Smart Energy Code

SEC
Smart Energy Code

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SEC Modification Proposal Form – SECMP0068

Mod Title

Alt HAN Company third party rights to enable external financing arrangements

Submission Date

6 December 2018

Details of Proposer	
Name:	David Lyons
Organisation:	E.ON
Contact Number:	024 7619 6282
Email Address:	David.Lyons@eonenergy.com
Details of Representative (if applicable)	
Name:	
Organisation:	
Contact Number:	
Email Address:	

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1. What issue are you looking to address?

Background

Principle obligations within Standard Licence Condition (SLC) 55.2 of the Electricity Supply Licence and Standard Licence Condition 49.2 of the Gas Supply Licence require that all Relevant Supplier Parties, in conjunction with each other, must ensure that Alternative Home Area Network (Alt HAN) Activities are carried out and that Alt HAN Services are made available to all Relevant Suppliers.

Alt HAN Activities (as defined in SLC 55.6) involve arrangements for the financing of the costs incurred during the undertaking of Alt HAN Activities. Alt HAN Services (as defined in SLCs 55.7) include, but are not limited to, the manufacture, provision, installation, operation of Alt HAN Equipment. Under SLC 55.4 Alt HAN Services may be made available by entering into arrangements for the financing of the costs of the services.

In addition to the regulations above, The Department for Business, Energy and Industrial Strategy (BEIS) has confirmed the policy intent is to allow the Alt HAN Company (AltHANCo) to finance its costs.

SEC Section Z4 outlines the regulatory requirements pertaining to AltHANCo costs being reimbursed by the Data Communications Company (DCC). They outline the requirement for DCC to reimburse costs incurred by the DCC to AltHANCo and that the DCC is entitled to recover amounts paid by it to AltHANCo through DCC Charges, which are paid by Energy Suppliers.

What is the issue?

As preparations for, and as the Alt HAN Technology Solutions roll-out commences, high costs of technology solutions contracted via AltHANCo will be incurred over a short period. The pass-through of these costs in-year to Energy Suppliers will not be the most appropriate funding mechanism as Suppliers will be burdened with high upfront costs for Alt HAN, which will not necessarily reflect the level of benefit that current and future Suppliers will receive from Alt HAN solutions as market share changes over time.

Following direction from the Alt HAN Forum (Forum), (a Forum established pursuant to SEC Section Z and consisting of all Relevant Supplier Parties), AltHANCo is investigating possible financing routes to spread and reduce in-year costs for Energy Suppliers. Currently, the preferred financing model is an assignment of receivables model where AltHANCo would assign its right to receive income for the financed costs from the DCC directly to a funder. This loan agreement would be between AltHANCo and an external funder. Energy Suppliers would continue to pay the DCC via monthly invoices, with AltHANCo's receivables relating to the financed costs being assigned to an external funder. The external funder will provide payments to AltHANCo as required and will recover payments from DCC over time. Although other financing models are also possible, the assignment of receivables model is

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currently considered the most simple and cost-effective for the initial financing requirement. It is important to note that the need for AltHANCo to be given enforceable rights to receive payments from the DCC under the SEC would be required for all financing options.

The key issue for this financing arrangement is the ability to assign rights to receive income to the funder, to provide the necessary comfort that their revenue stream is secure. As AltHANCo is not a party to the SEC (as it has not signed the Framework Agreement or an Accession Agreement), technically it does not currently have an enforceable contractual right to receive payment of the AltHANCo costs from the DCC, and therefore by extension it cannot assign these rights. However, DCC are obligated to pay AltHANCo under its licence, under SEC Section Z4.7, or for Relevant Suppliers to pay under SEC Section Z4.11. It is not clear how AltHANCo would enforce its purported rights, since it is not a Party to the SEC and there is no reference to AltHANCo in the Third Party Rights clause (Section M11.5(b)), through which other Third Parties (ie: Comms Hub Lenders and SECCo) are permitted to enforce their rights.

As a result, it is not currently possible for funders to take an assignment of the right to the income received from the DCC, as they would have no ability to enforce that right. AltHANCo would be unable to pursue its preferred financing model as funders will not lend without a SEC Modification to give AltHANCo enforceable rights under the SEC and the ability to assign these rights. BEIS has also confirmed that the policy intent was for AltHANCo to be able to finance, but the current SEC drafting does not support this intent.

2. Why does this issue need to be addressed? *(i.e. Why is doing nothing not an option?)*

The current regulations represent a barrier to AltHANCo to enter into financing models. AltHANCo does not currently have a contractual right to receive payment of the AltHANCo costs from the DCC, or the ability to assign these rights. Without the ability to enforce its rights under the SEC, AltHANCo will be unable to pursue its preferred method of financing (an assignment of receivables model) as funders will not provide funds under this model without a Modification due to a lack of security over the revenue stream.

If financing is not secured, Suppliers will incur high in-year costs as a result of the Alt HAN Programme which AltHANCo believes could hinder the Forum in meeting its objectives, such as to facilitate competition between persons engaged in, or in Commercial Activities connected with, the Supply of Energy.

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3. What is your Proposed Solution?

AltHANCo has received legal advice and the proposed solution is to give AltHANCo Third Party Rights to enable it to enforce and assign its rights to receive payments from the DCC.

This is the preferred solution as it is less complex than other options considered, creates assignable and enforceable rights for AltHANCo against DCC and (with Ofgem consent) licensed suppliers, limits AltHANCo exposure to other SEC obligations and will not bind AltHANCo to the prohibition on assignment of rights (Section M11.8). It also represents a similar approach to that used elsewhere in the Smart Meter programme as the DCC has previously used this structure for its financing activities.

Alternatively, AltHANCo could obtain rights by acceding to the SEC. However, this is a more complicated, time consuming solution that would place addition obligations on AltHANCo.

