

## **A consultation on the detailed policy design of the regulatory and commercial framework for DCC – Response from the Energy Retail Association**

### **Executive Summary:**

#### **Overview:**

The introduction of the Data Communications Company (the DCC) is a fundamental requirement for the operation of smart meters in Great Britain. As a licensed monopoly, it will be essential that the regulatory framework for the DCC and its activities are relevant and appropriate.

The ERA's members fully support the progress made under the Smart Metering Programme to date in defining and drawing up the regulatory arrangements to date. Whilst the energy industry is well versed and experienced in regulatory arrangements for monopoly service provision, setting up the DCC does provide new challenges associated with introducing communications services into the energy market. The efforts of DECC's officials in dealing with these challenges must be commended, as do the efforts of the various industry stakeholders and participants who have helped progress the development of the proposals as set out in the consultation.

One area that does need to be highlighted is that some of the proposals as set out in the consultation have been made, and stakeholders are being asked to comment on them without sight of the overall revised Smart Metering Implementation Programme Project Plan. Whilst the majority of the proposals as set out in this consultation are unlikely to be affected by changes to previous shared versions of the Project Plan, there could be some proposals affected, and these should be highlighted to stakeholders as soon as this is known.

#### **The role of the DCC:**

The DCC will be a completely independent entity, and is not intended to have any direct interaction with consumers in its operations (certainly at Day 1), therefore it is not appropriate for the DCC to be placed with objectives around consumer protection, instead, consumer protection will be delivered through the commercial service levels between the DCC, its service providers, and the DCC's users.

In procuring the services required to deliver the communications and data infrastructures for the roll-out of smart meters, there will need to be a significant focus on service and system integration in order to deliver a coherent end-to-end infrastructure. At present, with the DCC being described as a procurement and contract management entity, it is unclear if the DCC will take on this role of service and systems integrator. The ERA believes that this issue needs to be clarified at the earliest opportunity, and the issue has not been raised within this consultation.

#### **DCC's Services to Users**

There has been much discussion as to what constitutes Core, Elective and Value Added services throughout the course of the DCCG Working Group sessions over the last year. The current thinking is that the DCC's Core Services should be those key, critical, everyday services that users will need to

function in the smart world is correct. It is worth adding though, that the majority of the ERA's members believe that Core Services should only be applicable to compliant smart metering systems.

The majority view is that if the same services as defined in the Core Services category are offered and subsequently provided to users for non-compliant smart metering systems, then these services should be provided as Elective Services. It is also vitally important to ensure that the regulatory framework delivers the principle that in providing Elective and Value Added Services, the DCC's Core Services will not be compromised in any way.

### **Response to Consultation Questions:**

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 ERA sees no obvious issues basing the prohibition upon contracting with all licensed suppliers – however, the prohibition will need to recognise that not all domestic smart meters will operate via DCC – unless the communications service provider is able to provide 100% coverage. It will also need to recognise and support the gradual nature of the smart meter rollout programme, including the likely scenario of a 2-staged SMETS approval process.

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

There could be some abnormalities; domestic sites supplied as part of a multi-site contract, where the non-domestic supplier may be using an alternative solution; advanced meters not adopted by the DCC; and possibly some AMR type situations. .

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

We have no other comments on the form of the licensable activity.

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.

The consequential changes listed appear to capture the areas identified as part of the DCCG WG1 work to date. The ERA isn't aware that any other changes are required.

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, the ERA agrees that a single licence is preferable and appears wholly sensible based on the expectation for a single, cross-fuel governance regime sitting alongside the licensable activity.

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

We agree with the proposed approach to establish all of DCC's licence conditions as 'special conditions'. The ERA's members do however recognise the need for Government to fully consult with key industry stakeholders during the drafting of all aspects of the DCC licence. Equally, the

ERA's members also expect to be part of any future consultation process required for any future changes to the DCC licence.

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

Generally, the proposals make sense. However, there may be issues relating to the operation of the Data Transfer Service that may require changes to Distribution Network Operator licences as discussed in our response to Question 8 below.

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?

There are some potential issues in relation to the existing licence obligations on network operators and their current obligation (under SLC 37) to "establish, or procure the establishment (and maintain) the Data Transfer Service", and these issues will be dependent on decisions as to whether or not the Data Transfer Network will be used as the method of communication of interactions between DCC users and the DCC. If this is likely to be the case, then it may not continue to be appropriate for the obligation to remain with network operators. It may be more appropriate for these obligations to transfer over to the DCC, either from day one, or when the transfer of supply/meter point registration to the DCC takes place.

