision of the Panel pursuant to Section D9.4(a), may (within 10 Working Days following the publication of that decision) refer the matter to the Authority, and the Authority shall determine whether the Modification Proposal should be rejected or approved in accordance with Section D9.2 (which determination shall, without prejudice to section 173 of the Energy Act 2004, be final and binding for the purposes of this Code); and
- (c) accordingly, where the consequence of the Panel's or the Authority's determination is that the Modification Proposal is to be rejected (where it has previously been approved) the Modification Proposal shall be cancelled and not implemented (or, if already implemented, shall be reversed).

Fast-Track Modifications

D9.5 In the case of a Fast-Track Modification, any decision of the Panel under Section D3.6 to approve the Modification Proposal shall be final, subject to the following:

- (a) where the Panel has raised a Fast-Track Modification, any Party may notify the Panel that the Party believes that the procedure for Fast-Track Modifications is inappropriate given the nature of the variation in question (and the Party should give reasons to substantiate this belief);
- (b) when the Panel considers the status of the Fast-Track Modification in accordance with Section D3.6 (Initial Consideration of Modification Proposals), it shall consider any notifications received pursuant to Section D9.5(a);
- (c) where the Panel nevertheless determines under Section D3.6 (Initial Consideration of Modification Proposals) that the Modification Proposal should be approved, the Panel shall notify the Party that raised the issue under Section D9.5(a);
- (d) such Party may, within 10 Working Days thereafter, refer the matter to the Authority for final determination; and
- (e) following a referral to the Authority in accordance with Section D9.5(d), where the Authority determines that the Panel's decision to follow the Fast-Track Procedure was inappropriate given the nature of the variation in question, the Modification Proposal shall be cancelled and not implemented (or, if already implemented, shall be reversed).

D10 IMPLEMENTATION

General

D10.1 Once a Modification Proposal has been approved in accordance with Section D9 (Modification Proposal Decision), the Panel shall ensure that this Code is varied in accordance with that Modification Proposal, as set out in this Section D10.

Implementation

D10.2 The Panel shall, at the next Panel meeting after a Modification Proposal has been approved:

- (a) determine what actions are required in order to ensure that the approved variation to this Code is made in accordance with the approved implementation timetable; and
- (b) set a timetable for the completion of each of those actions.

D10.3 It shall be the duty of the Panel to ensure that the actions which are required to secure that an approved variation to this Code is made in accordance with the approved implementation timetable are taken.

D10.4 Each Party shall co-operate with the Panel to the extent required to ensure that such variation is made with effect from such date.

Subsequent Amendment to Implementation Timetable

D10.5 Where, having regard to representations received from the Code Administrator or from any Party, the Panel considers that it is not reasonably practicable to make the approved variation to this Code in accordance with the approved implementation timetable:

- (a) the Panel may request the Authority to direct that a new implementation timetable be substituted for the first such timetable; and
- (b) where the Authority makes such a direction following a request by the Panel, the implementation timetable directed by the Authority shall have effect in substitution for the first such timetable, and the requirements of this Section

D10 shall be defined by relation to that later date.

D10.6 Without prejudice to the generality of Section D10.5, the Panel shall make a request to the Authority under that Section where:

- (a) the decision of the Authority to approve the relevant Modification Proposal is subject to an appeal pursuant to section 173 of the Energy Act 2004 or is challenged by judicial review; and
- (b) the Panel considers that it is appropriate in the circumstances for the timetable to be delayed given such appeal or challenge.

SECTION E: REGISTRATION DATA

E1 RELIANCE ON REGISTRATION DATA

DCC

- E1.1 The DCC shall, from time to time, use and rely upon the Data provided to it pursuant to Section E2 as most recently updated pursuant to Section E2 (the **Registration Data**).
- E1.2 Without prejudice to the generality of Section E1.1, the DCC shall use and rely upon the Registration Data when:
- (a) assessing a User's eligibility to receive a Service;
 - (b) calculating the Charges payable by a Party; and
 - (c) identifying a Supplier Nominated Agent.
- E1.3 The DCC shall have no liability to any Party where it provides (or does not provide) a Service in circumstances where it should not (or should) have done so, to the extent that the same arises due to inaccuracies in the Registration Data that are not caused by the DCC.

Panel

- E1.4 The Panel shall periodically request from the DCC any Registration Data reasonably required by the Panel in relation to the proper exercise of its duties, powers and functions, including the Registration Data required by the Panel to establish into which Party Category a Party falls. Where aggregated or anonymised data (or similar) is sufficient for the Panel's needs, the Panel shall request, and the DCC shall provide, the data in such format.
- E1.5 The DCC shall provide to the Panel any Registration Data requested by the Panel in accordance with Section E1.4.
- E1.6 The Panel (and the Secretariat) shall, from time to time, use and rely upon the Registration Data most recently provided to the Panel pursuant to Section E1.5.

E2 PROVISION OF DATA

Responsibility for Providing Electricity Registration Data

E2.1 The Electricity Distributor in respect of each MPAN shall provide the following information (or procure that the following information is provided) to the DCC in respect of that MPAN (insofar as such information is recorded in the relevant registration systems). The information in question is the following (as each of the following capitalised expressions is defined in the MRA):

- (a) Source Registration System ID;
- (b) MPAN;
- (c) Supplier ID;
- (d) Supplier ID Effective From Settlement Date (REGI);
- (e) Supplier ID effective to date;
- (f) Network Operator ID;
- (g) Network Operator ID effective from date;
- (h) Meter Operator ID;
- (i) Effective From Date (MOA);
- (j) Metering Point Address;
- (k) Metering Point Postcode;
- (l) Energy Direction indicator;
- (m) Profile Class ID; and
- (n) UPRN.

Responsibility for Providing Gas Registration Data

E2.2 The Gas Transporter in respect of each MPRN shall provide the following information (or procure that the following information is provided) to the DCC in

respect of that MPRN (insofar as such information is recorded in the relevant registration systems). The information in question is the following (as each of the following capitalised expressions is defined in the UNC):

- (a) Source registration system ID;
- (b) MPRN;
- (c) Supplier ID;
- (d) Supplier ID effective from date;
- (e) Supplier ID effective to date;
- (f) Network Operator ID;
- (g) Network Operator ID effective from date;
- (h) Meter Asset Manager ID;
- (i) Effective From Date (MAM);
- (j) Metering Point Address;
- (k) Metering Point Postcode;
- (l) UPRN; and
- (m) Market Sector Code.

Obligation on Electricity Suppliers to Provide Data

E2.3 The Party that is the Import Supplier or Export Supplier (as applicable) for an MPAN that is associated with a Non-Domestic Premises shall notify the DCC that such MPAN is associated with a Non-Domestic Premises.

Obligation on DCC to Provide Data

E2.4 The DCC shall provide the information set out in Section E2.5 (or procure that such information is provided) to the Electricity Distributors and the Gas Transporters (or to any person or persons nominated by them).

E2.5 The information to be provided by the DCC:

- (a) to each Electricity Distributor (or its nominee) is whether or not there is an Enrolled Smart Metering System associated with each of the Electricity Distributor's MPANs (and, where relevant, the date of its Enrolment or Withdrawal); and
- (b) to each Gas Transporter (or its nominee) is whether or not there is an Enrolled Smart Metering System associated with each of the Gas Transporter's MPRNs (and, where relevant, the date of its Enrolment or Withdrawal).

Frequency and Format of Data Exchanges

E2.6 The Data to be provided in accordance with this Section E2 shall be provided or updated at least once each day (or, in the case of Section E2.3 only, at least once each month), and otherwise at any frequency and/or time required in accordance with the applicable SEC Subsidiary Document.

E2.7 The Data to be provided in accordance with this Section E2 shall be provided in the format required in accordance with the applicable SEC Subsidiary Document.

SECTION H: DCC SERVICES

H1 USER ENTRY PROCESS

Eligibility

- H1.1 A Party is not entitled to Enrol Smart Metering Systems or to receive Communication Services until that Party has become a User by completing the User Entry Process.
- H1.2 Only persons that are Parties are eligible to complete the User Entry Process and to become Users. For the avoidance of doubt, the DCC is not required to (and cannot) become a User.

User Entry Guide

- H1.3 The Code Administrator shall establish and publish on the Website a guide to the User Entry Process. Such guide shall:
- (a) identify any information that a Party is required to provide in support of its application to become a User; and
 - (b) include a recommendation that each Party undertakes a privacy impact assessment in accordance with the Information Commissioner's guidance concerning the same (but there shall be no obligation under this Code to do so).

User Entry

- H1.4 A Party that wishes to become a User must apply to the Code Administrator in compliance with any requirements concerning the same identified in the guide referred to in Section H1.3.
- H1.5 On receipt of a Party's application pursuant to Section H1.4, the Code Administrator will process the Party's application to become a User in accordance with this Section H1.

User Entry Process Requirements

- H1.6 The User Entry Process requires that the Party has:
- (a) successfully demonstrated that the Party's Systems can communicate with the DCC User Gateway in accordance with Section H3.3 (Testing of Systems);
 - (b) successfully demonstrated in accordance with the procedure set out in Section G (Security) that the Party meets the applicable security requirements required by that Section;
 - (c) successfully demonstrated in accordance with the applicable SEC Subsidiary Document that the Party is able to satisfy the entry tests required by that document; and
 - (d) provided the Credit Cover (if any) that the DCC requires that Party to provide, to be calculated by the DCC in accordance with Section J3 (Credit Cover) as if that Party were a User (and based on the DCC's reasonable estimates of the Charges that are likely to be incurred by the User in the period until the first Invoice for that Party is due to be paid by that Party).
- H1.7 A Party will have successfully completed the User Entry Process once the Code Administrator has received confirmation from the body responsible for each of the requirements set out in Section H1.6 that the Party has met each and every requirement set out in Section H1.6, and once the Code Administrator has confirmed the same to the Party.
- H1.8 Once a Party has successfully completed the User Entry process, the Code Administrator shall confirm the same to the DCC and the Panel.

Disputes Regarding User Entry Process

- H1.9 Where a Party wishes to raise a dispute in relation to its application to become a User, and to the extent that the dispute relates to:
- (a) the matters described in Section H1.6(a), then the dispute shall be determined in accordance with Sections H3.5 (Testing of Systems);
 - (b) the matters described in Section H1.6(b), then the dispute shall be determined

in accordance with the dispute resolution procedure set out in Section G (Security);

- (c) the matters described in Section H1.6(c), then the dispute shall be determined in accordance with any dispute resolution procedure provided for in the applicable SEC Subsidiary Document (and otherwise by the Panel);
- (d) the matters described in Section H1.6(d), then the dispute shall be determined in accordance with Section J3.15 (Disputes); or
- (e) any matters other than those referred to above, then the dispute may be referred to the Panel for determination.

H1.10 Where a Party disagrees with any decision of the Panel made pursuant to Section H1.9(e), then that Party may refer the matter to the Authority for its determination, which shall be final and binding for the purposes of this Code.

H2 SUPPLIER NOMINATED AGENTS

Eligible Supplier Agents

- H2.1 No person may act as a Supplier Nominated Agent unless that person is an Eligible Supplier Agent.
- H2.2 In order to become an “**Eligible Supplier Agent**” a person must have:
- (a) successfully demonstrated that the person’s Systems can communicate with the DCC User Gateway in accordance with tests equivalent to those tests that apply to Users under Section H3.3 (Testing of User Systems);
 - (b) successfully demonstrated in accordance with the procedure set out in Section G (Security) that the person meets the applicable security requirements required by that Section;
 - (c) successfully demonstrated in accordance with the applicable SEC Subsidiary Document that the person is able to satisfy the entry tests required by that document; and
 - (d) provided to the DCC details of the unique identifiers by which the person is identified under the MRA or the UNC (or both).
- H2.3 A person that wishes to become an Eligible Supplier Agent must apply to the Code Administrator, who will process the person’s application to become an Eligible Supplier Agent in accordance with this Section H2.
- H2.4 A person will become an Eligible Supplier Agent once the Code Administrator has received confirmation from the body responsible for each of the requirements set out in Section H2.2 that such person has met each and every requirement set out in Section H2.2, and once the Code Administrator has confirmed the same to such person.
- H2.5 Once a person has become an Eligible Supplier Agent, the Code Administrator shall confirm the same to the DCC and the Panel.
- H2.6 An Eligible Supplier Agent may opt to cease to be an Eligible Supplier Agent by giving notice of the same to the Code Administrator.

H2.7 The Code Administrator shall publish the names of the Eligible Supplier Agents from time to time on the Website, and shall notify all the Parties in the event that an Eligible Supplier Agent ceases to be an Eligible Supplier Agent.

Eligibility Disputes

H2.8 A person that is refused the status of an Eligible Supplier Agent may refer the matter to the Panel for determination.

H2.9 Where a person disagrees with any decision of the Panel made pursuant to Section H2.8, then that Party may refer the matter to the Authority for its determination, which shall be final and binding for the purposes of this Code.

Appointment of Supplier Nominated Agents

H2.10 A “**Supplier Nominated Agent**” will be deemed to be (and may only be) appointed as follows:

- (a) the Meter Operator appointed in respect of an Import MPAN shall, provided that person is an Eligible Supplier Agent, be deemed to have been appointed by the Import Supplier for the MPAN as the Supplier Nominated Agent for the MPAN;
- (b) the Meter Operator appointed in respect of an Export MPAN shall, provided that person is an Eligible Supplier Agent, be deemed to have been appointed by the Export Supplier for the MPAN as the Supplier Nominated Agent for the MPAN; and
- (c) the Meter Asset Manager appointed in respect of an MPRN shall, provided that person is an Eligible Supplier Agent, be deemed to have been appointed by the Gas Supplier for the MPRN as the Supplier Nominated Agent for the MPRN.

Supplier Nominated Agents

H2.11 In relation to those matters set out in the applicable SEC Subsidiary Document, the DCC shall act upon the instructions and requests of, and provide and accept information to and from, the Supplier Nominated Agent as if the agent was the User

by which the agent is deemed to have been appointed under this Section H2.

H2.12 Supplier Nominated Agents have no rights or obligations (in their capacity as such) under this Code or any Bilateral Agreement. The rights and obligations of each Supplier Nominated Agent (in its capacity as such) shall be agreed between that agent and the User by which the agent is deemed to have been appointed under this Section H2.

H2.13 Nothing in this Section H2 obliges a User to grant any rights to the Supplier Nominated Agent. Each User shall be responsible for controlling the ability of the Supplier Nominated Agent to issue instructions on the User's behalf pursuant to Section H2.11.

H2.14 In no circumstances shall the rights of a Supplier Nominated Agent (in its capacity as such) exceed the rights of the User by which the agent was appointed. Where the rights of the User by which the Supplier Nominated Agent is deemed to have been appointed cease or are suspended in accordance with Section M8, then the rights of the agent (in its capacity as such) shall similarly cease or be suspended.

Responsibility for Supplier Nominated Agents

H2.15 The acts and omissions of each Supplier Nominated Agent (in its capacity as such) shall be treated as the acts and omissions of the User by which the agent is deemed to have been appointed under this Section H2.

H2.16 Without limiting the generality of Section H2.15, the User by which the agent is deemed to have been appointed in respect of an MPAN or MPRN will be liable for all Charges arising as a result of the Services provided to the Supplier Nominated Agent (in its capacity as such) in respect of that MPAN or MPRN.

H2.17 No warranty or representation as to the ability or standing of an Eligible Supplier Agent shall be inferred from a person's status as an Eligible Supplier Agent.

H3 DCC USER GATEWAY

Obligation to Maintain the DCC User Gateway

H3.1 The DCC shall maintain the DCC User Gateway in accordance with the applicable SEC Subsidiary Document, and make it available to Users to send messages in accordance with the applicable SEC Subsidiary Documents.

Communications to be sent via DCC User Gateway

H3.2 The Parties shall use the DCC User Gateway for the following communications, which are to be sent in the format required by the applicable SEC Subsidiary Document:

- (a) a User requesting a Core Communication Service (Section H6.7);
- (b) the DCC rejecting a request for a Core Communication Service (Section H6.7), or providing a Core Communication Service (Section H6);
- (c) communications between the DCC and a User requesting, rejecting requests for and providing an Elective Communication Service under (and as further described in) the Bilateral Agreement for that Elective Communication Service; and
- (d) any other communications expressly required in this Code to be sent via the DCC User Gateway.

Testing of Systems

H3.3 The DCC shall, as part of the User Entry Process, facilitate the testing of the User's User Systems to ensure that they are capable of communicating with the DCC User Gateway as set out in the applicable SEC Subsidiary Documents.

H3.4 The DCC shall act reasonably in relation to the facilitation of the tests referred to in Section H3.3, and shall facilitate such tests in the manner described in the applicable SEC Subsidiary Document.

H3.5 Any dispute regarding the tests referred to in Section H3.3 may be referred to the Panel for its determination. Where a Party disagrees with any such determination of

the Panel, then that Party may refer the matter to arbitration in accordance with Section M7 (Dispute Resolution).

DCC System Testing

H3.6 Where the DCC intends to undertake material testing of the DCC Systems, including in relation to the implementation of a new Communication Service, the DCC shall give all Users reasonable prior notice (and details) of such testing.

H4 COMMUNICATIONS HUB SERVICE

[intentionally blank]

H5 ENROLMENT OF SMART METERING SYSTEMS

[intentionally blank]

H6 CORE COMMUNICATION SERVICES

Eligible Smart Metering Systems

H6.1 Core Communication Services can only be provided in respect of Smart Metering Systems that have been Enrolled.

Entitlement to Core Communication Services

H6.2 Without prejudice to Section H2.11 (Supplier Nominated Agents), only a User is entitled to receive Core Communication Services, and a Party that is not a User is not entitled to receive Core Communication Services.

Types of Core Communication Services

H6.3 Subject to Section H6.1, the following Users are entitled to receive the following Core Communication Services:

- (a) the Import Supplier for a Smart Metering System is entitled to the Import Supplier Services in respect of that Smart Metering System;
- (b) the Export Supplier for a Smart Metering System is entitled to the Export Supplier Services in respect of that Smart Metering System;
- (c) the Gas Supplier for a Smart Metering System is entitled to the Gas Supplier Services in respect of that Smart Metering System;
- (d) the Electricity Distributor for a Smart Metering System is entitled to Electricity Distributor Services in respect of that Smart Metering System;
- (e) the Gas Transporter for a Smart Metering System is entitled to Gas Transporter Services in respect of that Smart Metering System; and
- (f) any User is entitled to Other User Core Services in respect of any Smart Metering System.

H6.4 For the avoidance of doubt, Supplier Parties and Network Parties that are Users are entitled to Other User Core Services in respect of a Smart Metering System, whether or not they are also entitled to any other Core Communication Services in respect of

that Smart Metering System under any other provision of Section H6.3.

Provision of Automatic Services (Alerts)

H6.5 Some Core Communication Services are described in the Core Communication Services Schedule as being ‘automatic’. Where that is the case, the DCC shall provide that service to the relevant User in respect of each Enrolled Smart Metering System on the occurrence of the relevant trigger (and without the User having to request the service).

H6.6 For the purposes of Section H6.5, the relevant User is the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System and the Core Communication Service in question.

Provision of Requested Services

H6.7 Some Core Communication Services are described in the Core Communication Services Schedule as requiring a User ‘request’. Where a User requests such a Core Communication Service in respect of an Enrolled Smart Metering System:

- (a) where that User is entitled to receive that Core Communication Service in accordance with this Section H6, then the DCC shall provide that Core Communication Service to that User; or
- (b) where that User is not entitled to receive that Core Communication Service in accordance with this Section H6, then the DCC shall not provide that Core Communication Service to that User and shall (as soon as reasonably practicable thereafter) notify that User that it is not entitled to receive that service.

H7 ELECTIVE COMMUNICATION SERVICES

Eligible Smart Metering Systems

H7.1 Elective Communication Services can only be provided in respect of Smart Metering Systems that have been Enrolled.

Entitlement to Elective Communication Services

H7.2 Only a User is entitled to receive Elective Communication Services. A Party that is not a User is not entitled to receive Elective Communication Services.

H7.3 A User for a Smart Metering System shall not be entitled to request or receive (and the DCC shall not provide to such User) any Elective Communication Services in respect of that Smart Metering System that would constitute a Restricted Communication Service.

Preliminary Assessment of Elective Communication Services

H7.4 Notwithstanding Section E7.2, any Party may request an initial evaluation of the technical feasibility and likely Charges for a proposed Elective Communication Service (a “**Preliminary Assessment**”).

H7.5 Requests for a Preliminary Assessment shall be made in such format as the DCC may specify from time to time, and shall be submitted to the DCC.

H7.6 The DCC shall respond to requests for a Preliminary Assessment in accordance with the time period prescribed by Condition 17 of the DCC Licence, and shall either (in accordance with Condition 17 of the DCC Licence):

- (a) provide an initial evaluation of the technical feasibility and the likely Charges for a proposed Elective Communication Service; or
- (b) give notice that a further and more detailed evaluation of the request is required.

Detailed Evaluation of Elective Communication Services

H7.7 Any Party that has requested a Preliminary Assessment and obtained a response as

described in Section H7.6(b) may request a more detailed evaluation of the technical feasibility and likely Charges for a proposed Elective Communication Service (a “**Detailed Evaluation**”).

H7.8 Requests for a Detailed Evaluation shall be made in such format as the DCC may specify from time to time, and shall be submitted to the DCC together with the prescribed fee set out in the Charging Statement. Following receipt of any such request (or purported request), the DCC shall:

- (a) where the prescribed fee has not been paid, notify the requesting Party that the DCC will not process the request until the fee has been paid;
- (b) where the request is incomplete or the DCC reasonably requires further information in order to assess the request, notify the Party that this is the case and provide reasonable assistance to the Party in re-submitting its request; and
- (c) once the DCC has received the prescribed fee and all the information it reasonably requires in order to assess the request, provide the Detailed Evaluation to the requesting Party (in accordance with the time period prescribed by Condition 17 of the DCC Licence).

Request for an Offer for an Elective Communication Service

H7.9 Any Party that has requested a Preliminary Assessment in respect of a proposed Elective Communication Service, and obtained a response as described in Section H7.6(a), may request a formal offer for that proposed Elective Communication Service.

H7.10 Any Party that has requested and obtained a Detailed Evaluation in respect of a proposed Elective Communication Service may request a formal offer for that proposed Elective Communication Service.

H7.11 Following a request pursuant to Section H7.9 or H7.10, the DCC shall (in accordance with the time period prescribed by Condition 17 of the DCC Licence):

- (a) make an offer to provide the Elective Communication Service in question; or
- (b) notify the Party that the DCC is not willing to make such an offer (provided

that the DCC may only do so where the DCC is not obliged to make such an offer in accordance with Condition 17 of the DCC Licence).

Formal Offer

H7.12 An offer to provide the Elective Communication Service made by the DCC pursuant to this Section H7 shall:

- (a) include details of the Charges that would apply to the Elective Communication Service, as determined in accordance with the Charging Methodology;
- (b) where the proposed Charges have been calculated (in accordance with the Charging Methodology) on the assumption that one or more other Parties accept offers made pursuant to this Section H7, provide for two alternative sets of Charges, one of which is contingent on acceptance of all the other such offers and one of which is not; and
- (c) include an offer by the DCC to enter into a Bilateral Agreement with the Party requesting the Elective Communication Service.

H7.13 Each Bilateral Agreement must:

- (a) be based on the Specimen Bilateral Agreement, subject only to such variations from such specimen form as are reasonable in the circumstances;
- (b) not contradict or seek to override any or all of this Section H or Sections G (Security), I (Data Privacy), J (Charges), or M (General);
- (c) where reasonably necessary in accordance with the Charging Methodology, provide for Charges that include or comprise a standing charge that is payable by the recipient of the Elective Communication Service regardless of whether or not the Elective Communication Service is requested or provided;
- (d) where reasonably necessary in accordance with the Charging Methodology, require the recipient of the Elective Communication Service to pay compensation to DCC in the event of the early termination of the Bilateral Agreement (except in the case of termination as envisaged by Section H7.13(e));

- (e) allow the recipient of the Elective Communication Services to terminate the Bilateral Agreement without paying compensation to the extent that such compensation is intended to recover investments made for the purposes of providing the Elective Communication Service where the DCC subsequently offers a Core Communication Service that relies upon such investments (and each Bilateral Agreement must provide for disputes regarding this provision to be subject to an initial Panel determination, but to ultimately be determined by arbitration); and
- (f) where reasonably necessary, require the recipient of the Elective Communication Services to provide credit support in respect of its obligation to pay the compensation referred to in Section H7.13(d).

H7.14 Elective Communication Services shall be provided in accordance with this Code and the applicable Bilateral Agreement. In the event of any inconsistency between this Code and a Bilateral Agreement, the provisions of this Code shall prevail.

H7.15 The DCC shall not agree to any variations to a Bilateral Agreement that would cause that agreement to become inconsistent with the requirements of this Section H7.

Disputes Regarding Offers for Elective Communication Services

H7.16 Where the requirements of Condition 20 of the DCC Licence are met, a Party that has requested an offer for a proposed Elective Communication Service may refer a dispute regarding such request to the Authority for determination under and in accordance with that Condition.

Publication of Details of Elective Communication Services

H7.17 Once the DCC has commenced provision of an Elective Communication Service pursuant to a Bilateral Agreement, the DCC shall notify the Code Administrator of the date on which the provision of such service commenced (but shall not provide any details regarding such agreement to the Code Administrator).

H7.18 The DCC shall, on or around the date falling six months after it commenced provision of an Elective Communication Service pursuant to a Bilateral Agreement, provide to the Code Administrator the following details:

- (a) a brief description of the Elective Communication Service;
- (b) the frequency with which, and period during which, the Elective Communication Service is to be provided; and
- (c) the response time (or latency) within which the Elective Communication Service is to be provided (following the relevant trigger or request for that service).

H7.19 The Code Administrator shall arrange for the publication on the Website of the details provided to it pursuant to Section H7.18. The Code Administrator shall monitor and report to the Panel on whether the DCC has provided details pursuant to Section H7.18 in respect of Elective Communication Services of which the Code Administrator is notified under Section H7.17.

H7.20 Without prejudice to the DCC's obligations under Section H7.18, the existence and contents of each Bilateral Agreement shall constitute Confidential Information which the DCC is obliged to keep confidential in accordance with Section M4 (Confidentiality).

H8 WITHDRAWAL OF SMART METERING SYSTEMS

[intentionally blank]

H9 REPLACEMENT OF SMART METERING SYSTEMS

[intentionally blank]

H10 ERROR REPORTING / FAULT MANAGEMENT

[intentionally blank]

H11 OTHER SERVICES

[intentionally blank]

H12 BUSINESS CONTINUITY

[intentionally blank]

H13 PERFORMANCE STANDARDS AND REPORTING

[intentionally blank]

SECTION I: DATA PRIVACY

II DATA PROTECTION AND ACCESS TO DATA

Without Prejudice

II.1 The obligations of the DCC and each User under this Section II are without prejudice to any other obligations they each may have under the Relevant Instruments, including any such obligations they each may have concerning Processing of Personal Data.

Consumption Data, User Obligations

II.2 Each User undertakes that it will not request, in respect of a Smart Metering System, a Communication Service that will result in it obtaining Consumption Data, unless:

- (a) the User has the Appropriate Permission in respect of that Smart Metering System; and
- (b) (where that User is not the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System) the User has, at the point of obtaining Appropriate Permission and at such intervals as are reasonably determined appropriate by the User for the purposes of ensuring that the Energy Consumer is regularly updated of such matters, notified the Energy Consumer in writing of:
 - (i) the time periods (by reference to length) in respect of which the User obtains or may obtain Consumption Data;
 - (ii) the purposes for which that Consumption Data is, or may be, used by the User; and
 - (iii) the Energy Customer's right to object or withdraw consent (as the case may be) to the User obtaining or using that Consumption Data, and the process by which the Energy Consumer may object or withdraw consent.

Verification of Energy Consumer

- I1.3 Each User shall put in place and maintain arrangements designed in accordance with Good Industry Practice to ensure that the person from whom they have obtained consent pursuant to Section I1.2 is the Energy Consumer.

