



Department
of Energy &
Climate Change

Smart Meters Programme

Smart Energy Code Governance Set-up Arrangements

April 2013

Summary

This document sets out the processes that the Department of Energy and Climate Change (DECC) is following to put in place some of the initial governance arrangements for the Smart Energy Code (SEC). It implements the proposals set out in the November 2012 consultation on the SEC (the November Consultation) and the draft SEC legal text which accompanied it. There are two sections to this document.

The **first section** covers arrangements for the appointment of the first SEC Panel and the process for Parties applying to accede to the SEC. With the publication of this document the period for applying to become a Party to the SEC has opened. Stakeholders should pay careful attention to the deadlines set out in relation to accession and the appointment of the first SEC Panel. This section also sets out the Government's conclusions on the composition and voting arrangements for the SEC Panel following the November consultation, which is accompanied by updated SEC drafting.

The **second section** outlines the work that DECC is undertaking to procure the SEC Code Administrator and Secretariat (SECAS) and the arrangements for the establishment of a Smart Energy Code Company (SECCo). It includes updated SEC drafting related to the establishment of a SECCo.

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Background

1. The roll-out of smart meters across Great Britain will require changes to the regulatory framework governing energy industry participants. This includes the creation of a new industry code, the 'Smart Energy Code' (SEC). The SEC will be a new multiparty agreement which will define the rights and obligations between the Data and Communications Company (DCC) and the users of its services and specify other provisions to govern the end-to-end management of smart metering. The draft DCC licence contains regulatory provision for the introduction of the SEC defining it as the document designated by the Secretary of State as the "Smart Energy Code". Stage 1 of the SEC will be designated by the Secretary of State through publication of a notice setting out the legal text of the SEC and specifying the date it will take effect (its commencement date).

Establishment of SEC governance arrangements

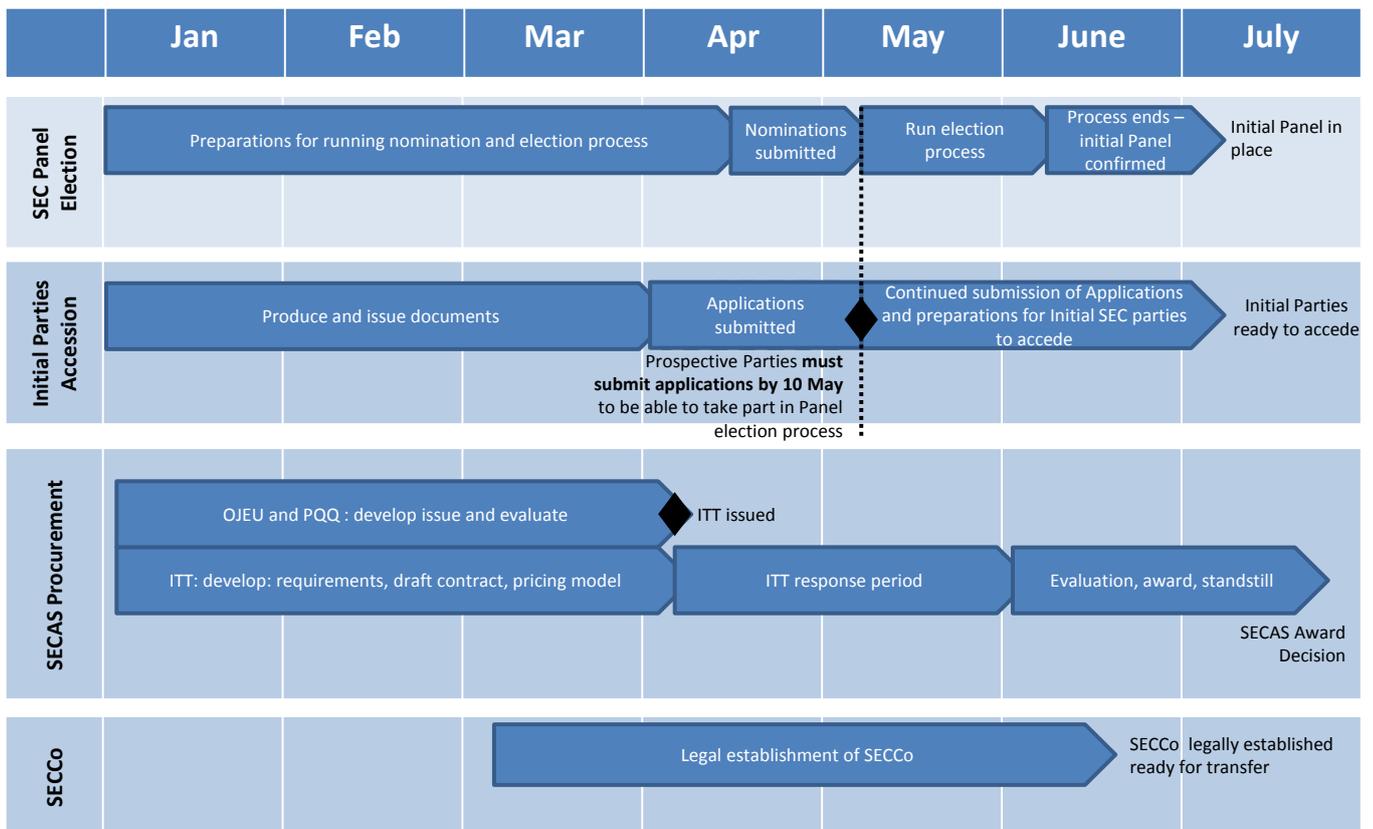
2. At SEC commencement the SEC will become a legally enforceable framework setting out contractual rights and obligations, with which Parties to the SEC will be required to adhere. Governance arrangements are required to be in place from this point onwards to oversee the operation of the SEC. In the November Consultation the Government set out the view that responsibility for SEC governance should be transferred to industry as soon as practical, supporting the principle of industry-led governance. There were few comments from stakeholders on the proposed approach set out in the November Consultation, and DECC is therefore now in the process of:
 - running the accession process for Parties to accede to the SEC at its commencement (paras 5-10 and Annex A and B);
 - facilitating the appointment process for the Initial SEC Panel (paras 11-20 and Annex C);
 - undertaking the procurement process for the appointment of the SEC Code Administrator and Secretariat on behalf of the Panel (paras 23-27); and
 - establishing a SECCo (paras 28-32 and Annex D).
3. DECC is undertaking these activities in order to provide a working governance framework for the SEC, such that the SEC Panel can take responsibility for some elements of the governance of the SEC from its commencement. Wherever possible the enduring processes set out in the SEC will be followed, and industry views will be sought to inform this work. This document describes the activities DECC is undertaking and the processes and timetable to be followed, including setting-out the points at which stakeholders need to take action.

