



Consultation Response

By email to smartmetering@decc.gsi.gov.uk

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1 June 2012

Smart Metering Implementation Programme – Regulatory Design Team

Department of Energy & Climate Change

3 Whitehall Place

London, SW1A 2AW

ELEXON's response to DECC Smart Metering Implementation Programme's: Consultation on DCC Licence and DCC Licence Application Regulations

We welcome the release of the draft Licence and the opportunity to respond to the DECC consultation. We congratulate DECC on the readability of the draft Licence.

In responding to the consultation we have focussed on those areas where our experience of the BSC may help develop the most effective arrangements. However we feel the following points are worth consideration.

Allocation of Roles and Responsibilities

The most important outstanding element is clarity of the scope of the activities, roles and the associated time frames between the:

- DCC Licensee;
- SEC Administrator;
- Fundamental Service Providers; and
- SMIP

For example, we note the importance of the Design Authority role and the implications of where this sits for the liabilities and protections within the contract. It may be that it is the Programme's intention to identify the best mechanism for who should deliver certain elements of the solution during the competitive process. If this is the case, we believe a statement clarifying this would allow potential bidders to prepare an appropriate solution.

Similarly it would be helpful to have a definitive answer on whether the DCC and SEC Administrator could be one and the same company. We are aware that a number of organisations, including our own, not only have robust contract procurement and management expertise but also an excellent track record in providing Code governance services.



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Need for flexibility during Establishment

Inevitably implementation of the smart solution will need to overcome unforeseen issues, this is expected of a major Programme with new systems, processes and multiple stakeholders interacting with each other. The solution will need to be flexible enough during Establishment to allow for issues that emerge to be addressed swiftly. From our experience of implementing the NETA arrangements issues may manifest themselves in a number of ways. For example, to allow flexibility with the technical solution, it is better to minimise 'hard' coding of solutions. Whilst allowing flexibility will add cost to the initial solution it will support the refining of the market and services, for the benefit of the industry, in the longer term. We have made a number of comments through the response in support of this position and in particular we would draw attention to the need to ensure that commercial arrangements and performance indicators are able to evolve quickly to ensure they do not impede the development of the DCC infrastructure. We also note from our experience of managing new arrangements that DECC should anticipate a high number of modifications in the early years of operation.

Co-ordination of Rollout Plans and DCC Services

A major influence on the success of the DCC in delivering the services in an efficient fashion will be the relationship between the roll-out plans of the Suppliers and the DCC services. While we recognise above the benefits of flexibility we believe some degree of control for DCC to help co-ordinate activities is necessary (such as the economic incentives on Suppliers proposed within the September consultation) and will significantly reduce the overall costs of the rollout.

If you would like to discuss any areas of our response, please contact me on 020 7380 4337, or by email at chris.rowell@elexon.co.uk.

Yours sincerely

Chris Rowell
Smart Programme Director



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A consultation on DCC Licence and DCC Licence Application Regulations

Question 1: Do you agree with the structure and content of parts 1 and 2 of the licence?

This document is in keeping with the general structure of licences within the industry.

We are however unclear how the remaining terms and conditions, liabilities and commercial schedules fit within the Licence and other associated documents. As we note in the cover letter there are significant benefits to ensuring a swift and flexible process for making changes. Therefore, there is a need to ensure the roles, responsibilities and requirements are clearly linked across agreements and the appropriate level of detail is contained in the right documentation. .

Contract extension

We note the 'power for the authority to extend the contract for a period of more than 1 year without the consent of the incumbent DCC' (4.14 of the Proposal documentation). In our view any extension of the licence should trigger a re-opener to recognise the commercial implications.

Question 2: Do you agree with the proposed list of licence revocation events, in particular do you agree with the inclusion of revocation triggers linked to:

- i) A failure of the DCC to comply with an enforcement notice issued under Section 40 of the Data Protection Act;
- ii) A contravention of the licence condition or statutory requirement in a manner so serious as to make it inappropriate for the licensee to continue to hold the licence;
- iii) A contravention of the independence Condition 9; and
- iv) The licensee no longer being, or never having been, a fit and proper person to carry out the Authorised Activity?

We would agree with the provisions proposed but would suggest that the Authority should use its discretion over how to address non compliances, to ensure any action taken is proportional to the breach.

Question 3: Do you agree that the DCC licence should be issued for a fixed-term only?