Processing of Personal Data by the DCC

- I1.4 It is acknowledged that, in providing the Services to a User, the DCC may act in the capacity of ‘data processor’ (as defined in the Data Protection Act) on behalf of that User in respect of the Personal Data for which that User is the ‘data controller’ (as defined in the Data Protection Act).
- I1.5 The DCC undertakes for the benefit of each User in respect of the Personal Data for which that User is the ‘data controller’ (as defined in the Data Protection Act) to:
- (a) only Process that Personal Data for the purposes permitted by the DCC Licence and this Code;
 - (b) undertake the Processing of that Personal Data in accordance with this Code, (to the extent consistent with this Code) the instructions of the User and (subject to the foregoing requirements of this Section I1.5(b)) not in a manner that the DCC knows (or should reasonably know) is likely to cause the User to breach its obligations under the Data Protection Act;
 - (c) implement appropriate technical and organisational measures to protect that Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure (such measures to at least be in accordance with Good Industry Practice and the requirements of Section G (Security));
 - (d) not Process that Personal Data outside the European Economic Area;
 - (e) provide reasonable assistance to the User in complying with any subject access request with which the User is obliged to comply under the Data Protection Act and which relates to the Processing of that Personal Data pursuant to this Code;

- (f) provide reasonable assistance to the User in complying with any enquiry made, or investigation or assessment initiated, by the Information Commissioner or any other Competent Authority in respect of the Processing of that Personal Data pursuant to this Code;
- (g) promptly notify the User in the event that the DCC Processes any of that Personal Data otherwise than in accordance with this Code (including in the event of unauthorised access to such Personal Data);
- (h) notify the User of any complaint or subject access request or other request received by the DCC with respect to the Processing of that Personal Data pursuant to this Code, and to do so within 5 Working Days following receipt of the relevant complaint or request; and
- (i) notify the User of any a complaint or request relating to the DCC's obligations (if any) under the Data Protection Act in respect of the Processing of that Personal Data pursuant to this Code.

Records

- I1.6 The DCC and each User will each maintain in accordance with Good Industry Practice all such records and other information as is necessary to enable the DCC and each such User to demonstrate that it is complying with its respective obligations under Sections I1.2, I1.3 and I1.5.

SECTION J: CHARGES

J1 PAYMENT OF CHARGES

Charges

J1.1 Each Party shall pay the Charges to the DCC, which Charges shall be determined in accordance with the Charging Statement applicable from time to time.

Invoicing of Charges

J1.2 Following the end of each month in which one or more Parties incurs Charges in accordance with the Charging Statement, the DCC shall prepare and submit to each such Party an invoice or an invoice with a separate accompanying statement (in either case, an “**Invoice**”) showing:

- (a) the date by which payment is due pursuant to Section J1.4;
- (b) a breakdown (in reasonable detail) of the Charges incurred by that Party in that month;
- (c) subject to Section J1.3, the amount of VAT payable on the above amounts;
- (d) any adjustment required pursuant to Section J1.8; and
- (e) the total amount payable by that Party in respect of the above.

J1.3 The Charges stated in each Invoice shall be stated exclusive of VAT, which shall be added if appropriate at the rate prevailing at the relevant tax point. A Party shall only be required to pay VAT where the DCC provides an appropriate VAT invoice.

Payment of Charges

J1.4 Each Party shall pay the amount set out in an Invoice issued to it by the DCC by the “**Due Date**” for payment; being the later of:

- (a) 5 Working Days following receipt of such invoice; and
- (b) 8 Working Days following the end of the month to which such invoice relates.

J1.5 Without prejudice to a Party's right to dispute the Charges in accordance with Section J2 (Payment Default and Disputes), each Party shall pay the amount set out in each Invoice addressed to it by the Due Date for such payment regardless of any such dispute. Nevertheless, where the DCC agrees that an Invoice contains a manifest error, the DCC shall cancel that Invoice (which will not therefore be payable) and promptly issue a replacement Invoice.

J1.6 Payments shall be made in pounds sterling by transfer of funds to the credit of the account of the DCC specified in the Invoice, and shall not be deemed to be made until the amount is available as cleared funds. Each payment shall identify within its reference the Invoice number to which that payment relates. The paying Party shall be responsible for all banking fees associated with the transfer of funds.

Estimation of Charges

J1.7 If any information that the DCC requires in order to prepare an Invoice is not available at the time that Invoice is prepared, then the DCC may prepare that Invoice based on its reasonable estimate of that information.

Adjustment of Charges

J1.8 Where:

- (a) the DCC prepared an Invoice based on its estimate of any information, and the actual information subsequently becomes available to the DCC;
- (b) there is a change to the information used by the DCC to prepare an Invoice (including following a reconciliation or amendment of Registration Data); or
- (c) it is agreed (or determined), in accordance with Section J2.4 (Resolution of Payment Default), that there was an error in an Invoice,

then the DCC shall include an adjustment in the next Invoice for the relevant Party to be produced thereafter (or, where no Invoice is due to be produced, the DCC shall produce a separate Invoice for such purpose).

J1.9 Each adjustment to be included pursuant to Section J1.8 shall be:

- (a) the difference between the amount included in the previous Invoice, and the amount that should have been included (being, as applicable, either an additional amount payable to the DCC, or a credit in favour of the relevant Party); plus
- (b) interest on the amount of such difference calculated from day-to-day from the Due Date of the previous Invoice to (but excluding) the Due Date of the Invoice in which such adjustment is to be included (compounded monthly).

Interest Rate

J1.10 The interest rate applying for the purposes of Section J1.9 shall be the Non-Default Interest Rate.

Further Supporting Information

J1.11 The DCC shall, where requested by a Party, provide such additional information as that Party may reasonably request regarding the calculation of the Charges payable by that Party.

J2 PAYMENT DEFAULT AND DISPUTES

Notification of Payment Failure

- J2.1 Where a Party fails to pay an amount set out in an Invoice by the relevant Due Date, then the DCC shall, on the Working Day following the Due Date, issue a notice to that Party:
- (a) setting out the unpaid amount; and
 - (b) referring to the matters set out in Sections J2.2, J2.4, J2.5, J3.16 (where applicable), and M8.1(d) (Events of Default).

Default Interest

- J2.2 Where a Party fails to pay an amount set out in an Invoice by the relevant Due Date, then that Party shall pay interest on that amount at the Default Interest Rate calculated from day-to-day from the Due Date to (but excluding) the date on which payment is made (compounded monthly).

Notification of Payment Disputes

- J2.3 Where a Party wishes to dispute any amount set out in an Invoice addressed to it, then that Party shall nevertheless pay the full amount set out in the Invoice by the Due Date, and shall give notice to the DCC of the disputed amount and the reason for the dispute. A Party may not give notice under this Section J2.3 (or otherwise dispute an amount set out in an Invoice) more than 12 months after the Due Date for that Invoice.

Resolution of Payment Disputes

- J2.4 Where a Party disputes, in accordance with Section J2.3, any amount set out in an Invoice addressed to it, then:
- (a) such Party and the DCC shall each in good faith negotiate to resolve the dispute amicably and as soon as reasonably practicable after it arises;
 - (b) the DCC shall provide all such evidence in support of its position as the disputing Party may reasonably request, and the DCC shall provide such

evidence within 5 Working Days after such request;

- (c) no earlier than 1 Working Day after receipt from the DCC of the information requested under Section J2.4(b) (or, where the DCC does not comply with such request, on the expiry of the period referred to in that Section), the disputing Party may refer the dispute to the Panel, in which case each of the DCC and the disputing Party shall be entitled to provide written submissions in support of its position;
- (d) where a dispute is referred to the Panel in accordance with Section J2.4(c), the Panel shall convene a meeting and determine the dispute within 10 Working Days of the reference being made (to which meeting representatives of the disputing Party and the DCC may be invited in accordance with Section C (Governance)); and
- (e) where the Panel determines that there has been an overpayment to the DCC, the DCC shall include an adjustment in accordance with Section J1.8(c) to address such overpayment (or comply with any direction of the Panel to repay the relevant amount together with interest at the rate that would have applied had the adjustment been made in accordance with Section J1.8(c)).

J2.5 Section J2.4, and any determination by the Panel pursuant thereto, are without prejudice to the following rights of the Parties:

- (a) where the amount set out in an Invoice addressed to a Party is disputed on the grounds of whether or not the Charges were calculated and levied in accordance with the Charging Methodology and the Charging Statement, then either of that Party or the DCC may refer the matter to the Authority for determination pursuant to Condition 20 of the DCC Licence; or
- (b) where the amount set out in an Invoice addressed to a Party is disputed on any other grounds, then either of that Party or the DCC may refer the matter to arbitration in accordance with Section M7 (Dispute Resolution).

Pursuing Non-Payment

J2.6 Where the DCC has served a notice in accordance with Section J2.1 in respect of

Charges payable by a Party, and such Charges have not been paid within three (3) Working Days following that notice, the DCC shall:

- (a) as required by Section M8.2 (Notification of Events of Default), notify the Panel that an Event of Default has occurred in respect of that Party under Section M8.1(d); and
- (b) the DCC shall take all reasonable steps and proceedings (in consultation with the Panel) to pursue and recover the unpaid amount (together with interest), unless and until the Panel (whether on the application of the DCC or otherwise) determines that it would not be worthwhile to do so in the circumstances (having regard to, amongst other things, the DCC's duties under part D of Condition 11 of the DCC Licence).

J2.7 Any Party may appeal the decision of the Panel under Section J2.6 to the Authority, and the DCC shall comply with any decision of the Authority in respect of such matter (which shall be final and binding, but without prejudice to the Panel's ability to make a further decision under Section J2.6 following a material change in circumstances).

Records

J2.8 Without prejudice to any other requirements under Laws or Directives, the DCC shall maintain records of each Invoice (together with reasonable supporting evidence for the Charges levied in the Invoice) for a period of at least 18 months following the date of the Invoice.

J3 CREDIT COVER

Obligation to Provide Credit Support

J3.1 Each User shall procure that one or more of the following forms of Credit Support is delivered to the DCC, and thereafter maintained, such that the aggregate value of such Credit Support is equal to or greater than that User's Credit Cover Requirement (as notified by the DCC to the User from time to time):

- (a) a Bank Guarantee;
- (b) a Letter of Credit; and/or
- (c) a Cash Deposit.

Calculation of Credit Cover Requirement

J3.2 The DCC shall calculate each User's "**Credit Cover Requirement**" from time to time (and at least once a week) as follows:

- (a) the User's Value at Risk; multiplied by
- (b) the User's Credit Cover Factor,

and (except where the Credit Cover Requirement for a User is zero) shall notify each User of the Credit Cover Requirement calculated in respect of that User (and of the Value at Risk and Credit Cover Factor used in that calculation).

User's Value at Risk

J3.3 Each User's "**Value at Risk**" shall be calculated as the sum of:

- (a) the Charges (inclusive of VAT) set out in Invoices addressed to, but not yet paid by, the User; plus
- (b) the Charges (inclusive of VAT) that the DCC reasonably estimates are likely to be incurred by the User in the period until the next Invoice for that User is due to be produced by the DCC,

provided that, where a User's Value at Risk would otherwise be £500 or less, the User's Value at Risk shall be deemed to be zero.

User's Credit Cover Factor

- J3.4 Each User's "Credit Cover Factor" shall be determined in accordance with Section J3.5, J3.6 or J3.7 (as applicable); provided that, where a User has failed to pay the Charges set out in an Invoice by the Due Date on 3 or more occasions during the 12 months preceding the date on which the Credit Cover Factor is being determined, then the User's Credit Cover Factor shall be 100%.
- J3.5 Where a User has one or more Recognised Credit Ratings, the User's Credit Cover Factor shall be determined on the basis of that Recognised Credit Rating from time to time as follows (based, where the User has more than one such rating, on the lower of the ratings):

DBRS		Moody's		Fitch		Standard and Poor's		Credit Cover Factor (%)
Long-Term	Short-Term	Long-Term	Short-Term	Long-Term	Short-Term	Long-Term	Short-Term	
AAA	R-1 H	Aaa	P-1	AAA	F1+	AAA	A-1+	0
AA (high)	R-1 H	Aa1	P-1	AA+	F1+	AA+	A-1+	0
AA	R-1 M	Aa2	P-1	AA	F1+	AA	A-1+	0
AA (low)	R-1 M	Aa2	P-1	AA-	F1+	AA-	A-1+	0
A (high)	R-1 L	A1	P-1	A+	F1	A+	A-1	0
A	R-1 L	A2	P-1	A	F1	A	A-1	0
A (low)	R-1 L	A3	P-2	A-	F2	A-	A-2	0
BBB (high)	R-2 H	Baa1	P-2	BBB+	F2	BBB+	A-2	50
BBB	R-2 M	Baa2	P-3	BBB	F3	BBB	A-3	50
BBB (low)	R-2 L	Baa3	P-3	BBB-	F3	BBB-	A-3	50
lower	lower	lower	lower	lower	lower	lower	lower	100

- J3.6 Where a User's obligations are guaranteed by a Parent Company Guarantee, and where the provider of that Parent Company Guarantee has a Recognised Credit Rating, the User's Credit Cover Factor shall be determined in accordance with Section J3.5; save that:
- (a) Section J3.5 shall apply on the basis of the Recognised Credit Rating of the guarantor under the Parent Company Guarantee (rather than of the User); and
 - (b) where the Parent Company Guarantee is capped at an amount lower than the User's Value at Risk, then the User's Credit Cover Factor shall be the weighted average of the amounts determined under Sections J3.6(a) and either

(as applicable) J3.5 or J3.7(a) (such average to be weighted by reference to the Parent Company Guarantee cap and the amount by which the User’s Value at Risk exceeds such cap).

J3.7 To the extent that neither Section J3.5 nor J3.6 applies to a User, the User’s Credit Cover Factor shall be determined:

- (a) where a User’s obligations are not guaranteed by a Parent Company Guarantee, on the basis of the User’s Credit Assessment Score;
- (b) where a User’s obligations are guaranteed by a Parent Company Guarantee and that guarantee is capped at an amount higher than the User’s Value at Risk, on the basis of the guarantor’s Credit Assessment Score; or
- (c) where a User’s obligations are guaranteed by a Parent Company Guarantee and that guarantee is capped at an amount lower than the User’s Value at Risk, on the basis of the weighted average of the User’s Credit Assessment Score and the guarantor’s Credit Assessment Score (weighted by reference to the Parent Company Guarantee cap and the amount by which the User’s Value at Risk exceeds such cap).

J3.8 For the purposes of Section J3.7, the User’s (and/or its guarantor’s) “**Credit Assessment Score**” shall be determined in accordance with the table set out below (subject to Section J3.9(d)):

Check It (ICC) Credit Score Report	Dunn & Bradstreet / N2 Check Comprehensive Report	Equifax	Experian Bronze, Silver or Gold Report	Graydons Level 1, Level 2, or Level 3 Report	Credit Cover Factor (%)
95-100	5A1/	A+	95-100	1A	50
90-94	5A2/4A1	A /A-	90-94	1B/2A	60
80-89	5A3/4A2/3A1	B+	80-89	1C/2B/3A	70
70-79	4A3/3A2/2A1	B/B-	70-79	2C/3B/4A	80
60-69	3A3/2A2/1A1	C+	60-69	3C/4B/5A	90
50-59	2A3/1A2/A1	C/C-	50-59	4C/5B/6A	100
40-49	1A3/A2/B1	D+	40-49	5C/6B/7A	100
30-39	A3/B2/C1	D/D-	30-39	6C/7B/8A	100
20-29	B3/C2/D1	E+	20-29	8B	100
10-19	C3/D2/E1	E/E-	10-19	8C	100
Below 10	Below E1	Below E-	Below 10	Below 8C	100

J3.9 Where Section J3.7 applies to a User:

- (a) the cost of obtaining the Credit Assessment Score in respect of that User (and/or its guarantor) shall be met by the User;
- (b) a revised Credit Assessment Score in respect of that User (and/or its guarantor) shall be obtained as often as the User reasonably requires and at least once every 12 months;
- (c) where no valid Credit Assessment Score exists in respect of a User (or its guarantor) the User's Credit Cover Factor shall be deemed to be 100%; and
- (d) where the User's Value at Risk (and/or the guarantor's Parent Company Guarantee cap) exceeds the recommended exposure limit associated with its Credit Assessment Score, its Credit Assessment Score shall be the weighted average of the Credit Assessment Score that would otherwise have applied and 100% (weighted by reference to the recommended exposure limit, and the amount by which the Value at Risk (or Parent Company Guarantee cap) exceeds such limit).

Increase or Decrease in Credit Cover Requirement

- J3.10 On notifying a User of its Credit Cover Requirement pursuant to Section J3.2, the DCC shall also specify the value of the Credit Support provided to the DCC on behalf of the User at that time. Where the value of the Credit Support is less than the User's Credit Cover Requirement, the User shall, within two Working Days after receipt of such notification, procure that additional Credit Support is provided to the DCC on the User's behalf so that the aggregate value of all such Credit Support is equal to or greater than the User's Credit Cover Requirement.
- J3.11 The DCC shall, within five Working Days after a request from a User to do so, return that User's Credit Support (or any part of it) to that User; provided that the DCC shall never be obliged to return Credit Support to the extent that such return would reduce the aggregate value of the User's Credit Support below the User Credit Cover Requirement.
- J3.12 Additions and reductions in Credit Support pursuant to Section J3.10 and J3.11 may (without limitation) be achieved by amending the terms of existing Credit Support or exchanging Credit Support.

J3.13 For the avoidance of doubt, where a Bank Guarantee, Letter of Credit or Parent Company Guarantee provided on behalf of a User ceases to satisfy the requirements of the definitions of Bank Guarantee, Letter of Credit or Parent Company Guarantee (respectively), then the value of such Credit Support or of the User's Credit Cover Factor (as applicable) shall be calculated as if no such document had been provided (and the DCC shall return such document to the User within 5 Working Days after a request to do so).

Breach of Credit Cover Obligations

J3.14 Where a User fails to procure that Credit Support (or additional Credit Support) is provided to the DCC on the User's behalf in accordance with this Section J3, then the DCC shall issue a notice to that Party:

- (a) setting out that fact; and
- (b) referring to the matters set out in Section M8.1(e) (Events of Default).

Disputes

J3.15 Where a Party disputes the amount of Credit Support requested of it pursuant to this Section J3, that Party shall nevertheless procure that such amount of Credit Support is provided to the DCC, pending resolution of such dispute. In the case of such a dispute:

- (a) such Party and the DCC shall each in good faith negotiate to resolve the dispute amicably and as soon as reasonably practicable after it arises;
- (b) the DCC shall provide all such evidence in support of its position as the disputing Party may reasonably request, and the DCC shall provide such evidence within 5 Working Days after such request;
- (c) no earlier than 1 Working Day after receipt from the DCC of the information requested under Section J3.15(b) (or, where the DCC does not comply with such request, on the expiry of the period referred to in that Section), the disputing Party may refer the dispute to the Panel, in which case each of the DCC and the disputing Party shall be entitled to provide written submissions in support of its position;

- (d) where a dispute is referred to the Panel in accordance with Section J3.15(c), the Panel shall convene a meeting and determine the dispute within 10 Working Days of the reference being made (to which meeting representatives of the disputing Party and the DCC may be invited in accordance with Section C (Governance)); and
- (e) the disputing Party and the DCC shall each give effect to any determination of the Panel pursuant to this Section J3.15, which shall be final and binding for the purposes of this Code.

Use of Credit Support

J3.16 Where a User fails to pay the Charges set out in an Invoice addressed to that User by the Due Date for that Invoice, and where the DCC has issued a notice to that User pursuant to Section J2.1 (Notification of Payment Failure), the DCC shall (in addition to any other remedies available to it) on the Working Day following service of such notice:

- (a) claim an amount equal to the unpaid Charges plus interest (or, if lower, as much as is available to be claimed) under any Bank Guarantee or Letter of Credit provided on behalf of that User;
- (b) remove an amount equal to the unpaid Charges plus interest (or, if lower, as much as is available to be removed) from any Cash Deposit account; or
- (c) undertake a combination of the above in respect of a total amount equal to the unpaid Charges plus interest (or, if lower, as much as is available to be claimed or removed).

J3.17 The DCC shall notify the User as soon as reasonably practicable after the DCC takes any action pursuant to Section J3.16.

J3.18 The DCC shall only exercise its rights in respect of a User's Credit Support in accordance with Section J3.16.

J3.19 Any amount received by the DCC pursuant to the exercise of its rights in respect of a User's Credit Support shall discharge the User's payment obligations to the extent of the amount so received, and reduce the value of the Credit Support to the same extent.

Cash Deposit

- J3.20 Interest that accrues on the funds deposited in a Cash Deposit account shall be added to and form part of such deposit.
- J3.21 It is agreed that all right, title and interest in and to the Cash Deposit vests in the DCC absolutely free and clear of any liens, claims, charges, encumbrances or other security interests (but without prejudice to the DCC's obligation to return an equivalent amount of money to the User subject to and in accordance with Section J3.11).

Letters of Credit and Bank Guarantees

- J3.22 Where a User has procured that Credit Support is delivered to the DCC in the form of a Letter of Credit or Bank Guarantee, and where that Letter of Credit or Bank Guarantee has 20 Working Days or less left until it expires, the DCC shall give notice of that fact to the User (which notice must refer to the matters set out in Section J3.23).
- J3.23 Where the DCC has given notice to a User pursuant to Section J3.22, and where the User has not (within 10 Working Days after such notice) procured that replacement Credit Support of equivalent value is provided to the DCC (to take effect on or before expiry of the current Letter of Credit or Bank Guarantee), then the DCC shall:
- (a) prior to the expiry of the Letter of Credit or Bank Guarantee, claim the entire undrawn value of the Letter of Credit or Bank Guarantee; and
 - (b) hold any amount so claimed as if it had been paid to the DCC as a Cash Deposit.

J4 REVIEW AND FORECASTING OF CHARGES

Review of Charges

- J4.1 The Charges payable from time to time are set out in the Charging Statement applicable at that time.
- J4.2 The DCC shall only amend the Charging Statement from time to time in accordance with the DCC Licence. The DCC shall only amend the Charging Statement once in each calendar year, such amendments to have effect from the start of each Regulatory Year (save for amendments to which the Authority gives consent under Condition 19.10 of the DCC Licence, and amendments to reflect within-year adjustments to the Charging Methodology made in accordance with the Charging Methodology). This Section J4.2 is without prejudice to the requirements of Condition 19 of the DCC Licence, and (unless the Authority gives consent under Condition 19.10 of the DCC Licence) the DCC shall give notice of any proposed changes to Parties pursuant to Condition 19.9 of the DCC Licence.

Indicative Charging Statements

- J4.3 Within the first five Working Days of April, July, October and January in each year, the DCC shall create and publish on the DCC Website an indicative Charging Statement for the first Regulatory Year due to start thereafter, setting out indicative Charges for that Regulatory Year based on the information available to the DCC at the start of the month of publication.

Indicative Budgets

- J4.4 Within the first five Working Days of April, July, October and January in each year, the DCC shall create and publish on the DCC Website a budget for the second and third Regulatory Years due to start thereafter, setting out indicative figures for each such Regulatory Year based on the information available to the DCC at the start of the month of publication.
- J4.5 Each such budget will contain indicative values for the following (as each such expression is defined in the Charging Methodology):

Acronym	Name
EAR _t	Estimated Allowed Revenue
EFR _t	Estimated Fixed Revenue
EESR _t	Estimated Elective Services Revenue
EECR _t	Estimated Explicit Charges Revenue
NFR _t	National Fixed Revenue
RFR _{rt}	Regional Fixed Revenue
EC _{it}	Explicit Charge for each Explicit Charging Metric

Working Model

J4.6 The DCC shall publish a working model which allows Parties to estimate their indicative Charges based on their view of input data relevant under the Charging Methodology, and which allows Parties to test potential modifications to the Charging Methodology. The DCC shall publish such model in an open-access or off-the-shelf software format, and hereby authorises the Parties to use and modify the model for the purposes set out in this Section J4.6 (subject to the relevant software licence). Such model shall not form part of the Charging Methodology.

Invoicing Timetable

J4.7 The DCC shall, from time to time, publish an indicative timetable of the dates on which the DCC intends to submit invoices pursuant to Section J1.2.

SECTION K: CHARGING METHODOLOGY

K1 INTRODUCTION

- K1.1 This Section K constitutes the Charging Methodology that the DCC is required to have in force in accordance with the DCC Licence.
- K1.2 The Charges payable to the DCC by the other Parties from time to time are those Charges set out in the Charging Statement at that time, which are payable in accordance with Section J.
- K1.3 The DCC is obliged under the DCC Licence to prepare the Charging Statement in accordance with this Charging Methodology.
- K1.4 This Charging Methodology is subject to modification in accordance with Section D (Modification Process), by reference to the Charging Objectives. This Section K is included in this Code in order to allow for such modification. This Section K is not intended to, and does not, create any contractual obligations between the Parties.
- K1.5 This Charging Methodology provides for Fixed Charges, Explicit Charges and Elective Charges. The methodology for calculating Fixed Charges differs before, during, and after the UITMR Period (as set out in Sections K4, K5 and K6 respectively).
- K1.6 The DCC shall act reasonably and in a manner consistent with the Charging Objectives in undertaking all calculations and estimations required pursuant to this Charging Methodology.
- K1.7 The expressions used in this Charging Methodology shall have the meanings given to them in Section K11.

K2 ESTIMATED REVENUES

Estimated Allowed Revenue

K2.1 In respect of each Regulatory Year, the DCC shall estimate the Allowed Revenue for that Regulatory Year. Such estimate for each Regulatory Year shall be the “**Estimated Allowed Revenue**” for that Regulatory Year.

Estimated Elective Service Revenue

K2.2 In respect of each Regulatory Year, the DCC shall estimate the amount that will be payable to it in respect of the provision of Elective Communication Services during that Regulatory Year. Such estimation shall be based on the Charges payable under the relevant Bilateral Agreements, the DCC’s estimate of the frequency at which the DCC will provide such Services (to the extent such Charges are payable on that basis), and any other relevant factors.

K2.3 The DCC’s estimate in accordance with paragraph K2.2 for each Regulatory Year shall be the “**Estimated Elective Service Revenue**” for that Regulatory Year.

Estimated Explicit Charges Revenue

K2.4 In respect of each Regulatory Year, the DCC shall estimate the amount that will be payable to it in respect of the Explicit Charging Metrics during that Regulatory Year, based on the Explicit Charges (calculated in accordance with Section K7) and the DCC’s estimate of the frequency at which the Explicit Charging Metrics will occur during that year.

K2.5 The DCC’s estimate in accordance with paragraph K2.4 for each Regulatory Year shall be the “**Estimated Explicit Charges Revenue**” for that Regulatory Year.

Estimated Fixed Revenue

K2.6 In respect of each Regulatory Year (t), the “**Estimated Fixed Revenue**” shall be calculated as follows:

$$EFR_t = EAR_t - EESR_t - EECR_t$$

Where:

Stage 1 of the Smart Energy Code: Proposed Designation Draft

EFR_t = the Estimated Fixed Revenue for the Regulatory Year t

EAR_t = the Estimated Allowed Revenue for the Regulatory Year t

$EESR_t$ = the Estimated Elective Services Revenue for the Regulatory Year t

$EECR_t$ = the Estimated Explicit Charges Revenue for the Regulatory Year t.

K3 MATTERS RELEVANT TO FIXED CHARGE CALCULATION

Introduction

K3.1 The DCC will determine the Fixed Charges for each Regulatory Year using the Estimated Fixed Revenue determined in accordance with Section K2, which is to be translated into Fixed Charges in accordance with Section K4, K5 or K6 (depending upon whether the Regulatory Year occurs before, during or after the UITMR Period).

K3.2 The Fixed Charges are payable in respect of:

- (a) prior to the UITMR Period, Mandated Smart Metering Systems for Domestic Premises;
- (b) during the UITMR Period, Mandated Smart Metering Systems for Domestic Premises and Enrolled Smart Metering Systems for Designated Premises; and
- (c) after the UITMR Period, Enrolled Smart Metering Systems (whether for Domestic Premises or Designated Premises),

and each reference in this Section K3 to '**Smart Metering Systems**' shall accordingly be construed as a reference to Mandated Smart Metering Systems or Enrolled Smart Metering Systems (as applicable).

K3.3 As further described in this Section K3, the Fixed Charges potentially differ so as to distinguish between Smart Metering Systems for Domestic Premises and for Non-Domestic Premises, between Smart Metering Systems in different Regions, and between persons within different Charging Groups.

