

Smart Metering Implementation Programme

Provisions in the Smart Energy Code concerning financing of communications hubs and consequential changes to the DCC Licence – Response

20 January 2014

1 Introduction

Smart DCC Ltd, the Data Communications Company (DCC) was granted the Smart Meter Communication Licence and acceded to the Smart Energy Code (SEC) on 23rd September 2013.

The Department of Energy & Climate Change (DECC) subsequently issued 'A Consultation on New Smart Energy Code Content (Stage 2)' on 17th October 2013 and invited responses from interested parties by 29th November 2013. On the 16 December DECC issued a subsequent document: 'Government response and further consultation: provisions in the Smart Energy Code concerning financing of communications hubs and consequential changes to the DCC Licence'.

This document provides a set of responses from DCC to the question set out in the consultation document.

DCC has also invited comments from the Communications Service Provider (North) as this is the only Service Provider directly affected by the changes to the Licence at this point in time. The resulting response has been informed by this input, however this response is from DCC.

DCC broadly agrees with the proposed drafting, however DCC proposes some minor drafting amendments and these are provided in Section 2 of this response document.

In addition to this response, DCC would be keen to discuss DECC's final draft prior to publication of the New Smart Energy Code Content (Stage 2) to ensure that there is a common understanding of the revised sections. In particular we are keen to see any drafting changes as a result of DCC's response (and any other responses) to Question 19 in the document and we would welcome clarity in these areas. For ease of reference the original DCC answers are in Annex 1.

If you have any questions regarding these responses please address them to:

2 DCC Response

Technical Governance and Change Control

Q1 Do you agree that the proposed changes to Conditions 11, 27 and 36, and Annex 5 Schedule 1, are necessary to align the DCC Licence with the communications hubs financing provisions in the SEC?

A1 DCC Broadly agrees with the proposed changes to align the DCC Licence with the communications hubs financing provisions in the SEC.

However we have the following specific comments that we would encourage DECC to consider adopting in the final version to ensure it is as clear as possible. We have provided an explanation for the proposed amendment, however should DECC have any questions we would be happy to discuss them.

Comments on Annex 2 – Proposed DCC Licence changes

1. Condition 11.12

DCC suggests that 11.12 (b) is slightly amended as follows:

(b) *from the Relevant Provider or Licensee (or where the SEC so provides, from SEC Parties) to persons engaged pursuant to the Relevant Contract in the business of financing, procuring, providing, or operating Communications Hubs,*

DCC has proposed the inserted text as it is feasible, for future tranches of Communications Hubs, that there may be a financing arrangement which does not require the Licensee or SEC Parties to make payments directly to the financiers.

2. Condition 27.14A, 27.14B, 27.14C and 27.14D

DCC suggests that any reference to other paragraphs in these paragraphs is provided in full to be consistent with references to paragraphs in the rest of the Licence.

i.e.

27.14A Subject to paragraph 27.14C, the Licensee must...

27.14B For the purposes of paragraph 27.14A, a "Secure Account"....

27.14C (b) respect of those Communications Hubs (unless returned under paragraph 27.14C(c));

27.14C (d)to such bank account (excluding that referred to in paragraph 27.14C(c))

27.14C (e)its obligations referred to in paragraph 27.14C(b).....in

compliance with the Licensee's obligations under 27.14C(c)..

27.14D (a)bank account of the nature referred to in paragraph 27.14C;

3. Condition 27.14C

DCC suggests that the preamble in Condition 27.14C is amended as follows:

To the extent provided for in the SEC, the Licensee may direct SEC Parties to pay amounts due by way of certain Service Charges relating to the provision of Communications Hubs into a bank account held in the name of a person, approved by the Licensee, in the business of financing.....

DCC has proposed this amendment as this Condition is describing the CHuRP (i.e. the entity holding the bank account into which SEC Parties should pay the Communications Hub amounts directly) as a person 'engaged pursuant to an External Service Provider Contract'. In this context this refers to the CSP Contract itself and DCC suggests that it is incorrect to state that the CHuRP has been engaged pursuant to the CSP Contract.

4. Condition 27.14C (c)

DCC suggests that this paragraph is amended as follows:

(d) when requested by the Licensee, an amount equal to the interest that accrues to such bank account (excluding that referred to in paragraph 27.14C(c)) is promptly paid to the Licensee.

DCC has proposed this amendment as there is a 'de minimis' value in the Arqiva Direct Agreement before any repayments to the Licensee are triggered. The additional words give the Licensee more flexibility regarding the timing of the recovery of any interest accrued in the bank account.

Annex 1 –

Communications Hub Financing

Q19 Do you agree that the four additional provisions are proportionate responses to providing reliable and economic third party financing options for Communications Hubs?

A19 DCC broadly agrees that the four additional provisions are proportionate responses to providing reliable and economic third party financing options for Communications Hubs with the exception of the following comments:

(i) J1.6 (DCC Account, direct payment to the CHuRP) – This condition states that ‘payments shall be made in pounds sterling by transfer of funds to the credit of the account or accounts of the DCC.....’ This needs to be amended to allow for payment to a specific account (or accounts) of the CHuRP.

The rationale for this proposed amendment is to ensure that the SEC conditions are in line with the conditions of the Direct Agreement for the financing of the CSP Communications Hubs.

(ii) Smart Meter Communication Licence (DCC Account) - In order for the Licence Conditions to be compatible with the direct payment process, there will also need to be an amendment to Annex 1 of Schedule 5 of the Licence so that a bank account may be set up in the name of the CHuRP.

The rationale for this proposed amendment is that the current Licence Conditions only allow for Licensee revenues to be paid into a bank account in the Licensee's name.

(iii) M11.5(b)(i) – the reference to ‘that event’ should be replaced with a reference to ‘a Communications Hub Finance Acceleration Event’.

The rationale for this proposed amendment is to provide clarity with respect to the type of event which would trigger the rights of the Approved Finance Party.

(iv) Section A – Definitions – It is proposed that the following definitions are amended:

a. ‘Approved Finance Party’ – Please replace ‘the person’ with ‘each person’

The rationale for this proposed amendment is that as more tranches of finance are entered into, there is a possibility that there may be further Direct Agreements in the future.

b. ‘Communications Hub Finance Acceleration Event’ – This definition would benefit from making it explicit that in such an event the DCC would be liable under the Direct Agreement for the unamortised asset value and finance charges and costs as specified in the definition of the Base Termination Amount.

The rationale for this proposed amendment is to provide clarity regarding DCC's liability for the Base Termination Amount under the circumstances of a communications Hub Finance Acceleration Event as detailed in the Service Provider contract.

c. ‘Communications Hub Finance Facility’ – Please replace

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'exclusively' with 'primarily'.

The rationale for this proposed amendment is that the relative facility will be primarily for the purchase of the Communications Hubs but may also be used for CHuRP administration costs.