SEC SCHEDULE 3 – SPECIMEN BILATERAL AGREEMENT

Dated: 2[XXX]

[User]

and

[DCC]

Smart Energy Code Bilateral Agreement

THIS BILATERAL AGREEMENT is made on 2[XXX]

BETWEEN:

(1) **[TBC]** a company incorporated in [*Jurisdiction*] (registered number [TBC]) whose registered office is at [TBC] (the "**User**"); and

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

WHEREAS

A) The User wishes to procure the Elective Communication Service pursuant to the Smart Energy Code.

B) The DCC has agreed to provide the Elective Communication Service pursuant to this Bilateral Agreement and the Smart Energy Code, in consideration of the Elective Charges.

NOW IT IS HEREBY AGREED as follows:

1 <u>Interpretation</u>

1.1 In this Bilateral Agreement, unless the context otherwise requires:

"**Elective Charges**" means the charges described as such in Schedule 1.

"**Elective Communication Service**" means the service described as such in Schedule 2.

"**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 Bilateral Agreement, unless the context otherwise requires, references to "Clauses" and "Schedules" are to the clauses of, and schedules to, this Bilateral Agreement.

1.3 Subject to Clauses 1.1 and 1.2, the words and expressions used in this Bilateral 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 those definitions and provisions regarding interpretation were set out in this Bilateral Agreement and as if the references therein to "this Code" were to "this Bilateral 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 that the Smart Energy Code as so modified from time to time shall apply for the purposes of this Bilateral Agreement. References to Sections of the Smart Energy Code shall be to those sections as modified and/or renumbered from time to time.

1.5 The provisions of this Bilateral Agreement are without prejudice to the rights and obligations of the Parties under the Smart Energy Code. The Parties acknowledge that certain provisions of the Smart Energy Code apply, but such acknowledgments are without prejudice to the potentially broader application of the Smart Energy Code. In the event of any conflict between the provisions of this Bilateral Agreement and the provisions of the Smart Energy Code, the Smart Energy Code shall prevail.

2 Commencement of this Bilateral Agreement

2.1 This Bilateral Agreement shall commence on [TBC][1].

3 Provision of the Elective Communication Services

3.1 The DCC shall provide the Elective Communication Services to the User subject to and in accordance with this Bilateral Agreement and the Smart Energy Code.

3.2 The provision of the Elective Communication Services is subject to the User having completed the User Entry Process. The provision of the Elective Communication Services in respect of any Smart Metering System is subject to that Smart Metering System having been Enrolled.

[1] [*Note: consider whether agreement should be conditional on provision of adequate credit support. If so, also add a termination right linked to failure of credit support.*]

4 Elective Charges

4.1 The User shall pay the Elective Charges in accordance with Section J (Charges) of the Smart Energy Code.

4.2 [The Elective Charges include a standing charge (as further described in Schedule 1) that is payable by the User regardless of whether or not the Elective Communication Services are requested or provided.][2]

5 Security and Data Privacy

5.1 The Parties acknowledge that the provisions of Section G (Security) of the Smart Energy Code apply.

5.2 The Parties acknowledge that the provisions of Section I (Data Privacy) of the Smart Energy Code apply.

6 Termination or Expiry of this Bilateral Agreement

6.1 Subject to earlier termination in accordance with this Clause 6, this Bilateral Agreement shall expire on [TBC].

6.2 This Bilateral Agreement shall automatically terminate on the User being expelled from, or voluntarily ceasing to be party to, the Smart Energy Code in accordance with Section M8 (Suspension, Expulsion and Withdrawal) of the Smart Energy Code.

6.3 The User shall, at its discretion, be entitled to terminate this Bilateral Agreement on 20 Working Days' prior notice in writing to the DCC.

6.4 In the event of termination of this Bilateral Agreement in accordance with Clause 6.3, the User shall not be obliged to pay compensation on termination to the extent such compensation is intended to recover investments made for the purposes of providing the Elective Communication Service where (and to the extent that) the DCC subsequently offers a Service listed in the DCC User Interface Services Schedule that relies upon such investments. Any dispute under this Clause 6.4 may be referred to the Panel for initial determination, but shall ultimately be subject to arbitration.

[2] [*Note: delete or retain as applicable.*]

6.5 Where this Bilateral Agreement terminates in accordance with Clause 6.2 or 6.3, the User shall (subject to Clause 6.4) pay any compensation on termination described in Schedule 1.

7 Suspension

7.1 The User acknowledges that the DCC may suspend provision of the Elective Communication Services where the Panel directs that the DCC should do so pursuant to Section M8 (Suspension, Expulsion and Withdrawal) of the Smart Energy Code. Such suspension shall be without prejudice to any take or pay obligation described in Schedule 1.

8 Communications

8.1 The Parties acknowledge and agree that the provisions of Sections H3 (DCC User Gateway) and M10 (Notices) apply.

9 Amendments

9.1 Without prejudice to Clause 1.4, this Bilateral 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.

9.2 Without prejudice to Clause 1.5, the Parties shall amend this Bilateral Agreement where it has become inconsistent with the Smart Energy Code in order to correct such inconsistency (including where the Specimen Bilateral Agreement is modified, in which case the Parties shall amend this Bilateral Agreement in the same manner and to the same extent).

9.3 The User hereby authorises the DCC to make the amendments to this Bilateral Agreement required pursuant to Clause 9.2 on the User's behalf. Where the User disputes the requirement for, or form of, any such amendments made by the DCC on the User's behalf, then the User may refer the matter to the Panel for its determination. Nothing in this Clause 9.3 shall fetter the User's right to refer disputes to the Authority pursuant to the DCC Licence.

10 Miscellaneous

10.1 The Parties acknowledge that the provisions of Sections M2 (Limitations of Liability), M3 (Services FM and Force Majeure), M4 (Confidentiality), and M5 (Intellectual Property Rights) of the Smart Energy Code apply.

10.2 The Parties acknowledge and agree that this Bilateral Agreement may be novated to DCC's successor in accordance with Section M9 (DCC Transfer) of the Smart Energy Code.

10.3 This Bilateral 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.

10.4 The provisions of Section M11 (Miscellaneous) of the Smart Energy Code shall apply as if set out in this Bilateral Agreement and as if the references therein to "this Code" were to "this Bilateral Agreement".

11 Governing Law and Jurisdiction

11.1 This Bilateral 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.

11.2 In relation to any dispute or claim arising out of or in connection with this Bilateral Agreement (including in respect of non-contractual claims), each of the Parties irrevocably agrees to submit to the exclusive jurisdiction of the relevant person, panel, court or other tribunal specified in Section M7 (Dispute Resolution) of the Smart Energy Code from time to time for the purpose of disputes or claims of that nature.

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

SIGNED by

duly authorised for and on behalf of

……

Print full name of User

……

Print name of person signing

Signature

…….

SIGNED by

duly authorised for and on behalf of the DCC

……

Print name of person signing

Signature

…….

Schedule 1 – Elective Charges

[Note: to include charges determined in accordance with the Charging Methodology, and to include standing charges and early termination compensation payments where required in accordance with Section H7.]

Schedule 2 – Elective Communication Services

[Note: to identify services in a manner consistent with the DCC User Interface Services Schedule and Section H7.14.]