Alt HAN Forum Decision

It has been agreed in principle by the Forum that AltHANCo should be given Third Party Rights to enable it to enforce its rights under Section Z4 and shall be entitled to assign the benefit of these rights. Through this action Forum has approved the work to pursue a SEC Modification to give AltHANCo rights under the SEC, but has not yet made a decision as to whether financing should be pursued for the initial stage of financing. This modification is an enabling change, which would allow AltHANCo the ability to pursue this financing approach which is expressed the Energy Supply Licence and aligned to the policy intent.

This agreement has been documented in the Alt HAN Forum meeting (ALTHF_23_181128) minutes in the form of a Forum decision to pursue a SEC Modification to give AltHANCo the rights to be reimbursed by the DCC and also to be entitled to assign these rights.

Legal drafting

The proposed legal drafting below has been agreed by SEC lawyers. Draft legal text to give AltHANCo Third Party Rights to receive payments from the DCC and assign these rights is provided below:

Third Party Rights

M11.5 The following persons shall be entitled to enforce the following rights in accordance with the Contracts (Rights of Third Parties) Act 1999:

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(a) the person referred to in Sections C3.12 (Protections for Panel Members and Others) and M2.13(a) (Other Matters) shall be entitled to enforce the respective rights referred to in those Sections; ~~and~~

(b) the Approved Finance Party for each Communications Hub Finance Facility shall be entitled to exercise and/or enforce the following rights of the DCC in respect of the Communications Hub Finance Charges relating to that facility where a Communications Hub Finance Acceleration Event has occurred in respect of that Communications Hub Finance Facility and the Authority has determined that the DCC is unwilling or unable to do so:

(i) the right to calculate the amount of the Communications Hub Finance Charges arising as a result of that event (provided in such circumstances that the Approved Finance Party must demonstrate to the satisfaction of the Authority that the amount of the charges so calculated will in aggregate be no more than the amount contractually due and payable (but unpaid) by the DCC to the Approved Finance Party in respect of that event);

(ii) the right to invoice the Users in respect of the Communications Hub Finance Charges arising as a result of the Communications Hub Finance Acceleration Event (whether in the amount calculated by the DCC in accordance with this Code, or in the amount calculated by the Approved Finance Party and approved by the Authority under Section M11.5(b)); and/or

(iii) the right to enforce payment by the Users in accordance with this Code of the amount of Communications Hub Finance Charges invoiced in accordance with this Code,

and the payment of any amount by a User to an Approved Finance Party pursuant to this Section M11.5(b) shall satisfy that User's obligation to pay that amount to the DCC; and

(c) AltHANCo (as defined in Section Z (Alt HAN Arrangements)) shall be entitled to enforce all rights which are conferred upon it under Section Z4 (Alt HAN Costs and Budgets), and shall (notwithstanding Section M11.8) be entitled to assign the benefit of these rights

Amend Section Z4.7 as follows:

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AltHAN Costs to be Reimbursed by the DCC

Z4.7 The Alt HAN Costs incurred by AltHANCo shall be reimbursed to AltHANCo by the DCC. Nothing in Section M2 (Limitations of Liability) shall limit the DCC's liability to reimburse AltHANCo for the AltHANCo Costs.

This change to Z4.7 is consistent with M2.18 which apples to SECCo's recovery of Recoverable Costs.

4. What SEC objectives does this Modification better facilitate?

This Modification better facilitates General SEC Objective (d)[1] by spreading costs over a number of years preventing Suppliers having to pay high in-year costs for Alt HAN which would aid competition by helping to avoid cashflow issues for Suppliers.

This Modification also better facilitates General SEC Objective (h)[2] by:

- Enabling energy Suppliers to exercise their right under licence obligations with respect of 55.4(c) & 55.5(h) which are currently prohibited for an assignment of receivables mode:
  - 55.4(c)
    - entering into, by or on behalf of all Relevant Suppliers, of such arrangements for the financing of the costs of the services as are reasonably required for the purposes of ensuring the availability and provision of those services.
  - 55.5(h)
    - include such arrangements for the financing of the costs of any of the activities referred to in paragraphs (a) to (g) as are reasonably required for the purposes of ensuring the undertaking of, or acquiring of services which comprise or form part of, those activities; and

The Alt HAN Forum, which all Relevant Supplier Parties are entitled to attend, has agreed that an assignment of receivables financing model is an option it would like to consider.

[1] To facilitate effective competition between persons engaged in, or in Commercial Activities connected with, the Supply of Energy.
[2] To facilitate the establishment and operation of the Alt HAN Arrangements.

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5. What is the requested Path type?	Path 2

- This modification meets the criteria under SEC Section D2.6(b)[3] as this modification will have a material impact on Commercial Activities connected with the Supply of Energy.
- As AltHANCo are requesting that this Modification be treated as Urgent it will follow an Authority Determined path type.

6. Are you requesting that the Modification Proposal be treated as Urgent?	Yes

This Modification should be treated as Urgent.

This relates to Urgent Criteria (a)[4] as set out in Ofgem's criteria under a "significant commercial impact on parties, consumers or other stakeholder(s)."

AltHANCo is looking to initially finance development and mobilisation costs over the next financial year which would be spread over a number of years rather than being incurred in-year by Suppliers. From financial year 2020/21 AltHANCo will be looking to finance roll-out activities over a number of years. Financing will reduce in-year costs significantly for small and large Suppliers which AltHANCo considers has an advantage for competition as small Suppliers will face less cashflow issues.

Without Urgent status, the Modification will not be implemented in time to allow AltHANCo to finance costs next year through an assignment of receivables model.

The DCC has also given AltHANCo a deadline of 31st January 2019 to provide an updated view on the AltHANCo budget for financial year 2019/20. This approach has been approved as part of the budget consultation. A view as to whether financing is going ahead before this date is needed to prevent DCC from over-recovering in financial year 2019/20 from Suppliers.

7. What is your desired implementation date?

AltHANCo requires an ad hoc implementation date during the month of January to provide funders comfort over the regulatory regime and to allow AltHANCo to pursue an assignment of receivables financing model.