Domestic or Non-Domestic Premises

K3.4 The Charging Objectives require the DCC to impose Charges in respect of Smart Metering Systems for Domestic Premises that do not distinguish (whether directly or indirectly) between Domestic Premises located in different parts of Great Britain. Consistent with the Charging Objectives, the methodology provides for different means of calculating the Fixed Charges depending upon whether a Smart Metering System is for Domestic Premises or for Non-Domestic Premises. The DCC shall estimate the numbers of Domestic Premises and Non-Domestic Premises based on

Registration Data (using profile class in the case of Smart Metering Systems associated with an MPAN and market sector code in the case of Smart Metering Systems associated with an MPRN, or some other sensible proxy to the extent that the Registration Data does not readily identify whether a premises is a Domestic Premises and Non-Domestic Premises).

Cost-reflectivity

K3.5 One of the Charging Objectives is that the Charges are cost reflective (insofar as reasonably practicable in the circumstances of the case, having regard to the cost of implementing the methodology and subject to the objective referred to in Section K3.4). Consistent with the Charging Objectives, the methodology provides (subject to Section K3.4) for the Fixed Charges in respect of a Smart Metering System to be set proportionately to the costs and expenses of providing the Services (other than the Elective Communication Services and the Explicit Charging Metrics) in respect of that Smart Metering System by Region and Charging Group (as set out in the remainder of this Section K3).

Regions

K3.6 The costs and expenses of providing the Services (ignoring the Elective Communication Services and ignoring the costs and expenses designed to be recovered pursuant to the Explicit Charges) in respect of a Smart Metering System for a premises may vary depending upon the Region in which such premises is located. For the reasons described in Section K3.4, the Fixed Charges in respect of Smart Metering Systems for Domestic Premises will not differ by Region, but those in respect of Smart Metering Systems for Non-Domestic Premises may.

K3.7 For the reasons described in Section K3.5 and K3.6, the DCC must split the Estimated Fixed Revenue for Regulatory Year (t) between revenue that should be recovered on a uniform basis across all the Regions (the **National Fixed Revenue**) and revenue that should be recovered on a basis that differentiates between Regions (for each Region, the **Regional Fixed Revenue**). Whilst Fixed Charges in respect of Domestic Premises will not ultimately vary by Region, in order to determine the regional charges to apply in respect of Non-Domestic Premises, the DCC must first apportion the entirety of the Estimated Fixed Revenue between those costs which do and those which do not vary

by Region (initially disregarding the fact that charges in respect of Domestic Premises will ultimately be recovered on a uniform basis). For these purposes, the DCC shall split the Estimated Fixed Revenue between the National Fixed Revenue and the Regional Fixed Revenue for each Region so as to reflect the relative proportion of the cost and expenses that the DCC incurs across all Regions or in particular Regions in providing the Services (ignoring the Elective Communication Services and ignoring the costs and expenses designed to be recovered pursuant to the Explicit Charges), and such that:

$$EFR_t = NFR_t + \sum_{\forall r} RFR_{rt}$$

Where:

EFR_t = the Estimated Fixed Revenue (estimated in accordance with Section K2) for Regulatory Year (t).

NFR_t = the National Fixed Revenue (estimated in accordance with this Section K3.7) for Regulatory Year (t).

RFR_{rt} = the Regional Fixed Revenue (estimated in accordance with this Section K3.7) within each region (r) for Regulatory Year (t)

Charging Groups

K3.8 The Fixed Charges payable in respect of Smart Metering Systems will be payable by the Users who fall into the following categories for the Smart Metering Systems:

- (a) the Import Suppliers (**Charging Group g1**);
- (b) the Export Suppliers (**Charging Group g2**);
- (c) the Gas Suppliers (**Charging Group g3**);
- (d) the Electricity Distributors (**Charging Group g4**); and
- (e) the Gas Transporters (**Charging Group g5**).

Application of Charging Group Weighting Factors

K3.9 For the reasons described in Section K3.5, the Fixed Charges payable by each Charging Group may need to differ. This is achieved through the Charging Group Weighting Factors.

K3.10 The Charging Group Weighting Factors are designed:

- (a) to reflect the relative proportion of the costs and expenses likely to be incurred by the DCC in providing the Services (ignoring the Elective Communication Services and ignoring the costs and expenses designed to be recovered pursuant to the Explicit Charges) to the persons in each Charging Group;
- (b) to specify the ratio of the costs and expenses to be incurred in respect of each Smart Metering System (without regard to the number of Smart Metering Systems); and
- (c) so that the sum of the Charging Group Weighting Factors shall be equal to one (1).

K3.11 The “**Charging Group Weighting Factors**” to apply to each Charging Group in respect of each Regulatory Year are to be determined by the DCC in accordance with Section K3.10, and set out in the Charging Statement for that Regulatory Year. The DCC shall make such determination based on its estimate of the demand of persons within each Charging Group for each of the Services other than the Elective Communication Services. Prior to the start of the UITMR Period, such estimates of demand will be based on assumptions for the Regulatory Year starting on 1st April 2021. Once data on usage becomes available the estimates will be determined as the average of the previous two full Regulatory Years of actual data plus the DCC’s forecasts for the two Regulatory Years ahead.

Description of Approach to Determining Fixed Charges for Smart Metering Systems for Domestic Premises during and after the UITMR Period

K3.12 In the case of the methodology applying during and after the UITMR Period, the approach to determining the Fixed Charges payable in respect of Smart Metering Systems for Domestic Premises is as set out in Section K5.5 and K6.4 (respectively),

but to assist Parties in understanding those Sections the approach is described in generic terms below:

- (a) the first part of the equation determines an amount that would be recovered in total in respect of all Smart Metering Systems for Domestic Premises across all Regions and Charging Groups were the Fixed Charges to be calculated in the same manner as those for Smart Metering Systems for Non-Domestic Premises; and
- (b) the second part of the equation is then used to pro-rate this total amount on a non-geographic basis across all persons in each Charging Group. This results in the required uniform charge for each Charging Group in respect of Smart Metering Systems for Domestic Premises, and provides the same aggregate revenue for DCC as would have been derived from the same number of Smart Metering Systems for Non-Domestic Premises at the same locations.

K4 DETERMINING FIXED CHARGES BEFORE THE UITMR PERIOD

Introduction

K4.1 The DCC will determine the Fixed Charges for each Regulatory Year occurring prior to the UITMR Period in accordance with this Section K4, using:

- (a) the Estimated Fixed Revenue for that Regulatory Year determined in accordance with Section K2;
- (b) an estimate, in accordance with this Section K4, of the number of Mandated Smart Metering Systems for Domestic Premises that will exist as at the beginning of that Regulatory Year; and
- (c) the Charging Group Weighting Factors described in Section K3.

Estimates

K4.2 In respect of Regulatory Years occurring prior to the UITMR Period:

- (a) the DCC must estimate the aggregate number of Mandated Smart Metering Systems for Domestic Premises that will exist as at the beginning of that Regulatory Year;
- (b) the DCC must estimate the number of persons in each Charging Group for such Mandated Smart Metering Systems; and
- (c) the estimate pursuant to Section K4.2(b) in respect of a Regulatory Year (t) and each Charging Group (g) shall be represented as $EMSMS_{gt}$.

Determining the Fixed Charges

K4.3 The DCC will determine the Fixed Charge payable in respect of each month (or part month) of Regulatory Year (t) by each person in each Charging Group (g) in respect of each Mandated Smart Metering System (FC_{gt}) as follows:

$$FC_{gt} = \frac{EFR_t}{NM_t} \times \frac{\alpha_{gt}}{\sum_{\forall g} (\alpha_{gt} \times EMSMS_{gt})}$$

Where:

α_{gt} = the Charging Group Weighting Factor (as set out in Section K3) for Regulatory Year (t) and each Charging Group (g)

NM_t = the number of months (or part months) in Regulatory Year (t)

EFR_t = the Estimated Fixed Revenue (estimated in accordance with Section K2) for Regulatory Year (t)

$EMSMS_{gt}$ = the estimate pursuant to Section K4.2(c) for Regulatory Year (t) and each Charging Group (g).

Calculating number of MSMSs for Fixed Charge Payment

K4.4 Following the end of each month (or part month) occurring during each Regulatory Year prior to the UITMR Period, the DCC will:

- (a) determine (insofar as it is able) the actual number of Mandated Smart Metering Systems that existed at the end of the 15th day of that month (or, in the case of a part month that ends on or prior to the 15th day of that month, at the end of that part month);
- (b) calculate the number of persons in each Charging Group for such Mandated Smart Metering Systems; and
- (c) break down these calculations by reference to each Party.

K4.5 The calculation in accordance with Section K4.4(c) for each month (or part month) (m) during Regulatory Year (t) and each Party (p) in each Charging Group (g) shall be represented as $AMSMS_{pgmt}$.

K5 DETERMINING FIXED CHARGES DURING THE UITMR PERIOD

Introduction

K5.1 The DCC will determine the Fixed Charges for each Regulatory Year during the UITMR Period in accordance with this Section K5, using:

- (a) the Estimated Fixed Revenue for that Regulatory Year determined in accordance with Section K2;
- (b) an estimate, in accordance with this Section K5, of the number of Smart Metering Systems for Non-Domestic Premises that will have been Enrolled (and not Withdrawn) as at the beginning of that Regulatory Year;
- (c) an estimate, in accordance with this Section K5, of the number of Mandated Smart Metering Systems for Domestic Premises that will exist as at the beginning of that Regulatory Year; and
- (d) the Charging Group Weighting Factors and other relevant matters described in Section K3.

Estimates: Non-Domestic Premises

K5.2 In respect of Regulatory Years occurring during the UITMR Period:

- (a) the DCC will estimate the total number of Smart Metering Systems for Non-Domestic Premises that will have been Enrolled (and not Withdrawn) as at the beginning of that Regulatory Year;
- (b) the DCC must estimate the number of persons in each Charging Group for such Smart Metering Systems;
- (c) the DCC must break down its estimate pursuant to Section K5.2(b) by reference to the number of Smart Metering Systems in each Region; and
- (d) the estimate pursuant to Section K5.2(c) in respect of a Regulatory Year (t), each Charging Group (g) and each Region (r), shall be represented as $RENSMS_{grt}$.

Estimates: Domestic Premises

K5.3 In respect of Regulatory Years occurring during the UITMR Period:

- (a) the DCC must estimate the aggregate number of Mandated Smart Metering Systems that will exist as at the beginning of that Regulatory Year;
- (b) the DCC must estimate the number of persons in each Charging Group for such Mandated Smart Metering Systems;
- (c) the DCC must break down its estimate pursuant to Section K5.3(b) by reference to the number of Mandated Smart Metering Systems in each Region; and
- (d) the estimate pursuant to Section K5.3(c) in respect of a Regulatory Year (t), each Charging Group (g) and each Region (r), shall be represented as $REDSMS_{grt}$.

Determining the Fixed Charges: Non-Domestic Premises

K5.4 For each Regulatory Year (t), the DCC will determine the Fixed Charge payable in respect of each month (or part month) of Regulatory Year (t) by each person within each Charging Group (g) in respect of each Enrolled Smart Metering System for a Non-Domestic Premises in each Region (r) ($RNFC_{grt}$), as follows:

$$RNFC_{grt} = \frac{NFR_t}{NM_t} \times \frac{\alpha_{gt}}{\sum_{\forall g} (\alpha_{gt} \times \sum_{\forall r} RESMS_{grt})} + \frac{RFR_{rt}}{NM_t} \times \frac{\alpha_{gt}}{\sum_{\forall g} (\alpha_{gt} \times RESMS_{grt})}$$

Where:

α_{gt} = the Charging Group Weighting Factor (as set out in Section K3) for Regulatory Year (t) and each Charging Group (g)

NM_t = the number of months (or part months) in Regulatory Year (t)

NFR_t = the National Fixed Revenue (estimated in accordance with Section K2) for Regulatory Year (t)

RFR_{rt} = the Regional Fixed Revenue (estimated in accordance with Section K2) for Regulatory Year (t) and Region (r)

$$\forall g \forall r \quad RESMS_{grt} = REDSMS_{grt} + RENSMS_{grt}$$

$RENSMS_{grt}$ = the estimate pursuant to Section K5.2(d) for Regulatory Year (t), each Charging Group (g) and each Region (r)

$REDSMS_{grt}$ = the estimate pursuant to Section K5.3(d) for Regulatory Year (t), each Charging Group (g) and each Region (r).

Determining the Fixed Charges: Domestic Premises

K5.5 For each Regulatory Year (t), the DCC will determine the Fixed Charge payable in respect of each month (or part month) of Regulatory Year (t) by each person within each Charging Group (g) in respect of each Mandated Smart Metering System ($RDFC_{gt}$) as follows:

$$RDFC_{gt} = \sum_{\forall g \forall r} (RNFC_{grt} \times REDSMS_{grt}) \times \frac{\alpha_{gt}}{\sum_{\forall g} (\alpha_{gt} \times \sum_{\forall r} REDSMS_{grt})}$$

Where:

α_{gt} = the Charging Group Weighting Factor (as set out in Section K3) for Regulatory Year (t) and each Charging Group (g)

$RNFC_{grt}$ = the Fixed Charge payable in respect of months (or part months) during Regulatory Year (t) by persons in each Charging Group (g) in respect of Enrolled Smart Metering Systems for Non-Domestic Premises in each Region (r), as calculated in accordance with Section K5.4

$REDSMS_{grt}$ = the estimate pursuant to Section K5.3(d) for Regulatory Year (t), each Charging Group (g) and each Region (r).

Calculating number of ESMSs for Fixed Charge Payment: Non-Domestic Premises

K5.6 Following the end of each month (or part month) occurring during each Regulatory Year during the UITMR Period, the DCC will:

- (a) determine the actual number of Smart Metering Systems for Non-Domestic Premises that have been Enrolled (and not Withdrawn) as at the end of the 15th day of that month (or, in the case of a part month that ends on or prior to the 15th day of that month, at the end of that part month), whether Enrolled during that month or previously;
- (b) calculate the number of persons within each Charging Group for those Enrolled Smart Metering Systems; and
- (c) break down these calculations by reference to each Party, and by reference to the Region in which such premises are located.

K5.7 The calculations in accordance with Section K5.6 of the number of Enrolled Smart Metering Systems for Non-Domestic Premises as at the end of each month (m) during Regulatory Year (t) within each Charging Group (g) broken down by reference to each Party (p), and by reference to each Region (r), shall be represented as $ANSMS_{pgrmt}$.

Calculating number of MSMSs for Fixed Charge Payment: Domestic Premises

K5.8 Following the end of each month (or part month) occurring during each Regulatory Year during the UITMR Period, the DCC will:

- (a) determine (insofar as it is able) the actual number of Mandated Smart Metering Systems for Domestic Premises as at the end of the 15th day of that month (or, in the case of a part month that ends on or prior to the 15th day of that month, at the end of that part month);
- (b) calculate the number of persons within each Charging Group for those Mandated Smart Metering Systems; and
- (c) break down these calculations by reference to each Party.

K5.9 The calculations in accordance with Section K5.8 of the number of Mandated Smart Metering Systems as at the end of each month (or part month) (m) during Regulatory Year (t) within each Charging Group (g) broken down by reference to each Party (p) shall be represented as $ADSMS_{pgmt}$.

K6 DETERMINING FIXED CHARGES AFTER THE UITMR PERIOD (ENDURING)

Introduction

K6.1 The DCC will determine the Fixed Charges for each Regulatory Year following the UITMR Period in accordance with this Section K6, using:

- (a) the Estimated Fixed Revenue for that Regulatory Year determined in accordance with Section K2;
- (b) an estimate, in accordance with this Section K6, of the number of Smart Metering Systems that will have been Enrolled (and not Withdrawn) as at the beginning of that Regulatory Year; and
- (c) the Charging Group Weighting Factors and other relevant matters described in Section K3.

Estimates

K6.2 In respect of Regulatory Years occurring after the UITMR Period, the DCC will estimate the number of Smart Metering Systems that will have been Enrolled (and not Withdrawn) as at the beginning of that Regulatory Year. The DCC shall undertake such estimates for Domestic Premises and Non-Domestic Premises separately (being *EDSMS* and *ENSMS* respectively). For each such Regulatory Year (t), the DCC will estimate the average number of persons within each Charging Group (g) for such Smart Metering Systems, and break down such estimates by reference to the Region (r) in which the premises is located, such that:

$$\forall g \forall r \quad ESMS_{grt} = EDSMS_{grt} + ENSMS_{grt}$$

Where:

EDSMS_{grt} = the DCC's estimate of the number of persons within each Charging Group (g) for Smart Metering Systems for Domestic Premises that will have been Enrolled (and not Withdrawn) as at the beginning of that Regulatory Year (t), broken down by Region (r); and

$ENSMS_{grt}$ = the DCC's estimate of the number of persons within each Charging Group (g) for Smart Metering Systems for Non-Domestic Premises that will have been Enrolled (and not Withdrawn) as at the beginning of that Regulatory Year (t), broken down by Region (r).

Determining the Fixed Charges: Non-Domestic Fixed Charges

K6.3 For each Regulatory Year (t), the DCC will determine the Fixed Charge payable in respect of each month (or part month) of Regulatory Year (t) by each person within each Charging Group (g) in respect of each Enrolled Smart Metering System for a Non-Domestic Premises in each Region (r) (NFC_{grt}) as follows:

$$NFC_{grt} = \frac{NFR_t}{NM_t} \times \frac{\alpha_{gt}}{\sum_{\forall g} (\alpha_{gt} \times \sum_{\forall r} ESMS_{grt})} + \frac{RFR_{rt}}{NM_t} \times \frac{\alpha_{gt}}{\sum_{\forall g} (\alpha_{gt} \times ESMS_{grt})}$$

Where:

α_{gt} = the Charging Group Weighting Factor (as set out in Section K3) for Regulatory Year (t) and each Charging Group (g)

NM_t = the number of months (or part months) in Regulatory Year (t)

NFR_t = the National Fixed Revenue (determined in accordance with Section K3) for Regulatory Year (t)

$ESMS_{grt}$ = the estimated number of persons within each Charging Group (g) for Enrolled Smart Metering Systems determined in accordance with Section K6.2 for Regulatory Year (t) and each Region (r)

RFR_{rt} = the Regional Fixed Revenue (determined in accordance with Section K3) for Regulatory Year (t) and each Region (r).

Determining the Fixed Charges: Domestic Fixed Charges

K6.4 For each Regulatory Year (t), the DCC will determine the Fixed Charge payable in respect of each month (or part month) of Regulatory Year (t) by each person within each Charging Group (g) in respect of each Enrolled Smart Metering System for a

Domestic Premises (DFC_{gt}) as follows:

$$DFC_{gt} = \sum_{\forall g \forall r} (NFC_{grt} \times EDSMS_{grt}) \times \frac{\alpha_{gt}}{\sum_{\forall g} (\alpha_{gt} \times \sum_{\forall r} EDSMS_{grt})}$$

Where:

α_{gt} = the Charging Group Weighting Factor (as set out in Section K3) for Regulatory Year (t) and each Charging Group (g)

NFC_{grt} = the Fixed Charges payable in respect of months (or part months) during Regulatory Year (t) by persons in each Charging Group (g) in respect of Enrolled Smart Metering Systems for Non-Domestic Premises in each Region (r), as determined in accordance with Section K6.3

$EDSMS_{grt}$ = the estimated average number of persons within each Charging Group (g) for Enrolled Smart Metering Systems for Domestic Premises determined in accordance with Section K6.2 for Regulatory Year (t) and each Region (r).

Calculating number of ESMSs for Fixed Charge Payment

K6.5 Following the end of each month (or part month) during each Regulatory Year occurring after the UITMR Period, the DCC will:

- (a) determine the actual number of Smart Metering Systems that have been Enrolled (and not Withdrawn) as at the end of the 15th day of that month (or, in the case of a part month that ends on or prior to the 15th day of that month, at the end of that part month), whether Enrolled during that month or previously, and shall do so for Domestic Premises and for Non-Domestic Premises separately;
- (b) calculate the number of persons within each Charging Group for such Enrolled Smart Metering Systems; and
- (c) break down these calculations by reference to Parties (p), and (in the case of

Smart Metering Systems for Non-Domestic Premises only) by reference to the Region in which such premises are located.

K6.6 The calculations in accordance with Section K6.5 of the number of Enrolled Smart Metering Systems as at the end of each month (or part month) (m) during Regulatory Year (t) within each Charging Group (g) broken down by reference to each Party (p), and (in the case of Non-Domestic Premises only) by reference to each Region (r), shall:

- (a) in respect of Domestic Premises, be represented as $ADSMS_{pgmt}$; and
- (b) in respect of Non-Domestic Premises, be represented as $ANSMS_{pgmnt}$.

K7 DETERMINING EXPLICIT CHARGES

Introduction

- K7.1 The Explicit Charges for each Regulatory Year are payable in respect of the Explicit Charging Metrics for that Regulatory Year.
- K7.2 The Explicit Charging Metrics from time to time are as set out in this Section K7.
- K7.3 Part of the rationale for Explicit Charging Metrics is to allow the DCC to closely reflect the charges it pays to the DCC Service Providers in respect of certain services, so as to minimise the risks for the DCC associated with uncertainty regarding the frequency with which such services are to be provided. The Explicit Charging Metrics may comprise any or all of the Core Communication Services and of the Enabling Services (so they are a sub-set of all Services other than the Elective Communication Services). The Explicit Charging Metrics represent those Core Communication Services and Enabling Services that are to be charged for separately from the Fixed Charges.
- K7.4 The DCC will determine the Explicit Charges for each Regulatory Year in accordance with this Section K7.

Explicit Charging Metrics

- K7.5 The Explicit Charging Metrics are as follows:
- (a) the prescribed fee for providing Detailed Evaluations in respect of potential Elective Communication Services (as referred to in Section H7); and
 - (b) the Core Communication Services which are identified as attracting an Explicit Charge in the Core Communication Services Schedule.

Explicit Charges

- K7.6 The DCC will determine the Explicit Charges for each Explicit Charging Metric and each Regulatory Year:
- (a) in a manner consistent with the Charging Objectives referred to in Sections C1.4 and C1.5(a), (b), and (c); and

- (b) (subject to the Charging Objective referred to in Section C1.3) on a non-discriminatory and cost reflective basis so as to recover the incremental cost to the DCC (including under the DCC Service Provider Contracts) associated with the occurrence of that Explicit Charging Metric (and disregarding any costs and expenses that would be incurred whether or not that Explicit Charging Metric occurred).

K7.7 This Section K7.7 applies only in respect of the Explicit Charging Metrics referred to in Sections K7.5(a). Where the DCC is simultaneously considering requests for an Explicit Charging Metric from two or more Parties, and where it would be advantageous to all such Parties for the DCC to do so, the DCC shall offer the Explicit Charging Metrics both conditionally on all the Parties taking up the Explicit Charging Metric and without such condition. In respect of the Explicit Charges to apply in respect of the conditional offer, the DCC shall calculate the Explicit Charges for each Party on the assumption that the other Parties accept the offers, and shall accordingly apportion any common costs between the Parties on a non-discriminatory and cost-reflective basis.

Second-Comer Contributions

K7.8 This Section K7.8 applies only in respect of the Explicit Charging Metrics referred to in Sections K7.5(a). Subject to Section K7.10, where:

- (a) the DCC makes an offer in respect of any proposed Explicit Charging Metric to a person (the “**subsequent person**”); and
- (b) prior to such offer being made to the subsequent person, another person (the “**initial contributor**”) was obliged to pay Explicit Charges designed to recover any costs (the “**relevant costs**”) that would otherwise (in accordance with this Charging Methodology) have been recoverable from the subsequent person,

then the DCC shall make an offer to the subsequent person that requires that subsequent person to pay by way of Explicit Charges such a contribution to the relevant costs as may be reasonable in all the circumstances.

K7.9 Subject to Section K7.10, where an offer made by the DCC that includes an element

of relevant costs is accepted by the subsequent person, the DCC shall (following payment by the subsequent person) offer such rebate to the initial contributor as may be reasonable in all the circumstances.

K7.10 Sections K7.8 and K7.9 shall not apply:

- (a) where the relevant costs are less than £20,000;
- (b) where the relevant costs are between £20,000 and £500,000 (inclusive), and the initial contributor's offer for the Explicit Charging Metric was accepted more than 5 years before the offer to the subsequent contributor is made;
- (c) where the relevant costs are more than £500,000, and the initial contributor's offer for the Explicit Charging Metric was accepted more than 10 years before the offer to the subsequent contributor is made; and/or
- (d) where the initial contributor no longer exists or cannot be contacted by the DCC following reasonable enquiry.

K7.11 All references to an initial contributor in this Section K7 shall, in respect of any subsequent person, be interpreted so as to include any person that was previously a subsequent person in respect of the relevant costs in question and that paid Explicit Charges designed to recover an element of those relevant costs.

K8 DETERMINING ELECTIVE CHARGES

Introduction

- K8.1 The Elective Charges for each Regulatory Year are payable in accordance with the relevant Bilateral Agreement.
- K8.2 The terms and conditions of each Bilateral Agreement (including those in respect of the Elective Charges payable thereunder) are to be agreed or determined in accordance with Section H7 (Elective Communication Services) and the DCC Licence.

Determining the Elective Charges

- K8.3 Where the DCC makes any offer to enter into a Bilateral Agreement in respect of an Elective Communication Service, the DCC shall offer Elective Charges in respect of each such Elective Communication Service determined by the DCC:
- (a) in a manner consistent with the Charging Objectives referred to in Sections C1.5(a), (b), and (c);
 - (b) in a non-discriminatory and cost-reflective manner, so as to recover the total costs to the DCC (including under the DCC Service Provider Contracts) associated with that Bilateral Agreement (including so as to recover a reasonable proportion of any standing costs that would be incurred whether or not that Elective Communication Service was provided); and
 - (c) so that such proportion of such standing costs is recovered by way of a standing charge that is payable whether or not the service is requested or provided.
- K8.4 Where the DCC is simultaneously considering requests for a formal offer to provide Elective Communication Services from two or more Parties, and where it would be advantageous to all such Parties for the DCC to do so, the DCC shall make the offer both conditionally on all the Parties accepting the offer and without such condition. In respect of the Elective Charges to apply in respect of the conditional offer, the DCC shall calculate the Elective Charges for each Party on the assumption that the other Parties accept the offers, and shall accordingly apportion any common costs between

the Parties on a non-discriminatory and cost-reflective basis.

K8.5 Although this Code in no way binds the Authority it is acknowledged that any determination by the Authority of the Elective Charges in respect of a Bilateral Agreement will be undertaken as envisaged by the DCC Licence, including by reference to those matters set out in Sections K8.3 and K8.4.

Second-Comer Contributions

K8.6 Subject to Section K8.8, where:

- (a) the DCC makes an offer in respect of any proposed Elective Communications Service to a person (the “**subsequent person**”); and
- (b) prior to such offer being made to the subsequent person, another person (the “**initial contributor**”) was obliged to pay Elective Charges designed to recover any costs (the “**relevant costs**”) that would otherwise (in accordance with this Charging Methodology) have been recoverable from the subsequent person,

then the DCC shall make an offer to the subsequent person that requires that subsequent person to pay by way of Elective Charges such a contribution to the relevant costs as may be reasonable in all the circumstances.

K8.7 Subject to Section K8.8, where an offer made by the DCC that includes an element of relevant costs is accepted by the subsequent person, the DCC shall (following payment by the subsequent person) offer such rebate to the initial contributor as may be reasonable in all the circumstances.

K8.8 Sections K8.6 and K8.7 shall not apply:

- (a) where the relevant costs are less than £20,000;
- (b) where the relevant costs are between £20,000 and £500,000 (inclusive), and the initial contributor’s offer for the Elective Communication Service was accepted more than 5 years before the offer to the subsequent contributor is made;
- (c) where the relevant costs are more than £500,000, and the initial contributor’s

offer for the Elective Communication Service was accepted more than 10 years before the offer to the subsequent contributor is made; and/or

- (d) where the initial contributor no longer exists or cannot be contacted by the DCC following reasonable enquiry.

K8.9 All references to an initial contributor in this Section K8 shall, in respect of any subsequent person, be interpreted so as to include any person that was previously a subsequent person in respect of the relevant costs in question and that paid Elective Charges designed to recover an element of those relevant costs.

K9 WITHIN-YEAR ADJUSTMENTS

Introduction

- K9.1 The revenue restriction contained in the DCC Licence allows the DCC to carry forward any under or over recovery in respect of one Regulatory Year to the following Regulatory Year. Therefore, there is no absolute need for the DCC to alter the Charges part way through a Regulatory Year.
- K9.2 Nevertheless, the DCC may alter the Charges part way through a Regulatory Year in one of two ways:
- (a) where the Authority consents to a revision of the Charges in accordance with Condition 19 of the DCC Licence; or
 - (b) where the requirements of this Section K9 are met, by applying within-year adjustments for the matters set out in this Section K9.

