SCOTTISHPOWER

Smart Metering Implementation Programme - Regulation
Department of Energy & Climate Change
Orchard 3, Lower Ground Floor
1 Victoria Street
London, SW1H 0ET

27 August 2014

Dear Sir or Madam,

**CONSULTATION ON NEW SMART ENERGY CODE CONTENT (STAGE 4) AND CONSEQUENTIAL/ ASSOCIATED CHANGES TO LICENCE CONDITIONS**

Thank you for the opportunity to respond to the above consultation.

As we have been closely involved in the development of this additional SEC drafting, we largely agree with the approach being proposed to each of the issues under consideration. However, with important details yet to be fully established and consulted on, we do not feel able to offer unqualified support at this time - particularly with regard to the proposed arrangements for Communications Hub (CH) ordering, Security/Privacy assessments and the User Gateway Interface Specification.

Our views on the specific issues raised are set out in the annex to this letter. However we would draw your particular attention to the following points:

- We will be obliged to use the CH Ordering System since, if we do not do so, our forecast will be deemed to be zero. However, the SEC drafting makes no allowance for the possibility that the System might have failed, potentially leaving Parties open to an unacceptable level of risk (see our response to Q6).

- The drafting is unclear as to how a minimum delivery quantity for an order will be arrived at, and conflicts between sections appear to leave the possibility of the Communications Hub Support Materials (CHSM) obliging an order lower than the minimum delivery quantity (see our response to Q3.)

- The Security Sub-Committee needs to have the right balance of expertise to ensure its recommendations represent a proportionate response to perceived security risks (see our response to Q15).

- We are concerned that suppliers may be subject to variable rates of charges if more than one Independent Security Assessment Provider is appointed (G8.2). We recommend exploring a 'prime and sub' relationship to address this (see our response to Q15a).

- Although apparently consultative, the process toward subsidiary document designation only requires DCC to summarise any unresolved disagreements for consideration by the Secretary of State, giving rise to a risk that significant issues are not properly dealt with. The SEC is a contract between the DCC and its Users, so it is important the DCC is not simply allowed to unilaterally dictate terms of delivery (see our response to Q3).

Yours faithfully,

**Annex 1**

**CONSULTATION ON NEW SMART ENERGY CODE CONTENT (STAGE 4) AND CONSEQUENTIAL/ ASSOCIATED CHANGES TO LICENCE CONDITIONS SCOTTISHPOWER RESPONSE**

**Q1 Do you agree with the requirement for the DCC to consult SEC Parties on future tranches of Communications Hubs procurement?**

Yes, we would very much welcome a DCC obligation to re-engage with Parties regarding the procurement of future tranches of Comms Hubs. By drawing on their experience of the initial tranche, Parties will be uniquely placed to help inform the requirements of such future procurements. Also, the DCC relied on disparate financing arrangements between its service areas for that initial tranche, and future consultations will allow Parties to revisit these arrangements for the purposes of comparison.

Changing technology also throws up compelling reasons for the DCC having such an obligation, such as:

- timing may be such that the introduction of dual band Communication Hubs coincides with future tranches and the opportunity arises to alter the CH mix in future tranches;
- further opportunity may exist in the future to reduce the physical size of the communications hub and therefore increase the percentage of successful initial installations; and
- as technology evolves there may be opportunity to take cost out of the Communication Hub design.

We are, however, concerned that the drafting in the consultation does not specify how the DCC should consult, nor does it place an obligation on the DCC to have regard to the comments it receives.

**Q2 Do you agree with the proposed approach to allow SEC Parties (which will include MOPs) to forecast, order, take delivery and return uninstalled Communications Hubs?**

We agree it is essential that SEC Parties are able to forecast, order, take delivery and return uninstalled Communications Hubs.

However, we do not support the principle of Meter Operators being SEC Parties, nor do we agree they should order Communications Hubs, which we think is likely to jeopardise the complex commercial arrangements that exist between these entities and relevant suppliers. Moreover, it is unclear how financing arrangements will work if no supplier is involved (especially where payment on delivery obtains), or where the requirements of the Communications Hubs ordering process will be met when orders must relate to a single identified Region.

We do recognise that Meter Operators might be better placed to receive deliveries of orders placed by suppliers; however, we are not convinced that they need accede to the SEC to do so.

**Q3 Do you agree with the proposed approach and legal drafting in relation to the development of the Communications Hub Support Materials?**

As a member of the DCC CHSM Working Group, we have contributed fully to the development of the guidance material within the Communications Hub Support Materials, and fully support the principle of a consultative process towards the completion of such materials. However, we would like to see a single approach to each process within the CHSM document, rather than variable for each CSP – the current proposal – to prevent inconsistencies and simplify interactions between suppliers and the DCC.

We are concerned that the DCC need only summarise any outstanding disagreements for consideration by the Secretary of State. There is a risk that where there are significant or complex disagreements these may not be adequately captured in a summary. We would therefore suggest that the Secretary of State be provided with Parties' unabridged responses in addition to the summary.