SEC legal drafting

4. The following sections of this document set out the mechanics of a number of processes that DECC is following to put in place some of the governance arrangements for the SEC.

Where references are made to the SEC, or to terms defined within it, they relate to the draft of the SEC (Stage 1 of the Smart Energy Code Consultation Draft, November 2012¹) which accompanied the November Consultation. The Government will respond to the November Consultation in due course when Stage 1 of the SEC will also be finalised. However because of their direct bearing on the SEC governance set-up work the Government’s conclusions on the Panel’s composition and revised legal drafting are included, as is updated legal drafting on respect of the SECCo, which are set out in Annex C and Annex D.

Overview of activities and timetable



¹ <https://www.gov.uk/government/consultations/smart-energy-code-stage-1>

SECTION 1 – Appointment of initial SEC Panel and process for applying to accede to the SEC at designation

Initial Parties' Accession

5. Organisations required to accede to the SEC as a requirement of their licence must do so at SEC commencement. Organisations wishing to accede for other reasons will also be able to do so at SEC commencement. Parties acceding at commencement are the "Initial Parties" and DECC will run a process for Initial Parties to accede to the SEC at commencement culminating in the signing of the Framework Agreement (a schedule to the SEC).
6. Those wishing to accede to the SEC should complete and submit the following documentation to DECC:
 - The **Accession Application Form**² (Annex A) – requesting basic business information as set out in Schedule 1 of the SEC. Applications can be submitted from now onwards; and
 - **Power of Attorney** (Annex B) – allowing the Framework Agreement for Initial Parties to be executed on their behalf by DECC officials.
7. The final deadline for submission of Accession Application Forms and Power of Attorney for those wishing to become Initial Parties is 28 June 2013, allowing sufficient time for processing the completed Accession Application Forms before SEC commencement.

Important note for stakeholders

There is an earlier deadline of 10 May 2013 for the submission of Accession Application Forms from organisations wishing to take part in the election of the first Panel (see paras 17-20 below).