Yes we support the proposal for the fixed term contract. We consider periodic retendering to be the



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single most powerful incentive in outsourced service management.

Question 4: Do you have any comments on Chapter 1 of the licence conditions, in particular do you have any comments on the drafting of the definitions?

We note that some capitalised terms in the Consultation documentation and draft Licence are not referenced within the Definitions section. For example: Service Providers and Fundamental Service Capability – these terms are particularly relevant for the independence provisions discussed in Chapter 3 of the Licence Conditions.

Question 5: Do you have any comments on Chapter 2 of the licence conditions, in particular do you have any views on:

- i) The general objectives of the DCC;**
- ii) The way in which the Mandatory and Permitted businesses of the DCC have been constructed;**
- iii) The interaction between the mandatory and permitted businesses;**
- iv) The proposed general and security controls for the DCC?**

In keeping with our initial response to the September consultation we agree with the general objectives proposed for the DCC Licence; but would reiterate the importance of ensuring that the objectives for each participant must be consistent and commensurate throughout the value chain. From our experience of the BSC, to maximise the likelihood of the SMIP objectives being met we would suggest that the DCC objectives be included within the Fundamental Service Provider contracts and that of any sub-contractors within the agreement. We have found that providing the overall objectives of the business helps ensure decisions are made within this context and remain aligned.

- i) We recognise the opportunity for SEC parties to raise new elective services but note that the DCC does not appear to have a mechanism by which to raise its own; ELEXON notes from managing the BSC that oversight of central services gives the central body a unique insight across the market. This should give the DCC a strong position to develop services for the benefit of its users. We would propose that the DCC Licensee should be able to raise proposals for new elective services and, importantly, should be incentivised to do so to ensure the services develop to support the SMIP objectives and the benefits case.
- ii) We note the intention that Value Added Services should help defray costs for the Mandatory services and believe it appropriate that the DCC Licensee should seek to achieve this.



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However we also note condition 11.4 proposes that there should be no 'cross subsidy' between Mandatory and Permitted Business. For the avoidance of doubt, it should be confirmed that Value Added Services, developed using the infrastructure or expertise developed for the Mandatory Services, does not constitute a cross subsidy. If this is not the case, we struggle to see how any Value Added Services could be developed.

- iii) ELEXON agrees with the government's overall approach to security controls through the DCC Licence; however a number of further considerations are required. We recognize that the detailed security controls will be delivered through the Smart Energy Code (SEC) and that a number of specific consultations may be needed in order to finalise security governance and accreditation approaches for DCC implementation. ELEXON views these further consultations as critical to defining the governance framework for securing the end-to-end smart solution.

In reference to Condition 8 Part A: (Compliance with requirements is subject to direction) of the DCC Licence. We suggest that further clarity around the Authorised Security Standard is required. Is this Standard, or suite of Standards, to be defined to a greater level of detail in the SEC, or is this referring to alignment of appropriate industry standards for DCC? Does the Authorised Security Standard act as a subsidiary document to a DCC Information Security Policy? We believe that the SEC will define which ISO standards to align to for security (e.g. ISO27001/2), and that this will drive the implementation of an Information Security Policy and supporting Security Standards for the DCC.

In reference to Condition 8 Part D: (Requirements for control of information security) of the DCC Licence. We agree with the stated alignment to the ISO standards for Information security however suggest clarity is required on the statement - "The Licensee must comply with and (if applicable) hold appropriate certification." What determines the applicability of certification vs. no certification? Recent versions of the DECC Security and Technical Experts Group (STEG) Draft Security Requirements stipulated the DCC must be certified against the ISO security standards. It is ELEXON's view that the DCC Licensee should be certified against ISO27001/2 to ensure security of all DCC parties and connected DCC Users is appropriately scoped, implemented and maintained throughout the life of the DCC.

Question 6: Do you have any comments on Chapter 3 of the licence conditions, in particular do you have any comments on:

- i) **The independence requirements of the DCC and the interaction with the**



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revocation provisions

- ii) The broad condition on protection of confidential information;**
- iii) The scope and nature of the role of the compliance officer?**

We support the conditions proposed within Chapter 3.

- i) We support the independence requirements proposed
- ii) We support the confidential information protections
- iii) We support the scope and nature of the proposed compliance officer role.