Similarly, there may also need to be changes to the obligations on gas network operators (under SLC 31 of the GT licence) for the same reasons. It may also be appropriate to add obligations on Independent Gas Transporters to facilitate the access to data that will be required by the DCC for access control purposes.

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

The ERA has no comment to make on the proposed approach.

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

Generally, the objectives are consistent with those discussed as part of the DCCG WG1 sessions and as such, the ERA broadly agrees with the objectives listed. The one area of concern is the statement that "The DCC would be required to protect the interests of consumers by following these objectives in carrying out its business". As the DCC is not intended to have any direct relationship or direct interaction with consumers particularly at Day 1, we do not believe it is appropriate or achievable for the DCC to have consumer protection linked objectives. Obligations in this area sit firmly with the users of services provided and managed by the DCC, and as such, any objective for protecting the interests of consumers should sit within the objectives of the Smart Energy Code.

Whilst the DCC's role is likely to change to incorporate supply/meter point registration at some point in the future, and this may well require some element of customer contact facility, the ERA's members do not believe this changes the need for the DCC to have any specific consumer protection objectives.

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

The ERA believes it will be sufficient to address statutory duties on DCC in the DCC licence. Government should be seeking to reduce the need for duplication wherever possible and the ERA sees no reason to replicate these in the Electricity and Gas Acts.

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?

The ERA agrees with this proposal. Whilst smart grids will be a reality in the GB market, it is far too early to speculate what obligations might be appropriate on the DCC with regard to the facilitation of distribution competition.

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

The ERA fully understands the intention with regard to protecting the interests of consumers. However, as described in our response to Question 10 above, we do not believe it is appropriate or achievable for the DCC to have consumer protection linked objectives. Obligations in this area sit firmly with the users of services provided and managed by the DCC, and as such, any objective for protecting the interests of consumers should sit within the objectives of the Smart Energy Code.

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

The ERA does not believe it appropriate for there to be an objective for the DCC to promote (or facilitate) energy efficiency. As the DCC is not intended to be a customer facing organisation, nor does it carry out any activity other than delivering services to industry parties, it is difficult to envisage how the DCC could deliver against such an objective.

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

Yes, the ERA agrees that the SEC licence condition must be drafted in a manner that provides flexibility of the future scope of the SEC.

16. What are your views on the SEC Applicable Objectives set out above?

The ERA believes that the SEC Applicable Objectives should align with the objectives within the DCC's licence obligations. It is essential that the SEC Applicable Objectives reference these, rather than duplicate them.

The SEC Applicable Objectives should also be kept as simple as possible. If there are too many SEC Applicable Objectives, it could be the case that either the Objectives become overly complicated, or contradictory in certain circumstances.

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

Yes, the ERA agrees with this approach.

18. Should there be a SEC objective related to promoting (or facilitating) efficiency of energy networks?

The ERA does not believe there is a need for a SEC objective in this area. Network Operators already have obligations in this area, and there is no need for duplication within the SEC.

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

The ERA does not believe it is either appropriate or necessary for the SEC to have an objective of promoting energy efficiency. The majority of the ERA's members agree that it is sensible however to include an objective for the SEC to facilitate competition in energy efficiency services.

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

The ERA broadly agrees with the service definitions as described.

Core services will be the key 'bread and butter' services required for the successful operation of the end-to-end smart metering infrastructure, and as such, the DCC must be 'required' to provide these services to any authorised user – the provision of Core Services must be DCC's priority and consideration is needed to understand if there is a need to put in place measures that ensures priority is given to Core Services both in terms of day-to-day operation, and ongoing service development.

The majority of the ERA's members share the view that Core Services should only be available as standard services to compliant smart metering systems. As such, their view is that if an authorised user would like to take the Core Services for non-compliant metering systems, then they could be provided as Elective Services by the DCC. One member does have a view that Core Services should be available for non-compliant metering systems as well as compliant smart metering systems.

The ERA's members have a consensus view that any variation to Core Services (such as the same activity, but on a more frequent basis) could be provided on an Elective basis.