8. DECC will facilitate the process for Initial Parties to accede to the SEC at SEC commencement. As set out in the November consultation DECC intends to facilitate a postal accession process. This is intended to place a reduced burden on acceding SEC Parties as representatives will not be required to travel to a specific location on the day that the SEC is designated to sign the Framework Agreement. The postal process will operate with Initial Parties giving authority to DECC officials in the form of a Power of Attorney (Annex B), which:
 - allows the Framework Agreement, forming part of the SEC, to be signed on behalf of the Initial Parties. It is intended that Parties will have sight of the version of the

² In the enduring SEC Governance arrangement the Code Administrator will be responsible for creating an Application Form and establishing Application Guidance (Sections B1.3 and 1.4 of the SEC)

SEC which will be designated by the Secretary of State at least 28 days before the designation;

- enables Parties to subscribe to shares in the Smart Energy Code Company Ltd. (SECCo Ltd). Further detail of the process to establish the SECCo is at paras 23-28 below; and
 - can be withdrawn at any time by giving ten business days written notice to DECC.
9. The Power of Attorney should be submitted with the completed Accession Application Form to smooth the administrative process. In any event, the Power of Attorney will be required no later than 28 June 2013. The Accession Application Form allows for applicants to indicate that they do not wish to provide Power of Attorney, in which case they will need to make their representative available to physically sign the Framework Agreement at commencement – the date and arrangements for this will be notified at a later date.
10. The Power of Attorney will be used to execute the Framework Agreement on behalf of the Initial Parties when the SEC is designated. All signed Framework Agreement counterparts will be passed by DECC to the SEC Panel.

Appointment of Elected Members of the SEC Panel

November Consultation: Government conclusion on SEC Panel composition

11. This section sets out the Government's conclusions on SEC Panel composition, describing the enduring arrangements that will apply once SEC is designated. The November Consultation asked for views on the composition and voting arrangements for the SEC Panel. In light of responses to the consultation and further analysis, the Government has concluded that the Panel will comprise twelve or thirteen members: the panel Chair, two consumer members, the DCC member and eight elected industry members. In addition an appointment may be made by the Panel Chair. The eight industry members of the Panel will be elected by Party Categories as follows:
- Two are elected by Large Suppliers Parties;
 - Two are elected by Small Suppliers Parties;
 - One is elected by Electricity Network Parties;
 - One is elected by Gas Network Parties; and
 - Two are elected by Other SEC Parties.
12. As a consequence of the revised Panel composition the voting arrangements have also been revised. The SEC Secretariat will administer a process for the submission of nominations and election by Parties. Any person may submit a nomination for an individual to become an Elected Panel Member within the Party Categories listed above. The Secretariat will publish on the website, and send to each SEC Party, an invitation for nominations for candidates for the role of Elected Member.

13. Elected Members will be elected as follows. Where there is the same number of candidates for a Party Category as there are positions to be filled for that Party Category, all of the candidates will be elected as Elected Members. Where there are more candidates for a Party Category than there are positions to be filled for that Party Category, the Secretariat will invite the Voting Groups³ in that Party Category to vote for their preferred candidate.
14. Where voting is required one vote will be allowed per Voting Group and the candidate(s) receiving the most votes will be elected as the Elected Members. The Secretariat will publish the names of the individuals elected and notify the Parties, although the details of the votes cast will not be revealed, except to the Panel Chair. In the case of a tie, the Secretariat shall determine the Elected Member by drawing lots.
15. Where there are fewer candidates for a Party Category than there are positions to be filled, Ofgem may nominate an Elected Member for that Party Category. Where this occurs the Panel may then determine that a further election should be held in respect of that Party Category at any time thereafter.
16. Annex C sets out further the background and the rationale for the Government conclusions outlined above and includes updated SEC drafting.

DECC process to appoint the first Elected Panel Members

17. Under the enduring arrangements described above SEC Parties will vote in elections to appoint SEC Panel Elected Members. However, because there can be no SEC Parties until SEC commencement, alternative arrangements are necessary for the practical management of the appointment of the first Panel, if it is to be in place at SEC commencement. DECC therefore intends to facilitate the appointment process enabling industry to appoint the Elected Members of the first SEC Panel. In facilitating this process DECC's intention is to mirror, as far as practicable, the enduring appointment processes in the SEC, with DECC taking a purely administrative role by:
 - i. inviting nominations for candidates for the role of Elected Member by issuing a notice to stakeholders and by placing information on the DECC website. It is expected that this notice and further information on this part of the process will be issued mid-April; and
 - ii. inviting persons intending to become Initial Parties⁴ to submit completed Accession Application Forms (Annex A) by 10 May 2013. Persons submitting a correctly completed Accession Application Form by 10 May 2013 will be "Prospective Parties", and will be able to vote in the election of the first Elected Members of the SEC Panel
18. DECC will make available to the Prospective Parties the list of the nominated candidates in each Party Category, and in line with the enduring arrangements:

³ 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.