Amending this Charging Methodology

- K9.3 Where the Authority consents in accordance with Condition 19 of the DCC Licence, the DCC may recalculate the Charges in accordance with this Charging Methodology (including so as to take into account any modification of this Charging Methodology). In such circumstances, the references herein to a Regulatory Year shall be interpreted as meaning the remaining period of such Regulatory Year from the time at which the modified Charges in question are to apply.

Within-Year Adjustment for Bad Debt

- K9.4 Where a Party fails to pay to the DCC an amount due by way of Charges such that an Event of Default has occurred, and provided the DCC has complied with its obligations under Section J (Charges) in respect of the same, the DCC may (where it reasonably considers it appropriate to do so, taking into account the matters referred to in Section K9.1) determine the **Unrecovered Bad Debt Payment** ($UBDP_{pemt}$) to be paid by every other Party (p) in respect of that Event of Default (e) in one or more subsequent months (m) of such Regulatory Year (t) as the DCC may determine. $UBDP_{pemt}$ shall be calculated as follows:

$$UBDP_{pemt} = \frac{UBP_e \times DS_{pe}}{BM_e}$$

Where:

BM_e is the number of months in the balance of the Regulatory Year over which the DCC decides it is to recover the amount owing in respect of the Event of Default

UBP_e is the amount owing in respect of the Event of Default (e) or such smaller amount as DCC decides to recover over the remainder of the Regulatory Year (t)

DS_{pe} is the share of the debt owing in respect of the Event of Default (e) to be paid by each Party (p) other than the Defaulting Party, which is to be calculated as follows.

$$DS_{pe} = \frac{TMP_{pe}}{\sum_{\forall p} TMP_{pe}}$$

where TMP_{pe} is the total amount paid or payable by way of Charges by each Party (p) in respect of the 12 months preceding the month in respect of which the Event of Default (e) occurred

$\sum_{\forall p}$ represents a sum over all Parties other than the Party that is the Defaulting Party for the Event of Default.

K9.5 Where the DCC:

- (a) has levied a charge for an Unrecovered Bad Debt Payment; and
- (b) subsequently recovers from the defaulting Party any or all of the unpaid debt to which the Unrecovered Bad Debt Payment related,

then the DCC shall return the money it has recovered from the defaulting Party to the other Parties in proportion to their contributions to $UBDP_{pemt}$. In order to return such

money, the DCC shall include a negative $UBDP_{pemt}$ amount in the Charges for the month following the month in which the DCC received payment (or part payment) from the defaulting Party.

Within-Year Adjustment for KPI Performance

K9.6 Over time, it is the intention that this Charging Methodology is developed so as to provide for targeted reductions in Charges in the event that the DCC fails to achieve the required performance standards. This will be achieved through the *KPIP* and *KPIS* terms. For the moment, both these terms shall be set to zero. The absence of such targeted reductions in Charges does not alter the overall amount recoverable by the DCC by way of Charges. Nor does it affect the amount of revenue recoverable by DCC, which may be reduced if the DCC fails to achieve the required performance standards. Both of these matters are controlled via the revenue restriction contained in the DCC Licence.

Within-Year Adjustment for Liability Events

K9.7 If a Liability Event arises, the DCC may (where it reasonably considers it appropriate to do so, taking into account the matters referred to in Section K9.1 and having consulted with the Authority and the Panel) determine the **Liability Payment** (LP_{plmt}) to be paid by (or, in the case of negative Liability Sums, paid to) every other Party (p) in respect of that Liability Event (l) in one or more subsequent months (m) of such Regulatory Year (t) as the DCC may determine. LP_{plmt} shall be calculated as follows:

$$LP_{plmt} = \frac{TLP_l \times LS_{pl}}{BM_l}$$

Where:

BM_l is the number of months in the balance of the Regulatory Year over which the DCC decides it is to recover the amount owing in respect of the Liability Event

TLP_l is the Liability Sum arising in respect of the Liability Event (l) or such smaller amount as DCC decides to recover over the remainder of the Regulatory Year (t)

LS_{pl} is the share of the liability owing in respect of the Liability Event (l) to be paid by (or, in the case of negative Liability Sums, paid to) each Party (p), which is to be calculated as follows.

$$LS_{pl} = \frac{TMP_{pl}}{\sum_{\forall p} TMP_{pl}}$$

where TMP_{pl} is the total amount paid or payable by way of Charges by each Party (p) in respect of the 12 months preceding the month in which the Liability Sum for the Liability Event (l) is payable to or by the DCC Service Providers

$\sum_{\forall p}$ represents a sum over all Parties.

K10 CALCULATING MONTHLY PAYMENTS

Introduction

K10.1 The monthly payment of Charges payable by each Party shall be calculated in accordance with this Section K10, based on:

- (a) the Fixed Charges determined in accordance with Section K4, K5 or K6 (as applicable);
- (b) the Explicit Charges determined in accordance with Section K7;
- (c) the Elective Charges determined in accordance with Section K8; and
- (d) any within-year adjustments determined in accordance with Section K9.

Calculating Fixed Charges

K10.2 The Fixed Charges payable by each person in respect of any month (or part month) during a Regulatory Year shall be calculated following the end of that month based on the calculations in accordance with Section K4, K5 or K6 (as applicable).

K10.3 The Fixed Charges are payable by the persons in each Charging Group. The Fixed Charges payable by any Party that is not in a Charging Group shall be zero.

Calculating Explicit Charges and Elective Charges Payments

K10.4 The Explicit Charges payable by each Party in respect of any month (or part month) during a Regulatory Year shall be calculated following the end of that month based on the Explicit Charging Metrics incurred by that Party in that month (or part month).

K10.5 The Elective Charges payable by each Party in respect of any month (or part month) during a Regulatory Year shall be calculated following the end of that month based on the relevant Bilateral Agreement.

Calculating Monthly Payments

K10.6 For each month (or part month) (m) during a Regulatory Year (t) prior to the UITMR Period, the initial monthly payment (*IMP*) in respect of the Charges payable by each Party (p) shall be calculated as follows:

$$IMP_{pmt} = \sum_{\forall g} (FC_{gt} \times AMSMS_{pgmt}) + TEP_{pmt} + \sum_{e \in m} UBDP_{pemt} + \sum_{l \in m} LP_{plmt}$$

Where:

FC_{gt} = the Fixed Charges payable in respect of months (or part months) during Regulatory Year (t) by persons in Charging Group (g) in respect of Mandated Smart Metering Systems, calculated in accordance with Section K4

$AMSMS_{pgmt}$ = the amount described in Section K4.5

TEP_{pmt} = the total amount payable by a Party (p) in respect of Elective Charges and a month (m) in a Regulatory Year (t)

$UBDP_{pemt}$ = the Unrecovered Bad Debt Payment in respect of a month (m) in a Regulatory Year (t) and each Event of Default (e), as calculated in accordance with Section K9

LP_{plmt} = the Liability Payment in respect of a month (m) in a Regulatory Year (t) and each Liability Event (l), as calculated in accordance with Section K9.

K10.7 For each month (or part month) (m) during a Regulatory Year (t) during the UITMR Period, the rollout monthly payment (RMP) in respect of the Charges payable by each Party (p) shall be calculated as follows:

$$RMP_{pmt} = \sum_{\forall g} (RDFC_{gt} \times ADSMS_{pgmt}) + \sum_{\forall g} \left(\sum_{\forall r} (RNFC_{grt} \times ANSMS_{pgrmt}) \right) + \sum_{i=1}^{i=n} (EC_{it} \times ECM_{ipmt}) + TEP_{pmt} + \sum_{e \in m} UBDP_{pemt} + \sum_{l \in m} LP_{plmt} - (KPIP_{mt} \times KPIS_{pmt})$$

Where:

$RDFC_{gt}$ = the Fixed Charges payable in respect of months (or part months) during Regulatory Year (t) by persons in Charging Group (g) in respect of

Mandated Smart Metering Systems, calculated in accordance with Section K5

$ADSMS_{pgmt}$ = the amount described as such in Section K5.9

$RNFC_{grt}$ = the Fixed Charges payable in respect of months (or part months) during Regulatory Year (t) by persons in Charging Group (g) in respect of Enrolled Smart Metering Systems for Non-Domestic Premises in each Region (r), calculated in accordance with Section K5

$ANSMS_{pgrmt}$ = the amount described as such in Section K5.7

EC_{it} = the Explicit Charge for an Explicit Charging Metric (i) and a Regulatory Year (t)

ECM_{ipmt} = the Explicit Charging Metrics incurred by a Party (p) during the month (m) in a Regulatory Year (t)

TEP_{pmt} = the total amount payable by a Party (p) in respect of Elective Charges and a month (m) in a Regulatory Year (t)

$KPIP_{mt}$ = zero

$KPIS_{pmt}$ = zero

$UBDP_{pemt}$ = the Unrecovered Bad Debt Payment in respect of a month (m) in a Regulatory Year (t) and each Event of Default (e), as calculated in accordance with Section K9

LP_{plmt} = the Liability Payment in respect of a month (m) in a Regulatory Year (t) and each Liability Event (l), as calculated in accordance with Section K9.

K10.8 For each month (or part month) (m) during a Regulatory Year (t) after the UITMR Period, the monthly payment (MP) in respect of the Charges payable by each Party (p) shall be calculated as follows:

$$\begin{aligned}
 MP_{pmt} = & \sum_{\forall g} (DFC_{gt} \times ADSMS_{pgmt}) + \sum_{\forall g} \left(\sum_{\forall r} (NFC_{grt} \times ANSMS_{pgrmt}) \right) \\
 & + \sum_{i=1}^{i=n} (EC_{it} \times ECM_{ipmt}) + TEP_{pmt} + \sum_{e \in m} UBDP_{pemt} + \sum_{l \in m} LP_{plmt} \\
 & - (KPIP_{mt} \times KPIS_{pmt})
 \end{aligned}$$

Where:

DFC_{gt} = the Fixed Charges payable in respect of months (or part months) during Regulatory Year (t) by persons in Charging Group (g) in respect of Enrolled Smart Metering Systems for Domestic Premises, calculated in accordance with Section K6

$ADSMS_{pgmt}$ = the amount described as such in Section K6.7

NFC_{grt} = the Fixed Charges payable in respect of months (or part months) during Regulatory Year (t) by persons in Charging Group (g) in respect of Enrolled Smart Metering Systems for Non-Domestic Premises in each Region (r), calculated in accordance with Section K6

$ANSMS_{pgrmt}$ = the amount described as such in Section K6.7

EC_{it} = the Explicit Charge for an Explicit Charging Metric (i) and a Regulatory Year (t)

ECM_{ipmt} = the Explicit Charging Metrics incurred by a Party (p) during the month (m) in a Regulatory Year (t)

TEP_{pmt} = the total amount payable by a Party (p) in respect of Elective Charges and a month (m) in a Regulatory Year (t)

$KPIP_{mt}$ = zero

$KPIS_{pmt}$ = zero

$UBDP_{pemt}$ = the Unrecovered Bad Debt Payment in respect of a month (m) in a Regulatory Year (t) and each Event of Default (e), as calculated in accordance with Section K9

LP_{plmt} = the Liability Payment in respect of a month (m) in a Regulatory Year (t) and each Liability Event (l), as calculated in accordance with Section K9.

K11 DEFINITIONS

K11.1 In this Charging Methodology, except where the context otherwise requires, the expressions in the left hand column below shall have the meanings given to them in the right hand column below:

Allowed Revenue	has the meaning given to that expression in the revenue restriction conditions of the DCC Licence.
Charging Group	has the meaning given to that expression in Section K3.9.
Charging Group Weighting Factor	has the meaning given to that expression in Section K3.12.
Elective Charges	means the Charges payable in respect of Elective Communication Services.
Enrolled Smart Metering System	means a Smart Metering System that has been Enrolled.
Estimated Allowed Revenue	has the meaning given to that expression in Section K2.1.
Estimated Elective Service Revenue	has the meaning given to that expression in Section K2.3.
Estimated Explicit Charges Revenue	has the meaning given to that expression in Section K2.5.
Estimated Fixed Charges Revenue	has the meaning given to that expression in Section K2.6.

Explicit Charges means the Charges calculated in accordance with Section K7, and payable in respect of the Explicit Charging Metrics.

Explicit Charging Metrics has the meaning given to that expression in Section K7.

Fixed Charges means the Charges calculated in accordance with Section K4, K5 or K6 (as applicable).

Liability Event means an event as a result of which either:

- (a) the DCC has a net liability to the DCC Service Providers collectively (excluding in respect of charges arising in the ordinary course of events);
or
- (b) the DCC Service Providers collectively have a net liability to the DCC (excluding in respect of service credits or liquidated damages arising from poor service performance).

Liability Sum

means, in respect of a Liability Event as a result of which:

- (a) the DCC owes a net liability to the DCC Service Providers collectively, the amount of such net liability (having taken into account amounts recoverable by the DCC in respect of that Liability Event otherwise than pursuant to this Charging Methodology, including amounts recoverable from other Parties as a result of any breach of this Code by such Parties which caused or contributed to that Liability Event), but only to the extent that the DCC estimates that such net liability will be recoverable by the DCC as Allowed Revenue; or
- (b) the DCC Service Providers collectively owe a net liability to the DCC, the net amount actually received by the DCC in respect of such net liability (having taken into account amounts owed by the DCC to other Parties and to third parties in respect of that Liability Event otherwise than pursuant to this Charging Methodology), but only to the extent that the DCC estimates that such net liability will reduce the Allowed Revenue that the DCC could otherwise recover by way of the Charges (which net amount will be expressed as a negative number).

Liability Payment

has the meaning given to that expression in Section K9.7 (expressed as a negative number in the case of negative Liability Sums).

Mandated Smart Metering System	means, from time to time, each MPAN or MPRN associated with a Domestic Premises (regardless of whether or not a Smart Metering System has been installed or Enrolled), but excluding those MPANs and MPRNs associated with premises in respect of which the DCC is exempted from the requirement to Enrol Smart Metering Systems in accordance with the Statement of Service Exemptions.
National Fixed Revenue	has the meaning given to that expression in Section K3.7.
Regional Fixed Revenue	has the meaning given to that expression in Section K3.7.
Regulatory Year	means (subject to Section K9.3) a period of twelve months beginning at the start of 1 April in any calendar year and ending at the end of 31 March in the next following calendar year; provided that a Regulatory Year will end and a new one will commence simultaneously with both the commencement and the end of the UITMR Period.
UITMR Period	means the period, covering User integration testing and the mass rollout period, which: <ul style="list-style-type: none">(a) commences at the start of the month in which the DCC is first obliged to make regular monthly payments to one or more of the DCC Service Providers; and(b) ends at the end of the date referred to in paragraph 1 of Condition 39 of the Energy Supply Licences.

Unrecovered Bad Debt Payment has the meaning given to that expression in Section K9.4.

SECTION M: GENERAL

M1 COMMENCEMENT AND DURATION

Commencement

M1.1 This Code shall take effect from the effective date designated by the Secretary of State pursuant to Condition 22 of the DCC Licence.

Duration

M1.2 Once this Code comes into effect, it shall remain in effect:

- (a) in respect of the DCC, until the DCC ceases to be a Party in accordance with Section M9 (Transfer of the DCC Licence); and
- (b) in respect of each Party other than the DCC, until (subject to Section M8.14) such Party ceases to be a Party in accordance with Section M8 (Suspension, Expulsion and Withdrawal).

M2 LIMITATIONS OF LIABILITY

Unlimited Liabilities

- M2.1 Nothing in this Code or any Bilateral Agreement shall exclude or limit a Party's Liability:
- (a) for death or personal injury resulting from the negligence of that Party;
 - (b) for fraud or fraudulent misrepresentation;
 - (c) to pay the Charges and any interest accruing in respect of the Charges in accordance with this Code; or
 - (d) for any other type of Liability which cannot by law be excluded or limited.

Exclusion of Indirect Loss

- M2.2 No Party shall in any circumstances be liable to another Party for loss arising as a result of a breach of this Code and/or any Bilateral Agreement that does not directly result from such breach and that was not reasonably foreseeable as likely to occur in the ordinary course of events.

Confidentiality and Intellectual Property Rights

- M2.3 Each Party's Liability for any breach of Section M4 (Confidentiality) shall be unlimited (save as provided in Section M2.2).
- M2.4 Each Party's Liability for any breach of Section M5 (Intellectual Property Rights) shall be unlimited (save as provided in Section M2.2).

Damage to Physical Property

- M2.5 Subject to Section M2.1, each Party's Liability for loss of or damage to physical property (including loss of or damage to Systems, and loss or corruption of Data) arising as a result of a breach by that Party of this Code and/or any Bilateral Agreement shall be limited as follows:
- (a) the Liability of the DCC shall be limited to £1,000,000 (one million pounds)

in respect of each incident or series of related incidents; and

- (b) the Liability of each Party other than the DCC shall be limited to £1,000,000 (one million pounds) in respect of each incident or series of related incidents.

M2.6 Subject to Section M2.5, it is expressly agreed that a Party may recover the following losses arising as a result of a breach of this Code (and without intending to limit recovery of any other Liability that may arise as a result of such breach):

- (a) where such breach causes the loss of, or damage to, a Smart Metering System (or any part of it), the Import Supplier, Export Supplier and/or Gas Supplier (as applicable) for that Smart Metering System shall be entitled to recover the reasonable costs and expenses (including cost of labour) incurred in attending the relevant premises for the purpose of repairing or replacing that Smart Metering System (or the relevant part of it).

M2.7 Subject to Sections M2.1 and M2.6 and save in the case of a breach of those provisions referred to in Section M2.3 or M2.4, no Party shall in any circumstances be liable to another Party for any of the following losses arising as a result of a breach of this Code and/or any Bilateral Agreement:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of use;
- (d) loss of contract; or
- (e) loss of goodwill.

Exclusion of Other Liabilities

M2.8 Subject to Sections M2.1 and M2.6 and save in the case of a breach of those provisions referred to in Section M2.3 or M2.4, no Party shall be liable to any other Party for loss arising from any breach of this Code and/or any Bilateral Agreement other than for losses that are subject to Section M2.5. This Section M2.8 is without prejudice to the operation of the Charging Methodology.

- M2.9 The rights and remedies provided by this Code and/or any Bilateral Agreement are exclusive and not cumulative, and exclude and are in place of all substantive (but not procedural) rights or remedies provided by common law or statute in respect of the subject matter of this Code and/or any Bilateral Agreement, including any rights that any Party may possess in tort (or delict).
- M2.10 Subject to Section M2.1, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute (and releases the other Parties to the same extent from all Liabilities or obligations provided by common law or statute in respect of the subject matter of this Code and/or any Bilateral Agreement).

Statutory Rights

- M2.11 For the avoidance of doubt, nothing in this Section M2 shall exclude or restrict or otherwise prejudice or affect any of:
- (a) the rights, powers, duties and obligations of any Party which are conferred or created by the Relevant Instruments; or
 - (b) the rights, powers and duties of the Authority or the Secretary of State.

Other Matters

- M2.12 Each of the sub-clauses of this Section M2 shall be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable, then the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties.
- M2.13 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 this Code and/or any Bilateral Agreement, it is agreed that:
- (a) each Party hereby waives and releases (to the fullest extent possible at law)

such rights and remedies in respect of such loss or damage as such Party may otherwise have against the contractors, employees and agents of each other Party (including the DCC Service Providers and Supplier Nominated Agents) in their capacity as such;

- (b) the DCC shall ensure that each DCC Service Provider (when acting in its capacity as such) waives and releases (to the fullest extent possible at law) such rights and remedies in respect of such loss or damage as such DCC Service Provider may otherwise have against the 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, including the Supplier Nominated Agents in such capacity);
- (c) each Supplier Party shall ensure that its Supplier Nominated Agent (when acting in its capacity as such) waives and releases (to the fullest extent possible at law) such rights and remedies in respect of such loss or damage as such Supplier Nominated Agent may otherwise have against the DCC in its capacity as such (and/or against the contractors, employees and agents of the DCC in their capacity as such, including the DCC Service Providers in such capacity);
- (d) the waiver and release referred to in Section M2.13(a) is to be enforceable by the persons stated therein to have the benefit thereof in accordance with Section M11.5 (Third Party Rights); and
- (e) the DCC or each Supplier Party (respectively) shall ensure that the waiver and release referred to in Section M2.13(b) or (c) is enforceable by the persons stated therein to have the benefit thereof under the Contracts (Rights of Third Parties) Act 1999.

M2.14 Each Party shall be under a duty to mitigate its loss.

M2.15 Each Party hereby acknowledges and agrees that the provisions of this Section M2 are fair and reasonable having regard to the circumstances.

Conduct of Indemnity Claims

M2.16 Where this Code provides that one Party (the “**Indemnifier**”) is to indemnify another Party (the “**Indemnified Party**”) against third party claims, the Indemnified Party shall:

- (a) promptly notify the Indemnifier of any such claim, and provide it with details in relation to the same and all relevant documentation excluding that which attracts legal privilege;
- (b) consult with the Indemnifier with respect to the subject matter of the claim and the manner in which the Indemnified Party intends to deal with the same, keep the Indemnifier promptly advised of developments concerning the same, and have due regard to the Indemnifier’s views in relation to the same;
- (c) not settle, compromise or make any admission of liability concerning any such claim, without the prior written consent of the Indemnifier (such consent not to be unreasonably withheld or delayed); and
- (d) where the Indemnifier so requests, allow the Indemnifier (or such person as the Indemnifier may nominate) to conduct all negotiations and proceedings regarding the claim (at the Indemnifier’s cost), in which case the Indemnifier shall ensure that the claim is diligently defended in accordance with any reasonable instructions of the Indemnified Party and not settled or compromised without the Indemnified Party’s consent (such consent not to be unreasonably withheld or delayed).

SECCo

M2.17 The provisions of this Section M2 (and the definitions used in this Section) shall apply to SECCo as if SECCo was a Party, but shall not limit SECCo’s liability under Section C3.12 (Protections for Panel Members and Others).

M2.18 Nothing in this Section M2 shall limit the DCC’s liability to reimburse SECCo in respect of Recoverable Costs.

M3 SERVICES FM AND FORCE MAJEURE

Force Majeure affecting the Services - Services FM

M3.1 The concept of Services FM applies in respect of the obligations of the DCC to provide the Services pursuant to this Code (including pursuant to any Bilateral Agreement).

M3.2 The DCC may claim relief from Liability for non-performance of its obligations in respect of the Services to the extent this is due to Services FM. To the extent that performance of the DCC's obligations is unaffected by the Services FM, the provisions of this Code and any Bilateral Agreement will continue to apply.

M3.3 The DCC cannot claim Services FM has occurred:

(a) in relation to any wilful act, neglect or failure to take reasonable precautions against the relevant Services FM event by the DCC or its servants, agents, employees or contractors (including the DCC Service Providers);

(b) in relation to any circumstances resulting from a failure or delay by any other person in the performance of that other person's obligations under a contract with the DCC (unless that other person is itself prevented from or delayed in complying with its obligations as a result of Services FM); and/or

(c) as a result of any shortage of labour, material or other resources unless caused by circumstances which are themselves Services FM,

and in any event, the DCC shall not be entitled to relief if and to the extent that it is required to comply with the Business Continuity Plan but has failed to do so (unless this failure is also due to Services FM affecting the operation of the Business Continuity Plan).

M3.4 The DCC shall, as soon as reasonably practicable (and in any event within five (5) days of the occurrence of the Services FM), give to the Users that were due to receive the affected Services and to the Panel full details of the Services FM and any relief the DCC wishes to claim in connection with the Services FM.

M3.5 The DCC shall be entitled to relief in respect of Services FM to the extent that the

Panel agrees (or it is subsequently determined by arbitration) that the requirements of Sections M3.2 and M3.3 are met, and that:

- (a) the DCC could not have avoided the occurrence of the Services FM (or its consequences or likely consequences) by taking steps which the DCC was required to take (or procure) under this Code and any Bilateral Agreement or might reasonably be expected to have taken;
- (b) the Services FM directly caused the non-performance of the Services for which relief is claimed;
- (c) the time lost and/or relief from the obligations under this Code and any Bilateral Agreement claimed by the DCC could not reasonably be expected to be mitigated or recovered by the DCC acting in accordance with Good Industry Practice; and
- (d) the DCC is taking all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Services FM on the performance of the Services.

M3.6 If the DCC is entitled to relief in respect of Services FM in accordance with Section M3.5, then:

- (a) the DCC shall be relieved of Liability under this Code and any Bilateral Agreement in respect of the Services to the extent to which that Liability would otherwise have arisen solely as a result of the Services FM; and
- (b) for the avoidance of doubt, the Charges (but not, for the avoidance of doubt, the Fixed Charges) payable by a User shall be reduced to the extent that the DCC does not provide the Services to that User as a result of the Services FM (and shall be calculated on the basis of the Services that are actually provided).

M3.7 The DCC shall notify the affected Users and the Panel as soon as reasonably practicable after the Services FM ceases or no longer causes the DCC to be unable to comply with its obligations under this Code and/or any Bilateral Agreement in respect of the Services. Following such notification, the Services shall continue to be

performed in accordance with the terms and conditions existing immediately before the occurrence of the Services FM.

M3.8 The DCC hereby irrevocably and unconditionally waives all and any rights to claim any extension or allowance of time or other relief from performance of its obligations in respect of the Services other than to the extent caused by Services FM. Each User hereby irrevocably and unconditionally waives all and any rights to claim compensation (including for breach of contract or in tort) for failure by the DCC to provide the Services to the extent caused by Services FM.

Force Majeure

M3.9 The concept of Force Majeure applies in respect of:

- (a) all obligations of the DCC pursuant to this Code and any Bilateral Agreement other than the obligations of the DCC to provide the Services; and
- (b) all obligations of the other Parties pursuant to this Code and any Bilateral Agreement,

all such obligations together being in this Section M3 the “**Relevant Obligations**”.

M3.10 Subject to Section M3.11, the Affected Party will not be in breach of this Code and/or any Bilateral Agreement or otherwise liable for any failure or delay in performance of any Relevant Obligations to the extent such failure or delay is caused by Force Majeure.

M3.11 An Affected Party may only rely upon Section M3.10 in respect of a failure or delay in performance of any Relevant Obligations to the extent that the Affected Party and the Party or Parties to whom the Affected Party owes the Relevant Obligations agree (or it is determined by arbitration) that the Affected Party:

- (a) notified the Party or Parties to whom the Affected Party owes those Relevant Obligations of the matters constituting Force Majeure as soon as reasonably practicable following their occurrence;
- (b) kept such Party or Parties fully informed as to the matters relating to the Force Majeure; and

- (c) took all reasonable steps in accordance with Good Industry Practice to overcome the Force Majeure and/or minimise the consequences of the Force Majeure on the performance of the Relevant Obligations.

M3.12 The Affected Party shall notify the Party or Parties to whom the Affected Party owes the Relevant Obligations as soon as reasonably practicable after the Force Majeure ceases or no longer causes the Affected Party to be unable to comply with the Relevant Obligations.

M3.13 Each Party hereby irrevocably and unconditionally waives all and any rights to claim any extension or allowance of time or other relief from performance of the Relevant Obligations other than to the extent caused by Force Majeure. Each Party hereby irrevocably and unconditionally waives all and any rights to claim compensation (including for breach of contract or in tort) for, or to seek to expel the Affected Party from this Code for, any failure by the Affected Party to comply with the Relevant Obligations to the extent caused by Force Majeure.

SECCo

M3.14 The provisions of this Section M3 (and the definitions used in this Section) shall apply to SECCo as if SECCo was a Party.

M4 CONFIDENTIALITY

Prohibition on disclosure and use by DCC

- M4.1 Subject to Section M4.3, the DCC shall not disclose another Party's Confidential Information to, or authorise access to another Party's Confidential Information by, any person.
- M4.2 Subject to Section M4.3, the DCC shall not use a Party's Confidential Information for any purpose other than the purpose for which it was provided (or otherwise made available) to the DCC, and in any event for any purpose other than the purposes of this Code.