It is then appropriate for the DCC to be 'permitted' to provide additional 'value added' or non-energy related services as it sees fit. The governance arrangements within the SEC, and requirement for the DCC to seek Authority approval for such services will provide the

appropriate protections that ensure the DCC is not placing inappropriate risks on its ability to deliver the core and elective services.

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

The issue here is slightly mis-aligned to the discussion points on this subject. The DCC should only be required to offer terms, rather than to offer services. Only when terms can be agreed should the DCC be able to provide services. So, the ERA believes that the DCC should be required to offer terms to any domestic or non-domestic non-compliant metering systems. The DCC must include all relevant safety/security/privacy requirements in the terms in order to protect the integrity of the end-to-end smart metering infrastructure. As in our response to Question 20 above, the majority of the ERA's members share the view that Core Services for non-compliant metering systems should be provided on an Elective basis.

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

The same principles apply as in our response to Question 21 above.

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 ERA's members have a consensus view that full transparency is required. All DCC users will need to have all relevant information available to them in order to assess the impact of new Elective or Value-Added services.

In having full transparency, there is a much stronger likelihood of achieving the DCC and SEC objectives of providing services in an efficient, economic and co-ordinated manner, as well as simplifying the assessment process for DCC users. It will also assist the 'second comer' principle – once the mechanics of the re-charging/refunding are decided, DCC users will have a clear view of the costs they will incur in deciding to take the same Elective services.

The ERA does not believe that full transparency will affect innovation in the provision of new products and services. Whilst services are likely to be provided by the DCC, it may be the case that products and services will be provided via non-DCC infrastructure.

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

The majority of the ERA's members believe it would make absolute sense that the detailed terms and conditions must be set out in bi-lateral agreements between the DCC and persons whom it is providing services to. One member is of the view that they should be set out in the SEC.

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).

The ERA believes that the key focus for the DCC, particularly during the initial stages of its operations, must be on stabilising the provision of the Core services. Whilst the ERA can see the intention in relation to Value-Added services (in that DCC will need to obtain the consent of The Authority before providing Value-Added services), there may be a need for some form of moratorium on Elective services, if only for a very limited time period whilst the Core services are stabilised and working efficiently and effectively.

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?

The ERA supports the view of the DCCG work group in that the licence should include a definition that sets out the activities that the DCC must procure. The ERA also recognises that the DCC should be given some level of flexibility to undertake some activities internally. This may help make the role of DCC licensee more attractive to some parties, and result in improving the level competition within the procurement process.

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

The ERA broadly agrees with the procurement objectives as proposed. However, we suggest removing 'where relevant' to the fourth objective. The DCC should adopt best industry practice approaches to the procurement and management of its service provider contacts at all times.

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

The proposal that the DCC should be required to produce a procurement and contract management approach document is a sensible one, especially when considering the importance of the services that the DCC must provide. An approach document of this nature, approved by the Authority should provide an appropriate structure to the DCC's activities and therefore provide appropriate confidence to the market as a whole that the DCC fully understands the role it must provide.

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.

The majority of the ERA's members support the view that the approach document should be submitted to the Authority for approval. This support is based on the fact that the Authority will have the ultimate day-to-day responsibility of monitoring the DCC's performance, and will therefore be in a position to do this against the document. However, one of the ERA's members

believes that the Secretary of State should have the overall approval responsibility, and that the Authority should assist the Secretary of State in that process.

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

The ERA does not agree with the assumption that a DCC user that operates in a monopoly environment would not be able to exercise influence over DCC, compared to once that operates in a competitive environment. It will be essential that no one particular party is able to exercise any influence over the DCC and therefore the same restrictions on relationships must be in place for all DCC users.

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?

The ERA believes that reliance on obligations on DCC to maintain and develop an economic system, and to promote competition in services is sufficient.

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?

Yes, the DCC must be independent of its service providers but this can be achieved with an agreed de minimis level of affiliation. The ERA agrees with Government that complete independence with no affiliation whatsoever will severely limit the number of potential bidders for the DCC role.

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 20% level as discussed in the DCCG work group appears appropriate.

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?

As suggested in our response to Question 32 above, prohibiting any level of affiliation or shareholding will severely limit potential bidders for the DCC role. As such, the 20% limit as proposed appears appropriate.

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

No, we do believe there needs to be some business separation, but the level of, and structure of any business separation will need further discussion depending on the circumstances concerned.



There may need to be some form of negotiation between potential DCC bidders and Government once responses to the tender process are in.