⁴ That is they will accede at SEC commencement

- where there are the same number of candidates for a Party Category as there are positions to be filled for that Party Category all of the candidates will be elected as Elected Members; or
 - where there are more candidates for a Party Category than there are positions to be filled for that Party Category, DECC will invite the Prospective Parties (as identified in paragraph 17(i) above) in that Party Category to vote for their preferred candidate. One vote will be allowed per Voting Group⁵ and the candidate(s) receiving the most votes will be elected as the Elected Members. DECC will count and verify the results of the voting, in the event of a tie lots will be drawn to determine the result.
19. Prospective Parties and Elected Members will be informed of the outcome by DECC, and the process will conclude with the confirmation by the Secretary of State of the first SEC Panel Elected Members. It is anticipated that this process will run during May and June 2013 (see timetable below).
20. The objective of this process is to give industry participants the opportunity to select Elected Members of the first SEC Panel. DECC expects that organisations becoming Prospective Parties will become Initial Parties to the SEC (they are simply applying earlier in order to be able to take part in the election process for the first Panel). However, if DECC considers that the nomination or election process is being abused in any way, the Secretary of State reserves the right to identify the persons to be nominated as the first SEC Panel in some other way.

Timetable and key activities

21. The table shows the key activities in the timetable for the identification of Prospective Parties, appointment of the first Panel and Accession of Initial Parties. Stakeholders will want to note the key deadlines in the rows shaded red.

Date	Action
8 April	DECC issues notice to stakeholders with invitation to submit Accession Application forms
8 April to 10 May	<p>Prospective SEC Parties submit completed application form and Power of Attorney</p> <p>Those wishing to accede at the SEC commencement AND take part in election for first SEC Panel should submit completed Accession Application Forms by 10 May to become Prospective Parties.</p> <p>Applications received after 10 May, will still be able to accede at SEC commencement (subject to the final deadline below), but will not be eligible to vote in the election for the first SEC Panel.</p>

⁵ 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.

Date	Action
17 April	DECC issues notice inviting the nomination of candidates for the role of Elected Member.
17 April to 10 May	Period for submission of nominations for Elected Member positions.
29 May	<p>DECC Initiates election process for Elected Members as follows:</p> <p>Where there is the same number of candidates nominated for a Party Category as there are positions to be filled for that Party Category all of the candidates will be elected as Elected Members.</p> <p>Where there are more candidates nominated for a Party Category than there are positions to be filled for that Party Category, DECC will invite the Prospective Parties in that Party Category to vote for their preferred candidate (one vote per Voting Group).</p>
29 May to 11 June	Voting Groups cast votes for preferred candidate
12 June to early July	<p>DECC counts votes and confirms Elected Members of the first Panel</p> <p>This period includes: assurance and verification of election results, informing Elected Panel Members and Prospective Parties, and publishing names of Elected Panel Members on website.</p>
28 June 2013	<p>Final deadline for submission of Accession Application Forms and Powers of Attorney (for those who did not become Prospective Parties).</p> <p>Applications received after 28 June date can still accede, but <u>not</u> as Initial Parties. Such applications will be passed to the SEC Panel.</p>

Contacts

22. If you have any questions in relation to this process please contact:

Saleha Dani on 0300 068 5195 or

Rob Thornes on 0300 068 5128.

Alternatively please email at secgovernance@decc.gsi.gov.uk

SECTION 2 – Code Administrator and Secretariat and SECCo

The SEC Code Administrator and Secretariat

23. The SEC Code Administrator and Secretariat (SECAS) will play an important role in SEC governance, undertaking day-to-day governance activities under the direction of the SEC Panel. The November Consultation proposed that DECC would facilitate the procurement of the SECAS enabling it to be in place at SEC commencement. The approach set out in the consultation was that DECC would run the procurement process, engaging with the industry to ensure that the requirements for the SECAS services were appropriately specified, but with the SECAS contracts themselves signed by a SECCo at SEC commencement.
24. The procurement process for the SECAS has started. As a matter of best practice DECC is mirroring the Utilities Contracts Regulations 2006⁶ restricted procedures for the procurement of the SECAS and an advert for SECAS services was placed in the Official Journal of the European Union in January. A Pre-Qualification Questionnaire (PQQ) was issued to the market on 4 February 2013 and DECC is now developing detailed requirements for the tender documentation in consultation with industry and consumer representatives⁷. An Invitation to Tender (ITT) is expected to be issued in April and the competition is expected to conclude with the identification of the preferred bidder in the summer before SEC commencement. DECC is undertaking this procurement on behalf of the SEC Panel; ultimately the SECCo will sign the contracts with the SECAS service provider. The draft SEC sets out some of the specific roles and responsibilities of the SECAS, which are summarised below.
25. The SECAS Code Administration services will encompass support to the conduct of the SEC Panel's governance procedures and expert procedural advice encompassing:
- Configuration control of the Code and supporting documentation
 - Modification of the SEC at the request of Parties, government or Ofgem
 - Accession of Parties to the SEC
 - The provision of advice and support to prospective SEC Parties
 - Suspension, expulsion and withdrawal procedures for Parties
 - Dispute resolution between Parties
 - Entry of service users to the DCC
 - Reporting

