

SEC SCHEDULE 7 – SPECIMEN ENABLING SERVICES AGREEMENT

Dated: 2[XXX]

[Participant]

and

[DCC]

**Smart Energy Code Enabling Services
Agreement**

THIS ENABLING SERVICE AGREEMENT is made on

2[XXX]

BETWEEN:

- (1) [TBC] a company incorporated in [Jurisdiction] (registered number [TBC]) whose registered office is at [TBC] (the "**Participant**"); and
- (2) [TBC] a company incorporated in [Jurisdiction] (registered number [TBC]) whose registered office is at [TBC] (the "**DCC**").

WHEREAS

- A) The Participant wishes to procure the Enabling Services pursuant to the Smart Energy Code.
- B) The DCC has agreed to provide the Enabling Services pursuant to this Enabling Services Agreement, in consideration of the Enabling Service Charges.

NOW IT IS HEREBY AGREED as follows:

1 INTERPRETATION

1.1 In this Enabling Services Agreement, unless the context otherwise requires:

"**Enabling Service Charges**" means those charges described in Schedule 2.

"**Enabling Services**" means the services described in Schedule 1.

"**Event of Default**" means that the Participant:

(a) is in material breach of any of its material obligations under this Enabling Services Agreement, and the Participant has failed to remedy the breach within 20 Working Days after a notice from the DCC requiring such remedy; and/or

(b) suffers an Insolvency Type Event.

"**Party**" means the DCC or the Participant; and "**Parties**" means both of them.

"**Smart Energy Code**" means the code of that name designated by the Secretary of State pursuant to the smart meter communication licences granted to the DCC pursuant to the Electricity Act 1989 and the Gas Act 1986, as such code is modified from time to time in accordance with its provisions.

1.2 In this Enabling Services Agreement, unless the context otherwise requires, references to "Clauses" and "Schedules" are to the clauses of, and schedules to, this Enabling Services Agreement.

1.3 Subject to Clauses 1.1 and 1.2, the words and expressions used in this Enabling Services Agreement shall be construed and interpreted in accordance with the definitions and provisions regarding interpretation set out in Section A (Definitions and Interpretation) of the Smart Energy Code, as if:

- (a) those definitions and provisions regarding interpretation were set out in this Enabling Services Agreement;
- (b) the uses therein of the words defined in Clause 1.1 were interpreted in accordance with Clause 1.1; and
- (c) the references therein to:
 - (i) "Charges" were to "Enabling Service Charges";
 - (ii) "Services" were to "Enabling Services";
 - (iii) "User" were to "Participant"; and
 - (iv) "this Code" or "this Code and/or any Bilateral Agreement" were to "this Enabling Services Agreement".

1.4 The Parties acknowledge that the Smart Energy Code is subject to modification from time to time in accordance with its provisions and law, and that the Smart Energy Code as so modified from time to time shall apply for the purposes of this Enabling Services Agreement.

1.5 References in this Enabling Services Agreement (or in provisions incorporated herein by reference) to Sections of the Smart Energy Code shall be to those sections as incorporated into this Enabling Services Agreement, as such sections are modified and/or renumbered from time to time.

2 COMMENCEMENT OF THIS ENABLING SERVICES AGREEMENT

2.1 This Enabling Services Agreement shall commence on [TBC].

3 PROVISION OF THE ENABLING SERVICES

3.1 The DCC shall provide the Enabling Services to the Participant subject to and in

accordance with this Enabling Services Agreement.

- 3.2 The DCC and the Participant shall each comply with the additional obligations assigned to them in Schedule 1.

4 ENABLING SERVICE CHARGES

- 4.1 The Participant shall pay the Enabling Service Charges in respect of which Sections J1 (Payment of Charges) and J2 (Payment Default and Disputes) shall apply as if:

- (a) those Sections were set out in this Enabling Services Agreement;
- (b) the uses therein of the words defined in Clause 1.1 were interpreted in accordance with Clause 1.1;
- (c) the references therein to expressions referred to in Clause 1.3(c) were interpreted as referred to in that Clause; and
- (d) Section J2.7 (Pursing Non-Payment) did not apply.

5 LIMITATIONS OF LIABILITY

- 5.1 The DCC's and the Participant's liability under or in connection with this Enabling Services Agreement shall be limited in accordance with Section M2 (Limitations of Liability) as if:

- (a) that Section was set out in this Enabling Services Agreement;
- (b) the uses therein of the words defined in Clause 1.1 were interpreted in accordance with Clause 1.1;
- (c) the references therein to expressions referred to in Clause 1.3(c) were interpreted as referred to in that Clause; and
- (d) Sections M2.17 and M2.18 (SECCo) did not apply.