[3] The variations are likely to have a material effect on competition in the Supply of Energy or Commercial Activities connected with the Supply of Energy.
[4] A significant commercial impact on parties, consumers or other stakeholder(s).

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The DCC has also given AltHANCo a deadline of 31st January 2019 to provide an updated view on the AltHANCo budget for financial year 2019/20. A view as to whether financing is going ahead before this date is needed to prevent DCC from over-recovering from Suppliers.

8. Which SEC Parties are expected to be impacted? (Please mark with an X)

Large Supplier Parties	X	Small Supplier Parties	X
Electricity Network Parties		Gas Network Parties	
Other SEC Parties	X		

Suppliers will be impacted as if the modification is approved they will incur less in-year costs in financial year 2019/20.

The DCC will also be impacted as its financial year 2019/20 budget will be revised downwards (subject to successful SEC Modification implementation). AltHANCo would also have the right to receive costs under Section Z4.

9. Which parts of the SEC will be impacted?

SEC Sections M11.5 and Z4.7 of the SEC will be impacted.

M11.5 will have a paragraph (c) added to state AltHANCo is entitled to enforce its rights under Sections Z4 (AltHAN Costs and Budgets) and shall be entitled to assign the benefit of these rights.

Z4.7 will be amended to state nothing in Section M2 (Limitations of Liability) shall limit the DCC's liability to reimburse AltHANCo for the AltHANCo Costs.

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10. Will there be an impact on Central Systems? (Please mark with an X)			
DCC Systems		Party interfacing systems	
Smart Metering Systems		Communication Hubs	
Other systems			

There will be no impact on Central Systems.

11. Will there be any testing required?

There will be no testing required.

12. Will this Modification impact other Energy Codes?	No

There will be no impact on other Energy Codes.

13. Will this Modification impact Greenhouse Gas Emissions?	No

There will be no impact on Greenhouse Gas Emissions.

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SECMP0068

‘Alt HAN Company third party rights to enable external financing arrangements’

Modification Report

Version 0.1

About this document

This document is the Modification Report for SECMP0068 'Alt HAN Company third party rights to enable external financing arrangements'. It provides detailed information on the background, issue, solution, costs, impacts and implementation approach.

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This document also has one annex:

- **Annex A** contains the redlined changes to the SEC required to deliver the proposed solution.

1. Summary

As preparations for, and as the Alternative Home Area Network (Alt HAN) Technology Solutions roll-out commences, high costs of technology solutions contracted via the Alt HAN Company (AltHANCo) will be incurred over a short period. The pass-through of these costs in-year to Energy Suppliers will not be the most appropriate funding mechanism as Suppliers will be burdened with high upfront costs for Alt HAN, which will not necessarily reflect the level of benefit that current and future Suppliers will receive from Alt HAN solutions as market share changes over time.

As a result, the Alt HAN Forum (a Forum established pursuant to SEC Section Z and consisting of all Relevant Supplier Parties) has directed AltHANCo to investigate possible financing routes to spread and reduce in-year costs for Energy Suppliers. Currently, the preferred financing model is an assignment of receivables model where AltHANCo would assign its right to receive income for the financed costs from the Data Communications Company (DCC) directly to a funder. The need for AltHANCo to be given enforceable rights to receive payments from the DCC under the SEC would be required for all financing options.

The key issue for an assignment of receivables model is the ability to assign rights to receive income to the funder, to provide the necessary comfort that their revenue stream is secure. As AltHANCo is not a party to the SEC, it does not currently have an enforceable contractual right to receive payment of the AltHANCo costs from the DCC, and therefore by extension it cannot assign these rights.

AltHANCo would be unable to pursue its preferred financing model as funders will not lend without a SEC Modification to give AltHANCo enforceable rights under the SEC and the ability to assign these rights. BEIS has confirmed that the policy intent was for AltHANCo to be able to finance, but the current SEC drafting does not support this intent.

The proposed solution is to give AltHANCo Third Party Rights to enable it to enforce and assign its rights to receive payments from the DCC. This solution is less complex, creates assignable and enforceable rights for AltHANCo against the DCC and (with Ofgem consent) licensed suppliers, limits AltHANCo exposure to other SEC obligations and will not bind AltHANCo to the prohibition on assignment of rights (Section M11.8). It also represents a similar approach to that used elsewhere in the Smart Meter programme as the DCC has previously used this structure for its financing activities of Communication Hubs.

This modification would impact Supplier Parties as, if the modification is approved, they will incur less in-year costs in the 2019/20 financial year. If this modification is not approved, it could result in exceptionally high costs being put on SEC Parties in-year. The DCC will also be impacted as its financial year 2019/20 budget will be revised downwards to prevent it from over recovering from Suppliers (subject to successful SEC Modification implementation). AltHANCo would also have the right to receive costs under SEC Section Z4.

2. Background

Alt HAN Regulations

Principle obligations within Standard Licence Condition (SLC) 55.2 of the Electricity Supply Licence and Standard Licence Condition 49.2 of the Gas Supply Licence require that all Relevant Supplier Parties, in conjunction with each other, must ensure that Alt HAN Activities are carried out and that Alt HAN Services are made available to all Relevant Suppliers.

Alt HAN Activities (as defined in SLC 55.6) involve arrangements for the financing of the costs incurred during the undertaking of Alt HAN Activities. Alt HAN Services (as defined in SLCs 55.7) include, but are not limited to, the manufacture, provision, installation and operation of Alt HAN Equipment. Under SLC 55.4 Alt HAN Services may be made available by entering into arrangements for the financing of the costs of the services.

In addition to the regulations above, The Department for Business, Energy and Industrial Strategy (BEIS) has confirmed the policy intent is to allow the AltHANCo to finance its costs.

SEC Section Z4 outlines the regulatory requirements pertaining to AltHANCo costs being reimbursed by the DCC. They outline the requirement for DCC to reimburse costs incurred by the DCC to AltHANCo and that the DCC is entitled to recover amounts paid by it to AltHANCo through DCC Charges, which are paid by Energy Suppliers.