⁶ <http://www.legislation.gov.uk/uksi/2006/6/contents/made>

⁷ A subset of the programme's Smart Meter Regulation working group 2 – Smart Energy Code is providing input to this process

26. The SECAS Secretariat services will encompass support to the conduct of SEC Panel meetings relating to the administration of the Code including:
- Acting as clerk to the SEC Panel
 - Scheduling SEC Panel meetings and sub-committee meetings, working group and other meetings
 - Arranging meeting facilities
 - Recording Panel decisions
 - Administering the election of Panel members
27. The exact scope of the SECAS services is being further developed through the procurement process and in conjunction with prospective industry service users.

Smart Energy Code Company (SECCo)

28. The November consultation proposed that a SECCo would be established as a vehicle for the SEC Panel to contract for a range of governance services (including, but not limited to, the SECAS), this contracting mechanism would be its only substantive function. It was proposed that a SECCo would be established as a company prior to SEC commencement with Government-appointed lawyers given the legal responsibility to be its directors before SEC commencement.
29. Schedule 4 of the SEC has been updated and amended and is included at Annex D of this document. Schedule 4 sets out the arrangements for the operation of SECCo including its shareholders and dealings with shares, composition and proceedings of its board, and handling of conflicts. It further sets out that SECCo will be run on a break even basis with any surplus working capital applied to subsequent expenditure. Furthermore none of the shareholders are obliged to provide finance to SECCo or provide any guarantees, indemnities or securities for it.
30. The activities, ownership and board composition of the SECCo will be tightly constrained by the SEC. The objective of the SECCo is to be a corporate vehicle to assist the Panel, including entering into contracts to implement Panel Decisions. Its board will be the members of the SEC Panel, it will have no additional employees and will be owned by SEC Parties (licensed SEC Parties, other than the DCC, will be required to purchase a share and non-licensed SEC Parties will have the choice to purchase a share). Each Party may hold only one share with a value of £1. The transfer of directorship and ownership will take place at SEC designation.
31. Given the intention to establish SECCo before commencement of the SEC, Annex 1 of Schedule 4 sets out the steps that will have been taken prior to commencement. This will ensure that those Parties who agreed to become shareholders prior to commencement (see also Appendix to Power of Attorney) will each be a Shareholder, and that each of the initial Panel Members will be a Director. Various procedural formalities will be completed as set out in Annex 1 of Schedule 4 of the SEC. Annex 2 of Schedule 4 of the SEC set out the Articles of Association for SECCo.

32. Stakeholders did not comment on the provisions contained within the draft SEC related to the SECCo as set out in the November Consultation. Minor updates have been made to the content of Schedule 4 and its Annex 2 and its Annex 1 is now included. As this is a procedural matter it is not intended to specifically consult on it. The necessary activities for the establishment of SECCo are now underway.

Timetable and key activities

33. The table below shows the key activities for the procurement of SECAS and the establishment of a SECCo.

Date	Action
Early April 2013	DECC issues of ITT for SECAS procurement following evaluation of PQQ stage.
April/ May	Bid preparations by potential service providers preparing submissions in response to ITT.
March/ April	DECC progresses legal establishment of SECCo including the material listed at SEC Schedule 4 Annex 1.
May/ July	DECC evaluation of ITT submissions and progress to award decision.

Contacts

34. If you have any questions in relation to this aspect of the SEC set-up work please contact:

Peter Dell'Osa on 0300 068 6729 or

Rob Thornes on 0300 068 5128.

Alternatively please email at secgovernance@decc.gsi.gov.uk

Annex A: Accession Application Form

Persons wishing to become Parties to the Smart Energy Code should provide all of the information listed below.

The completed form can be submitted in electronic form to secgovernance@decc.gsi.gov.uk or in hard copy to Smart Meters Programme, Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW.

1.	The Party's full name.	Click here to enter text.
2.	Whether the Party is a company or a natural person or a partnership etc.	Click here to enter text.
3.	The Party's jurisdiction of incorporation (if applicable).	Click here to enter text.
4.	The Party's registered number (if applicable).	Click here to enter text.
5.	The Party's registered address (or, if not applicable, its principal address).	Click here to enter text.
6.	Where the Party is incorporated or resident outside of Great Britain, an address in Great Britain for the receipt of legal notices on the Party's behalf.	Click here to enter text.
7.	The Party's VAT registration number (if applicable).	Click here to enter text.
8.	The Party's address for invoices under the Code.	Click here to enter text.
9.	The Party's address or addresses for all other notices under the Code.	Click here to enter text.
10.	The Party Category into which the Party considers it will initially fall.	Click here to enter text.