Circumstances in which disclosure or use by the DCC are permitted

- M4.3 The restrictions on disclosure and authorisation of access in Section M4.1 and on use in Section M4.2 shall not apply to the disclosure or use of, or authorisation of access to, a Party's Confidential Information to the extent:
- (a) expressly permitted or required by the DCC Licence;
 - (b) necessary for the exercise by the DCC of any of its obligations under the Electricity Act, the Gas Act, the DCC Licence, or this Code;
 - (c) made or given in accordance with the Authority's prior written consent;
 - (d) such Confidential Information is already available in the public domain other than as a result of a breach by the DCC of this Section M4 and/or the DCC Licence; or
 - (e) such Confidential Information is already lawfully in the possession of the DCC otherwise than as a result (whether directly or indirectly) of a breach of this Code and/or the DCC Licence (but without prejudice to any obligations to which the DCC is subject in respect of the use or disclosure of such Confidential Information under the arrangements relating to such lawful possession).
- M4.4 The restrictions on disclosure and authorisation of access in Section M4.1 shall not

apply to the disclosure of, or authorisation of access to, a Party's Confidential Information to the extent:

- (a) made or given in order to comply with the DCC's duties under Laws and Directives or the rules of any recognised stock exchange; provided that, in so far as is reasonably practicable in accordance with such Laws and Directives or rules, the DCC shall provide that Party with prior notice of such proposed disclosure or authorisation of access; or
- (b) made or given to the employees, other agents, contractors or advisers of the DCC to the extent such persons require such Confidential Information for the purpose of performing their roles as such; provided that such persons are subject to restrictions on the disclosure or use of, or authorisation of access to, such Confidential Information equivalent to those under this Section M4, and provided that the DCC shall be liable for any disclosure, authorisation or use by such persons otherwise than in accordance with this Section M4. This Section M4.4(b) is without prejudice to Section M4.5.

Restriction of disclosure to DCC employees who are leaving

M4.5 The DCC shall not (having regard to the nature and effective life of the Confidential Information in question) continue to disclose Confidential Information to (or authorise access to Confidential Information by) an employee or other agent of the DCC who has notified DCC of his or her intention to become engaged as an employee or agent of:

- (a) any other Party; or
- (b) a broker or consultant who is known to provide services in relation to the Supply of Energy and/or Commercial Activities,

save where the DCC could not, in all the circumstances, reasonably be expected to refrain from divulging to such employee or other agent Confidential Information which is required for the proper performance of his or her duties.

Other matters relating to the DCC

- M4.6 The DCC shall put in place and at all times maintain managerial and operational practices, systems, and procedures designed to ensure that it complies with this Section M4.
- M4.7 The DCC agrees that damages may not be an adequate remedy in the event of breach of this Section M4, and that a Party may seek injunctive relief in respect of any breach or potential breach of this Section M4.

Provision of Information to the Panel

- M4.8 Each Party agrees, subject to any confidentiality provision binding on it, to provide to the Panel (or its Sub-Committees and/or Working Groups, including via the Code Administrator, the Secretariat or SECCo) all Data reasonably requested by the Panel (or its Sub-Committees and/or Working Groups, including via the Code Administrator, the Secretariat or SECCo) in order that they may properly carry out their duties and functions under this Code.

Confidentiality and the Panel

- M4.9 Where a Party wishes its Party Data to remain confidential, it shall clearly mark (or otherwise state) such Party Data as (or to be) confidential. Where a Party does not clearly mark (or otherwise state) its Party Data as (or to be) confidential, the Panel (or its Sub-Committees or Working Groups, the Code Administrator, the Secretariat or SECCo, as applicable) may treat such Party Data as not being confidential (and shall have no confidentiality obligation in respect of the same).
- M4.10 Subject to Section M4.11, the Panel shall (and shall ensure that its Sub-Committees and Working Groups, the Code Administrator, the Secretariat and SECCo shall) not disclose, or authorise access to, any Party Data that is provided (or otherwise made available) to them by one or more Parties in confidence.
- M4.11 The restrictions in Section M4.10 on disclosures of, or authorisation of access to, Party Data shall not apply to the extent:
- (a) made or given in accordance with duties under Laws and Directives or

instructions of the Authority;

- (b) such Party Data is already available in the public domain other than as a result of a breach by the Panel (or its Sub-Committees or Working Groups, the Code Administrator, the Secretariat or SECCo); or
- (c) such Party Data is already lawfully in the possession of the Panel (or its Sub-Committees or Working Groups, the Code Administrator, the Secretariat or SECCo) otherwise than as a result (whether directly or indirectly) of this Code and/or the DCC Licence (but without prejudice to any obligations in respect of the use or disclosure of such Confidential Information under the arrangements relating to such lawful possession).

M4.12 The Parties acknowledge that, in order for the Panel (and its Sub-Committees and Working Groups, the Code Administrator, the Secretariat and SECCo) to properly carry out their duties and functions under this Code, the Panel may decide (or be obliged) to keep Data as confidential, and not disclose that Data to the Parties. The Panel shall use its reasonable endeavours to keep such instances to a minimum.

Confidentiality of DCC Data

M4.13 Where Data belonging to the DCC, or relating to the DCC or the Services, is disclosed (or otherwise becomes available) to another Party under or in relation to this Code, and where the DCC wishes such Data to remain confidential, the DCC shall clearly mark (or otherwise state) such Data as (or to be) confidential. Where the DCC does not clearly mark (or otherwise state) such Data as (or to be) confidential, the other Parties may treat such Data as not being confidential (and shall have no confidentiality obligation in respect of the same).

M4.14 Each Party other than the DCC shall not disclose, or authorise access to, the Data that is clearly marked (or otherwise stated) as (or to be) confidential in accordance with Section M4.13; provided that such restrictions on disclosure and access shall not apply to the extent:

- (a) made or given in accordance with duties under Laws and Directives or instructions of the Authority;

- (b) such Data is already available in the public domain other than as a result of a breach of this Code by a Party; or
- (c) such Party Data is already lawfully in the possession of the Party otherwise than as a result (whether directly or indirectly) of this Code and/or the DCC Licence (but without prejudice to any obligations in respect of the use or disclosure of such Confidential Information under the arrangements relating to such lawful possession).

M4.15 The Parties other than the DCC may only use the Data belonging to the DCC, or relating to the DCC or the Services, which is disclosed (or otherwise becomes available) to them under or in relation to this Code for the purpose of performing their obligations or exercising their rights under this Code (or for any other use that is expressly authorised by the DCC in writing).

M5 INTELLECTUAL PROPERTY RIGHTS

SEC Materials

- M5.1 Section M5.2 applies in respect of this Code and any and all documents, materials, reports, charts and tables, diagrams and specifications, and any and all other works, inventions, ideas, designs or proposals (in whatever form, and including Modification Proposals) arising out of or in connection with the central administration, operation and development of this Code, including any and all associated drafts and working papers (collectively, the “**SEC Materials**”); provided that the SEC Materials shall not include the Consumer Data or the Services IPR.
- M5.2 The Parties agree that, as between the Parties, any and all Intellectual Property Rights subsisting in the SEC Materials and the whole of the title to the SEC Materials will:
- (a) be owned by SECCo; and
 - (b) automatically and immediately vest in SECCo upon their creation or acquisition.
- M5.3 Where a Party other than SECCo acquires (by operation of Laws and Directives or otherwise) any Intellectual Property Rights in the SEC Materials, then that Party:
- (a) (as far as is permitted by law) hereby assigns such Intellectual Property Rights to SECCo with full title guarantee, by way of present assignment of future Intellectual Property Rights; and
 - (b) (to the extent such assignment is not permitted) shall (and shall procure that any of its employees, agents or contractors shall) do all acts and things and execute all documents that may be reasonably necessary to transfer such Intellectual Property Rights to SECCo with full title guarantee (and pending such assignment shall hold such rights on trust for SECCo).
- M5.4 SECCo hereby grants to each of the other Parties (for so long as they remain a Party) a royalty-free, non-exclusive, non-transferable licence to use the SEC Materials for the sole purpose of participating as a Party (including exercising its rights and performing its obligations as a Party). Each licence granted to a Party under this

Section M5.4 includes the right of that Party to grant sub-licences to its agents, contractors and advisers provided that they are granted solely in respect of that Party's participation as a Party (and the SEC Materials are used for no other purpose).

M5.5 SECCo hereby grants to each of the Panel Members, any Sub-Committee or Working Group members, the Code Administrator and the Secretariat (for so long as they each remain such) a royalty-free, non-exclusive, non-transferable licence to use the SEC Materials for the sole purpose of performing their roles as such. Each licence granted to a person under this Section M5.5 includes the right of that person to grant sub-licences to its agents, contractors and advisers provided that they are granted solely in respect of that person's performance of the role for which the licence was granted (and the SEC Materials are used for no other purpose).

Consumer Data

M5.6 Section M5.7 applies in respect of the Data that is obtained by the DCC (or its employees, other agents or contractors) as a result of providing Services to that User, including the Data contained in requests for Services and that is obtained as a result of communicating with Smart Metering Systems pursuant to this Code on behalf of a User (such Data being the "**Consumer Data**" of that User).

M5.7 As between the DCC and each User, any and all Intellectual Property Rights subsisting in the Consumer Data of that User shall be owned by that User (and the DCC shall make no claims in respect of such Intellectual Property Rights).

M5.8 Each User, in respect of its Consumer Data, hereby grants to the DCC a royalty-free, non-exclusive, non-transferable licence to use that Consumer Data for the sole purpose of DCC exercising its rights and performing its obligations under the Electricity Act, the Gas Act, the DCC Licence and this Code. Each licence granted to the DCC under this Section M5.8 includes the right of the DCC to grant sub-licences to its agents, contractors and advisers provided that they are granted solely in respect of the DCC's rights and obligations under the Electricity Act, the Gas Act, the DCC Licence and this Code (and the Consumer Data is used for no other purpose).

M5.9 Each User, in respect of its Consumer Data, shall ensure that the DCC (and its

agents, contractors and advisers) can use that Consumer Data in the manner envisaged by Section M5.8, and shall indemnify the DCC in respect of any Liabilities suffered or incurred by the DCC (or its agents, contractors or advisers) as a result of claims brought by persons alleging that the use of that Consumer Data in the manner envisaged by Section M5.8 has infringed any Intellectual Property Rights.

Party Data

- M5.10 Section M5.11 applies in respect of the Data (other than SEC Materials and Consumer Data) that is provided (or otherwise made available) pursuant to this Code to the Panel (or its Sub-Committees and/or Working Groups, including via the Code Administrator, the Secretariat or SECCo) by or on behalf of a Party (such Data being the “**Party Data**” of that Party).
- M5.11 As between the Panel (including its Sub-Committees and/or Working Groups, the Code Administrator, the Secretariat and SECCo) and each Party, any and all Intellectual Property Rights subsisting in the Party Data of that Party shall be owned by that Party (and none of the Panel, its Sub-Committees, its Working Groups, the Code Administrator, the Secretariat or SECCo shall make any claims in respect of such Intellectual Property Rights).
- M5.12 Without prejudice to Section M4.10 (Confidentiality and the Panel), each Party, in respect of its Party Data, hereby grants to SECCo, the Panel Members, any Sub-Committee or Working Group members, the Code Administrator and the Secretariat a royalty-free, non-exclusive, non-transferable licence to use that Party Data for the sole purpose of performing their roles as such. Each licence granted to a person under this Section M5.12 includes the right of that person to grant sub-licences to its agents, contractors and advisers provided that they are granted solely in respect of that person’s performance of the role for which the licence was granted (and the Party Data is used for no other purpose).
- M5.13 Without prejudice to Section M4.10, each Party, in respect of its Party Data, shall ensure that SECCo, the Panel Members, any Sub-Committee or Working Group members, the Code Administrator and the Secretariat (and their agents, contractors and advisers) can use that Party Data in the manner envisaged by Section M5.12, and shall indemnify the SECCo, the Panel Members, any Sub-Committee or Working

Group members, the Code Administrator and the Secretariat in respect of any Liabilities suffered or incurred by them (or their agents, contractors or advisers) as a result of claims brought by persons alleging that the use of that Party Data in the manner envisaged by Section M5.12 has infringed any Intellectual Property Rights.

Services IPR

M5.14 Section M5.15 applies in respect of the Intellectual Property Rights created by, arising from or that are associated with:

- (a) the activities undertaken by the DCC for the purposes of carrying on its Authorised Business (as defined in the DCC Licence) in accordance with the DCC Licence; or
- (b) the operation of a DCC Service Provider Contract in accordance with its provisions,

such Intellectual Property Rights being the “**Services IPR**”.

M5.15 As between the DCC and each User, the Services IPR shall be owned by the DCC (and no User shall make any claims in respect of the Services IPR).

M5.16 The DCC hereby grants to each User a royalty-free, non-exclusive, non-transferable licence to use the Services IPR for the sole purpose of receiving (and to the extent necessary to receive) the Services. Each licence granted by the DCC under this Section M5.16 includes the right of the User to grant sub-licences to its agents, and contractors provided that they are granted solely for the purpose of the User receiving (and to the extent necessary for the User to receive) the Services (and that the Services IPR is used for no other purpose).

M5.17 The DCC shall ensure that each User (and its agents and contractors) can use the Services IPR in the manner envisaged by Section M5.16, and shall indemnify each User in respect of any Liabilities suffered or incurred by that User (or its agents or contractors) as a result of claims brought by persons alleging that the use of that Services IPR in the manner envisaged by Section M5.16 has infringed any Intellectual Property Rights.

General

M5.18 For the avoidance of doubt, the use by a Party of Intellectual Property Rights licensed to it under this Section M5 otherwise than in accordance with such licence shall constitute a breach of this Code.

M5.19 The Parties agree that damages may not be an adequate remedy in the event of breach of this Section M5, and that a Party may seek injunctive relief in respect of any breach or potential breach of this Section M5.

SECCo

M5.20 The provisions of this Section M5 (and the definitions used in this Section) shall apply to SECCo as if SECCo was a Party.

M6 PARTY DETAILS

Provision of the Party Details

M6.1 Each Party's original Party Details shall be provided as part of its Framework Agreement counterpart or its Accession Agreement (as applicable).

Amendments to Party Details

M6.2 Each Party may amend its Party Details by notice to the Secretariat from time to time, and each Party shall ensure that its Party Details remain up-to-date.

Publication

M6.3 The Secretariat shall maintain a record of each Party's Party Details, and shall publish that record on the Website (other than those elements of the Party Details that are identified in Schedule 5 as being confidential).

M6.4 As soon as reasonably practicable after each person becomes a Party, or following notification of an amendment to a Party's Party Details in accordance with Section M6.2, the Secretariat shall update the record referred to in Section M6.3.

M6.5 The Secretariat shall use its reasonable endeavours to identify any errors or omissions in each Party's Party Details, and shall notify the relevant Party of any such errors or omissions.

M7 DISPUTE RESOLUTION

Duty to Seek to Resolve

M7.1 Where a Dispute arises between two or more Parties, each such Party shall seek to resolve the Dispute amicably within a reasonable timescale through negotiation in good faith.

Reference to the Authority

M7.2 Any Dispute of a nature that is expressly stated in this Code or in the Electricity Act or the Gas Act or in the Energy Licences to be subject to determination by the Authority shall be subject to determination by the Authority (which shall be final and binding for the purposes of this Code).

Reference to the Panel or its Sub-Committees

M7.3 Any Dispute of a nature that is expressly stated in this Code or a Bilateral Agreement to be subject to determination by the Panel (or one of its Sub-Committees) shall be subject to determination by the Panel (or that Sub-Committee). The Panel shall ensure that any such Dispute is determined within a reasonable period of time after its referral to the Panel (or its Sub-Committee).

M7.4 Unless such determination by the Panel (or one of its Sub-Committees) is expressly stated in this Code or a Bilateral Agreement to be final and binding, such disputes shall (following the Panel's or Sub-Committee's determination) be subject to final determination by the Authority (where this is expressly stated to be the case) or as referred to in Section M7.5.

Arbitration

M7.5 Subject to Sections M7.2, M7.3 and M7.4, any Dispute shall be subject to determination by arbitration in accordance with Section M7.6 (subject to Section M7.13).

M7.6 Where this Section M7.6 applies:

(a) the Party seeking to initiate the arbitration shall give a written notice to the

other Party or Parties involved in the Dispute, stating that the matter is to be referred to arbitration and setting out a brief summary of the Dispute;

- (b) the Party seeking to initiate the arbitration shall send a copy of that notice to the Panel;
- (c) to the extent consistent with this Section M7.6, the arbitration shall be subject to the Arbitration Act 1996 and the rules of the London Court of International Arbitration (the **LCIA**);
- (d) the arbitrator shall be a person appointed by agreement between the Parties involved in the Dispute, or (in the absence of agreement within 10 Working Days following the notice under Section M7.6(a)) appointed by the LCIA;
- (e) (unless otherwise agreed by the Parties involved in the Dispute) the arbitration proceedings shall take place in London and in the English language;
- (f) the Parties involved in the Dispute agree to keep the arbitration process (and the decision or anything said, done or produced in or in relation to the arbitration process) confidential, except as may be required by Laws and Directives and provided that representatives of the Panel may attend the arbitration and receive a copy of the decision;
- (g) the Panel shall treat the decision and all other information relating to the arbitration as confidential, and Section M4.10 (Confidentiality and the Panel) shall apply to the decision and such information;
- (h) the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996; and
- (i) subject to any contrary award by the arbitrator, each Party involved in the Dispute shall bear its own costs in relation to the arbitration and an equal share of the fees and expenses of the arbitrator.

M7.7 The decision of the arbitrator pursuant to a reference in accordance with Section M7.6 shall be final and binding on each of the Parties to the arbitration, except where

there is a serious irregularity (as defined in section 68(2) of the Arbitration Act 1996) or a Party successfully appeals the arbitral award on a point of law in accordance with section 69 of the Arbitration Act 1996. Each Party shall comply with such decision provided that (for the avoidance of doubt) the arbitrator shall not have the power to modify this Code.

DCC Service Provider Disputes

- M7.8 If any Dispute that is subject to determination by arbitration involves the DCC, and the DCC considers that the Dispute relates to a dispute it has under or in relation to one or more of the DCC Service Provider Contracts, then the DCC may join the relevant DCC Service Provider or DCC Service Providers to the arbitration, so that the arbitrator hears and determines the disputes under or in relation to the DCC Service Provider Contracts simultaneously with the Dispute. The Parties other than the DCC hereby consent to such joining of disputes.
- M7.9 Where the DCC is aware of any dispute arising under or in relation to one or more DCC Service Provider Contracts that may reasonably relate to a Dispute or potential Dispute that would be subject to arbitration, then the DCC may give notice of that dispute to the Panel and to any or all of the other Parties.
- M7.10 Where the DCC gives notice to a Party under Section M7.9, such notice shall only be valid if the DCC gives reasonable detail of such dispute and expressly refers to the waiver that may potentially be given by that Party under Section M7.12.
- M7.11 Within 30 Working Days after the DCC has given a valid notification to a Party under Section M7.9 in respect of a dispute under or in relation to a DCC Service Provider Contract, that Party should give notice to the DCC of any Dispute that that Party wishes to bring in relation to that dispute. Where that Dispute is to be resolved by arbitration, the DCC may then exercise its rights under Section M7.8.
- M7.12 Where the DCC gives notice to a Party in accordance with Section M7.9, and where that Party does not give notice to the DCC in accordance with Section M7.11, then that Party shall be deemed to have waived any right it may have to bring a claim against the DCC in respect of the subject matter of the dispute in question (and shall, notwithstanding Section M2 (Limitations of Liability), indemnify the DCC in full

against any Liabilities incurred by the DCC as a consequence of that Party bringing any such claim).

Claims by Third Parties

M7.13 Subject to Section M7.14, if any person who is not a Party to this Code brings any legal proceedings in any court against any Party and that Party considers such legal proceedings to raise or involve issues that are or would be the subject matter of a Dispute or potential Dispute that would (but for this Section M7.13) be subject to arbitration, then (in lieu of arbitration) the court in which the legal proceedings have been commenced shall hear and determine the legal proceedings and the Dispute between such person and the Parties.

M7.14 If any person who is not a Party to this Code brings any legal proceedings in any court against any Party and that Party considers such legal proceedings to raise or involve issues that are the subject matter of a Dispute that is already subject to an ongoing arbitration, then Section M7.13 shall only apply where the arbitrator in that arbitration determines that such legal proceedings raise or involve issues that are the subject matter of the Dispute.

Injunctive Relief

M7.15 Nothing in this Section M7 shall prevent a Party seeking interim or interlocutory remedies in any court in relation to any breach of this Code.

SECCo

M7.16 The provisions of this Section M7 (and the definitions used in this Section) shall apply to SECCo as if SECCo was a Party.

M8 SUSPENSION, EXPULSION AND WITHDRAWAL

Events of Default

- M8.1 An “**Event of Default**” shall have occurred in respect of any Party other than the DCC (the “**Defaulting Party**”) if one or more of the following occurs in respect of the Defaulting Party:
- (a) the Defaulting Party has not, during any period of six consecutive months, taken a Core Communication Service and/or made a request for a formal offer for a proposed Elective Communication Service;
 - (b) the Defaulting Party has committed a material breach of Section I1.2 (Consumption Data, User Obligations);
 - (c) the Defaulting Party has failed in a material respect to comply with an enforcement notice served by the Information Commissioner pursuant to section 40 of the Data Protection Act, whether such failure has been notified to the Panel by the Information Commissioner or the Panel has otherwise become aware of such failure;
 - (d) the DCC has served a notice on the Defaulting Party in accordance with Section J2.1 (Notification of Payment Failure) in respect of Charges payable by the Defaulting Party, and such Charges have not been paid within three (3) Working Days following that notice;
 - (e) the DCC has issued a notice to the Defaulting Party in accordance with Section J3.14 (Breach of Credit Cover Obligations) in respect of Credit Support required to be procured by the Defaulting Party, and such Credit Support has not been provided within three (3) Working Days following that notice;
 - (f) the Defaulting Party has not paid any amount other than in respect of the Charges (failures in respect of which are subject to Section M8.1(d)) which the Defaulting Party is due to have paid under this Code, and does not remedy such failure within five (5) Working Days after a notice requiring it to do so (which notice must refer to this Section M8);

- (g) the Defaulting Party has made a material misrepresentation in its Application Form;
- (h) the Defaulting Party is in material breach of any of its material obligations under this Code and/or any Bilateral Agreement (other than those that are subject to another paragraph of this Section M8.1) and the Defaulting Party has failed to remedy the breach (or to desist from the breach and mitigate its effects insofar as it is reasonably practicable to do so) within 20 Working Days after a notice requiring it to do so (which notice must describe the breach in reasonable detail and refer to this Section M8); and/or
- (i) the Defaulting Party suffers an Insolvency Type Event.

Notification of an Event of Default

M8.2 Where the DCC or the Code Administrator or the Secretariat becomes aware that an Event of Default has occurred in respect of a Party, then the DCC or the Code Administrator or the Secretariat (as applicable) shall notify the Panel of such occurrence. Where any Party other than the DCC becomes aware that an Event of Default has occurred in respect of another Party, the Party that has become so aware may notify the Panel of such occurrence.

Investigation of an Event of Default

M8.3 Where the Panel has reason to believe that an Event of Default may have occurred in respect of a Party, then the Panel may investigate the circumstances relating to such potential Event of Default. Each Party shall provide all reasonable Data and cooperation as the Panel may reasonably request in respect of any such investigation.

Consequences of an Event of Default

M8.4 Where an Event of Default occurs in respect of a Defaulting Party and while that Event of Default is continuing, the Panel may take one or more of the following steps (in each case to the extent and at such time as the Panel sees fit, having regard to all the circumstances of the Event of Default and any representations made by any Competent Authority or any Party, provided that the Panel must always take the steps referred to in Section M8.4(a) and (b)):

- (a) notify the Authority that such Event of Default has occurred in respect of the Defaulting Party;
- (b) notify the Defaulting Party that such Event of Default has occurred in respect of it;
- (c) notify each other Party that such Event of Default has occurred in respect of the Defaulting Party;
- (d) require the Defaulting Party to give effect to a reasonable remedial action plan designed to remedy and/or mitigate the effects of the Event of Default within a reasonable timescale (a material breach of which plan shall in itself constitute an Event of Default);
- (e) suspend one or more of the Defaulting Party's rights referred to in Section M8.5 (following such prior consultation with the Defaulting Party as the Panel considers appropriate);
- (f) instruct the DCC to suspend (in which case the DCC shall, within one Working Day thereafter, suspend) one or more of the Defaulting Party's rights referred to in Section M8.6 (following such prior consultation with the Defaulting Party as the Panel considers appropriate); and/or
- (g) expel the Defaulting Party from this Code subject to and in accordance with Section M8.10.

Suspension of Rights

M8.5 The rights referred to in Section M8.4(e) are:

- (a) the right of the Defaulting Party (and each other member of its Voting Group) to vote in Panel Member elections under Section C4 (Panel Elections);
- (b) the right of the Defaulting Party to raise new Modification Proposals under Section D (Modifications); and
- (c) the right of the Defaulting Party to influence the appointment of a Change Board Member, so that:

- (i) in the case of a Supplier Party, the Change Board Member appointed by the Voting Group of which that Supplier Party forms part shall be suspended; or
- (ii) in the case of any Party other than a Supplier Party, the Secretariat shall ignore the views of that Party when considering any request to appoint or remove a Change Board Member appointed by the Party Category of which that Party forms part.

M8.6 The rights referred to in Section M8.4(f) are:

- (a) the right of the Defaulting Party to request or receive any or all Other User Core Services;
- (b) (subject to the Authority's approval) the right of the Defaulting Party to receive any or all Core Communication Services other than Other User Core Services;
- (c) (subject to the Authority's approval) the right of the Defaulting Party to receive any or all Elective Communication Services; and
- (d) (subject to the Authority's approval) the right of the Defaulting Party to initiate Enrolment of Smart Metering Systems.

M8.7 The suspension of any or all of the Defaulting Party's rights referred to in Section M8.5 or M8.6 shall be without prejudice to the Defaulting Party's obligations and Liabilities under and in relation to this Code (whether accruing prior to, during, or after such suspension). Without prejudice to the generality of the foregoing, the Defaulting Party shall continue to be liable for all Charges that it is or becomes liable to pay under this Code.

M8.8 Where the Panel has, pursuant to Section M8.4(e) and/or (f), suspended a Party's rights, then the Panel may at any time thereafter end such suspension (provided that, in the case of rights that the Panel cannot suspend without the Authority's approval, the Panel may not end such suspension without the Authority's approval).

Ceasing to be a Party

M8.9 A Party that holds an Energy Licence that requires that Party to be a party to this Code:

- (a) cannot be expelled from this Code by the Panel unless the Authority has approved such expulsion (and, in the case of any such approval, Section M8.10(a) shall apply as if the Party did not hold an Energy Licence that requires it to be a party to this Code); and
- (b) cannot voluntarily cease to be a Party while that Energy Licence remains in force.

M8.10 A Party that does not hold an Energy Licence that requires that Party to be a party to this Code:

- (a) may (while an Event of Default is continuing in respect of that Party) be expelled from this Code with effect from such time on such date as the Panel may resolve (where the Panel considers it reasonable to do so in the circumstances); and
- (b) may give notice to the Panel of that Party's intention to voluntarily cease to be a Party and of the time on the date from which it wishes to cease to be a Party. The Panel shall, following receipt of such a notice, resolve that that Party shall cease to be a Party with effect from the time on the date notified.

M8.11 The Panel shall notify the Authority and each remaining Party in the event that any person is expelled from this Code or voluntarily ceases to be a Party.

Appeal to the Authority

M8.12 Where the Panel resolves to suspend the rights of a Party and/or to expel a Party pursuant to this Section M, then that Party may at any subsequent time apply to the Authority to have such suspension lifted or to be reinstated as a Party. The Parties and the Panel shall give effect to any decision of the Authority pursuant to such application, which shall be final and binding for the purposes of this Code.

Consequences of Ceasing to be a Party

M8.13 Where the Panel makes a resolution in respect of a Party in accordance with Section M8.10, then with effect from the time on the date at which such resolutions are effective:

- (a) that Party's accession to this Code shall be terminated, and it shall cease to be a Party; and
- (b) subject to Section M8.14, that Party shall cease to have any rights or obligations under this Code or any Bilateral Agreement.

M8.14 The termination of a Party's accession to this Code shall be without prejudice to:

- (a) those rights and obligations under this Code and/or any Bilateral Agreement that may have accrued prior to such termination; or
- (b) those provisions of this Code or any Bilateral Agreement that are expressly or by implication intended to survive such termination, including Sections A (Definitions and Interpretation), J (Charges), M2 (Limitations of Liability), M5 (Intellectual Property Rights), M7 (Dispute Resolution), M10 (Notices), and M11 (Miscellaneous).

