
Smart Metering Implementation Programme: a consultation on the detailed policy design of the regulatory and commercial framework for DCC (September 2011).

Consultation Reference: URN: 11D/868.

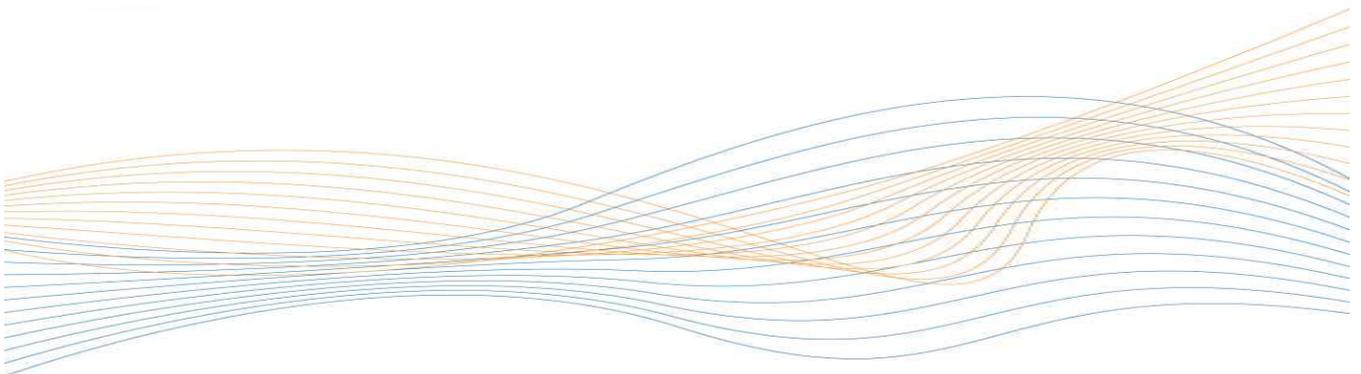
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1 Executive Summary

Please see set out below ElectraLink's response to "A consultation on the detailed policy design of the regulatory and commercial framework for DCC (September 2011)". In accordance with our central role as service provider of the Data Transfer Service to the GB electricity market we have focussed our response on those areas most closely aligned with our experience, knowledge and core competencies.

When reviewing the proposed policy for its implementation, one must not lose track of the fundamental rationale underpinning the formation of the DCC, namely that the provision of a common communications infrastructure for Smart meters reduces the risk, cost and complexity of the GB energy market.

DCC must consider itself, and be contractually obliged, to be a service provider to industry. To achieve this DCC will require a combination of commercial behaviours and a service provider culture. Its focus must be on service delivery efficiency, value and responsiveness to the needs of industry. Service excellence and delivery against its KPIs should be evidence of it fulfilling its service and licence obligations. Crucially it must not be a bottleneck or impediment to the deployment of Smart meters and its success will be determined by how seamlessly it can facilitate roll out.

DCC will procure (reprocure in the case of arrangements which it inherits) the enduring development and operation of a WAN and data services to enable secure and timely communication with Smart energy meters and to support activities related to Smart data. It will also support the ongoing administration of the Smart Energy Code. Inter alia, the Smart Energy Code will provide the highest level of oversight, barring DECC and Ofgem interventions, of DCC and its sub contractors. In carrying out these activities, DCC will be a major component in giving effect to the intent of Government regarding Smart meter rollout and the evolving needs of Ofgem and Smart data users.

Accordingly, we agree that DCC needs only to have a thin underlying organisation, with the ability to scale up and down, bringing in specialist resource as and when required from partners, consortium members and contractors. It will be people intensive during set up phase, initial years of roll out and centralisation of registration. During steady state service delivery post completion of the roll out the DCC should revert to being a thin organization

At the outset, perhaps for the first 5 years post Go Live, DCC needs to be wholly focused on service initiation including managing system change; the key to delivering the Government's business case is getting the meters on the wall. User requirements for elective services are also important during this phase but DCC should pay limited attention to Value Added Services during this period. Therefore there should be a limitation on DCC's commercialisation, as opposed to its commercial behaviour, until the Smart roll out is substantially complete.

The DCC service procurement that is currently underway is inviting bids from up to four separate service providers. Any requirement for the users of the DCC to deal bilaterally with each of these providers will increase market complexity and potentially create barriers to energy market entry. It is ElectraLink's view that the DCC licensee should assume ultimate responsibility for DCC service management, recognising that a single point of contact for the users of DCC services should be included in the DCC data services procurement. The

technologies and processes for the end-to-end service management of communications services are well understood and, if deployed correctly, should ensure that the DCC service is scalable and does not push complexity/cost onto its users.

DCC will itself be a licensed activity. A number of factors are essential to the overall contribution of DCC to Smart roll out, including:

- Extensive and accurate reporting by DCC;
- Informed and effective User representation;
- A DCC contract which is explicit on known requirements, e.g. most technical requirements and governance support services; and
- A DCC contract which offers flexibility to both sides in the case of timing uncertainties and unforeseen requirements.

End-users, especially suppliers, must have a high degree of participation in the central organization, which is effectively delivering a critical component of their economic future.

It is proposed that the uncertainties as to timing and scope of the DCC services are to be dealt with by passing through the costs of DCC itself and its contractors' costs. This is necessary because of the scale of these costs compared to that of DCC profits. DCC Profits will essentially be dealt with by a performance related component in its charges. KPIs for DCC's technical and governance service delivery can be conceived; ElectraLink operates with such defined parameters in its own agreements. KPIs for achieving 'most economic' delivery for a unique programme of novel activities over a decade may be, per se, unachievable. Proxies, evidence of behaviours most likely to lead to 'most economic' delivery, may be required. Re-openers in the licence or agreement to deal with DCC uncertainties pose huge difficulties in defining their trigger points (impossible in the case of, "Unknown Unknowns") and usually tend to flag up an issue rather than give explicit remedies (if the explicit remedy were knowable then it would already be in the contract and the need for a re-opener avoided). Economic behaviour achieved without such an incentive may be better than the consequences of the wrong incentive.

DCC charges should be cost reflective to promote economic efficiency amongst users. They should be billable based on known parameters. The costs and corresponding charges which DCC and its service providers can make must be aligned with the rollout profile. DCC may consider smearing of costs to spread the load amongst users during roll out.

As DCC's services are essential to the industry, its licence and contractual arrangements will aim to secure an orderly hand over of all assets and liabilities at expiry or revocation of its licence. Mirroring provisions in DCC's suppliers' contracts should be sought.

2 Questions and Responses

1. *Please provide views on the approach to basing the prohibition upon contracting with all licensed suppliers in respect of all domestic Smart meters, and on the way in which the specific wording of the prohibition should be developed.*

The recipients of Smart services will be broader than licensed suppliers and will include distribution companies and ESCOs. The consultation recognises that the licence can be narrowly drafted to ensure that it does not inadvertently captures third parties while recognising that the scope of DCC's licensed activity may be broader. The DCC must have clarity of its role and its obligations. Its relationship with, and obligations to all, parties, be it DCC users, service providers or the Authority, must be clearly defined. This can be achieved through a combination of broad, but clear, objectives and scope in the licence supported by detailed service obligations within the Smart Energy Code. If this clarity is available then the proposed scope of the licence and the narrow constituency to whom the obligations are owed would seem appropriate.

2. *Do you think there will be any persons other than DCC who might inadvertently be captured by a definition structured in this way?*

It is critical that the licence is developed in full consultation with the recipients of the DCC services, parties who will have an interest in bidding for the DCC Licence and with existing organizations serving common energy industry purposes.

As detailed elsewhere in the consultation, a number of existing licence conditions will require review to ensure there is no overlap between the activities required under those licences and the activities within the DCC Licence. Currently Electricity Distribution Network Operators are required to provide Data Services, including data transfer under Standard licence Condition 37, to electricity market participants. Similar provisions exist with the Gas Distribution licences and within the Uniform Network Code. Data Retrieval is explicitly excluded as part of the definition of Data Services. As such there is no overlap between the obligations captured under Data Services and those of DCC. The data transfer obligation under SLC37 is discharged by ElectraLink through the provision of the Data Transfer Service, which in turn is delivered using latest network technologies and service management techniques. The service is governed by the Data Transfer Services Agreement, a multi-part industry framework agreement and system code which contains the key principles of non discrimination, openness and transparency coupled with a high level of end user control and ultimate Authority oversight. Therefore the scope of the DCC Licence needs to ensure that data transfer, being separate to Data Retrieval, is not inadvertently captured. This obligation can remain with those who currently fulfil it until such time as registration is centralised.

3. *Do you have any other comments on the form of the licensable activity?*

DCC will itself be a licensed activity. This is a contrast with existing organisations serving common energy industry purposes, where usually only users are licensed and service delivery on their behalf is secured through a multi lateral agreement with an agency (which may in turn have bilateral agreements with sub-contractors for elements of the service).

DCC activities need to be defined as clearly as possible through a combination of the licence and the Smart Energy Code. Key elements of the Government's business case for Smart metering are reliant on the smooth rollout of Smart meters which in turn will be substantially reliant on the effective creation, transition and operation of DCC. To achieve this, the DCC will need clarity on its role to ensure it can effectively manage its service providers. The level of definition will need to strike a balance between being restrictive enough to ensure DCC keeps focussed on its key role of delivering service to enable Smart roll out without limiting its flexibility and adaptability to meet unforeseen operational circumstances.

In addition, it will be important that the DCC Licensee has a fair degree of certainty around the stability of its licence during roll out and that changes to the licence during that period should be limited to extreme circumstances only. Day-to-day oversight of DCC's contractual agreement would need to be by a pro-active group constituted under the Smart Energy Code. Ofgem should retain oversight of the regulatory arrangements and it should be an aspiration that DCC is subject to light touch regulation and regulatory reporting.

4. *Please provide comments on the proposed changes to legislation identified in Table 2.1 and Table 2.2 and any other possible changes that you consider might be appropriate.*

Those areas identified as Possible Changes to Other Legislation (table 2.1) need to be confirmed prior to the issue of any tender documentation. The full scope of DCC's regulatory and legal responsibilities must be known and agreed to enable bidders to assess the resource impacts of complying with such requirements. Any areas of uncertainty may lead to bidders including risk premiums or unnecessary levels of resource; or equally under estimating the level of resource necessary to meet such obligations in their bids.

5. *Do you agree with the proposal to have a single document with a single set of licence conditions that apply to both licences?*

Yes, while there exists differences in the operation of the gas and electricity markets and there will be functional differences between the services provided in support of gas meters and electricity meters, specifically in relation to alerts, these differences are not of a nature sufficient to warrant differential licences. These differences can be dealt with through the Smart Energy Code service definitions.