In the same vein, we are unclear as to the effect of X7.4 (b), which seems to suggest the DCC must negotiate with the supplier in question in efforts to resolve such disagreements. While this may be a useful process (if practicable given the timescales), it would be essential in most cases that other interested parties are given an opportunity to consider and comment upon any proposed change arising before the matter is submitted to the Secretary of State.

Given the timeframes involved, we recognise some parallel development is almost inevitable; however, we would highlight the risks and uncertainties such parallel working introduces. In this instance, Parties are being asked to consider the legal drafting for the CHSM, while the CHSM itself is still subject to development.

Our concerns in this area are exacerbated by the legal drafting, which only requires that these materials be incorporated into the SEC '*in advance*' of the date forecasts are first to be submitted by Suppliers. In essence, SEC Parties might only get visibility of the version of the CHSM to be added to the SEC on the eve of the first deadline for submission. We would therefore propose that an earlier deadline for adding the CHSM to the SEC be considered.

**Q4 Do you agree with the proposed approach and legal drafting in relation to forecasting of Communications Hubs?**

Broadly, yes, although we think it should be made clear that forecasts must be done monthly for a "rolling" 24 months period; in our view, use of the word "rolling" might make the drafting a little clearer. We also think provisions are needed to cover the eventuality of a change to Initial Live Operation (ILO). For example, if the ILO schedule is altered, then Parties must have the right to revise their orders without penalty.

As regards the proposed requirement to forecast at a Device Model level, although we acknowledge the commercial imperatives facing the CSPs, we also note that such granular forecasting might cause inefficiencies in our rollout activities by making tolerance thresholds more constraining or leading to an unintended and inefficient stockpiling of particular Device Models.

In accordance with our response to Q2, above, we would recommend that DECC consider replacing the text at F5.2 that states:'*...future requirements of a Party for the delivery to it of Communications Hubs...'* with something along the lines of *'...future requirements of a Party for the delivery to it, or to a non-Party nominated by that Party for the purpose, of Communications Hubs...'*

**Q5 Do you agree that forecasts that are submitted from the tenth month before a delivery month should include the numbers of Device Models to be delivered in that month in each region, and these should be subject to the specified tolerance thresholds outlined below?**

Notwithstanding our response to Q4 we broadly agree with the approach to timetabling as set out in the consultation document, although there should be some recognition that HAN variants will not be available at ILO.

**Q6 Do you agree with the proposed approach and legal drafting in relation to ordering of Communications Hubs?**

The drafting states that orders must be placed through the CH Ordering System (F5.5 and repeated at F5.15) and if they are not then the forecast is deemed to be zero (F5.12). This seems unreasonable in that it makes no allowance for the possibility that the CH Ordering System may fail in some way, which potentially confers an unacceptable level of risk on Parties. While the intention may be to address such failures in an ancillary document (perhaps obliging the DCC to provide a "back-up" ordering system for the purpose) we feel this could be more readily covered in F5.20 to F5.22 (CH Ordering System).

F5.11 is not clear as to how a minimum delivery quantity for an order will be arrived at. In any event F5.9 and F5.10 should be made subject to F5.11 as that seems to be the intention. We also wonder whether there could ever be a conflict between the two: i.e. where F5.9/F5.10 obliges the order to be a figure which is lower than the minimum delivery quantity.

The drafting at F5.13 (b) means that if a Supplier has failed to make an order but, according to its forecasts should have done, the supplier will have been "deemed to have submitted" such an order (the details of which shall be determined by the DCC). This could give rise to a number of practical issues which may or may not be addressed in the policy referred to at F5.18:

a) How will the DCC decide upon appropriate ancillary equipment which might be needed with the order? There seems to be a risk that suppliers may end up with orders they cannot utilise.

b) How will the obligations work in terms of delivery and acceptance of Comms Hubs if the order is a "deemed" one: i.e. will the supplier be obliged to take receipt of Comms Hubs it has not ordered? The sections on delivery are silent on this and do not cross-refer to this type of "deemed" order.

c) This provision does not appear to sit very well with F5.19 (Cancellation of Orders) or the returns section at F8.7: i.e. if a supplier can cancel or return any order anyway, what is the point in having "deemed" orders? Can the Supplier cancel a "deemed" order?

d) Surely it would be preferable, where a Supplier fails to make an order in line with the forecast tolerances, that the DCC first makes every effort to re-use those hubs for other Suppliers who may wish to over-order in line with DCC's discretion at F5.18, and only if it cannot so mitigate its losses will the Supplier be charged for the failure to order. This would be preferable to having a "deemed" order.

F5.18 (b) should refer to F5.17 not H5.17

Should there be an appeals process for where the DCC rejects an order, subject to F5.17, and causes financial loss to a Supplier, or is this eventuality expected to be captured by the disputes process?

More generally, we believe the section on the Comms Hub ordering process could benefit from further review to tighten the legal drafting and close potential loopholes.

**Q7 Do you agree with the proposed approach and legal drafting in relation to delivery and handover of Communications Hubs?**

We agree with the proposed approach; however, we note the wording of F6.4 might allow for the illegitimate removal of Communications Hubs to nonetheless qualify as delivery, provided it takes place at the relevant Delivery Location. We would therefore propose the text be changed to make clear that such removal only constitutes delivery where the removal is by the Party assigned responsibility for doing so under the CHHSM. Similar clarity should also extend to the transfer of liabilities as set out in F6.4.