M9 TRANSFER OF DCC LICENCE

Introduction

M9.1 This Section M9 is included in accordance with Condition 22 of the DCC Licence, and provides for the transfer of (amongst other things) the DCC's interest in this Code to a Successor Licensee.

Application and Interpretation of this Section M9

M9.2 This Section M9 shall only apply where two persons hold a DCC Licence at the same time. In such circumstances:

- (a) “**Transfer Date**” has the meaning given to that expression in Condition 43 of the earlier of the two DCC Licences;
- (b) until the Transfer Date, the holder of the earlier DCC Licence shall be “**the DCC**” for the purposes of this Code, and the holder of the later DCC Licence shall be “**the Successor Licensee**”; and
- (c) from the Transfer Date, all references in this Code to “**the DCC**” shall be references to the holder of the later DCC Licence.

Novation Agreement

M9.3 Where this Section M9 applies, the DCC and the Successor Licensee shall each enter into a novation agreement in a form approved by the Authority.

M9.4 Such novation agreement will, with effect from the Transfer Date, novate to the Successor Licensee all rights and obligations of the DCC under the agreements referred to in Section M9.5 (including all rights obligations and liabilities of the DCC that may have accrued in respect of the period prior to the Transfer Date).

M9.5 Such novation agreement shall be in respect of the following agreements:

- (a) the Framework Agreement;
- (b) all Accession Agreements; and

(c) all Bilateral Agreements.

M9.6 The DCC shall enter into such novation agreement in (to the extent applicable) its own right, and also (to the extent applicable) on behalf of the Parties (which shall include SECCo) that are counterparties to the agreements referred to in Section M9.5.

DCC Authority to enter into Accession Agreements

M9.7 Each Party (which shall include SECCo) hereby irrevocably and unconditionally authorises the DCC to execute and deliver, on behalf of such Party, a novation agreement as envisaged by this Section M9.

Co-operation

M9.8 Each Party shall do all such things as the Panel may reasonably request in relation to the novation of the agreements referred to in Section M9.5 from the DCC to the Successor DCC.

M10 NOTICES

DCC User Gateway

M10.1 Certain communications are to be sent via the DCC User Gateway in accordance with Section H3 (DCC User Gateway).

Other Notices

M10.2 Save as provided in Section M10.1, any notice or other communication to be made by one Party to another Party under or in connection with this Code or any Bilateral Agreement shall be in writing and shall be:

- (a) delivered personally or by courier;
- (b) sent by first class prepaid post; or
- (c) sent by fax or email.

M10.3 All notices and communications as described in Section M10.2 shall be sent to the physical address, fax number or email address specified for such purpose in the relevant Party's Party Details. Where no fax or email address is specified for a particular type of notice or communication, notice may not be given in that manner.

M10.4 Subject to Section M10.5, all notices and communications as described in Section M10.2 shall be deemed to be received by the recipient:

- (a) if delivered personally or by courier, when left at the address set out for such purpose in the relevant Party's Party Details;
- (b) if sent by first class prepaid post, two Working Days after the date of posting;
- (c) if sent by fax, upon production by the sender's equipment of a transmission report indicating that the fax was sent to the fax number of the recipient in full without error (provided that a copy of the notice is sent by personal or courier delivery or by first class prepaid post within 1 Working Day after the fax is sent); and
- (d) if sent by email, one hour after being sent, unless an error message is received

by the sender in respect of that email before that hour has elapsed (provided that a copy of the notice is sent by personal or courier delivery or by first class prepaid post within 1 Working Day after the email is sent).

M10.5 Any notice that would otherwise be deemed to be received on a day that is not a Working Day, or after 17.30 hours on a Working Day, shall be deemed to have been received at 9.00 hours on the next following Working Day.

The Panel, Code Administrator, Secretariat and SECCo

M10.6 Notices between a Party and any of the Panel, the Code Administrator, the Secretariat or SECCo shall also be subject to this Section M. Notices to any of the Panel, the Code Administrator, the Secretariat or SECCo shall be sent to the relevant address given for such purpose, from time to time, on the Website (or, in the absence of any such address, to SECCo's registered office).

Process Agent

M10.7 Any Party (being a natural person) who is not resident in Great Britain or (not being a natural person) which is not incorporated in Great Britain shall, as part of its Party Details, provide an address in Great Britain for service of process on its behalf in any proceedings under or in relation to this Code and/or any Bilateral Agreement. Where any such Party fails at any time to provide such address, such Party shall be deemed to have appointed SECCo as its agent to accept such service of process on its behalf.

M11 MISCELLANEOUS

Entire Code

M11.1 This Code and any document referred to herein represents the entirety of the contractual arrangements between the Parties in relation to the subject matter of this Code. This Code and any document referred to herein supersedes any previous contract between any of the Parties with respect to the subject matter of this Code.

M11.2 Each Party confirms that, except as provided in this Code and without prejudice to any claim for fraudulent misrepresentation, it has not relied on any representation, warranty or undertaking which is not contained in this Code or any document referred to herein.

Severability

M11.3 If any provision of this Code shall be held to be invalid or unenforceable by a judgement or decision of any Competent Authority, that provision shall be deemed severable and the remainder of this Code shall remain valid and enforceable to the fullest extent permitted by law.

Waivers

M11.4 The failure by any Party to exercise, or the delay by any Party in exercising, any right, power, privilege or remedy provided under this Code or by law shall not constitute a waiver thereof nor of any other right, power, privilege or remedy. No single or partial exercise of any such right, power, privilege or remedy shall preclude any future exercise thereof or the exercise of any other right, power, privilege or remedy.

Third Party Rights

M11.5 The persons referred to in Sections C3.12 (Protections for Panel Members and Others) and M2.13(a) (Other Matters) shall be entitled to enforce their rights under those Sections in accordance with the Contracts (Rights of Third Parties) Act 1999.

M11.6 Subject to Section M11.5, the Parties do not intend that any of the terms or conditions of this Code will be enforceable by a third party (whether by virtue of the

Contracts (Rights of Third Parties) Act 1999 or otherwise).

M11.7 Notwithstanding that a person who is not a Party has the right to enforce particular rights in accordance with Section M11.5, the Parties may vary or terminate this Code in accordance with its terms without requiring the consent of any such person.

Assignment and Sub-contracting

M11.8 Without prejudice to a Party's right to appoint agents (including Supplier Nominated Agents) to exercise that Party's rights, no Party may assign any of its rights under this Code without the prior written consent of the other Parties.

M11.9 Any Party may sub-contract or delegate the performance of any or all of its obligations under this Code to any appropriately qualified and experienced third party, but such Party shall at all times remain liable for the performance of such obligations (and for the acts and omissions of such third party, as if they were the Party's own). It is expressly acknowledged that the DCC has sub-contracted a number of its obligations under this Code to the DCC Service Providers.

Agency

M11.10 Nothing in this Code shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties and no employee of one Party shall be deemed to be or have become an employee of another Party.

M11.11 No Party shall:

- (a) pledge the credit of another Party;
- (b) represent itself as being another Party, or an agent, partner, employee or representative of another Party; or
- (c) hold itself out as having any power or authority to incur any obligation of any nature, express or implied, on behalf of another Party.

Derogations

M11.12 A Party that holds an Energy Licence shall not be obliged to comply with its

obligations under this Code to the extent to which such Party has the benefit of a derogation from the obligation to do so granted by the Authority under such Energy Licence.

Law and Jurisdiction

M11.13 This Code and any dispute or claim arising out of or in connection with it (including non-contractual claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

M11.14 In relation to any dispute or claim arising out of or in connection with this Code (including in respect of non-contractual claims), each Party (subject to Section M7 (Dispute Resolution)) irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales and of Scotland. For the avoidance of doubt, the foregoing shall not limit a Party's right to enforce a judgment or order in any other jurisdiction.

SECCo

M11.15 The provisions of this Section M11 (and the definitions used in this Section) shall apply to SECCo as if SECCo was a Party.

SECTION X: TRANSITION

X1 GENERAL PROVISIONS REGARDING TRANSITION

Overriding Nature of this Section

X1.1 The provisions of this Section X shall apply notwithstanding, and shall override, any other provision of this Code.

Transition Objective

X1.2 The objective to be achieved pursuant to this Section X (the “**Transition Objective**”) is the efficient, economical, co-ordinated, timely, and secure process of transition to the Completion of Implementation.

X1.3 The “**Completion of Implementation**” shall occur on the date designated for the purpose of this Section X1.3 by the Secretary of State (or such person as the Secretary of State may designate for the purposes of this Section X1.3), once the Secretary of State (or the person so designated) is of the opinion that:

- (a) the documents referred to in Section X5 and that the Secretary of State (or the person so designated) considers material to the implementation of this Code have been incorporated into this Code in accordance with that Section;
- (b) the provisions of this Code that the Secretary of State (or the person so designated) considers material to the implementation of this Code apply in full without any variation pursuant to this Section X (or, where any such variations do apply, the requirements of Sections X1.3(c) will still be met despite such variations ending in accordance with Section X1.5(a)); and
- (c) each Party that holds an Energy Licence is (or would be had such Party acted in accordance with Good Industry Practice) reasonably able (on the assumption that such Party acts in accordance with Good Industry Practice) to perform its obligations, and to exercise its rights, under this Code to the extent that the Secretary of State (or the person so designated) considers such obligations or rights material to the implementation of this Code.

X1.4 Before designating a date for the purpose of Section X1.3, the Secretary of State (or the person designated for the purposes of this Section X1.3) must consult the Authority, the Panel and the Parties in respect of the proposed date. Such consultation must allow such period of time as the Secretary of State (or the person so designated) considers appropriate in the circumstances within which representations or objections may be made.

Ending of the Application of this Section X

X1.5 With effect from the earlier of:

- (a) Completion of Implementation; or
- (b) 31 October 2018,

this Section X (and any variations to this Code provided for in, or made by directions pursuant to, this Section X) shall cease to apply (save as set out in Section X5.5), and this Code shall automatically be modified so as to delete this Section X.

General Obligations

X1.6 Each Party shall take all reasonable steps to do all such things as are within its power and necessary or expedient in order to facilitate achievement of the Transition Objective.

X1.7 Each Party shall provide such reasonable co-operation and assistance to the other Parties and to the Panel as may be necessary to facilitate compliance with the provisions of this Section X, and with any variations to this Code provided for in (or made by directions pursuant to) this Section X.

X1.8 Without prejudice to its legal rights, no Party shall take any step, or exercise any right, which is intended to (or might reasonably be expected to) hinder or frustrate the achievement of the Transition Objective.

Information

X1.9 Each Party shall provide to the Secretary of State, in such manner and at such times as the Secretary of State may reasonably require, such Data as the Secretary of State may

reasonably require in order to enable the Secretary of State to assess progress towards (and to facilitate) achievement of the Transition Objective. No Party shall be obliged to provide information under this Section X1.9 where such Party is obliged to provide such information under its Energy Licence, or where such information is expressly excluded from the information that such Party is obliged to provide under its Energy Licence.

X1.10 If a Party is aware of any matter or circumstance which it considers will materially delay or frustrate the achievement of the Transition Objective, that Party shall promptly inform the Secretary of State of such matter or circumstance.

Day-One Elective Communication Services

X1.11 Where the Secretary of State designates one or more draft Bilateral Agreements for the purposes of this Section X1.11 (each of which drafts must specify the potential Elective Communication Services to be provided thereunder, and the DCC's potential counterparty thereunder), then:

- (a) the DCC shall, within 10 Working Days thereafter, make a formal offer to each of the counterparties in question for the Elective Communication Services in question as if Section H7.12 (Formal Offer) applied;
- (b) such offer shall be on the basis of the draft Bilateral Agreement designated by the Secretary of State (subject only to the addition of the applicable Elective Charges, any termination fee and any credit support requirements);
- (c) the counterparty shall be under no obligation to accept such offer; and
- (d) any agreement entered into pursuant to this Section X1.11 shall be a Bilateral Agreement.

Disputes

X1.12 In the event of any dispute between the Parties (or between the Panel and any Party) as to whether a particular Party is obliged to undertake a particular activity pursuant to Section X1.6 to X1.11 (inclusive), a Party (or the Panel) may refer the matter to the Secretary of State (or, where designated by the Secretary of State for such purposes, the Panel or the Authority) for determination (which determination may include a

requirement to comply with such terms and conditions as the person making it considers appropriate in all the circumstances of the case). Any determination by the Secretary of State or by the Authority pursuant to this Section X1.12 shall be final and binding for the purposes of this Section X1. Any determination by the Panel pursuant to this Section X1.12 shall be subject to appeal to the Secretary of State (or, where designated by the Secretary of State for such purposes, to the Authority), the determination of such appeal being final and binding for the purposes of this Section X1.

Modification of this Section X

X1.13 The variations to this Code provided for in, or made by directions pursuant to, this Section X shall not constitute modifications that should be subject to Section D (Modification Process). For the avoidance of doubt, this Section X shall be capable of being modified under Section D (Modification Process).

SECCo

X1.14 The provisions of this Section X1 (and the definitions used in this Section) shall apply to SECCo as if SECCo was a Party.

X2 EFFECTIVE PROVISIONS AT DESIGNATION

Provisions to have Effect from Designation

X2.1 The following Sections, Schedules and SEC Subsidiary Documents shall be effective from the date of this Code's designation (subject to the other provisions of this Section X):

- (a) Section A (Definitions and Interpretation);
- (b) Section B (Accession);
- (c) Section C (Governance);
- (d) Section D (Modification Process);
- (e) Section E (Registration Data);
- (f) Section K (Charging Methodology);
- (g) Section M (General);
- (h) Section X (Transition);
- (i) Schedule 1 (Framework Agreement);
- (j) Schedule 2 (Specimen Accession Agreement);
- (k) Schedule 4 (Establishment of SECCo);
- (l) Schedule 5 (Accession Information); and
- (m) Schedule 6 (Specimen Form Letter of Credit).

Effectiveness of Section J

X2.2 Section J (Charges) shall be effective (subject to the other provisions of this Section X) from the earlier of:

- (a) the date three months after the date of this Code's designation; or
- (b) the date notified by the DCC to the other Original Parties on not less than 10

Working Days prior notice (on the basis that the DCC may only specify one such date from which date all of Section J shall be effective),

provided that the DCC shall be entitled to recover Charges in respect of the period from the designation of this Code.

Variations in respect of Section D

X2.3 Notwithstanding that Section D (Modifications) is stated in Section X2.1 to be effective, it shall, until the date designated by the Secretary of State for the purposes of this Section X2.3, apply as varied by this Section X2.3. The variations to apply pursuant to this Section X2.3 are that Section D (Modifications) is to apply subject to the following:

- (a) only Modification Proposals that are either an Urgent Proposal or a Fast-Track Modification may be raised;
- (b) any Modification Proposal that is raised by a Proposer on the basis that it is urgent, but which is subsequently determined by the Authority (as provided for in Section D4) not to be an Urgent Proposal, shall be cancelled and shall not be progressed;
- (c) the Secretary of State shall be entitled to direct the Panel to cancel or suspend any Modification Proposal, in which case the Panel shall cancel or suspend the Modification Proposal in question and it shall not then be further progressed or implemented (or, in the case of suspension, shall not then be further progressed or implemented until the Secretary of State so directs); and
- (d) the Change Board need not be established on the designation of this Code, but the Panel shall establish the Change Board as soon as reasonably practicable after the designation of this Code, and until the Change Board is established the Panel shall perform the function of the Change Board in respect of Modification Proposals (in which case, the Panel shall vote on whether to approve or reject a Modification Proposal in accordance with the Panel Objectives and on the basis of a simple majority).

Variations in respect of Section E

X2.4 Notwithstanding that Section E (Registration Data) is stated in Section X2.1 to be effective, it shall, until the date designated by the Secretary of State for the purposes of this Section X2.4, apply as varied by this Section X2.4. The variations to apply pursuant to this Section X2.4 are that Section E (Registration Data) is to apply as if:

- (a) the information to be provided under Sections E2.1 and E2.2 is (subject to Section X2.4(b)):
 - (i) each of the MPANs or MPRNs (as applicable);
 - (ii) the Supplier ID and Network Operator ID (as referred to in those Sections) relating to each such MPAN or MPRN;
 - (iii) the Profile Class ID (as referred to in Section E2.1) relating to each such MPAN;
 - (iv) the Market Sector Code (as referred to in Section E2.2) relating to each such MPRN;
- (b) the information to be provided under Section E2.2 in respect of the period until the end of the 15th of December 2013 (or such later date as the Secretary of State may direct) is capable of being provided either by reference to MPRNs or by reference to 'Supply Point Registration Numbers' (as defined in the UNC);
- (c) the text at Section E2.4 and E2.5 (Obligation on the DCC to Provide Data) was deleted;
- (d) the text at Section E2.6 (Frequency and Format of Data Exchange) was replaced with "The Data to be provided in accordance with this Section E2 shall be provided or updated on the last Working Day of each month (or as soon as reasonably practicable thereafter), so as to show the position as at the end of the 15th day of that month"; and
- (e) the text at Section E2.7 (Frequency and Format of Data Exchange) was replaced with "The Data to be provided in accordance with this Section E2

shall be provided in such format, and shall be aggregated in such manner, as the DCC may reasonably require in order to enable the DCC to comply with its obligations under the DCC Licence or this Code”.

Variations in respect of Section J

X2.5 Notwithstanding that Section J (Charges) is stated in Section X2.2 to be effective, it shall, until the date designated by the Secretary of State for the purposes of this Section X2.5, apply as varied by this Section X2.5. The variation to apply pursuant to this Section X2.5 is that, notwithstanding that Section J3 (Credit Cover) is stated to apply to Users, each Party shall be obliged to comply with Section J3 as if each reference therein to “a User” or to “Users” was a reference to “a Party” and “Parties” respectively.

Variations in respect of Section K

X2.6 Notwithstanding that Section K (Charging Methodology) is stated in Section X2.1 to be effective, it shall, until the date designated by the Secretary of State for the purposes of this Section X2.6, apply as varied by this Section X2.6. The variations to apply pursuant to this Section X2.6 are that:

- (a) in respect of the Fixed Charges payable for each of the months up to and including November 2013 (or such later month as the Secretary of State may direct), the DCC shall calculate the Fixed Charges as if there were no Export Suppliers and as if all Export Suppliers were Import Suppliers (and the DCC shall not therefore require data in respect of such months pursuant to Section E2.1 that distinguishes between Import MPANs and Export MPANs); and
- (b) insofar as the Registration Data provided to the DCC under Section E2.2 is by reference to ‘Supply Points’ (as defined in the UNC), rather than MPRNs, the DCC may calculate the number of Mandated Smart Metering Systems (as defined in Section K11.1) by reference to the number of such Supply Points.

Variations in respect of Section M

X2.7 Notwithstanding that Section M (General) is stated in Section X2.1 to be effective, it shall, until the date designated by the Secretary of State for the purposes of this

Section X2.7, apply as varied by this Section X2.7. The variation to apply pursuant to this Section X2.7 is that Section M8.1(a) shall not apply.

General

X2.8 Where a Section is stated in this Section X2 to apply subject to more than one variation, then the Secretary of State may:

- (a) designate different dates from which each such variation is to cease to apply; and/or
- (b) designate a date from which one or more such variations are to cease to apply (without prejudice to the continued application of the other such variations).

X2.9 Before designating any dates for the purpose of this Section X2, the Secretary of State must consult the Authority, the Panel and the Parties in respect of the proposed date. Such consultation must allow such period of time as the Secretary of State considers appropriate in the circumstances within which to make representations or objections with respect to the proposed date. The requirement for consultation may be satisfied by consultation before, as well as after, the designation of this Code.

X3 PROVISIONS TO BECOME EFFECTIVE FOLLOWING DESIGNATION

Designation of Effective Dates

X3.1 Each Section, Schedule and SEC Subsidiary Document (or any part thereof) not referred to in Section X2.1 or X2.2 shall only be effective from the date designated in respect of that provision by the Secretary of State for the purpose of this Section X3.

Provisions to be Effective Subject to Variations

X3.2 In designating the date from which a provision of this Code is to be effective for the purpose of this Section X3, the Secretary of State may direct that such provision is to apply subject to such variation as is necessary or expedient in order to facilitate achievement of the Transition Objective (which variation may or may not be specified to apply until a specified date).

X3.3 Where the Secretary of State directs that a provision of this Code is to apply subject to such a variation, the Secretary of State may subsequently designate a date from which the provision is to apply without variation.

X3.4 Where the Secretary of State directs that a provision of this Code is to apply subject to more than one such variation, then the Secretary of State may:

- (a) designate different dates from which each such variation is to cease to apply; and/or
- (b) designate a date from which one or more such variations are to cease to apply (without prejudice to the continued application of the other such variations).

General

X3.5 Before designating any dates and/or making any directions for the purpose of this Section X3, the Secretary of State must consult the Authority, the Panel and the Parties in respect of the proposed date and/or the draft direction (as applicable). Such consultation must allow such period of time as the Secretary of State considers appropriate in the circumstances within which to make representations or objections with respect to the proposed date and/or the draft direction (as applicable).

X4 GOVERNANCE SET-UP ARRANGEMENTS

General

X4.1 The provisions of Section C (Governance) shall have effect subject to the provisions of this Section X4.

Elected Members

X4.2 The Elected Members to be appointed on the designation of this Code shall be the individuals nominated by the Secretary of State for the purposes of this Section X4.2 (chosen on the basis of the election process administered by the Secretary of State on behalf of prospective Parties prior to the designation of this Code).

X4.3 Of the persons appointed as Elected Members in accordance with Section X4.2:

- (a) certain of them shall retire 12 months after the designation of this Code; and
- (b) certain of them shall retire 24 months after the designation of this Code,

as specified in the document by which they are nominated by the Secretary of State for the purposes of Section X4.2.

Panel Chair

X4.4 There shall be no separate Panel Chair on the designation of this Code. The Panel Members shall select (and may deselect and reselect) from among the Elected Members a person to act as Panel Chair until a person is appointed as Panel Chair pursuant to Section X4.6.

X4.5 The Elected Member acting, from time to time, as Panel Chair in accordance with Section X4.4 shall retain his or her vote as a Panel Member, but shall have no casting vote as Panel Chair.

X4.6 The Panel shall appoint a separate Panel Chair by a date no later than five months after the designation of this Code. The Panel Chair shall be appointed in accordance with a process developed by the Panel for such purpose; provided that such process must be designed to ensure that:

- (a) the candidate selected is sufficiently independent of any particular Party or class of Parties;
- (b) the appointment is conditional on the Authority approving the candidate;
- (c) the Panel Chair is appointed for a three-year term (following which he or she can apply to be re-appointed);
- (d) the Panel Chair is remunerated at a reasonable rate;
- (e) the Panel Chair's appointment is subject to Section C3.8 (Panel Member Confirmation) and terms equivalent to those set out in Section C4.6 (Removal of Elected Members); and
- (f) the Panel Chair can be required to continue in office for a reasonable period following the end of his or her term of office in the event of any delay in appointing his or her successor.

X4.7 Until such time as a separate Panel Chair has been appointed pursuant to Section X4.6, the Panel Chair shall only be entitled to appoint an additional Panel Member under Section C3.6 (Panel Chair Appointee) with the unanimous approval of the Panel.

DCC Member and Consumer Members

X4.8 The DCC Member and the Consumer Members to be appointed on the designation of this Code shall be the individuals nominated as such by the Secretary of State for the purposes of this Section X4.8.

Code Administrator and Secretariat

X4.9 The Panel shall, on the designation of this Code, be deemed to have appointed as Code Administrator and Secretariat such person or persons as the Secretary of State nominates for the purposes of this Section X4.9 (chosen on the basis of the procurement process administered by the Secretary of State on behalf of the prospective Panel prior to the designation of this Code).

X4.10 As soon as reasonably practicable following the designation of this Code, the Panel shall direct SECCo to enter into contracts with such person or persons under which

they are to perform the roles of Code Administrator and Secretariat. Such contracts shall be on terms and conditions approved by the Secretary of State for the purposes of this Section X4.10.

X4.11 Without prejudice to the ongoing duties of the Panel, the appointments of, and contracts with, the Code Administrator and Secretariat made in accordance with this Section X4 are deemed to have been properly made.

Recoverable Costs

X4.12 The requirement for Recoverable Costs to be provided for in, or otherwise consistent with, an Approved Budget (as set out in Section C8.2 (SEC Costs and Expenses)) shall not apply until such time as the first Approved Budget is established. The Panel shall establish the first Approved Budget (to cover the period from the designation of this Code) as soon as reasonably practicable following the designation of this Code.

X5 INCORPORATION OF CERTAIN DOCUMENTS INTO THIS CODE

Smart Metering Equipment Technical Specification

- X5.1 The document designated by the Secretary of State as the Smart Metering Technical Specification under the DCC Licence shall, from the date designated by the Secretary of State for the purpose of this Section X5.1, be incorporated into this Code as the Schedule specified in such designation.

Communications Hub Technical Specification

- X5.2 The document designated by the Secretary of State as the Communications Hub Technical Specification under the DCC Licence shall, from the date designated by the Secretary of State for the purpose of this Section X5.2, be incorporated into this Code as the Schedule specified in such designation.

Other Technical Specifications

- X5.3 Each of the technical specifications and procedural or associated documents designated by the Secretary of State under paragraph 26(c) of Condition 22 of the DCC Licence shall, from the relevant date designated by the Secretary of State for the purpose of such document and this Section X5.3, be incorporated into this Code as the Schedule or SEC Subsidiary Document specified in such designation.

Supplementary Provisions

- X5.4 Paragraph 28 of Condition 22 of the DCC Licence includes a power for the Secretary of State to specify supplementary, incidental, consequential, governance or other provisions which are to have effect in this Code from the date designated for such purpose by the Secretary of State. This Code shall automatically be amended so as to include such provisions with effect from such date.

General

- X5.5 The incorporation of documents into this Code pursuant to this Section X5 (and any provisions made pursuant to Section X5.4) shall not constitute a modification that should be subject to Section D (Modification Process). The incorporation of documents into this Code pursuant to this Section X5 (and any provisions made

pursuant to Section X5.4) shall not constitute a variation of this Code that is time limited in accordance with Section X1.5 (and such documents and provisions shall remain part of this Code notwithstanding the deletion of this Section X on Completion of Implementation).

- X5.6 The documents incorporated into this Code pursuant to this Section X5 (and any provision made pursuant to Section X5.4) shall, from the date of their incorporation, be subject to modification in accordance with the provisions of this Code.
- X5.7 Before designating any dates for the purpose of this Section X5, the Secretary of State must consult the Authority, the Panel and the Parties in respect of the proposed date. Such consultation must allow such period of time as the Secretary of State considers appropriate in the circumstances within which to make representations or objections with respect to the proposed date to be designated. The requirement for consultation may be satisfied by consultation before, as well as after, the designation of this Code.
- X5.8 Before designating any date from which a document is to be incorporated into this Code pursuant to this Section X5, the content of such document must have been subject to such consultation as the Secretary of State considers appropriate in the circumstances (whether or not under this Code, whether or not undertaken by the Secretary of State and whether before or after the designation of this Code).

X6 TRANSITIONAL VARIATIONS

Status of this Section X6

X6.1 This Section X6 is without prejudice to Section D (Modification Process), as (where applicable) varied pursuant to Section X2.

Secretary of State's Power to Vary for Purposes of Transition

X6.2 In pursuance of facilitating the achievement of the Transition Objective, the Secretary of State may direct that such provisions of this Code as the Secretary of State may specify are to apply subject to such variations as the Secretary of State may specify.

X6.3 Such a direction shall only be validly made if it specifies a date or dates from which the specified provision or provisions shall apply without variation. The Secretary of State may subsequently designate an earlier date from which the relevant provision is to apply without variation.

X6.4 The purposes for which such directions may be made includes purposes relating to the design, trialling, testing, set-up, integration, commencement and proving of the DCC Systems and the User Systems and the processes and procedures relating to the SEC Arrangements.

X6.5 The variations referred to in Section X6.2 may suspend the application of specified provisions of this Code and/or specify additional provisions to apply in this Code, and may include variations which:

- (a) add additional limitations on Liability provided for in this Code;
- (b) provide for indemnities against Liabilities to which a Party might be exposed; and/or
- (c) provide for the referral to, and final determination by, the Secretary of State (or, where designated by the Secretary of State for such purposes, the Panel or the Authority) of certain Disputes.

