

## 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 E2.3 (Obligation on Electricity Suppliers to Provide Data) and at Sections 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 ~~276~~(ed) 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 ~~289~~ 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.