F6.9 (c) sets out the process for rejection of damaged Communications Hubs and refers to their visual inspection. We would ordinarily consider such visual inspection to require first removing them from the delivery vehicle. However, we note that F6.9 (c) requires that 'such damage or tampering occurred prior to their delivery'; yet, according to F6.4, removal for visual inspection would likely constitute delivery.

It is worth noting that Parties will need to ensure the terms of their insurances reflect the financial obligation to cover damage to the Hubs without ownership transferring, and we wonder whether it might present a degree of difficulty to some as they seek to insure assets they do not yet own.

We also think the 5-day window, for confirming acceptance of deliveries, might be a little tight for large organisations to comfortably accommodate, particularly if they are relying on agents to accept such deliveries on their behalf. We would therefore prefer that this window be extended a little.

Where a Communications Hub order has been rejected, it is important that Parties have some certainty over when a replacement order will be provided. To that end, we think some clear timescales should be set out in the legal draft.

We note that, where more Communications Hubs are delivered than were ordered, the delivery is to be considered non-compliant and the Party entitled to reject the 'Communications Hub Products in question'. We assume that this permits that only that excess of Communications Hubs needs be returned, but would like to see this confirmed in the legal draft.

In our view, this section should cover or at least refer to "deemed" orders under F5.13 (b).

**Q8 Do you agree with the proposed approach and legal drafting in relation to installation and maintenance of Communications Hubs?**

We agree with the approach and broadly agree with the legal drafting; it seems reasonable to us that the DCC acts as the Supplier's agent as the customer's contract is with the Supplier. However, it needs to be recognised that suppliers will have lengthy, detailed, contracts with their agents, setting out strict terms governing standards of behaviour etc.;

whereas no such contracts will exist here. Under the circumstances, appropriate insurances will need to be in place to make sure the actions of the DCC are covered.

We also think the drafting at F7.6 might be changed to 'replacement or removal of the equipment'.

**Q9 Do you agree with the proposed approach and legal drafting in relation to removal and returns of Communications Hubs?**

We agree with the approach and broadly agree with the legal drafting that supports it; however, make the following observations / recommendations:

- The consultation states at paragraph 85 that Suppliers must only take "reasonable steps" to recover the hubs. This is at odds with the drafting, however, which places an absolute obligation on Suppliers to do so. We consider such an obligation to be impracticable, given it relies on access being granted by customers. We therefore think it should be a "reasonable endeavours" obligation at F8.1;

- Given that the text at F9.6 (a) refers to returned Hubs as being a 'CH User Responsibility', we are surprised to find the new drafting silent on consequences. If the Supplier is to be subject to a termination charge in these circumstances then, for clarity, we think a cross-reference should be added to the charging provisions here.

- We think the drafting at F8.2 might be changed to '...the DCC shall provide to Parties all such information as such Parties and any relevant Energy Consumers reasonably require in respect of the situation.' This is because F8.2 (a) might apply to Parties other than Supplier Parties if proposals found elsewhere in the consultation are implemented;

- In our view, returns identified as "Service User Fault" (e.g. environment conditions exceeded) and "corrosion due to install conditions" amount to one and the same thing. We would also question where liability rests in the event that environmental conditions have changed since initial installation.

- Duplicate text ('installation') should be removed from F8.5;

- F8.6 and F8.16 - 'Communications Hubs', should be Hub (singular);

- F8.8 – We are unclear as to why the DCC is restricted to no more than two locations, in respect of each Region, to which Communications Hubs may be returned; and

- F8.9 (b) – Reference to '(a) above' should be changed to 'F8.9 (a)'.

**Q10 Do you agree that there should be an obligation for the first installing supplier in a dual fuel premises to take all reasonable steps to install a communications Hubs that would work with both the smart meter that it is installing and the smart meter of the other fuel type?**

For SMETS 2 installations, we agree that an 'all reasonable steps' obligation would be reasonable; but in the context of SMETS1 meters, we do not believe this to be operationally possible.

**Q11 Do you agree with the Governments proposals in relation to the processes to determine the reasons for early return of Communications Hubs?**

The legal text seems appropriate; however, there appears to be some confusion of singular and plural in F9.9: i.e. "those Communications Hub".

**Q12 Do you agree with the proposed approach and legal drafting in relation to the transitional requirements for Communications Hubs forecasts and orders?**

Yes, we agree with the approach and that the draft legal text delivers its intent.

**Q13 Question: do you agree with our proposed changes to the DCC licence to require the DCC to offer services to non-SEC Parties where required to do so under the SEC?**

We support the principle of the DCC offering enabling services to non-SEC parties, as it should help to maintain the integrity and on-going operation of GB smart metering. We also welcome the approach to charging non-SEC Parties for such provision, but would highlight that the services must be explicitly defined in the SEC to ensure there is sufficient transparency to give Parties comfort that this broadening of the DCC's scope does not come at the detriment of service levels.