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, the DCC should be prohibited from using any confidential information for any purpose other than its licensed activity, including the very granular energy consumption data produced by smart metering systems. This restriction must also be placed on service providers via the contractual arrangements between them and the DCC (as well as any sub-contractors involved in providing any aspect of the DCC's services).

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?

The ERA's members do believe there is merit in exploring how any special administration arrangements might work in practice, especially bearing in mind the potential risk to industry should the DCC fail due to financial issues. Whilst the concept was discussed in the DCCG working group, the discussions didn't go into enough detail about how the arrangements would need to be framed, and how they could be put into practice.

The ERA also recognises that Ofgem are consulting on the issue of financial ring fencing provisions, and it would appear sensible to await the outcome of that exercise before making any fundamental decisions in relation to the financial ring fencing of the DCC.

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?

The ERA's members recognise that there must be some degree of flexibility in relation to the approach to financial security. It will also be important to ensure that any level of security required is both relevant and proportionate to the role the DCC is playing in the market.

Whilst providing some level of security is important, and is likely to be subject to an element of negotiation between potential DCC licensee's and Government, the ERA's members all agree that there does need to be some form of 'step-in rights' for Government, should the DCC fall into financial difficulty. This type of arrangement is already in place as part of the Network Rail Franchise arrangements. We have already seen Government take over the operation of the East Coast Mainline because National Express did not believe it could continue operating the service, and a similar principle should be allowed for in terms of the DCC licensee.

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?

This type of arrangement is relatively standard for contract exit management. Of course, it may be appropriate to structure such potential liabilities according to the circumstances of how and why the DCC's licence could be revoked. That said, any level of liability (and therefore the level of financial security required) must be proportionate to the services being provided by the DCC.

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

No.

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

Please refer to our response to Question 37 above.

42. Do you agree with 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?

Yes. End-to-end business continuity must be in place, and tested on a regular basis (either as part of a periodic and/or ad-hoc activity). This is an essential element of good contract management practices.

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.

Yes. The DCC should include provisions in its contracts that ensure it has the right to carry out regular financial 'health checks' on its service providers (and any relevant sub-contractors). It will also be essential that in the event of financial failure of a service provider, that any assets or IPR that are essential in providing the relevant service can be taken over by a new provider in order to minimise any service interruption for DCC users.

It may be appropriate to consider how this could be achieved practically, and to also consider whether there is a need to 'financially ring-fence' certain assets (such as the Comms hub in terms of communications services).

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

We agree that the proposed 10 year period is appropriate.

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?

It would appear sensible to allow flexibility for the Authority to extend the initial DCC's licence, and that a period of up to 5 years is acceptable.

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

The approach described appears sensible, especially in terms of there being the ability to review the costs that the DCC licensee had initially submitted for the extension period, some nine to ten years earlier. Our members fully expect that some elements of the DCC's services will have changed during the licensee's term as licence holder, and it is wholly sensible to review costs to ensure they remain appropriate.

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

Yes. It will be absolutely essential that any critical services can be transferred to a successor in order to ensure there is seamless service provision during any transfer period.

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

It is essential that the DCC's licence includes appropriate provisions to facilitate and possibly incentivise a smooth transfer between the incumbent and successor DCC. The ERA and its members would like to see:-

- Provision of arrangements for the transfer of key assets (should there be any) and any associated IPR;
- Specific details requiring parties to participate in transition testing, with specific details of processes and procedures detailed in the SEC;
- Provision of arrangements to facilitate modifications/change process during transition;
- Provision of arrangements to manage any SEC compliance issues (of SEC users) during transition; and
- Provision of arrangements to manage any ongoing disputes between SEC users and the DCC, and disputes between SEC users during transition.

Consideration should also be given to establish if it will be beneficial to provide some form of financial incentive on the outgoing DCC to facilitate the smooth transfer of the DCC licence. For example, it may be possible to withhold some element of the outgoing DCC licence holder's financial security payment to cover any costs that the new licence holder incurs as a result of the outgoing licence holder's actions. Of course, this could add complexity to the arrangements, but it could also provide an appropriate incentive for the outgoing party to behave appropriately during the licence transfer process.

Finally, it will be essential that the incoming licence holder has an appropriate knowledge and expertise of the energy industry. Regardless of the timing of a change of DCC licence holder, the nature of the energy market is such that there is always significant change and development occurring, and as such, any incoming licence holder will need to be able to hit the ground running to ensure minimal disruption to the services for all DCC users.