This dual fuel philosophy can be extended to be reflected in the DCC organisational culture and service provision including network connectivity between industry and DCC. We would envisage that a single service provider can meet the data transfer

requirement of the gas and electricity requirement. This would ensure that DCC delivers equitable service to all users and user connectivity and service provisions are minimised.

6. *Do you agree with, and have any comments on, the proposed approach to establish all of the DCC licence conditions as “special” conditions?*

ElectraLink does not have a comment on this question.

7. *Do you have any comments on the scope and nature of the consequential licence changes that we propose to make?*

The consultation recognises that the current licence and regulatory regime contains sufficient latitude to allow for the Smart meter roll out without the need for significant consequential change. The changes identified are considered mechanistic in nature.

While DCC will be a new licensed activity, its key role of data capture from meters, albeit using modern technologies resulting in more data, more often and a lot quicker, is an existing industry obligation. This obligation is reflected in the current licence and regulatory framework. DCC’s key role will be Data Retrieval, being the capture of data from Smart meters and this is reflected in the service contracts it is procuring.

Electricity Distribution SLC37 requires the licensee to provide, as part of its broader requirements to provide Data Services, a Data Transfer Service in support of the electricity market. A central requirement of that service is the communication of electricity meter reading data and electricity meter standing data. ElectraLink’s legal advisers, Herbert Smith, have carried out an independent legal review, both of the impact on this licence as well as broader procurement issues and concur with the consultation view that there is no overlap or duplication of the DCC purpose and the existing licence obligation for data transfer. As noted in the consultation, data transfer is a subset of the Data Services, which DNOs are required to provide to the market, which specifically excludes Data Retrieval.

Our legal assessment has concluded that the requirement to provide the necessary data transfer arrangements in support of DCC (‘DCC Gateway’) being DCC to industry transfer, as well as intra industry participant data transfer, would require only minor change to SLC37. The changes could be limited to inserting a reference (at LC 37.3) to the transfer of data between the DCC and any party entitled to receive information from the DCC under the Smart Energy Code. Our legal review also considered the corresponding data transfer obligations in gas and how both sets of obligations could be delivered over a single network through a combination of a regulatory regime and commercial contracts. ElectraLink would be happy to share this analysis in detail with DECC.

We also considered what changes would be required to the broad range of industry codes such as the BSC , MRA,UNC etc to facilitate a continuation of the existing data transfer requirements. Again, the legal conclusion was that as the arrangements are currently drafted to deal with data transfer the changes would, while being numerous, be mechanistic. Smart meter and the role of DCC will necessitate more data, more often

and faster, the underlying requirement to transfer data seamlessly, securely and efficiently already exists within the market. Any changes could, if required, be facilitated through the existing change processes.

The extension of the existing licence regime to include the requirement for Smart meter data transfer would not constitute a procurement by either DECC or DCC. The DNOs are compelled under the Utilities Contracts Regulations 2006 ('UCR') to conduct open and full procurements and this obligation would flow down onto ElectraLink for the procurement of any enhanced network to deliver the DCC Gateway. ElectraLink has previously carried out such an exercise, generating significant cost savings for industry. Such procurement would allow for service providers to demonstrate innovation as well as generating competition.

ElectraLink recognises that, given Smart metering is a supplier initiative which will be delivered through a new licensed entity, coupled with the plan to centralise registration in the future, there is an inconsistency with network operators being required to deliver data transfer. We therefore concur with the view that on centralisation of registration consideration should be given to the migration of the obligation to provide data transfer to the DCC. However, to reduce programme risks, deliver best value, reduce costs and use what already exists centrally and at users, we recommend the amendment of existing arrangements to facilitate existing data transfer arrangements until such time as registration is centralised.

ElectraLink would highlight that it is critical that DCC is responsive to industry change and this is reflected in its obligations under the Smart Energy Code. Therefore, the Smart Energy Code needs to contain full user representation with such users having a high level of influence and control over the Smart meter system. This principle of user defined service is enshrined within the Data Transfer Service Agreement.

8. *Are there any other consequential licence changes that you consider might be necessary as a result of the creation of the new licensable activity?*

While not necessarily a licence obligation, the Data Transfer service Agreement is the multi party industry framework and system agreement through which Electricity Distribution SLC37 is discharged. This agreement is subject to Ofgem oversight, is open and transparent, has non discriminatory pricing and the end users of the service (Suppliers, Distributors, Settlement Bodies and Agents) exert significant control and influence via the DTS User Group.

Currently, meter data management within each of the electricity and gas industries can be broadly categorised into:

- data capture (i.e. the capturing of meter readings from meters); and
- data transfer (i.e. the onwards transfer of data within industry, e.g. for registration, change of supplier, balancing and settlement, meter replacement purposes etc.).

Currently, these data activities are performed and regulated as follows:

- data capture is the responsibility of suppliers and is undertaken by a meter reader appointed by the relevant supplier who, in the case of dumb meters, physically visits the site in order to extract data; and
- data transfer is the responsibility of DNOs (in the electricity industry) and Gas Transporters (in the gas industry) and is performed by ElectraLink and Xoserve respectively.

From 2014, once the mandatory roll-out of Smart meters commences, data capture (expanded to include disconnections, reconnections, tariff amendments, alarms etc) will be the responsibility of the DCC and will be carried out by its service providers. Some time after 2014, it is intended that the DCC will assume responsibility for the registration of meters. The consultation determines this is likely to be 2-3 years after DCC go-live (i.e. 2016 or 2017), and the consultation proposes to achieve this as follows:

- A. The DCC Licence will include a licence condition in relation to registration, to provide for a high-level obligation on the DCC covering its future provision of registration services, and referring to the Smart Energy Code for the detail of the services to be provided. This provision will initially be "switched-off".
- B. DECC also proposes to make changes to the gas transporter and electricity DNO licences to provide the ability to discontinue the obligations on those licensees to provide the registration services that transfer to the DCC. Accompanying changes to the relevant industry codes and agreements will also be made.
- C. These two changes taken together would give Ofgem the ability to determine when to switch-on the DCC registration obligation and to co-ordinate this with a release of current licensees from their corresponding obligations. These two events need not be simultaneous.
- D. In addition, DECC proposes to include a condition in all relevant licences (gas and electricity suppliers, distribution licensees and gas transporters) requiring the licensee to take steps to facilitate the switch-on of the DCC registration condition and the discontinuation of the other licensee obligations in respect of registration.

ElectraLink agrees with the proposed approach in the consultation.

9. *Please provide any comments on the proposed approach in relation to geographic scope of the DCC licence and provisions relating to its duration.*

ElectraLink does not have a comment on this question.

10. *Do you agree with the proposed general objectives of DCC set out above?*

The central obligation of DCC will be to develop, maintain and operate an efficient, coordinated and economical data and communications system; this definition should be expanded to include the word 'secure'. The achievement of this key central objective should in itself allow the other key objective, of facilitating the roll out of Smart meters in accordance with Government policy, to be achieved. These two objectives should be the primary objectives of DCC with the other general objectives being achieved through the fulfilment of these two key objectives. In turn the obligation for DCC to discharge efficiently its obligations under the licence should be evidenced by the successful delivery of its services, as defined in the Smart Energy Code to the users.

It is anticipated that Ofgem would prefer to avoid frequent interventions and it follows that the 'day-to-day' oversight of DCC's contractual agreement would need to be via the Smart Energy Code, mostly likely delivered by the Code Administrator on behalf of the Smart Energy Code Panel. This oversight would provide a bridge, outside of licence and regulatory reporting, between DCC and Ofgem. The Smart Energy Code Administrator would be contracted by and to DCC and the potential for such an arrangement to create conflicts of interest should be recognised.

11. *Do you think it is necessary to include any statutory duties on DCC in the Gas and Electricity Acts or is it appropriate to address these issues in the DCC licence alone? Please provide the rationale for your views.*

ElectraLink does not have a comment on this question.

12. *Do you agree that any obligation to facilitate competition in the area of distribution should be considered as part of the implementation of any future Smart grids related arrangements?*

Yes, the DCC obligation to facilitate competition in distribution should be within the context of supporting the development of Smart grids, should be a future consideration and should be limited to facilitation through delivery of non discriminatory services rather than an explicit obligation to enable competition.

A critical component to facilitating competition, be it in supply or distribution, is that there are no technical or economic barriers to entry. This needs to be supplemented by an open and transparent governance and charging regime. These elements all exist within the Data Transfer Service Agreement, the multi-party framework agreement through which ElectraLink is contracted to deliver data transfer services to the electricity market. The key principles in the DTSA are replicated, where it is appropriate to do so, in ElectraLink's commercial contracts with participants in the gas and electricity markets. In our experience, a non discriminatory and transparent pricing regime is a key enabler to competition allowing for new market entrants to predict their costs with a high degree of accuracy.

It is broadly acknowledged that significant efficiencies, carbon reduction and consumer benefits can be achieved through the development, deployment and operation of Smart

grids. A key component to delivering the benefits of Smart grids will be establishing a 'bridge' between Smart meters and Smart grids. Given the infancy of Smart grid development in GB and the early stage lifecycle of existing Low Carbon Network Fund programmes an obligation to facilitate competition in distribution should at the outset be a placeholder for future development. This should also apply to obligations in respect of the facilitation of competition, broader than delivering non discriminatory services, in metering.

The development of services to deliver this 'bridge' between Smart meters and Smart grids is ideally suited to elective services, which can be developed and assessed as the mass roll out reaches a critical mass. In the shorter term, such services may be able to inform LCNF projects.

13. Do you agree with the approach proposed in relation to the protection of consumers interests?

DCC will be required to provide its services to all users on an impartial and transparent basis. DCC will not have any direct relationship, and is unlikely to have any contact with, end consumers. DCC should be required to provide its services, specifically data protection and data security, in a manner which allows the users of its services, specifically those who possess a consumer relationship, to meet and protect consumer interests. The delivery of its services in an efficient manner against its contractual obligations should evidence the discharge of any consumer protection obligation DCC may have.

14. Do you think DCC should have a separate objective to promote (or facilitate) energy efficiency?

DCC should not be required to promote or facilitate energy efficiency broader than an obligation to do so in respect of the procurement and operation of its services. DCC will have no relationship or direct contact with consumers. The obligation to promote and facilitate energy efficiency should remain vested in those industry participants best placed to do so.