What is the issue?

As preparations for, and as the Alt HAN Technology Solutions roll-out commences, high costs of technology solutions contracted via AltHANCo will be incurred over a short period. The pass-through of these costs in-year to Energy Suppliers will not be the most appropriate funding mechanism as Suppliers will be burdened with high upfront costs for Alt HAN, which will not necessarily reflect the level of benefit that current and future Suppliers will receive from Alt HAN solutions as market share changes over time.

Following direction from the Forum, AltHANCo is investigating possible financing routes to spread and reduce in-year costs for Energy Suppliers. Currently, the preferred financing model is an assignment of receivables model where AltHANCo would assign its right to receive income for the financed costs from the DCC directly to a funder. This loan agreement would be between AltHANCo and an external funder. Energy Suppliers would continue to pay the DCC via monthly invoices, with AltHANCo's receivables relating to the financed costs being assigned to an external funder. The external funder will provide payments to AltHANCo as required and will recover payments from the DCC over time. Although other financing models are also possible, the assignment of receivables model is currently considered the most simple and cost-effective for the initial financing requirement. It is important to note that the need for AltHANCo to be given enforceable rights to receive payments from the DCC under the SEC would be required for all financing options.

The key issue for this financing arrangement is the ability to assign rights to receive income to the funder and to provide the necessary comfort that their revenue stream is secure. As AltHANCo is not a party to the SEC (as it has not signed the Framework Agreement or an Accession Agreement), technically it does not have an enforceable contractual right to receive payment of the AltHANCo costs from the DCC, and therefore by extension it cannot assign these rights. However, the DCC are obligated to pay AltHANCo under its licence, under SEC Section Z4.7, or for Relevant Suppliers to pay under SEC Section Z4.11. It is not clear how AltHANCo would enforce its purported rights, since

it is not a Party to the SEC and there is no reference to AltHANCo in the Third Party Rights clause (Section M11.5(b)), through which other Third Parties (i.e. Comms Hub Lenders and SECCo) are permitted to enforce their rights.

As a result, it is not currently possible for funders to take an assignment of the right to the income received from the DCC, as they would have no ability to enforce that right. AltHANCo would be unable to pursue its preferred financing model as funders will not lend without a SEC Modification to give AltHANCo enforceable rights under the SEC and the ability to assign these rights. BEIS has also confirmed that the policy intent was for AltHANCo to be able to finance, but the current SEC drafting does not support this intent.

SECMP0068 was raised by E.ON on 6 December 2018 to resolve this issue.

3. Solution

Proposed Solution

AltHANCo has received legal advice and the proposed solution is to give AltHANCo Third Party Rights to enable it to enforce and assign its rights to receive payments from the DCC.

This is the preferred solution as it is the simplest, creates assignable and enforceable rights for AltHANCo against the DCC and (with Ofgem consent) licensed suppliers, limits AltHANCo exposure to other SEC obligations and will not bind AltHANCo to the prohibition on assignment of rights (Section M11.8). It also represents a similar approach to that used elsewhere in the Smart Meter programme as the DCC has previously used this structure for its financing activities of Communication Hubs.

Alternatively, AltHANCo could obtain rights by acceding to the SEC. However, this is a more complicated, time consuming solution that would place additional obligations on AltHANCo.

Alt HAN Forum Decision

It has been agreed in principle by the Forum that AltHANCo should be given Third Party Rights to enable it to enforce its rights under Section Z4 and shall be entitled to assign the benefit of these rights. Through this action, the Forum has approved the work to pursue a SEC Modification to give AltHANCo rights under the SEC but has not yet made a decision as to whether this should be pursued for the initial stage of financing.

This modification is an enabling change, which would allow AltHANCo the ability to pursue this financing approach which is expressed in the Energy Supply Licence and aligned to the policy intent as confirmed by BEIS.

This agreement has been documented in the Alt HAN Forum meeting (ALTHF_23_181128) minutes in the form of a Forum decision to pursue a SEC Modification to give AltHANCo the rights to be reimbursed by the DCC and to be entitled to assign these rights.

Legal text

The changes to the SEC required to deliver the proposed solution can be found in Annex A.

4. Impacts

This section summarises the impacts that would arise from the implementation of this modification.

SEC Parties

SEC Party Categories impacted			
✓	Large Suppliers	✓	Small Suppliers
	Electricity Network Operators		Gas Network Operators
✓	Other SEC Parties	✓	DCC

Supplier Parties will be impacted as if the modification is approved, they will incur less in-year costs in the 2019/20 financial year.

The DCC will also be impacted as its 2019/20 financial year budget will be revised downwards (subject to successful implementation of this modification). AltHANCo would also have the right to receive costs under SEC Section Z4.

DCC System

This modification will have no impact on DCC Systems.

SEC and subsidiary documents

The following parts of the SEC will be impacted:

- Section M 'General'
- Section Z 'Alt HAN Arrangements'

Other industry Codes

This modification will not impact on other Industry Codes

Greenhouse gas emissions

This modification will not impact Greenhouse Gas Emissions.

5. Costs

DCC costs

There will be no impacts on DCC costs as a result of this modification.

SECAS costs

The estimated SECAS implementation costs to implement this modification is two days of effort, amounting to approximately £1,200. The activities needed to be undertaken for this are:

- Updating the SEC and releasing the new version to the industry.

SEC Party costs

There will be no impacts on SEC Party costs as a result of this modification.

6. Implementation approach

Recommended implementation approach

We recommend an implementation approach of:

- **2 January 2019** if a decision to approve is received by 31 December 2018; or
- **One Working Day following approval** if a decision to approve is received after 31 December 2018.

AltHANCo requires an ad hoc implementation date during January 2019 to provide funders comfort over the regulatory regime and to allow AltHANCo to pursue an assignment of receivables financing model.

The DCC has also given AltHANCo a deadline of 31 January 2019 to provide an updated view on the AltHANCo budget for financial year 2019/20. A view as to whether financing is going ahead before this date is needed to prevent DCC from over-recovering from Suppliers.