General

X6.6 Before designating any dates and/or making any directions for the purpose of this

Section X6, the Secretary of State must consult the Authority, the Panel and the Parties in respect of the proposed date and/or the draft direction (as applicable). Such consultation must allow such period of time as the Secretary of State considers appropriate in the circumstances within which representations or objections may be made.

SEC SCHEDULE 1 – FRAMEWORK AGREEMENT

Dated: _____ **2013**

The Original Parties

and

Smart Energy Code Company Limited

**Smart Energy Code
Framework Agreement**

THIS FRAMEWORK AGREEMENT is made on 2013

BETWEEN:

- (1) the persons whose details are set out in the Schedule (the “**Original Parties**”); and
- (2) **Smart Energy Code Company Limited** a company incorporated in England and Wales with company number 08430267 (“**SECCo**”).

WHEREAS

- A) Certain of the Original Parties are the holders of Energy Licences that oblige them to be a party to, and to comply with, the Smart Energy Code.
- B) The Original Parties that do not hold an Energy Licence, or do not hold an Energy Licence that obliges them to be party to the Smart Energy Code, have chosen to become a party to the Smart Energy Code in order to receive Services from the DCC.
- C) SECCo is a company established to facilitate the operation of the Smart Energy Code.
- D) The Original Parties and SECCo have agreed to give effect to, and to be bound by, the Smart Energy Code in accordance with this Framework Agreement.

NOW IT IS HEREBY AGREED as follows:

1 Interpretation

- 1.1 In this Framework Agreement, including the recitals hereto, “**Smart Energy Code**” means the code of that name designated by the Secretary of State pursuant to the smart meter communication licences granted pursuant to the Electricity Act 1989 and the Gas Act 1986, as such code is modified from time to time in accordance with its provisions.
- 1.2 Subject to clause 1.1 above, the words and expressions used in this Framework Agreement shall be construed and interpreted in accordance with the definitions and provisions regarding interpretation set out in Section A (Definitions and Interpretation) of the Smart Energy Code, as if those definitions and provisions

regarding interpretation were set out in this Framework Agreement and as if the references therein to “this Code” were to “this Framework Agreement”.

2 Compliance with the Smart Energy Code

- 2.1 With effect from the date hereof, SECCo and each of the Original Parties hereby undertakes, for the benefit of each other Party from time to time, to comply with the Smart Energy Code in accordance with, and subject to, its terms and conditions.

3 Identity of the Parties

- 3.1 SECCo and each of the Original Parties acknowledges that it has agreed a mechanism (set out in Section B (Accession) of the Smart Energy Code) by which New Parties may become bound by the Smart Energy Code, each of whom will then become a Party for the purposes of clause 2 above (and otherwise).
- 3.2 Each of the Original Parties acknowledges that it has agreed a mechanism (set out in Section M8 (Suspension, Expulsion and Withdrawal) of the Smart Energy Code) by which it may cease to be bound by the Smart Energy Code, from which time it will (subject to Section M8 of the Smart Energy Code) cease to be obliged to comply with the Smart Energy Code.
- 3.3 SECCo and each of the Original Parties acknowledges that it has agreed a mechanism (set out in Section M8 (Suspension, Expulsion and Withdrawal) of the Smart Energy Code) by which other Parties may cease to be bound by the Smart Energy Code, from which time such other Parties will (subject to Section M8 of the Smart Energy Code) cease to be a Party for the purposes of clause 2 above (and otherwise).

4 Party Details

- 4.1 The Party Details for each of the Original Parties shall (as at the date hereof, and subject to future amendment in accordance with Section M6 (Party Details) of the Smart Energy Code) be those details set out as such in the Schedule.

5 Third Party Rights

- 5.1 Without prejudice to any provisions of the Smart Energy Code permitting enforcement of the Smart Energy Code by third parties, the Original Parties do not

intend that any of the terms or conditions of this Framework Agreement will be enforceable by a third party (whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise).

6 Counterparts

- 6.1 This Framework Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. The counterpart executed by each of the Original Parties shall attach a schedule containing details of the relevant Original Party, all of which schedules together shall comprise the “**Schedule**”.

7 Governing Law and Jurisdiction

- 7.1 This Framework Agreement and any dispute or claim arising out of or in connection with it (including non-contractual claims) shall be governed by, and construed in accordance with, the laws specified in Section M11 (Miscellaneous) of the Smart Energy Code from time to time for the purpose of disputes or claims arising out of or in connection with the Smart Energy Code.
- 7.2 In relation to any dispute or claim arising out of or in connection with this Framework Agreement (including in respect of non-contractual claims), each of the Original Parties and SECCo irrevocably agrees to submit to the exclusive jurisdiction of the relevant person, panel, court or other tribunal specified in Section M7 (Dispute Resolution) of the Smart Energy Code from time to time for the purpose of disputes or claims of that nature.

THIS FRAMEWORK AGREEMENT has been executed and delivered as a **DEED** on the date first stated above.

Executed and delivered as a deed by

.....
Print full name of Original Party *Print name of attorney*

acting by an attorney appointed
under a power of attorney

Signature

In the presence of:

.....
Print name of witness

Signature

Address

OR

Executed and delivered as a deed by

.....
Print full name of Original Party *Print name of person signing*

acting by two directors or a director
and the company secretary

Signature

.....
Print name of person signing

Signature

Schedule to the Framework Agreement – Original Parties

- 1 The Party's full name.
- 2 Whether the Party is a company or a natural person or a partnership etc.
- 3 The Party's jurisdiction of incorporation (if applicable).
- 4 The Party's registered number (if applicable).
- 5 The Party's registered address (or, if not applicable, its principal address).
- 6 Where the Party is incorporated or resident outside Great Britain, an address in Great Britain for the receipt of legal notices on the Party's behalf.
- 7 The Party's VAT registration number (if applicable).
- 8 The Party's address for invoices under the Code.
- 9 The Party's address or addresses for all other notices under the Code.
- 10 The Party Category into which the Party considers it will initially fall.
- 11 The Energy Licences held by the Party (including any for which it has applied).
- 12 Details of any Parties that are Affiliates of the Party (where the Party is a company).
- 13 Where the Party holds one or more Energy Licences, details of any unique identifiers by which the Party is identified under the MRA and/or the UNC (as applicable).

SEC SCHEDULE 2 – ACCESSION AGREEMENT

Dated: _____ **2[XXX]**

[New Party]

and

Smart Energy Code Company Limited

**Smart Energy Code
Accession Agreement**

THIS ACCESSION AGREEMENT is made on 2[XXX]

BETWEEN:

- (1) [TBC] a company incorporated in [*Jurisdiction*] (registered number [TBC]) whose registered office is at [TBC] (the “**New Party**”); and
- (2) **Smart Energy Code Company Limited** a company incorporated in England and Wales with company number 08430267 (“**SECCo**”).

WHEREAS

- A) The New Party is either obliged by its Energy Licence to become a party to the Smart Energy Code, or wishes to become a party to the Smart Energy Code in order to receive Services from the DCC.
- B) SECCo is authorised by the Parties to the Smart Energy Code to accept the accession to the Smart Energy Code of the New Party.

NOW IT IS HEREBY AGREED as follows:

1 Interpretation

- 1.1 In this Accession Agreement, including the recitals hereto, “**Smart Energy Code**” means the code of that name designated by the Secretary of State pursuant to the smart meter communication licences granted pursuant to the Electricity Act 1989 and the Gas Act 1986, as such code is modified from time to time in accordance with its provisions.
- 1.2 Subject to clause 1.1 above, the words and expressions used in this Accession Agreement shall be construed and interpreted in accordance with the definitions and provisions regarding interpretation set out in Section A (Definitions and Interpretation) of the Smart Energy Code, as if those definitions and provisions regarding interpretation were set out in this Accession Agreement and as if the references therein to “this Code” were to “this Accession Agreement”.

2 Compliance with the Smart Energy Code

- 2.1 With effect from the date hereof, the New Party hereby undertakes, for the benefit of SECCo and each other Party from time to time, to comply with the Smart Energy Code in accordance with, and subject to, its terms and conditions.

3 Identity of the Parties

- 3.1 The New Party acknowledges that the Original Parties became bound by the Smart Energy Code pursuant to the Framework Agreement, and that each such Original Party is a Party for the purposes of clause 2 above (and otherwise).
- 3.2 The New Party acknowledges that it has agreed a mechanism (set out in Section B (Accession) of the Smart Energy Code) by which New Parties other than itself may have (or may in the future) become bound by the Smart Energy Code, each of whom is (or will then become) a Party for the purposes of clause 2 above (and otherwise).
- 3.3 The New Party acknowledges that it has agreed a mechanism (set out in Section M8 (Suspension, Expulsion and Withdrawal) of the Smart Energy Code) by which it may cease to be bound by the Smart Energy Code, from which time it will (subject to Section M8 of the Smart Energy Code) cease to be obliged to comply with the Smart Energy Code.
- 3.4 The New Party acknowledges that it has agreed a mechanism (set out in Section M8 (Suspension, Expulsion and Withdrawal) of the Smart Energy Code) by which other Parties may cease to be bound by the Smart Energy Code, from which time such other Parties will (subject to Section M8 of the Smart Energy Code) cease to be a Party for the purposes of clause 2 above (and otherwise).

4 Party Details

- 4.1 The New Party's Party Details shall (as at the date hereof, and subject to future amendment in accordance with Section M6 (Party Details) of the Smart Energy Code) be those details set out as such in the Schedule.

5 Third Party Rights

- 5.1 Without prejudice to any provisions of the Smart Energy Code permitting

enforcement of the Smart Energy Code by third parties, neither the New Party nor SECCo intends that any of the terms or conditions of this Accession Agreement will be enforceable by a third party (whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise).

6 Execution

- 6.1 This Accession Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.
- 6.2 Where the Code Administrator has provided unexecuted counterparts of this Accession Agreement to the New Party, the New Party should sign (but not date) both counterparts of this Accession Agreement, and return them to the Code Administrator. In doing so, the New Party will be deemed to have authorised SECCo (by its signature of the counterparts) to complete the agreement and to date the counterparts with the date of such completion.

7 Governing Law and Jurisdiction

- 7.1 This Accession Agreement and any dispute or claim arising out of or in connection with it (including non-contractual claims) shall be governed by, and construed in accordance with, the laws specified in Section M11 (Miscellaneous) of the Smart Energy Code from time to time for the purpose of disputes or claims arising out of or in connection with the Smart Energy Code.
- 7.2 In relation to any dispute or claim arising out of or in connection with this Accession Agreement (including in respect of non-contractual claims), each of the New Party and SECCo irrevocably agrees to submit to the exclusive jurisdiction of the relevant person, panel, court or other tribunal specified in Section M7 (Dispute Resolution) of the Smart Energy Code from time to time for the purpose of disputes or claims of that nature.

THIS ACCESSION AGREEMENT has been executed and delivered as a **DEED** on the date first stated above.

Executed and delivered as a deed by

.....
Print name of person signing
.....
Print full name of New Party

acting by two directors or a director and the company secretary *Signature*

.....
Print name of person signing

Signature

Executed and delivered as a deed by

.....
Smart Energy Code Company Limited *Print name of person signing*

acting by two directors or a director and the company secretary *Signature*

.....
Print name of person signing

Signature

Schedule to the Accession Agreement – Party Details

- 1 Where the Applicant is incorporated or resident outside Great Britain, an address in Great Britain for the receipt of legal notices on the Applicant's behalf.
- 2 The Applicant's VAT registration number (if applicable).
- 3 The Applicant's address for invoices under the Code.
- 4 The Applicant's address or addresses for all other notices under the Code.
- 5 The Party Category into which the Applicant considers it will initially fall.
- 6 The Energy Licences held by the Applicant (including any for which it has applied).
- 7 Details of any Parties that are Affiliates of the Applicant (where the Applicant is a company).
- 8 Where the Applicant holds one or more Energy Licences, details of any unique identifiers by which the Applicant is identified under the MRA and/or the UNC (as applicable).

SEC SCHEDULE 3 – SPECIMEN BILATERAL AGREEMENT

Dated: 2[XXX]

[User]

and

[DCC]

**Smart Energy Code
Bilateral Agreement**

THIS BILATERAL AGREEMENT is made on 2[XXX]

BETWEEN:

- (1) [TBC] a company incorporated in [Jurisdiction] (registered number [TBC]) whose registered office is at [TBC] (the “User”); and
- (2) [TBC] a company incorporated in [Jurisdiction] (registered number [TBC]) whose registered office is at [TBC] (the “DCC”).

WHEREAS

- A) The User wishes to procure the Elective Communication Service pursuant to the Smart Energy Code.
- B) The DCC has agreed to provide the Elective Communication Service pursuant to this Bilateral Agreement and the Smart Energy Code, in consideration of the Elective Charges.

NOW IT IS HEREBY AGREED as follows:

1 Interpretation

1.1 In this Bilateral Agreement, unless the context otherwise requires:

“**Elective Charges**” means the charges described as such in Schedule 1.

“**Elective Communication Service**” means the service described as such in Schedule 2.

“**Smart Energy Code**” means the code of that name designated by the Secretary of State pursuant to the smart meter communication licences granted to the DCC pursuant to the Electricity Act 1989 and the Gas Act 1986, as such code is modified from time to time in accordance with its provisions.

1.2 In this Bilateral Agreement, unless the context otherwise requires, references to “Clauses” and “Schedules” are to the clauses of, and schedules to, this Bilateral Agreement.

- 1.3 Subject to Clauses 1.1 and 1.2, the words and expressions used in this Bilateral Agreement shall be construed and interpreted in accordance with the definitions and provisions regarding interpretation set out in Section A (Definitions and Interpretation) of the Smart Energy Code, as if those definitions and provisions regarding interpretation were set out in this Bilateral Agreement and as if the references therein to “this Code” were to “this Bilateral Agreement”.
- 1.4 The Parties acknowledge that the Smart Energy Code is subject to modification from time to time in accordance with its provisions, and that the Smart Energy Code as so modified from time to time shall apply for the purposes of this Bilateral Agreement. References to Sections of the Smart Energy Code shall be to those sections as modified and/or renumbered from time to time.
- 1.5 The provisions of this Bilateral Agreement are without prejudice to the rights and obligations of the Parties under the Smart Energy Code. The Parties acknowledge that certain provisions of the Smart Energy Code apply, but such acknowledgments are without prejudice to the potentially broader application of the Smart Energy Code. In the event of any conflict between the provisions of this Bilateral Agreement and the provisions of the Smart Energy Code, the Smart Energy Code shall prevail.

2 Commencement of this Bilateral Agreement

- 2.1 This Bilateral Agreement shall commence on [TBC]¹.

3 Provision of the Elective Communication Services

- 3.1 The DCC shall provide the Elective Communication Services to the User subject to and in accordance with this Bilateral Agreement and the Smart Energy Code.
- 3.2 The provision of the Elective Communication Services is subject to the User having completed the User Entry Process. The provision of the Elective Communication Services in respect of any Smart Metering System is subject to that Smart Metering System having been Enrolled.

¹ [Note: consider whether agreement should be conditional on provision of adequate credit support. If so, also add a termination right linked to failure of credit support.]

4 Elective Charges

- 4.1 The User shall pay the Elective Charges in accordance with Section J (Charges) of the Smart Energy Code.
- 4.2 [The Elective Charges include a standing charge (as further described in Schedule 1) that is payable by the User regardless of whether or not the Elective Communication Services are requested or provided.]²

5 Security and Data Privacy

- 5.1 The Parties acknowledge that the provisions of Section G (Security) of the Smart Energy Code apply.
- 5.2 The Parties acknowledge that the provisions of Section I (Data Privacy) of the Smart Energy Code apply.

6 Termination or Expiry of this Bilateral Agreement

- 6.1 Subject to earlier termination in accordance with this Clause 6, this Bilateral Agreement shall expire on [TBC].
- 6.2 This Bilateral Agreement shall automatically terminate on the User being expelled from, or voluntarily ceasing to be party to, the Smart Energy Code in accordance with Section M8 (Suspension, Expulsion and Withdrawal) of the Smart Energy Code.
- 6.3 The User shall, at its discretion, be entitled to terminate this Bilateral Agreement on 20 Working Days' prior notice in writing to the DCC.
- 6.4 In the event of termination of this Bilateral Agreement in accordance with Clause 6.3, the User shall not be obliged to pay compensation on termination to the extent such compensation is intended to recover investments made for the purposes of providing the Elective Communication Service where the DCC subsequently offers a Core Communication Service that relies upon such investments. Any dispute under this Clause 6.4 may be referred to the Panel for initial determination, but shall ultimately be subject to arbitration.

² [Note: delete or retain as applicable.]

6.5 Where this Bilateral Agreement terminates in accordance with Clause 6.2 or 6.3, the User shall (subject to Clause 6.4) pay any compensation on termination described in Schedule 1.

7 Suspension

7.1 The User acknowledges that the DCC may suspend provision of the Elective Communication Services where the Panel directs that the DCC should do so pursuant to Section M8 (Suspension, Expulsion and Withdrawal) of the Smart Energy Code. Such suspension shall be without prejudice to any take or pay obligation described in Schedule 1.

8 Supplier Nominated Agents

8.1 [The Parties agree for the purposes of Section H2.11 (Supplier Nominated Agents) that the Supplier Nominated Agents deemed to have been appointed in accordance with Section H2 (Supplier Nominated Agents) shall be entitled to exercise the following rights of the User in respect of the Elective Communication Service on behalf of the User: [TBC].]³

9 Communications

9.1 The Parties acknowledge and agree that the provisions of Sections H3 (DCC User Gateway) and M10 (Notices) apply.

10 Amendments

10.1 Without prejudice to Clause 1.4, this Bilateral Agreement may only be amended by agreement in writing by the Parties or in order to give effect to any determination of disputes by the Authority pursuant to the DCC Licence.

10.2 Without prejudice to Clause 1.5, the Parties shall amend this Bilateral Agreement where it has become inconsistent with the Smart Energy Code in order to correct such inconsistency (including where the Specimen Bilateral Agreement is modified, in which case the Parties shall amend this Bilateral Agreement in the same manner and to the same extent).

³ [Note: retain only in the case of supply licensees.]

10.3 The User hereby authorises the DCC to make the amendments to this Bilateral Agreement required pursuant to Clause 10.2 on the User's behalf. Where the User disputes the requirement for, or form of, any such amendments made by the DCC on the User's behalf, then the User may refer the matter to the Panel for its determination. Nothing in this Clause 10.3 shall fetter the User's right to refer disputes to the Authority pursuant to the DCC Licence.

11 Miscellaneous

11.1 The Parties acknowledge that the provisions of Sections M2 (Limitations of Liability), M3 (Services FM and Force Majeure), M4 (Confidentiality), and M5 (Intellectual Property Rights) of the Smart Energy Code apply.

11.2 The Parties acknowledge and agree that this Bilateral Agreement may be novated to DCC's successor in accordance with Section M9 (DCC Transfer) of the Smart Energy Code.

11.3 This Bilateral Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

11.4 The provisions of Section M11 (Miscellaneous) of the Smart Energy Code shall apply as if set out in this Bilateral Agreement and as if the references therein to "this Code" were to "this Bilateral Agreement".

12 Governing Law and Jurisdiction

12.1 This Bilateral Agreement and any dispute or claim arising out of or in connection with it (including non-contractual claims) shall be governed by, and construed in accordance with, the relevant laws specified in Section M11 (Miscellaneous) of the Smart Energy Code from time to time for the purpose of disputes or claims of that nature.

12.2 In relation to any dispute or claim arising out of or in connection with this Bilateral Agreement (including in respect of non-contractual claims), each of the Parties irrevocably agrees to submit to the exclusive jurisdiction of the relevant person, panel, court or other tribunal specified in Section M7 (Dispute Resolution) of the Smart

Energy Code from time to time for the purpose of disputes or claims of that nature.

THIS BILATERAL AGREEMENT has been entered into on the date first stated above.

SIGNED by

duly authorised for and on behalf of

..... *Print name of person signing*

Print full name of User

Signature

SIGNED by

duly authorised for and on behalf of the
DCC

Print name of person signing

Signature

Schedule 1 – Elective Charges

[Note: to include charges determined in accordance with the Charging Methodology, and to include standing charges and early termination compensation payments where required in accordance with Section H7.]

Schedule 2 – Elective Communication Services

[Note: to identify services in a manner consistent with the Core Communications Schedule.]

SEC SCHEDULE 4 – SECCO

1 **Background**

- 1.1 Smart Energy Code Company Limited (registered in England and Wales with company number 08430267) (“SECCo”) has been established on behalf of the Parties in order to fulfil the Objective (as defined below), and in doing so will act as the contracting body for the Panel.
- 1.2 It is intended that the shareholders of SECCo shall be limited to Eligible Parties in accordance with this Schedule.
- 1.3 The Shareholders have agreed that their respective rights as Shareholders shall be regulated by the provisions of this Schedule. The rights of the Eligible Parties as Shareholders are set out exclusively in this Schedule. No other provision of this Code shall apply to the regulation of the rights and obligations of Shareholders in their capacity as Shareholders.
- 1.4 SECCo has agreed with the Shareholders to comply with the provisions of this Schedule insofar as it relates to SECCo.

2 **Additional Definitions and Interpretation**

- 2.1 In this Schedule, except where the context otherwise requires, the following words and expressions shall have the following meanings:

Articles means the articles of association of SECCo, as amended from time to time.

Board means the board of directors of SECCo at the relevant time.

Director means a director of SECCo from time to time.

Eligible Party means a Party that is not the DCC (which, for the avoidance of doubt, does not include SECCo), and which either:

- (a) holds an Energy Licence that obliges it to be a party to this Code; or
- (b) does not hold an Energy Licence that obliges it to be a party to this Code, but has opted (by notice in writing to the SECCo Secretary) to be a Shareholder.

Objective means acting as a corporate vehicle to assist the Panel in exercising its powers, duties and functions (including entering into contracts where necessary or desirable in order to implement any Panel Decision).

Panel Decision means a resolution of the Panel (or a resolution made by any Sub-Committee to which the Panel has delegated decision-making authority in accordance with Section C7 (Sub-Committees)), and cognate terms shall be construed accordingly.

Retiring Shareholder means either:

- (a) a Shareholder that ceases to be a Party; or
- (b) a Shareholder that does not hold an Energy Licence that obliges it to be a party to this Code and which gives notice that it no longer wishes to be a Shareholder (such notice to be given in writing to the SECCo Secretary).

SECCo Chair means the chairman of the Board from time to time.

SECCo Secretary means the company secretary of SECCo from time to time.

Share means an ordinary share of £1 each in the share capital of SECCo.

Shareholder means a person from time to time registered as a holder

of a Share.

Subscribing Shareholders means each Eligible Party that agreed (prior to the designation of this Code) to become a Shareholder with effect from the designation of this Code.

2.2 Words and expressions defined elsewhere in this Code shall have the same meaning in this Schedule unless the context otherwise requires.

3 Acknowledgement of Preliminary Matters Already Undertaken

3.1 It is acknowledged that resolutions of the Board and of the Shareholders were made prior to the designation of this Code, at which the business set out in annex 1 to this Schedule was undertaken. As set out in that annex, such business is to have effect from the designation of this Code.

3.2 The consequence of the resolutions referred to above is that, with effect from the designation of this Code, each of the Subscribing Shareholders is a Shareholder and each of the Panel Members is a Director.

4 SECCo's Objective

4.1 The Shareholders and SECCo acknowledge and agree that SECCo shall not undertake any activities other than those that are reasonably necessary for carrying out the Objective.

4.2 Each Shareholder acknowledges and agrees that SECCo will have complete independence from its Shareholders in its operations and undertakes not to take any action which obstructs or interferes with, or seeks to obstruct or interfere with, the carrying out of the Objective (provided that this Paragraph 4.2 shall not restrict the exercise of Shareholder rights in order to comply with the requirements of this Schedule).

5 SECCo's Business

5.1 Each Shareholder agrees with each other Shareholder to exercise its rights under this Schedule and as a Shareholder in SECCo so as to ensure that:

- (a) SECCo performs and complies with all its obligations under this Code (including without limitation this Schedule) and complies with the restrictions (if any) imposed on it by the Articles; and
- (b) SECCo's activities are conducted in accordance with sound and good business practice with a view to achieving the Objective.

6 New Shareholders

6.1 Any Eligible Party, from time to time, which is not a Shareholder may apply to the SECCo Secretary to become a Shareholder. An Eligible Party holding an Energy Licence that obliges it to be a party to this Code shall be deemed to have so applied on its accession to this Code pursuant to Section B (Accession). Upon any such application, the Directors shall either:

- (a) procure the transfer to such Eligible Party of one Share then held by a nominee in accordance with Paragraph 7.2 or 7.3; or
- (b) allot to such Eligible Party one Share.

6.2 For the purposes of Paragraph 6.1(b), the Shareholders agree that, where no Shares are otherwise available for issue, they will exercise the voting rights attaching to their Shares to procure that all necessary steps are taken to create and/or authorise the issue of further Shares.

7 Dealings with Shares

7.1 Otherwise than in accordance with the following provisions of this Paragraph 7, no Shareholder shall:

- (a) pledge, mortgage (whether by way of fixed or floating charge) or otherwise encumber its legal or beneficial interest in its Shares; or
- (b) sell, transfer or otherwise dispose of any of such Shares (or any legal or beneficial interest therein); or
- (c) enter into any agreement in respect of the votes attached to Shares; or
- (d) agree, whether or not subject to any condition precedent or subsequent, to do any of the foregoing.

- 7.2 Upon written notice by the Board requiring it to do so, a Retiring Shareholder shall pay up all amounts which remain unpaid on any Share held by it. The Retiring Shareholder will transfer its Shares at par to a nominee who will hold the Shares for and on behalf of all the other Shareholders. The nominee will be selected by the Directors. All costs and expenses of such transfer shall be for the account of the Retiring Shareholder.
- 7.3 If a Retiring Shareholder fails or refuses to transfer any Shares in accordance with its obligations under Paragraph 7.2, the Retiring Shareholder irrevocably appoints by way of security for the failure to perform obligations under this Paragraph 7.3 any Director to execute and deliver a transfer of the Shares from the Retiring Shareholder to a nominee on behalf of the Retiring Shareholder. SECCo may accept the consideration for the transfer (subject to the Retiring Shareholder paying-up all amounts which remain unpaid on any Share) and hold it on trust for the Retiring Shareholder, which acceptance shall be a good discharge to the nominee, and may set off such amounts against the costs and expenses of the transfer. The Directors shall cause the nominee to be registered as the holder of such Share and, following the registration of the transfer, the validity of the proceedings shall not be questioned by SECCo or any Shareholder.
- 7.4 The nominee referred to in Paragraphs 7.2 and 7.3 shall hold Shares transferred to it until such time as it is directed by the Directors to transfer them (or some of them) in accordance with Paragraph 6.1(a) and for such period (and only for such period) as the nominee holds any Shares, all rights attaching to the Share shall be suspended, including:
- (a) the right to receive income and/or capital;
 - (b) the right to attend and vote or appoint proxies to attend and vote at general meetings of SECCo (whether on a show of hands or on a poll and in the case of proxies only on a poll); and
 - (c) the right to appoint and remove a Director.
- 7.5 The Shareholders shall procure that, save in the case of any nominee for the purposes of Paragraphs 7.2 and 7.3:

(a) no person who is not an Eligible Party may at any time become a Shareholder; and

(b) no Eligible Party shall hold more than one Share at any time,

and the Directors shall be entitled to refuse to allot and/or to register any transfer of a Share that would result in a breach of this Paragraph 7.5.

8 Composition and Proceedings of the Board

8.1 SECCo and the Shareholders acknowledge that this Code contains detailed provisions regarding the composition of the Panel, and that it is the intention of SECCo and the Shareholders that the composition of the Board is identical to the composition of the Panel. The Shareholders shall, accordingly, procure that:

(a) each of the Panel Members from time to time shall be appointed as a Director; and

(b) the Panel Chair from time to time shall be appointed as the SECCo Chair.

8.2 SECCo and the Shareholders acknowledge that this Code contains detailed provisions regarding the procedural rules of the Panel, and that it is the intention of SECCo and the Shareholders that the procedural rules of the Board are identical to the procedural rules of the Panel. The remaining provisions of this Paragraph 8 shall therefore have effect subject to the procedural rules of the Board set out in Section C (Governance); save only to the extent that such procedural rules applicable to the Panel are incompatible with Laws and Directives stipulating procedural rules for company boards of directors.