While the DCC Licence drafting changes largely meet with proposed requirements, we are not particularly persuaded that the Authority is best placed to determine on disputes where one of the parties involved would not otherwise come within its jurisdiction.

**Q14 Do you agree with the proposed approach and legal drafting in relation to the provision of Communications Hubs for testing?**

It seems sensible to have a different process for the purchase of testing hubs as the ownership of these hubs will pass to the purchaser, which takes them out of the usual "system".

What a purchaser will wish to be certain of, however, is that hubs for testing are in all material respects the same as the Comms Hubs being provided for installation so that testing can be effective. An obvious point, perhaps, we think it worth adding to the drafting as such an obligation on the DCC might serve to obviate the risk of subsequent disputes over the quality of the testing hubs.

**Q15 Do you agree with the legal drafting in relation to Security Governance?**

We agree that the legal drafting reflects the consultation proposals. We also consider the measures proportionate, although we think the SCC's role needs to be more clearly defined within the context of the overall smart metering security framework, and we would have liked to see draft terms of reference being made available as part of this consultation. While we welcome the Government's recognition that specialist security input will be required, we also think it is important for the SSC quorum to have the right mix of skills to ensure its response to security related issues is proportionate given this context.

Notwithstanding this need for context, it is our expectation that security specialists supporting the SSC will have a broad security experience that is not limited purely to smart

metering deployment. Experience gained in other sectors, such as telecoms or banking, should bring the sort of valuable insight needed to ensure the SSC arrangements are as robust as they can be.

**Q15a Do you agree with the Governments proposals in relation to Security Assurance? In particular on:**

- **the proposal for the SEC Panel to procure a central CIO on an initial basis;**
- **the proposal for Users to meet the costs of security assessments that are undertaken at their organisation;**
- **the proposal for a three year rolling cycle of security assessments to be used to provide assurance on Users;**
- **the process for identifying and managing non-compliance**
- **the assessment arrangements proposed for DCC.**

Central CIO procurement by the SEC

We agree in principle with the procurement of a central CIO, by the SEC Panel to act as Independent Security Assurance Provider (ISAP), and that the SEC Panel will ensure that in terms of assurance scope, the appointed CIO's activities are proportionate in terms of SEC Parties' compliance with the SEC and referenced security standards. While the principles for the appointment of a CIO have been previously set out, an additional understanding of when the CIO audits will take place in terms of gate entry and exit criteria for remaining Programme milestones would be welcomed.

We still wish to understand how a centrally procured CIO will have sufficient bandwidth to assure all SEC Parties wishing to progress to ILO as quickly as possible and in practical terms how individual SEC Party needs will be met without delays being incurred due to resourcing constraints.

Regards costs, we note from G8.2 that the SEC Panel can procure more than one ISAP. However, we are unclear as to how the Panel will ensure a consistency of service and approach in such circumstances. Also, if more than one ISAP were to be appointed (pursuant to a procurement process), we are unclear as to how the charging arrangements would apply: i.e. would the relevant charges vary according to which ISAP a supplier gets, or will they be set across the market to average them out? In our view, the only practicable way of achieving this would be through a prime/sub relationship, but this point does not currently appear to be addressed in the drafting.

Costs of security assessments

We agree that the costs of security assessments undertaken by the CIO should be met by the individual SEC Party. We agree that this approach is the only way in which it can be assured that related costs are proportionate and relate directly to the individual SEC Party security and data privacy solution and associated assurance scope.

Three year rolling assessment of security assessments

We accept the assessment framework that has been set out with some reservations. While we recognise that risk can be attributed to the volume of smart metering systems that are rolled out by an organisation, we would consider that from a role based perspective irrespective of the size of supplier, the way in which smart meters are deployed and subsequently managed is of equal importance whatever the size of the organisation given the same entry messages into the CNI.

While all organisations will be required to undergo an initial full audit, we would recommend that the SEC Panel continues to monitor subsequent compliance activities in the intervening years and any security incidents which are a result of smaller organisations performing less stringent security activities within the intervening years.

Differing levels of security assurance for SEC Parties, particularly in terms of large and small suppliers must be considered in terms of churn where a gaining supplier determines that the smart metering system that has been gained requires additional security measures as a result of the losing supplier operating less stringently in the period between full-audits.

Process for identifying and notifying non-compliance

As previously stated, we agree with the security governance framework as currently set out and that the SSC can be consulted for non-compliance referrals and subsequent recommendations to the SEC Panel. Given the standard does not necessarily set an industry baseline, any remedial actions as a result of CIO assessments must be proportionate. Part of the assurance role should be to ensure that where an organisation is be brought in line with the SEC obligations, the remedial actions must not introduce additional requirements which other SEC Parties have not been required to demonstrate.

It must be ensured that identifying and notifying non-compliance is a process by which it is ensured that GB end-to-end smart metering remains secure and does not become a set of industry 'league tables'. It must be noted that organisations will have different risk appetites and deploy their security mitigations in different ways and whilst complying with the core elements of the security standards and obligations currently required, security landscapes must be considered on a case by case basis.