15. Do you agree that Smart Energy Code licence condition should be drafted so as to provide flexibility over the future scope of the Smart Energy Code, i.e. that the scope of the Smart Energy Code in the DCC licence condition should be drafted in a permissive manner?

Yes, whilst the end to end Smart meter system will be defined with a high degree of clarity at the outset, a combination of operational experience, market conditions, technology changes etc is likely to have an impact on the final shape and scope of the Smart metering roll out. The Licence needs to be permissive to allow for any change necessary to the Smart Energy Code, be it planned, such as the centralisation of registration, or unplanned, due to changing market conditions. The Licence needs to be flexible and adaptable, subject of course to a suitable 'checks and balances' regime.

It is recognised in the consultation that while the governance arrangements in the Smart Energy Code can draw on the outcome of the Ofgem Review of Code Governance, as well as best practice enshrined within existing industry codes, the newest code being the Distribution Connection Use of System Agreement (DCUSA) for which ElectraLink is the code administrator, it may also, given the unique nature and scope of the Smart Energy Code, require bespoke governance arrangements. ElectraLink fully supports this principle of seeking and utilising best practice from existing arrangements while developing new arrangements where necessary. This duality will ensure the Smart Energy Code is a made to measure governance arrangement reflecting the unique nature of a combined code dealing with a centralised service to enable a new technology solution for the industry.

Given the reliance that will be placed on the modification process under such a permissive licence condition it is essential that the modification process, or any other tests that are set down, needs to clearly define both the objectives and the assessment process to ensure that any proposed modifications can be assessed without resorting to interpretation and subjectivity which in turn would lead to ambiguity.

16. What are your views on the Smart Energy Code Applicable Objectives set out above?

The Smart Energy Code applicable objectives listed appear to strike the right balance between a focus on the key objective of DCC, being the provision of an efficient, effective, secure, economic and coordinated service to enable the roll out and support of Smart meters provision while ensuring broader objectives such as environmental impact will be considered.

As detailed previously, to avoid the need for subjective judgement, the intent of the applicable objectives must be clearly stated and understood. This in itself will require a balance to be struck between clarity in the definition of the objectives while ensuring that the objectives are broad enough to ensure they do not inadvertently limit innovation.

17. Do you agree that the Smart Energy Code should be designed to take into account consumers' interests by meeting its applicable objectives, rather than having a explicit objective related to the protection of the interests of consumers?

Yes, the Smart Energy Code should be designed to take into account consumers' interests by meeting its applicable objectives rather than containing an explicit objective related to protecting consumer interests. The requirement to protect consumers' interests should remain with those parties who have direct relationships and contact with consumers. Any changes to the Smart Energy Code, including changes to DCC services, should as a matter of course consider the protection of consumer interests and this requirement should be discharged through the Smart Energy Code meeting its applicable objectives. Equally, DCC should meet any implicit consumer protection objectives it may have through the development, implementation and operation of open, transparent and non discriminatory services to all users.

18. *Should there be a Smart Energy Code objective related to promoting (or facilitating) efficiency of energy networks?*

The benefits of Smart grids are widely recognised. There needs to exist a ‘bridge’ between Smart meters, which is a supplier driven initiative and Smart grids which are a distribution initiative. A critical component of this bridge will be access to and use of Smart data. The DCC, in its central role is ideally placed to facilitate the development and efficiency of Smart grids through the provision of data services, either as core or elective services. To enable these services the issue of centralised data storage, as well as the aggregation of this data, would need to be considered. It is currently envisaged that DCC will not store or aggregate Smart meter data for any significant time period. To enable centralised data services, which would facilitate Smart grid development, data would need to be stored and aggregated centrally. This centralised aggregation would provide for the most effective and efficient means of providing usable, meaningful and informative data. Aggregation coupled with making the data anonymous would ensure that data confidentiality and data protection risks could be mitigated.

19. *Do you think the Smart Energy Code should have a separate objective of promoting (or facilitating) energy efficiency?*

Yes, the inclusion of such an objective would both build on the obligations included in existing licences of entities that have direct contact and engagement with consumers as well as capture those parties to the Smart Energy Code who will not be licensed entities. A key component of the case for Smart metering is the achievement of energy efficiency and as such it is entirely reasonable for the Code governing such arrangements to reflect, promote and facilitate this. Any change to the arrangements would need to be assessed against such an objective.

20. *Do you agree with the definitions of the services that DCC should be required or permitted to provide?*

The consultation identifies 4 main service streams; *core, elective, other Smart Energy Code services and added value services*. A more comprehensive definition of ‘*other Smart Energy Code services*’ needs to be developed as such services are not considered separately in Section 5 of the consultation.

The consultation requires the DCC to act in a commercial manner albeit the ability for commercialisation appears to be limited. Under the definitions provided, Value-added Services cannot relate to energy metering systems or are not concerned with energy use. In addition, Authority permission is required for such services. The example given in 3.58 is Smart meter services outside the energy sector, in effect new services to new markets, being the highest risk option in product and service development. The scope of added value services needs further consideration. The central role of DCC and its access to data means that it is ideally placed to provide data services, however such data services should be limited to being provided as elective services and may be both DCC and user initiated.

A framework of clearly defined, transparently priced core services provided to all parties in a non discriminatory manner supported by a shopping list of elective services provides a good balance and ensures that end users are not paying for services which they may not require. This has been our experience with the Data Transfer Service Agreement whereby the core services are provided on a non discriminatory way through a transparent pricing regime with users being able to buy “Additional Services” if they require them on a user pays basis. The charging principles define the method of price calculation for core and Additional Services.

As detailed previously, ElectraLink believes that DCC’s key objective and primary function should be the development, implementation and operation of a service in support of an efficient and effective Smart meter roll out. Thereafter the focus should be on the operation of the service supporting competition and enabling Government policy of carbon reduction and energy efficiency. To this end, DCC should be incentivised and its activities limited, in the initial stages of rollout and possibly until registration has been successfully integrated, to this purpose. A focus on commercialisation could lead to dilution of management and company focus.

21. In relation to which non-compliant metering systems should DCC be required to offer services?

DCC should be required to offer services, where it is technically able to do so and where the additional costs of meeting the particular requirement of each non compliant system is borne by the relevant supplier. A clear and predetermined testing regime and acceptance criteria should be developed in advance for each such meter type or head end system to ensure that services can be provided to the correct quality. Consideration should be given to the timing of offering non-compliant metering system services, for example it may be prudent to provide these services towards the back end of the roll out when the compliant metering services are bedded in.

22. In relation to which non-compliant metering systems associated with energy supply at consumer premises should DCC be permitted to offer services?

Please refer to our answer to Q21.

23. *What information should be made available to all users about:*

- *elective services;*
- *value-added services?*

Should information be restricted to that required to assess the impact on other users of DCC services or should there be full transparency? Should DCC be required to make available the detailed commercial terms and conditions of such services?

The fundamental difference between elective services, being those which are governed through the Smart Energy Code and available to all users on a non discriminatory basis and value-added services which are developed, either in response to bespoke requests or at risk by the DCC needs to be reflected in the nature of information made available to users.

Elective services, given their potential universal nature, should be subject to full, open and transparent disclosure including method of tariff calculation.

Value-added services which are likely to be commercial by nature should have a much more narrow disclosure scope and disclosure should only be subject to a compliance statement from DCC. The information in the compliance statement should be limited to confirming that key areas such as service performance, security and data privacy have been impact assessed against the ability to deliver core services. DCC should not be required to make available the commercial terms on which those added value services are provided. Where applicable, users should be informed of the service with sufficient performance information necessary for them to understand what, if any, impact the new service would have on their systems.

24. *Do you think the detailed terms and conditions for elective and value-added services should be set out in the Smart Energy Code or included in bilateral agreements between DCC and persons to whom it is providing services?*

For elective services the detailed terms and conditions should be set out in the Smart Energy Code.

For value-added services the detailed terms and conditions, given their sensitive commercial nature should be included within bilateral arrangements confidential to DCC and the recipient of the service. To ensure that core and elective service users are protected against any terms included in those commercial arrangements a framework of contract requirements could be established, for instance maximum levels of liability which DCC can take on, maximum levels of liquidated damages it can be liable for, minimum security standards for service recipient systems etc.

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25. *Are there any other matters that we have not addressed related to the nature of services provided by DCC? (Note that provisions addressing independence and non-discrimination in the provision of DCC services are covered in paragraphs 3.119 to 3.120).*

ElectraLink does not have a comment on this question.

26. *Do you agree that DCC should be required to externally procure specific services and have principles that determine what other services it should externally procure?*

Yes, DCC needs to have a clear understanding as to what its role is and which services it is required to procure, or inherit from the initial DECC managed service procurements, and which services it can develop and self provide. As highlighted in the consultation, DCC should seek to place risk where it can be best managed. This can be achieved through placing contracts with organisations that are best placed to deliver the services necessary to enable roll out rather than seeking to develop and replicate such services in house. This approach will also ensure that DCC facilitates competition in the services it requires.

DCC will procure (re-procure in the case of arrangements which it inherits) the enduring development and operation of a WAN and data services to enable secure and timely communication with Smart energy meters and to support activities related to Smart data. It will also contract for the ongoing administration of the Smart Energy Code. It has to have the clear objective of procuring and managing the services which will give effect to Government policy. It should have a key objective of procuring the most economic service on behalf of industry, and ultimately end consumers, and should be appropriately remunerated for doing so. It must have commercial rigour, displaying commercial behaviours in the management of its service providers, while focussing on the key objective of facilitating Smart roll out. Until roll out has been completed its ability to seek commercial advantage from its position should be limited.

DECC has recently commenced the procurement of its key service providers:

- WAN contracts, split across 3 geographical areas of the UK; northern GB, including Scotland, Central GB including Wales and Southern GB. The WAN providers will be required to provide all the necessary technologies within each area to achieve the required coverage. Each area will be serviced by a prime contractor who may have subordinate sub contractors. The prime contractor is responsible for integration of different technologies and sub-contractors within their geographical area. A single WAN service provider could be selected for all three areas; and
- Data services, being the single, GB-wide centralised IT system necessary for the management of Smart data to all meters from a central hub. This role will be responsible for access control, translation, scheduled data retrieval and DCC user services. It will also be the main systems integrator including integration of the communications services as well as hosting, security, IT management, reporting and billing. It is expected that this entity will also provide a single, central helpdesk facility covering both WAN and data services.

Given the contractual structure which is being proposed for DCC services, there are a number of models which could be used to ensure that service assurance is met, including assurance of the DCC's internally-provided services such as billing. It is expected that users of the DCC's services will benefit from a single point of contact for service management, including technical services and non-technical services, rather than multiple helpdesks.