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?

Yes. Without this, there is little incentive for the DCC to improve or rectify any failure to meet service levels. Whilst it may be possible to impose some form of financial penalty, any penalty

regime will need to be constructed based on the DCC's operating margin and as such is unlikely to be significant enough of a threat. The ERA is unaware of any other contractual arrangement that does not allow for the ultimate sanction of service termination. The DCC licence should not be an exception.

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 SEC?

Yes, the approach of including a high-level obligation for the DCC to prepare for go-live appears sensible.

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?

It would appear sensible to include a high-level obligation relating to the provision of meter point/supplier registration services based on Government's previous decision that DCC will provide services in this area at some point in the future. We note that the consultation recognises the additional work required by the programme to further define the services that will be transferred, and to understand the impacts on relevant parties already carrying out this activity.

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?

Conditions will be needed in other licences to provide for the release of other licensee's obligations to provide these services at some point in the future. We support the proposal to use powers under the Energy Act 2008 to facilitate the necessary amendments to relevant licences.

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. The ERA's members have a consensus view that this is an essential and logical step for the market to take.

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

The ERA's members agree that there will need to be an appropriate dispute mechanism for disputes involving the DCC. It is likely that the majority of any disputes will be between the DCC and DCC users, and as such, many of these should be settled under the dispute arrangements within the SEC. The Authority need only be required to intervene where no resolution can be sought.

In terms of disputes between an outgoing and incoming DCC licensee, the Authority must be the determining body. It is wholly appropriate to include this within the DCC licence.

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?

The ERA sees no reason to include any reference to gas shipping, electricity generation or the participation in the operation of an interconnector at this time. It may be the case that as the market evolves, the DCC may have some role that interacts with these activities in the future, but it is too early to say at the moment. The ERA suggests that changes can be made to licences as and when they are needed, rather than to try and predict that they will definitely be needed at some point in the future.

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

The ERA notes that in terms of Theft, damage and meter interference, Government believes it not appropriate to include an obligation on DCC. We are also aware of the recent Ofgem consultation “Tackling Gas Theft”, which discusses potential models for a centralised theft body, and as such would suggest that Government liaise closely with Ofgem before making any decision in this area. It may be highly appropriate to have a joined up policy in this area in order to deliver the most economical solution for the identification of theft at some point in the future, even if not immediately.

The ERA believes that **“Business Carbon Footprint Reporting”** would be better included within the Smart Energy Code, rather than as a specific condition within the DCC’s licence.

In terms of the section titled **“Licensee’s payments to the Authority”**, it is not clear under what circumstances the DCC would make any payment to the Authority. Before any such condition is included in the drafting of the DCC licence conditions, it would be beneficial to all parties to further understand Government’s thinking in this area.

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

The ERA can see no obvious omissions.

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. In an ever evolving market, it would appear sensible to extend the Secretary of State’s powers to apply to modification of DCC’s licence conditions. This must be a formal process including a requirement to carry out full Impact Analysis on any proposed modification.

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?

Whilst some may consider it to be premature to ask DCC licence applicants to provide costs for undertaking any activity that may be required in the future, the ERA believes that it would not be difficult for DCC licence applicants to provide costs associated with undertaking meter point/supply point registration activities. Many of the current industry costs for this activity are

well known and straight forward, and many of the activities associated with managing this activity are well defined and documented.

That said, no party should be expected to provide costs without as a minimum, a defined set of 'baselined' assumptions to work from. The ERA does not believe that Government should assume a direct replication of the existing meter/supply point registration activities, and therefore the need for an agreed set of 'baselined' assumptions will be essential if industry is to have any confidence in any costs provided.

The ERA does not believe there is any need for a specific re-opener for DCC's costs of undertaking this activity. Not only would a re-opener add unnecessary complexity and delay, the costs can already be identified and considered with an appropriate level of confidence for all industry parties involved if the 'baselined' assumptions are defined. A re-opener should only be necessary or appropriate if it is apparent there needs to be a significant change to the 'baselined' assumptions that is expected to alter the costs either way.

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 SEC modifications?

The ERA's members all support the 'cost pass through' mechanism for the costs associated with SEC modifications. The SEC panel will have a role to play in reviewing costs of modifications, but this should be manageable and it is in everyone's interests to carry out this role efficiently and effectively.