Proposed assessment arrangements for DCC

We welcome that the DCC is subject to CIO assessment and subsequent SOC2 assurance measures. We would anticipate that the audit regime established by the CIO is proportionate and that it is executed in an efficient and consistent manner. The SEC Panel have a key role in overseeing the CIO's assurance activities on an on-going basis with SSC support as and when necessary – whether this be to assess findings and recommendations, or changes in assurance scope over time.

**Q16 Do you agree with our proposed approach and legal text for SEC in relation to Privacy Assessments?**

The same issues would apply as in Q15 if the SEC appointed more than one Independent Privacy Auditor (see I2.2).

**Q17 Do you agree with the specific proposals for undertaking random sample compliance assessments?**

Yes, we agree that random sample compliance assessments are considered. However it must be determined how this will be achieved and by what mechanisms SEC Parties will demonstrate continued compliance. We agree that random sample compliance might be more appropriate for those organisations that do not undergo a full audit on an annual basis.

**Q18 Do you agree with the proposal for Users to meet the costs of the privacy assessments that are undertaken at their organisation?**

We agree with the current proposal on the understanding that privacy assessment is part of the overall CIO security and privacy assurance engagement. Please also see our response to Question 15.

**Q19 What are your views on potential future changes to the SEC to provide for reporting the results of privacy assurance assessments bodies such as Ofgem, DECC, ICO and Parties generally?**

We are unclear as to how Government anticipates the results of these privacy assurance assessments might be used by these bodies. Suppliers are already required to conform to the Data Protection Act 1998; they are also subject, through standard conditions of the gas and electricity supply licences, to clear restrictions on their data collection activities, and there are specific rules around customer consent set out within the SEC. In our view, therefore, the bodies mentioned should already be able to take sufficient comfort from the combination of these measures, and the fact that an independent assurance scheme is being undertaken, without the need for additional reporting.

**Q20 Do you agree that the proposed legal drafting reflects the position reached in the SMETS2 consultation response, that Users should be required obtain consent and to verify the identity of the energy consumer from whom they have obtained the consent prior to pairing a CAD?**

Yes, the legal drafting reflects the position.

**Q21 Do you agree with the proposed updates to the Security Requirements and the associated legal drafting?**

We agree that the legal drafting reflects the proposal and, notwithstanding some specific points we raise in response to other questions regarding security assurance, are satisfied that the proposed updates retain the key elements of the general security framework that was previously set out by DECC.

Greater detail would still be welcomed, however, especially around the more operational aspects and how the overall security regime will be implemented in practice. For example, we like to know how the assurance principles will apply to entry and exit criteria during UEPT and before ILO (general timescales and how to engage the CIO).

We are also uncertain as to the requirements for separation and whether individuals working on systems can be effectively policed by Users or the DCC to ensure they satisfy the relevant requirements set out in the drafting. There must also be some question as to whether the market for suitable expertise is capable of supporting such separation in practice.

**Q22 Do you agree that we should also include in the SEC obligations on the DCC and Users which limit the future dating of commands to 30 days?**

In principle, we have no objections to this proposal. However, it needs to be recognised that future dated commands (pending activation) can only be cancelled by overwriting with a

command of the same type, but with an activation date so far in advance that it will never take effect. The proposed approach would, therefore, limit or prevent the use of this means of cancellation, requiring a revision of supplier processes. Preferably, however, an alternative approach might see the legal drafting and DCC validation rules take account of such circumstances, perhaps by offering a relaxation for commands future dated to a prescribed date: e.g. 01/01/2099.

**Q23 Do you agree with the proposed approach and legal drafting in relation to which parties are eligible to subscribe for specific Organisation Certificates?**

We agree with the approach and that the legal drafting meets the technical proposals.

**Q24 Do you agree with the proposed approach and legal drafting in relation to the Organisation Certificates the DCC must subscribe for in order to support installation of Devices?**

We agree with the approach and that the legal drafting meets the technical proposals.

**Q25 Do you agree with the proposed approach and legal drafting in relation to the date on which the DCC must start providing live certificates, in particular the proposal to turn off the DCC's response time obligations until the Stage 2 Assurance Report (see section 6.6) has been produced?**

We agree with the approach and that the legal drafting meets the technical proposals.

**Q26 Do you agree with the proposed approach for all Network Parties to have established SMKI Organisation certificates?**

We agree that Network Parties should have established SMKI organisation certificates for the purposes of ensuring that upon initial install, smart meters are established correctly and SEC obligations on all parties can be discharged. It also provides an additional technical assurance step that smart metering systems can be established correctly upon install.

Alternative options where DNO organisational certificates are not available could result in Registered Suppliers having to undertake organisation certificate changes on behalf of Network Parties (on demand) at a later date, which is of no benefit to the Supplier and merely represents additional operational complexity.

We support the SEC legal drafting to be updated to support these principles.

**Q27 Do you agree with the proposed approach for Non-User Suppliers to have established SMKI Organisation certificates?**

We agree with the proposed approach for non-user suppliers, as this will ensure a consistent level of security measures is applied across the industry. While some parties may choose to opt out of the DCC, this should not be allowed to introduce additional complexities for DCC Users, nor present operational or security risks where assets churn between non-Users and Users over time.