ElectraLink would recommend that the DCC provides a single helpdesk to manage all DCC user calls, including technical queries and non-technical queries. This model means that DCC users have a single point of contact for all issues relating to the DCC and its services.

How the DCC manages technical queries to successful conclusion is open to debate. One model would be for the DCC to outsource technical helpdesks to each of its service providers. In this instance the DCC would retain overall responsibility for incident resolution, managing individual incidents between different service providers' helpdesks. Contractually, the DCC will have a relationship with each Service Provider and carries the overall responsibility for resolution, implying some level of overall design knowledge by the DCC so that it can effectively manage the different service providers.

A second model would be for the Data Services provision to be expanded from an overall systems integration role to one which also provides a single helpdesk which manages all calls, including those relating to the Data Services provider and to the WAN service providers. This arrangement will leverage the Data Service Provider's technical knowledge, however it should be noted that the Data Services provider will have no contractual relationship to the WAN Service Providers and it may therefore be difficult for it to exert any control over these service providers. A solution could be that the DCC appoints the Data Services provider to be its Contract Manager for the WAN contracts, however even in this instance the DCC would retain its overall responsibility for successfully resolving all calls.

DCC will inherit the initial service providers and contracts but will be responsible for the re-procurement of any further or replacement contracts for these services. In addition to the above, DCC will be the contracting body for the Smart Energy Code support services, albeit the procurement and selection of the Smart Energy Code service provider is likely to be carried out by the Smart Energy Code Panel. Therefore, again DCC will inherit this service contract.

DCC is likely to have 5 main service provider contracts; 3 (albeit there could be 1,2 or 3 contracts) for WAN, 1 for Data Services and 1 for Smart Energy Code services.

ElectraLink considers that DCC should self provide the following activities:

- Procurement expertise for large scale technical services;
- On going contract management;
- Programme and Project management;
- Service management;
- Systems change management;

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- Financial management including billing;
 - Other roles such as regulatory reporting, HR etc; and
 - System design authority including security design (see below).

With regard to the system design authority, ElectraLink considers that responsibility and liability for the initial end to end system design should reside within the Smart Energy Code. DCC would retain a skilled technical design capability whose role would be to impact assess any system changes and ensure such changes do not unduly impact the system integrity. Through this change management process the system design authority function would effectively migrate from within the Smart Energy Code to DCC. On reprocurement of the data services and WAN contracts, DCC would fully assume the design authority responsibility. At that time DCC liability issues would need to be resolved.

These self provide roles should be delivered through a permanent and skilled workforce. DCC should have a service provider culture and ethos and its obligations under the Smart Energy Code should focus on service delivery excellence.

DCC will be a people intensive organisation during the set up phase, service initiation and the initial years of roll out as well as during the centralisation of registration. In addition, during the initial years following Go Live, and given previous industry experience in large scale developments such as NETA and the 1998 Programme, there are likely to be significant levels of change required to systems.

Accordingly, DCC needs only to have a thin underlying organisation, with the ability to scale up and down, bringing in specialist resource as and when required from partners, consortium members, contractors etc. Such specialist resource would need to 'map' to the key procured services, as outlined above. This approach will minimise cost and risk while ensuring that DCC deployment can be achieved efficiently and on time.

ElectraLink's experience of using the model described above has worked well for the procurement of data transfer services in the electricity industry where ElectraLink acts as the "intelligent customer" on behalf of electricity market participants. This has ensured a wholly independent procurement process. This independence, coupled with contractual obligations to deliver an economic service, high degree of user representation in the delivery of the system and industry ownership has allowed for significant cost savings, which are passed onto DTS Users. Re-procurement points allow for a trigger for significant economic savings to be procured through competitive tendering.

27. Do you agree with the procurement objectives for DCC identified above?

Yes, the objectives in the first and second bullets represent good procurement practice and are designed to ensure that competition is facilitated, economic and innovative services are offered and the procuring body can have a high degree of certainty around the enduring ability of the service provide to deliver on its contractual obligations.

It is critical that the service provider contracts include a change control process which allows for changes and variations to be managed in an open and transparent way. DCC

should seek for all its service provider contracts to include a schedule of agreed charges for all known service amendments as well as a list of agreed days rates etc. This will aid transparency and limit the risk of change being uneconomic.

Consideration should be given to how change control is funded between the DCC and its service providers. The DCC would not expect to pay additional charges for all impact assessments undertaken by its service providers, however neither would it expect the sub contracts to include a large cost allocated to change management if little change is required.

With regard to continuity of service, this could be achieved in a number of ways from requiring the outgoing service provider to provide such assistance as necessary to enable an orderly handover through to step in rights. It is likely that there is no single correct answer in this respect and DCC should seek to include a number of options. However, this must be balanced against the “cost” of including such options in the contracts.

28. Do you agree that DCC should be required to produce a procurement and contract management approach document?

Yes, such a document will provide clarity and certainty to DCC, service providers and end users of the systems. It will allow for all procurements to be managed and delivered against an agreed framework and remove the need for subjectivity. Such a defined and understood framework will reduce procurement risk and should give effect to corresponding savings.

The approach will need to be a ‘living’ document adapting as and when required to changes in the market, changes in procurement best practice, legislation etc.

29. We seek your views as to whether the procurement and contract management approach document should be required to be submitted for approval by the Authority and/or the Secretary of State.

DCC will be a specialist procurement and contract management body. It is right that there should be some oversight of its procurement methodology. Such oversight should be by the Smart Energy Code Panel initially with the potential to escalate to the Authority. The Smart Energy Code could appoint a specialist to provide an opinion on the methodology and such opinion could in turn be provided to the Authority for their consideration.

It should be noted that any fundamental revision to the proposed methodology by either the Smart Energy Code Panel and/or the Authority may require DCC to incur additional cost and therefore seek a re-opener of its charges.

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30. *Is the scope of the proposed prohibition on discrimination, which is limited to undue discrimination between uses or classes of users, adequate?*

Yes, given DCC's central role in the facilitation and provision of services to users and classes of users it is important that each recipient of the same service element is treated and charged in the same way. This will provide certainty for new market entrants which in turn will facilitate competition and deliver benefits to the end consumer. In addition to ensuring there is no discrimination, DCC's services must allow for no technical barriers to entry and provide a range of service options which facilitate the entry of small and/or niche participants into the market. This non discriminatory model supported by no economic or technical barriers to entry is a fundamental principle within the Data Transfer Service Agreement.

31. *Are any specific provisions needed which require DCC not to discriminate between service providers? Or is it sufficient to rely on obligations on DCC to maintain and develop an economic system and, in the procurement of DCC services, to promote competition in the provision of such services?*

ElectraLink does not consider it necessary for explicit non discriminatory provisions to be included in the licence. The requirement for DCC to maintain and develop an economic system, supported by an approved procurement and management framework, will allow sufficient safeguards to ensure that DCC promotes competition in the services it procures. DCC should not be required to promote market competition in wider service markets such as IT and telecommunications.

32. *Do you agree that DCC should be independent of service providers? Do you agree that a de minimis level of affiliation between DCC and service providers should be permissible?*

To ensure that DCC procures its services in an open, transparent and independent manner it should be free from undue influence from all the parties which have an interest in the receipt or provision of its services. Undue influence should be defined with reference to existing legislation and / or corporate governance best practice, for example the Companies Act and the Combined Code. Undue influence can be broader than having a % shareholding and will need to include reference to Board constitution etc. Where DCC is compelled to "sign up to" or become part of existing industry arrangements then any services delivered to DCC under those arrangements should not be captured by the definition of DCC service provider. It is likely that DCC will need to accede to a number of existing industry arrangements and to consider those entities that currently provide such services, most usually consequent to some form of regulatory obligation, as DCC service providers would limit competition for the role of DCC.

Any level of affiliation should be avoided.

33. *What level of affiliation do you consider should be set for the maximum level of shareholding or control of any individual service provider may have in DCC?*

The consultation recognises the complex relationships which exist within the energy industry, and while these may be borne out of historical arrangements such relationships exist and will need to be considered in the tender process. It is important that the limitations exercised in the procurement process do not inadvertently limit competition.

What constitutes de minimus needs to be defined and should not be done so in broad terms such as “not having undue influence”. Affiliates having a maximum 5% shareholding and not having any Directors on the Board of DCC would be a good starting point.

Consideration should also be given to whether there should be a limitation placed on the maximum shareholding any entity can hold in the DCC licensee. ElectraLink’s view is that there should be no limit and a single organisation should be allowed to bid for 100% of the licence.

34. *Do you agree with the business separation between DCC and users that is proposed? More specifically, do you agree that no DCC user that operates in a competitive environment should be permitted to have more than a 20% shareholding or control in DCC, and that DCC and its subsidiaries should not be permitted to have any shareholdings in users or service providers?*

Yes, DCC needs to be independent, as far as possible, from its users and its service providers. Equally to being independent from a single user operating in a competitive market, consideration also needs to be given as to whether DCC needs to be independent from a class of users operating in a competitive market.

A 20% limit on all prospective users would seem appropriate as this reflects the voting and control limits in a number of existing industry agreements such as SPAA and DCUSA.

The consultation recognises the limitation of the ability of a regulated user who operates in a monopoly environment, for example a network operator to exert undue influence over the DCC. ElectraLink fully supports the pragmatic approach taken in the consultation on ownership of DCC by monopoly organisations, either directly or indirectly, and how imposing limitations and restrictions on such monopoly organisations having a relationship with DCC would be disproportionate and can be addressed through possible reinforcement and extension of existing ring fencing arrangements.

35. *Do you agree that it is not necessary to explicitly require business separation between DCC users and DCC service providers?*

Yes, it is not necessary to explicitly require business separation. It is likely that some business relationships and affiliations will exist. As long as these are known and in the public domain and do not allow undue influence to be exerted on DCC then DCC's independence is unlikely to be compromised.

36. *Should DCC be prohibited from using confidential information for any purpose other than the licensed DCC activity? Should DCC be obliged to impose this restriction on service providers contractually?*

Yes, DCC should be prohibited from using confidential information for any purpose other than the licensed DCC activity. Equally, DCC should have access to data to deliver its licensed activity and included in this should be services to enable energy efficiency and realise the benefits of Smart grid. DCC in its central role as data retriever is uniquely placed to provide services, either as core or elective services to industry users. It can use this novel position to provide non discriminatory services for the benefit of the industry, and ultimately end consumers. The regulatory regime within the Smart Energy Code and the associated pricing structure will ensure that DCC cannot excessively benefit from such access.

