

DCC TENDER ENABLING MODIFICATION

SECTION C: BSCCO AND ITS SUBSIDIARIES (version 16.0)

Insert new paragraph 3.4.6 to read as follows:

3.4 Restrictions on powers of BSCCo

3.4.6 BSCCo shall not give any cross-subsidy to, or receive any cross-subsidy from, an Affiliate of BSCCo.

Insert new paragraph 3.5.2 to read as follows:

3.5 BSCCo resources

3.5.1 If at any time the resources (which in this paragraph 3.5 does not mean financial resources) of BSCCo are inadequate to enable it to perform any particular requirement of the Code (including a requirement specified by the Panel or a Panel Committee or Workgroup pursuant to paragraph 3.1.1), BSCCo shall promptly so notify the Panel and discuss the matter with the Panel, and following such discussion shall take such steps and procure such resources as are necessary to enable BSCCo to meet such requirement (as it may have been modified following such discussion) as soon as is reasonably practicable.

3.5.2 Without prejudice to paragraph 3.5.1, BSCCo shall at all times act in a manner to ensure it has available to it such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able to discharge its powers, functions and responsibilities under the BSC in all respects.

Insert new paragraph 7.1.6 to read as follows:

7. BSC COMPANIES

7.1 General

7.1.6 The provisions of this paragraph 7 shall not apply to Smart Co.

Insert new paragraph 10 to read as follows:

10. SMART METERING

10.1 General

10.1.1 Notwithstanding paragraph 3.4.5(b), BSCCo shall be entitled to subscribe for, acquire or hold any share or security in a body corporate other than the BSC Companies for the purpose of tendering and performing the role, functions and responsibilities, through such body corporate, of the DCC Licensee ("Smart Co").

10.1.2 Nothing in this paragraph 10 shall affect or limit BSCCo's obligation to discharge its functions and responsibilities pursuant to the Code.

10.1.3 Without prejudice to paragraph 3 (but subject to paragraph 10.2), BSCCo shall not transfer, lease, license, or lend any sum or sums, asset (including non-financial resources), right, or benefit to Smart Co except by way of:

- (a) a payment properly due for any goods, services, or assets provided on an arm's length basis and on normal commercial terms; or
- (b) a transfer, lease, licence, or loan of any sum or sums, asset, right, or benefit that is on an arm's length basis and on normal commercial terms; or
- (c) payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received.

10.1.4 Reference in this paragraph 10.1 to the term “BSC Companies” shall not include Smart Co.

10.2 DCC tender

10.2.1 Subject to paragraphs 10.2.3 and 10.3, BSCCo may provide a loan or grant credit to Smart Co on such terms as the Board may approve, from time to time, to enable Smart Co to pay, in connection with a DCC Tender exercise:

- (a) its third party costs (including in respect of professional advisors), expenses, other outgoings and liabilities incurred in connection with the planning, preparation, negotiation and award of a DCC Tender, or any other process leading to an award, of the DCC Licensee role, provided always that such third party costs shall not in any event exceed the total aggregate sum of £300,000; and
- (b) its overhead costs (including, without limitation, personnel costs), provided that such costs shall in the first instance be incurred by BSCCo on behalf of Smart Co but shall in no event exceed £300,000.

(together, “DCC Tender Costs”).

10.2.2 Subject to paragraph 10.2.1, DCC Tender Costs may be incurred over successive BSC Years.

10.2.3 Subject to paragraphs 3.5.2 and this paragraph 10, BSCCo may do anything necessary or reasonably incidental to provide assistance to Smart Co in connection with a DCC Tender exercise.

10.2.4 DCC Tender Costs shall be BSC Costs and BSCCo shall keep account of such costs, expenses and liabilities separately from all other BSC Costs.

10.2.5 BSCCo shall submit any report it receives from Smart Co pursuant to paragraph 10.4.6(c) to the Panel at its next available meeting.

10.2.6 BSCCo shall ensure that DCC Tender Costs are subject to a statutory audit and such findings are reported to the Panel and Parties.

10.3 Reimbursement of DCC Tender Costs to Trading Parties

10.3.1 The amounts recoverable by Trading Parties as DCC Tender Costs are amounts expended or funded by or on behalf of Trading Parties pursuant to paragraph 10.2 and any amounts which are otherwise described in the Code as DCC Tender Costs.

10.3.2 BSCCo shall procure the agreement of Smart Co that in the event Smart Co is successful in a DCC Tender exercise Smart Co shall repay Aggregate DCC Tender Costs to BSCCo within the DCC Tender Recovery Period.

10.3.3 Subject to paragraphs 10.3.2, 10.3.5 and 10.3.6 Trading Parties shall be entitled to recover Aggregate DCC Tender Costs in accordance with their respective Main Funding Shares.

10.3.4 As soon as reasonably practicable after receipt of the statement referred to in paragraph 10.4.6(d), BSCCo shall determine the Aggregate DCC Tender Costs and the recovery share for each Trading Party and provide its own statement of account to the Panel, the Authority and all Parties (excluding commercially sensitive information), which subject to the Panel’s approval shall be final and binding in the absence of manifest error.

10.3.5 Subject to paragraph 10.3.6 it is acknowledged that:

- (a) in the event Smart Co is unsuccessful in a DCC Tender exercise, it is unlikely that BSCCo will be able to recover Aggregate DCC Tender Costs (in whole or in part) from Smart Co; and
- (b) if BSCCo were obliged to reimburse Aggregate DCC Tender Costs to Trading Parties the financial consequences of such reimbursement would be borne by Trading Parties themselves.