Question 7: Do you have any comments on Chapter 4 of the licence conditions, in particular do you have any comments on the drafting of:

- i) The transitional obligations on the DCC, possibly as part of a wider transition scheme;**
- ii) The proposals on how the DCC would set out its future business development objectives**
- iii) The proposed inclusion of a licence condition that would facilitate the future transition of registration to the DCC**

We support the general conditions within Chapter 4.

- i) We agree with the transitional obligations as proposed. However we would raise the observation that the duration and scope of the Transition scheme will be an important driver for costs in the initial years of the DCC Licence and thus all information available will be important to ascertain accurate costing information during the Award Process.
- ii) We support the provision of a Business Development Plan. We have used business plans to help planning within our existing contract management suite particularly in ensuring that the long term aims of the contracts and service providers are consistent across technologies. However we also note that some of the most valuable content will be commercially sensitive. We would therefore suggest publishing a high level plan to help assist with user planning. This should be reviewed annually and consulted upon with the user community. However in addition to this a confidential plan with additional commercial input should be shared annually with the Authority.
- iii) The probable inclusion of Energy Registration Services has been heralded for some time and therefore it is appropriate that the Secretary of State is given powers to consult and direct on



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this. Any additional clarity which could be given on when this may occur and the scope of registration services required would be helpful to the market.

Question 8: Do you have any comments on Chapter 5 of the licence conditions, in particular do you have any comments on:

- i) The procurement obligations, including the balance between what the DCC must competitively procure and what it may self provide;**
- ii) The most appropriate role, if any, for the Authority in influencing how the DCC should balance various competing public interests, when preparing for future procurements of Fundamental Service Capability;**
- iii) Do you have any evidence from other sectors about how the public interest is taken into account by regulated bodies when making major procurement decisions;**
- iv) The obligations on the DCC in relation to provision of services, recognising that these conditions will need to be reviewed in light of a more detailed definition of services; and**
- v) The charging methodology provisions, particularly the objectives of the methodology?**

- i) We understand that with the exception of the Fundamental Service Capability the DCC can self-provide services where it is satisfied that there is an economic and/or efficiency case for doing so. Where this criterion has not been met the services must be procured in accordance with an agreed Procurement Strategy. This approach is similar to that used as part of the BSC and should ensure the services are appropriately sourced allowing the DCC to take advantage of changes within the market and technologies.

We are however unclear as to why the Procurement Strategy, once agreed by the Authority, should be shared with the SEC parties. Some of the information that is likely to ensure that the document is valuable as a tool to give assurance as to the efficiency of the costs incurred will be necessarily commercially sensitive. This is further discussed as part of the cover letter

With reference to Condition 17; Parts A through F we note that the Licensee will only be able to deliver on these requirements pursuant to the provisions within the Fundamental Service Provider contracts.



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- ii) The overall model proposed appears appropriate but we would suggest that the distinction (Condition 1: Definitions) whereby Core and elective services are solely related to energy may prove problematic. For example, if a service allowed a consumer to perform a remote status check on energy using appliances, that would be an elective service. But if the same service also reported whether his front door was closed, it would become Value Add as it no longer relates to energy in its entirety.

We would also add that defining what is covered by 'energy services' may prove problematic in the ever evolving landscape. We anticipate this will need to be at the discretion of the SEC panel and should allow for flexible interpretation with a minimum stipulation.

- iii) The charging principles are consistent with the General Objectives which we believe is crucial for the DCC.
- iv) The Charging Methodology will be the key driver for the Cost recovery provisions within the DCC Licence. Recognising this we support the current provisions and look forward to further detail.

Question 9: Do you have any comments on Chapter 6 of the licence conditions, in particular do you have any comments on :

- v) **The scope of the SEC as set out in the SEC condition and the SEC objectives;**
- vi) **Whether the DCC should have a licence obligation to maintain and keep in force the SEC;**
- vii) **The proposal to allow the Secretary of State to block SEC modifications in the period up to 31 October 2018; and**
- viii) **The way in which interoperability should be addressed through the SEC objectives?**

ELEXON has made significant comments with regards the structure, contents and interrelationships with the SEC as part of the SEC consultation and has here picked up issues specific to the Licence.

- v) With regards to the requirements on being Party to other industry codes (4.156 (condition 21)) we are keen to clarify that if the parent company must be a signatory to the SEC would this make it a User and thus subject to the restrictions attendant to them?