Any additional costs to support non-DCC Users should be borne by them.

**Q28 Do you agree with the proposed approach and legal drafting in relation to specific SMKI Organisation Certificates placed on specific Devices?**

We agree with the approach and that the legal drafting meets the technical proposals.

**Q29 Do you agree with our proposal to require DCC to provide Test Certificates to Test Participants (who, in the case of non-SEC parties, will have to be bound by an agreement entered into with the DCC) only for the purposes of Test Services and testing pursuant to Section T of the SEC, and to not require DCC to provide a Test Repository? Please provide a rationale for your view.**

We agree with the proposal to require DCC to provide Test Certificates and that, where these Test Certificates are being provided to non-SEC parties, this is done under the terms of a binding agreement.

However, we are less persuaded of the arguments for not requiring a Test Certificate Repository; rather we had anticipated such a Repository offering a sort of 'proof of concept' before morphing into the Enduring SMKI Certificate Repository. If we are not to have a Test Repository, then we think DCC should accelerate its provision of the enduring version. The Test Certificate can then be issued through that system, complete with test flags to ensure integrity.

In any event, we would be wary of attempts to water down the requirements of the Test Certificate provision. In this vein, we are particularly concerned at suggestions that Parties and non-Parties alike must waive DCC liability in the event that Certificates were to prove unreliable. We feel this is especially inappropriate where a specific commercial arrangement has been entered into between the DCC and non-SEC parties for that purpose, and it would make for a very peculiar agreement where suitability of the product delivered is not a consideration.

**Q30 Do you agree with the proposed approach and legal drafting in relation to the DCC User Gateway Services Schedule?**

We agree with the proposed approach and legal drafting; however, our ultimate agreement will be dependent on our detailed review of the DCC User Interface Specification (DUGIS), which is not due to be published until September 2014.

**Q31 Do you agree with the proposed approach to centrally procure a EUI-64 Registry Entry?**

Yes, we agree with the proposed approach for central procurement of a EUI-64 Registry Entry.

**Q32 Do you agree with the intention to create a 'Party ID', enabling access to the Self Service Interface at a Party level?**

Yes, this should help expedite access to the Self-Service Interface.

**Q33 Do you agree that the proposed legal drafting accurately reflects the process by which the DCC will provider connection the DCC User Gateway?**

Broadly, we agree that the drafting reflects the process as we currently understand it; however, we believe aspects of this overall process are still in development (e.g. the way in which the DCC User Gateway Router is procured, or practical timescales for satisfying technical requirements and arranging site visits in time for Interface Testing and UEPT) and we need to see the final outcome of this development work to be able to give an unqualified response to this question.

**Q34 Do you agree that the drafting meets the needs of both DCC and its Users in establishing, maintaining and terminating connections? Please provide a rationale for your views and include any supporting evidence.**

We agree with the approach and that the legal drafting meets the technical proposals.

**Q35 Do you agree with the proposed approach and legal drafting in relation to Processing Service Requests?**

We agree with the approach and that the legal drafting meets the technical proposals.

**Q36 Do you agree with the proposed changes to the approach and legal drafting in relation to Smart Metering Inventory and Enrolment Services?**

Yes, we agree with the change and the legal drafting.

**Q37 Do you agree with the proposed approach and legal drafting in relation to Problem Management?**

Yes, we agree with the approach, although the legal drafting does not appear to indicate who will be responsible for establishing the root cause of a problem:

- The DCC party is clearly responsible for logging the problem and initial triage;
- The DCC is responsible if the problem is caused by DCC systems, parse and correlate, or a DCC comms hub (where the problem cannot be resolved remotely);
- There is no clear accountability for establishing the root cause.

The legal drafting regarding “Lead Supplier for a Communications Hub” and their responsibility for on-site activities appears incomplete:

- There is no detail about how the lead supplier would be instructed to perform a site visit, how the results of these site visits would be returned to the DCC and any other interested parties (e.g. the other supplier for a non-DF site), or how the lead supplier will recover its costs.

**Q38 Do you agree with the proposed approach and legal drafting in facilitating provision of a service to consumers to allow them to find out which Users have accessed consumption data from their meters?**

We agree that this is a necessary service and that the legal drafting meets the technical proposals.

**Q39 Do you agree with the proposed approach of not requiring any User to offer a transparency service to consumers at this stage?**

We agree that Users should not be required to offer a transparency service to consumers at this stage. However, we found no mention of any relaxation from such obligations in the SEC drafting.

**Q40 Do you agree with the proposal to provide for a date in the SEC when any assessment of whether a supplier is large/small for testing purposes is made? If not, please provide evidence for why this approach would not work and what alternatives should be used.**

Yes, we you agree with the proposal to provide for a date in the SEC when any assessment of whether a supplier is large/small for testing purposes is made. However we believe that this date should be no earlier than Q2 2015.

**Q41 Do you agree with the proposed approach and legal drafting in relation to registration data text alignment?**

We agree that the legal drafting meets the technical proposals and the approach seems reasonable.