As detailed earlier, the access to, interpretation and use of Smart data, rather than ownership of it, is critical to realising the benefits of Smart metering. It is widely accepted that significant benefits will accrue from the adoption of Smart grids and while the detail is yet to be worked up, access and use of aggregated, anonymous Smart meter data is considered a key component of achieving such benefits. DCC is ideally placed to provide, as a minimum, an aggregated data store through which either core or elective services could be delivered to industry to allow for energy efficiencies and for Smart grid deployment to be achieved. A regulated regime makes this possible.

DCC's access to the data, at least for the period of the rollout, should be prohibited other than for core and elective services.

DCC should be required to flow any such obligation down to its service providers. Service providers should be required to demonstrate that such obligations are flowed down to any sub contractors they may have and that business separation exists between any other non DCC services they provide bilaterally to the energy industry and the services they provide to DCC.

37. *To what extent do you believe that the existing financial ring fencing provisions (and those proposed by Ofgem in its recent consultation on this issue) should be included in DCC's licence?*

Financial ring fencing will be necessary to ensure the financial stability and longevity of DCC over the full period of its licence. A ring fence minimises the risk of financial distress through putting in place requirements to protect assets, limit indebtedness and create good corporate governance structures. Any arrangements should also allow for

signals of financial distress to be identified early and for pricing re-openers where necessary to protect the licensed entity.

It is critical that the financial ring fence conditions are open to modification and can be changed with Authority permission to allow a degree of flexibility to address any permanent and material changes in the licensees operating environment, for example the need for DCC to fund assets and have associated borrowings.

38. Do you agree that a flexible approach to financial security should be adopted and, if a financial security is required, what level of financial security should be provided?

Yes, as noted in the consultation DCC will be a new venture, albeit potentially delivered through an existing registered company, and a 'thin' organisation which will not own any substantial assets. Therefore, a traditional investment grade credit rating approach may not be appropriate. The level of financial security will depend on the risk assumed by the DCC licence and its potential upside. Since these are not yet defined, we agree with the flexible approach to financial security.

Elsewhere in the consultation, the matter of allowing DCC to make a loss by not achieving its KPIs is discussed, implying that DCC's protection will be limited to losses from the payment of liquidated damages for non performance but not extending to cover other possible loss making scenarios such as DCC underestimating its costs in its tender.

Therefore, to protect against shareholders ceasing operations a financial security would seem appropriate. There should be flexibility around the form of this security, for example the requirement to provide a substantial cash deposit would be onerous on some parties. An irrevocable letter of credit may possibly be one such option (see 39) with a value equivalent to 6 months DCC charges.

The circumstances under which this letter of credit can be invoked would need to be clearly defined. The letter of credit would also need to be placed with an appropriate bank or financial institution.

39. What are your views on whether it would be appropriate to require DCC to pay for a proportion of the costs of appointing a new DCC in the event of an early licence revocation? Do you think that this potential liability should be reflected in the level of financial security required from DCC?

The extent of DCC's liabilities must be clearly defined and capped within the contract. These liabilities could be extended to include the liability for a contribution towards the cost of appointing a new DCC in the event of a licence revocation. Depending on the reason for the revocation, for example DCC financial distress, this may create a preferential creditor status.

The value of any contribution must be defined at the outset in the contract as the requirement to take on potentially unlimited liabilities would have an impact on the number of organisations willing to bid for the licence.

Careful consideration would need to be given to ensure that competition is not limited by this requirement. Bidders could commit to fulfilling this requirement either through the provision of a ring fenced deposit or through a letter of credit or through reinsurance. For the latter two methods, consideration would need to be given to the availability of underwriters and their ability to accurately assess the insurable risk given the novelty of the requirement. This may lead to either the risk not being insurable or the premium being prohibitive.

40. *Are there any other conditions that you consider should be imposed in DCC's licence to ensure its continued financial viability?*

The scope of the financial ring fence conditions imposed on distribution businesses would appear to be sufficient.

41. *Would it be appropriate for a special administration scheme to apply to DCC?*

Yes, the continued service delivery by DCC, rather than any particular licensee at any particular time, is critical to achieving Government Smart meter policy.

42. *Do you agree that DCC should be required to ensure business continuity of service providers and should monitor the provisions that they have in place to deliver business continuity?*

As well as implementing its own business continuity processes, DCC should be required to ensure its service provider contracts contain appropriate business continuity provisions. Such provisions could include disaster recovery obligations, financial ring fencing obligations or step in rights etc. The service providers will be tasked with the day to day service delivery and it is critical that industry can rely on the longevity of such service providers. DCC and its Service Providers should also be required to regularly test, at least yearly for critical elements of their service, such business continuity arrangements. DCC should be required to ensure that service providers maintain and test their business continuity arrangements in line with their contractual obligations and witness and report on such testing under the Smart Energy Code.

43. *Do you believe that DCC needs to include in its service provider contracts any further protections which help to secure against, or mitigate the consequences of, a financial failure of a major service provider? Please provide examples of any additional protections you consider suitable.*

ElectraLink does not have any further comment on this question.

44. *Do you agree that it is appropriate to grant the initial DCC licence for a ten year period?*

Yes, this period coupled with the potential for a 5 year extension will ensure that the DCC Licensee has sufficient time to facilitate the roll out, any enhancements to its role such as centralisation of registration, develop added value services post completion of the roll out and recover any investment it has made. It will also allow for the DCC to build up a knowledge base of experience and intellectual capital associated with enabling a mass roll out as well as operating a steady state environment.

In ElectraLink's experience, the first 5 years post Go Live of a business critical central service reflects a period of system change. It is only after the expiry of this initial period that a genuine assessment of a steady state environment can be made. It is only in steady state that a wholly informed view can be taken to determine what the scope of any subsequent procurement of data services and or communication contracts should be. It is through these second period procurements that significant economic benefits can be achieved. ElectraLink delivered £8m of savings while taking advantage of technology advances on behalf of industry when it switched from its incumbent service supplier in 2004 following go-live in 1998.

45. *Do you agree that flexibility for the Authority to decide to extend the initial DCC's licence by up to 5 years would be desirable?*

Yes, this will allow for the incumbent DCC to utilise its knowledge of a steady state environment to carry out any procurement activities on service provider contracts.

This flexibility also allows the Authority to defer a costly procurement of the DCC Licence where the incumbent Licensee is demonstrating best value in the delivery of its services. An independent assessment of best value prior to the award of any extension should be carried out.

46. *Do you agree with the approach described for the treatment of DCC internal costs for any extension period?*

The costs provided by DCC bidders should be considered as nothing more than indicative. The development of DCC is a novel service spanning a significant time period meaning that accurately predicating costs 10 years hence is a challenge. Any such cost predictions are likely to be heavily caveated, which could lead to significant levels of contingency in the DCC's contract pricing, unless flexibility is allowed.

Alternatively, the DCC Licence / Smart Energy Code obligations could require the DCC to "bid" for an extension at least 2 years prior to the expiry of its first term. This would provide the Authority with a much better informed view of the cost of the extension as DCC would by then be in a steady state operational environment. The likely significant costs in such an extension would centre on exit arrangements and any procurement costs in respect of any data services and communication contracts due to mature in the extended period.

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47. *Do you agree that DCC should be required to ensure that any critical services can be transferred to a successor?*

Yes, a number of the service provider contracts may span the DCC licence and therefore it is necessary that such contracts can be novated, without penalty or charge, to any new DCC licensee. The DCC license should also include provisions for exit arrangements to assist the migration to a new licensee.

48. *What scope of matters governing the handover to a successor do you think need to be included in DCC's licence?*

The list included in the consultation is comprehensive. The rights of any employees of the DCC Licensee under Employment Law would also need to be considered and transferred in accordance with TUPE if applicable.

49. *Do you agree that DCC's licence should be capable of being revoked in the event of a repeated or material failure to meet service levels?*

The conditions which amount to a material breach of contract would need to be clearly defined in the contract. The consultation confirms that the DCC will need to pay liquidated damages for service failures and it is usual for such damages to represent a genuine pre-estimate of the loss incurred due to the failure. For the licence to be revoked the level of failure would need to be of such a materiality to constitute a fundamental inability of the DCC to deliver its contractual obligations.

Standard conditions such as Administration would need to be considered as a material breach of contract giving rise to the licence being revoked.

50. *Do you agree that the DCC licence should contain a condition which gives it a high-level obligation in relation to foundation and subsequent rollout, activities and that the detailed obligations can be dealt with as part of the development of the Smart Energy Code?*

Yes, the experience of roll out of foundation stage Smart meter systems will provide valuable insight and learning in advance of mass roll out. This learning will greatly enhance the chances of success for the mass roll out. While this can be enabled through a high level obligation within the licence there has to be some degree of clarity as to DCC specific obligation to allow bidders to determine the resource to deliver such obligations. An open ended licence obligation will not be workable. It will be critical that, during foundation, DCC works closely with Meter Service Providers and existing central bodies such as ElectraLink whose data transfer network will be supporting interoperability arrangements.

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51. *Do you agree that DCC should have a high-level obligation, albeit initially “switched off”, relating to the provision of meter point/supplier registration services?*

Yes, the centralisation of registration, physical or logical, will form a key component in the success of Smart metering and will enable faster customer switching and an improved customer experience.

The centralisation of registration is likely to be a complex matter requiring significant levels of system changes. Therefore, to ensure that the roll out programme is not put at any risk, this activity should only be undertaken once the mass roll is on track and nearing completion.

Requirements for data services including data transfer already exist within the current regulatory framework. It is acknowledged that on centralisation of registration it would be prudent to consider industry data transfer arrangements and associated procurement.

52. *Do you agree that conditions should be introduced in other licences providing the ability to release other licensees from the requirement to provide meter point/supplier registration services at some point in the future?*

Yes, albeit there will need to be a run off / parallel run of registration processes.

53. *Do you agree that DCC and other relevant licensees should be subject to an obligation requiring the licensee to take steps to facilitate the transfer of meter point/supplier registration activities to DCC?*

Yes, given the importance of ensuring an orderly migration of meter point / supply point registration an obligation on the relevant licensees would seem appropriate. It should be recognised that such an activity would incur costs and appropriate allowance should be include in charging regimes to allow for such cost recovery.

54. *What dispute mechanism would be appropriate to apply to disputes involving DCC and who should be enabled to determine such disputes?*

The consultation envisages two possible areas of dispute, firstly service disputes between DCC and users and secondly, disputes rising between DCC and its successor.

