

Consultation on Alternative HAN Solution

Condition 22. The Smart Energy Code

Introduction

- 22.1 This condition applies for the purpose of establishing (without limitation) the scope and contents of the Smart Energy Code (“the SEC”).
- 22.2 The Licensee must be a party to, comply with, and maintain and have in force the SEC by virtue of Part A of Condition 21 (Roles in relation to Core Industry Documents).

Part A: Mandatory features of the Smart Energy Code

- 22.3 The Smart Energy Code is the document of that name that:
- (a) has effect under this Licence from the SEC Commencement Date;
 - (b) has been designated by the Secretary of State for the purposes of this condition, (i) in accordance with Part B below, (ii) having due regard to the requirement imposed by Part C below, and (iii) on the basis that the SEC is appropriately designed to achieve the General SEC Objectives set out in Part D below;
 - (c) makes provision for the technical, commercial, and operational arrangements set out in Part E below;
 - (d) makes provision in respect of the matters relating to SEC governance and SEC administration set out in Part F below;
 - (e) makes provision for the other matters relating to the contents of the SEC that are set out in Parts G and H below; and
 - (f) may be modified on and after SEC Commencement Date in accordance with the provisions of Condition 23 (Change control for Smart Energy Code).

Part B: Designation of the Smart Energy Code

- 22.4 The Smart Energy Code has no effect under this Licence until it has been designated by the Secretary of State in a direction given for the purposes of this condition.
- 22.5 Before issuing a direction under paragraph 22.4, the Secretary of State must consult:
- (a) the Authority;
 - (b) every holder of an Energy Licence who is required by a condition of that licence to be a party to and comply with the Smart Energy Code; and

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- (c) such other persons as the Secretary of State considers it is appropriate to consult in relation to the matter.

22.6 For the purposes of consultation under paragraph 22.5, the Secretary of State must:

- (a) state that he proposes to designate the SEC and specify the date (or a method by which such date may be determined) on which he proposes that the SEC should have effect;
- (b) set out the text of the SEC and his reasons for proposing to designate it; and
- (c) allow a period of at least 28 days within which representations or objections may be made to him concerning the proposal.

22.7 The Secretary of State must have due regard to any representations or objections duly received under paragraph 22.6, and give reasons for his decisions in relation to them.

22.8 The requirements imposed by this Part B may be satisfied by consultation before, as well as consultation after, the Licence Commencement Date.

Part C: Compatibility with Transition Objective under Condition 13

22.9 During the period prior to the Completion of Implementation, as defined in Part D of Condition 5 (General Objectives of the Licensee), the General SEC Objectives set out in Part D below 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 in the terms set out in paragraph 1 of Condition 13 (Arrangements relating to the Transition Objective).

Part D: General Objectives of the Smart Energy Code

22.10 The General SEC Objectives that the Smart Energy Code must be designed to achieve are as follows.

22.11 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.

22.12 The second General SEC Objective is to enable the Licensee to comply at all times with the General Objectives of the Licensee, and to efficiently discharge the other obligations imposed upon it by this Licence.

22.13 The third General SEC Objective is to facilitate Energy Consumers' management of their use of Energy through the provision to them of appropriate information by means of Smart Metering Systems.

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- 22.14 The fourth General SEC Objective is to facilitate effective competition between persons engaged in, or in Commercial Activities connected with, the Supply of Energy under the Principal Energy Legislation.
- 22.15 The fifth General SEC Objective is to facilitate such innovation in the design and operation of Energy Networks as will best contribute to the delivery of a secure and sustainable Supply of Energy under the Principal Energy Legislation.
- 22.16 The sixth General SEC Objective is to ensure the protection of data and the security of data and systems in the operation of the SEC.
- 22.17 The seventh General SEC Objective is to facilitate the efficient and transparent administration and implementation of the SEC.
- 22.18 The eighth General SEC Objective is to facilitate the establishment and operation of the Alt HAN Arrangements.
- ~~22.18~~¹⁹ For the purposes of this condition and those of Condition 23 (Change control for the Smart Energy Code), the order in which the General SEC Objectives are listed in this Part D is of no significance.