11.	The Energy Licences held by the Party (including any for which it has applied).	Click here to enter text.
12.	Details of any Parties that are Affiliates of the Party (where the Party is a company).	Click here to enter text.
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).	Click here to enter text.

Additional material provided for the accession of Initial Parties

<p>Please indicate whether you will provide Power of Attorney</p> <p>NOTE: if Power of Attorney is not provided a representative will be required to make themselves available on a date to be confirmed to sign the Framework Agreement</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
<p>If you are not an energy licensee, please indicate whether you wish to hold a share in SECCo.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>

<p>Please provide full contact details for the person who should be contacted with regard to questions or queries arising from the completion of this form</p>	<p>Click here to enter text.</p>
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Annex B: Power of Attorney

The following Power of Attorney and associated Appendix should be completed and returned to Saleha Dani, Smart Meters Programme, Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW.

A number of areas are highlighted for completion and some notes are included within the form. These should be carefully reviewed and completed and/ or removed as appropriate.

If Power of Attorney is not granted then prospective Parties will need to make their appropriate representative available to physically sign the Framework Agreement if they are to become Initial SEC Parties.

THIS POWER OF ATTORNEY is made on the *[insert date]* 2013 by *[insert name of company]* (a company incorporated in *[insert jurisdiction]* with company number *[insert registered number]*) whose registered office is at *[insert registered address]* (the “**Principal**”).

This Power of Attorney witnesses as follows:

1 The Principal hereby severally appoints each of:

Robert Thornes;

Peter Dell’Osa; and

Saleha Dani

(in each case, c/o DECC, 3 Whitehall Place, London, SW1A 2AW), each of whom being the “**Attorney**” and two or more of whom together being the “**Attorneys**”, to execute, sign and deliver (as a deed or otherwise):

- the Framework Agreement, being the document of that name forming part of the Smart Energy Code designated by the Secretary of State pursuant to the smart meter communication licences granted under the Electricity Act 1989 and the Gas Act 1986; and
- a letter subscribing for shares in the capital of Smart Energy Code Company Limited (a company incorporated in England & Wales, with company number 08430267) which is

substantially in the form attached as an Appendix to this Power of Attorney. ***[Delete this bullet if you do not hold an energy licence and do not wish to become a shareholder in SECCo. Delete this comment in all cases.]***

2 Each Attorney shall (in his or her absolute discretion) be entitled to appoint a substitute to act as the attorney of the Principal and any additional person to be the attorney of the Principal for any or all of the purposes of the appointment made by this Power of Attorney (with the same powers as the Attorney, including the power to appoint any substitute or additional attorney as conferred by this paragraph 2), and to revoke such appointments. Notice of such appointments and revocations must be in writing and will take effect in accordance with paragraph 6.

3 The execution, signature and delivery (as a deed or otherwise) of the documents referred to in paragraph 1 by any Attorney shall be as good valid and effective as if the same had been executed, signed and delivered by the Principal and the Principal hereby undertakes (where requested to do so) to ratify and confirm the execution, signature and delivery (as a deed or otherwise) of the documents referred to in paragraph 1.

4 This Power of Attorney may be revoked by the Principal on 10 Business Days notice. Any notice given to revoke this Power of Attorney will not take effect until the beginning of the 11th Business Day after the notice has been received. A “**Business Day**” means Monday to Friday on a day that is not a public holiday in England.

5 A notice to be given to the Principal under or in connection with this Power of Attorney must be in writing and given by first class pre-paid post to the address of the Principal set out at the head of this Power of Attorney. A notice to be given by the Principal under or in connection with this Power of Attorney must be in writing and delivered by hand, recorded delivery or email to:

Robert Thornes, DECC, 3 Whitehall Place, London, SW1A 2AW

secgovernance@decc.gsi.gov.uk

6 A notice given in accordance with paragraph 5 shall be deemed to have been received:

- (a) if given by first-class pre-paid post, 2 Business Days after being posted to the specifies address;
- (b) if delivered by hand or recorded delivery, at the time of delivery to the specified address; or

(c) if delivered by email, at the time of transmission to the specified email address (provided that a copy of the email is delivered by hand or recorded delivery to the specified address on the next following Business Day).

7 This Power of Attorney, or a certified copy of it, may be disclosed to any other person who requires a copy of it in relation to the Smart Energy Code referred to in paragraph 1 above.

8 The proper law applicable to this Power of Attorney is English law. Any dispute or claim (whether contractual or otherwise) arising out of or in connection with this Power of Attorney or its subject matter shall be governed by and construed in accordance with English law.