7. Conclusions

General SEC Objectives

Objective (d)[1]

The Proposer believes that SECMP0068 will better facilitate SEC Objective (d) by spreading costs over a number of years preventing Suppliers having to pay high in-year costs for Alt HAN which would aid competition by helping to avoid cashflow issues for Suppliers.

Objective (h)[2]

The Proposer believes that SECMP0068 will better facilitate SEC Objective (h) by enabling energy Suppliers to exercise their right under licence obligations with respect to SLC 55 'Smart Metering – The Alt HAN Arrangements' under 55.4(c) and 55.5(h), and finance Alt HAN Activities and Alt HAN Services which is prohibited under the current SEC drafting.

- SLC 55.4(c), by allowing AltHANCo to enter into, by or on behalf of all Relevant Suppliers, such arrangements for the financing of the costs of the services as are reasonably required for the purposes of ensuring the availability and provision of those services; and
- SLC 55.5(h), by including such arrangements for the financing of the costs of any of the activities referred to in paragraphs (a) to (g) of SLC 55.5 as are reasonably required for the purposes of ensuring the undertaking of, or acquiring of services which comprise or form part of, those activities.

The Alt HAN Forum, which all Relevant Supplier Parties are entitled to attend, has agreed that an assignment of receivables financing model is an option it would like to consider.

[1] To facilitate effective competition between persons engaged in, or in Commercial Activities connected with, the Supply of Energy.
[2] To facilitate the establishment and operation of the Alt HAN Arrangements.

Appendix 1: Glossary

This table lists all the acronyms used in this document and the full term they are an abbreviation for.

Glossary	
Acronym	**Full term**
AltHANCo	Alternative Home Area Network Company
Alt HAN	Alternative Home Area Network
BEIS	The Department for Business, Energy and Industrial Strategy
DCC	Data Communications Company
SECAS	Smart Energy Code Administrator and Secretariat
SEC	Smart Energy Code
SLC	Standard Licence Condition

If you have any questions on this modification, please contact:

Joe Hehir

020 7770 6874

joe.hehir@gemserv.com

Smart Energy Code Administrator and Secretariat (SECAS)

8 Fenchurch Place, London, EC3M 4AJ

020 7090 7755

sec.change@gemserv.com

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SECMP0068 'Alt HAN Company third party rights to enable external financing arrangements'

Legal text – version 0.1

About this document

This document contains the redlined changes to the SEC that would be required to deliver this Modification Proposal.

These changes have been drafted against the Smart Energy Code (SEC) Version 6.2.

Section M 'General'

Amend Section M11.5 as follows:

Third Party Rights

M11.5 The following persons shall be entitled to enforce the following rights in accordance with the Contracts (Rights of Third Parties) Act 1999:

(a) the person referred to in Sections C3.12 (Protections for Panel Members and Others) and M2.13(a) (Other Matters) shall be entitled to enforce the respective rights referred to in those Sections; ~~and~~

(b) the Approved Finance Party for each Communications Hub Finance Facility shall be entitled to exercise and/or enforce the following rights of the DCC in respect of the Communications Hub Finance Charges relating to that facility where a Communications Hub Finance Acceleration Event has occurred in respect of that Communications Hub Finance Facility and the Authority has determined that the DCC is unwilling or unable to do so:

(i) the right to calculate the amount of the Communications Hub Finance Charges arising as a result of that event (provided in such circumstances that the Approved Finance Party must demonstrate to the satisfaction of the Authority that the amount of the charges so calculated will in aggregate be no more than the amount contractually due and payable (but unpaid) by the DCC to the Approved Finance Party in respect of that event);

(ii) the right to invoice the Users in respect of the Communications Hub Finance Charges arising as a result of the Communications Hub Finance Acceleration Event (whether in the amount calculated by the DCC in accordance with this Code, or in the amount calculated by the Approved Finance Party and approved by the Authority under Section M11.5(b)); and/or

(iii) the right to enforce payment by the Users in accordance with this Code of the amount of Communications Hub Finance Charges invoiced in accordance with this Code,

and the payment of any amount by a User to an Approved Finance Party pursuant to this Section M11.5(b) shall satisfy that User's obligation to pay that amount to the DCC~~.~~; and

(c) AltHANCo (as defined in Section Z (Alt HAN Arrangements)) shall be entitled to enforce all rights which are conferred upon it under Section Z4 (Alt HAN Costs and Budgets), and shall (notwithstanding Section M11.8) be entitled to assign the benefit of these rights.

M11.6 Subject to Section M11.5, the Parties do not intend that any of the terms or conditions of this Code will be enforceable by a third party (whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise).

M11.7 Notwithstanding that a person who is not a Party has the right to exercise and/or enforce particular rights in accordance with Section M11.5, the Parties may vary or terminate this Code in accordance with its terms without requiring the consent of any such person.

Section Z 'Alt HAN Arrangements'

Amend Section Z4.7 as follows:

Z4 ALT HAN COSTS AND BUDGETS

General

Z4.1 The costs and expenses incurred by (or on behalf of) the Forum in exercising its powers, performing its functions and discharging its duties in respect of this Section Z shall be incurred by AltHANCo, and the DCC shall provide AltHANCo:

(a) with the funds necessary to meet such costs and expenses; and

(b) with the funds necessary to meet all other costs and expenses incurred by AltHANCo in the exercise of its duties, powers and functions under this Section Z.