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

The ERA's members all agree that this is likely to be decided as part of the contract negotiations between DCC applicant's and Government. There is no consensus position between the ERA's members on what percentage is acceptable – views range from 5% through to 20%.

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

Not at this time, however the ERA's members do recognise that there are still some key policy decisions that need to be made before we can answer this question with any real confidence. For example, industry is still discussing issues around the costs of maintenance activities associated with WAN communications equipment at the home, and there is still plenty of discussion to be had regarding costs associated with difficult meter positions/smart metering system installation. Until such issues have been discussed and policy decisions decided upon, industry is not able to answer this.

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?

There are a number of issues to consider with either option. However, the most relevant issue is whether or not all suppliers should pay DCC's internal costs, regardless of whether or not they will, or intend to receive services from DCC. It may be highly inappropriate to ask suppliers who have no intention to use any DCC services to contribute to DCC's internal costs.

Additionally, there is also further consideration required as to the principle of whether the DCC licensee should be recovering all of its internal costs prior to go-live. Whilst the DCC will be providing some services to future users of the DCC (such as with the adoption and early management of the Smart Energy Code), and these costs should rightly be recovered, some of the ERA's members would question whether the principle of the DCC being able to recover its costs in preparing itself for go-live is correct. The ERA's members would therefore suggest more discussion and thought is required before any decision should be made on the ability for DCC to recover all of its internal costs prior to go-live.

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

The ERA's members all support a 'User Pays' approach. If suppliers of only larger non-domestic customers use any aspect of DCC's services, our members believe they should be charged a proportion of DCC's internal costs.

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.

As a general principle, the ERA's members agree that there needs to be full transparency in relation to the DCC's internal costs pre-"go-live". Typically, network operators' costs are passed onto suppliers through Use of System charges – and therefore if network operators are charged pre-"go-live", then it is likely that this will simply result in an increase in Use of System charges to suppliers. Arguably, in this scenario, the transparency that suppliers believe is essential will be lost. The majority of the ERA's members believe it may well be simpler for suppliers to meet these costs rather than seek to allocate them to other parties, only for those charges to be levied on suppliers through other mechanisms.

In terms of network operators charging DCC for services provided to the DCC, it is difficult to envisage what services network operators will need to be providing pre-"go-live". As such, the ERA does not believe this is appropriate.

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.

Yes, this should be the over-arching principle, unless there are significant cost benefits for alternative charging models.

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.

The ERA's members all agree that data service provider(s) should not be treated differently.

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, how can this option for allocating costs during rollout be improved? If not, what is your preferred option and why?

It is not appropriate for the ERA to comment on the allocation of costs on suppliers. Our members will respond on an individual basis.

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 is not appropriate for the ERA to comment on the allocation of costs on suppliers. Our members will respond on an individual basis.

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

There is no consensus view from the ERA's members on this issue. Some believe that charging according to market share is appropriate, where others believe alternative charging mechanisms could be applied.

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 SEC management funding requirements?

Yes, these are the costs that our members expect to be recovered through a 'standing charge'.

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

There is no consensus view from the ERA's members on this issue. There are pro's and con's for either method.

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

Yes, the ERA's members all agree with this proposal.

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

Yes as a principle. However, the ERA's members all agree that it will be sensible to revisit this principle once network operators' smart grid requirements are fully understood, and what impacts those requirements are likely to have on the DCC's costs, and subsequent charging arrangements thereafter.

75. Do you agree with the proposed charging principles?

The majority of the ERA's members support all of the charging principles as listed. One member does have concerns with the principle that charges should not disincentive early roll-out of smart meters, and will provide their reasoning for this in their own response.

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?

The ERA's members can understand why Government might think it appropriate to consider that an objective for the charging methodology should be to promote innovation, however,



innovation will primarily be driven by the competitive market and the needs of consumers. It is therefore not necessary to include a specific objective for the charging methodology.

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?

There is no consensus between the ERA's members on the allocation of DCC's internal costs. Our members will respond accordingly on an individual basis.

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?

The principle of charging users for extensive assessment and design work is welcomed by the ERA's members. Any prospect of a user who only needs, or intends to use core services, then having to meet and costs associated with assessing or designing services it will never use should be avoided. One of the basic principles of good business practice is to have a good understanding of your costs. DCC users will face unnecessary uncertainty in managing their costs if they are paying the costs of the development of products they have no intention of utilising.