The first is in essence a contractual dispute and should be dealt with through the escalation route defined in the Smart Energy Code. This could include, as a first step, escalation to the Smart Energy Code Panel and if unresolved there through an external route comprising arbitration, mediation etc with such external appointed arbitrator/mediator having the final say.

Disputes between the out going and incoming DCC is a licence matter and should be resolved through escalation to the Authority.

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55. *Do you believe that DCC should be required to operate its business in a way that ensures it does not restrict, prevent or distort competition in gas shipping, the generation of electricity and participation in the operation of an interconnector?*

No, the DCC will be concerned initially with the roll out of Smart meters to the domestic supply market. This should be its primary and sole purpose until the successful completion of such mass roll out. Consideration should only be given to broader scope once the roll out is complete.

56. *Do you have views on the additional conditions discussed above?*

DCC is likely to be a thin organisation and the imposition of a complex regulatory reporting regime is likely to add disproportionate cost to the organisation. The Authority is recommended to consider the scope of the regulatory reporting requirements and not seek to impose the same level of obligation as that in place for network operators.

This comment also applies to the carbon footprint reporting requirement. DCC will in effect be an “office based” role and as such its own carbon footprint is unlikely to be significant.

57. *Are there any additional conditions that you would wish to see included?*

ElectraLink does not have a comment on this question.

58. *Is it appropriate to consider extending the Secretary of State’s powers to provide equivalent powers to modify DCC’s licence conditions as it does for other energy licences for the purposes of implementing Smart metering?*

Yes, the DCC will be a licensed activity and as such should be subject to the same conditions as other licensed activities, subject to the creation of these powers not impacting the project or procurement delivery timescales or commencement of the roll out.

59. *Do you consider that it is practicable for DCC licence applicants to provide costs for undertaking meter point/supplier registration? Or is it more appropriate to include a specific reopener for DCC’s costs of undertaking meter point/supplier registration?*

We consider the delivery of registration systems would, as per the DCC model, be a procured service rather than a self provide service. The scope of DCC’s obligations in respect of registration would need to be defined. For example, would DCC be required to provide a helpdesk to deal with registration queries and exceptions or would it be limited to the contract management of an outsource registration service provider? Accordingly DCC’s costs for provision of registration could vary significantly. To allow DCC bidders to provide a cost of “managing meter point/supplier registration” the exact scope of its responsibilities will need to be defined.

Accordingly, we consider a specific re-opener for DCC's costs of undertaking meter point/supplier registration to be the more appropriate mechanism.

60. *Do you have views on the relative benefits of the two options (cost pass through and volume drivers) for recovery of DCC internal costs associated with Smart Energy Code modifications?*

A tiered approach seems sensible with 'postage stamp', effectively volume, charges from DCC for a schedule of changes of pre-definable or de-minimus scope, particularly where only internal DCC costs are likely to be involved. Where there are large changes, or impact assessments of considerable depth, and particularly where more substantial disbursements to external parties will be involved, there is a case for an individual, pre estimate of costs and that Users, via Smart Energy Code, are consulted in order to make an informed decision on whether the change request should go ahead in its existing or a modified form.

61. *Do you have a view on the appropriate materiality threshold (trigger) for the revenue reopener?*

See answer 62 below.

62. *Do you consider that any other cost areas may require mechanisms to deal with uncertainty?*

The uncertainties faced by DCC are inherent in the programme itself and in the extent to which these cannot be laid off on its service providers appear considerable, even given the principle of cost pass through stated in various places in the document.

In some material instances we support specific re-openers, for example registration, however for the majority of cases it may be more straightforward to have a general re-opener if DCCs margin fails significantly short of that envisaged when bidding for the licence. This would trigger an examination of the circumstances which have brought this about and whether the DCC is culpable or simply subject to circumstances beyond its control. A quid pro quo could be an upside re-opener if margins out-turned excessively high compared to the bid figure.

63. *Do you agree that market share should be based on MPANs and MPRNs that are mandated to receive Smart metering systems, rather than all MPANs and MPRNs?*

Yes. Meter points other than those mandated to receive Smart should only pay for services received from DCC based on the costs incurred when those services are taken.

64. *Do you have a view on whether suppliers of only larger non-domestic customers should be charged a proportion of DCC internal costs?*

Please refer to our answer to Q.63.

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65. *We welcome views from stakeholders in regards to charges on network operators for DCC internal costs pre-“go-live” and whether they should charge DCC for services provided to DCC.*

ElectraLink does not have a comment on this question.

66. *Do you agree that DCC should only begin to charge users for communication service providers’ costs from “go-live”? Please provide reasons as to why this is or is not appropriate.*

DCC should charge users from when costs are incurred, or a liability for those costs arises, in order to minimise its working capital funding requirement. Otherwise the choice of DCC licence bidders may be limited to those with a high availability of capital rather than those with the best capability and most economic bid overall to perform DCC’s functions.

67. *Do you have a view on whether the data service provider(s) should be treated differently from communication service providers and be allowed to recover its fixed costs evenly over the length of its contract from “go-live”? Please provide reasons why this is or is not appropriate.*

Yes, we agree that the data service provider should be required to amortise the cost of developing their systems and recover such costs over the life of their contracts from Go Live. This will provide an added incentive in respect of service delivery performance, given the value of unrecovered amortised cost is effectively at risk. To protect against onerous cost of capital charges service providers should be required to disclose their funding charge separately in their tender response.

It is assumed that the data service providers’ charges to DCC will be structured to reflect their own cost structure, including initial costs in making services available generally and to a specific user, and ongoing fixed costs relating to maintaining the ongoing availability of service. A greater proportion of data service provider costs are likely to be fixed in the medium term based on making services available. Service providers’ capacity to fund initial costs depends on the expectation of a certain term over which they can be amortised. This may be less true for communication service providers with a large portfolio of users sharing common infrastructure with Smart traffic.

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68. *Is it appropriate that the allocation of costs on suppliers during rollout be based on the suppliers' rollout plan for the year plus actual Smart meters installed in preceding years? If so, can this option for allocating costs during rollout be improved? If not, what is your preferred option and why?*

It is important that DCC and its service providers are able to forecast what and where the demand for their services will be. In the absence of a prescribed profile for roll out DCC is dependent on the pace targeted and achieved by suppliers, their forecast accuracy and how their plans are shared. However, in the grand scheme of things, the allocation basis above is unlikely to distort forecasts and, with a retrospective correction factor, is equitable.

69. *Do you have a view on how any additional costs resulting from suppliers exceeding their rollout plans should be allocated? Should DCC be able to pass through to the relevant supplier any higher costs resulting from this (or should such costs be averaged across all users)?*

It will usually be difficult to identify additional costs with particular suppliers and the default should be that such costs are averaged across all users. If the intention is partly to ensure, in the interests of achieving the greatest economy, that users have a roll out plan and stick to it or incur penalties, then it would be better to deal with this as a distinct licence item.

70. *Do you agree that network operators should be charged in line with their market share?*

Charges to network operators should reflect the costs of the services they receive. Users should be incentivised wherever possible to use the common infrastructure created by DCC. The use of a common infrastructure, in addition to being economically advantageous, also provides a landscape for innovation. The use of the DCC common infrastructure could be used by network operators as a platform for expediting the development of Smart grids.

71. *Do you agree that a standing charge should cover the service providers' fixed costs for providing core services, DCC's internal costs and the Smart Energy Code management funding requirements?*

Yes. DCC's standing charge should cover its service providers' fixed charges for providing core services, DCC's internal costs and the Smart Energy Code management funding requirements.

72. *Do you agree that a proportion of service providers' fixed operating expenditure should be converted to volumetric charges?*

No. A proportion of service providers' fixed charges to DCC should not be converted to DCC volumetric charges. Charging structure should reflect cost structure, albeit a simplified view, in the interests of economic efficiency. Fixed costs, operating or otherwise, should not be converted to volumetric charges.

This answer also applies in the case that the question asks "... a proportion of service providers' fixed operating expenditure should be converted to their volumetric charges to DCC?"

It is expected that many costs will be 'fixed' (in the sense that that they do not vary in the short term with data volumes or message numbers). We would expect this to be reflected in Data Service providers' charges to DCC and in Communications services charges to DCC (subject to existing and future procurement terms, although communications providers generally, particularly wireless, clearly adopt a very wide range of pricing practices for marketing purposes). Accordingly, if DCC's volumetric costs are material (most likely depending on WAN pricing) and where information from communications providers is available at a sufficient level of granularity to allocate this to DCC's users, it may be worthwhile reflecting this in the structure of DCC charges to their Users.

73. *Do you agree that the proposal for postage stamp charging is consistent with the objectives of the Smart metering programme?*

It seems desirable to adopt postage stamp charges to users for the majority of Smart connections so as not discourage the take-up of Smart on the basis of location and in the interests of simplicity.

For a minority of connections a higher charge band, set at some percentile of average costs, might be helpful to provide some economic message. At some high percentile of average costs to serve, e.g. due to lack of local communications infrastructure, there should not be an obligation to provide service; inter alia, this would dilute the overall cost benefits of Smart.

74. *Should postage stamp charging apply to all users including network operators?*

Similar considerations as Q.73 apply.

75. *Do you agree with the proposed charging principles?*

Yes, acknowledging there will always be some compromises in the averaging inherent in a charging structure that is a simplified representation of DCC's cost structure.

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76. *Do you consider that an objective for the charging methodology should be to promote innovation in the supply of energy, provision of energy related services and energy distribution?*

Yes, the charging methodology adopted must have a key objective of encouraging and incentivising the use of the common infrastructure created by DCC. The use of this common infrastructure will allow for an industry lead approach to innovation which coupled with the use of elective services would allow for benefits to be fully maximised across all parties.

77. *Do stakeholders have views on whether DCC's internal costs should be allocated across the different types to users on the same basis as service provider fixed costs?*

Allocation should reflect costs incurred by the different types to users if separately determinable.

78. *Do you agree with the proposals to charge users for extensive assessment and design work in relation to AMRs? Should a similar approach be adopted for other elective services offered by DCC, regardless of the user accepting the service?*

This needs to be funded by the relevant users. "Extensive" will require definition. Users should be able to act as consortia in their discussions with DCC to define their requirements and develop cost efficient solutions. Any such discussions and agreement would need to be facilitated and managed through the Smart Energy Code processes.

79. *Do you agree that "a second comer principle" can be applied?*

Adopting a first comer/second comer principle is more equitable than not, and shown to be workable.