6 TERMINATION OR EXPIRY OF THIS ENABLING SERVICES AGREEMENT

- 6.1 Subject to earlier termination in accordance with this Clause 6, this Enabling Services

Agreement shall expire on [TBC].

- 6.2 The Participant shall, at its discretion, be entitled to terminate this Enabling Services Agreement on 20 Working Days' prior notice in writing to the DCC.
- 6.3 The DCC shall be entitled to immediately terminate this Agreement on notice to the Participant where an Event of Default occurs.
- 6.4 The expiry or earlier termination of this Agreement shall be without prejudice to:
- (a) those rights and obligations under this Enabling Services Agreement that may have accrued prior to such expiry or termination; or
 - (b) those provisions of this Enabling Services Agreement that are expressly or by implication intended to survive such expiry or termination, including Clauses 4 and 5.

7 AMENDMENTS

- 7.1 Without prejudice to Clause 1.4, this Enabling Services Agreement may only be amended by agreement in writing by the Parties or in order to give effect to any determination of disputes by the Authority pursuant to the DCC Licence.
- 7.2 The Parties shall amend this Enabling Services Agreement where it has become inconsistent with the Smart Energy Code in order to correct such inconsistency (including where the Specimen Enabling Services Agreement is modified, in which case the Parties shall amend this Enabling Services Agreement in the same manner and to the same extent).
- 7.3 The Participant hereby authorises the DCC to make the amendments to this Enabling Services Agreement required pursuant to Clause 7.2 on the Participant's behalf. Where the Participant disputes the requirement for, or form of, any such amendments made by the DCC on the Participant's behalf, then the Participant may refer the matter to the Panel for its determination. Nothing in this Clause 7.3 shall fetter the Participant's right to refer disputes to the Authority pursuant to the DCC Licence.

8 MISCELLANEOUS

8.1 The Parties agree that the provisions of Sections M3 (Services FM and Force Majeure), M4 (Confidentiality), M7 (Dispute Resolution), M9 (DCC Transfer), M10 (Notices) and M11 (Miscellaneous) of the Smart Energy Code shall apply to this Enabling Services Agreement, as if:

- (a) those Sections were set out in this Enabling Services Agreement;
- (b) the uses therein of the words defined in Clause 1.1 were interpreted in accordance with Clause 1.1;
- (c) the references therein to expressions referred to in Clause 1.3(c) were interpreted as referred to in that Clause; and
- (d) the following Sections did not apply: Sections M3.14 (SECCo), M7.16 (SECCo), M10.1 (Communication via Specified Interfaces), M10.6 (The Panel, Code Administrator, Secretariat and SECCo), M11.5 (Third Party Rights), and M11.15 (SECCo).

8.2 This Enabling Services Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

9 GOVERNING LAW

9.1 In accordance with Clause 8, this Enabling Services Agreement and any dispute or claim arising out of or in connection with it (including non-contractual claims) shall be governed by, and construed in accordance with, the relevant laws specified in Section M11 (Miscellaneous) of the Smart Energy Code from time to time for the purpose of disputes or claims of that nature.

THIS ENABLING SERVICES AGREEMENT has been entered into on the date first stated above.

SIGNED by

duly authorised for and on behalf of

..... *Print name of person signing*

Print full name of Participant

Signature

SIGNED by

duly authorised for and on behalf of the
DCC

Print name of person signing

Signature

Schedule 1 – Enabling Services

[The Enabling Services shall comprise the provision of Test Communications Hubs in accordance with Section F10 (Test Communications Hubs). The DCC and the Participant shall each comply with their respective obligations set out or referred to in that Section F10 (the Participant complying with those obligations assigned to TCH Participants).]

[The Enabling Services shall comprise the provision of those Device and User System Tests described in Section H14.31(a) (Device and User System Tests) in accordance with Section H14 (Testing Services). The DCC and the Participant shall each comply with their respective obligations set out or referred to in that Section H14 (the Participant complying with those obligations assigned to Testing Participants).]

Schedule 2 – Enabling Service Charges

The Enabling Service Charges shall comprise those charges set out in the Charging Statement from time to time that apply to the Explicit Charging Metrics (as defined in the Charging Methodology) that comprise the Enabling Services, being the Explicit Charge applicable to the:

[ordering of Test Communications Hubs pursuant to Section F10 (Test Communications Hubs)] / [the provision of a connection to the SM WAN pursuant to Section H14.31 (Device and User System Testing)] / [the provision of additional testing support pursuant to Section H14.33 (Device and User System Testing)].