Part E: Principal contents within the Smart Energy Code

- ~~22.19~~²⁰ The SEC must include or make appropriate provision for or in connection with the following matters:
- (a) the terms on which the Licensee will arrange with each Domestic Energy Supplier to provide, in respect of a Smart Meter that is installed at Domestic Premises supplied with Energy by that supplier, a service by means of which information may be communicated to and from that meter on behalf of the supplier, whether for the purposes of compliance with the conditions of its Energy Supply Licence or otherwise;
 - (b) the terms on which the Licensee will contract with any Energy Supplier (not being a Domestic Energy Supplier) or any other SEC Party to provide that person with a service by means of which information may be communicated to and from any Smart Meter installed at premises by that person;
 - (c) arrangements designed to provide assurance that all Smart Metering Systems installed at Energy Consumers' premises for the purposes of the Supply of Energy consist of the apparatus identified in, have the functional capability specified by, and comply with the other requirements of the SME Technical

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Specification or CH Technical Specification (as the case may be) applicable at the date at which such systems are installed; **and**

- (d) the contractual and commercial arrangements necessary to secure the ownership, delivery, installation, repair, maintenance, and replacement of Communications Hubs pursuant to the Communications Hub Service; **and**

- (e) **arrangements for the governance, management and implementation of processes and procedures by means of which Relevant Suppliers shall be able, acting in conjunction and co-operation with each other, to acquire Alt HAN Service Capacity and ensure the availability and provision of the Alt HAN Services to any Relevant Supplier which elects to acquire them (the "Alt HAN Arrangements").**

22.2021 The SEC must include or make appropriate provision for or in connection with the following matters:

- (a) details of all of the Mandatory Business Services (clearly distinguishing between Core Communication Services, Elective Communication Services, the Enrolment Service, the Communications Hub Service, and Other Enabling Services) that are to be provided by the Licensee under or pursuant to the SEC;
- (b) procedures relating to any requirement for SEC Parties to make Smart Metering Systems available for use by other specified persons (including the Licensee) for specified purposes, whether under or pursuant to the SEC or otherwise;
- (c) terms and procedures for the implementation of charging, billing, and payment arrangements in respect of **(i) Services provided under or pursuant to the SEC for and on behalf of SEC Parties, and (ii) the recovery of the costs of acquiring the Alt HAN Service Capacity, providing the Alt HAN Services and administering the Alt HAN Arrangements;** and
- (d) terms and arrangements relating to (i) the ownership, licensing, and protection of any intellectual property rights created by or arising by virtue of the operation of any of the SEC Arrangements, and (ii) the treatment and allocation of any royalty revenues resulting from the exercise of such rights.

22.2122 The SEC must include or make appropriate provision for or in connection with the following matters:

- (a) arrangements, requirements, and procedures providing for the incorporation of Energy Registration Services into the SEC Arrangements, and for any transfers of property, rights, and liabilities necessary to give full and continuing effect to such incorporation, with effect from a date to be determined in a direction given to the

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Licensee by the Secretary of State under Condition 15 (Incorporation of Energy Registration Services);

- (b) requirements and procedures for the purposes of ensuring data protection and data and systems security in the operation of the SEC Arrangements; and
- (c) terms providing for the limitation of the liability of the Licensee and SEC Parties in respect of loss or damage arising from the procurement, provision, or use of Services under or pursuant to the SEC.

22.2223 The SEC must include or make appropriate provision for or in connection with the following matters:

- (a) provision for or in connection with the governance and administration of the SEC (as to which, see Part F below);
- (b) provision for or in connection with the incorporation of documents into the SEC (as to which, see Part G below);
- (c) provision for or in connection with other SEC matters (as to which, see Part H below); and
- (d) arrangements for modifying the SEC after consultation with SEC Parties (as to which, see Condition 23 of this Licence).

Part F: Governance and administration of the Smart Energy Code

22.2324 Without prejudice to such matters as are required to be included in the SEC by virtue of Part E above, the SEC must also include:

- (a) a SEC Framework Agreement, to which the Licensee, every holder of an Energy Licence that is required by that licence to be a party to the SEC, and Other SEC Participants will be required to be party with effect from the SEC Commencement Date on such terms and conditions of accession as are set out in the SEC;
- (b) provision for other persons (being persons who accept the terms and fulfil all of the conditions on which accession to the SEC is offered) to be admitted subsequently as parties to the SEC by entering into an agreement (an "Accession Agreement") with SECCo Ltd acting for that purpose on behalf of all SEC Parties; and
- (c) provision enabling any person who seeks to be admitted as a SEC Party pursuant to an Accession Agreement to request the Authority to determine any dispute as to whether that person has fulfilled the terms and conditions of accession.