Alt HAN Costs and Expenses

Z4.2 The costs and expenses capable of recovery under this Section Z4 (the **Alt HAN Costs**) shall be all the reasonable costs and expenses incurred:

(a) subject to Section Z4.3, by the Forum Chair, Alternate Chair, Forum Members, Board Members and Forum Sub-Group Members in their capacities as such;

(b) by AltHANCo under or in connection with contracts that AltHANCo has entered into in accordance with this Section Z, including in particular any contracts for:

(i) the acquisition of any services which comprise or form a part of the Alt HAN Activities;

(ii) the provision of any Alt HAN Services;

(iii) the appointment of the Forum Chair;

(iv) the appointment of Forum Sub-Group Members;

(v) the appointment of the Alt HAN Secretariat; and

(vi) the appointment of advisers; and

(c) by AltHANCo under or in connection with any provision of this Section Z,

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

Z4.3 Subject to the terms of those contracts referred to in Section Z4.2(b):

(a) the Forum Chair, Alternate Chair, Forum Members, Board Members and Forum Sub-Group Members shall be entitled to recover all reasonable travel expenses properly incurred by them in their roles as such (and the Board shall adopt a policy that sets out guidelines regarding what constitutes reasonable travel expenses);

(b) no Alternate Chair, Forum Member or Board Member shall be entitled to a salary in respect of his or her role as such, or to any payment in respect of the time he or she spends in performing that role; and

(c) no Forum Sub-Group Member shall be entitled to a salary in respect of his or her role as such, or to any payment in respect of the time he or she spends in performing that role, except to the extent that the Forum has approved any such payment.

Z4.4 Where the Forum Chair, Alternate Chair or any Forum Member, Board Member or Forum Sub-Group Member wishes to recover any cost or expense (excepting, in the case of the Forum Chair, any regular payment of salary for which no claim is required to be made) he or she shall submit evidence of the cost or expense in question to the Board (or a named person approved by the Board) for approval.

Z4.5 Any cost or expenses referred to in Section Z4.4 shall only be approved to the extent that it is an Alt HAN Cost, and only if the evidence is submitted in a timely manner (and in any event on or before the 20th Working Day following the end of the relevant Regulatory Year). Once approved, the evidence of the Alt HAN Cost shall be submitted

to AltHANCo for payment.

Z4.6 Within 20 Working Days following receipt of evidence of an Alt HAN Cost that has been approved in accordance with Section Z4.5, AltHANCo shall pay the relevant amount to the Forum Chair, Alternate Chair, Forum Member, Board Member or Forum Sub-Group Member making the claim.

Alt HAN Costs to be Reimbursed by the DCC

Z4.7 The Alt HAN Costs incurred by AltHANCo shall be reimbursed to AltHANCo by the DCC. Nothing in Section M2 (Limitations of Liability) shall limit the DCC's liability to reimburse AltHANCo for the AltHANCo Costs.

Z4.8 AltHANCo may periodically invoice the DCC for the Alt HAN Costs incurred, or reasonably expected to be incurred, by AltHANCo in accordance with the Approved Alt HAN Budget, provided that AltHANCo shall deduct from such invoice any amounts that represent previous overpayments by the DCC (due to the inaccuracy of AltHANCo estimates, or otherwise).

Z4.9 The DCC shall pay each invoice submitted by AltHANCo in accordance with Section Z4.7 within 10 Working Days of receipt of such invoice by the DCC.

Z4.10 It is acknowledged that the DCC is entitled to recover amounts paid by it to AltHANCo in accordance with this Section Z4 through the Charges (subject to the requirements of the DCC Licence).

Z4.11 In the event that the DCC does not pay AltHANCo in accordance with Section Z4.9, and subject to prior approval from the Authority, AltHANCo may invoice the Relevant Supplier Parties for the unpaid amount (and those Parties shall pay the invoiced amounts to AltHANCo as if they were Charges).

Z4.12 Where Section Z4.11 applies, the amount to be paid by each Relevant Supplier Party shall, unless the Authority approves or directs the use of an alternative methodology, be the same as the amount that the Relevant Supplier Party would have paid in Fixed Alt HAN Charges and in Explicit Charges under Section K7.6(j), calculated in

accordance with the Charging Methodology, had the amounts been recovered by the DCC through the Charges.

Z4.13 Any amounts paid by a Relevant Supplier Party in accordance with Section Z4.12 shall be reimbursed by AltHANCo to that Relevant Supplier Party (plus interest at the Non-Default Interest Rate) at such time as the Authority may determine.

Budgets and Work Plans

Timetable

Z4.14 The Board shall take all reasonable steps to give effect to the provisions of Sections Z4.15 to Z4.19 so that a copy of each Approved Alt HAN Budget is provided to the DCC by no later than 1 December in the year prior to the commencement of the first Regulatory Year to which that Approved Alt HAN Budget relates.

Draft Budgets and Work Plans

Z4.15 The Board shall during each Regulatory Year prepare and circulate to all Relevant Supplier Parties, the Secretary of State and the Authority a draft budget in respect of Alt HAN Costs for the next two Regulatory Years commencing thereafter (a **Draft Alt HAN Budget**).

Z4.16 Each Draft Alt HAN Budget:

(a) shall set out the Board's good-faith estimate of the Alt HAN Costs that it anticipates will be incurred (or committed to) during each of the relevant Regulatory Years;

(b) shall set out how that estimate is composed of the Board's estimates of the total costs and expenses that it anticipates will be incurred (or committed to) during each of the relevant Regulatory Years in relation to:

(i) the carrying out of the Alt HAN Activities;

(ii) the provision of Alt HAN Services in respect of:

(A) Smart Metering Systems that will use (or be capable of using) installed Shared Solution Alt HAN Equipment;

(B) Smart Metering Systems that will use (or be capable of using) installed Point-to-Point Alt HAN Equipment; and

(C) Point-to-Point Alt HAN Equipment that is provided to, but not installed by, Relevant Supplier Parties;

(c) shall be accompanied by a detailed work plan showing the activities and projects to which the relevant costs and expenses relate; and

(d) may make reasonable provision for contingencies.

Z4.17 Each Draft Alt HAN Budget must provide for limits (both individually and in the aggregate) on costs and expenses not expressly provided for in the budget which can be incurred without having to amend the budget.