Additionally we cannot see any specific proposals for the scope of the SEC to deal with any privacy and security considerations. We believe the SEC must contain some provisions as it



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is unlikely that this can be dealt with wholly in licences and existing legislation. Security is referenced as one of the Applicable SEC objectives.

- vi) We support this obligation and note the parallel between the Transmission Company Licence and its obligation to maintain and keep in force the Balancing and Settlement Code.
- vii) We note this condition has been included solely to avoid the need for Section 88 powers to be exercised to undo SEC Modifications that were inconsistent with the wider implementation of the smart metering programme. We have no comment on this proposal
- viii) The requirements for interoperability should be managed through the SEC as this is a requirement placed largely on the SEC parties with the objective to communicate with all meters sufficient to manage the DCC responsibilities in this area.

Question 10: Do you have particular comments on how best to ensure the consumer interest is met in the SEC Objectives, in particular:

iii) Can you identify any potential scenarios where a modification might be proposed which would be in the interests of consumers but which would not be supported by the objectives set out for the code; and

iv) If you think the objectives could be set out to better capture the interests of consumers, as opposed to the proposed approach for SEC objectives to be balanced in the round with due regard for energy consumers' interests, how do you think this could be done?

iii) We suspect that in the majority of cases where there is a consumer benefit, this can be justified under the existing objectives (in particular facilitating competition). Arguments can be made along the lines of, if competition is facilitated then consumers must benefit in the long term, or if there is a reduction in costs, these should lead to a reduction in costs to the consumers. However, this is difficult to measure as costs savings may not necessarily be passed through. It may be difficult to successfully progress a change where there is a perceived customer benefit (e.g. to introduce improved processes that support privacy), if this incurs greater costs. Considerations such as this may be unique to 'smart', in that they are not, on the face of it, relevant to other industry codes. It may therefore be appropriate to ensure that the Relevant SEC Objectives (probably the fifth objective) explicitly includes privacy considerations

Question 11: Do you have comments on the proposed condition allowing the Authority to put forward code modifications and for this power to be limited to specific areas defined in



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the SEC?

This proposal is made in the context of modifications arising following a Significant Code Review process. We note that the licence contains broad powers but that the intention is that these will be limited to specific, defined areas through the Smart Energy Code. This is an important constraint as the ability for any Authority to both raise and determine Modifications should be exercised with extreme caution. In all events Modifications should follow the standard assessment and consultation approach to ensure all issues are addressed and parties protected.

Question 12: Do you have any comments on Chapter 7 of the licence conditions, in particular do you have any comments on:

i) The proposals in relation to financial security, in particular the requirement to provide a performance bond in addition to financial security?

We have consistently argued that the DCC needs to be set up to succeed. Delivery of the DCC services is central to the smart arrangements and will underpin the domestic energy volume calculations used in settlement and transmission and distribution billing. We therefore recognise that the licence conditions will need to ensure a robust service is delivered, whilst not being unduly burdensome or prescriptive and discouraging potentially suitable applicants.

The general conditions for the Financial and Governance Provisions are best practise for the industry and should afford the relevant protection to the industry.

- i) Adopting a flexible approach to demonstrating financial stability and financial security (Condition 26) should expand the pool of potential applicants, whilst not diluting the overall financial support requirements.

Question 13: Do you have any comments on Chapter 9 of the licence conditions, in particular do you have comments on:

- i) The need for the revenue restriction conditions in the DCC licence to evolve as the DCC's role changes;
- ii) The need to incentivise the DCC to concentrate on achieving programme milestones at the beginning;
- iii) The proposal that the DCC's internal costs should be passed through with a (£/annum margin applied;
- iv) That incentives on reduction in the DCC's internal costs and on output measures



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should be applied later;

v) That the DCC should be subject to an element of bad debt risk unless it takes reasonable measures to recover such debt; and

vi) Particular KPIs that could be applied to the DCC after it starts to deliver services?

We make the general observation on the DCC Charges and incentives with regards their governance and management. It is suggested that the DCC KPI's might be included within the SEC. We believe this is not the appropriate place for the KPI's given that we understand the KPI's are the responsibility of the Authority, not the SEC Panel. The KPI's interact significantly with the Charges and thus should be under the oversight of the Authority with whom the responsibility for the Charges resides. We note that this appears to be what is intended in 4.250 of the Consultation.