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22.24~~25~~ Without prejudice to such matters as are required to be included in the SEC by virtue of Part E above, the SEC must also include:

- (a) arrangements providing for the novation to a Successor Licensee (upon either the expiry of the Licence Term (or of any Additional Licence Term) within the meaning of Part 1 of this Licence, or any revocation of this Licence pursuant to a Revocation Event under its Part 2) of the whole of the Licensee's interest under the SEC, on terms that require the Successor Licensee to assume all accrued rights or obligations of the Licensee and all accrued liabilities of the Licensee, in each case in respect of any act or omission relating to the SEC Arrangements on or at any time before the date of the novation; and
- (b) terms providing for the Licensee and such SEC Parties as are specified in the SEC to be contractually bound by some or all of the provisions of the SEC.

22.25~~26~~ Without prejudice to such matters as are required to be included in the SEC by virtue of Part E above, the SEC must also include:

- (a) arrangements for the establishment, in accordance with such procedures for the election of members as are specified in the SEC, of a representative body, the SEC Panel, which is to be responsible, by way of such proceedings as are so specified (which may include voting procedures), for the governance and administration of the SEC;
- (b) provision for the appointment of an independent chairperson of the SEC Panel who is approved by the Authority;
- (c) provision for Citizens Advice or Citizens Advice Scotland to appoint to the membership of the SEC Panel two persons (neither of them being a SEC Party) to represent to the Panel the interests of Energy Consumers ("the Consumer Members"); and
- (d) arrangements for the establishment, in accordance with such procedures as are specified in the SEC, of a body, the SMKI Policy Management Authority, which is to be responsible, by way of such proceedings as are so specified (which may include voting procedures), for the oversight and implementation of documents to be known as the Certificate Policies (whether or not incorporated into the SEC by virtue of the provisions of Part G below) that set out the roles and duties of SEC Parties and other persons in the management of the Smart Metering Key Infrastructure; and
- (e) arrangements for the establishment, in accordance with such procedures as are specified in the SEC, of a body, the Alt HAN Forum, which is to be responsible, by way of such proceedings as are so specified (which may include voting procedures),

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for matters related to the acquisition of Alt HAN Service Capacity and the availability and provision of the Alt HAN Services.

22.2627 Without prejudice to such matters as are required to be included in the SEC by virtue of Part E above, the SEC must also include:

- (a) arrangements for the establishment and funding of a Secretariat to service the SEC Panel in connection with such matters of governance and administration as are specified in the SEC, including the maintenance of a conformed and up-to-date copy of the SEC as from time to time modified in accordance with such arrangements as are in place by virtue of Condition 23;
- (b) arrangements for the establishment and funding of a person to be known as the Code Administrator to advise and assist the SEC Panel (including, in particular, the Consumer Members), SEC Parties, and other interested persons with respect to the policy and administration of the SEC, to such extent and in relation to such matters as are specified in the SEC;
- (c) provision for the establishment of a joint venture company, SECCo Ltd, (i) the shareholders of which are to be such SEC Parties as may be specified for that purpose in the SEC, (ii) the sole business of which is to act as a corporate vehicle to assist the SEC Panel in exercising its powers, duties, and functions (including by entering into contracts where necessary or desirable in order to implement any decision of the SEC Panel), and (iii) the affairs of which are to be conducted in accordance with good business practice;
- (d) arrangements for the establishment and funding of one or more bodies that may be required to support the Certificate Policy Management Authority in the implementation of the Certificate Policy, including arrangements that provide for such bodies to become SEC Parties to such extent, for such purposes, and in such circumstances as may be specified in the SEC; and
- (e) terms requiring the Code Administrator to act in accordance with any Code of Practice approved by the Authority that relates to the performance of their duties by persons or bodies responsible for administering documents of the kind that are described in Condition 21 (Roles in relation to Core Industry Documents); and
- (f) provision for the establishment of a joint venture company, AltHANCo Ltd, (i) the shareholders of which are to be Relevant Suppliers which are SEC Parties, (ii) the sole business of which is to act as a corporate vehicle to assist the Alt HAN Forum in exercising its powers, duties and functions (including by entering into contracts where necessary or desirable in order to implement any decision of the Alt HAN

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Forum), and (iii) the affairs of which are to be conducted in accordance with good business practice.