Any party using DCC's services will want and need to accurately predict the charges it is likely to face from the DCC – if they then face any amount of 'unknown' additional costs as a result of assessment and design of products/services for other parties, they will have no control of the overall costs of using the DCC.

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

Yes, the ERA's members support the concept of the 'second comer principle' where some of the costs attributed to the assessment and development of elective services are refunded to the original initiating party, when another user takes the same services.

As described in our response to Question 23 above, with full transparency regarding the details of elective and value-added services, and the relevant re-charging mechanisms agreed, other DCC users will be able to assess what costs they are likely to face to enable their decision making process, rather than having to request the information from the DCC, or worse still, only getting knowledge of costs further down the line.

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.

The ERA's members do believe that the more work is required to clarify the Minimum Core Service Requirements. The ERA's members have all identified some significant irregularities with the Core Service Requirements as listed in the consultation document and will provide details of their suggested changes on an individual basis. In terms of benefits that could be realised, it is

not appropriate for the ERA to comment. Again, the ERA's members will respond on an individual basis.

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.

As with Question 80 above, the ERA is not able to quantify benefits in this area, and its members will respond on an individual basis accordingly.

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.

- The ERA's members do not believe that the Service Requirements represent the Minimum Core Service Requirements for DCC Users. There is a significant amount of duplication between messaging requirements for network operators and suppliers that will need to be rationalised.
- Our members are concerned that there has not been a sufficient level of cost benefit analysis by network operators regarding their requirements and that their engagement with the Working Group tasked with this topic was incomplete. Given the fluid state of the smart grid market arrangements we recommend that these duplicate requirements are either withdrawn or revised.
- The ERA's members support modifications to the Minimum Core Service Requirements set out in the consultation. The current requirements do not in our view represent the requirements of DCC Users in either the roll out period or the first years following the completion of the roll out.
- If these requirements were included in the WAN service competitive procurement in 2012 as drafted, the ERA has serious concerns that a number of providers could be excluded and other unintended consequences such as significantly higher costs could occur.

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

The ERA's members all agree that setting a balanced incentive regime for the DCC will be essential in delivering an efficient and robust service for its users. The proposals stated appear to provide the required balance, and the ERA's members support the proposal for the Authority to have the ability to commission an independent audit of DCC's performance against its licence obligations, and key KPI's. That said, the SEC panel will also have a key role to play in monitoring performance against those key KPI's on a regular basis (i.e. monthly), which should provide a sound basis for the early identification of persistent failure to deliver against them. Where it is apparent that key failings are occurring on a regular basis, the ERA's members fully expect the

Authority to act accordingly and commission an independent audit as necessary, rather than on a periodic basis.

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

The majority of the ERA's members believe it should be appropriate and feasible for the SEC panel and DCC to negotiate KPI targets, and this should be done on a regular basis, especially during the early years of operation. This view is based on it being essential that there is a level of flexibility to negotiate KPI targets as operational procedures bed-in, that there is confidence in their effectiveness, and when user requirements change. The Authority should also have a role as arbitrator where any such negotiations break down.

Two of the ERA's members do not support this view, as they believe the Authority should negotiate KPI targets with the DCC.

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?

As described in our response to Question 83 above, the ERA's members support the principle of an independent audit of DCC's performance. Audits should be conducted on a periodic basis, with the scope for the Authority to commission ad-hoc audits where there is evidence of regular or systematic failure or under-performance.

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?

Yes, the ERA's members support the principle of a sharing mechanism for DCC internal costs. A 'cap and collar', or other similar approach may be appropriate to deliver this.

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

The ERA sees no reason why DCC licence applicants shouldn't propose KPI's as part of the licence application process. If nothing else, this should help demonstrate a good understanding of the services that it is expected to provide, and the services its users expect to receive. It is however vitally important that the DCC licence applicants have sufficient information available to them during the application process, otherwise any suggested KPI's are likely to be all but useless.

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?

The ERA's members broadly agree that the adoption criteria are appropriate. Our members will respond on an individual basis where they believe changes may be needed, or where they have significant concerns.

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?

There is no consensus position between the ERA's members on this issue. Our members will respond on an individual basis.

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?

There is no consensus position between the ERA's members on this issue. Our members will respond on an individual basis.

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?