EXECUTED AND DELIVERED AS A DEED by the Principal on the date which first appears in this Power of Attorney.

[This Power of Attorney should be executed using one of the following four options. Please delete the three options that are not used together with this comment.]

Option 1 – two directors or director and company secretary

EXECUTED AND DELIVERED)
AS A DEED by)
[insert name of company])
acting by 2 Directors or
1 Director and the Company Secretary

Director

Name (in BLOCK CAPITALS)

Director/Secretary

Name (in BLOCK CAPITALS)

Option 2 – one director and witness (where allowed by company articles)

EXECUTED AND DELIVERED)
AS A DEED by)
[insert name of company])
acting by a Director

Director

Name (in BLOCK CAPITALS)

In the presence of:

Signature of witness

Name (in BLOCK CAPITALS)

Address

Option 3 – company seal

EXECUTED AND DELIVERED)
AS A DEED by affixing the)
common seal of)
[insert name of company])
in the presence of a Director duly
authorised to attest the affixing of the
seal on its behalf

Director

Name (in BLOCK CAPITALS)

Option 4 – companies incorporated outside of the UK

EXECUTED AND DELIVERED)
AS A DEED by)
[insert name of company])
acting by a person authorised to execute this
document on its behalf in accordance with the
rules of the jurisdiction in which it is incorporated

Authorised Person

Name (in BLOCK CAPITALS)

In the presence of:

Signature of witness

Name (in BLOCK CAPITALS)

Address

APPENDIX TO POWER OF ATTORNEY

(Subscription Letter)

To: The Directors
 Smart Energy Code Company Limited
 [ADDRESS]

2013

Dear Sirs

Smart Energy Code Company Limited (the “Company”)

I apply for and request that you allot to me 1 ordinary share of £1 in the capital of the Company (the “Share”).

I agree to accept the Share when allotted to me subject to the terms of the Memorandum and Articles of Association of the Company and I hereby authorise you to place my name in the Register of Members of the Company as the holder of the Share.

I agree to pay for the Share in full prior to any transfer of the Share.

Yours faithfully

.....
**Executed under a Power of Attorney
for and on behalf of [insert subscriber name]**

Annex C: Government conclusion on Panel composition and voting arrangements

Panel composition

Following responses received from the November 2012 SEC Stage 1 consultation the arrangements for electing SEC Panel members have been revised. The November 2012 consultation set out two potential approaches to the Panel composition and asked respondents to indicate their preference:

Option A: A Panel which includes an equal number of members per Party category (Large Supplier, Small Supplier, Network, Other DCC User), thus helping to ensure that Panel members have a grasp of issues that are important to the diversity of SEC Participants; and

Option B: A Panel which provides for a set number of members to be nominated from and elected by all SEC Parties, thus incentivising the election of Panel Members who have the support of multiple Party Categories and a broad understanding of issues that are important to SEC participants.

The consultation explicitly recognised that both models have advantages. Option A ensures that Panel members have an understanding of all categories of market participant. Option B places more emphasis on the qualities of the individuals being nominated. The legal drafting presented in the consultation was for Option B.

A small majority of respondents expressed a preference for a Panel drawn from and elected in equal numbers by Party Category (Option A). One argument in favour of this option was that it best ensures that all Party Categories are equitably represented, whereas Option B creates the potential for a Panel whose members are not drawn from all Party Categories. In particular it was noted that Option B could lead to the creation of a Panel which had no members elected by certain licenced parties who will be obliged to accede to the SEC (because they could be outvoted by other Parties). Consequently some respondents strongly opposed Option B. Additionally, some respondents found the voting arrangements for Option A to be less complex than Option B, and therefore easier for parties to understand and for the Code Administrator and Secretariat to administer.

A significant minority of respondents preferred Option B. Some argued that it would be more responsive to the interests of parties as they change over time, and noted that the population of DCC users has the potential to change significantly. One respondent suggested that for many categories it may be unreasonable to expect that one member would be able to understand and communicate the priorities of the whole category (especially given the potential for differences between large and small participants across gas and electricity).

Having originally considered that both approaches to creating a Panel were practical the Government has concluded that it is better to guarantee that each Party Category is able to elect Panel members. Whilst the interests of different Party Categories are likely to change over time, some energy licence holders will always need to be Party to the SEC, and will be subject to rights and obligations under it. It is right therefore that they are given certainty that

they can elect a set number of Panel members. This change also has the added benefit of simplifying the Panel elections and providing a greater breadth of industry participation.

The Government has therefore concluded that it is appropriate that each Party Category is able to elect two Panel members rather than one. This will better ensure that Panel members can understand issues which are important to a diversity of Parties within each category, while ensuring the Panel stays a manageable size. In line with this change the Government considers it is reasonable to allow for up to two consumer representatives to have a seat on the Panel. The resulting change in Panel composition is set out in the table below.