Part G: Incorporation of documents into the Smart Energy Code

22.2728 Without prejudice to any of the matters set out in Parts E and F above, the contents of the SEC must also include:

- (a) provision for the incorporation into the SEC of the Charging Methodology for Service Charges as designated by the Secretary of State under Condition 18 (Charging Methodology for Service Charges) for the purposes of incorporation in accordance with the requirements of that condition;
- (b) provision for the incorporation into the SEC of one or more versions of the SME Technical Specification, the IHD Technical Specification, the PPMID Technical Specification, the HCALCS Technical Specification and the CH Technical Specification, in each case from a date designated by the Secretary of State under this condition;
- (c) provision for incorporation into the SEC of any Certificate Policy as designated by the Secretary of State under this condition; and
- (d) provision for the incorporation into the SEC, in each case as designated by the Secretary of State under this condition, of such other technical specifications and procedural or associated documents as the Secretary of State believes are required to support the fulfilment of rights or obligations already specified in the SEC, including, in particular, documents developed by the Licensee under Schedule 5 of this Licence with respect to the following matters:
 - (i) the interface that is to be used to exchange Registration Data (within the meaning given to that term in the SEC) between the Licensee and the persons providing such data to the Licensee,
 - (ii) the specification for the interface (or the interfaces) by means of which requests (or other communications) with respect to Services are to be sent between the Licensee and SEC Parties, and vice versa,
 - (iii) the matters with which SEC Parties have to demonstrate compliance in order to become eligible to receive or use Services,
 - (iv) the application of appropriate security controls and security standards to business processes carried on under or pursuant to the SEC,

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- (v) the detailed policy for managing incidents relating to the provision of Services, and the associated business continuity and disaster recovery procedures, and
- (vi) the procedures and arrangements required to support the trialling and testing programmes to be undertaken pursuant to the provisions of Condition 13 (Arrangements relating to the Transition Objective): **and**

(e) provision for the incorporation into the SEC, in each case as designated by the Secretary of State under this condition, of such other procedural or associated documents as the Secretary of State believes are required to support the Alt HAN Arrangements.

22.2829 A document may:

- (a) be designated under this condition by the Secretary of State for incorporation into the SEC as part of his general designation of the SEC by way of direction under Part B above, or in any circumstances and at any time thereafter up to (but not later than) 31 October 2018;
- (b) where it is a document of a type described in sub-paragraphs 22.2728(b), 22.2728(c), **and** 22.2728(d) **or 22.28(e)** of this condition and has first been designated under this condition by the Secretary of State, be re-designated by him on one or more occasions subject to such amendments as he considers requisite or expedient,

and where any document is re-designated by the Secretary of State in accordance with sub-paragraph (b) above, the other provisions of this Part G shall apply in relation to it in the same manner as if it were being designated for the first time, and references in those provisions to the document being designated shall be read as referring to it being re-designated.

22.2930 The power of the Secretary of State under this condition to designate a document for incorporation into the SEC includes:

- (a) power to make such supplementary, incidental or consequential provision with respect to the SEC as he considers necessary or expedient for the purposes of, in consequence of, or for giving full and timely effect to the incorporation of that document; and
- (b) power to make such provision for the application of that document to SEC Parties, and for the subsequent governance of the document, as he believes is necessary

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or expedient for the purpose of facilitating the achievement of the General SEC Objectives.

22.3031 The incorporation into the SEC of a document designated for such purpose under this condition is not to be treated as, and does not constitute, a modification of the SEC pursuant to any of the modification arrangements established for the SEC by virtue of the provisions of Condition 23 (Change control for the Smart Energy Code).