**Q42 Do you agree with the proposed approach and legal drafting in relation to provision of market share information to the CDB including Ofgem determining disputes between the CDB and the DCC?**

We have no issues with the principle or proposed legal drafting. While it might be that an independent arbitrator would provide a quicker and more impartial service, we think that such a commercial approach would involve unwelcome costs, which would not obtain if Ofgem was responsible for settling such disputes

**Q43 Do you agree with the proposed approach to RDP/DCC connections and the associated legal drafting?**

We agree with both; however, we must be careful that enabling a sharing of obligations does not reduce the impact any breach or failure might have on each responsible party to such an extent that they deem non-compliance with the obligations to be a ‘risk worth taking’.

**Q44 Do you agree that Network Parties using the same RDP should be jointly and severally liable for failure of that RDP to comply with provisions relating to the RDP's use of the connection provided to it by the DCC?**

We think consideration should be given to whether the RDP agent should be a SEC party itself (like supplier agents) and hence take on some liability. Failing that, we consider that if the failure of the RDP is attributable to (or in respect of) services provided to a particular Network Party, that Network Party should be liable. Only where it is not possible to attribute the failure to a particular Network Party should all Network Parties using the same RDP be jointly and severally liable.

**Q45 Do you agree with the proposed approach and legal drafting in relation to provision of Explicit Charges for Certain Other Enabling Services?**

We generally agree with both, although we note there appears to be nothing in the legal drafting to preclude the DCC from making a margin on the service from both parties (e.g. they could charge the first party 100% of the cost, charge the second supplier 50% of the cost, and then offer the first party a rebate of 25%).

**Q46 Do you agree with broadening the scope of DCC Licence Condition 20 to include the Other Enabling Services which attract an explicit charge?**

Yes.

**Q47 Do you agree with the proposed amendments to the legal drafting which introduce a new controlled category of DCC data, set out guidelines for types of data which may be marked as confidential or controlled and limit liability for breach of the latter category?**

It is obviously beneficial that there is no longer unlimited liability in respect of any data which the DCC chooses to mark "confidential"; therefore generally this is a positive move.

In respect of the drafting, it could be clearer what is meant under M4.19 (a) by "relates to a DCC Service Provider". Does this mean commercially sensitive information relating to the manner in which the Service Provider does its job, the service charges or service credits it is paid etc (we assume this is the case) or any information coming from the DCC Service Providers (which could be far broader)?

It would be helpful to understand exactly what falls under limbs (a), (b) and (c) in order to be able to assess which categories of information remain "Confidential" and therefore subject to unlimited liability. The wording should perhaps replicate what is in the DCC Service Contracts.

**Q48 Do you agree that liability for disclosure of controlled information should be limited to £1 million per event (or series of events) for direct losses?**

With specific regard to the cap on liability, we agree that the figure of £1m per event (or series of events) seems reasonable.

However, whereas we welcome moves to narrow the definition of confidential, we do not think the inclusion of a provision for 'controlled information' is particularly helpful. We would

be concerned that, in effect, such data as the DCC might have chosen to mark as confidential before its definition was narrowed by M4.19 (assuming M4.19 is designated) could end up being marked as 'controlled', although these concerns are generally mitigated by the provisions of M4.21.

**Q49 Do you think that SEC Parties other than the DCC may have a need to mark data 'controlled'? If so, please outline what, if any, parameters ought to apply?**

If it is decided that DCC should be permitted to mark data as 'controlled', then it would seem appropriate for reciprocity to be extended to Parties.

**Q50 Do you agree that liabilities if these controls are breached should be limited to £1 million (excluding consequential losses)?**

Notwithstanding our reservations about these provisions in general, we agree that this cap would at least represent an even-handed approach.

**Q51 Do you agree with the proposed approach and legal drafting in relation to the consequential changes to align the SEC with the proposed changes to the DCC and Supply Licences?**

Yes, although the requirement for the SEC Panel to keep the compatibility matrix "reasonably up to date" means we are taking this on trust.

**Q52 Do you agree with the proposed approach and legal drafting in relation to the invoicing threshold?**

Yes, we agree with this approach.

**Q53 Do you agree with the proposed approach and legal drafting in relation to the credit cover threshold?**

Yes, we agree with this approach and the legal drafting.

**Q54 Do you agree with the proposed approach and legal drafting in relation to scope for an explicit charge related to Services within the DCC User Gateway Services Schedule of zero?**

We agree with the principle and with the legal drafting. However, we would like to see something added to the effect that, before zero charges are applied to specific services, the DCC would be required to carry out a full assessment of the anticipated impact it will have on the usage profile for those services.

**Q55 Do you agree with the proposed amendment to the definition of 'Mandated Smart Metering System'? Views would be welcome whether this change has a material impact.**

We do not think this change will have a material impact; moreover, it provides for greater accuracy and, in so far as there is any, cost reflectivity in the charging arrangements during UITMR.

**Q56 Do you agree with the proposed approach and legal drafting regarding power outage alerts?**

No. In line with our understanding of the current drafting of the GBCS, which only requires power outage alerts to be sent to the Electricity Distributor, we think it would be more appropriate for suppliers to simply access a log of such alerts, when necessary.