Panel composition set out in November consultation	Revised Panel composition
<p>A nine or ten member Panel comprised of:</p> <ul style="list-style-type: none"> • The Panel Chair • One Consumer member • One DCC Member • Six industry members elected by all parties • Any additional person appointed by the Panel Chair whose interests are not adequately represented in the composition of the Panel at that time 	<p>A twelve or thirteen member Panel comprised of:</p> <ul style="list-style-type: none"> • The Panel Chair • Two Consumer members • One DCC Member • • Eight industry members, of which: <ul style="list-style-type: none"> • 2 are elected by Large Suppliers Parties • 2 are elected by Small Suppliers Parties • 2 are elected by Networks (1 each by electricity network and gas network Parties) • 2 are elected by 'Other DCC Users' Parties • Any additional person appointed by the Panel Chair whose interests are not adequately represented in the composition of the Panel at that time

Voting arrangements

As a consequence of the revised Panel composition the voting arrangements have been revised. These are set out as follows:

- An invitation for nominations for candidates for the role of Elected Member will be placed on the Website and sent to Parties by the Secretariat

- Nominations are submitted to the Secretariat:
 - There are no restrictions on the persons who can submit nominations (persons may nominate themselves)
 - Nominations must be made for individuals (that is they are not to be made for a body corporate, association or partnership)
 - Subject to very few limitations nominated persons will be eligible candidates
 - nominations are made for a person to be elected to a particular Party Category position
- Each Party in the relevant Party Category⁸ is given notice by the Secretariat of the names of each eligible candidate for that Party Category, any supporting information provided to the Secretariat with the nomination will also be provided.
 - Where there are the same number of eligible candidates for Party Category as there are positions, then those candidates are elected the Elected Members for those positions
 - Where there are more eligible candidates for a Party Category than there are positions to fill for that Party Category, then the Voting Groups⁹ comprising that Party Category cast one vote for their preferred eligible candidate. Eligible candidates with most votes elected the Elected Member. In the case of a tie lots will be drawn.
- The Secretariat will publish on the Website and notify Parties of the persons elected
- Panel Members commence in office in accordance with the circumstances of the election.

Where there are less eligible candidates for a Party Category than there are positions to be filled as Elected Members for that Party Category then Ofgem may at its discretion nominate an Elected Member for that Party Category. Where this occurs the Panel may then determine that a further election should be held in respect of that Party Category at any time thereafter.

Updated draft of Sections C3 and C4 of the SEC

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;

⁸ that is each of Large Suppliers Parties, Small Suppliers Parties, Electricity Network Parties, Gas Network Parties and Other SEC Parties

⁹ 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.

- (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

C3.2 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; 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, 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 itself 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 of 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.

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

- (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;
- (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 The person or persons elected as an Elected Member as a result of the process set out in Section C4.2 shall be:

- (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 less 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 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.

Annex D

SEC SCHEDULE 4 – SECCO [DRAFT]

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: <ul style="list-style-type: none"> (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 SECCo) 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 cognitive terms shall be construed accordingly.
Retiring Shareholder	means either: <ul style="list-style-type: none"> (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.

Shareholder means a person from time to time registered as a holder of a Share.

Share means an ordinary share of £1 each in the share capital of SECCo.

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 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 and transfer at par to a nominee for all the Shareholders (other than the Retiring Shareholder) selected by the Directors the Share held by the Retiring Shareholder. 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 any Director to execute and deliver a transfer 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 amount 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 the Share, 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 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 appointor to do all the things which his appointor is authorised or empowered to do. A Director who is also an alternate is entitled, in the absence of his appointor:

(a) to a separate vote on behalf of his appointor in addition to his own vote;

(b) to be counted as part of the quorum of the Board on his own account and also in respect of the Director for whom he 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 speak to and hear 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 shall be six Directors, 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

12.1 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 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, save in respect of any antecedent breach.

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 from 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 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 5.4 applies) be referred to the chair of the meeting. The ruling of the chair of the meeting in accordance with this article 5.3 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 5.3 the chair of the meeting is an interested director, the question must be referred to the other directors in accordance with article 5.4 as if it were a question about the chair of the meeting.

5.6 If a question of the kind referred to in article 5.3 arises about the chair of the meeting (or if article 5.4 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 5.5,
- (c) 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 5.5,

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 shall be six Directors, 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 The directors shall not be entitled to any remuneration from 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, all shares shall be at the disposal of the directors who may issue them, 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 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 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.

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 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 served on or 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 that the Directors shall act in all respects in relation to the Company so as to give effect to the Code.

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