Part H: Other necessary matters for the Smart Energy Code

22.3132 Without prejudice to any of the matters set out in Parts E to G above, the contents of the SEC must also include:

- (a) provision enabling such SEC Parties (or categories of SEC Party) as are specified in the SEC to appoint agents (in accordance with such requirements regarding the eligibility of such persons as are so specified) for the purpose of exercising such functions under or in connection with the SEC, in such circumstances and subject to such restrictions, as are so specified;
- (b) provision requiring SEC Parties who are also parties to one or more of the other Core Industry Documents mentioned in Condition 21 to establish arrangements for the purpose of ensuring that such information arising from activities carried on in accordance with those documents as the Licensee may reasonably require for the exercise of its functions under the Principal Energy Legislation, this Licence, and the SEC will be supplied to the Licensee at such times and in such form and manner as may be specified in the SEC;
- (c) provision for the establishment and operation of the SEC Adoption Process to facilitate the activities described at Part I of Condition 16 (Procurement of Relevant Service Capability) with respect to the adoption by the Licensee of Energy Supplier Contracts within the meaning that is given to that term in Part J of that condition;
- (d) provision for the Licensee to receive, from such SEC Parties as are specified in the SEC, such services or resources, for such purposes and on such terms, as are so specified;
- (e) provision for the vesting, ownership, and novation of intellectual property rights in SEC Materials within the meaning of Condition 44 (Treatment of Intellectual Property Rights) to be compliant with the requirements of that condition with respect to those matters;
- (f) provision for a copy of the SEC that is compliant with paragraph 22.2627(a) to be published on behalf of the SEC Panel on its website;

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- (g) provision for information about the operation of the SEC Arrangements to be supplied on request to the Authority or to be published by it or the SEC Panel;
- (h) provision for the SEC Panel to secure the compliance of any SEC Party with the requirements of sub-paragraph (g); and
- (i) provision for such other matters as may be appropriate, having regard to the requirement for the SEC to be maintained as a document that is designed to achieve the General SEC Objectives.

Part I: Relief from obligations under the Smart Energy Code

22.3233 The Authority may (after consulting with the Licensee and, where appropriate, any other person likely to be materially affected) give a direction (“a derogation”) to the Licensee that relieves it of any one or more of its obligations under the Smart Energy Code to such extent, for such period of time, and subject to such conditions as may be specified in the direction.

Part J: Interpretation

22.3334 Any reference in this condition to a matter that the SEC must include or for which it must make appropriate provision is a reference to that matter whether as included or provided for in the SEC on the SEC Commencement Date or as so included or provided for at any time between that date and the Completion of Implementation (within the meaning that is given to that term in Part D of Condition 5).

22.3435 For the purposes of this condition:

Accession Agreement has the meaning that is given to that term in paragraph 22.2324(b).

Alt HAN Arrangements has the meaning that is given to that term in paragraph 22.20(e).

Alt HAN Service Capacity has the meaning that is given to that term in standard condition 55 of the electricity supply licence and standard condition 49 of the gas supply licence (Smart Metering – The Alt HAN Arrangements).

Alt HAN Services has the meaning that is given to that term in standard condition 55 of the electricity supply licence and standard condition 49 of the gas supply licence (Smart Metering – The Alt HAN Arrangements).

Certification Policies has the meaning that is given to that term in paragraph 22.2526(d).

Code Administrator has the meaning that is given to that term in paragraph 22.2627(b).

Consumer Members has the meaning that is given to that term in paragraph 22.2526(c).

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Other SEC Participants means every party to the SEC who is neither the Licensee nor the holder of an Energy Licence that requires that person to be a party to the SEC.

Relevant Supplier has the meaning that is given to that term in standard condition 55 of the electricity supply licence and standard condition 49 of the gas supply licence (Smart Metering – The Alt HAN Arrangements).

SEC Adoption Process has the meaning that is given to that term in paragraph 37 of Condition 16 (Procurement of Relevant Service Capability).

SEC Framework Agreement has the meaning given to that term in paragraph 22.2324(a).

Secretariat has the meaning that is given to that term in paragraph 22.2627(a).

Smart Metering Key Infrastructure means the arrangements in place under the SEC that govern the creation, management, distribution, use, storage, and revocation of digital certificates.

SMKI Policy Management Authority has the meaning given to that term in paragraph 22.2526(d).