80. *Please indicate whether the Minimum Core Service Requirements (i.e. message size, frequency, response time and coverage) for each of the message flows in the above tables can be modified to reduce the potential impact on the WAN cost without compromising the corresponding benefits. Please quantify the additional Programme benefit that could be realised by including each of this message flows in the aggregate Minimum Core Service Requirements.*

In ElectraLinks' role in providing and managing the core data network within the electricity and elements of the gas industry we are keen to ensure effective, efficient and secure data transport. We feel, however that we are not the most appropriate organisation to respond to this question. We would however reiterate the importance from a network management perspective the need to mitigate information duplication through defined and structured data items, similar to those sent across the Data Transfer Network (DTN) as this will aid in the overall efficiency and security of the chosen network solution.

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81. *Please quantify the additional benefit, if any, that could be realised by using the 'User Target' rather than the 'Minimum Core Service Requirement' in table 6.1. as basis for the procurement of DCC communication services.*

Procurement of the DCC communication service needs to reflect the timescales and installation profile of Smart meters rollout. A procurement that focuses on delivering a solution based on projected whole market capacity as at the end of the rollout in 2019 may not provide the most cost effective solution.

In ElectraLinks' experience of network procurement and management, it is important to strike a balance between what is required on day one in order to ensure that a workable and appropriate solution is implemented with a vision of the 'end game' requirements. A procurement that enables the service provider to deliver a solution that is achievable, flexible and commercially attractive but demonstrates a clear and unambiguous implementation plan will help mitigate some initial implementation risks relating to costs, complexity and timescales. It is important that the service procured provides for innovation and the ability to benefit from advances in technology over the lifetime of the service that are commercially advantageous to both parties.

82. *Please provide views on whether the Service Requirements described in the above table represent the Minimum Core Service Requirements. Please also indicate whether in your view there are any additional Minimum Core Service Requirements not identified in the above table, and for any such requirement please quantify the additional benefits, if any, that could be realised.*

ElectraLink has no comment on this question other than the principles that we detailed in our response against Q.80.

83. *Please provide comments on the incentive regime proposed for DCC.*

ElectraLink agrees that an incentive regime should be in place and recommends that the incentives are developed and changed in accordance with the changing profile of the DCC. KPIs for many measures of technical performance and timely and satisfactory user responsiveness could be quantified. A blended regime of qualitative and quantitative KPIs would be desirable.

It is difficult to see how baselines for procurement efficiency can be established against the many cost changes that may legitimately arise in a novel programme of uncertain scope and timing. It may be an option at the 5 year stage, when baselines may be evident from experience and DCC will be moving from inherited contracts to reprocurement. That this incentive could initially be set wrongly creates considerable risk for DCC from the incentive itself and the uncertainty of any remedy. Consequently, ElectraLink believes that the DCC focus in the initial term needs to be around the service initiation and facilitating 'getting meters on the wall'.

Whilst the DCC will always need to apply commercial rigour with its service providers, incentives to drive down costs initially should not detract from its role of facilitating

mass meter rollout. Cost savings should come once, inter-alia arrangements inherited by DCC's come up for re-negotiation and service definitions and timings are known with accuracy. This is ElectraLink's experience reflected by the £8m savings generated at the time of procurement of its network services after the expiry of the initial 5 year term post go live of the 1998 programme.

Appropriate incentives around the efficient management of change and innovation are critical factors to the success of a service, especially in the early stages of the DCC.

84. Do you consider it appropriate and feasible for the Smart Energy Code panel and DCC to negotiate KPI targets?

ElectraLink supports the view that KPIs need to be agreed between the DCC and the Smart Energy Code Panel and that both work closely together to ensure a common understanding of the changing profile of the service. A working group with informed user representation is necessary. Clearly DCC would be conflicted out of some discussions. Resort to Ofgem would only arise if there were a failure to agree, which of itself would provide some incentive to conclude a reasonable agreement.

Due to the uncertainty of specific KPI targets, especially in the early stages of the DCC, it would be appropriate for the KPIs to be reviewed once a steady state environment has been achieved at the point where mass roll out is substantially complete. This will ensure that KPIs can be then defined to reflect this steady state environment with a focus on continuing service delivery and change control management, whereas at the outset of the programme KPIs should focus on the main objective of 'getting meters on the wall'.

85. Do you have views on the use of an independent audit of DCC performance? Should this be on a regular and/or ad hoc basis?

ElectraLink considers that the use of an independent audit may be more appropriate once the service has settled into steady state and only where operational delivery demonstrates to the Authority or the Smart Energy Code that DCC or one of its service providers is consistently failing in its obligations.

The initial term, years 1-5, should focus on facilitating the mass rollout of meters. ElectraLink believes the Authority should be mindful not to distract the DCC from this primary objective and feels this may occur if regular audits are undertaken where no indication of failing has been identified. The audit needs to be clear in its objectives, only focusing on specific areas where there is believed to be a failing.

It should be noted that DCC will be subject to an annual financial audit, will have service reporting requirements under Smart Energy Code and will need to comply with a procurement and contract management framework agreement. The Smart Energy Code Panel, most likely through its appointed service provider, will contract manage DCC and as such DCC will be under ongoing scrutiny with regard to service delivery and compliance with its obligations. Therefore the use of audits should be limited to where they are absolutely necessary.

86. Do you consider that a sharing mechanism should be in place for DCC internal costs? Should a sharing mechanism be included in the contracts with the service providers?

ElectraLink believes that the DCC licensee will be a thin but flexible organisation with regards to its internal resource profile. It will flex and bring in expertise at appropriate times as needs dictate e.g. for specific procurements. ElectraLink believes that any internal sharing mechanism must reflect this flexible profile of the organisation and should not deflect the DCC from achieving its primary objective of facilitating mass rollout.

With regard to sharing mechanisms with service providers, ElectraLink supports this approach and expects this as standard practice with regards to contracts it has negotiated. We would however expect these mechanisms to be applied once the service is established and the DCC and its service providers better understand the nuances of such a new service.

Notwithstanding the above, the DCC and its service providers should be actively encouraged and incentivised to promote innovation within the service and ultimately benefit commercially for their efforts. A balance needs to be struck to ensure development of the service is not to be stifled.

There should be a requirement to allocate incremental DCC internal costs which arise because of its provision of elective or value added services to the relevant service. This might be audited as per Q.85.

87. Do you consider that it is appropriate to invite DCC licence applicants to propose KPIs?

As detailed in the paper, the requirements of the incentive mechanism of the initial license term will be different to those of a subsequent term. ElectraLink believes that procurement is likely to include dialogue about KPIs, so it is appropriate for DCC licence applicants to set out their proposals. There is scope for applicants to propose KPIs and these should reflect their individual approach to how they intend to operate the service. It would be unhelpful for DCC's procurers to be over-prescriptive initially, and a set of minimum KPIs to which all bidders would need to confirm compliance needs to be included as part of the procurement to facilitate comparison. As mentioned against the response to question 83, the KPIs will need to reflect the key stages of the DCC lifecycle.

88. Are the criteria for adoption of contracts discussed in paragraphs 8.8 and 8.9 appropriate? Are there any additional criteria that should be included? Can quantitative thresholds for any or all of criterion be defined and, if so, how?

ElectraLink is in full support of enabling the market to initiate the rollout of Smart meters prior to the establishment of the DCC. ElectraLink believes that the Foundation Stage provides an excellent opportunity for Suppliers, Service Providers and the market in general to understand and iron out the complex processes and technical issues needed to ensure a successful rollout.

The criteria for sufficient scale will need to be clearly defined in order that a fair assessment of its economic viability for adoption can be undertaken. Consideration

needs to be given to scale being measured in terms of the number of metering systems, their geographical location or the value of the contract being assessed.

ElectraLink would expect to see that not only is the communication contract proven to work but it should have been in operation for an agreed period prior to adoption. The solution needs to be additionally assessed based on its security methodology so to ensure it does not detrimentally impact the contracts already being managed by DCC. The DCC licensee must be mindful of the technologies used and be provided with sufficient opportunity to undertake a due diligence of the service being adopted.

89. Do you agree with our approach to identifying the guaranteed adoption volume of Foundation Stage Smart metering systems? Are the factors we have identified the appropriate ones? What are your views as to the appropriate values of the various parameters identified in Table 8.1?

ElectraLink supports the approach of identifying the guaranteed adoption volume, as this will provide a level of certainty for suppliers in defining their pre DCC rollout strategy.

ElectraLink does not have a view on what the most appropriate values for the parameters identified in section Table 8.1 is as these views will be better provided from an Energy Supplier perspective.

90. Do you agree that DCC should be able to decide to adopt communication contracts associated with Foundation Stage Smart metering systems in excess of the guaranteed adoption volume providing there is a net benefit to doing so? If so, does DCC need to be provided with additional obligations and incentives to encourage DCC to actively pursue such contracts and what factors should DCC take into account in making its assessments? Should we specifically provide for suppliers to compensate directly DCC for any costs incurred by DCC or its service providers in the adoption of additional contracts?

ElectraLink believes that the DCC should be able to decide to adopt communication contracts in excess of the guaranteed adoption volumes if in adopting those established communication contracts a further increase in the economies of scale is achieved.

Provision should be allowed in the instances where it is commercially attractive for the DCC to adopt additional contracts from a Supplier, and that Supplier will gain greater benefit than that given in compensating DCC. The DCC should however have the final say in the timing of any such adoption so it does not detriment the overall mass rollout. The DCC must also be held accountable for the failure of any due diligence with respect of a migrated contract.

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91. *What in your view is the most appropriate option for allocating the guaranteed adoption volume across energy suppliers and on the mechanism, including timing and frequency, by which any allocation unused by one supplier should be redistributed to other suppliers?*

ElectraLink believes that the most appropriate option for allocating the guaranteed adoption volume is linked to market share within communication region.

ElectraLink supports a regular and independent review on the commercial viability of the redistribution of unused allocation, and this review needs to be mindful of the DCC go-live date as economies of scale may be increasingly effected closer to DCC go-live and key periods throughout the mass rollout.

92. *Do you have views as to when Foundation Stage communication contracts should be adopted?*

ElectraLink is proactively working with a number of meter service providers as part of Foundation to enable the early roll out and adoption of interoperable Smart meters. Our network is ideally placed to provide the necessary interoperability on change of supplier. Early roll out and adoption will provide a good learning ground for all parties in the industry, be it meter service providers, energy suppliers or other supporting organisations. As previously stated the timing of when a contract is migrated will be dependent on a number of pre-defined criteria but the decision must be cognizant of the overall status of the Smart meter rollout so not to increase risk or cost e.g. stranded assets.