8.3 Each Director shall be deemed to have appointed his or her Alternate as his or her alternate Director, and shall be deemed to have removed such person from such position on that person ceasing to be his or her Alternate. Any such alternate Director shall be entitled to receive notice of all Board meetings and attend and vote as such at any meeting at which the appointing Director is not present and generally in the absence of his or her appointor to do all the things which his or her appointor is authorised or empowered to do. A Director who is also an alternate is entitled, in the absence of his or her appointor:

- (a) to a separate vote on behalf of his or her appointor in addition to his or her own vote; and
 - (b) to be counted as part of the quorum of the Board on his or her own account and also in respect of the Director for whom he or she is the alternate.
- 8.4 If a Director ceases to be a Panel Member, the Shareholders shall exercise their powers to ensure that such person ceases to be a Director. The DCC shall indemnify SECCo against all Liabilities which SECCo may suffer or incur by reason of any claim by that person in connection with his removal from office as a Director.
- 8.5 The SECCo Chair shall chair any Board meeting. If the SECCo Chair is unable to be present at a Board meeting, the SECCo Chair's alternate appointed in accordance with Paragraph 8.3 may act as chair of that Board meeting.
- 8.6 The person appointed from time to time as the Secretariat shall be appointed as the SECCo Secretary.
- 8.7 All resolutions of the Board shall be made by simple majority of those Directors present at the meeting. Each Director shall have one vote, provided that the SECCo Chair shall have no vote (except in the case of equality of votes, in which case the SECCo Chair shall have the casting vote). Notwithstanding the foregoing, in the case of the person appointed as SECCo Chair by virtue of being Panel Chair in accordance with Section X (Transition), that person shall have a vote as a Director and shall not have any casting vote.
- 8.8 The Board shall meet at intervals of not less than once in any period of two months unless otherwise agreed by the Directors. Insofar as reasonably practicable, meetings of the Board shall follow on immediately from meetings of the Panel. A meeting of the Board may be convened at any reasonable time at the request of any Director by written notice to the SECCo Secretary.
- 8.9 Meetings of the Board may be held by means of any telecommunications equipment provided that each of the Directors attending the meeting acknowledges that he or she can communicate with each other. In any such case, the meeting shall be deemed to take place in the location of the SECCo Chair during such meeting.

- 8.10 Each of the Directors shall be given notice by the SECCo Secretary of each meeting of the Board setting out details of the time, date and place of meeting at least 10 Working Days prior to the date of such meeting (provided that such period of notice may be shortened for particular meetings by unanimous written consent of all Directors entitled to attend and vote at the meeting).
- 8.11 The quorum for each meeting of the Board is one half of all Directors appointed at the relevant time, at least one of whom must be the SECCo Chair (or his or her alternate as such).
- 8.12 A written resolution signed by a majority of the Directors shall be as valid and effective as a resolution passed by a meeting of the Board properly convened and constituted in accordance with the terms of this Schedule and the Articles.
- 8.13 As soon as reasonably practicable and in any event no later than five Working Days after each Board meeting, the SECCo Secretary shall circulate minutes of that meeting to each of the Directors.
- 8.14 The Board may delegate any of its powers to committees of the Board consisting of such persons as the Board may resolve. Any such committee shall exercise only powers expressly delegated to it and shall comply with any regulations imposed on it by the Board.

9 Expenditure and Working Capital

- 9.1 The Shareholders intend that SECCo should be run on a “break even” basis and shall procure that any surplus working capital shall, rather than being distributed to Shareholders, be retained by SECCo and applied to subsequent expenditure.
- 9.2 None of the Shareholders shall be obliged to provide any finance to SECCo or to provide any guarantee, indemnity or other security which third parties may require to secure the obligations of SECCo.
- 9.3 The Shareholders shall exercise the rights attaching to their Shares with a view to ensuring that SECCo does not incur costs unless authorised to do so in accordance with Section C8 (Panel Costs and Budgets), except insofar as is necessary in order to comply with legally binding obligations to which SECCo is subject.

10 Accounts

- 10.1 As soon as reasonably practicable following the end of each Regulatory Year, SECCo shall procure that an account shall be taken of all the assets and liabilities of SECCo and of all the dealings and transactions of SECCo during such Regulatory Year.
- 10.2 The Board shall prepare a report and accounts in accordance with the Companies Act 2006 to be audited within three months after the end of each Regulatory Year.

11 Conflict with the Articles

- 11.1 In the event of any ambiguity created by or discrepancy between the provisions of this Schedule and the Articles, it is the intention that the provisions of this Schedule shall prevail and accordingly the Shareholders shall exercise all voting and other rights and powers available to them so as to give effect to the provisions of this Schedule and shall further, if necessary, procure any required amendment to the Articles.
- 11.2 Any Shareholder failing to comply with the provisions of Paragraph 11.1 shall be deemed to have appointed SECCo as its lawful attorney for the purpose of signing any written resolution (or receiving notices of and attending and voting at all meetings) of the members of the SECCo to give effect to the provisions of Paragraph 11.1 and to effect any required amendment to the Articles (including to conform the Articles to this Schedule), and this power of attorney (which is given by way of security to secure the performance of obligations owed by the Shareholder to the SECCo under Paragraph 11.1) shall be irrevocable.

12 Further Assurance

Each Shareholder shall co-operate with the other Shareholders and execute and deliver to the other Shareholders such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights under, and the intended purpose of, this Schedule.

13 Duration and Termination

13.1 This Schedule shall continue in full force and effect, save in respect of any antecedent breach, until the earlier of:

- (a) the termination of this Code; and
- (b) the date on which an effective resolution is passed, or a binding order is made, for the winding up of SECCo,

provided, however, that this Schedule shall cease to have effect as regards any Eligible Party who, having been entitled under the terms of this Schedule to hold Shares, ceases to hold any Shares.

ANNEX 1

Prior to designation of this Code, SECCo (acting by its directors from time to time) and/or the shareholders of SECCo (as applicable) approved the following matters:

- 1 the change of name of SECCo to Smart Energy Code Company Limited;
- 2 the transfer of the subscription share in the capital of SECCo to a nominee as if Paragraph 7.2 applied;
- 3 the change of the registered office of SECCo to the registered address of the Secretariat;
- 4 the change of the accounting reference date of SECCo to 31 March;
- 5 the adoption of new Articles of Association of SECCo as per Annex 2;
- 6 the subscription for Shares in SECCo by the Subscribing Shareholders;
- 7 the appointment as Directors of SECCo of the Panel Members nominated pursuant to Section X (Transition);
- 8 the appointment as the company secretary of SECCo of the Secretariat nominated pursuant to Section X (Transition);
- 9 conflicts of interest (if any) of the incoming Directors of SECCo;
- 10 the resignation of the incumbent Director of SECCo appointed at incorporation; and
- 11 the filings at Companies House and updates to the statutory books of SECCo in relation to the matters referred to at 1 – 10 above.

ANNEX 2

Form of New Articles

ARTICLES OF ASSOCIATION

THE COMPANIES ACT 2006

ARTICLES OF ASSOCIATION

of

Smart Energy Code Company Limited (the “Company”)

(Registered No. 08430267)

(adopted by Special Resolution passed on [])

1 Defined terms

1.1 In these articles:

“**CA 2006**” means the Companies Act 2006;

“**Code**” means the Smart Energy Code designated by the Secretary of State pursuant to the smart meter communication licences granted pursuant to the Electricity Act 1989 and the Gas Act 1986, as such code is modified from time to time in accordance with its provisions;

“**Companies Acts**” means the Companies Acts (as defined in section 2 of the CA 2006), in so far as they apply to the company;

“**connected persons**” in relation to a director means persons connected with that director for the purposes of section 252 CA 2006;

“**eligible director**” means, in relation to a matter or decision, a director who is or would be entitled to count in the quorum and vote on the matter or decision at a meeting of directors (but excluding any director whose vote is not to be counted in respect of the particular matter or decision);

“**Group Company**” means a body corporate which is at the relevant time:

(a) a subsidiary of the Company; or

(b) the Company's holding company or a subsidiary of that holding company,

and for these purposes “**holding company**” and “**subsidiary**” have the meanings given to those expressions in section 1159 CA 2006;

“**Model Articles**” means the regulations contained in Schedule 3 to The Companies (Model Articles) Regulations 2008; and

“**Panel**” has the meaning given to that expression in the Code.

1.2 Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Model Articles and CA 2006, in each case as in force on the date when these articles become binding on the Company.

1.3 For the purposes of these articles a corporation shall be deemed to be present in person if its representative duly authorised in accordance with the Companies Acts is present in person.

1.4 Headings in these articles are used for convenience only and shall not affect the construction or interpretation of these articles.

1.5 A reference in these articles to an “article” is a reference to the relevant article of these articles unless expressly provided otherwise.

1.6 Unless expressly provided otherwise, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of:

(a) any subordinate legislation from time to time made under it; and

(b) any amendment or re-enactment,

and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

1.7 Any phrase in these articles or the Model Articles introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2 Adoption and variation of Model Articles

- 2.1 Subject as provided in these articles, the Model Articles shall apply to the Company.
- 2.2 Model Articles 7, 8(2), 11, 12, 13(3), 16, 17(2), 18(4), 19, 20, 21, 23, 41, 52 – 62 (inclusive), and 70 – 77 (inclusive) shall not apply to the Company.

3 Conflicts of interest

- 3.1 In this article and articles 4 and 5:

“**authorise**” means to authorise in accordance with section 175(5)(a) CA 2006 and “**authorisation**”, “**authorised**” and cognate expressions shall be construed accordingly;

a “**conflict of interest**” includes a conflict of interest and duty and a conflict of duties;

“**conflicted director**” means a director in relation to whom there is a conflicting matter;

“**conflicting matter**” means a matter which would or might (if not authorised or if not permitted under article 4) constitute or give rise to a breach of the duty of a director under section 175(1) CA 2006 to avoid a conflict situation;

“**conflict situation**” means a situation in which a director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company (including a conflict of interest);

“**interested director**” means a director who has, in any way, a material direct or indirect interest in a matter or decision;

a conflicting matter, conflict situation or interest is “**material**” unless it cannot reasonably be regarded as likely to give rise to a conflict of interest; and

“**other directors**” means, in relation to a particular conflicting matter, directors who are not interested directors in relation to that conflicting matter.

3.2 Exercise of the power of the directors to authorise a conflicting matter shall be subject to the provisions of this article.

3.3 The provisions of this article apply:

(a) subject to article 4; and

(b) without prejudice (and subject) to the provisions of section 175(6) CA 2006.

Nothing in these articles shall invalidate an authorisation.

3.4 A conflicted director seeking authorisation of any conflicting matter shall disclose to the other directors the nature and extent of the conflicting matter as soon as is reasonably practicable. The conflicted director shall provide the other directors with such details of the conflicting matter as are necessary for the other directors to decide how to address the conflicting matter, together with such additional information as may be requested by the other directors.

3.5 Any director (including the conflicted director) may propose that a conflicted director's conflicting matter be authorised. Any such proposal, and any authorisation given by the directors, shall be effected in the same way as any other matter that may be proposed to and resolved on by the directors under the provisions of these articles, except that:

(a) the conflicted director and any other interested director shall not count towards the quorum nor vote on any resolution giving that authorisation; and

(b) the conflicted director and any other interested director may, if the other directors so decide, be excluded from any meeting of the directors while the conflicting matter and the giving of that authorisation are under consideration.

3.6 Where the directors authorise a conflicted director's conflicting matter:

(a) the directors may (whether at the time of giving the authorisation or subsequently):

(i) require that the conflicted director is excluded from the receipt of

information, the participation in discussions and/or the making of decisions (whether at meetings of the directors or otherwise) in relation to which any actual or potential conflict of interest may arise from the conflicting matter; and

- (ii) impose on the conflicted director such other terms or conditions for the purpose of dealing with any actual or potential conflict of interest which may arise from the conflicting matter as they may determine;
- (b) the conflicted director shall conduct himself in accordance with any terms or conditions imposed by the directors (whether at the time of giving that authorisation or subsequently);
- (c) the directors may provide that, where the conflicted director obtains (otherwise than through his position as a director) information that is confidential to a third party, the conflicted director will not be obliged to disclose the information to the company, or to use or apply the information in relation to the company's affairs, where to do so would amount to a breach of that confidence;
- (d) the terms of the authorisation shall be recorded in writing (but the authorisation shall be effective whether or not the terms are so recorded); and
- (e) the directors may revoke or vary the authorisation at any time but no such action will affect anything done by the conflicted director prior to that action in accordance with the terms of the authorisation.

4 Permitted conflict situations

4.1 If a director or a connected person of a director:

- (a) is or becomes a member, director, manager or employee of the company or any other Group Company; or
- (b) acquires and holds shares in the capital of any other body corporate, wherever incorporated, provided that the shares held by the director and his

connected persons do not exceed 3% of the nominal value of the issued share capital of that body corporate;

any conflict situation which arises only by reason of such a conflicting matter is permitted by this article and the relevant conflicting matter does not require disclosure and authorisation in accordance with article 3.

4.2 A director shall not, by reason of his office or of the resulting fiduciary relationship, be liable to account to the company for any benefit which he (or a person connected with him) derives from:

- (a) a conflicting matter authorised by the directors;
- (b) a conflicting matter to which article 4.1 applies; or
- (c) a decision of the directors in relation to which, in accordance with article 5.2, the director was an eligible director, notwithstanding his relevant conflicting interest,

and no transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit.

5 Directors' interests and decision making

5.1 Model Articles - 8 – 10 (inclusive), 13, 17 and 18 shall take effect subject to the terms of the Code.

5.2 A director who has a direct or indirect interest or duty that conflicts with the interests of the company in relation to a proposed decision of the directors is not an eligible director in relation to that decision unless article 5.3 applies to him.

5.3 A director who has a direct or indirect interest that conflicts with the interests of the company in relation to a proposed decision of the directors (a “**relevant conflicting interest**”) shall be an eligible director in relation to that decision, provided that:

- (a) in a case where the relevant conflicting interest is in an actual or proposed transaction or arrangement with the company, the nature and extent of the relevant conflicting interest either:

- (i) has been duly declared to the other directors in accordance with section 177 or section 182 CA 2006, as the case may require; or
- (ii) is not required by the terms of either of those sections to be declared; and
 - (A) where the relevant conflicting interest is constituted by, or arises from, a conflicting matter of the director and:
 - 1) that conflicting matter (or any breach of the relevant director's duty under section 175(1) CA 2006 by reason of that conflicting matter) is or has been authorised, permitted, approved or ratified, either in accordance with article 3 or article 4 or by the members (and that authorisation, permission, approval or ratification has not been revoked, withdrawn or reversed); and
 - 2) the relevant director has not been required to be excluded from participation in discussions and/or the making of decisions in relation to which the director has the relevant conflicting interest; or
 - (B) where the relevant conflicting interest is constituted by, or arises from, a conflicting matter of the director and that conflicting matter (or any breach of the relevant director's duty under section 175(1) CA 2006 by reason of that conflicting matter) is not or has not been authorised, permitted, approved or ratified, either in accordance with article 3 or article 4 or by the members:
 - 1) the conflict situation arising by reason of that conflicting matter is not material; or
 - 2) the other directors are aware of the relevant conflicting interest and have determined that the director shall be an eligible director in relation to that

decision; and

- (b) in any other case:
 - (i) the director has disclosed the nature and extent of the relevant conflicting interest, or has not done so where:
 - (A) it cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - (B) the other directors are already aware of it; and
 - (ii) where the relevant conflicting interest is constituted by, or arises from, a conflicting matter of the director and:
 - (A) that conflicting matter (or any breach of the relevant director's duty under section 175(1) CA 2006 by reason of that conflicting matter) is or has been authorised, permitted, approved or ratified, either in accordance with article 3 or article 4 or by the members (and that authorisation, permission, approval or ratification has not been revoked, withdrawn or reversed); and
 - (B) the relevant director has not been required to be excluded from participation in discussions and/or the making of decisions in relation to which the director has the relevant conflicting interest; or
 - (iii) where the relevant conflicting interest is constituted by, or arises from, a conflicting matter of the director and that conflicting matter (or any breach of the relevant director's duty under section 175(1) CA 2006 by reason of that conflicting matter) is not or has not been authorised, permitted, approved or ratified, either in accordance with article 3 or article 4 or by the members:
 - (A) the conflict situation arising by reason of that conflicting matter is not material; or

- (B) the other directors are aware of the relevant conflicting interest and have determined that the director shall be an eligible director in relation to that decision; but

the provisions of this article do not apply in relation to a decision under article 3.5.

For the purposes of this article, the other directors are to be treated as aware of anything of which they ought reasonably to be aware.

5.4 If a question arises at a meeting of the directors about whether or not a director (other than the chair of the meeting):

- (a) has a material conflict situation for the purposes of articles 3 or 4;
- (b) can vote (where that director does not agree to abstain from voting) on the issue in relation to which the conflict situation arises; or
- (c) can be counted in the quorum (where that director does not agree not to be counted in the quorum) for the purpose of voting on the issue in relation to which the conflict arises,

the question must (unless article 5.5 applies) be referred to the chair of the meeting. The ruling of the chair of the meeting in accordance with this article 5.4 about any director other than himself is final and conclusive, unless the nature or extent of the director's conflict situation (so far as it is known to him) has not been fairly disclosed to the other directors.

5.5 If in relation to a question of the kind referred to in article 5.4 the chair of the meeting is an interested director, the question must be referred to the other directors in accordance with article 5.5 as if it were a question about the chair of the meeting.

5.6 If a question of the kind referred to in article 5.4 arises about the chair of the meeting (or if article 5.5 applies), the question shall be decided by a resolution of the other directors. The chair of the meeting (or conflicted director) cannot vote on the question but can be counted in the quorum. The other directors' resolution about the chair of the meeting (or conflicted director) is conclusive, unless the nature and extent of the chair's (or conflicted director's) conflict situation (so far as

it is known to him) has not been fairly disclosed to the other directors.

5.7 For the purposes of:

- (a) any meeting (or part of a meeting) held in accordance with article 3 to authorise a director's conflict; or
- (b) any determination in accordance with article 5.4 or 5.6,

if there is only one director present who is not an interested director for the purpose of that authorisation or determination, the quorum for that meeting (or part of a meeting) is one eligible director.

5.8 For the purposes of:

- (a) any written directors' resolution to authorise a director's conflict in accordance with article 3; or
- (b) any written determination in accordance with article 5.4 or 5.6,

if there is only one director in office who is not an interested director for the purpose of that authorisation or determination, the quorum for the purpose of signing that resolution or determination is one eligible director.

5.9 Nothing in this article 5 shall be taken as absolving any director from any of the obligations set out in article 3. A determination by the directors in accordance with article 5.3(a)(ii)(B)(2) or 5.3(b)(iii)(B) that a conflicted director may be an eligible director in relation to a decision of the directors does not amount to authorisation of the relevant conflict situation.

5.10 The company may, by ordinary resolution, ratify any transaction, arrangement or other matter which has not been properly authorised by reason of a contravention of these articles.

6 Decision-making by directors: general

6.1 Subject to the terms the Code, the general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or by written resolution in accordance with Model Article 18.

6.2 The quorum for each meeting of the Board is one half of all Directors appointed at the relevant time, at least one of whom must be the SECCo Chair (or his or her alternate as such). If:

- (a) the Company only has one director; and
- (b) no other provision of these articles requires it to have more than one director,

the general rule does not apply, the quorum for meetings of the directors shall be one and the director may take decisions without regard to any of the provisions of these articles relating to directors' decision-making, other than the provisions of articles 6.3 and 6.7.

6.3 The directors must ensure that the Company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

6.4 Model Article 9(3) shall be modified so that any meeting where all the directors participating are not in the same place shall be treated as taking place in the place where the chair of the meeting is.

6.5 Model Article 10(2) shall be read:

- (a) subject to articles 5 and 6.2; and
- (b) as if the final word was deleted and the words "two eligible directors" were added in its place.

6.6 The chair of directors' meetings shall have no vote, save in the event of an equality of votes, where he shall have a casting vote, and Model Article 13(2) shall be modified accordingly.

6.7 Model Article 14(2) shall be read as if the words "to be counted" to "voting purposes" inclusive were omitted and the words "an eligible director for the purposes of that meeting (or part of a meeting)" were added in their place.

6.8 For the purposes of Model Articles 17 and 18, a written resolution of the directors

may be in electronic form. Model Article 18 shall be read as if the words “all the directors” were omitted and the words “a simple majority of the directors” were added in their place.

- 6.9 A decision may not be taken in accordance with Model Article 18 if the eligible directors making that decision would not have formed a quorum at a directors’ meeting resolving on the same matter.
- 6.10 Save for the chair person, the directors shall not be entitled to any remuneration from the Company. This is without prejudice to the recovery of reasonable expenses properly incurred in connection with the Company.

7 General meetings and written resolutions

- 7.1 Voting rights attaching to a share may be exercised, either at a general meeting or on any written resolution, notwithstanding that amounts are outstanding, due and payable to the Company in respect of that share.

8 Allotment of shares

- 8.1 Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, all shares shall be issued to the persons, on the terms and conditions and with the rights, priorities, privileges or restrictions in each case as provided in the resolution creating or issuing the relevant shares. In the absence of any such provision, the directors may issue the shares, subject to section 551 CA 2006, to such persons at such times and generally on such terms and conditions and with such rights, priorities, privileges or restrictions as they may think fit. Accordingly, and in accordance with section 570 CA 2006, sections 561(1) and 562 CA 2006 shall not apply to the Company.
- 8.2 No share shall be issued to any infant, bankrupt, insolvent body corporate or person who, by reason of that person’s mental health, is subject to a court order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have.

9 Transmission of shares

- 9.1 Nothing in these articles or the Model Articles releases the estate of a deceased

member from any liability in respect of a share solely or jointly held by that member.

10 Return of capital

10.1 The Shareholders intend that the Company should be run on a “break even” basis and shall procure that any surplus working capital shall, rather than being distributed to Shareholders, be retained by the Company and applied to subsequent expenditure.

10.2 Subject to articles 10.1 and 10.3, on a return of capital on liquidation, capital reduction or otherwise, the surplus assets of the Company remaining after the payment of its liabilities shall be applied:

- (a) in paying to each holder of shares an amount in respect of each share held equal to the amount paid up thereon (including any premium); and
- (b) thereafter, in distributing the balance of such assets amongst the holders of the shares in proportion to the amounts paid up or credited as paid up on the shares and held by them.

10.3 Any Shareholder may elect (by notice to the Company secretary) to pay up all amounts which remain unpaid on any Share immediately prior to any return of capital of the kind referred to in article 10.2.

11 Delivery of documents and information

11.1 Any notice, document or other information shall be deemed to be served on and delivered to the intended recipient:

- (a) if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five business days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five business days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);

- (b) if properly addressed and delivered by hand, when it was given or left at the appropriate address; and
- (c) if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article, no account shall be taken of any part of a day that is not a working day.

- 11.2 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by CA 2006.
- 11.3 For the purposes of section 1147(3) CA 2006, where a document or information is sent or supplied by the Company to any member by electronic means, and the Company is able to show that it was properly addressed, it is deemed to have been received by the intended recipient one hour after it was sent (but subject to section 1147(5)).
- 11.4 Where a document or information is sent or supplied to the Company by one person (the “**agent**”) on behalf of another person (the “**sender**”), the Company may require reasonable evidence of the authority of the agent to act on behalf of the sender.

12 The Code

- 12.1 In addition to the provisions of these Articles, the members shall be obliged (except to the extent, if any, prohibited by law) to give effect to the Code in force at the relevant time.
- 12.2 Each Shareholder shall procure, to the extent reasonably possible, that the Directors shall act in all reasonable respects in relation to the Company so as to give effect to the Code, provided always that each Director will not be required to act in any manner prejudicial to his fiduciary duties as a Director of the Company.

SEC SCHEDULE 5 – ACCESSION INFORMATION

- 1 The Applicant's full name.
- 2 Whether the Applicant is a company or a natural person or a partnership etc.
- 3 The Applicant's jurisdiction of incorporation (if applicable).
- 4 The Applicant's registered number (if applicable).
- 5 The Applicant's registered address (or, if not applicable, its principal address).
- 6 Where the Applicant is incorporated or resident outside Great Britain, an address in Great Britain for the receipt of legal notices on the Applicant's behalf.
- 7 The Applicant's VAT registration number (if applicable).
- 8 The Applicant's address for invoices under the Code.
- 9 The Applicant's address or addresses for all other notices under the Code.
- 10 The Party Category into which the Applicant considers it will initially fall.
- 11 The Energy Licences held by the Applicant (including any for which it has applied).
- 12 Details of any Parties that are Affiliates of the Applicant (where the Applicant is a company).
- 13 Where the Applicant holds one or more Energy Licences, details of any unique identifiers by which the Applicant is identified under the MRA and/or the UNC (as applicable). This information shall be treated as confidential and not disclosed on the Website.
- 14 The name of the person or persons who will enter into the Accession Agreement on behalf of the Applicant.

SEC SCHEDULE 6 - FORM OF LETTER OF CREDIT

Form of Document: Irrevocable Standby Letter of Credit

Documentary Credit Number: []

Date of Issue: []

Issuing Bank: []

At the request of the Applicant, the Issuing Bank issues this irrevocable standby letter of credit (“**Standby Letter of Credit**”) in the Beneficiary’s favour on the following terms and conditions.

In this Standby Letter of Credit:

“**Applicant**” means [insert User’s name]

“**Beneficiary**” means [DCC] [insert company number and address], and its successors as the DCC under the Smart Energy Code

“**Beneficiary Statement**” means a demand on the Beneficiary’s letterhead, stating the name and title of the person signing on behalf of the Beneficiary, in the form set out at in the schedule to this Standby Letter of Credit.

“**Effective Date**” means [] (London, UK)

“**Expiry Date**” means [] (London, UK)

“**Maximum Amount**” means []

“**Smart Energy Code**” means the code of that name designated by the Secretary of State pursuant to the smart meter communication licences granted pursuant to the Electricity Act 1989 and the Gas Act 1986, as such code is modified from time to time.

1. From the Effective Date, this Standby Letter of Credit is available for payment at sight against presentation to the Issuing Bank of a Beneficiary Statement.

2. The Issuing Bank will not be obliged to make a payment under this Standby Letter of Credit if as a result the aggregate of all payments made by it under this Standby Letter of Credit would exceed the Maximum Amount.
3. The Beneficiary Statement must be presented to the Issuing Bank on or before the Expiry Date.
4. All payments under this Letter of Credit shall be made in Pounds Sterling in immediately available, freely transferable funds and for value on the due date to the account set out in the Beneficiary Statement.
5. The Issuing Bank hereby waives any right to set off or counterclaim whatsoever against any amounts payable under this Standby Letter of Credit in respect of any claims the Issuing Bank may have against the Beneficiary and such amounts shall be paid free and clear of all deductions or withholdings whatsoever. If the Issuing Bank is required by law to make a tax deduction from any amounts payable under this Standby Letter of Credit, the amount due from the Issuing Bank shall be increased to an amount which (after such tax deduction) leaves an amount equal to the payment which would have been due if no tax deduction had been required.
6. This Standby Letter of Credit is personal to the Beneficiary, and the Beneficiary's rights hereunder (including the right to receive proceeds) are not assignable; provided that such rights shall enure for the benefit of the DCC's successors under the Smart Energy Code.
7. Except to the extent it is inconsistent with the express terms of this Standby Letter of Credit, this Standby Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 other than Article 38 thereof which is hereby waived and Article 36 is varied as below. Other than a person to whom this Standby Letter of Credit has been transferred in accordance with clause 6, this Standby Letter of Credit shall not confer any benefit on or be enforceable by any third party. If this Standby Letter of Credit expires during any interruption of business as described in Article 36 of said Publication 600, the Issuing Bank specifically agrees to honour any demand made under this

Standby Letter of Credit within thirty (30) days after the resumption of business.

8. This Standby Letter of Credit and any non-contractual obligations or disputes arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England for all disputes arising under, out of, or in relation to this Letter of Credit.

Signed for and on behalf of

Issuing Bank

Schedule - Form of Beneficiary Statement

We, the DCC under the Smart Energy Code (the “Beneficiary”), hereby state that we are entitled, in accordance with the Smart Energy Code, to demand[insert amount being claimed] under Standby Letter of Credit number..... issued by[insert name of Issuing Bank]. Payment in respect of this demand shall be effected immediately to [insert relevant account details]. We confirm that the signatory(ies) to this demand are empowered to sign and make this demand on behalf of the Beneficiary.