**Q57 Do you agree with the proposed approach and legal drafting in relation to the testing of shared systems?**

We agree in principle with the approach and that the legal drafting delivers that. However, we still require additional detail from the DCC as to how testing will be operationally managed, and a number of key interdependencies still need to be clarified, including:

- SMKI requirements in the context of UEPT – an SMKI consultation was issued by the DCC on the 1st August;
- Test approach – it is anticipated that the DCC will provide a test approach document during August which will be subject to consultation setting out the operational context in which testing will be performed;
- Use of test labs.

Until these aspects are fully understood, the testing approach will necessarily remain subject to on-going consideration and review.

**Q58 Do you consider the costs of remote access to the test SMWAN should be socialised across all Users or charged directly to those test participants who use the service? Please provide an explanation for your answer.**

We can see merit in each charging option. On balance, however, as other elements of the overall connection process will be subject to direct charging arrangements, we think the same should apply here. It is also worth considering this point in the light of potential future testing (e.g. following some technical innovation) where the requirement might only relate to one Party. In such circumstances, we would expect individual charging arrangements to apply.

**Q59 Do you agree with the proposed legal drafting in relation to Communications Hub Asset and Maintenance Charges?**

Broadly, yes. However, K7.5 should be reconciled with the possibility of a "deemed" order of hubs (see comments above) as currently it is not clear how Suppliers would be charged for "deemed" orders under F5.13(b).

**Q60 Do you agree with the proposed legal drafting on Communications Hubs Charging following removal and/or return?**

Yes, we agree that the legal drafting appears to satisfy the requirements set out in the consultation document.

**Q61 Do you have any views on the operation of SMETS 2 meters that are opted out of DCC services in light of:**

- **the conclusions on SMKI set out above; and**
- **any other matters, including GBCS, that may affect two-way communications with an opted-out meter?**

We believe the requirements for all SMETS2 meters should be subject to the same SMKI requirements. In our view, a single operational model will mitigate most of the issues relating to transitioning of meters between DCC and non-DCC Users.

All SMETS2 meters should similarly be subject to the same security requirements on the basis that such meters will churn between DCC and non-DCC meters over time. DCC Users need to be satisfied that, upon a change of supplier, a meter can be gained in the confidence that:

- appropriate security measures have been maintained and different risk profiles of meters (including those of the same type) are not introduced on the basis of whether a supplier was opted into / out of the DCC at the point of churn; and

- additional complexities within the change of supplier process, change of security credentials process, are not introduced - noting Ofgem's proposal to significantly reduce customer switching timescales.

**Q62 Do you agree with the proposed legal text with respect to the DCC's, Subscriber and Relying Party obligations and associated liabilities?**

Yes, the drafting appears to reflect the intent of the proposals.

**Q63 Do you agree with proposed legal text in relation to the Initial Enrolment Project for SMETS1 meters installed during Foundation?**

Generally the drafting reflects the process outlined in the consultation. However, that process is sufficiently vague and at the discretion of the DCC as to leave little input/control to Suppliers (other than to provide information on their SMETS1 Meters) with regard to which meters might get accepted. In particular, leaving the definition of Adoption Criteria as a "non-exhaustive" list to be determined by the DCC means that the DCC will have absolute discretion over whether to accept or reject Communication Contracts, and we think the

proposed arrangements make it possible for a situation to arise where only some of a supplier's portfolio of candidate meters is accepted.

We also note that, once the Report has been published, N4.8 only allows a supplier 2 weeks to confirm the actual number of meters it wants to enrol. We are concerned this might not offer a sufficient period for suppliers to properly consider their options.

**Q64 Does the contents list for the Initial Enrolment Project Feasibility Report (para 406) cover the required issues for the DCC to address? Are there any additional areas which you consider the DCC should be specifically required to include?**

The EPFR list, set out in paragraph 401 of the consultation document, sets out most of the key criteria against which SMETS1 meters should be measured. Additional criteria we think need to be considered include:

- operational performance / stability of meter types; and
- the production of an over-arching acceptance criteria to ensure a consistent reference point during evaluation.

**Q65 Do you agree with the proposed legal text in relation to charging arrangements for the ongoing communications costs of Foundation Meters enrolled in the DCC?**

While the legal draft seems largely appropriate, we are concerned a reference to 'a supplier of energy' at C1.5 (b) will not necessarily capture the relevant supplier if a dual fuel customer churns, but only with respect to the energy being measured by the relevant SMETS1 meter. However, we recognise that such events would be extremely rare.

**Q66 Do you agree with the proposed approach and legal drafting in relation to User supplier to Non-User supplier churn?**

We agree with the proposed requirements to be placed on non-DCC Users and the DCC to ensure all SMETS2 meters are operated within the same security trust model, and that suppliers, when gaining a meter from a non-DCC User, should be subject to treating those meters with a different risk profile and potentially additional operational overheads.

The current proposals are pragmatic and appear to mitigate the concerns that have been raised by EUK members in the past.

ScottishPower
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