93. *Do you agree that a four stage process as outlined in paragraph 9.10 is appropriate for appointment of DCC?*

Yes, this staged approach will allow for clarity and certainty to prospective bidders as well as allowing bidders to manage their bids costs. Such a staged approach is a common and understandable process used in most major procurements and as such should be familiar to service providers.

It is crucial that the process allows for bidders during each phase to have sufficient time in which to prepare, develop and submit comprehensive and credible submissions. It is unlikely that prospective bidders will commit to investment in the subsequent phase of the process until they have received notification of their eligibility to progress.

Critical to the success of any procurement process is that service providers clearly understand the customer's requirements and we have commented on the need for the scope to be clearly defined, both with regard to licence obligations and detailed obligations within the Smart Energy Code, elsewhere in our response. If clarity is lacking then bidders may be minded to either include significant risk premiums within their bid or may under estimate the risks thus increasing the possibility of future financial difficulties and consequential costs to the industry.

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94. *Do you consider that applicants should commit to lodge a form of financial security at the invitation to apply stage that would take effect if the licence was granted to the applicant?*

We consider that any financial security should only take effect from grant of licence and cover the period of the licence. No financial security should be required during the procurement.

Given the criticality of the DCC role in the successful enabling of the Smart metering role out it is appropriate that some form of financial security is in place. The level of security needs be aligned to that element of DCC activities under the applicant's control and not linked to the value of the service providers' contracts. If the latter approach is adopted then this would not align with the concept expressed in the consultation of placing the risks where they are best placed to be managed. Applicants will need to fully understand the scale of their financial exposure and a requirement to "underwrite" service provider performance through letters of credits and other forms of security may lead to the opportunity being viewed as very high risk.

Not all organisations, especially newly formed consortia, may be in a position to achieve an investment grade credit rating. This will also apply in respect of the provision of a cash deposit or other liquid security.

Whilst the requirement to provide an unconditional irrevocable letter of credit would seem otherwise appropriate, the current credit environment and the ability and willingness of financial institutions to provide such letters of credit must be considered. The ability to provide security should not be a determining or key factor in the selection of the successful applicant.

95. *Do you agree with the proposals for dealing with changes to consortia including allowing changes up to but not beyond submission of responses to the ITA?*

Yes, we agree with this proposal. The scope of the DCC role could lend itself to the development of consortia bidders and as such Government needs to ensure that each consortium member meets the necessary qualification criteria. It is pleasing to see that Government recognises that there can be changes in consortia membership during a bid process, either due to unforeseen circumstances within the wider market or changes and clarifications in the requirements of the procuring party.

96. *Do you agree with the proposal for one overarching confidentiality agreement for each applicant group rather than individual confidentiality agreements for each member of an applicant group?*

Yes, the requirement for each member of an applicant group to sign a single overarching confidentiality agreement applicable to that group mirrors the concept of the members of the applicant group acting together as a single entity to deliver the DCC Licence requirements.

Such an overarching agreement would also ensure that all applicant group members have the same confidentiality requirements in place and that no gaps between individual confidentiality agreements can arise.

Government will need to give consideration as to the degree of negotiation that will be allowed in respect of confidentiality agreements. It is likely that each applicant group will have different legal concerns and as such will seek to negotiate the content of their confidentiality agreement. Government will need to consider whether any negotiated changes to a single confidentiality agreement is made available to all other groups.

97. Do you have any comments on the approach to clarifications and dialogue with prospective applicants?

Given the complexity and uncertainty around the scope of the role to be procured it is critical that applicants have the opportunity to seek clarifications throughout the procurement process. This process will need to be carried out in a secure, structured and transparent way.

The proposed process of providing such clarifications via the data room by means of a secure electronic means of communication will facilitate this process. ElectraLink also supports the proposal that all clarifications are circulated to all applicants, subject to commercial confidentiality.

ElectraLink supports the reciprocal nature of the proposed ability for Government to seek clarifications from applicants at both the PQ and ITA stages.

98. Do you agree with the proposed approach to the pre-qualification stage including the timescale, the information required and the assessment methodology and criteria?

The main purpose of the PQ stage is to ensure an initial robust gateway process is in place to identify those applicants who, based on the information provided in their response, are capable of delivering the DCC activities. An open, transparent and robust process needs to be in place to ensure this objective is met.

As part of its response to the PQQ Government will be asking applicants to confirm their willingness to comply with key elements such as the DCC licence and Smart Energy Code. It is critical therefore, given the limited response window of 3 weeks that the draft documentation published in advance of the procurement process provides as much clarity as possible on such conditions. ElectraLink considers the 3 week timescale to be demanding but achievable.

The information required of applicants reflects a combination of factual information coupled with applicants confirming their willingness to comply with the requirements of the role of DCC and its associated licence and governance structure. For this latter requirement the onus will be on Government to ensure that sufficient detailed licence and the Smart Energy Code information is available for applicants to critically appraise the likely obligations and determine whether they wish to partake in the procurement process.

The high level information provided on the proposed service provider contracts will need to include critical items such as liability clauses, specifically any liabilities which the DCC will be asked to carry.

A two-phase assessment process is proposed whereby Phase 1 will determine compliance with the process and Phase 2 will assess the applicant's suitability for progressing to the ITA stage. The ability of applicants to correct any minor non-conformity in Phase 1 is welcomed.

ElectraLink is broadly in agreement with the assessment criteria outlined for Phase 2 but would suggest that as part of the PQQ issued criteria such as financial standing are clearly defined in monetary terms. It is important that there is no element of subjectivity within the assessment process.

The selection process to be used to identify which of a large number of applicants are to be taken forward to the IT stage must be based on factual evidence and not open to interpretation. This will ensure that the potential for subjective judgements leading to discriminatory behaviour is avoided.

99. Do you have any comment on the documentation to be provided by applicants for the DCC licence? Is there any other information that you think should be made available to applicants?

To ensure that applicants provide comprehensive and robust bids, as much detail as possible on the role of the DCC, the content of its licence and its obligations under the Smart Energy Code must be provided. To avoid applicants inserting significant levels of risk premium in their bids, or not understanding the risk profile and as such increasing the likelihood of financial loss, it is critical that the applicants can assess the full scope of the role they are being asked to bid for.

Eliminating uncertainty at this stage should lead to Government receiving lower risk bids, better pricing and eliminating the likelihood of triggering contract re-openers at a later date.

The content of the service provider contracts will be a critical component of the information provided. Accordingly, applicants will need to assess the potential risk and liabilities within the contracts they will be inheriting. The services delivered under these service provider contracts will form the foundation for the Smart meter system and their management will be the main part of the DCC's role. It is critical that the applicants are fully aware of the content of these contracts and are comfortable with inheriting them.

In addition, any limitations on bidding for indirectly related services, such as Smart Energy Code Administrator, needs to be fully detailed in the procurement documentation.

100. Do you agree with the proposed approach to the Invitation to Apply stage including the timescales, the assessment criteria and their weightings?

The proposed timescale of preparing and submitting a response within 4 weeks is not feasible. A significant element of the response will be bespoke and will map directly to the information provided at the ITA stage. The element that is “boilerplate” will be minimal. Applicants should have a minimum of 6-8 weeks to reply.

ElectraLink agrees with the conclusions of the DCCG Working Group that the experience of the senior management team plus experience of managing and procuring substantial contracts in similar sectors are critical elements of the assessment criteria. DCC will play a central role in the energy sector and will facilitate and provide services to competing parties on an equitable basis. ElectraLink would suggest that the value of energy sector experience and working in a regulated environment should not be underestimated and should attract a significant weighting in the selection process.

The proposed licence period is 10 years with an option to extend for a further 5 years. This is an extended time period over which a number of material elements of the DCC role could change. ElectraLink suggests that the transition plans associated with migrating to a new service provider at the end of the licence period should be deferred until 2 years prior to the expiry of the Licence. This will allow for the Smart service rollout to be completed and the full scope of the services to be known and understood.

It is understood that both the DCC licence and the DCC service provider procurements will be run in parallel, with allowance given for the DCC Licensee to have input into the final negotiation stage of the service provider contracts. It is also understood that bidders will be afforded the opportunity to carry out legal due diligence on these contracts. The timescales for this due diligence and the potential impact that the resolution of any issues highlighted as part of this process could have on timescales should not be underestimated. ElectraLink suggests that this due diligence is carried out after the DCC licence has been awarded and any material issues identified are dealt with as a “re-opener” in the DCC Licence award and cost base.

It is suggested that as part of the ITA documents, DECC provides some parameters as to what it would expect the KPIs for the DCC licensee to be. These KPIs would be the minimum performance criteria against which the DCC would be judged and would allow for comparison of bids. Applicants should be asked to provide details of what further KPIs they would be willing to sign up to and what level of liquidated damages and service credits they would be happy to put at risk for non performance.

101. Do you agree with the proposals for appointing one or more preferred applicants as well as one or more reserve applicants to ensure that there are alternatives in the event that a preferred applicant withdraws or is disqualified?

This is a sensible suggestion and ensures a competitive process for as long as possible. It also mitigates the risk of failure to achieve an appointment through a negotiated process with one single applicant. ElectraLink would recommend not more than two bidders be taken to this stage

102. *Do you agree with the proposal for an optional best and final offer stage in the event that two or more applicants have similar positions? Do you agree with the proposed approach to the pre-qualification stage including the timescale, the information required and the assessment methodology and criteria?*

This is common practice in large procurements but should only be used if absolutely necessary.

103. *Are there any other specific issues that you think should be considered before grant of the licence?*

ElectraLink has no further comment on this question.

104. *Do you agree that in the event of DCC losing its licence the Authority should have the power to fast track the appointment of a temporary DCC? If so, is eighteen months an appropriate maximum time period for the temporary DCC to hold a licence before a new DCC can be appointed via a full competitive process? Which elements of the licence application process could be accelerated or eliminated to ensure rapid appointment of a temporary DCC?*

Yes, in the event that a licence is revoked then it would be crucial to establish a new DCC, be it an interim provider or longer term provider, as fast as possible. This would bring certainty to a distressed situation.

18 months would appear to be a sufficient timescale. Depending on the timing of the revocation of the licence it may be appropriate to include in the temporary appointment process the flexibility for the “interim DCC” to bid to continue the Licence past the expiry of the initial term. Such an extension would be the shorter of the period to the end of the original licence or 5 years. This flexibility would allow for continuation of service, reduce procurement costs and allow for a check point on the interim DCC costs.