We also note that should the KPI's sit within the SEC they would be subject to the Modifications process. This process is designed for changes to be made to industry arrangements and as such is not suitable for commercial management structures such as KPI's. We believe that these features should be part of the contract between the Authority and the DCC Licensee. The KPI's results should be reported on to the SEC Panel and the SEC should input to their review process. This would allow for the KPI's to be closely aligned to the service users but under the authority of the Licensor – this approach would appear more in keeping with the proposal set out in 4.250 of the Consultation.

We agree with the approach suggested where DCC is not subject to specific price incentives during the initial phase recognising the overall pre-requisite that only 'efficient costs' will be passed through. We would add that the initial phases of delivering a major infrastructure programme including managing the interfaces with the Service users will require significant flexibility to address unexpected and emergent challenges. This will place flexibility above certainty in the incentives and charges regime priorities for the DCC and would also support the KPI's being documented in an easily modified environment

Further to this one of the primary goals of the Licence award process is to ensure that any appointed DCC is motivated to support the industry goals of delivering an infrastructure service capable of supporting the benefits identified by the SMIP. Success in this would reduce the risk of the KPI's and incentives driving the 'wrong behaviours' as the main goal would remain central.

i) As we noted in our response to the September consultation we believe the evolving approach is the only way to ensure relevant restrictions are applied across the Licence term. We note the inclusion of a formal review of the Price Controls on the introduction of the Registration arrangements. While we agree this is likely to be necessary given the evolution



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of the services during the initial 5 years of the licence we are unsure of how the Prices submitted during the selection process for the period after the reopener will be evaluated given they are subject to the review.

- ii) Similarly we support the concept of milestone incentives but note that the Licensee must have an effective 'toolbox' for the management of the Fundamental Service Providers. In particular a milestone payments relating to timely go-live of the DCC services would only be appropriate if the DCC had contractual stage gates – ideally with financial penalties - within the FSP contracts. If these were not in place alongside indemnities against FSP failures the milestone payments would represent an unmanageable risk and therefore be inappropriate.

More generally we would suggest that all incentives on the DCC must either have commensurate incentives on the FSPs or be limited to activities within its own control.

- iii) If the volume of services and therefore efficient revenues remain consistent with the margin we believe this is an appropriate model. However the suggested mechanism for reopening the agreement will be important to avoid putting the service at risk from significant volume increases not being matched by the margin.
- iv) We support the approach that incentives on reduction in the DCC's internal costs and on output measures should be applied later in the contract.
- v) We support the aim of ensuring that the DCC is incentivised to manage bad debt, where it is in a position to do so. We also agree with the proposal to limit this exposure to the DCC's internal costs recognising the low profile of risk the DCC Licensee is likely to assume.
- vi) We have no specific suggestions as to KPI's.

Question 14: Do you have any comments on Chapter 10 of the licence conditions, in particular do you have any comments on:

- i) **The proposed arrangements applying to Management Orders, including the scope of the powers of the Authority in such circumstances;**
- ii) **The arrangements proposed in relation to the Business Handover Plan and the process for resolution of matters between the outgoing and incoming DCC;**
- iii) **The scope of matters that the Business Handover Plan should provide for;**
- iv) **The scope of the matters that may need to survive for a period of time to continue to ensure a smooth handover to the DCC's successor and whether the**



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two year timeframe is appropriate; and

v) The proposed approach to Intellectual Property Rights?

We have no general comments relating to Chapter 10 of the Licence

- i) We have no comment on the application of Management Orders.
- ii) We utilise Business Handover Plans within the BSC agent contracts and support the inclusion within the DCC Licence. It is however important to recognise that there is a cost implication for the outgoing Licensee that will have to be reimbursed if the service quality is to be maintained and the risks minimised. We would suggest that this is indicatively priced during the selection process but reviewed in the final years of the licence to ensure it is relevant to the evolved service and contracts.
- iii) The scope of matters to be included in the Business Handover Plan seems to be appropriate.
- iv) Without the exact scope of the activities being explicit, the two years' timeframe should be a sufficient period of time to ensure a smooth handover to the DCC's successor.
- v) The intention of keeping all IPR the DCC needs available is appropriate. However we raise a clarification as to whether the proposals will allow the DCC to retain the IPR it generates for other activities after the termination of the Licence.

For more information on our response, please contact:

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