There is no consensus position between the ERA's members on this issue. Our members will respond on an individual basis.

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

In principle, there is merit in DCC adopting Foundation Stage communications contracts as soon as possible after the DCC goes into live operations. There are obvious financial benefits in doing so, especially in that DCC users will be meeting the DCC's internal operating costs regardless of the volume of smart meters it is providing services for. It therefore makes sense commercially that those users paying its internal operating costs are receiving a service in return for payment.

However, the ERA does recognise that it may not be feasible for DCC to adopt contracts from day one, and that there may be additional development work required in preparation for contract adoption. As such, the ERA believes that the aim should be for DCC to be in a position to adopt contracts soon after go-live, with a level of flexibility to be determined between the period of the DCC licence holder being appointed, and the DCC go-live date. The adoption of contracts should be completed well in advance of the DCC taking on supply/meter point registration activities.

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

Yes, the ERA agrees with the 4 stage process outlined is an appropriate process for DCC appointment. The optional 'best and final offer' stage is a welcome addition to the process and should help the fine-tuning of applicant's submissions, as well as providing Government with any additional clarity needed, with the onus being on the applicant to flex their application as they

see necessary in order to win selection. However, the key issue for consideration is the suitability and effectiveness of any evaluation by Government in assessing all applications throughout the process.

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?

The ERA's members all support the proposal that applicants should lodge a form of financial security at the invitation to apply stage. Whilst this should not be the key driver for assessment, being able to demonstrate its financial security early on in the application process should be expected for such an important appointment in the market.

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?

The proposals for dealing with changes to consortia appear sensible. In dealing with unexpected or unforeseen circumstances, it will be important to ensure there is a clear and transparent process outlined so that any applicant is clear on how such circumstances will be dealt with. It is the ERA's view that simply relying on words such as 'will be dealt with on a case by case basis' are rather vague, and are unlikely to instil confidence that all applicants will be assessed equally.

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?

The ERA agrees with the view of the DCCG work group that an overarching confidentiality agreement for each applicant group will deliver the appropriate protections for all parties concerned.

97. Do you have any comments on the approach to clarifications and dialogue with DCC Licensing and Licence Application Process prospective applicants?

The proposed approach is sensible, and should deliver appropriate transparency to all parties. In publishing the details of each clarification request (subject to commercially sensitive information being removed), this should assist all parties and could potentially reduce the instances of repeated requests on the same subject.

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 ERA agrees with the proposed approach to the pre-qualification stage. It will be essential for all parties to fully understand the approach, and the intention to clarify details of the selection process in the pre-qualification documents helps deliver complete transparency to all applicants. It will be essential to manage and deal with any notifications of changes to consortia quickly in order to keep within the 6 week timescales proposed.

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?

The proposed information that must be provided by applicants appears to be sufficient for the pre-qualification stage of the process.

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

The ERA agrees with the proposed approach to the Invitation to Apply stage, but have some reservations as to whether the 6-8 week timescale is realistic for such detailed evaluation, especially if there are a number of applicants at this stage of the process.

The assessment and criteria are in-line with those discussed during the DCCG work group, and appear to offer the right balance for assessment.

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?

The ERA supports the proposals for appointing one or more preferred applicants as well as reserve applicants to ensure there are alternatives in the event of withdrawals or disqualification. This will be particularly important in the event that new or additional information becomes available that may have a material effect on applicants' ability to deliver the final requirements of services.

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?

Yes. As described in our response to Question 93 above, the 'best and final offer' stage is a welcome addition to the process and should help the fine-tuning of applicant's submissions, as well as providing Government with any additional clarity needed, with the onus being on the applicant to flex their application as they see necessary in order to win selection.

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

The ERA has nothing further to add here.

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?

The ERA's members support the principle that the Authority should have the power to fast track the appointment of a temporary DCC in the event of the incumbent licence holder having its licence revoked. With the DCC playing such a vital role in the market, it will be essential to ensure there any 'downtime' or disruption to the DCC's services. As such, it may be the case that the Authority will need to appoint an interim DCC with as little limitation as possible.

In reality, it is the ERA's view that the Authority will have little choice but to appoint either an existing central body, or large consultancy practitioner to carry out the interim role. Alternatively, should the licence revocation event take place early in the DCC's tenure, the Authority could approach one of the previously unsuccessful licence applicants to take on the role if deemed appropriate.