Approval of Budgets

Z4.18 In relation to the Draft Alt HAN Budget circulated in any Regulatory Year in respect of the next two Regulatory Years commencing thereafter, the Board shall:

(a) arrange for the circulation to all the Relevant Supplier Parties of the comments received from each Relevant Supplier Party regarding the Draft Alt HAN Budget during the 20 Working Days following the date of its circulation;

(b) consider and respond to those comments, and circulate its responses to all Relevant Supplier Parties;

(c) to the extent that it considers it appropriate to do so, amend the Draft Alt HAN Budget and/or the accompanying work plan in the light of those comments; and

(d) submit that Draft Alt HAN Budget to the Forum for its approval, subject to any amendments that the Forum may determine,

and the Draft Alt HAN Budget in such form as it may be approved by the Forum shall be the **Approved Alt HAN Budget** for the relevant Regulatory Year.

Z4.19 The Board shall, promptly upon its approval by the Forum, provide the DCC with a copy of the Approved Alt HAN Budget together with such supporting information as may reasonably be requested by the DCC.

Amendments to Budgets

Z4.20 The Approved Budget relating to each Regulatory Year may be amended from time to time (whether before, during or after that Regulatory Year, and including in respect of Alt HAN Costs already incurred), provided that:

(a) the Board has first followed the procedure set out in Section Z4.18 in relation to the amendment as if it were a Draft Alt HAN Budget; and

(b) the Forum has approved either the proposed amendment or such alternative amendment as it may determine.

Provision of Information to the DCC

Timetable

Z4.21 The Board shall take all reasonable steps to give effect to the provisions of Sections Z4.22 to Z4.29 so that a copy of each set of Approved Alt HAN Charging Data is provided to the DCC by no later than 1 December in the year prior to the commencement of the first Regulatory Year to which that Approved Alt HAN Charging Data relates.

Draft Alt HAN Charging Data

Z4.22 The Board shall during each Regulatory Year prepare and circulate to all Relevant Supplier Parties, the Secretary of State and the Authority draft information in respect of the Explicit Charges for Alt HAN Equipment for the next Regulatory Year commencing thereafter (the **Draft Alt HAN Charging Data**).

Z4.23 Each set of Draft Alt HAN Charging Data shall consist of the information:

(a) referred to in Section Z4.24 in respect of Smart Metering Systems that will use (or be capable of using) installed Central Shared Solution Alt HAN Equipment;

(b) referred to in Section Z4.25 in respect of Smart Metering Systems that will use (or be capable of using) installed Central Point-to-Point Alt HAN Equipment; and

(c) referred to in Section Z4.26 in respect of Central Point-to-Point Alt HAN Equipment that is provided to, but not installed by, Relevant Supplier Parties.

Shared Solution Alt HAN Equipment

Z4.24 The information referred to in this Section Z4.24 is the Board's best estimate of:

(a) the total annual incremental cost of the provision of Alt HAN Services in the relevant Regulatory Year in respect of Smart Metering Systems that will use (or be capable of using) installed Central Shared Solution Alt HAN Equipment;

(b) the average number of Smart Metering Systems during the relevant Regulatory Year that will use (or be capable of using) installed Central Shared Solution Alt HAN Equipment (excluding any in relation to which the Responsible Supplier has elected to use Opted-out Alt HAN Equipment); and

(c) the average monthly incremental cost (expressed in £ per Smart Metering System per month) of the provision of Alt HAN Services in the relevant Regulatory Year in respect of each Smart Metering System that will use (or be capable of using) installed Central Shared Solution Alt HAN Equipment during that Regulatory Year (excluding any in relation to which the Responsible Supplier has elected to use Opted-out Alt HAN Equipment).

Point-to-Point Alt HAN Equipment

Z4.25 The information referred to in this Section Z4.25 is the Board's best estimate of:

(a) the total annual incremental cost of the provision of Alt HAN Services in the relevant Regulatory Year in respect of Smart Metering Systems that will use (or

be capable of using) installed Central Point-to-Point Alt HAN Equipment;

(b) the average number of Smart Metering Systems during the relevant Regulatory Year that will use (or be capable of using) installed Central Point-to-Point Alt HAN Equipment (excluding any in relation to which the Responsible Supplier has elected to use Opted-out Alt HAN Equipment); and

(c) the average monthly incremental cost (expressed in £ per Smart Metering System) of the provision of Alt HAN Services in the relevant Regulatory Year in respect of each Smart Metering System that will use (or be capable of using) installed Central Point-to-Point Alt HAN Equipment during that Regulatory Year (excluding any in relation to which the Responsible Supplier has elected to use Opted-out Alt HAN Equipment).

Stock Level Point-to-Point Alt HAN Equipment

Z4.26 The information referred to in this Section Z4.26 is the Board's best estimate of:

(a) the total annual incremental cost of the provision of Alt HAN Services in the relevant Regulatory Year in respect of Central Point-to-Point Alt HAN Equipment that will be provided to, but not installed by, Relevant Supplier Parties during that Regulatory Year;

(b) the total number of sets of Central Point-to-Point Alt HAN Equipment that will be provided to, but not installed by, Relevant Supplier Parties during that Regulatory Year; and

(c) the average monthly incremental cost (expressed in £ per set of Point-to-Point Alt HAN Equipment) of the provision of Alt HAN Services in the relevant Regulatory Year in respect of each set of Point-to-Point Alt HAN Equipment that will be provided to, but not installed by, Relevant Supplier Parties during that Regulatory Year.

Z4.27 The incremental costs referred to in Sections Z4.24 to Z4.26 shall include all the costs of making available and providing the relevant Alt HAN Services but shall not include

any costs or expenses in relation to the carrying out of the Alt HAN Activities.

Approved Alt HAN Charging Data

Z4.28 In relation to the Draft Alt HAN Charging Data circulated in any Regulatory Year in respect of the next Regulatory Year commencing thereafter, the Board shall:

(a) arrange for the circulation to all the Relevant Supplier Parties of the comments received from each Relevant Supplier Party regarding the Draft Alt HAN Charging Data during the 20 Working Days following the date of its circulation;

(b) consider and respond to those comments, and circulate its responses to all Relevant Supplier Parties;

(c) to the extent that it considers it appropriate to do so (consistent with Section Z4.27) amend the Draft Alt HAN Charging Data; and

(d) submit that Draft Alt HAN Charging Data to the Forum for its approval, subject to any amendments that the Forum may (consistent with Section Z4.27) determine,

and the Draft Alt HAN Charging Data in such form as it may be approved by the Forum shall be the **Approved Alt HAN Charging Data** for the relevant Regulatory Year.