10.3.6 In accordance with paragraph 10.3.5, the Parties agree that:

- (a) subject to paragraph 10.3.6(b), any loan arrangements agreed pursuant to this paragraph 10 may provide that the Board may, in its absolute discretion, resolve to write off any loan or credit provided to Smart Co for DCC Tender Costs which relates to an unsuccessful DCC Tender exercise;
- (b) for the purposes of the Code, such loan arrangements as referred to in paragraph 10.3.6(a) which permit the Board to write off a loan or credit to Smart Co shall be treated as arrangements concluded at arm's length and on normal commercial terms.

10.3.7 For the avoidance of doubt, BSCCo shall procure that any DCC Tender Costs provided pursuant to paragraph 10.2.1(a) which are not utilised in connection with a DCC Tender exercise shall be refunded to BSCCo.

10.4 Shareholder arrangements with Smart Co

10.4.1 At all times BSCCo shall be the registered holder of all of the issued share capital in Smart Co.

10.4.2 For the avoidance of doubt, the form of the Memorandum and Articles of Association of Smart Co shall not form part of the Code.

10.4.3 Subject to the provision of DCC Tender Costs and paragraph 10.4.4, BSCCo shall have no liability or obligation to provide any finance or financial support to Smart Co.

10.4.4 Notwithstanding paragraph 3.4.4, BSCCo shall not enter into any obligation by way of security in the form of a guarantee, bond, stand-by letter of credit or other similar instrument entered into in connection with, or in anticipation of, Smart Co's obligations, except with the Panel's prior consent.

10.4.5 BSCCo agrees and undertakes that it shall not cause Smart Co to be in default of the Legal Requirements of the Smart Communication Licence by reason of any act or omission in connection with the Code or in its capacity as the Smart Co Shareholder, and each Party agrees that BSCCo may contract or otherwise put in place arrangements with Smart Co on such basis.

10.4.6 In its capacity as the Smart Co Shareholder, BSCCo shall ensure, and shall procure, Smart Co's agreement, that:

- (a) subject always to paragraph 10.4.5:
 - (i) the Board shall appoint the initial chairman of the Smart Co Board;
 - (ii) the initial chairman of the Smart Co Board shall, in consultation with the Panel, appoint other initial directors of Smart Co; and
 - (iii) Smart Co shall comply in all material respects with the UK Corporate Governance Code (including in respect of the nomination of directors);
- (b) the declaration of dividends by Smart Co shall be subject to the approval of BSCCo;
- (c) Smart Co shall provide a regular summary of DCC Tender Costs to BSCCo, provided that Smart Co shall be entitled to exclude any information which relates to the affairs of Smart Co, a BSC Company or any other third party and is in Smart Co's opinion confidential and/or commercially sensitive;
- (d) without prejudice to paragraph 10.4.6(c), Smart Co shall, as soon as reasonable practicable after it is notified of its success or not (as the case may be) in a DCC Tender exercise, submit a statement of its costs incurred in accordance with paragraph 10.2.1(b) to BSCCo;
- (e) subject to paragraph 3.4.6, in the event that Smart Co is successful in a DCC Tender exercise BSCCo shall, as soon as reasonably practicable, prepare procedures to ensure that where any common or shared costs between BSCCo and Smart Co are incurred these costs are allocated on a fair and reasonable basis, provided that in determining such allocation Smart Co shall not be obliged to pay in excess of the established market rate.

SECTION X: DEFINITIONS AND INTERPRETATION (version 55.0)

ANNEX X-1: GENERAL GLOSSARY

Amend Section X by inserting the following definitions in alphabetical order into Annex X – 1 General Glossary:

<u>“Aggregate DCC Tender Costs”</u>	<u>means the aggregate amount of DCC Tender Costs incurred in respect of a successful DCC Tender exercise comprising each amount of DCC Tender Costs pursuant to:</u> <u>(i) Section C, paragraph 10.2.1(a) repayable together with interest at the agreed rate from the first day of the month after the month in which such amount was paid to Smart Co until the re-payment date; and</u> <u>(ii) Section C, paragraph 10.2.1(b) repayable on a capital repayment basis based on BSCCo’s statement of account provided in accordance with paragraph 10.3.4;</u>
<u>“DCC Licensee”:</u>	<u>means the provider of the Smart Communication Service as that term is defined for the purposes of The Electricity and Gas (Competitive Tenders for Smart Communication Licences) Regulations 2012;</u>
<u>“DCC Tender”:</u>	<u>means all activities, by or on behalf of Smart Co, in connection with the planning, preparation, negotiation and award of, or any other process leading to an award of, the role of DCC Licensee;</u>
<u>“DCC Tender Costs”:</u>	<u>has the meaning given to that term in Section C, paragraph 10.2.1;</u>
<u>“DCC Tender Recovery Period”:</u>	<u>means the period commencing on the date DCC Tender Costs are first paid to Smart Co and ending a maximum of 12 years thereafter;</u>
<u>“Smart Co”:</u>	<u>has the meaning given to that term in Section C, paragraph 10.1.1;</u>
<u>“Smart Communication Licence” (“DCC Licence”)</u>	<u>means the licence of that name to be granted to the DCC Licensee by the Secretary of State in exercise of relevant powers conferred by section 7AB(2) of the Gas Act 1986 and section 6(1A) of the Electricity Act 1989;</u>
<u>“Smart Co Board”:</u>	<u>means the board of directors of Smart Co;</u>
<u>“Smart Co Shareholder”</u>	<u>means BSCCo in its capacity as holder of all of the issued share capital of Smart Co;</u>