Z4.29 The Board shall, promptly upon its approval by the Forum, for the purposes of the determination by the DCC of Explicit Charges under Section K7.6(j), provide the DCC with a copy of the Approved Alt HAN Charging Data together with such supporting information as may reasonably be requested by the DCC.

The Alt HAN Inventory

Establishment and Maintenance of the Alt HAN Inventory

Z4.30 The Forum shall ensure that a database (the **Alt HAN Inventory**) is established and at all times maintained which shall include data in respect of:

(a) Central Shared Solution Alt HAN Equipment and Central Point-to-Point Alt

HAN Equipment which has been installed at premises, and the MPANs and MPRNs associated with Smart Metering Systems (whether already installed or to be installed) which are capable of using such equipment;

(b) Opted-out Alt HAN Equipment which has been installed at premises, and the MPANs and MPRNs associated with Smart Metering Systems (whether already installed or to be installed) which are capable of using such equipment; and

(c) where Opted-out Alt HAN Equipment has been installed at premises, whether any Relevant Supplier Party which is the Responsible Supplier for a Smart Metering System that is capable of using that Opted-out Alt HAN Equipment has elected to use it in respect of an MPAN or MPRN with which it is associated.

Z4.31 Each Relevant Supplier Party shall ensure that the Alt HAN Inventory is promptly updated upon:

(a) the installation at premises of Alt HAN Equipment which is capable of being used by a Smart Metering System in respect of which that Party is the Responsible Supplier;

(b) that Party electing either:

(i) to use any Opted-out Alt HAN Equipment which is capable of being used by a Smart Metering System in respect of which it is the Responsible Supplier; or

(ii) to cease to use any such Opted-out Alt HAN Equipment.

Z4.32 When a Relevant Supplier Party ensures that the Alt HAN Inventory is updated in accordance with Section Z4.31(a), it shall also ensure that the Alt HAN Inventory records whether the Alt HAN Equipment which has been installed is Opted-out Alt HAN Equipment or otherwise.

Z4.33 The information contained on the Alt HAN Inventory at any time shall be treated as conclusive evidence of whether a Relevant Supplier Party has elected at that time to use any Opted-out Alt HAN Equipment in respect of an MPAN or MPRN.

Z4.34 The Forum shall ensure that all Relevant Supplier Parties have available to them a means by which they can ensure that the Alt HAN Inventory is updated in accordance the requirements of Sections Z4.31 and Z4.32.

Provision of Information to the DCC

Z4.35 In each month of each year, the Board shall provide to the DCC the information set out in Section Z4.36, so that the information is:

(a) obtained by extracting it from the Alt HAN Inventory on the 15th day of that month; and

(b) provided to the DCC within five Working Days of being obtained.

Z4.36 The information set out in this Section Z4.36 is:

(a) for the purposes of the Explicit Charging Metric referred to at Section K7.5(t) ('shared solution Alt HAN Equipment'), a list of MPANs and MPRNs at premises associated with a Smart Metering System which is using (or is capable of using) installed Central Shared Solution Alt HAN Equipment (including where such equipment has been installed but not commissioned, but excluding any MPAN or MPRN associated with a Smart Metering System in relation to which the Responsible Supplier has elected to use Opted-out Alt HAN Equipment);

(b) for the purposes of the Explicit Charging Metric referred to at Section K7.5(u) ('point-to-point solution Alt HAN Equipment'), a list of MPANs and MPRNs at premises associated with a Smart Metering System which is using (or is capable of using) installed Central Point-to-Point Alt HAN Equipment to which the Alt HAN Services relate (including where such equipment has been installed but not commissioned, but excluding any MPAN or MPRN associated with a Smart Metering System in relation to which the Responsible Supplier has elected to use Opted-out Alt HAN Equipment); and

(c) for the purposes of the Explicit Charging Metric referred to at Section K7.5(v)

('stock level point-to-point solution Alt HAN Equipment'):

(i) a list of Relevant Supplier Parties which have been provided with, but have not installed, Central Point-to-Point Alt HAN Equipment; and

(ii) a statement of the number of items of Central Point-to-Point Alt HAN Equipment which have been provided to, but not installed by, each such Relevant Supplier Party.

Reports

Z4.37 The Board shall, as soon as is reasonably practicable following the end of each Regulatory Year, produce and circulate to:

(a) the Relevant Supplier Parties; and

(b) on request, the Secretary of State and the Authority,

a report on the Alt HAN Costs incurred (or committed to) during that Regulatory Year and the activities and projects to which those Alt HAN Costs relate.

Audit

Z4.38 The Board shall arrange for the monies paid by and to AltHANCo pursuant to this Section Z4 during each Regulatory Year to be audited by a firm of chartered accountants on an annual basis in order to verify whether the requirements of this Section Z4 have been met.

Z4.39 The Board shall send a copy of such auditor's report to all Relevant Supplier Parties and to the Authority within 10 Working Days of its receipt by the Board.

Z4.40 The Authority may from time to time require the Board to provide any information in relation to the Alt HAN Costs that the Authority may specify or describe in a notice given to the Board in accordance with this Section Z4.40, and the Board shall ensure that all such information is provided to the Authority by any date and in any format that the Authority may specify for that purpose.

Z4.41 The Authority may arrange for any such audit of the accounts and financial information of AltHANCo as it may consider appropriate for the purpose of verifying whether or not the Alt HAN Costs have been economically and efficiently incurred, and where it does so the Board shall co-operate fully with the Authority and any person acting on its behalf in order to ensure that any such audit is effective for that purpose.